

# ADMINISTRATIVE REGISTER OF KENTUCKY

LEGISLATIVE RESEARCH COMMISSION  
FRANKFORT, KENTUCKY

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**MEETING NOTICE:** The Administrative Regulation Review Subcommittee is scheduled to meet on September 9, 1997. See tentative agenda beginning on page 451 of this Register.

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

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

#### **ADMINISTRATIVE REGISTER OF KENTUCKY**

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**ADMINISTRATIVE REGULATION REVIEW SUBCOMMITTEE**

**TENTATIVE AGENDA - September 9, 1997 at 10 a.m.**

**Room 149, Capitol Annex**

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

**PERSONNEL BOARD**

**Board**

101 KAR 1:365. Appeal and hearing procedures.

**PERSONNEL CABINET**

**Unclassified**

101 KAR 3:045E. Compensation plan and compensation incentive systems. (Deferred from May)

**REVENUE CABINET**

**Income Tax; General Administration**

103 KAR 15:050. Filing dates and extensions.

**FINANCE AND ADMINISTRATION CABINET**

**Kentucky Infrastructure Authority**

**Authority**

200 KAR 17:070. Drinking Water State Revolving Fund, priority formula and application requirements. (Not Amended After Hearing)  
(Deferred from August)

**Kentucky Asset/Liability Commission**

**Commission**

200 KAR 23:010E. Guidelines for use of financial agreements.

**GENERAL GOVERNMENT CABINET**

**Board of Ophthalmic Dispensers**

201 KAR 13:080. Inspection of establishments. (Deferred from July)

**Board of Nursing**

201 KAR 20:240. Fees for applications and for services.

201 KAR 20:411. Sexual Assault Nurse Examiner Program standards and credential requirements.

**Board of Social Work (Deferred from July)**

201 KAR 23:011. Repeal of 201 KAR 23:010, 201 KAR 23:030, 201 KAR 23:040, 201 KAR 23:100, and 201 KAR 23:110.

201 KAR 23:020. Fees.

201 KAR 23:060. Licensed social workers, certified social workers, and licensed clinical social workers.

201 KAR 23:070. Qualifying education and qualifying experience under supervision.

201 KAR 23:080. Code of ethical conduct.

201 KAR 23:140. Per diem compensation for board members.

**TOURISM DEVELOPMENT CABINET**

**Department of Fish and Wildlife Resources**

**Fish**

301 KAR 1:201. Fishing limits.

**Game**

301 KAR 2:082. Importing and holding exotic wildlife.

**DEPARTMENT OF AGRICULTURE**

**Division of Markets**

**Organic Agricultural Product Certification**

302 KAR 40:010. Standard organic agricultural product requirements. (Deferred from June)

**NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET**

**Department for Environmental Protection**

**Division of Waste Management**

**Waste Tires (Public Hearing in August)**

401 KAR 46:005. Definitions related to 401 KAR Chapter 46.

401 KAR 46:010. General provisions for waste tires.

401 KAR 46:020. Registration for waste tire accumulators and waste tire processors.

401 KAR 46:030. Operating requirements for waste tire facilities.

401 KAR 46:040. Financial assurance.

401 KAR 46:050. Tire retailer fee.

401 KAR 46:060. Waste Tire Trust Fund Loan Program.

401 KAR 46:070. Waste Tire Trust Fund Grant Program.

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### Solid Waste Facilities

401 KAR 47:150. Special types of permits. (Public Hearing in August)

### JUSTICE CABINET Division of Charitable Gaming

#### Charitable Gaming

- 500 KAR 11:001. Definitions. (Not Amended After Hearing)
- 500 KAR 11:025. Quarterly reports. (Not Amended After Hearing)
- 500 KAR 11:080. Charity fundraising event. (Not Amended After Hearing)
- 500 KAR 11:090. Special limited charitable games. (Not Amended After Hearing)

### Department of Corrections Division of Adult Institutions

#### Office of the Secretary

- 501 KAR 6:110. Roederer Correctional Complex.
- 501 KAR 6:130. Western Kentucky Correctional Complex. (Found Deficient by ARRS, 10/96) (Deferred from November)

### Department of State Police

#### Sex Offender Registration System

- 502 KAR 31:010. Sex offender registration system.

#### Candidate Selection

- 502 KAR 45:145E. Merit Pay Program. (Deferred from August)

### Department of Juvenile Justice

#### Child Welfare

- 505 KAR 1:030E. DJJ policy and procedures manual. (Deferred from June)

### TRANSPORTATION CABINET Department of Vehicle Regulation Division of Motor Vehicle Licensing Department of Fiscal Management Division of Audit Review

#### Motor Vehicle Tax

- 601 KAR 9:135. Apportioned registration.

### Department of Highways Division of Traffic

#### Maintenance

- 603 KAR 3:080. Advertising devices. (Amended After Hearing)

#### Traffic

- 603 KAR 5:050. Uniform traffic control devices.
- 603 KAR 5:070E. Motor vehicle dimension limits. (Deferred from August)

### EDUCATION, ARTS, AND HUMANITIES CABINET Education Professional Standards Board

#### Board

- 704 KAR 20:670. Kentucky teaching certificates.

### WORKFORCE DEVELOPMENT CABINET State Board for Adult and Technical Education

#### Management of the Kentucky TECH System

- 780 KAR 2:130E. Minimum standards of admission for postsecondary students.

#### Personnel System for Certified and Equivalent Employees (Deferred from May)

- 780 KAR 3:070. Attendance, compensatory time, and leave. (Amended After Hearing)
- 780 KAR 3:080. Extent and duration of school term, use of school days and extended employment. (Amended After Hearing)

#### Unclassified Personnel Administrative Regulations

- 780 KAR 6:060. Attendance, compensatory time, and leave. (Deferred from March)

### Department for Adult Education and Literacy

#### Adult Education and Literacy

- 785 KAR 1:010. Testing program.
- 785 KAR 1:020. High school equivalency diploma.

### Department for Employment Services Division for Unemployment Insurance

#### Unemployment Insurance

- 787 KAR 1:200E. Maximum weekly benefit rate.

### PUBLIC PROTECTION & REGULATION CABINET Department of Insurance

#### Rates and Rating Organizations

- 806 KAR 13:130 & E. Experience modification factors for workers' compensation insurers.
- 806 KAR 13:140 & E. Notice of right to seek review of application of workers' compensation insurance rates.

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### Health Care Malpractice

806 KAR 40:020. Charitable health care provider registration.

### CABINET FOR HEALTH SERVICES

#### Department for Public Health

#### Division of Health Systems Development

### Emergency Medical Services and Ambulance Service Providers

902 KAR 14:084. Class III ground ambulance providers.

902 KAR 14:100. Advanced life support (ALS) medical first response providers. (Deferred from August)

### Health Services and Facilities

902 KAR 20:016E. Hospitals, operations and services. (Deferred from August)

902 KAR 20:048. Operation and services; nursing homes.

902 KAR 20:051. Operation and services; intermediate care.

### Controlled Substances

902 KAR 55:095E. Prescription for Schedule II controlled substance - facsimile transmission or partial filling. (Deferred from August)

### CABINET FOR FAMILIES AND CHILDREN

#### Department for Social Insurance

#### Division of Management & Development

### Public Assistance

904 KAR 2:017E. Kentucky Works supportive services.

904 KAR 2:035E. Right to apply and reapply. (Deferred from August)

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

904 KAR 2:046E. Adverse action; conditions. (Deferred from August)

904 KAR 2:055E. Hearings and appeals. (Deferred from August)

904 KAR 2:060E. Delegation of power for oaths and affirmations. (Deferred from August)

904 KAR 2:370E. Technical requirements for Kentucky Works.

#### Department for Social Services

#### Division of Family Services

### Child Welfare

905 KAR 1:180E. DSS policy and procedures manual. (Deferred from June)

### CABINET FOR HEALTH SERVICES

#### Department for Medicaid Services

#### Division of Administration and Development

### Medicaid Services

907 KAR 1:160E. Home and community based waiver services. (Deferred from June)

907 KAR 1:170E. Payments for home and community based waiver services. (Deferred from June)

907 KAR 1:710. Managed behavioral health care initiative (1915b Waiver). (Amended After Hearing)

907 KAR 1:720E. Coverage and payments for the Kentucky Early Intervention Program services provided through an agreement with the state Title V agency. (Deferred from June)

#### Department for Mental Health and Mental Retardation Services

### Mental Health

908 KAR 2:200E. Coverage and payment for Kentucky Early Intervention Program services. (Deferred from June)

### OTHER BUSINESS

### REVENUE CABINET

### Sales and Use Tax; General Exemptions

103 KAR 30:091. Sales to farmers.

### NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET

#### Department for Natural Resources

### Division of Water Patrol - 401 KAR Chapter 4

401 KAR 4:010, 401 KAR 4:020, 401 KAR 4:030, 401 KAR 4:035, 401 KAR 4:040, 401 KAR 4:050, 401 KAR 4:060, 401 KAR 4:070, 401 KAR 4:080, 401 KAR 4:090, 401 KAR 4:100, 401 KAR 4:110, 401 KAR 4:120, 401 KAR 4:130, 401 KAR 4:140, 401 KAR 4:150, 401 KAR 4:160, 401 KAR 4:170, 401 KAR 4:180, 401 KAR 4:190, 401 KAR 4:200.

**ADMINISTRATIVE REGULATION REVIEW PROCEDURE**  
(See KRS Chapter 13A for specific provisions)

**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 working (5) days before the scheduled hearing. If no written notice is received at least five (5) working days before the hearing, the administrative body may cancel the hearing.

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

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

**Review Procedure**

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

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NOTICES OF INTENT TO PROMULGATE ADMINISTRATIVE REGULATIONS

REVENUE CABINET  
Department of Law  
Division of Tax Policy

July 29, 1997  
Revenue Cabinet  
Department of Law  
Division of Tax Policy

- (1) **103 KAR 35:040** - Natural gas taxpayer defined.
- (2) The Revenue Cabinet intends to promulgate an administrative regulation governing the subject matter listed above.
- (3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for September 30, 1997, at 10 a.m., at 200 Fair Oaks Lane, Third Floor - Training Room A, Frankfort, Kentucky.
- (4)(a) The public hearing will be held if:
  1. It is requested, in writing, by at least 5 persons, or an administrative body, or an association having at least 5 members; and
  2. A minimum of 5 persons, or the administrative body or association, agree, in writing, to be present at the public hearing.
- (b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 10 days prior to September 30, 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: Joseph G. Hall, Tax Consultant, Kentucky Revenue Cabinet, Division of Tax Policy, 200 Fair Oaks Lane, Third Floor, Frankfort, Kentucky 40620, Telephone: (502) 564-6843, Fax: (502) 564-9565.
- (b) On a request for public hearing, a person shall state:
  1. "I agree to attend the public hearing."; or
  2. "I will not attend the public hearing."
- (6)(a) KRS Chapter 13A provides that persons who desire to be informed of the intent of an administrative body to promulgate an administrative regulation governing a specific subject matter may file a request to be informed by the administrative body.
- (b) Persons who wish to file this request may obtain a request form from the Kentucky Revenue Cabinet at the address listed above.
- (7) Information relating to the proposed administrative regulation:
  - (a) The statutory authority for the promulgation of an administrative regulation relating to the definition of natural gas taxpayer is KRS 143A.060(2).
  - (b) The administrative regulation that the Kentucky Revenue Cabinet intends to promulgate will not amend an existing administrative regulation. It will establish the party liable for reporting and paying the natural gas severance and processing taxes.
  - (c) The necessity and function of the proposed administrative regulation is as follows: KRS 143A.060(2) allows the cabinet to collect natural gas severance tax directly from the severer, or severer and processor if the cabinet determines that the collection of the taxes due under KRS 143A.020 would be accomplished in a more efficient and effective manner. The cabinet would be required to set out its determination in writing, along with its reasons for this finding. The severer, or severer and processor must then be notified at least fifteen (15) days in advance of the first reporting period for which the action would be effective. The Federal Energy Regulation Commission (FERC) Order 636 requires the natural gas industry to provide services on an unbundled basis, offering transportation, storage, gathering, and other services on a stand-alone basis. FERC Order 636 has transformed the pipeline industry from monopolies with minimal risk into a competitive market-driven environment. Thus, due to the extensive changes in the gas pipeline industry arising from the implementation of FERC Order 636, the cabinet has determined that the collection of severance taxes under KRS 143A.020 from the severance, or severance and processing of natural gas would be accomplished in a more efficient and effective manner through the severer, or severer/processor, remitting the taxes.
  - (d) The benefits expected from the administrative regulation are:
    1. All taxpayers will be located inside the state of Kentucky, therefore allowing for more efficient audit of natural gas tax records;
    2. Less revenue will be jeopardized from natural gas exported to other states;
    3. Fair market value for natural gas will be easier to establish; and
    4. Accuracy of appropriate revenue amounts will be insured.
  - (e) The administrative regulation will be implemented as follows: The provisions of this administrative regulation will be incorporated into the instructions of Revenue Form 56A100, Natural Gas and Natural Gas Liquids Tax Return, and other publications issued by the Revenue Cabinet.

FINANCE AND ADMINISTRATION CABINET  
Office of the Secretary

August 15, 1997  
Finance and Administration Cabinet  
Office of the Secretary

- (1) **200 KAR 2:006**. Employees' reimbursement for travel.
- (2) The Finance and Administration Cabinet intends to promulgate an administrative regulation governing the subject matter listed above.
- (3) A public hearing to receive oral and written comments on the proposed amendment has been scheduled for September 29, 1997, at 9 a.m. in Room 386 of the Capitol Annex, Frankfort, Kentucky 40601.
- (4)(a) The public hearing will be held if:
  1. It is requested in writing by at least five (5) persons, or an administrative body, or an association having at least five (5) members; and

## ADMINISTRATIVE REGISTER - 456

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 10 days prior to the hearing date, the public hearing will be canceled.

(5)(a) Persons wishing to request a public hearing or make written comments should mail their written request or comments to the following address: Angela C. Robinson, Attorney, Office of Legal and Legislative Services, Finance and Administration Cabinet, Room 374, Capitol Annex, Frankfort, Kentucky 40601.

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

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

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

(b) Persons who wish to file this request may obtain a request form from the Office of Legal and Legislative Services at the address listed above.

(7) Information relating to the proposed administrative regulation:

(a) The statutory authority for the promulgation of an administrative regulation governing the subject matter of this administrative regulation is contained in KRS 44.060 and 45.101.

(b) The administrative regulation that the Finance and Administration Cabinet intends to promulgate will amend 200 KAR 2:006. It will increase the reimbursement rate for mileage and per diem expenses and increase the dollar amount for which a receipt is required.

(c) The necessity and function of the proposed administrative regulation is as follows: The Finance and Administration Cabinet is directed by law to coordinate and supervise the fiscal affairs and procedures of the state and is authorized to adopt regulations for that purpose. The proposed amendment will increase the reimbursement rate for mileage and per diem expenses in order to more fairly compensate employees and will reflect the recent statutory change which increased the dollar amount for which a receipt is required.

(d) The benefit expected from this administrative regulation is fair reimbursement of mileage and per diem expenses for state employees and a reduction in paperwork required to document minimal expenses.

(e) The administrative regulation will be implemented as follows: Payment of the increased rates and changes in the Finance and Administration Cabinet's Manual of Policies and Procedures.

August 15, 1997

Finance and Administration Cabinet

Office of the Secretary

(1) **200 KAR 5:021.** Manual of policies and procedures.

(2) The Finance and Administration Cabinet intends to promulgate an administrative regulation governing the subject matter listed above.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for 9:30 a.m., September 29, 1997, in Room 386 of the Capitol Annex, Frankfort, Kentucky.

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

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

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

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Finance and Administration Cabinet, Office of Legal and Legislative Services, Room 374 Capitol Annex, Frankfort, Kentucky 40601.

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

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

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

(b) Persons who wish to file this request may obtain a request form from the Office of Legal and Legislative Services 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 promulgation of the Finance and Administration Cabinet Manual of Policies and Procedures is KRS 45A.045(2).

(b) The administrative regulation that the Finance and Administration Cabinet intends to promulgate will amend 200 KAR 5:021. It will update the Finance and Administration Cabinet's Manual of Policies and Procedures to reflect recent statutory changes.

(c) The necessity and function of the proposed regulation is as follows: There have been recent statutory and regulatory changes which require that the manual be updated.

(d) The benefits expected from this regulation are: Allowing the Finance and Administration Cabinet's Manual of Policies and Procedures to accurately reflect statutory and regulatory requirements.

(e) The administrative regulation will be implemented as follows: By making necessary changes in the Finance and Administration Cabinet's Manual of Policies and Procedures.

August 15, 1997

Finance and Administration Cabinet

Office of the Secretary

(1) **200 KAR 5:302.** Delegation of authority.

(2) The Finance and Administration Cabinet intends to promulgate an administrative regulation governing the subject matter listed above.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for September 29, 1997, at 10 a.m., in Room 386 of the Capitol Annex, Frankfort, Kentucky.

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(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 the hearing date, the public hearing will be canceled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Finance and Administration Cabinet, Office of Legal and Legislative Services, Room 374 Capitol Annex, Frankfort, Kentucky 40601.

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

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

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

(b) Persons who wish to file this request may obtain a request form from the Office of Legal and Legislative Services at the address listed above.

(7) Information relating to the proposed administrative regulation:

(a) The statutory authority for the promulgation of an administrative regulation relating to the above subject matter is contained in KRS 45A.035 and 45A.045(5).

(b) The administrative regulation that the Finance and Administration Cabinet intends to promulgate will amend 200 KAR 5:302. It will allow for delegation by the Secretary of the Finance and Administration Cabinet of authority to declare and dispose of surplus personal property other than vehicles.

(c) The necessity and function of the proposed regulation is as follows: To provide for the method of delegating authority to declare and dispose of surplus personal property other than vehicles and to insure that the agency receiving the authority follows all requirements of applicable laws and regulations.

(d) The benefits expected from this administrative regulation are: A more timely and efficient system of disposal of surplus personal property that will result in less warehousing and transportation costs related to the handling of same.

(e) The administrative regulation will be implemented as follows: By requiring a state agency to follow certain procedures and guidelines when requesting and when exercising a delegation of authority to declare and dispose of surplus personal property other than vehicles.

August 15, 1997

Finance and Administration Cabinet

Office of the Secretary

(1) **200 KAR 5:306.** Competitive sealed bidding.

(2) The Finance and Administration Cabinet intends to promulgate an administrative regulation governing the subject matter listed above.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for September 29, 1997, at 10:30 a.m., in Room 386 of the Capitol Annex, Frankfort, Kentucky.

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

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

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

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Finance and Administration Cabinet, Office of Legal and Legislative Services, Room 374 Capitol Annex, Frankfort, Kentucky 40601.

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

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

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

(b) Persons who wish to file this request may obtain a request form from the Office of Legal and Legislative Services at the address listed above.

(7) Information relating to the proposed administrative regulation:

(a) The statutory authority for the promulgation of an administrative regulation relating to the above subject matter is contained in KRS 45A.035 and 45A.080.

(b) The administrative regulation that the Finance and Administration Cabinet intends to promulgate will amend 200 KAR 5:306. It will reflect the recent statutory changes which require procurement on the basis of the best value to the Commonwealth and make advertising for bids in newspapers discretionary.

(c) The necessity and function of the proposed regulation is as follows: To update the regulation to reflect recent statutory changes.

(d) The benefit expected from this regulation is: An accurate reflection of statutory requirements.

(e) The administrative regulation will be implemented as follows: By use of "best value" methods of procurement by purchasing agencies.

## STATE INVESTMENT COMMISSION

August 15, 1997

State Investment Commission

(1) **200 KAR 14:011.** General rules.

(2) The State Investment Commission intends to promulgate an administrative regulation governing the use of securities as defined in Section 36 of House Bill 5 of the 1997 Extraordinary Session of the General Assembly.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for September 25, 1997 at 9 a.m. at 702 Capitol Avenue, Suite 261, Frankfort, Kentucky, 40601.

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

1. It is requested, in writing, by at least 5 person, 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 September 25, 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: Mr. Gordon L. Mullis, Executive Director, Office of Financial Management and Economic Analysis, 702 Capitol Avenue, Suite 261, Frankfort, Kentucky, 40601.

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

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

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

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

(7) Information relating to the proposed administrative regulation:

(a) The statutory authority for the promulgation of an administrative regulation relating to the guidelines for the use of securities by the State Investment Commission is House Bill 5 of the 1997 Extraordinary Session of the General Assembly, Section 36(9).

(b) The administrative regulation that the State Investment Commission intends to promulgate will replace an emergency administrative regulation, 200 KAR 14:011. It will establish guidelines under which the State Investment Commission shall use securities as defined by House Bill 5 of the Extraordinary Session of the General Assembly, Section 36(9). The guidelines of the commission in the use of securities will include, but not be limited to the following:

1. The commission shall utilize securities in a prudent and nonspeculative manner.
2. The commission shall only enter into trades with parties who have been approved by the commission.
3. Securities should be used in the order of safety of principal, liquidity, and then yield.

(c) The necessity and function of the proposed administrative regulation is as follows: KRS Chapter 42 as provided in House Bill 5 of the 1997 Extraordinary Session of the General Assembly, Section 36(9) requires that the State Investment Commission promulgate regulations that limit the exposure of the Commonwealth as a result of the commission investing in securities. This administrative regulation will establish the limits under which the commission may purchase securities.

(d) The benefits expected from the proposed administrative regulation are the effective implementation of House Bill 5 of the 1997 Extraordinary Session of the General Assembly which will result in better management of the Commonwealth's interest-sensitive assets.

(e) The administrative regulation will be implemented by the Office of Financial Management and Economic Analysis as staff to the State Investment Commission. The guidelines established by the regulation will govern how the Office of Financial Management and Economic Analysis operates with respect to the investment of the Commonwealth's funds.

August 15, 1997

State Investment Commission

(1) **200 KAR 14:081**, Repurchase agreements.

(2) The State Investment Commission intends to promulgate an administrative regulation governing the use of securities as defined in Section 36 of House Bill 5 of the 1997 Extraordinary Session of the General Assembly.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for September 25, 1997 at 9 a.m. at 702 Capitol Avenue, Suite 261, Frankfort, Kentucky, 40601.

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

1. It is requested, in writing, by at least 5 person, 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 September 25, 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: Mr. Gordon L. Mullis, Executive Director, Office of Financial Management and Economic Analysis, 702 Capitol Avenue, Suite 261, Frankfort, Kentucky, 40601.

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

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

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

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

(7) Information relating to the proposed administrative regulation:

(a) The statutory authority for the promulgation of an administrative regulation relating to the guidelines for the use of securities by the State Investment Commission is House Bill 5 of the 1997 Extraordinary Session of the General Assembly, Section 36(9).

(b) The administrative regulation that the State Investment Commission intends to promulgate will replace an emergency administrative regulation, 200 KAR 14:011. It will establish guidelines under which the State Investment Commission shall use securities as defined by House Bill 5 of the Extraordinary Session of the General Assembly, Section 36(9). The guidelines of the commission in the use of securities will include, but not be limited to the following:

1. The commission shall utilize securities in a prudent and nonspeculative manner.
2. The commission shall only enter into trades with parties who have been approved by the commission.
3. Securities should be used in the order of safety of principal, liquidity, and then yield.



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(c) The necessity and function of the proposed administrative regulation is as follows: KRS Chapter 42 as provided in House Bill 5 of the 1997 Extraordinary Session of the General Assembly, Section 36(9) requires that the State Investment Commission promulgate regulations that limit the exposure of the Commonwealth as a result of the commission investing in securities. This administrative regulation will establish the limits under which the commission may purchase securities.

(d) The benefits expected from the proposed administrative regulation are the effective implementation of House Bill 5 of the 1997 Extraordinary Session of General Assembly which will result in better management of the Commonwealth's interest-sensitive assets.

(e) The administrative regulation will be implemented by the Office of Financial Management and Economic Analysis as staff to the State Investment Commission. The guidelines established by the regulation will govern how the Office of Financial Management and Economic Analysis operates with respect to the investment of the Commonwealth's funds.

August 15, 1997

State Investment Commission

(1) **200 KAR 14:200**, Linked Deposit Investment Program.

(2) The State Investment Commission intends to promulgate an administrative regulation governing the use of securities as defined in Section 36 of House Bill 5 of the 1997 Extraordinary Session of the General Assembly.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for September 25, 1997 at 9 a.m. at 702 Capitol Avenue, Suite 261, Frankfort, Kentucky, 40601.

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

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

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

(b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 10 days prior to September 25, 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: Mr. Gordon L. Mullis, Executive Director, Office of Financial Management and Economic Analysis, 702 Capitol Avenue, Suite 261, Frankfort, Kentucky, 40601.

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

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

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

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

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

(7) Information relating to the proposed administrative regulation:

(a) The statutory authority for the promulgation of an administrative regulation relating to the guidelines for the use of securities by the State Investment Commission is House Bill 5 of the 1997 Extraordinary Session of the General Assembly, Section 36(9).

(b) The administrative regulation that the State Investment Commission intends to promulgate will replace an emergency administrative regulation, 200 KAR 14:011. It will establish guidelines under which the State Investment Commission shall use securities as defined by House Bill 5 of the Extraordinary Session of the General Assembly, Section 36(9). The guidelines of the commission in the use of securities will include, but not be limited to the following:

1. The commission shall utilize securities in a prudent and nonspeculative manner.

2. The commission shall only enter into trades with parties who have been approved by the commission.

3. Securities should be used in the order of safety of principal, liquidity, and then yield.

(c) The necessity and function of the proposed administrative regulation is as follows: KRS Chapter 42 as provided in House Bill 5 of the 1997 Extraordinary Session of the General Assembly, Section 36(9) requires that the State Investment Commission promulgate regulations that limit the exposure of the Commonwealth as a result of the commission investing in securities. This administrative regulation will establish the limits under which the commission may purchase securities.

(d) The benefits expected from the proposed administrative regulation are the effective implementation of House Bill 5 of the 1997 Extraordinary Session of the General Assembly which will result in better management of the Commonwealth's interest-sensitive assets.

(e) The administrative regulation will be implemented by the Office of Financial Management and Economic Analysis as staff to the State Investment Commission. The guidelines established by the regulation will govern how the Office of Financial Management and Economic Analysis operates with respect to the investment of the Commonwealth's funds.

## BOARD OF PHARMACY

July 30, 1997

Board of Pharmacy

(1) **201 KAR 2:030**, Reciprocity; temporary license.

(2) The Kentucky Board of Pharmacy intends to amend an administrative regulation, 201 KAR 2:030 relating to the method by which a pharmacist may obtain a license in the Commonwealth through license transfer.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for September 22, 1997 at 9 a.m. local prevailing time, at 1024 Capital Center Drive, Suite 210-Board Room, Frankfort, Kentucky 40601.

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

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

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

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

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Kentucky Board of Pharmacy,

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1024 Capital Center Drive, Suite 210, Frankfort, Kentucky 40601.

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

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

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

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

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of an administrative regulation relating to methods by which a pharmacist may obtain licensure by license transfer is found at KRS 315.210 and 315.191(1)(a).

(b) The amendment to the administrative regulation that the Board of Pharmacy intends to promulgate will conform its language to the current terminology of license transfer.

(c) The necessity, function, and conformity of the proposed amendment to the administrative regulation is as follows: KRS 315.210 authorizes the Board of Pharmacy to promulgate administrative regulations to establish the method by which a pharmacist may obtain a license to practice the profession of pharmacy in the Commonwealth through an exchange of a license from another jurisdiction.

(d) The benefit expected from the amendment to the administrative regulation is a greater clarity with current terminology and decreased confusion with applicants. The regulation also eliminates the requirement of a refund to applicants who are denied a license by license transfer from receiving a refund of 75% of the application fee. Applicants who are denied license transfer cost the Commonwealth board more than those who are approved. The application fee is earned whenever the application is received. Whether approved or denied, the board staff must prepare the application in the same manner, consequently, it is unreasonable to expect the pharmacists who are approved to subsidize those who are denied.

(e) The amendment to the administrative regulation will be implemented as follows: The board proposes to clarify the terminology in the regulation and to eliminate the requirement to refund 75% of the application fee.

(8) Any person with a disability for which the Board of Pharmacy needs to make an accommodation in order for the person to participate in the public comment hearing should notify Michael A. Moné at the above-mentioned address no later than September 12, 1997.

### NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET Department for Environmental Protection Division of Air Quality

August 11, 1997

Natural Resources and Environmental Protection Cabinet

Department for Environmental Protection

Division for Air Quality

(1) **401 KAR 60:750**, Standards of performance for municipal solid waste landfills, will adopt the provisions of the federal New Source Performance Standards (NSPS) for municipal solid waste (MSW) landfills that are subject to the federal NSPS. The federal provisions are found in 40 CFR 60.750 through 60.759 (40 CFR 60, Subpart WWW).

(2) The Division for Air Quality intends to promulgate an administrative regulation governing the subject matter listed above. The division seeks comment on the desirability of incorporating by reference the federal NSPS regulation.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for September 22, 1997, at 10 a.m. (ET), in the Conference Room of the Division for Air Quality, 803 Schenkel Lane, Frankfort, Kentucky.

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

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

(b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 10 days prior to September 22, 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: Division for Air Quality, Attention Millie Ellis, Supervisor, Regulation Development Section, Program Planning and Administration Branch, 803 Schenkel Lane, Frankfort, Kentucky 40601.

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

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

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

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

(7) Information relating to the new administrative regulation.

(a) The statutory authority for the promulgation of this administrative regulation is KRS 224.10-100, 42 USC 7411, and 40 CFR 60.750 through 60.759 (Subpart WWW).

(b) The administrative regulation that the Division for Air Quality intends to promulgate will not amend an existing administrative regulation. It will adopt the provisions of the federal regulation which applies to each MSW landfill that commenced construction, reconstruction or modification or began accepting waste on or after May 30, 1991.

(c) The necessity and function of the proposed administrative regulation is as follows: 42 USC 7411(b) mandates the U.S. EPA to promulgate federal NSPS regulations which establish standards to delegate to states the authority for implementing and enforcing the federal NSPS regulations. The new administrative regulation contains the same provisions as the federal regulation. The Division for Air Quality proposes this new administrative regulation so that the Commonwealth will have the delegated authority to enforce the provisions of the corresponding federal NSPS regulation.

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(d) The benefit expected from this administrative regulation is that Kentucky will have delegation of authority from the U.S. EPA for the federal NSPS regulation, so that affected facilities will be able to work with the state rather than the federal government.

(e) The administrative regulation will be implemented as follows: On and after the effective date of this administrative regulation, affected facilities shall comply with the provisions of 401 KAR 60:750, as part of the existing regulatory program.

August 11, 1997

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

(1) **401 KAR 61:036**, Emission guidelines and compliance times for municipal solid waste landfills, will adopt the federal Emission Guides (EG) and compliance times for the control of certain designated pollutants from designated municipal solid waste landfills (MSW), in accordance with 42 USC 7411(d)(Section 111(d) of the Clean Air Act). The federal provisions are found in 40 CFR 60.30c through 60.36c (40 CFR 60 Subpart Cc).

(2) The Division for Air Quality intends to promulgate an administrative governing the subject matter listed above. The division seeks comment on the desirability of incorporating by reference the federal existing source rule.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for September 22, 1997, at 10 a.m. (ET), in the Conference Room of the Division for Air Quality, 803 Schenkel Lane, Frankfort, Kentucky.

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

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

(b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 10 days prior to September 22, 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: Division for Air Quality, Attention Millie Ellis, Supervisor, Regulation Development Section, Program Planning and Administration Branch, 803 Schenkel Lane, Frankfort, Kentucky 40601.

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

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

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

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

(7) Information relating to the new administrative regulation.

(a) The statutory authority for the promulgation of this administrative regulation is KRS 224.10-100, 42 USC 7411(d), and 40 CFR 60.30c through 60.36c (Subpart Cc).

(b) The administrative regulation that the Division for Air Quality intends to promulgate will not amend an existing administrative regulation. It will adopt the provisions of the federal regulation which applies to each existing MSW landfill that commenced construction, reconstruction or modification before May 30, 1991.

(c) The necessity and function of the new administrative regulation is as follows: 42 USC 7411(d)(1) mandates the U.S. EPA to promulgate regulations which prescribe procedures for states to submit a plan to the U.S. EPA that establishes standards of performance for existing sources similar to the standards for new sources. 42 USC 7411(d)(2) requires the U.S. EPA to prescribe a plan for a state that does not submit a satisfactory plan and to enforce the provisions of the plan if the state fails to enforce them. The new administrative regulation will contain the same provisions as the federal regulation. The Division for Air Quality proposes this new administrative regulation so that the Commonwealth will have the delegated authority to enforce the provisions of the corresponding federal regulation.

(d) The benefit expected from this administrative regulation is that Kentucky will have a U.S. EPA approved plan for existing MSW landfills so that affected facilities will be able to work with the state rather than the federal government.

(e) The administrative regulation will be implemented as follows: On and after the effective date of this administrative regulation, affected facilities shall comply with the provisions of 401 KAR 61:036, as part of the existing regulatory program.

## JUSTICE CABINET Department of Corrections

August 13, 1997

Justice Cabinet  
Department of Corrections

(1) Regulation Number and Title: **501 KAR 6:040**, Kentucky State Penitentiary.

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

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for September 22, 1997, at 9 a.m., in the Auditorium, in the State Office Building, Frankfort, Kentucky 40601.

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

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

(b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 10 days prior to September 22, 1997, the public hearing will be canceled.

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

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- (b) On a request for public hearing, a person shall state:
1. "I agree to attend the public hearing."; or
  2. "I will not attend the public hearing."
- (6)(a) KRS Chapter 13A provides that persons who desire to be informed of the intent of an administrative body to promulgate an administrative regulation governing a specific subject matter may file a request to be informed by the administrative body.
- (b) Persons who wish to file this request may obtain a request form from the Department of Corrections at the address listed above.
- (7) Information relating to the proposed administrative regulation:
- (a) The statutory authority for the promulgation of this administrative regulation relating to the subject matter of this administrative regulation is KRS 196.035 and 197.020.
- (b) The administrative regulation that the Department of Corrections intends to promulgate will amend 501 KAR 6:040, as follows:
1. Requisition and purchase of supplies and equipment (KSP 02-11-01) shall be amended for clarity, to comply with Department of Finance Procedures, and to delete attachments.
  2. Inmate personal funds (KSP 02-12-01) shall be amended for clarity, to reflect change from Chief Clerk's Office to inmate accounts, and to delete attachment.
  3. Adjustment procedures (KSP 15-06-01) shall be amended to reflect subject change.
  4. Visiting program (KSP 16-01-01) shall be totally revised for clarity, to implement procedure for an approved visitor list, and to delete attachments.
- (c) The necessity and function of the proposed administrative regulation is as follows:
1. KRS 196.035, 197.020, 439.470, 439.590, and 439.640 authorizes the commissioner to promulgate administrative regulations necessary and suitable for the proper administration of the department or any division therein. These policies and procedures are incorporated by reference in order to comply with the accreditation standards of the American Correctional Association.
  2. This administrative regulation updates operating procedures at the Kentucky State Penitentiary to comply with KRS Chapter 13A and to reflect current operating procedures.
- (d) The benefits expected from this administrative regulation are: To comply with KRS Chapter 13A and to codify current operating procedures.
- (e) This administrative regulation will be implemented as follows: Staff will comply with operational procedures and standards noted in policy changes.

## TRANSPORTATION CABINET

August 15, 1997

Transportation Cabinet

- (1) **600 KAR 3:030**, Relocation or reconstruction of utility and rail facilities.
- (2) The Kentucky Transportation Cabinet intends to promulgate a new administrative regulation 603 KAR 3:030 governing the audit of costs incurred by utility and railroad companies in their relocation of facilities as part of a highway construction project.
- (3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for September 29, 1997 at 10 a.m. local prevailing time, in the 4th Floor Hearing/Conference Room of the State Office Building, at 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 September 29, 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 this administrative regulation are federal regulations 23 CFR Part 645, 23 CFR Part 646 Subpart B, and 23 CFR Part 140 Subpart I.
- (b) The administrative regulation that the Transportation Cabinet intends to promulgate will be a new administrative regulation.
- (c) The necessity, function, and conformity of the proposed administrative regulations are as follows: During the course of most highway construction projects, utilities and/or railroads need to be relocated or reconstructed. Since the owners of these public utilities are better equipped to perform the relocation or reconstruction than the Department of Highways, the Department of Highways will agree to reimburse the utility or railroad company for the cost incurred in the construction project. In order to establish that the costs to be reimbursed were a necessary part of the highway construction project, the Transportation Cabinet performs audits of the reimbursement requests. The recordkeeping requirements and audit standards for all federal-aid projects are set forth in 23 CFR Part 645. This administrative regulation sets forth the reimbursement eligible items, the recordkeeping requirements, and the audit standards for a utility or railroad relocation or reconstruction project which is a part of a highway construction project. The state standards are compatible with the federal requirements. The provisions of this administrative regulation will be applicable to both federal-aid and nonfederal-aid highway construction projects.
- (d) The benefit expected from this administrative regulation is advance notice to the utility and railroad companies of the recordkeeping and audit requirements so that there will be no confusion. All parties involved should then have a complete and accurate accounting of all costs that

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pertain to the relocation or reconstruction of utility or rail facilities. By requiring the same standards for federal- and nonfederal-aid projects, the Transportation Cabinet is simplifying procedures for the utility and rail companies.

(8) If you have a disability for which the Transportation Cabinet needs to provide accommodations, please notify us of your requirements by September 19, 1997. This request does not have to be in writing. This notice can be provided in an alternate format upon request.

August 15, 1997  
Transportation Cabinet  
Department of Highways

(1) **603 KAR 5:230** relating to the extended weight coal and coal by-products haul road system.

(2) The Kentucky Transportation Cabinet, Department of Highways intends to promulgate an administrative regulation governing the road segments to be included on the extended weight coal and coal by products haul road system, the weight limits of the bridges on the system, and the annual update of the eligible road segments.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for September 29, 1997 at 2:30 p.m. local prevailing time, at State Office Building, 501 High Street, 4th Floor Hearing Room, Frankfort, Kentucky 40622.

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

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

(b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 10 days prior to September 29, 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 administrative regulations relating to the extended weight coal and coal by-products haul system is KRS 177.977, 177.9771 and 189.230.

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

(c) The necessity, function, and conformity of the proposed administrative regulation is as follows: KRS 177.9771(2) requires the Secretary of the Transportation Cabinet to certify those public highways which meet certain criteria as the "extended weight coal or coal by-products haul road system". KRS 189.230 provides that the Department of Highways may prescribe gross vehicle weight limits for bridges lower than the weight limits prescribed in KRS 177.9771 on a bridge which may be damaged or destroyed to the point of catastrophic failure if gross vehicle weights exceeds certain limits. This administrative regulation identifies the extended weight coal or coal by-product haul road system and the bridges on the system which the Department of Highways has judged may be so damaged and prescribes the maximum weight for each of these bridges. Further, KRS 177.9771(9) requires the Transportation Secretary to meet with certain local governing bodies and give consideration to their concerns before adding to or deleting from the extended weight coal or coal by-products haul road system and establishes procedures to be followed by local governing bodies requesting this consideration. This proposed amendment to the administrative regulation specifically addresses the resolutions received by the Transportation Cabinet during the preceding year, the continuation of the resolutions received prior to the preceding year, the amount of coal transported over public roads in Kentucky during calendar year 1996, the cooperative highway maintenance/rehabilitation agreements entered into with the Transportation Cabinet, and those highways so severely damaged that it is unsafe to continue the transportation of coal at extended weights. As a result of this proposed change, there will be many roads added to and deleted from the extended weight coal haul road system.

(d) The benefits expected from this proposed amended administrative regulation are the annual update of the extended weight coal haul road system as required by KRS 177.9771 and improved highway safety where the cabinet is responding to local resolutions.

(8) If you have a disability for which the Transportation Cabinet needs to provide accommodations, please notify us of your requirements by September 20, 1997. This request does not have to be in writing.

August 15, 1997  
Transportation Cabinet

(1) **603 KAR 7:020**, Nonurbanized public transportation program and elderly and handicapped public transportation program; and **603 KAR 7:080**, Human services transportation delivery.

(2) The Transportation Cabinet intends to promulgate administrative regulations governing programs relating to the transportation of persons who receive federal or state human service program monetary assistance.

(3) A public hearing to receive oral and written comments on the proposed administrative regulations has been scheduled for September 30, 1997 at 9 a.m., in the Health Services Auditorium, Health Services Building, first floor, 275 East Main Street, Frankfort, Kentucky 40621.

(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 September 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: Sandra Pullen Davis, Transportation Cabinet, Staff Assistant, 501 High Street, Frankfort, Kentucky 40622, (502) 564-7650, Fax: (502) 564-5238.

(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 a person who desires 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, Sandra Pullen Davis, at the address and phone number listed in (5)(a) above.

(c) 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 the Transportation Cabinet administrative regulations may contact Sandra Pullen Davis at the address and phone number listed in (5)(a) above.

(7) Information relating to the proposed administrative regulation:

(a) The statutory authority for the promulgation of administrative regulation 603 KAR 7:020 relating to "Nonurbanized Public Transportation Program and Elderly and Handicap Program" are KRS 96A.095 and 49 USC Chapter 53. The statutory authority for the promulgation of administrative regulation 603 KAR 7:080 relating to "Human Service Transportation Delivery" are KRS 96A.095 and 49 USC Chapter 53.

(b) The administrative regulations the Transportation Cabinet intends to promulgate will amend 603 KAR 7:020 and promulgate a new 603 KAR 7:080. In 603 KAR 7:020 the Transportation Cabinet will replace the procedures manual currently incorporated by reference with a new one which complies with the rewrite and recodification of the Federal Transit Law. In 603 KAR 7:080, the Transportation Cabinet will develop a regional transportation network funded through a capitated and/or fee-for-service calculation process to meet the transportation needs of individuals in the Commonwealth in a more efficient and economic manner.

(c) The necessity, function, and conformity of the proposed amended administrative regulation 603 KAR 7:020 is as follows: The Nonurbanized Public Transportation Program is authorized and governed by Section 5311 of the Federal Transit Act of 1991. The Elderly and Disabled Persons Public Transportation Program is authorized and governed by Section 5310 of the same Act. The Transportation Cabinet is authorized by KRS 96A.095 to accept funds from the Commonwealth, any of its agencies, and any federal agency appropriations and grants to accomplish the promotion and development of mass transit services in Kentucky. The function of this administrative regulation is to implement the Nonurbanized Public Transportation Program and the Elderly and Disabled Persons Public Transportation Program by establishing the appropriate policies and procedures to be followed to comply with federal law and regulations. The necessity, function, and conformity of the proposed new administrative regulation 603 KAR 7:080 is as follows: The Transportation Cabinet is authorized by KRS 96A.095 to accept funds from the Commonwealth, any of its agencies, and any federal agency appropriations and grants to accomplish the promotion and development of mass transit services in Kentucky. The function of this administrative regulation is to implement the procedures required to administer human services transportation deliveries. This will be done in conformance with federal requirements.

(d) The benefits expected from these administrative regulations are: This administrative regulation will permit a regional capitated transportation network (as specified in the demonstration project). The regional transportation network will reflect the region's transportation infrastructure and will be geared to the unique needs of that region's population. This project should offer savings to the Health Services, Families and Children, and Workforce Development Cabinets while retaining safety, reliability, and stability in providing transportation to those in need.

(e) The administrative regulation will be implemented as follows: The provisions of the transportation network will be accomplished by using brokers/providers who will determine which transportation provider can best meet the needs of individuals needing transportation. A referral of eligible individuals will be made by Health Services, Families and Children, and Workforce Development Cabinets staff.

(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 September 20, 1997.

August 15, 1997

Transportation Cabinet

(1) **603 KAR 7:040**, Public Transportation Capital Assistance Program.

(2) The Transportation Cabinet intends to promulgate an administrative regulation governing programs making provisions for public transportation capital assistance.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for September 29, 1997 at 1:30 p.m., in the 4th Floor Hearing/Conference Room, 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 September 29, 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, Transportation Cabinet, Staff Assistant, 501 High Street, Frankfort, Kentucky 40622, (502) 564-7650, Fax: (502) 564-5238.

(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 a person who desires 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, Sandra Pullen Davis, at the address and phone number listed in (5)(a) above.

(c) 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 the Transportation Cabinet administrative regulations may contact Sandra Pullen Davis at the address and phone number listed in (5)(a) above.

(7) Information relating to the proposed administrative regulation:

(a) The statutory authorities for the promulgation of administrative regulation 603 KAR 7:040 relating to "Public Transportation Capital Assistance Program" are KRS 96A.095 and 49 USC Chapter 53.

(b) The administrative regulations the Transportation Cabinet intends to promulgate will amend 603 KAR 7:040. In 603 KAR 7:040 the Transportation Cabinet will replace the Public Transportation Capital Improvement Program manual currently incorporated by reference with a

## ADMINISTRATIVE REGISTER - 465

new one which complies with the rewrite and recodification of the Federal Transit Law.

(c) The necessity, function, and conformity of the proposed amended administrative regulation 603 KAR 7:040 is as follows: The Public Transportation Capital Assistance Program is authorized and governed by 49 USC Chapter 53 enacted as part of the Federal Transit Act of 1991. The Transportation Cabinet is authorized by KRS 96A.095 to accept funds from the Commonwealth, any of its agencies, and any federal agency appropriations and grants to accomplish the promotion and development of mass transit services in Kentucky. The function of this administrative regulation is to implement the Public Transportation Capital Assistance Program by establishing the appropriate policies and procedures to be followed to comply with federal law and regulations.

(d) The benefits expected from these administrative regulations are: Updating the program to comply with the changes in federal law and regulation.

(e) The administrative regulation will be implemented as follows: The Public Transportation Capital Improvement Program manual will be replaced by the Transportation Cabinet.

(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 September 20, 1997.

## KENTUCKY BOARD OF EDUCATION

August 6, 1997

Kentucky Board of Education

(1) **704 KAR 3:410**, Preschool education program for four (4) year old children.

(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 September 26, 1997, 10 a.m. in the State Board Room, 1st Floor, Capital Plaza, 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 September 26, 1997 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 September 26, 1997, the public hearing will be cancelled.

(5)(a) Persons wishing to request a public hearing should mail their written request to: Mr. Kevin Noland, General Counsel, Office of Legal Services, Kentucky Department of Education, 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 promulgate an administrative regulation governing a specific subject matter may file a request to be informed by the administrative body.

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

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the amendment of an existing administrative regulation relating to the operation and personnel standards for the preschool program is KRS 157.3175.

(b) The administrative regulation that the Kentucky Board of Education intends to amend is 704 KAR 3:410.

(c) The necessity and function of the proposed administrative regulation is to ensure that all school districts are in compliance with personnel and other standards for operating the preschool program.

(d) The benefits expected from this administrative regulation are to implement statutory requirements and ensure the quality and safety of programs for preschool children.

(e) The administrative regulation will be implemented as follows: Copies of the revised administrative regulation will be disseminated to all Kentucky school district superintendents and preschool coordinators with direction that it be forwarded to each school principal.

August 6, 1997

Kentucky Board of Education

(1) **704 KAR 3:420**, Preschool associate teachers.

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

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for September 26, 1997, 10 a.m. in the State Board Room, 1st Floor, Capital Plaza, 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 September 26, 1997, the public hearing will be cancelled.

(5)(a) Persons wishing to request a public hearing should mail their written request to: Mr. Kevin Noland, General Counsel, Office of Legal Services, Kentucky Department of Education, 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:



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

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

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

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of an administrative regulation relating to the operation and personnel standards for the preschool program is KRS 157.3175.

(b) The administrative regulation that the Kentucky Board of Education intends to promulgate is 704 KAR 3:420.

(c) The necessity and function of the proposed administrative regulation is to ensure that all school districts are in compliance with personnel and other standards for operating the preschool program.

(d) The benefits expected from this administrative regulation are to implement statutory requirements and ensure the quality and safety of programs for preschool children.

(e) The administrative regulation will be implemented as follows: Copies of the revised administrative regulation will be disseminated to all Kentucky school district superintendents and preschool coordinators with direction that it be forwarded to each school principal.

August 6, 1997

Kentucky Board of Education

(1) **707 KAR 1:150**, Preschool education program for children with disabilities.

(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 September 26, 1997, 10 a.m. in the State Board Room, 1st Floor, Capital Plaza, 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 September 26, 1997, the public hearing will be cancelled.

(5)(a) Persons wishing to request a public hearing should mail their written request to: Mr. Kevin Noland, General Counsel, Office of Legal Services, Kentucky Department of Education, 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 promulgate an administrative regulation governing a specific subject matter may file a request to be informed by the administrative body.

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

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the amendment of an existing administrative regulation relating to operation and personnel standards for children with disabilities is KRS 157.226.

(b) The administrative regulation that the Kentucky Board of Education intends to amend is 707 KAR 1:150.

(c) The necessity and function of the proposed administrative regulation is to ensure that all school districts are in compliance with personnel and other standards for operating the preschool program for children with disabilities.

(d) The benefits expected from this administrative regulation are to implement statutory requirements and ensure the quality and safety of programs for preschool children with disabilities.

(e) The administrative regulation will be implemented as follows: Copies of the revised administrative regulation will be disseminated to all Kentucky school district superintendents, preschool coordinators and directors of special education with direction that it be forwarded to each school principal.

## EDUCATION PROFESSIONAL STANDARDS BOARD

July 1997

Education Professional Standards Board

(1) **704 KAR 20:305**, Written examination prerequisites for teacher certification.

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

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for September 25, 1997, at 10 a.m. in the 1st Floor Local District 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 as scheduled.

(c) If a request for a public hearing is not received from the required number of people at least 10 days prior to September 25, 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 Standards Board, 1024 Capital Center Drive, Frankfort, Kentucky 40601, fax (502) 573-1610.



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(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: Sections 1, 2, and 3 have clarifying language. Section 3 (12) will be amended to include a statement that will allow specialty test scores required prior to October 1, 1997, to be accepted for the issuance of the corresponding certification for a teacher applicant who successfully completed the tests prior to that date and apply for certification no later than September 30, 1998.

(a) The statutory authority for the promulgation of an administrative regulation relating to the testing requirement for teachers is KRS 161.030.

(b) The administrative regulation that the Education Professional Standards Board intends to promulgate will amend is 704 KAR 20:305.

(c) The necessity, function, and conformity section of the proposed administrative regulation is as follows: 704 KAR 20:305 must be amended to add language so that teacher applicants who took the initiative to complete their assessment requirements early will not be penalized by having to retake the assessments. Many applicants have already successfully completed the specialty test(s) even though they will not apply for certification until they complete the teacher preparation program sometime after October 1, 1997. Retaking the assessment requirements will mean an added expense to the applicant as well as a delay in getting the teaching certificate since the tests are only given four (4) times per year.

(d) The benefits expected from administrative regulation are: The teacher applicants will not have the added expense of the new test, which would cost an additional eighty-five (85) dollars, and they will be able to get their teaching certificate as soon as the teacher preparation program is completed. This will allow the teachers to be employed sooner.

(e) The administrative regulation will be implemented as follows: The amendment to the regulation will be communicated to all teacher preparation programs and teacher applicants as soon as the amendment is effective.

### LABOR CABINET

#### Department of Workplace Standards Kentucky Occupational Safety and Health

August 14, 1997

Labor Cabinet

Department of Workplace Standards

Kentucky Occupational Safety and Health

(1) Regulation Number and Title: **803 KAR 2:060. Employer responsibilities.**

(2) The Kentucky Labor Cabinet intends to amend the administrative regulation cited above to include in the administrative regulation the provisions as published in the Federal Register, March 31, 1997, requiring that the agency be notified by those employers who have been cited for alleged hazardous conditions that abatement of the hazards has been accomplished, and to notify the affected employees as to the corrections.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for September 30, 1997, at 2 p.m. (ET), in the Bay 3 Conference Room at 1047 U.S. 127 South, 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 September 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: Kentucky Labor Cabinet, OSH Standards Office, 1047 U.S. 127 South, Suite 4, Frankfort, Kentucky 40601.

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

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

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

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

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of this administrative regulation is KRS 13A.120.

(b) The administrative regulation that the Labor Cabinet intends to promulgate will amend 803 KAR 2:060, as follows: The amendment to the administrative regulation will require those employers who have been cited for violations of occupational safety and health administrative regulations to certify to the Division of OSH Compliance that the hazardous condition has been abated and to inform the affected employees of the actions taken to correct the hazard.

(c) The necessity and function of the proposed administrative regulation is: Kentucky's Occupational Safety and Health Program is mandated by federal law to be at least as effective as the federal program. Kentucky does not have an effective alternative to this revision; accordingly, in order to maintain its state program, Kentucky must adopt the federal requirement.

(d) The benefits expected from the proposed administrative regulation are: Promulgation of the administrative regulation, by requiring the employer to notify the agency that corrective actions have been taken, assures the Division of OSH Compliance that corrective measures have been taken by the cited employer to correct the hazardous conditions, and, in notifying the affected employees in the corrective measures taken, assures the employee that the workplace is safe and healthful.

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(e) The administrative regulation will be implemented as follows: The proposed administrative regulation will be implemented by the Division of OSH Education and Training through its training sessions and seminars and its voluntary surveys, and by the Division of OSH Compliance in its enforcement investigations.

August 14, 1997

Labor Cabinet

Department of Workplace Standards

Kentucky Occupational Safety and Health

(1) Regulation Number and Title: **803 KAR 2:301**. Adoption and extension of established federal standards.

(2) The Kentucky Occupational Safety and Health Standards Board intends to amend the administrative regulation cited above.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for September 30, 1997, at 2 p.m. (ET), in the Bay 3 Conference Room at 1047 U.S. 127 South, 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 September 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: Kentucky Labor Cabinet, OSH Standards Office, 1047 U.S. 127 South, Suite 4, Frankfort, Kentucky 40601.

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

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

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

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

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of an administrative regulation relating to occupational safety and health is KRS Chapter 338.

(b) The administrative regulation that the Occupational Safety and Health Standards Board intends to promulgate will amend 803 KAR 2:301, as follows: The revision to 29 CFR 1910.19, "Special Provisions For Air Contaminants", as published in the Federal Register, Volume 62, Number 7, January 10, 1997, is incorporated by reference. This revision describes the coverage of 29 CFR 1910.1052 as it relates to places of employment other than general industry as defined by 29 CFR 1910.16.

(c) The necessity and function of the proposed administrative regulation is: Kentucky's Occupational Safety and Health Program is mandated by federal law to be at least as effective as the federal program. Kentucky does not have an effective alternative to this revision; accordingly, in order to maintain its state program, Kentucky must adopt the federal requirement.

(d) The benefits expected from the proposed administrative regulation are: This revision assures conformity with the Code of Federal Regulations. It also revises the definition section to meet KRS Chapter 13A considerations.

(e) The administrative regulation will be implemented as follows: The proposed administrative regulation will be implemented by the Division of OSH Education and Training through its training sessions and seminars and its voluntary surveys, and by the Division of Compliance through its enforcement investigations.

August 14, 1997

Labor Cabinet

Department of Workplace Standards

Kentucky Occupational Safety and Health

(1) Regulation Number and Title: **803 KAR 2:320**. Air contaminants.

(2) The Kentucky Occupational Safety and Health Standards Board intends to amend the administrative regulation cited above.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for September 30, 1997, at 2 p.m. (ET), in the Bay 3 Conference Room at 1047 U.S. 127 South, 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 September 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: Kentucky Labor Cabinet, OSH Standards Office, 1047 U.S. 127 South, Suite 4, Frankfort, Kentucky 40601.

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

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

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

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

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of an administrative regulation relating to occupational safety and health is KRS Chapter 338.

(b) The administrative regulation that the Occupational Safety and Health Standards Board intends to promulgate will amend 803 KAR 2:320, as follows: This proposed administrative regulation will incorporate, by reference, changes in the Code of Federal Regulations (CFR) relating to a new standard for occupational exposure to methylene chloride as published in the Federal Register, Volume 62, Number 7, January 10, 1997.

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(c) The necessity and function of the proposed administrative regulation is: Kentucky's Occupational Safety and Health Program is mandated by federal law to be at least as effective as the federal program. Kentucky does not have an effective alternative to this revision; accordingly, in order to maintain its state program, Kentucky must adopt the federal requirement.

(d) The benefits expected from the proposed administrative regulation are: This revision provides protection to employees in general industry who are required to work with methylene chloride, a substance identified by federal OSHA as having carcinogenic effects on humans. The new standard is expected to save 34 lives annually across the nation.

(e) The administrative regulation will be implemented as follows: The proposed administrative regulation will be implemented by the Division of OSH Education and Training through its training sessions and seminars and its voluntary surveys, and by the Division of Compliance through its enforcement investigations.

August 14, 1997

Labor Cabinet

Department of Workplace Standards

Kentucky Occupational Safety and Health

(1) Regulation Number and Title: **803 KAR 2:403**. Occupational health and environmental controls.

(2) The Kentucky Occupational Safety and Health Standards Board intends to amend the administrative regulation cited above.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for September 30, 1997, at 2 p.m. (ET), in the Bay 3 Conference Room at 1047 U.S. 127 South, 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 September 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: Kentucky Labor Cabinet, OSH Standards Office, 1047 U.S. 127 South, Suite 4, Frankfort, Kentucky 40601.

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

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

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

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

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

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of an administrative regulation relating to occupational safety and health is KRS Chapter 338.

(b) The administrative regulation that the Occupational Safety and Health Standards Board intends to promulgate will amend 803 KAR 2:403, as follows: This emergency administrative regulation incorporates by reference, a publication in the Federal Register, dated January 10, 1997, which changes the entry for the methylene chloride in the "substance" column of Appendix A of 29 CFR 1926.55, and refers the reader to the new applicable standard, 29 CFR 1910.1052, for the permissible exposure limit values of methylene chloride.

(c) The necessity and function of the proposed administrative regulation is: Kentucky's Occupational Safety and Health Program is mandated by federal law to be at least as effective as the federal program. Kentucky does not have an effective alternative to this revision; accordingly, in order to maintain its state program, Kentucky must adopt the federal requirement.

(d) The benefits expected from the proposed administrative regulation are: These revisions assure conformity with the Code of Federal Regulations.

(e) The administrative regulation will be implemented as follows: The proposed administrative regulation will be implemented by the Division of OSH Education and Training through its training sessions and seminars and its voluntary surveys, and by the Division of Compliance through its enforcement investigations.

August 14, 1997

Labor Cabinet

Department of Workplace Standards

Kentucky Occupational Safety and Health

(1) Regulation Number and Title: **803 KAR 2:411**. Scaffolds.

(2) The Kentucky Occupational Safety and Health Standards Board intends to amend the administrative regulation cited above.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for September 30, 1997, at 2 p.m. (ET), in the Bay 3 Conference Room at 1047 U.S. 127 South, 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 September 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: Kentucky Labor Cabinet, OSH Standards Office, 1047 U.S. 127 South, Suite 4, Frankfort, Kentucky 40601.

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

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

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

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

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

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(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of an administrative regulation relating to occupational safety and health is KRS Chapter 338.

(b) The administrative regulation that the Occupational Safety and Health Standards Board intends to promulgate will amend 803 KAR 2:411, as follows: The amendment to 29 CFR 1926 Subpart L, "Scaffolds" as published in the Federal Register, Volume 61, Number 228, November 25, 1996 is incorporated by reference. This new rule makes minor changes to the existing standard, correcting and clarifying the standard. The changes include clarifying paragraph (c)(2) of 29 CFR 1926.451, by removing the word "either" from the text, by removing the words "and listed" from 29 CFR 1926.451(d)(13), allowing the equipment to be tested by the testing laboratory, not necessarily listed. Tables in 29 CFR 1926.451 were corrected so that all ranges of voltage are now shown and typographical errors were corrected. In 29 CFR 1926.453, a note was added advising those affected that after January 1, 1998 only body belts were prohibited as part of the personal fall arrest system. A caption was also added to a drawing in Appendix E noting that hoists must be electronically isolated from any scaffold.

(c) The necessity and function of the proposed administrative regulation is: Kentucky's Occupational Safety and Health Program is mandated by federal law to be at least as effective as the federal program. Kentucky does not have an effective alternative to this revision; accordingly, in order to maintain its state program, Kentucky must adopt the federal requirement.

(d) The benefits expected from the proposed administrative regulation are: The corrections clarify the existing standard, enabling those affected by the administrative regulation, employers and employees, to better understand what is required by the rule.

(e) The administrative regulation will be implemented as follows: The proposed administrative regulation will be implemented by the Division of OSH Education and Training through its training sessions and seminars and its voluntary surveys, and by the Division of Compliance through its enforcement investigations.

Date: August 14, 1997

Labor Cabinet

Department of Workplace Standards

Kentucky Occupational Safety and Health

(1) Regulation Number and Title: **803 KAR 2:425. Toxic and hazardous substances.**

(2) The Kentucky Occupational Safety and Health Standards Board intends to amend the administrative regulation cited above.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for September 30, 1997, at 2 p.m. (ET), in the Bay 3 Conference Room at 1047 U.S. 127 South, 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 September 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: Kentucky Labor Cabinet, OSH Standards Office, 1047 U.S. 127 South, Suite 4, Frankfort, Kentucky 40601.

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

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

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

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

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

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of an administrative regulation relating to occupational safety and health is KRS Chapter 338.

(b) The administrative regulation that the Occupational Safety and Health Standards Board intends to promulgate will amend 803 KAR 2:425, as follows: This emergency administrative regulation incorporates, by reference, a publication in the Federal Register, dated January 10, 1997, which creates a new standard for methylene chloride in the construction industry, which is identical to the standard newly created for general industry.

(c) The necessity and function of the proposed administrative regulation is: Kentucky's Occupational Safety and Health Program is mandated by federal law to be at least as effective as the federal program. Kentucky does not have an effective alternative to this revision; accordingly, in order to maintain its state program, Kentucky must adopt the federal requirement.

(d) The benefits expected from the proposed administrative regulation are: This revision assures conformity with the Code of Federal Regulations.

(e) The administrative regulation will be implemented as follows: The proposed administrative regulation will be implemented by the Division of OSH Education and Training through its training sessions and seminars and its voluntary surveys, and by the Division of Compliance through its enforcement investigations.

August 14, 1997

Labor Cabinet

Department of Workplace Standards

Kentucky Occupational Safety and Health

(1) Regulation Number and Title: **803 KAR 2:500. Maritime employment.**

(2) The Kentucky Occupational Safety and Health Standards Board intends to amend the administrative regulation cited above.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for September 30, 1997, at 2 p.m. (ET), in the Bay 3 Conference Room at 1047 U.S. 127 South, 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 September 30, 1997, the

## ADMINISTRATIVE REGISTER - 471

public hearing will be canceled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Kentucky Labor Cabinet, OSH Standards Office, 1047 U.S. 127 South, Suite 4, Frankfort, Kentucky 40601.

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

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

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

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

(7) Information relating to the proposed administrative regulation:

(a) The statutory authority for the promulgation of an administrative regulation relating to occupational safety and health is KRS Chapter 338.

(b) The administrative regulation that the Occupational Safety and Health Standards Board intends to promulgate will amend 803 KAR 2:500, as follows: This emergency administrative regulation incorporates, by reference, a publication in the Federal Register, dated January 10, 1997, which creates a new standard for methylene chloride in the shipyard industry, which is identical to the standard newly created for general industry. This administrative regulation also changes the incorporation by reference of the Code of Federal Regulations to include the most recently published applicable version.

(c) The necessity and function of the proposed administrative regulation is: Kentucky's Occupational Safety and Health Program is mandated by federal law to be at least as effective as the federal program. Kentucky does not have an effective alternative to this revision; accordingly, in order to maintain its state program, Kentucky must adopt the federal requirement.

(d) The benefits expected from the proposed administrative regulation are: This revision assures conformity with the Code of Federal Regulations. It also corrects and clarifies a definition.

(e) The administrative regulation will be implemented as follows: The proposed administrative regulation will be implemented by the Division of OSH Education and Training through its training sessions and seminars and its voluntary surveys, and by the Division of Compliance through its enforcement investigations.

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

Public Protection and Regulation Cabinet

Department of Housing, Buildings and Construction

(1) Regulation Number and Title: **815 KAR 7:070**, Requirements for certification of Kentucky Building Code Inspectors.

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

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for Tuesday, September 23, 1997, at 1 p.m., local time, in the department's Conference Room at 1047 U.S. Highway 127 South, Suite #1, Frankfort, Kentucky.

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

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

(b) If a request for a public hearing and agreement to attend the public hearing are not received from the required number of people at least ten (10) days prior to September 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: Honorable Judith G. Walden, General Counsel, Department of Housing, Buildings and Construction, 1047 U. S. Highway 127 South, Suite #1, Frankfort, Kentucky 40601.

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

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

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

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

(7) Information relating to the proposed administrative regulation:

(a) The statutory authority for the promulgation of this administrative regulation is KRS 198B.050(5).

(b) The department intends to amend the minimum requirements to provide increased qualifications.

(c) The necessity and function of the proposed administrative regulation is as follows: KRS 198B.090 requires the department to create and administer a building official's certification program which is designed to ensure uniform statewide enforcement of applicable state building codes. This administrative regulation establishes the testing, training and continuing education requirements for two (2) designated professional classifications of building code inspectors; building inspector and plans and specifications inspector.

(d) The benefits expected from this administrative regulation are: The assurance that applicants will meet the minimum qualifications necessary to adequately enforce applicable building codes is essential to the consumer whose trust and confidence is in the inspector's ability to perform his duties.

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

July 21, 1997

Public Protection and Regulation Cabinet

Department of Housing, Buildings and Construction

(1) Regulation Number and Title: **815 KAR 15:027**, Certificates and fees for boiler and pressure vessel inspection.

(2) The department 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 1 p.m., local

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time, on Tuesday, September 23, 1997, in the department's Conference Room at 1047 U.S. Highway 127 South, Suite #1, Frankfort, Kentucky.

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

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

(b) If a request for a public hearing and agreement to attend the public hearing are not received from the required number of people at least ten (10) days prior to September 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: Honorable Judith G. Walden, General Counsel, Department of Housing, Buildings and Construction, 1047 U. S. Highway 127 South, Suite #1, Frankfort, Kentucky 40601.

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

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

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

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

(7) Information relating to the proposed administrative regulation:

(a) The statutory authority for the promulgation of this administrative regulation is KRS 236.030.

(b) The department intends to increase the fees authorized in this administrative regulation.

(c) The necessity and function of the proposed administrative regulation is as follows: This administrative regulation specifies fees for the boiler inspection section. The fees are set by the commissioner, through the Boiler Board.

(d) The benefits expected from this administrative regulation are: Boiler inspection fees have not been increased since 1987. An increase is necessary at this time because the function of the fees is such that they should cover the costs of the program.

(e) This administrative regulation will be implemented by boiler inspectors in the State Fire Marshal's Office.

July 21, 1997

Public Protection and Regulation Cabinet

Department of Housing, Buildings and Construction

(1) Regulation Number and Title: **815 KAR 15:080**, Fees for licensing new boiler and pressure vessel contractors.

(2) The department 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 1 p.m., local time, on Tuesday, September 23, 1997, in the department's Conference Room at 1047 U.S. Highway 127 South, Suite #1, Frankfort, Kentucky.

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

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

(b) If a request for a public hearing and agreement to attend the public hearing are not received from the required number of people at least ten (10) days prior to September 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: Honorable Judith G. Walden, General Counsel, Department of Housing, Buildings and Construction, 1047 U. S. Highway 127 South, Suite #1, Frankfort, Kentucky 40601.

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

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

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

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

(7) Information relating to the proposed administrative regulation:

(a) The statutory authority for the promulgation of this administrative regulation is KRS 236.030.

(b) The department intends to increase the fees authorized by this administrative regulation.

(c) The necessity and function of the proposed administrative regulation is as follows: This administrative regulation establishes the fees for licensing boiler and pressure vessel contractors.

(d) The benefits expected from this administrative regulation are: Boiler contractor fees have not been increased since 1987. An increase is necessary at this time in order to cover the costs of administering the program.

(e) This administrative regulation will be implemented by boiler inspectors in the State Fire Marshal's Office.

## CABINET FOR HEALTH SERVICES Office of Certificate of Need

July 21, 1997

Cabinet for Health Services

Office of Certificate of Need

(1) **900 KAR 6:050**. Certificate of need administrative regulations.

(2) Cabinet for Health Services, Office of Certificate of Need intends to promulgate an administrative regulation governing the subject matter listed above.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for September 30, 1997 at 9 a.m., in the Cabinet for Health Services Auditorium, Health Services Building, first floor, 275 East Main Street, Frankfort, Kentucky.

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

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

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(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 September 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, Cabinet Regulation Coordinator, Cabinet for Health Services, 275 East Main Street, 4th West, Frankfort, Kentucky 40621, 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 Health Services 275 East Main Street, Frankfort, Kentucky 40601.

(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 Families and Children regulations may call toll free 1-800-372-2973 (V/TDD).

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of an administrative regulation relating to the certificate of need process is KRS 13A.350 and 216B.040.

(b) The administrative regulation that the Office of Certificate of Need intends to promulgate is 900 KAR 6:050.

(c) The necessity and function of the proposed administrative regulation is as follows: This administrative regulation will enable the Cabinet for Health Services to administer the certification of need process and to establish criteria for the issuance of certificates of need.

(d) The benefits expected from administrative regulation are: This administrative regulation will enable the Cabinet for Health Services to carry out certificate of need mandates.

### Department for Public Health Division of State and Local Health Administration

August 15, 1997

Cabinet for Health Services

Department for Public Health

Division of State and Local Health Administration

(1) **902 KAR 8:019**, Repealer regulation for 902 KAR 8:020, Policies and procedures for local health department operations.

**902 KAR 8:021**, Definition of terms applicable to local health departments and boards of health.

**902 KAR 8:022**, Board of health requirements.

**902 KAR 8:023**, Local health department operations requirements.

**902 KAR 8:024**, Local health department accounting/auditing requirements.

**902 KAR 8:025**, Local health department financial management requirements.

**902 KAR 8:026**, Public health taxing district requirements.

**902 KAR 8:027**, Local health department unique grantor requirements.

**902 KAR 8:028**, Local health department environmental health standards.

(2) The Cabinet for Health Services, Department for Public Health, intends to promulgate the administrative regulations cited above.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for September 30, 1997 at 9 a.m. in the Health Services Auditorium, Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky.

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

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

(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 September 30, 1997 the public hearing will be cancelled.

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

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

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

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

(b) Persons who wish to file this request may obtain a request form from the Administrative Regulation Coordinator, Department for Public Health, Commissioner's Office, 1st Floor, 275 East Main Street, Frankfort, Kentucky 40621 or by calling (502) 564-3970 between the hours of 8 a.m. and 4:30 p.m. Monday through Friday.

(c) Note: Requests for Notification and the Notice of Intent to Promulgate shall be made available in another format, upon request, in accordance with the Americans With Disabilities Act. Persons requesting assistance regarding Cabinet for 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 these administrative regulations relating to 902 KAR 8:019, 8:021, 8:022, 8:023, 8:024, 8:025, 8:026, 8:027, 8:028 is KRS 194.050 and 211.180.

(b) The new administrative regulations that the Cabinet for Health Services, Department for Public Health intends to promulgate will set forth the updated administrative requirements for operation of Kentucky's local public health departments; these requirements will be consolidated in a series of administrative regulations.

## ADMINISTRATIVE REGISTER - 474

(c) The necessity, function and conformity of the proposed administrative regulations is as follows: KRS 211.025 and 211.090 require the cabinet to supervise and assist Kentucky's local health departments and boards of health in carrying out public health functions and responsibilities.

(d) The benefits expected from these proposed administrative regulations are: Updating of the administrative and management requirements for Kentucky's local health departments, ease of reference for Kentucky's local health departments, Department for Public Health managers, and the public; all administrative requirements will be streamlined and consolidated in a series of regulations.

(e) The administrative regulation will be implemented as follows: The Division of State and Local Health Administration, Department for Public Health, will provide technical assistance, consultation, and training to all local health departments on interpreting and implementing the uniform standards/policies developed through these administrative regulations.

### Department for Public Health Division of Health Systems Development

July 22, 1997

Cabinet for Health Services

Department for Public Health

Division of Health Systems Development

(1) **902 KAR 17:041**, State Health Plan for facilities and services.

(2) The Cabinet for Health Services, Department for Public Health, Division of Health Systems Development, intends to promulgate one new administrative regulation governing the subject matter cited above.

(3) A public hearing to receive oral and written comments on the proposed administrative regulations has been scheduled for September 30, 1997, at 9 a.m., in the Cabinet for Health Services Auditorium, Health Services Building, first floor, 275 East Main Street, Frankfort, Kentucky.

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

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

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

(b) If a request for public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 10 days prior to September 30, 1997, the public hearing will be cancelled.

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

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

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

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

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

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

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

(7) Information relating to the proposed administrative regulations.

(a) The statutory authority for the promulgation of these administrative regulations relating to 902 KAR 17:041E, 1966 Ky. Acts ch. 371.

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

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

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

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

### Office of Inspector General

August 1, 1997

Cabinet for Health Services

Office of Inspector General

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

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

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for September 30, 1997, at 9 a.m. in the Cabinet for Health Services Auditorium, Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky.

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

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

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

(b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least



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10 days prior to September 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, Cabinet Regulations Coordinator, Office of the Counsel, Cabinet for Health Services, 275 East Main Street, 4-West, Frankfort, Kentucky 40621, Telephone: (502) 564-7900, Fax: (502) 564-7573.

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

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

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

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

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

(7) Information relating to the proposed administrative regulation:

(a) The statutory authority for the promulgation of an administrative regulation relating to license procedures and fee schedules is KRS 216B.042.

(b) The administrative regulation that the Office of Inspector General intends to promulgate will amend 902 KAR 20:008, Section 2 to prohibit the issuance or renewal of more than one license for a specific licensure category at a specific location and designated geographical area.

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

(d) The benefits expected from this proposed administrative regulation is that it clarifies the limitation of number of licenses per licensure category at a specific location.

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

### Department for Public Health Division of Environmental Health and Community Safety

August 15, 1997

Cabinet for Health Services

Department for Public Health

Division of Environmental Health and Community Safety

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

(2) The Cabinet for Health Services, Department for Public Health 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 9 a.m., September 30, 1997, in the Cabinet for Health Services Auditorium, Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky.

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

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

(b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 10 days prior to September 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, Cabinet Regulation Coordinator, Office of General Counsel, Cabinet for Health Services, 275 East Main St. - 4th Floor West, Frankfort, Kentucky 40621, Telephone: (502) 564-7900, Fax: (502) 564-7573.

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

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

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

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

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

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of an administrative regulation relating to exempt anabolic steroid products is KRS 194.050, 211.020, 218A.020(3), 218A.250, EO 96-862.

(b) The administrative regulation that the Department for Public Health intends to promulgate will amend 902 KAR 55:090, Exempt anabolic steroid products. It will add 9 products to the list of anabolic steroid products that are exempt from the provisions of KRS Chapter 218A, the Controlled Substances Act.

(c) The necessity, function and conformity of the proposed administrative regulation is as follows: Executive Order 96-862, effective July 2, 1996, reorganizes the Cabinet for Human Resources, establishes and creates the Cabinet for Health Services, changes the name of the Department for Health Services to Department for Public Health, and places the Department for Public Health and its programs under the Cabinet

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for Health Services. KRS 218A.020(3) provides that if any controlled substance is designated, rescheduled, or deleted as a controlled substance under federal law and notice is given to the Cabinet for Health Services, the Cabinet for Health Services may similarly control the substance under KRS Chapter 218A by administrative regulation. The purpose of this administrative regulation is to exempt certain anabolic steroid products from the provisions of KRS Chapter 218A that have been exempted pursuant to federal regulation.

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

(e) The administrative regulation will be implemented as follows: No implementation is necessary since the requirements conform to existing federal regulations.

### CABINET FOR FAMILIES AND CHILDREN Department for Social Insurance Division of Management and Development

August 14, 1997

Cabinet for Families and Children

Department for Social Insurance

Division of Management and Development

(1) **904 KAR 2:006**, Technical requirements for the Kentucky Transitional Assistance Program (K-TAP).

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

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for September 30, 1997, at 9 a.m., in the Department for Health Services Auditorium, Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky.

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

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

(b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 10 days prior to September 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: Judy Trigg, Regulation Coordinator, Cabinet for Families and Children, 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 Social Insurance, Division of Management and Development, Third Floor West, CHR Building, 275 East Main, Frankfort, Kentucky 40621.

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

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of an administrative regulation relating to the Kentucky Transitional Assistance Program (K-TAP) is KRS 194.050(1), 205.010, 205.200(2), (3), EO 96-862 and 42 USC 601 et seq.

(b) The administrative regulation that the Department for Social Insurance intends to promulgate will amend 904 KAR 2:006, Technical requirements for the Kentucky Transitional Assistance Program (K-TAP).

(c) The necessity, function and conformity of the proposed administrative regulation is as follows: This administrative regulation is necessary to implement the mandated requirements found in 42 USC 601 et seq., in order to implement the temporary assistance for needy families (TANF) block grant program that replaces the current AFDC program. The October filing of Kentucky's Title IV-A state plan defines our method for operating the requirements for the program, called the Kentucky Transitional Assistance Program (K-TAP), funded under 42 USC 601 et seq. The provisions of the program delineated in the state plan submission to Health and Human Services must be implemented in order to qualify for block grant funds. The amendment will bring Kentucky in compliance with the federally mandated requirements found in 42 USC 601 et seq. These federal mandates include: a 5 year time limitation to receive benefits and a 2 year limitation to be working; definition of "work"; minor teenage parent requirement of living in an adult supervised setting; domestic violence provisions; work registration provisions; requirement of adult to report a child absent from the home for 30 consecutive days; grant reduction of 25% of grant maximum due to noncooperation of child support activities; qualified alien provisions; prohibition of receiving assistance in 2 or more states; and denial of assistance for fugitive felons and drug felons. We also intend to establish as eligibility requirements for K-TAP that school attendance is required for 16 to 18 year olds and that maintaining current immunizations is required for under school age children; change definition of an eligible child to include a child under age 18 who is a high school graduate; expand criteria for field determination of incapacity of an adult; and add provisions for a parent to continue to receive assistance for 60 days when the only child in the case is placed in emergency foster care. In addition, we intend to simplify technical eligibility requirements for Kentucky Transitional Assistance Program (K-TAP).

(d) The benefits expected from administrative regulation are: The amendments to this administrative regulation will bring Kentucky in compliance with the mandated requirements found in 42 USC 601 et seq. Simplification of technical eligibility requirements for the Kentucky Transitional Assistance Program (K-TAP) will reduce the complexities in applying for benefits by the applicant and in making eligibility determinations by the cabinet.

(e) The administrative regulation will be implemented as follows: The Cabinet for Families and Children, the Department for Social Insurance will be responsible for implementing the administrative regulation.

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August 14, 1997

Cabinet for Families and Children

Department for Social Insurance

Division of Management and Development

(1) **904 KAR 2:016**, Standards for need and amount for Kentucky Transitional Assistance Program (K-TAP).

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

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for September 30, 1997, at 9 a.m., in the Department for Health Services Auditorium, Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky.

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

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

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

(b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 10 days prior to September 30, 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: Judy Trigg, Regulation Coordinator, Cabinet for Families and Children, 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 Social Insurance, Division of Management and Development, Third Floor West, CHR Building, 275 East Main, Frankfort, Kentucky 40621.

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

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of an administrative regulation relating to the Kentucky Transitional Assistance Program (K-TAP) is KRS 194.050(1), 205.010, 205.200(2), EO 96-862 and 42 USC 601 et seq.

(b) The administrative regulation that the Department for Social Insurance intends to promulgate will amend 904 KAR 2:016, Standards for need and amount for Kentucky Transitional Assistance Program (K-TAP). The amendment will bring Kentucky in compliance with the federally mandated requirements found in 42 USC 601 et seq.

(c) The necessity, function, and conformity of the proposed administrative regulation is as follows: This administrative regulation is necessary to implement the mandated requirements found in 42 USC 601 et seq., in order to implement the Temporary Assistance for Needy Families (TANF) block grant program that replaces the current AFDC program. The October filing of Kentucky's Title IV-A state plan defines our method for operating the requirements for the program, called the Kentucky Transitional Assistance Program (K-TAP), funded under 42 USC 601 et seq. The provisions of the program delineated in the state plan submission to Health and Human Services must be implemented in order to qualify for block grant funds. We intend to exclude 1 vehicle per household; add Relocation Assistance Program, a K-TAP payment to meet moving related expenses in order to access employment; Family Alternative Diversion, a 1 time payment in lieu of on-going cash assistance payments to maintain self-sufficiency; clarify ratable reduction which is no change in current policy; disregard earnings for 2 months; increase the resource limit from \$1,000 to \$2,000 per family; exempt individual development accounts as a resource; eliminate the 6 months period in a year to consider earnings of a dependent child in school which would instead be totally disregarded with no time limitation; disregard income and resource changes for a family with a member participating in wage supplementation component of Kentucky Works (diverting the K-TAP grant to an employer who has hired the recipient and is paying wages to the individual); disregard earnings of a dependent child under 18 who is a high school graduate. References to the amount of child care made directly to the provider will be based on rates in administrative regulation 905 KAR 2:150 instead of 904 KAR 2:017E to conform with the amendments proposed in those administrative regulations. In addition, we intend to simplify financial eligibility requirements for Kentucky Transitional Assistance Program (K-TAP).

(d) The benefits expected from administrative regulation are: The amendments to this administrative regulation will bring Kentucky in compliance with the mandated requirements found in 42 USC 601 et seq. Simplification of financial eligibility requirements for the Kentucky Transitional Assistance Program (K-TAP) will reduce the complexities in applying for benefits by the applicant and in making eligibility determinations by the cabinet.

(e) The administrative regulation will be implemented as follows: The Cabinet for Families and Children, the Department for Social Insurance will be responsible for implementing the administrative regulation.

August 15, 1997

Cabinet for Families and Children

Department for Social Insurance

Division of Management and Development

(1) **904 KAR 2:018**, Kentucky Works transportation services.

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

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for September 30, 1997, at 9 a.m., in the Department for Health Services Auditorium, Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky.

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

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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 September 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: Judy Trigg, Regulation Coordinator, Cabinet for Families and Children, 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 Social Insurance, Division of Management and Development, Third Floor West, CHR Building, 275 East Main, Frankfort, Kentucky 40621.
- (c) Note: Requests for Notification and the Notice of Intent to Promulgate shall be made available in another format, upon request, in accordance with the Americans With Disabilities Act. Persons requesting assistance regarding Cabinet for Families and Children's regulations may call toll free 1-800-372-2973 (V/TTY).
- (7) Information relating to the proposed administrative regulation.
- (a) The statutory authority for the promulgation of an administrative regulation relating to the Kentucky Transitional Assistance Program (K-TAP), transportation services for Kentucky Works is KRS 194.050(1), 205.200(2), EO 96-862 and 42 USC 601 et seq.
- (b) The administrative regulation that the Department for Social Insurance intends to promulgate will be a new administrative regulation 904 KAR 2:018. In 904 KAR 2:018, the cabinet will refer eligible Kentucky Transitional Assistance Program (K-TAP) recipients who are eligible to receive transportation services for Kentucky Works, to use a regional capitated transportation network to meet their transportation needs in a more efficient and economic manner.
- (c) The necessity, function and conformity of the proposed administrative regulation is as follows: This administrative regulation is necessary to implement the procedures required to administer transportation services for Kentucky Transitional Assistance Program (K-TAP) recipients who are participants in Kentucky Works in areas where the regional capitated transportation network exists. This will be done in conformance with requirements found in 42 USC 601 et seq.
- (d) The benefits expected from administrative regulation are: This administrative regulation will allow eligible Kentucky Transitional Assistance Program (K-TAP) recipients to be referred to a regional capitated transportation network. The regional transportation network will reflect the region's transportation infrastructure and will be geared to the unique needs of that region's population. This network should offer savings to the cabinet while retaining stability in providing transportation to those in need. In those areas where the regional capitated transportation network exists, the broker/provider will provide the transportation on a capitated basis instead of direct payments to recipients.
- (e) The administrative regulation will be implemented as follows: The provisions of the transportation network will be accomplished by using brokers/providers who will determine which transportation provider best suits the needs of the individual needing transportation. A referral of eligible individuals will be made by cabinet staff.

August 15, 1997

Cabinet for Families and Children

Department for Social Insurance

Division of Management and Development

- (1) **904 KAR 2:050**, Time and manner of payments.
- (2) Cabinet for Families and Children, Department for Social Insurance intends to promulgate an administrative regulation governing the subject matter listed above.
- (3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for September 30, 1997, at 9 a.m., in the Department for Health Services Auditorium, Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky.
- (4)(a) The public hearing will be held if:
1. It is requested, in writing, by at least 5 persons, or an administrative body, or an association having at least 5 members; and
  2. A minimum of 5 persons, or the administrative body or association, agree, in writing, to be present at the public hearing.
- (b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 10 days prior to September 30, 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: Judy Trigg, Regulation Coordinator, Cabinet for Families and Children, 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 Social Insurance, Division of Management and Development, Third Floor West, CHR Building, 275 East Main, Frankfort, Kentucky 40621.
- (c) Note: Requests for Notification and the Notice of Intent to Promulgate shall be made available in another format, upon request, in accordance with the Americans With Disabilities Act. Persons requesting assistance regarding Cabinet for Families and Children's regulations may call toll free 1-800-372-2973 (V/TTY).
- (7) Information relating to the proposed administrative regulation.
- (a) The statutory authority for the promulgation of an administrative regulation relating to the Kentucky Transitional Assistance Program (K-

## ADMINISTRATIVE REGISTER - 479

TAP) is KRS 194.050(1), 205.010, 205.200(2), EO 96-862 and 42 USC 601 et seq.

(b) The administrative regulation that the Department for Social Insurance intends to promulgate will amend 904 KAR 2:050, Time and manner of payments.

(c) The necessity, function, and conformity of the proposed administrative regulation is as follows: This proposed administrative regulation 904 KAR 2:050, Time and manner of payments, is necessary to implement the payment of benefits requirements for the Kentucky Transitional Assistance Program (K-TAP). References to Aid to Families with Dependent Children (AFDC) will be changed to Kentucky Transitional Assistance Program (K-TAP) to conform with the provisions in 904 KAR 2:006E and 904 KAR 2:016E and the approved Title IV-A state plan. Provisions will be established for a protective payee for the eligible child of a teenage parent determined to be ineligible for Kentucky Transitional Assistance Program (K-TAP) due to failure to comply with provisions found in Section 18 of 904 KAR 2:006E, not living in an adult supervised setting. The amount of the eligible payment for the benefit group containing a wage supplementation participant will be diverted to the contracted employer of the participant pursuant to 904 KAR 2:370E. Kentucky Transitional Assistance Program (K-TAP) checks of \$10 dollars or more and less than \$25 dollars will be issued quarterly. Child care payments will be paid according to 905 KAR 2:150. Transportation will be paid according to 904 KAR 2:018 in the areas where the regional capitated transportation network exists. In those areas instead of direct payments to recipients, the transportation network will use brokers who will provide the transportation on a capitated basis. In addition, we intend to simplify eligibility requirements for Kentucky Transitional Assistance Program (K-TAP).

(d) The benefits expected from administrative regulation are: Public assistance benefits received by needy Kentuckians may be jeopardized if Kentucky does not conform with the provisions in 904 KAR 2:006E and 2:016E pursuant to Kentucky's Title IV-A state plan as required by the Personal Responsibility and Work Opportunity Reconciliation Act of 1996. The provisions of the regional transportation network will be geared to the unique needs of the region's population and should offer savings to the cabinet while retaining stability in providing transportation to eligible Kentucky Transitional Assistance Program (K-TAP) recipients. Simplification of financial eligibility requirements for the Kentucky Transitional Assistance Program (K-TAP) will reduce the complexities in applying for benefits by the applicant and in making eligibility determinations by the cabinet.

(e) The administrative regulation will be implemented as follows: The Cabinet for Families and Children, the Department for Social Insurance will be responsible for implementing the administrative regulation. The provisions of the transportation network will be accomplished by using brokers instead of direct payment to the recipient.

August 15, 1997

Cabinet for Families and Children

Department for Social Insurance

Division of Management and Development

**(1) 904 KAR 2:410.**

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

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for September 30, 1997, at 9 a.m., in the Department for Health Services Auditorium, Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky.

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

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

(b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 10 days prior to September 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: Judy Trigg, Regulation Coordinator, Cabinet for Families and Children, 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 Social Insurance, Division of Management and Development, Third Floor West, CHR Building, 275 East Main, Frankfort, Kentucky 40621.

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

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of an administrative regulation relating to child support is KRS 186.570, 194.050, 205.710 to 205.800, 213.046, 405.430, 405.520, 406.021, 406.025, 406.027, 42 USC 651 et seq., and EO 96-862.

(b) The administrative regulation that the Department for Social Insurance intends to promulgate 904 KAR 2:410, Child support collection and distribution, will change procedures regarding resolution of a dispute prior to a scheduled hearing.

(c) The necessity, function and conformity of the proposed administrative regulation is as follows: This administrative regulation is necessary to change the procedures for forwarding a hearing request to the hearing branch. When a hearing request is received from a noncustodial parent or obligor, an interview with the parent is scheduled in an attempt to resolve the dispute. This interview will provide an opportunity to resolve a dispute prior to requesting an administrative hearing. If the dispute is not resolved during the interview, the administrative hearing is scheduled.

(d) The benefits expected from administrative regulation are: The amendments to this administrative regulation will provide an opportunity for the noncustodial parent or obligor to meet with the agency in an attempt to resolve disputes prior to a formal hearing process thus providing a more efficient manner of resolving differences without requesting and canceling unnecessary hearings. It will not, however, eliminate due process or the right to request an administrative hearing for anyone involved. Disputes that cannot be resolved during the interview are forwarded

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to the hearing branch for scheduling of an administrative hearing. Time frames for timely requests of a hearing are not affected and will remain the same.

(e) The administrative regulation will be implemented as follows: The Cabinet for Families and Children, the Department for Social Insurance will be responsible for implementing the administrative regulation.

### CABINET FOR HEALTH SERVICES Office of Inspector General

July 18, 1997

Cabinet for Health Services

Office of Inspector General

- (1) **906 KAR 1:120** - Informal dispute resolution.
- (2) The Office of Inspector General intends to promulgate the administrative regulation cited above.
- (3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for September 30, 1997, at 9 a.m. in the Cabinet for Health Services Auditorium, Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky.
- (4)(a) The public hearing will be held if:
  1. It is requested, in writing, by at least 5 persons, or an administrative body, or an association having at least 5 members; and
  2. A minimum of 5 persons, or the administrative body or association, agree, in writing, to be present at the public hearing.
- (b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 10 days prior to September 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, Cabinet Regulation Coordinator, Office of the Counsel, Cabinet for Health Services, 275 East Main Street, 4-West, Frankfort, Kentucky 40621, Telephone: (502) 564-7900, Fax: (502) 564-7573.
- (b) On a request for public hearing, a person shall state:
  1. "I agree to attend the public hearing."; or
  2. "I will not attend the public hearing."
- (6)(a) KRS Chapter 13A provides that persons who desire to be informed of the intent of an administrative body to promulgate an administrative regulation governing a specific subject matter may file a request to be informed by the administrative body.
- (b) Persons who wish to file this request may obtain a request form from: Administrative Regulation Coordinator, Office of Inspector General, CHR Building, 4-East, 275 East Main Street, Frankfort, Kentucky 40621.
- (c) Note: Requests for Notification and the Notice of Intent to Promulgate shall be made available in another format, upon request, in accordance with the Americans with Disabilities Act. Persons requesting assistance regarding Cabinet for Health Services' regulations may call toll free 1-800-372-2973 (V/TDD).
- (7) Information relating to the proposed administrative regulation:
  - (a) The statutory authority for the promulgation of an administrative regulation relating to 906 KAR 1:120 is KRS 194.030(12)(b).
  - (b) The administrative regulation will set out the process by which a long-term care facility may informally dispute deficiencies issued for failure to meet federal requirements for participation in the Medicare or Medicaid Programs.
  - (c) The necessity, function, and conformity of the proposed administrative regulation is as follows: To comply with the mandate of 42 CFR 488.331 in the establishment of an informal dispute resolution process.
  - (d) The benefit expected from this administrative regulation is that it will set out the process by which a long-term care facility may informally dispute deficiencies. This resolution may avoid the formal federal appeals process.
  - (e) The administrative regulation will be implemented as follows: By the Division of Licensing and Regulation in the Office of Inspector General, Cabinet for Health Services.

### Department for Medicaid Services

August 15, 1997

Cabinet for Health Services

Department for Medicaid Services

- (1) **907 KAR 1:002**, Definitions.
- (2) Cabinet for Health Services, Department for Medicaid Services intends to promulgate an administrative regulation governing the subject matter listed above.
- (3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for September 30, 1997 at 9 a.m. in the Department for Health Services Auditorium, Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky, 40621.
- (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 September 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, Cabinet Regulation Coordinator, Cabinet for Health Services, Office of the Counsel, 275 East Main Street - 4th Floor West, Frankfort, Kentucky 40621, (502) 564-7900, (502) 564-7573 (Fax).
- (b) On a request for public hearing, a person shall state:
  1. "I agree to attend the public hearing."; or
  2. "I will not attend the public hearing."
- (6)(a) KRS Chapter 13A provides that persons who desire to be informed of the intent of an administrative body to promulgate an

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

(b) Persons who wish to file this request may obtain a request form from the Administrative Regulation Coordinator, Department for Medicaid Services, Division of Administration and Development, CHR Building, 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 definitions are KRS 194.050 and EO 96-862.

(b) The administrative regulation that the Department for Medicaid Services intends to promulgate will amend the definition of medical assistance drug list; add other definitions pertinent to the provision of medical assistance; incorporate EO 96-862 provisions, KRS Chapter 13A formatting and technical requirements and other minor clarifications.

(c) The necessity, function and conformity of the proposed administrative regulation is as follows: This administrative regulation establishes definitions for words and phrases used by the department in regulations pertaining to the provision of medical assistance.

(d) The benefits expected from administrative regulation are: Explanation of terms used by the Medicaid Program and the elimination of conflicting terminology between this administrative regulation and other topical regulations.

### Department for Medicaid Services

August 15, 1997

Cabinet for Health Services

Department for Medicaid Services

(1) **907 KAR 1:019**, Pharmacy services; **907 KAR 1:021**, Amounts payable for drugs.

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

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for September 30, 1997 at 9 a.m., in the Department for Health Services Auditorium, Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky 40621.

(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 September 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, Cabinet Regulation Coordinator, Cabinet for Health Services, Office of the Counsel, 275 East Main Street - 4th Floor West, Frankfort, Kentucky 40621, (502) 564-7900, (502) 564-7573 (Fax).

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

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

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

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

(b) Persons who wish to file this request may obtain a request form from the Administrative Regulation Coordinator, Department for Medicaid Services, Division of Administration and Development, CHR Building, 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 pharmacy services and amounts payable for drugs are KRS 194.050 and EO 96-862.

(b) The administrative regulation that the Department for Medicaid Services intends to promulgate will amend 907 KAR 1:019, Pharmacy services and 907 KAR 1:021, Amounts payable for drugs to revise the prior authorization program policy and procedures concerning (blanket) prior authorization for a long-term care recipient, revise drug coverage for a brain injury and ventilator dependent recipient in a nursing facility to comply with nursing facility regulations, establish drug class parameters in order to decrease inappropriate use of certain drugs, clarify wording indicating the need for a specific brand drug over generic drug in order to be consistent with HCFA guidelines, establish consistency with regulations 907 KAR 1:673, Claims processing and 907 KAR 1:002, Definition, revise reimbursement amount for dispense fees and unit dose packaging, and require a recipient or their representative to sign for receipt of medications, and make minor policy clarifications.

(c) The necessity, function and conformity of the proposed administrative regulation is as follows: 907 KAR 1:019 establishes the provisions relating to pharmacy services for which payment shall be made by the Medicaid Program. 907 KAR 1:021 establishes the method for determining amounts payable by the cabinet for drugs.

(d) The benefits expected from administrative regulation are: Decrease inappropriate use of drugs for an outpatient as well as a recipient in a long-term care facility, decrease fraud or possible abuse by requiring a recipient or representative to sign for receipt of a medication. Clarify policy and decrease wording inconsistencies.

(e) The administrative regulation will be implemented as follows: By the Division of Administration and Development, Department for Medicaid Services, Cabinet for Health Services.



## ADMINISTRATIVE REGISTER - 482

August 15, 1997

Cabinet for Health Services

Department for Medicaid Services

Division of Administration and Development

(1) **907 KAR 1:022**, Nursing facility and intermediate care facility for the mentally retarded services.

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

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for September 30, 1997 at 9 a.m., in the Department for Health Services Auditorium, Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky, 40621.

(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 September 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, Cabinet Regulation Coordinator, Cabinet for Health Services, Office of the Counsel, 275 East Main Street - 4th Floor West, Frankfort, Kentucky 40621, (502) 564-7900, (502) 564-7573 (Fax).

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

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

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

(b) Persons who wish to file this request may obtain a request form from the Administrative Regulation Coordinator, Department for Medicaid Services, Division of Administration and Development, CHR Building, 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 nursing facility and intermediate care facility for the mentally retarded services are KRS 194.050, 205.520 and EO 96-862.

(b) The administrative regulation that the Department for Medicaid Services intends to promulgate will amend 907 KAR 1:022 as follows:

1. To amend and define Section 7 to specify requirements and standards for distinct part high intensity nursing facility ventilator services as follows:

a. 20 bed;

b. Ventilator dependent:

(i) 12 hours and 24 hours high intensity nursing services; or

(ii) Active weaning program under physician's orders. The 12 hour time frame does not apply when an individual is on active weaning program;

(iii) 72 hour weaning stabilization period.

2. To consider revising high intensity case mix, as it relates to ventilator care, for individuals who do not meet the requirements specified in Section 7 of this administrative regulation.

3. To consider making revisions related to case mix, level of care and patient status determinations.

4. To consider revising low intensity case mix or level of care based on services available in other settings, including personal care, family care, adult day health, boarding homes, and assisted living.

5. To consider making revisions to the provision of specialized rehabilitation services for individuals with traumatic brain injuries.

6. To consider revisions to the provision of ancillary therapy services for individuals in pediatric nursing facilities.

7. To incorporate revisions to comply with KRS 205.8151 through KRS 205.8483 related to the control of fraud and abuse.

8. To revise 907 KAR 1:022 and corresponding incorporate material in accordance with provisions of KRS Chapter 13A. Revisions should provide for clarity, consistency, and nonduplications.

9. To revise preadmission screening and annual resident review program (PASARR) procedures in compliance with federal law.

10. To incorporate other technical or conforming changes as necessary to topical and incorporated material.

(c) The necessity, function and conformity of the proposed administrative regulation is as follows: This administrative regulation sets forth service provisions and requirements for nursing facility services including distinct part high intensity ventilator services for the 20 bed units.

(d) The benefits expected from administrative regulation are:

1. The revision to policy promotes access to care for individuals who require at least 12 hour ventilator services and 24 hour high intensity nursing services; or individuals who are in an active weaning program which requires 24 hour high intensity nursing. The 12 hour dependency requirement does not apply to active weaning.

2. Medicaid eligibles will benefit by being provided access to additional facility sites offering ventilator services.

3. Medicaid eligibles will benefit by clearer standards for case mix, level of care and patient status determinations for nursing facilities, including pediatric nursing facilities, and alternatives to institutional treatment.

August 15, 1997

Cabinet for Health Services

Department for Medicaid Services

(1) **907 KAR 1:025**, Payments for nursing facility and intermediate care facility for the mentally retarded services.

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



matter listed above.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for September 30, 1997 at 9 a.m., in the Department for Health Services Auditorium, Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky, 40621.

(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 September 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, Cabinet Regulation Coordinator, Cabinet for Health Services, Office of the Counsel, 275 East Main Street - 4th Floor West, Frankfort, Kentucky 40621, (502) 564-7900, (502) 564-7573 (Fax).

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

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

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

(b) Persons who wish to file this request may obtain a request form from the Administrative Regulation Coordinator, Department for Medicaid Services, Division of Administration and Development, CHR Building, 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 payment for ventilator, brain injury, intermediate care facility for the mentally retarded, and pediatric services are KRS 194.050 and EO 96-862.

(b) The administrative regulation that the Department for Medicaid Services intends to promulgate will amend 907 KAR 1:025 to:

1. Delete the majority of policy related to nursing facilities. The policy will be topicalized in a stand-alone regulation, 907 KAR 1:750;
2. Consider revising the dual licensed pediatric nursing facility and nursing facility with distinct part ventilator units and nursing facilities with certified brain injury units and intermediate care facilities for the mentally retarded (ICF/MRs) rate setting methodology pursuant to KRS 205.6326.
3. Consider revising 907 KAR 1:025, and corresponding incorporated material, in accordance with provisions of KRS Chapter 13A. Revisions should provide for clarity, consistency, and nonduplication;
4. Consider revising ventilator case mix, patient status determinations and level of care methodology which may affect payments to facilities;
5. Revise clarifying language in Section 4, and incorporate technical or conforming changes as necessary to topical and incorporated material;

6. Revise reimbursement for certified brain injury units and other brain injury treatment programs.

7. Revise ventilator payment provisions to comply with a Franklin County Circuit Court order;

8. Revise distinct part requirement, 20 bed nursing facility unit, and 15 bed census requirements for payment purposes for ventilator rate.

9. Revise the requirements for the preadmission screening and resident review (PASARR) program.

(c) The necessity, function and conformity of the proposed administrative regulation is as follows: This administrative regulation sets forth the method for determining amounts payable by the cabinet for ventilator, brain injury, intermediate care facility for the mentally retarded and pediatric services.

(d) The benefits expected from administrative regulation are:

1. Expanded availability and access to medically necessary nursing facility services;
2. Elimination of the requirement of annual resident reviews;
3. Elimination of duplicative and conflicting policy between this administrative regulation and 907 KAR 1:755;
4. The revision to policy permitting reimbursement at a high intensity rate for individuals who require at least 12 hour ventilator services and 24 hour nursing services; or individuals who are under physician orders and management, and are in an active weaning program which requires 24 hour high intensity nursing. The 12 hour dependency requirements do not apply to active weaning.

5. Medicaid eligibles will benefit by being provided access to and payments for additional facility sites offering ventilator services.

(e) The administrative regulation will be implemented as follows: By the Division of Administration and Development, Department for Medicaid Services, Cabinet for Health Services.

August 15, 1997

Cabinet for Health Services

Department for Medicaid Services

(1) **907 KAR 1:755**, Preadmission screening and annual resident review (PASARR) program.

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

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for September 30, 1997 at 9 a.m., in the Department for Health Services Auditorium, Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky, 40621.

(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 September 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, Cabinet

## ADMINISTRATIVE REGISTER - 484

Regulation Coordinator, Cabinet for Health Services, Office of the Counsel, 275 East Main Street - 4th Floor West, Frankfort, Kentucky 40621, (502) 564-7900, (502) 564-7573 (Fax).

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

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

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

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

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

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of an administrative regulation relating to payment for nursing facility services are KRS 194.050, 42 USC 1396r, and EO 96-862.

(b) The administrative regulation that the Department for Medicaid Services intends to promulgate will comply with federal mandates under 42 USC 1396r and recent HCFA directives.

(c) The necessity, function and conformity of the proposed administrative regulation is as follows: This administrative regulation sets forth the program requirements and payment provisions for preadmission screening and annual resident reviews (PASARR).

(d) The benefits expected from administrative regulation are: Compliance with 42 USC 1396r(6). The administrative regulation sets the program and policy requirements for the preadmission screening and annual resident review program. In addition, it clarifies that failure to perform an annual review will no longer be grounds to deny Medicaid payment.

(e) The administrative regulation will be implemented as follows: By the Division of Administration and Development, Department for Medicaid Services, Cabinet for Health Services.

August 15, 1997

Cabinet for Health Services

Department for Medicaid Services

(1) **907 KAR 3:065**, Nonemergency medical transportation waiver services and payments.

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

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for September 30, 1997 at 9 a.m., in the Department for Health Services Auditorium, Health Services Building, First Floor, 275 East Main Street, Frankfort, KY.

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

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

(b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 10 days prior to September 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, Cabinet Regulation Coordinator, 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 (VTDD).

(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 and EO 96-862.

(b) The administrative regulation that the Department for Medicaid Services intends to promulgate will create 907 KAR 3:065. It will, upon approval, provide Medicaid recipients access to medically necessary nonemergency medical transportation services through a more efficient and economic 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: This administrative regulation will permit a regional capitated transportation network. The regional transportation network will reflect the region's transportation infrastructure and will be geared to the unique needs of that region's population. This demonstration project should offer savings to the cabinet while retaining stability in providing transportation to those in need.

(e) The administrative regulation will be implemented as follows: The provisions of the transportation network will be accomplished by using brokers who will determine which transportation provider best suits the needs of the individual needing transportation. A referral of eligible individuals will be made by cabinet staff.

## EMERGENCY ADMINISTRATIVE REGULATIONS NOW IN EFFECT

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

**STATEMENT OF EMERGENCY**  
**200 KAR 14:011E**

This emergency administrative regulation establishes the limits under which the State Investment Commission shall invest the Commonwealth's excess funds as provided in House Bill 5 of the 1997 Extraordinary Session of the General Assembly. The General Assembly declared that an emergency existed with respect to House Bill 5 of the 1997 Extraordinary Session of the General Assembly, directing that the Act take effect upon its passage and approval by the Governor as it is in the best interest of the Commonwealth to implement cost-saving and efficiency measures as expediently as possible. Section 36(9) necessitates that administrative regulations be promulgated to limit the exposure of the Commonwealth as a result of the use of specific securities. Immediate implementation of House Bill 5 requires promulgation of this administrative regulation on an emergency basis under KRS 13A.190(1). This emergency administrative regulation shall be replaced by an ordinary administrative regulation. The Notice of Intent for the ordinary administrative regulation was filed with the Regulations Compiler the same day as the emergency administrative regulation.

PAUL E. PATTON, Governor  
 JOHN P. MCCARTY, Secretary

**FINANCE AND ADMINISTRATION CABINET**  
**State Investment Commission**

**200 KAR 14:011E. General rules.**

RELATES TO: KRS Chapter 42  
 STATUTORY AUTHORITY: KRS 42.525  
 EFFECTIVE: August 15, 1997

NECESSITY, FUNCTION, AND CONFORMITY: KRS 42.525 provides that the State Investment Commission shall prescribe rules for the operation of the state's investment program. This administrative regulation establishes the standards that govern the Commonwealth's investment and cash management programs.

Section 1. Definitions. For purposes of this administrative regulation:

(1) "Commission" means the State Investment Commission; and  
 (2) "Office" means the Office of Financial Management and Economic Analysis.

(3) "Pools" means the investment pools that are managed by the Office of Financial Management and Economic Analysis under the guidance of the State Investment Commission.

(4) "Hedge" means a position in a financial instrument(s) taken to minimize or eliminate the risk associated with an existing instrument or portfolio of instruments.

(5) "Interest rate swaps and options" means an agreement governed by an International Swap Dealers Association master contract between two (2) parties to exchange, or have the conditional right to exchange interest rate exposure from fixed rate to variable rate or from variable rate to fixed rate.

Section 2. Goals of Investments. The goals of all investments of the Commonwealth shall be to:

(1) Insure safety of principal. The commission shall not allow the investment of state funds in any institution or instrument which it

deems unsafe and a threat to the security of those funds.

(2) Maintain adequate liquidity to meet the cash needs of the Commonwealth. ~~[The office shall not execute nor allow the execution of any investment that will negatively impact the short or long term cash needs of the Commonwealth.]~~

(3) Maximize yield. The commission shall invest in securities which maximize yield or return to the Commonwealth within the safety and liquidity constraints set out by the commission. The use of leverage to increase the yield of a pool is expressly prohibited.

Section 3. Monies to be Invested. The commission shall invest all state funds as defined in KRS 446.010(31) which are excess, surplus, or otherwise available for investment for periods of time of one (1) day or more. These monies are held in cash accounts kept by the Division of Accounts in the Finance and Administration Cabinet. Interest earned on the cash balances will be calculated daily on an accrual basis. Total return takes into account the interest earned plus the change in the value of the securities held in the pool. Negative cash account balances are considered to be borrowed funds and will be charged at the yield earned on the applicable investment pool for the duration of the loan.

Section 4. Minimum Interest Rates. (1) The amount of funds per investment instrument shall be determined periodically by the commission at its regular public meetings. Criteria to determine such amounts shall be:

(a) Liquidity needs of the ~~(various)~~ state in aggregate as ~~(agencies for which funds are)~~ budgeted; and

(b) Rates available per instrument, and safety of principal and interest.

(2) Investment instruments shall be qualified as available for use by being:

(a) Specified as such in statute; and  
 (b) Further qualified under the provisions of 200 KAR 14:081, 200 KAR 14:091.

(3) The commission shall not allow the investment of state funds in any institution or instrument for a term of one (1) year or less at a yield less than the yield available on Treasury Bills of similar maturity unless specifically authorized by statute. For funds to be invested for more than one (1) year, the commission shall not allow investment in any institution or instrument at a yield less than the yield available on Treasury Notes of similar maturity unless specifically authorized by statute.

Section 5. Investment Policies. ~~[Acceptable Maturity of Investments.]~~ The maturity of investments made by the commission shall be subject to the liquidity needs of the Commonwealth as determined by the commission with the following limits:

(1) U.S. Treasury and agency securities with a maturity less than seven (7) years. No limit, with the exception of Treasury Strips which shall be limited to twenty (20) percent of each pool.

(2) U.S. agency mortgage backed securities with a final maturity of ten (10) years and a weighted average life of four (4) years or less at projected prepayment speed assumptions.

(a) U.S. agency mortgage backed securities and collateralized mortgage obligations are limited to twenty-five (25) percent of total pool assets in aggregate.

(3) Collateralized mortgage obligations are limited to a weighted average life of four (4) years or less at projected prepayment speed assumptions and meet the Federal Financial Institutions Examination

Council (FFIEC) guidelines for financial institution qualified purchases.

(4) Asset-backed securities are limited to those rated in the highest category by a nationally recognized rating agency with an expected life of four (4) years or less and a legal final of less than ten (10) years.

(5) U.S. dollar denominated corporate and Yankee securities issued by foreign and domestic issuers, rated A or higher by a nationally recognized rating agency with a maturity not longer than five (5) years and limited to not more than twenty-five (25) percent of any individual portfolio and \$25 million per issuer, inclusive of commercial paper, bankers' acceptances, and certificates of deposit.

(6) U.S. dollar denominated sovereign and supranational debt shall be rated A1 or higher by a nationally recognized rating agency with a maturity not to exceed five (5) years and limited to not more than five (5) percent of any individual portfolio and \$10 million per issuer.

(7) Money market securities shall be limited to twenty (20) percent of total pool assets and \$25 million per issuer. Money market securities include: commercial paper, certificates of deposit, Eurodollars and time deposits rated in the highest short-term rating with assets in excess of \$1 billion and bankers' acceptances rated A or higher. Maturities shall be limited to six (6) months for bankers' acceptances and nine (9) months for all other money market securities.

(8) Repurchase and reverse repurchase agreements collateralized at 102 percent (marked to market daily) with treasuries, agencies, and FFIEC qualified collateralized mortgage obligations, with a maximum maturity of one (1) year when executed with approved broker-dealers and Kentucky Bank Repurchase Program participants.

Section 6. In-state and Out-of-state Deposits. All funds eligible for investment in certificates of deposit as determined by the commission shall first be offered to financial institutions chartered in Kentucky or by the United States that have their main office located in Kentucky. The rate at which these funds shall be offered shall be set by the commission as set out in KRS Chapter 42. If Kentucky financial institutions eligible for these funds refuse any part of the funds offered, the commission may offer the funds to any commercial bank chartered in the United States, approved by the commission. Any out-of-state investments shall be subject to the same collateralization requirements as in-state investments.

Section 7. Risk Management. The pools may utilize interest rate swaps, over-the-counter and exchange traded U.S. Treasury contracts and options to hedge the portfolio against fluctuations due to changes in interest rates. The pools will use these securities for bona fide hedging purposes and not for speculative purposes, as defined by the State Investment Commission. The State Investment Commission will establish operating procedures based upon current market conditions. ~~[Distribution of Funds Among Types of Institutions. Distribution of funds among types of institutions shall be determined from time to time by the commission at its regular public meetings. The criteria for that distribution shall be:~~

~~(1) The institution is permitted by statute to qualify as a depository;~~

~~(2) Rates available;~~

~~(3) Sufficiency of collateral; and~~

~~(4) Determination as to whether institutions are meeting the economic development needs of the community.]~~

GORDON L. MULLIS, Secretary

APPROVED BY AGENCY: August 14, 1997

FILED WITH LRC: August 15, 1997 at noon

#### REGULATORY IMPACT ANALYSIS

Contact Person: F. Thomas Howard, Deputy Executive Director

(1) Type and number of entities affected: This administrative regulation affects the State Investment Commission and the Finance and Administration Cabinet in the Executive Branch.

(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 is no anticipated cost or savings on the cost of living and employment in the geographical area in which the administrative regulation will be implemented. A public hearing on this regulation has not yet taken place.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received. This administrative regulation poses no anticipated cost on business in the geographical area in which it will be implemented. A public hearing on this regulation has not yet taken place.

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

1. First year following implementation: There are no compliance, reporting, or paperwork requirements associated with this administrative regulation. nor will there be any effect upon competition.

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: Savings will result from increased investment income on the Commonwealth's assets.

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

3. Additional factors increasing or decreasing costs: No other factors are known at this time.

(b) Reporting and paperwork requirements: None

(4) Assessment of anticipated effect on state and local revenues: No impact is expected on local revenues. State investment income revenue is expected to be enhanced.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: No funds are anticipated to be required for implementation and enforcement of the administrative regulation. If funds are required, the source would be the General Fund.

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

(a) Geographical area in which administrative regulation will be implemented: No impact is expected; however, there has not yet been a public hearing on the regulations.

(b) Kentucky: No impact is expected; however, there has not yet been a public hearing on the regulation.

(7) Assessment of alternative methods; reasons why alternatives were rejected: No other methods were considered as the regulation implements limits required to be established by House Bill 5.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: No impact is expected.

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

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

(9) Identify any statute, rule, administrative regulation or government policy which may be in conflict, overlapping, or duplication: To the best knowledge of the Finance and Administration Cabinet, Office of Financial Management and Economic Analysis, no statutes, administrative regulation, or government policies conflict, overlap, or duplicate this administrative regulation.

(a) Necessity of proposed regulation if in conflict: Inapplicable.

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

(10) Any additional information or comments: None

(11) TIERING: Is tiering applied? No. The regulation only applies to one entity, the State Investment Commission. The goals and guidelines for the use of financial agreements are uniformly applied to this entity.

#### STATEMENT OF EMERGENCY 200 KAR 14:081E

This emergency administrative regulation establishes the limits under which the State Investment Commission shall invest the Commonwealth's excess funds as provided in House Bill 5 of the 1997 Extraordinary Session of the General Assembly. The General Assembly declared that an emergency existed with respect to House Bill 5 of the 1997 Extraordinary Session of the General Assembly, directing that the Act take effect upon its passage and approval by the Governor as it is in the best interest of the Commonwealth to implement cost-saving and efficiency measures as expediently as possible. Section 36(9) necessitates that administrative regulations be promulgated to limit the exposure of the Commonwealth as a result of the use of specific securities. Immediate implementation of House Bill 5 requires promulgation of this administrative regulation on an emergency basis under KRS 13A.190(1). This emergency administrative regulation shall be replaced by an ordinary administrative regulation. The Notice of Intent for the ordinary administrative regulation was filed with the Regulations Compiler the same day as the emergency administrative regulation.

PAUL E. PATTON, Governor  
JOHN P. MCCARTY, Secretary

#### FINANCE AND ADMINISTRATION CABINET State Investment Commission

#### 200 KAR 14:081E. Repurchase agreement.

RELATES TO: KRS Chapters 41, 42  
STATUTORY AUTHORITY: KRS 42.525  
EFFECTIVE: AUGUST 15, 1997

NECESSITY, FUNCTION, AND CONFORMITY: KRS 42.525 provides that the State Investment Commission shall prescribe standards for the operation of the state's investment program. This administrative regulation establishes the general standards which shall apply to the employment of repurchase agreements as investment vehicles with eligible financial institutions. [~~commercial banks or savings and loan associations chartered by the Commonwealth of Kentucky or by an agency of the United States government to do business in Kentucky, providing the main office is in Kentucky; or investment banking firms approved by the State Investment Commission at its open regular meetings.~~]

Section. 1. Definitions. For purposes of this administrative regulation:

- (1) "Commission" means the State Investment Commission;
- (2) "Office" means the Office of Financial Management and Economic Analysis;
- (3) "Repurchase agreement or reverse repurchase agreement" means an actual, conditional purchase or sale of securities of the United States Treasury, any agency instrumentality or corporation of the United States, or any other security authorized for investment pursuant to KRS 42.500(6), with an agreement to resell or repurchase the securities to their original owner on a specific date in the future.
- (4) "Eligible financial institution" refers to commercial banks or savings and loan association chartered by the Commonwealth of Kentucky or by an agency of the United States government to do business in Kentucky, provided they maintain a business nexus in

Kentucky; or investment banking firms approved by the State Investment Commission.

Section 2. Minimum Interest Rates. The commission shall not allow public funds to be invested in any repurchase agreement with a yield less than could be received on any directly purchased United States Treasury security of a comparable maturity.

Section 3. Eligible Investment Institutions. ~~Any commercial bank or savings and loan association chartered by the Commonwealth of Kentucky or by the U.S. government with its main office located in Kentucky shall be considered eligible to enter into repurchase agreements (as defined in this administrative regulation) with the Commonwealth. Any investment banking firm approved by the commission at an open meeting shall be considered eligible.~~

Section 4. Reporting Requirements for Eligible Investment Institutions. The commission shall advise all eligible investment institutions of the following reporting requirements which are prerequisites for the investment of state funds in such institutions:

(1) For commercial banks and savings and loan associations chartered by the Commonwealth of Kentucky or by the U.S. government with main offices located in Kentucky:

(a) The institution shall submit a copy of its quarterly financial reports as furnished to regulatory bodies, including all accompanying schedules, to the commission. The filing such reports shall be within thirty (30) days from the end of that quarter;

(b) The institution shall complete and sign the Commonwealth's form of [a] repurchase agreement contract [with the Commonwealth].

(2) For investment banking firms:

(a) The institution shall submit a copy of its annual audited financial statements and copies of quarterly financial statements, as published, to the commission;

(b) The institution shall complete and sign the Commonwealth's form of [a] repurchase agreement contract [with the Commonwealth].

Section 4. Maximum Size of Repurchase Agreement per Institution. The commission shall review on an annual basis the maximum size of repurchase agreements per investment bank. [~~5. Kentucky Banks and Savings and Loan Associations, Priority for Placement of Repurchase Agreements. Pursuant to KRS 42.520, the commission shall assign public funds to public depositories by priority based on evidence that the public depository serves the convenience and economic development needs of the communities in which they are chartered to do business. Repurchase agreements with commercial banks and savings and loan associations chartered by the Commonwealth of Kentucky or by the U.S. government with main offices located in Kentucky shall be placed pursuant to the following guidelines. As loan demand is a measure of economic activity in a community and as investments shorter than one (1) year are unlikely to provide loanable capital to financial institutions, the prioritization factors for placement of repurchase agreements with maturities longer than one (1) year shall be as follows:~~]

(1) For repurchase agreements with maturities equal to or greater than 365 days, the following financial criteria shall be met or exceeded:

(a) A loan to deposit ratio of equal to or great than seventy (70) percent;

(b) A nonperforming loan to capital ratio of equal to or less than twenty (25) five percent;

(c) A capital to assets ratio of equal to or greater than seven (7) percent; and

(d) A return on assets ratio greater than zero.

(2) Repurchase agreements with maturities equal to or greater than 365 days with commercial banks and savings and loan associations chartered by the Commonwealth of Kentucky or by the U.S. government with main offices located in Kentucky shall be limited to

\$5,000,000 per institution.

~~(3) The office shall review the financial ratios listed semiannually to determine eligibility of institutions. Existing repurchase agreements with maturities equal to or greater than one (1) year with institutions which fail to meet the minimum criteria for two (2) consecutive reporting periods shall be subject to call at par value by the commission. Repurchase agreements shall be placed according to:~~

- ~~(a) Availability of funds;~~
- ~~(b) Demand for funds by the institutions; and~~
- ~~(c) Highest loan to deposit ratio of eligible institutions.]~~

Section 5. Eligible Securities. The following shall be considered eligible securities for repurchase agreements:

(1) An investment security issued or guaranteed by:

- (a) The U.S. Treasury; or
- (b) An agency, corporation, or instrumentality of the government of the United States; or

(2) A security authorized for investment pursuant to KRS 42.500(6). [6. Maximum Size of Repurchase Agreement per Institution. (1)(a) The commission shall not enter into any repurchase agreement with a commercial bank or savings and loan association of more than \$25,000,000.

(b) A repurchase agreement with a commercial bank or savings and loan association shall not be an amount in excess of its capital structure or ten (10) percent of the institution's deposits, whichever is less.

(2) There shall be no limitation on the amount of repurchase agreements entered into with investment banking firms.

(3) The commission shall review at a minimum on an annual basis, the maximum size of repurchase agreements per institution.

Section 7. Payment for and Safekeeping Purchases. (1) All transactions shall be conducted on a payment versus delivery basis.

(2) A party shall not allow state funds to be released until delivery of adequate, negotiable collateral has been verified.

(3) Subject to the approval of the commission, securities purchased from commercial banks, savings and loan associations, or investment banks in a repurchase agreement shall be received, verified, and safe kept by the state's general depository bank or its agent.

Section 8. Eligible Securities. The following shall be considered eligible for repurchase agreements:

(1) An investment security issued or guaranteed by:

- (a) The United States Treasury; or
- (b) An agency, corporation, or instrumentality of the government of the United States; or

(2) A security authorized for investment pursuant to KRS 42.500(6).]

Section 6. [9.] Sufficiency of Securities Purchased. (1) The securities purchased shall have a market value (including accrued interest) of not less than 102 percent of the face value of the repurchase agreement.

(2) [14.] The state's general depository banking contract[, the commission] shall require the general depository to review the sufficiency of collateral on all repurchase agreements. This review shall occur at least every seven (7) calendar days with periodic reviews made by the office.

(3) The commission shall demand additional securities to be delivered immediately, if market conditions cause the value of the securities purchased to drop below 102 percent of the face value of the repurchase agreement.

Section 7. [40.] Status of Parties. (1) Both the commission and the eligible financial institutions authorized to enter into repurchase agreements [commercial bank, savings and loan association, or

investment bank] shall be considered principals in all repurchase agreements and shall not be considered to be acting as agents for third parties.

(2) All contractual obligations shall apply to and be binding on the commission and the specific financial institution with which the repurchase agreement is initially negotiated and settled.

Section 8. [44.] Default. (1) If an institution with which the commission has entered into a repurchase agreement defaults, or is determined by the commission to be in danger of default, the commission shall be entitled to set off claims and apply property held by them in respect to the repurchase against obligations owing to them in respect of any other repurchase agreements thereunder and that payments, deliveries and other transfers made in respect of any repurchase shall be deemed to have been made in consideration of payments, deliveries and other transfers in respect of any other repurchase thereunder, and the obligations to make any such payments, deliveries and other transfers may be applied against each other and netted. [immediately liquidate all securities delivered to it under the repurchase agreement.]

(2) From the proceeds, the commission shall pay itself the full principal and accrued interest due as of the date of liquidation. Remaining cash balances shall be forwarded to the financial institution with which the repurchase agreement was originally executed.

Section 9. Kentucky Bank Repurchase Program. Pursuant to KRS 42.520, the commission shall assign public funds to eligible financial institutions by priority based on evidence that the public depository serves the convenience and economic development needs of the communities in which they are chartered to do business. Repurchase agreements with commercial banks and savings and loan associations chartered by the Commonwealth of Kentucky or by the U.S. government with main offices located in Kentucky shall be placed pursuant to the following guidelines. As loan demand is a measure of economic activity in a community and as investments shorter than one (1) year are unlikely to provide loanable capital to financial institutions, priority shall be placed with maturities longer than one (1) year.

(1) Institutions with repurchase agreements shall meet or exceed the following financial criteria:

(a) A loan to deposit ratio equal to or greater than seventy (70) percent.

(b) A nonperforming loan to capital ratio of equal to or less than twenty-five (25) percent.

(c) A capital to assets ratio or equal to or greater than seven (7) percent; and

(d) A return on assets ratio greater than zero.

(2) Repurchase agreements with maturities equal to or greater than 365 days with commercial banks and savings and loan associations chartered by the Commonwealth of Kentucky or by the U.S. government with main offices located in Kentucky shall be limited to \$5,000,000 per institution.

(3) The office shall review the financial ratios listed quarterly to determine eligibility of institutions. Existing repurchase agreements with institutions which fail to meet the minimum criteria for two (2) consecutive quarters shall be subject to call at par value by the commission. Repurchase agreements shall be placed according to:

(a) Availability of funds;

(b) Demand for funds by the institutions; and

(c) Highest loan to deposit ratio of eligible institutions.

(4)(a) A repurchase agreement with a commercial bank or savings and loan shall not be an amount in excess of its capital structure or then ten (10) percent of the institution's deposits, whichever is less.

(b) The commission shall not enter into any Kentucky Bank Program repurchase agreement with a commercial bank or savings and loan association that will cause that institution to exceed in aggregate a total of \$25,000,000 in repurchase agreements.



(5) Yield charged and collateral requirements for commercial banks and savings and loans.

(a) Commercial banks and savings and loans submitting U.S. Treasuries and agencies excluding mortgage backed securities (MBS) and collateralized mortgage obligations (CMO) will be charged the like duration yield generic repurchase rate as quoted by a nationally recognized market reporter with 102 percent collateral.

(b) Commercial banks and savings and loans submitting securities authorized for investment pursuant to KRS 42.500 but not U.S. Treasuries and agencies but including MBS and collateralized CMO will be charged the like duration yield generic repurchase rate as posted on a nationally recognized market reporter plus fifty (50) basis points with 105 percent collateral.

(6) Payment for and safekeeping of purchases.

(a) All transactions shall be conducted on a payment-versus-delivery basis.

(b) A party shall not allow state funds to be released until delivery of adequate, negotiable collateral has been verified.

(c) Subject to the approval of the commission, securities purchased from commercial banks or savings and loan associations in a repurchase agreement shall be received, verified, and safe-kept by the state's general depository bank or its agent. ~~[(12) Contract (1) A formal agreement shall be signed by commercial banks, savings and loan associations, and investment banks desiring to enter into repurchase agreements with the Commonwealth.~~

~~[(2) Prior to executing a repurchase agreement with the Commonwealth, each commercial bank and savings and loan association and investment bank shall agree to and sign the Commonwealth's repurchase agreement contract.]~~

GORDON L. MULLIS, Secretary

APPROVED BY AGENCY: August 14, 1997

FILED WITH LRC: August 15, 1997 at noon

#### REGULATORY IMPACT ANALYSIS

Contact Person: F. Thomas Howard, Deputy Executive Director

(1) Type and number of entities affected: This administrative regulation affects the State Investment Commission and the Finance and Administration Cabinet in the Executive Branch.

(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 is no anticipated cost or savings on the cost of living and employment in the geographical area in which the administrative regulation will be implemented. A public hearing on this regulation has not yet taken place.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received. This administrative regulation poses no anticipated cost on business in the geographical area in which it will be implemented. A public hearing on this regulation has not yet taken place.

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

1. First year following implementation: There are no compliance, reporting, or paperwork requirements associated with this administrative regulation, nor will there be any effect upon competition.

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: Savings will result from increased investment income on the Commonwealth's assets.

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

3. Additional factors increasing or decreasing costs: No other factors are known at this time.

(b) Reporting and paperwork requirements: None

(4) Assessment of anticipated effect on state and local revenues: No impact is expected on local revenues. State investment income revenue is expected to be enhanced.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: No funds are anticipated to be required for implementation and enforcement of the administrative regulation. If funds are required, the source would be the General Fund.

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

(a) Geographical area in which administrative regulation will be implemented: No impact is expected; however, there has not yet been a public hearing on the regulations.

(b) Kentucky: No impact is expected; however, there has not yet been a public hearing on the regulation.

(7) Assessment of alternative methods; reasons why alternatives were rejected: No other methods were considered as the regulation implements limits required to be established by House Bill 5.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: No impact is expected.

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

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

(9) Identify any statute, rule, administrative regulation or government policy which may be in conflict, overlapping, or duplication: To the best knowledge of the Finance and Administration Cabinet, Office of Financial Management and Economic Analysis, no statutes, administrative regulation, or government policies conflict, overlap, or duplicate this administrative regulation.

(a) Necessity of proposed regulation if in conflict: Inapplicable

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

(10) Any additional information or comments: None

(11) TIERING: Is tiering applied? No. The regulation only applies to one entity, the State Investment Commission. The goals and guidelines for the use of financial agreements are uniformly applied to this entity.

#### STATEMENT OF EMERGENCY

200 KAR 14:200E

This emergency administrative regulation establishes the limits under which the State Investment Commission shall invest the Commonwealth's excess funds derived from the Department of Treasury's unclaimed and abandoned property fund. The General Assembly declared that an emergency existed with respect to House Bill 5 of the 1997 Extraordinary Session of the General Assembly, directing that the Act take effect upon its passage and approval by the Governor as it is in the best interest of the Commonwealth to implement cost-saving and efficiency measures as expediently as possible. Section 36(9) necessitates that administrative regulations be promulgated to limit the exposure of the Commonwealth as a result of the use of specific securities. Immediate implementation of House Bill 5 requires promulgation of this administrative regulation on an emergency basis under KRS 13A.190(1). This emergency administrative regulation shall be replaced by an ordinary administrative regulation. The Notice of Intent for the ordinary administrative regulation was filed with the Regulations Compiler the same day as the emergency administrative regulation.

PAUL E. PATTON, Governor

## ADMINISTRATIVE REGISTER - 490

JOHN P. MCCARTY, Secretary

### FINANCE AND ADMINISTRATION CABINET State Investment Commission

#### 200 KAR 14:200E. Linked Deposit Investment Program.

RELATES TO: KRS 41.600-41.620

STATUTORY AUTHORITY: KRS Chapter 13A, 41.606

EFFECTIVE: August 15, 1997

NECESSITY, FUNCTION, AND CONFORMITY: This administrative regulation established the conditions for which small businesses and agribusiness are eligible for loans made available through the Linked Deposit Investment Program and provides for agency review of the information provided by the lending institution as part of the loan package. The Linked Deposit Investment Program, as it pertains to agribusiness, will be monitored by the Department of Agriculture (department) and as it pertains to small businesses, will be monitored by the Cabinet for Economic Development (cabinet).

Section 1. Loan and Investment Approval Process. (1) After the cabinet or department has determined that the loan package is complete in accordance with either 307 KAR 5:010 or 302 KAR 3:010 it shall forward the loan package to the State Investment Commission for funding as required by KRS 41.610(5).

(2) Funds for linked deposit investment program loans are derived from the Department of Treasury's unclaimed and abandoned property fund as required by KRS 41.606(1). The availability of funds for linked deposit investment program loans shall be based on the recommendation contained in the Department of Treasury's annual report detailing the amount of money in the unclaimed and abandoned property fund, but shall not exceed the limits established by the State Investment Commission. The Department of Treasury shall submit its annual report to the State Investment Commission, the Cabinet for Economic Development and the Department of Agriculture no later than March 31 of each year.

(3) Approval for a new application for a linked deposit investment may be denied or an existing investment revoked by the State Investment Commission for failure of the financial institution to meet and maintain the eligibility requirements prescribed in KRS 42.500 and 200 KAR Chapter 14 for each investment type.

Section 2. Repayments. The eligible lending institution shall remit to the State Investment Commission by June 30 of each year all loan principal repayments for the preceding year beginning June 1 and ending May 31.

Section 3. Reporting Requirements. The State Investment Commission shall submit to either the Cabinet for Economic Development's Small and Minority Business Division or the Department of Agriculture a copy of the letter confirming each approved linked deposit investment with the eligible lending institution no later than thirty (30) days after the date the linked deposit investment program has been funded.

Section 4. Investment Policies. (1) Linked deposit investments in aggregate of less than \$100,000 for any institution may be in the form of a certificate of deposit. Aggregate investments between \$100,000 and \$250,000 may be in the form of a collateralized certificate of deposit with collateral meeting the same criteria as identified for the Kentucky Bank Repurchase Program. Any institution with linked deposit loans greater than \$250,000 shall be in the form of a repurchase agreement subject to the terms and conditions established for the Kentucky Bank Repurchase Program.

(2) The yield on link deposit investments shall be as prescribed in KRS 41.610.

GORDON L. MULLIS, Secretary

APPROVED BY AGENCY: August 14, 1997

FILED WITH LRC: August 15, 1997 at noon

#### REGULATORY IMPACT ANALYSIS

Contact Person: F. Thomas Howard, Deputy Executive Director

(1) Type and number of entities affected: This administrative regulation affects the State Investment Commission and the Finance and Administration Cabinet in the Executive Branch.

(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 is no anticipated cost or savings on the cost of living and employment in the geographical area in which the administrative regulation will be implemented. A public hearing on this regulation has not yet taken place.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received. This administrative regulation poses no anticipated cost on business in the geographical area in which it will be implemented. A public hearing on this regulation has not yet taken place.

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

1. First year following implementation: Paperwork is required on each line deposit with summaries provided at the end of each fiscal year.

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: Costs will result from decreased investment income on the Commonwealth's assets.

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

3. Additional factors increasing or decreasing costs: No other factors are known at this time.

(b) Reporting and paperwork requirements: None

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

No impact is expected on local revenues. State investment income revenue is expected to decline.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: No funds are anticipated to be required for implementation and enforcement of the administrative regulation. If funds are required, the source would be the General Fund.

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

(a) Geographical area in which administrative regulation will be implemented: No impact is expected; however, there has not yet been a public hearing on the regulations.

(b) Kentucky: No impact is expected; however, there has not yet been a public hearing on the regulation.

(7) Assessment of alternative methods; reasons why alternatives were rejected: No other methods were considered as the regulation brings 200 KAR 14:011 into compliance with 307 KAR 5:010 and 302 KAR 3:010.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: No impact is expected.

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

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

(9) Identify any statute, rule, administrative regulation or govern-



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ment policy which may be in conflict, overlapping, or duplication: To the best knowledge of the Finance and Administration Cabinet, Office of Financial Management and Economic Analysis, no statutes, administrative regulation, or government policies conflict, overlap, or duplicate this administrative regulation.

(a) Necessity of proposed regulation if in conflict: Inapplicable

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

(10) Any additional information or comments: None

(11) TIERING: Is tiering applied? No. The regulation only applies to one entity, the State Investment Commission. The goals and guidelines for the use of financial agreements are uniformly applied to this entity.

### STATEMENT OF EMERGENCY 704 KAR 20:305E

This emergency administrative regulation allows the specialty tests required prior to October 1, 1997 to be accepted for issuance of the corresponding certification for a teacher applicant who successfully completed the tests prior to that date and apply for certification no later than September 30, 1998. In order to alleviate an added testing expense to teacher applicants and a delay in getting their teaching certificate which will allow them to seek employment as a teacher, it is necessary to promulgate this emergency administrative regulation. This emergency administrative regulation shall be replaced by an ordinary administrative regulation.

PAUL PATTON, Governor  
ROSA WEAVER, Chair

### EDUCATION, ARTS, AND HUMANITIES CABINET Education Professional Standards Board

**704 KAR 20:305E. Written examination prerequisites for teacher certification.**

RELATES TO: KRS 161.028, 161.030

STATUTORY AUTHORITY: KRS 161.028, 161.030

EFFECTIVE: August 11, 1997

NECESSITY, FUNCTION, AND CONFORMITY: KRS 161.030 requires that all new teachers, including out-of-state teachers with less than two (2) years' experience, successfully complete appropriate written tests prior to initial certification in Kentucky. The tests are required to measure communication skills, general knowledge, professional education concepts, and knowledge in the specific teaching field of the applicant. The Education Professional Standards Board is required to select the tests; determine the minimum acceptable level of achievement on each test; establish a reasonable fee related to the cost of administration of the tests, with the fees to be paid by the teacher applicants; and establish procedures for persons having less than minimum levels of performance on a test to repeat that test and be informed of strengths and weaknesses in performance areas. This administrative regulation implements these duties relative to teacher testing.

Section 1. All teacher applicants [A new teacher applicant and an out-of-state applicant] for certification [with less than two (2) years of teaching experience as defined in 704 KAR 20:045] shall successfully complete the appropriate written tests identified in this administrative regulation prior to initial Kentucky certification. Scores on tests completed five (5) or more than five (5) years prior to application for certification shall not be acceptable.

Section 2. The following NTE Core Battery Tests and passing scores shall be required of each new teacher applicant and an out-of-

state applicant with less than two (2) years of teaching experience as defined in 704 KAR 20:045:

(1) Communication skills - 646;

(2) General knowledge - 643;

(3) Professional knowledge - 644.

Section 3. Specialty tests and passing scores shall be required of each new teacher applicant and any teacher seeking additional certificates as identified in this section.

(1) An applicant for interdisciplinary early childhood education, birth to primary, certification shall take an Education Professional Standards Board test for interdisciplinary early childhood, with a passing score of 150.

(2) An applicant for elementary certification shall take the NTE Early Childhood Education Test (10020) with a passing score of 480 through September 30, 1997. After this date, an applicant for elementary certification shall take Elementary Education: Curriculum and Instruction (10011) with a passing score of 143.

(3) An applicant for middle school certification shall take Education in the Elementary School Test (20010) with a passing score of 510.

(4) An 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 each specialty test based on the applicant's specialty with the corresponding passing score 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 applicant for certification at the secondary level shall take each specialty test corresponding to the teaching area or major with the passing score identified in this subsection. An 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.
    - (6) Effective October 1, 1997, tests designated with no passing scores in subsection (5) of this section shall have the following passing scores:
      - (a) English Language, Literature, and Composition: Essays (20042) with a passing score of 135;
      - (b) Biology: Content Essays (30233) with a passing score of 139;
      - (c) Mathematics Proofs, Models and Problems, Part I (20063) with a passing score of 141;
      - (d) Social Studies: Interpretation of Materials (20083) with a passing score of 150.
    - (7) An applicant for certification in all grades shall take the specialty test(s) with the passing score as identified in this subsection.
      - (a) Art - Art Education Test (10130) - 510;
      - (b) French - French (10170) - 510;
      - (c) German - German (20180) - 490;
      - (d) Health - Educational Professional Standards Board Test for Health Education - 67;
      - (e) Music (Vocal and Instrumental) Music Education (10110) - 510;
      - (f) Physical education:
        1. Physical Education: Content Knowledge (10091) - 152; and
        2. Physical Education: Movement Forms-Analysis and Design

- (30092) - no passing score;
  - (g) Spanish:
    1. Spanish Content Knowledge (10191) - 145; and
    2. Spanish: Productive Language Skills (20192) - no passing score;
  - (h) School Media Librarian: Library Media Specialist (10310) - 590.
- (8) Effective October 1, 1997, an applicant for certification in all grades in the following specialty areas shall take the specialty test(s) with the passing score as identified in this subsection.
  - (a) Art:
    1. Content Knowledge (10133) - 139; and
    2. Art Making (20131) - no passing score;
  - (b) French:
    1. French: Content Knowledge (10173) - 144;
    2. French: Productive Language Skills (20171) - no passing score;
  - (c) German: German: Content Knowledge (20181) - 143;
  - (d) Health: Health Education (10550) - 550;
  - (e) Music:
    1. Music: Content Knowledge (10113) - 137; and
    2. Music: Concepts and Processes (30111) - 140.
- (9) Effective October 1, 1997 tests designated with no passing scores in subsection (7) of this section shall have the following passing scores:
  - (a) Physical Education: Movement Forms - Analysis and Design (30092) - 135;
  - (b) Spanish: Productive Language Skills (20192) - 156.
- (10) An applicant for certification to teach in grades five (5) through twelve (12) with one (1) or more of the following specializations shall take the specialty tests with the passing scores as identified in this subsection:
  - (a) Agriculture: Agriculture (10700) - 530;
  - (b) Business and Marketing Education - Business Education (10100) - 540;
  - (c) Comprehensive Business - Business Education (10100) - 540;
  - (d) Distributive Education - Business Education - 540;
  - (e) Family and Consumer Sciences [~~Home Economics~~] - Home Economics Education (10120) - 540;
  - (f) Industrial Education - Technology Education (10050) - 550.
- (11) Effective October 1, 1997, an applicant for certification to teach in grades five (5) through twelve (12) with one (1) or more of the following specializations shall take the specialty test with passing score as identified in this subsection:
  - (a) Business and Marketing Education - Business Education (10100) - 570;
  - (b) Comprehensive Business - Business Education (10100) - 570;
  - (c) Distributive Education - Business Education (10100) - 570;
  - (d) Industrial Education - Technology Education (10050) - 570.
- (12) Specialty tests for an applicant who successfully completes the new test(s) identified in subsections (2), (4), and (9) of this section prior to October 1, 1997, shall be accepted for the issuance of the corresponding certification. Specialty tests required prior to October 1, 1997 shall be accepted for the issuance of the corresponding certification for a teacher applicant who successfully completed the test prior to that date and apply for certification no later than September 30, 1998.

Section 4. (1) An applicant for initial certification may take the NTE Core Battery Tests and Praxi II: Subject Assessments and Specialty Area Tests on any of the dates established by the Educational Testing Service for national administration or on any date established by the Education Professional Standards Board for special administration.

(2) An applicant shall authorize test results to be forwarded by the Educational Testing Service to the Kentucky Department of Education and to the appropriate teacher preparation institution.

(3) Public announcement of testing dates and locations shall be issued sufficiently in advance of testing dates to permit advance registration as required by the Educational Testing Service. 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. An applicant shall pay the appropriate examination fee for each relevant test 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 tests administered by the Educational Testing Service.

Section 6. An applicant 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 data and conduct analyses of the score and institutional reports provided by the Educational Testing Service to determine the impact of these tests and permit a review of this administrative regulation on an annual or biennial basis.

ROSA WEAVER, Chair

APPROVED BY AGENCY: July 28, 1997

FILED WITH LRC: August 11, 1997 at noon

#### REGULATORY IMPACT ANALYSIS

Contact Person: Ronda Tamme

(1) Type and number of entities affected: New teacher applicants.

(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: New teacher applicants will save \$75 to \$85 in assessment fees. In addition, there will be potential for employment as a teacher sooner.

(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 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: State funds.

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

(a) Geographical area in which administrative regulation will be

implemented: None

(b) Kentucky: None

(7) Assessment of alternative methods; reasons why alternatives were rejected: There would be a delay in the certification processing and some new teacher applicants would not be able to seek employment for the second semester of the 1997-98 school year. In addition, new teacher applicants would incur an additional cost for taking the new tests.

(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 cost savings for teacher applicants and the potential for employment during the second semester of the 1997-98 school year.

(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 government policy which may be in conflict, overlapping, or duplication:

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

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: Not applicable.

(10) Any additional information or comments: None

(11) TIERING: Is tiering applied? Tiering is not applied. The test scores for all new teacher applicants who apply for certification after October 1, 1997 and September 30, 1998 would be accepted for certification purposes.

#### STATEMENT OF EMERGENCY 803 KAR 2:301E

This emergency administrative regulation incorporates, by reference, in Section 2(1)(c) a publication in the Federal Register, dated November 4, 1996, which amends 29 CFR 1910.19, "Special provisions for air contaminants", by adding a section which describes the coverage of 29 CFR 1910.1052, "Occupational exposure to methylene chloride", as it relates to industries not subject to general industry regulations. It is necessary to promulgate this emergency administrative regulation to comply with the federal mandate, 29 CFR 1953.23, requiring implementation of the federal standard, or one (1) more stringent, within six (6) months of the date of promulgation of the new federal standard, and to keep the state program as effective as the federal program. This emergency administrative regulation shall be replaced by an ordinary administrative regulation. The "Notice of Intent to Promulgate Administrative Regulation" shall be filed with the Regulations Compiler on August 14, 1997.

PAUL E. PATTON, Governor

JOE NORSWORTHY, Chairman

#### LABOR CABINET Department of Workplace Standards Division of Occupational Safety and Health Compliance Division of Occupational Safety and Health Education and Training

803 KAR 2:301E. Adoption and extension of established federal standards.

RELATES TO: KRS 338.051, 338.061, 29 CFR 1910

STATUTORY AUTHORITY: KRS 338.051(3), 338.061, 29 CFR 1910

EFFECTIVE: August 14, 1997

NECESSITY, FUNCTION, AND CONFORMITY: KRS 338.051 and 338.061 authorize the Kentucky Occupational Safety and Health Standards Board to adopt and promulgate occupational safety and

health administrative regulations. Express authority to incorporate by reference established federal standards and national consensus standards is also given to the board. The following administrative regulation contains those standards to be enforced by the Division of Occupational Safety and Health Compliance in the area of general industry.

Section 1. Definitions. (1) "Act" means KRS Chapter 338.

(2) "Assistant Secretary of Labor" means the Secretary of Labor, Commonwealth of Kentucky.

(3) "Employee" means any person employed except those employees excluded in KRS 338.021.

(4) "Employer" means any entity for whom a person is employed except those employers excluded in KRS 338.021.

(5) "Established federal standard" means any operative occupational safety and health standard established by any agency of the United States Government.

(6) "National consensus standard" means any occupational safety and health standard or modification thereof which has been adopted and promulgated by a nationally-recognized standards-producing organization.

(7) "Standard" means a standard which requires conditions or the adoption or use of one (1) or more practices, means, methods, operations, or processes, reasonably necessary or appropriate to provide safe and healthful employment. "Standard" has the same meaning as and includes the words "regulation" and "rule".

(8) "U.S. Department of Labor" means Kentucky Labor Cabinet, U.S. 127 South, Frankfort, Kentucky 40601, or the U.S. Department of Labor.

Section 2. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) 29 CFR 1910.11-.19 of the Code of Federal Regulations revised as of July 1, 1996 [1995], published by the Office of the Federal Register, National Archives and Records Services, General Services Administration are incorporated by reference.

(b) The revision to 29 CFR 1910.19, "Special provisions for air contaminants", as published in the Federal Register, Volume 61, Number 214, November 4, 1996.

(c) The revision to 29 CFR 1910.19, "Special provisions for air contaminants", as published in the Federal Register, Volume 62, Number 7, January 10, 1997. [The revision to 29 CFR 1910.17, "Effective Dates", as published in the Federal Register, Volume 61, Number 46, March 7, 1996.]

(d) The revision to 29 CFR 1910.19, "Special provisions for air contaminants", as published in the Federal Register, Volume 61, Number 214, November 4, 1996.]

(2) This material may be inspected, obtained, and copied at: Kentucky Labor Cabinet, Division of Education and Training, U.S. 127 South, Frankfort, Kentucky 40601. Office hours are 8 a.m. - 4:30 p.m. (ET), Monday through Friday.

JOE NORSWORTHY, Chairman

APPROVED BY AGENCY: August 6, 1997

FILED WITH LRC: August 14, 1997 at 9 a.m.

#### REGULATORY IMPACT ANALYSIS

Agency Contact: Kembra Taylor, T.P. Chancellor

(1) Type and number of entities affected: The amendments to this regulation affect all employers in general industry within the jurisdiction of the Kentucky Occupational Safety and Health Program.

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

(a) Cost of living and employment in the geographic area in which the administrative regulation will be implemented: There are no costs or savings resulting from the promulgation of this amendment.

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

administrative regulation will be implemented: There will be no cost effected from this revision.

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

1. First year following implementation:

2. Second and subsequent years: There are no additional factors regarding these revisions will increase or decrease costs. There will be no affect on competition. Reporting and paperwork requirements: This amendment will not entail any reporting or additional paperwork requirements.

(3) Effects on the promulgating administrative body: The promulgating body will not be affected by the adoption of these revisions.

(a) Direct and indirect costs or savings:

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements: There will be no reporting or paperwork requirements as a result of these changes.

(4) Assessment of anticipated effect on state and local revenues: These revisions will have no anticipated effect on state and local revenues.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Current state and federal funding.

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

(a) Geographic area in which administrative regulation will be implemented: Undetermined; no public comments were received.

(b) Kentucky: Undetermined; no public comments were received.

(7) Assessment of alternative methods; reasons why alternative were rejected: Alternative methods were not considered as these proposed regulations are adopted by reference from federal regulations published in the Federal Register.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographic area in which implemented and on Kentucky: These proposed amendments will enhance worker safety throughout Kentucky.

(b) State whether detrimental effect on environment and public health would result if not implemented:

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

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: There is no conflicting, overlapping, or duplication as a result of adoption of these proposed amendments.

(a) Necessity of proposed regulation if in conflict:

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

(10) Any additional information or comments:

(11) TIERING: Was tiering applied? No. Kentucky's Occupational Safety and Health Program regulations affect all employers with one or more employees. Inspections are conducted at the facilities of those industries or firms that pose higher risks to worker safety and health, those employers from which the KYOSH Program has received worker complaints or referrals, or where a workplace fatality (or accident resulting in the hospitalization of three or more employees) has occurred.

#### FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. PL 91-596 (Occupational Safety and Health Act of 1970, Section 18(c)(2)).

2. State compliance standards. These amendments adopt federal regulations.

3. Minimum or uniform standards contained in the federal mandate. The amendments adopt revisions to the previously adopted regulation, 29 CFR 1910.19, "Special provisions for air contaminants", as published in the Federal Register, Volume 62, Number 7, January 10, 1997.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? This proposed amendment is identical to the federal regulation.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. These revisions impose no stricter, additional or different responsibilities than federal standards.

#### FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? Yes

2. State whether this administrative regulation will affect the local government or only a part or division of the local government. These amendments may affect local government entities that have employees with occupational exposure to methylene chloride.

3. State the aspect or service of local government to which this administrative regulation relates. The proposed regulations affect the safety and health of employees of local government.

4. How does this administrative regulation affect the local government or any service it provides? The purpose of these amendments is to comply with federal regulations relating to occupational safety and health. There will be no increase or decrease in local government revenues or significant expenditures. These proposed amendments will not affect the number of local government employees.

#### STATEMENT OF EMERGENCY 803 KAR 2:320E

This emergency administrative regulation incorporates, by reference, a publication in the Federal Register, dated January 10, 1997, relating to occupational exposure to methylene chloride in general industry. It is necessary to promulgate this emergency administrative regulation to comply with the federal mandate, 29 CFR 1953.23, requiring implementation of the federal standard, or one (1) more stringent, within six (6) months of the date of promulgation of the new federal standard, and to keep the state program as effective as the federal program. This emergency administrative regulation shall be replaced by an ordinary administrative regulation. The "Notice of Intent to Promulgate Administrative Regulation" shall be filed with the Regulations Compiler on August 14, 1997.

PAUL E. PATTON, Governor  
JOE NORSWORTHY, Chairman

#### LABOR CABINET Department of Workplace Standards Division of Occupational Safety and Health Compliance Division of Occupational Safety and Health Education and Training

#### 803 KAR 2:320E. Air contaminants.

RELATES TO: KRS 338.051, 338.061, 29 CFR 1910.1000-.1500  
STATUTORY AUTHORITY: KRS 338.051(3), 338.061, 29 CFR 1910.1000-.1500  
EFFECTIVE: August 14, 1997  
NECESSITY, FUNCTION, AND CONFORMITY: KRS 338.051

and 338.061 authorize the Kentucky Occupational Safety and Health Standards Board to adopt and promulgate occupational safety and health administrative regulations. Express authority to incorporate by reference established federal standards and national consensus standards is also given to the board. The following administrative regulation contains those standards to be enforced by the Division of Occupational Safety and Health Compliance in the area of general industry.

#### Section 1. Definitions. (1) Definitions applicable to this part:

(a) "Act" means KRS Chapter 338.

(b) "Assistant Secretary of Labor" means the Secretary of Labor, Commonwealth of Kentucky.

(c) "Employee" means any person employed except those employees excluded in KRS 338.021.

(d) "Employer" means any entity for whom a person is employed except those employers excluded in KRS 338.021.

(e) "Established federal standard" means any operative occupational safety and health standard established by any agency of the United States Government.

(f) "National consensus standard" means any occupational safety and health standard or modification thereof which has been adopted and promulgated by a nationally recognized standards-producing organization.

(g) "Standard" means a standard which requires conditions or the adoption or use of one (1) or more practices, means, methods, operations, or processes, reasonably necessary or appropriate to provide safe and healthful employment. "Standard" has the same meaning as and includes the words "regulation" and "rule".

(h) "U.S. Department of Labor" means Kentucky Labor Cabinet, U.S. 127 South, Frankfort, Kentucky 40601, or U.S. Department of Labor.

(2) Definitions for Section 2 of this administrative regulation.

(a) "Absolute filter" means a filter capable of retaining 99.97 percent of a mono disperse aerosol of three-tenths (0.3)  $\mu$  particles.

(b) "Authorized employee" means an employee whose duties require him to be in the regulated area and who has been specifically assigned by the employer.

(c) "Clean change room" means a room where employees put on clean clothing and/or protective equipment in an environment free of 4,4'-Methylene bis (2-chloroaniline). The clean change room shall be contiguous to and have an entry from a shower room, when the shower room facilities are otherwise required in this section.

(d) "Closed system" means an operation involving 4,4'-Methylene bis (2-chloroaniline) where containment prevents the release of 4,4'-Methylene bis (2-chloroaniline) into regulated areas, nonregulated areas, or the external environment.

(e) "Decontamination" means the inactivation of 4,4'-Methylene bis (2-chloroaniline) or its safe disposal.

(f) "Director" means the Director, National Institute for Occupational Safety and Health, or any person directed by him or the Secretary or Health, Education and Welfare to act for the Director.

(g) "Disposal" means the safe removal of 4,4'-Methylene bis (2-chloroaniline) from the work environment.

(h) "Emergency" means an unforeseen circumstance or set of circumstances resulting in the release of 4,4'-Methylene bis (2-chloroaniline) which may result in exposure to or contact with 4,4'-Methylene bis (2-chloroaniline).

(i) "External environment" means any environment external to regulated and nonregulated areas.

(j) "Isolated system" means a fully enclosed structure other than the vessel of containment, of 4,4'-Methylene bis (2-chloroaniline), which is impervious to the passage of entry of 4,4'-Methylene bis (2-chloroaniline), and which would prevent the entry of 4,4'-Methylene bis (2-chloroaniline) into regulated areas, or the external environment, should leakage or spillage from the vessel of containment occur.

(k) "Laboratory type hood" means a device enclosed on three

sides and the top and bottom designed and maintained so as to draw air inward at an average linear face velocity of 150 feet per minute with a minimum of 125 feet per minute; designed, constructed, and maintained in such a way that an operation involving 4,4'-Methylene bis (2-chloroaniline) within the hood does not require the insertion of any portion of any employee's body other than his hands and arms.

(l) "Nonregulated area" means any area under the control of the employer where entry and exit is neither restricted nor controlled.

(m) "Open-vessel system" means an operation involving 4,4'-Methylene bis (2-chloroaniline) in an open vessel, which is not in an isolated system, a laboratory type hood, nor in any other system affording equivalent protection against the entry of 4,4'-Methylene bis (2-chloroaniline) into regulated areas, nonregulated areas or the external environment.

(n) "Protective clothing" means clothing designed to protect an employee against contact with or exposure to 4,4'-Methylene bis (2-chloroaniline).

(o) "Regulated area" means an area where entry and exit is restricted and controlled.

(3) Definitions for Section 5 of this administrative regulation.

(a) "Area director" means Director, Division of Occupational Safety and Health, Kentucky Labor Cabinet.

(b) "Assistant secretary" means Secretary of Labor, Kentucky Labor Cabinet.

(c) "U.S. Department of Labor" means Kentucky Labor Cabinet.

Section 2. 4,4'-Methylene bis (2-Chloroaniline). (1) Scope and application.

(a) This section applies to any area in which, 4,4'-Methylene bis (2-chloroaniline), Chemical Abstracts Service Registry Number 101144 is manufactured, processed, repackaged, released, handled, or stored, but shall not apply to trans-shipment in sealed containers, except for the labeling requirements under subsection (5)(b), (c), and (d) of this section.

(b) This section shall not apply to solid or liquid mixtures containing less than 1.0 (one) percent by weight of 4,4'-Methylene bis (2-chloroaniline).

(2) Requirements for areas containing 4,4'-Methylene bis (2-chloroaniline). A regulated area shall be established by an employer where 4,4'-Methylene bis (2-chloroaniline) is manufactured, processed, used, repackaged, released, handled, and stored. All such areas shall be controlled in accordance with the requirements for the following category or categories describing the operations involved:

(a) Isolated systems. Employees working with 4,4'-Methylene bis (2-chloroaniline) within an isolated system such as a "glove box" shall wash their hands and arms upon completion of the assigned task and before engaging in other activities not associated with the isolated system.

(b) Closed system operation. Within regulated areas where 4,4'-Methylene bis (2-chloroaniline) is stored in sealed container, or contained in a closed system including piping systems, with any sample ports or openings closed while 4,4'-Methylene bis (2-chloroaniline) is contained within:

1. Access shall be restricted to authorized employees only;

2. Employees shall be required to wash hands, forearms, face and neck upon each exit from the regulated areas, close to the point of exit and before engaging in other activities.

(c) Open vessel system operations. Open vessel system operations as defined in paragraph (b)13 of this subsection are prohibited.

(d) Transfer from a closed system, charging or discharging point operations, or otherwise opening a closed system. In operations involving "laboratory type hood," or in locations where 4,4'-Methylene bis (2-chloroaniline) is contained in an otherwise "closed system," but is transferred, charge, or discharged into other normally closed containers, the provisions of this subparagraph shall apply.

1. Access shall be restricted to authorized employees only;

2. Each operation shall be provided with continuous local exhaust ventilation so that air movement is always from ordinary work areas to the operation. Exhaust air shall not be discharged to regulated areas, nonregulated areas or the external environment unless decontaminated. Clean make-up air shall be introduced in sufficient volume to maintain the correct operation of the local exhaust system.

3. Employees shall be provided with, and required to wear, clean, full body protective clothing (smocks, coveralls, or long-sleeved shirt and pants), shoe covers and gloves prior to entering the regulated area.

4. Employees engaged in 4,4'-Methylene bis (2-chloroaniline) handling operations shall be provided with and required to wear and use a half-face, filter-type respirator for dusts, mists, and fumes, in accordance with 1910.134. A respirator affording higher level of protection may be substituted.

5. Prior to each exit from a regulated area, employees shall be required to remove and leave protective clothing and equipment at the point of exit and at the last exit of the day, to place used clothing and equipment in impervious containers at the point of exit for purposes of decontamination or disposal. The contents of such impervious containers shall be identified, as required under subsection (5)(b), (c), and (d) of this section.

6. Employees shall be required to wash hands, forearms, face and neck on each exit from the regulated area, close to the point of exit, and before engaging in other activities.

7. Employees shall be required to shower after the last exit of the day.

8. Drinking fountains are prohibited in the regulated area.

(e) Maintenance and decontamination activities. In cleanup of leaks or spills, maintenance or repair operations on contaminated systems or equipment, or any operations involving work in an area where direct contact with 4,4'-Methylene bis (2-chloroaniline) could result, each authorized employee entering that area shall:

1. Be provided with and required to wear clean, impervious garments, including gloves, boots and continuous-air supplied hood in accordance with 1910.134;

2. Be decontaminated before removing the protective garments and hood;

3. Be required to shower upon removing the protective garments and hood.

(f) Laboratory activities. The requirements of this subparagraph shall apply to research and quality control activities involving the use of 4,4'-Methylene bis (2-chloroaniline).

1. Mechanical pipetting aids shall be used for all pipetting procedures.

2. Experiments, procedures and equipment which could produce aerosols shall be confined to laboratory-type hoods or glove boxes.

3. Surfaces on which 4,4'-Methylene bis (2-chloroaniline) is handled shall be protected from contamination.

4. Contaminated wastes and animal carcasses shall be collected in impervious containers which are closed and decontaminated prior to removal from the work area. Such wastes and carcasses shall be incinerated in such a manner that no carcinogenic products are release.

5. All other forms of 4,4'-Methylene bis (2-chloroaniline) shall be inactivated prior to disposal.

6. Employees engaged in animal support activities shall be:

a. Provided with, and required to wear, a complete protective clothing change, clean each day, including coveralls or pants and shirt, foot covers, head covers, gloves, and appropriate respiratory protective equipment or devices; and

b. Prior to each exit from a regulated area employees shall be required to remove and leave protective clothing and equipment at the point of exit and at the last exit of the day, to place used clothing and equipment in impervious containers at the point of exit for purposes of decontamination or disposal. The contents of such impervious containers shall be identified as required under subsection

(5)(b), (c), and (d) of this section.

c. Required to wash hands, forearms, face and neck upon each exit from the regulated area close to the point of exit and before engaging in other activities; and

d. Required to shower after the last exit of the day.

7. Employees, other than those engaged in animal support activities, each day shall be:

a. Provided with and required to wear a clean change of appropriate laboratory clothing, such as a solid front gown, surgical scrub suit, or fully buttoned laboratory coat.

b. Prior to each exit from a regulated area, employees shall be required to remove and leave protective clothing and equipment at the point of exit and at the last exit of the day, to place used clothing and equipment in impervious containers at the point of exit for purposes of decontamination or disposal. The contents of such impervious containers shall be identified as required under paragraphs (e)2, 3, and 4 of this subsection.

c. Required to wash hands, forearms, face and neck upon each exit from the regulated area close to the point of exit and before engaging in other activities.

8. Air pressure in laboratory areas and animal rooms where 4,4'-Methylene bis (2-chloroaniline) is handled and bioassay studies are performed shall be negative in relation to the pressure in surrounding area. Exhaust air shall not be discharged to regulated areas, nonregulated areas or the external environment unless decontaminated.

9. There shall be no connection between regulated areas and any other areas through the ventilation system.

10. A current inventory of 4,4'-Methylene bis (2-chloroaniline) shall be maintained.

11. Ventilated apparatus such as laboratory type hoods, shall be tested at least semi-annually or immediately after ventilation modification of maintenance operations, by personnel fully qualified to certify correct containment and operation.

(g) Premixed solutions. Where 4,4'-Methylene bis (2-chloroaniline) is present only in a single solution at a temperature not exceeding 120 degrees Celsius, the establishment of a regulated area is not required; however,

1. Only authorized employees shall be permitted to handle such materials;

2. Each day employees shall be provided with and required to wear a clean change of protective clothing (smocks, coveralls, or long-sleeved shirts and pants), gloves, and other protective garments and equipment necessary to prevent contact with the solution in the process used;

3. Employees shall be required to remove and leave protective clothing and equipment when leaving the work area at the end of the work day or at any time solution is spilled on such clothing or equipment. Used clothing and equipment shall be placed in impervious containers for purposes of decontamination or disposal. The contents of such impervious containers shall be identified, as required under paragraphs (e)2, 3, and 4 of this section.

4. Employees shall be required to wash hand and face after removing such clothing and equipment and before engaging in other activities.

5. Employees assigned to work covered by the subparagraph shall be deemed to be working in regulated areas for the purposes of subsection (4)(a), (b), (c)1 and 2, and (d)3 and 4, 5, 6, and 7 of this section;

6. Work areas where solution may be spilled shall be:

a. Covered daily or after any spill with a clean covering;

b. Cleaned thoroughly daily and after any spill.

(3) General regulated area requirements.

(a) Employee identification. A daily roster of employees entering regulated areas shall be established and maintained. The rosters or a summary of the rosters shall be retained for a period of twenty (20) years. The rosters and/or summaries shall be provided upon request

to authorized representatives of the assistant secretary and the director. In the event that the employer ceases business without a successor, rosters shall be forwarded by registered mail to the director.

(b) Emergencies. In an emergency, immediate measures including, but not limited to the requirements of subparagraphs 1, 2, 3, 4, and 5 of this paragraph shall be implemented.

1. The potentially affected area shall be evacuated as soon as the emergency has been determined.

2. Hazardous conditions created by the emergency shall be eliminated and the potentially affected area shall be decontaminated prior to the resumption of normal operations.

3. Special medical surveillance by a physician shall be instituted within twenty-four (24) hours for employees present in the potentially affected area at the time of the emergency. A report of the medical surveillance and any treatment shall be included in the incident report, in accordance with subsection (6)(b) of this section.

4. Where an employee has a known contact with 4,4'-Methylene bis (2-chloroaniline) such employee shall be required to shower as soon as possible, unless contraindicated by physical injuries.

5. An incident report on the emergency shall be reported as provided in subsection (6)(b) of this section.

(c) Hygiene facilities and practices.

1. Storage or consumption of food, storage or use of containers of beverages, storage or application of beverages, storage or application of cosmetics, smoking, storage of smoking materials, tobacco products or other products for chewing, or the chewing of such products, are prohibited in regulated areas.

2. Where employees are required by this section to wash, washing facilities shall be provided in accordance with 1910.141.

3. Where employees are required by this section to shower, facilities shall be provided in accordance with 1910.141(d)(3).

4. Where employees wear protective clothing and equipment, clean change rooms shall be provided, in accordance with 1910.141(e), for the number of such employees required to change clothes.

5. Where toilets are in regulated areas, such toilets shall be in a separate room.

(d) Contamination control.

1. Regulated areas, except for outdoor systems, shall be maintained under pressure negative with respect to nonregulated areas. Local exhaust ventilation may be used to satisfy this requirement. Clean make-up air in equal volume shall replace air removed.

2. Any equipment, material, or other item taken or removed from a regulated area shall be done so in a manner that does not cause contamination in nonregulated areas or the external environment.

3. Decontamination procedures shall be established and implemented to remove 4,4'-Methylene bis (2-chloroaniline) from the surface of materials, equipment and the decontamination facility.

4. Dry sweeping and dry mopping are prohibited.

(4) Signs, information and training.

(a) Signs.

1. Entrance to regulated areas shall be posted with signs bearing the legend:

CANCER-SUSPECT AGENT  
Authorized Personnel Only

2. Entrances to regulated areas containing operations covered in subsection (3)(e) of this section shall be posted with signs bearing the legend:

Cancer-Suspect Agent Exposed  
In this Area  
Impervious Suit Including Gloves,  
Boots, and Air-Supplied Hood  
Required At All Times



Authorized Personnel Only

3. Appropriate signs and instructions shall be posted at the entrance to, and exit from, regulated areas, informing employees of the procedures that must be followed in entering and leaving a regulated area.

(b) Container contents identification.

1. Containers of 4,4'-Methylene bis (2-chloroaniline) and containers required under subsection (2)(d)5 and (f)7b, and (g)3 of this section which are accessible only to, and handled only by authorized employees, or by other employees trained in accordance with paragraph (e) of this subsection, may have contents identification limited to a generic or proprietary name, or other proprietary identification, or the carcinogen and percent.

2. Containers of 4,4'-Methylene bis (2-chloroaniline) and containers required under subsection (2)(d)5, (f)7b, and (g)3 of this section which are accessible to, or handled by employees other than authorized employees or employees trained in accordance with subparagraph of this paragraph shall have contents identification which includes the full chemical name and Chemical Abstracts Service Registry number as listed in subsection (1)(a) of this section.

3. Containers shall have the warning words "CANCER-SUSPECT AGENT" displayed immediately under or adjacent to the contents identification.

4. Containers which have 4,4'-Methylene bis (2-chloroaniline) contents with corrosive or irritating properties shall have label statements warning of such hazards, noting, if appropriate, particularly sensitive of affected portions of the body.

(c) Lettering. Lettering on signs and instructions required by paragraph (a) of this subsection shall be a minimum letter height of two (2) inches. Labels on containers required under this section shall not be less than one-half (1/2) the size of the largest lettering on the package, and not less than eight (8) point type in any instance; provided that no such required lettering need be more than one (1) inch in height.

(d) Prohibited statements. No statement shall appear on or near any required sign, label, or instruction which contradicts or detracts from the effect of any required warning, information or instruction.

(e) Training and indoctrination.

1. Each employee prior to being authorized to enter regulated area, shall receive a training and indoctrination program including, but not necessarily limited to.

a. The nature of the carcinogenic hazards of 4,4'-Methylene bis (2-chloroaniline), including local and systemic toxicity;

b. The specific nature of the operation involving 4,4'-Methylene bis (2-chloroaniline) which could result in exposure;

c. The purpose for and application of the medical surveillance program, including, as appropriate, methods of self-examination;

d. The purpose for and application for decontamination practices and purposes;

e. The purpose for and significance of emergency practices and procedures;

f. The employees specific role in emergency procedures;

g. Specific information to aid the employee in recognition and evaluation of conditions and situations which may result in the release of 4,4'-Methylene bis (2-chloroaniline);

h. The purpose for and application of specific first-aid procedures and practices.

(i) A review of this section at the employees first training and indoctrination program and annually thereafter.

(ii) Specific emergency procedures shall be prescribed, and posted, and employees shall be familiarized with their terms, and rehearsed in their application.

(iii) All materials relating to the program shall be provided upon request to authorized representatives of assistant secretary and the director.

(5) Reports.

(a) Operations. Not later than March 1, 1974, the information required in subparagraphs 1, 2, 3, and 4 of this paragraph shall be reported in writing to the nearest OSHA Area director. Any changes in such information shall be similarly reported in writing within fifteen (15) calendar days of such change.

1. A brief description and inplant location of the area(s) regulated and the address of each regulated area:

2. The name(s) and other identifying information as to the presence of 4,4'-Methylene bis (2-chloroaniline) in each regulated area.

3. The number of employees in each regulated area, during normal operations including maintenance activities; and

4. The manner in which 4,4'-Methylene bis (2-chloroaniline) is present in each regulated area; e.g., whether it is manufactured, processed, used, repackaged, release, stored, or otherwise handled.

(b) Incidents. Incidents which result in the release of 4,4'-Methylene bis (2-chloroaniline) into any area where employees may be potentially exposed shall be reported in accordance with this subparagraph.

1. A report of the occurrence of the incident and the facts obtainable at that time including a report on any medical treatment of affected employees shall be made within twenty-four (24) hours to the nearest OSHA Area Director.

2. A written report shall be filed with the nearest OSHA Area Director within fifteen (15) calendar days thereafter and shall include:

a. A specification of the amount of material released, the amount of time involved, and an explanation of the procedure used in determining this figure:

b. A description of the area involved, and the extent of known and possible employee and area contamination; and

c. A report of any medical treatment of affected employees and any medical surveillance program implemented; and

d. An analysis of the circumstances to be taken, with specific completions dates, to avoid further similar release.

(6) Medical surveillance. At no cost to the employee, a program of medical surveillance shall be established and implemented for employees considered for assignment to enter regulated areas, and for authorized employees.

(a) Examinations.

1. Before an employee is assigned to enter a regulated area, a preassignment physical examination by a physician shall be provided. The examination shall include the personal history of the employee, family and occupational background, including genetic and environmental factors.

2. Authorized employees shall be provided periodic physical examination, not less often than annually, following the preassignment examination.

3. In all physical examinations, the examining physician shall consider whether there exist conditions of increased risk, including reduced immunological competence, those undergoing treatment with steroids of cytotoxic agents, pregnancy and cigarette smoking.

(b) Records.

1. Employers or employees examined pursuant to this paragraph shall cause to be maintained complete and accurate record of all such medical examinations. Records shall be maintained for the duration of the employee's employment. Upon termination of the employee's employment, including retirement or death, or in the event that the employer ceases business without a successor, records, or notarized true copies thereof, shall be forwarded by registered mail to the director.

2. Records required by this paragraph shall be provided upon request to authorized representatives of the assistant secretary or the director: and upon request of an employee or former employee, to a physician designated by the employee or to a new employer.

3. Any physician who conducts a medical examination required by this paragraph shall furnish to the employer a statement of the employees suitability for employment in the specific exposure.



Section 3. Laboratory Activities. (1) The requirements of this subsection shall apply to research and quality control activities involving the use of chemicals covered by 1910.1003-.1016.

(a) Mechanical pipetting aids shall be used for all pipetting procedures.

(b) Experiments, procedures and equipment which could produce aerosols shall be confined to laboratory-type hoods or glove boxes.

(c) Surfaces on which chemicals covered by .1103-.1016 are handled shall be protected from contamination.

(d) Contaminated wastes and animal carcasses shall be collected in impervious containers which are closed and decontaminated prior to removal from the work area. Such wastes and carcasses shall be incinerated in such a manner that no carcinogenic products are released.

(e) All other forms of chemicals covered by .1003-.1016 shall be inactivated prior to disposal.

(f) Laboratory vacuum systems shall be protected with high-efficiency scrubbers or with disposal absolute filters.

(g) Employees engaged in animal support activities shall be:

1. Provided with and required to wear, a complete protective clothing change, clean each day, including coveralls, or pants and shirt, foot covers, head covers, gloves, and appropriate respiratory protective equipment or devices; and

2. Prior to each exit from a regulated area, employees shall be required to remove and leave protective clothing and equipment at the point of exit and at the last exit of the day, to place used clothing and equipment in impervious containers at the point of exit for purposes of decontamination or disposal. The contents of such impervious containers shall be identified as required under subsection (5)(b), (c), and (d) of this section.

3. Required to wash hands, forearms, face and neck upon each exit from the regulated area close to the point of exit, and before engaging in other activities; and

4. Required to shower after the last exit of the day.

(h) Employees, other than those engaged only in animal support activities, each day shall be:

1. Provided with and required to wear a clean change of appropriate laboratory clothing, such as a solid front gown, surgical scrub suite, or fully buttoned laboratory coat;

2. Prior to each exit from a regulated area, employees shall be required to remove and leave protective clothing and equipment at the point of exit and at the last exit of the day, to place used clothing and equipment in impervious containers at the point of exit for purposes of decontamination or disposal. The contents of such impervious containers shall be identified under subsection (5)(b), (c), and (d) of this section.

3. Required to wash hands, forearms, face and neck upon each exit from the regulated area close to the point of exit, and before engaging in other activities.

(i) Air pressure in laboratory areas and animal rooms where chemicals covered by .1003-.1016 are handled and bioassay studies are performed shall be negative in relation to the pressure in surrounding areas. Exhaust air shall not be discharged to regulated areas, nonregulated areas or the external environment unless decontaminated.

(j) There shall be no connection between regulated areas and any other areas through the ventilation system.

(k) A current inventory of chemicals covered by .1003-.1016 shall be maintained.

(l) Ventilated apparatus such as laboratory-type hoods, shall be tested at least semi-annually or immediately after ventilation modification or maintenance operations, by personnel fully qualified to certify correct containment and operation.

Section 4. Access to Exposure or Medical Records. (1) The language relating to the access to exposure or medical records in subsection (2) of this section shall apply in lieu of 29 CFR

1910.1020(e)(1)(i);

(2) 29 CFR 1910.1020(e)(1)(i) is amended to read: "Whenever an employee or designated representative requests access to an exposure or medical record, the employer shall assure that access is provided in a reasonable time, place, and manner, but not longer than fifteen (15) days after the request for access is made unless sufficient reason is given why such a time is unreasonable or impractical."

(3) The language relating to the access to exposure or medical records in subsection (4) of this section shall apply in lieu of 29 CFR 1910.1020(e)(1)(iii);

(4) 29 CFR 1910.1020(e)(1)(iii) is amended to read: "Whenever an employee or designated representative requests a copy of a record, the employer shall, except as specified in (v) of this section, within the period of time previously specified assure that either:"

Section 5. The language relating to gloves in paragraph (2) of this subsection shall apply in lieu of 29 CFR 1910.1030(d)(3)(ix);

(2) Gloves shall be worn when it can be reasonably anticipated that the employees may have hand contact with blood, other potentially infectious materials, mucous membranes, and nonintact skin when performing vascular access procedures and when handling or touching contaminated items or surfaces.

Section 6. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) The material in subparagraph 1 through 2 of this paragraph, published by the Office of the Federal Register, National Archives and Records Services, General Services Administration, revised as of July 1, 1995, is incorporated by reference:

1. 29 CFR 1910.1000 to 29 CFR 1910.1030(d)(3)(viii); and
2. 29 CFR 1910.1030(d)(3)(x) through 29 CFR 1910.1500.

(b) The revisions to 29 CFR 1910.1000, "Air Contaminants", as published in the Federal Register, Volume 63, Number 7, January 10, 1997, are incorporated by reference.

(c) The revisions to 29 CFR 1910.1001, "Occupational Exposure to Asbestos", as published in the Federal Register, Volume 61, Number 165, August 23, 1996, are incorporated by reference.

(d) ~~(e)~~ The revisions to 29 CFR 1910.1003, "13 Carcinogens", as published in the Federal Register, Volume 61, Number 46, March 7, 1996, are incorporated by reference.

(e) ~~(f)~~ The revisions to 29 CFR 1910.1003, "13 Carcinogens (4-Nitrobiphenyl, etc.)", as published in the Federal Register, Volume 61, Number 120, June 20, 1996, are incorporated by reference.

(f) ~~(g)~~ The revisions to 29 CFR 1910.1004, "alpha-Naphthylamine", as published in the Federal Register, Volume 61, Number 46, March 7, 1996, are incorporated by reference.

(g) ~~(h)~~ The revisions to 29 CFR 1910.1006, "Methyl chloromethyl ether", as published in the Federal Register, Volume 61, Number 46, March 7, 1996, are incorporated by reference.

(h) ~~(i)~~ The revisions to 29 CFR 1910.1007, "3,3'-Dichlorobenzidine (and its salts)", as published in the Federal Register, Volume 61, Number 46, March 7, 1996, are incorporated by reference.

(i) ~~(j)~~ The revisions to 29 CFR 1910.1008, "bis-Chloromethyl ether", as published in the Federal Register, Volume 61, Number 46, March 7, 1996, are incorporated by reference.

(j) ~~(k)~~ The revisions to 29 CFR 1910.1009, "beta-Naphthylamine", as published in the Federal Register, Volume 61, Number 46, March 7, 1996, are incorporated by reference.

(k) ~~(l)~~ The revisions to 29 CFR 1910.1010, "Benzidine", as published in the Federal Register, Volume 61, Number 46, March 7, 1996, are incorporated by reference.

(l) ~~(m)~~ The revisions to 29 CFR 1910.1011, "4-Aminodiphenyl", as published in the Federal Register, Volume 61, Number 46, March 7, 1996, are incorporated by reference.

(m) ~~(n)~~ The revisions to 29 CFR 1910.1012, "Ethyleneimine", as published in the Federal Register, Volume 61, Number 46, March 7, 1996, are incorporated by reference.

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(n) ~~(m)~~ The revisions to 29 CFR 1910.1013, "beta-Propiolactone", as published in the Federal Register, Volume 61, Number 46, March 7, 1996, are incorporated by reference.

(o) ~~(n)~~ The revisions to 29 CFR 1910.1014, "2-Acetylaminofluorene", as published in the Federal Register, Volume 61, Number 46, March 7, 1996, are incorporated by reference.

(p) ~~(o)~~ The revisions to 29 CFR 1910.1015, "4-Dimethylaminoazobenzene", as published in the Federal Register, Volume 61, Number 46, March 7, 1996, are incorporated by reference.

(q) ~~(p)~~ The revisions to 29 CFR 1910.1016, "N-Nitrosodimethylamine", as published in the Federal Register, Volume 61, Number 46, March 7, 1996, are incorporated by reference.

(r) ~~(q)~~ The revisions to 29 CFR 1910.1018, "Inorganic arsenic," as published in the Federal Register, Volume 61, Number 46, March 7, 1996, are incorporated by reference.

(s) ~~(r)~~ The renumbering of 29 CFR 1910.20, "Access to Employee and Medical Records", to 29 CFR 1910.1020, as published in the Federal Register, Volume 61, Number 46, June 20, 1996, is incorporated by reference, as follows:

1. 29 CFR 1910.1020 through 29 CFR 1910.1020(e)(1);
2. 29 CFR 1910.1020(e)(1)(ii); and
3. 29 CFR 1910.1020(e)(3)(iii)(a) through Appendix B to 1910.1020.

(t) ~~(s)~~ The revisions to 29 CFR 1910.1025, "Occupational Exposure to Lead", as published in the Federal Register, Volume 60, Number 196, October 11, 1995, are incorporated by reference.

(u) ~~(t)~~ 29 CFR 1910.1051, "Occupational Exposure to 1,3-Butadiene", as published in the Federal Register, Volume 61, Number 214, November 4, 1996, is incorporated by reference.

(v) 29 CFR 1910.1051, "Occupational Exposure to Methylene Chloride", as published in the Federal Register, Volume 61, Number 7, January 10, 1997, is incorporated by reference.

(w) ~~(u)~~ The renumbering of 29 CFR 1910.96, "Ionizing Radiation", to 29 CFR 1910.1096, as published in the Federal Register, Volume 61, Number 46, June 20, 1996, is incorporated by reference.

(x) ~~(w)~~ The revisions to 29 CFR 1910.1200, "Hazard Communication", as published in the Federal Register, Volume 61, Number 46, March 7, 1996, are incorporated by reference.

(y) ~~(x)~~ The removal of 29 CFR 1910.1499, "Source of Standards", as published in the Federal Register, Volume 61, Number 46, March 7, 1996, is incorporated by reference.

(z) ~~(y)~~ The removal of 29 CFR 1910.1500, "Standards Organizations", as published in the Federal Register, Volume 61, Number 46, March 7, 1996, is incorporated by reference.

(2) The language relating to the access of exposure and medical records in Section 4(2) of this administrative regulation shall apply in lieu of 29 CFR 1910.1020(e)(1)(i).

(3) The language relating to the access of exposure and medical records in Section 4(4) of this administrative regulation shall apply in lieu of 29 CFR 1910.1020(e)(1)(iii).

(4) The language relating to gloves in Section 5(2) of this administrative regulation shall apply in lieu of 29 CFR 1910.1030(d)(3)(ix).

(5) This material may be inspected, copied or obtained at Kentucky Labor Cabinet, Division of Education and Training, 1047 U.S. 127 South, Frankfort, Kentucky 40601. Office hours are 8 a.m. - 4:30 p.m. (ET), Monday through Friday.

JOE NORSWORTHY, Chairman

APPROVED BY AGENCY: August 6, 1997

FILED WITH LRC: August 14, 1997 at 9 a.m.

### REGULATORY IMPACT ANALYSIS

Agency Contact: Kembra Taylor, T. P. Chancellor

(1) Type and number of entities affected: The amendments to this regulation affect all employers in general industry within the jurisdiction

tion of the Kentucky Occupational Safety and Health Program.

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

(a) Cost of living and employment in the geographic area in which the administrative regulation will be implemented: OSHA estimates that the methylene chloride regulation, 29 CFR 1910.1052, will annually cost industry \$101 million dollars nationwide.

(b) Cost of doing business in the geographic area in which the administrative regulation will be implemented: OSHA estimates that the methylene chloride regulation, 29 CFR 1910.1052, will cost the industry \$101 million dollars nationwide.

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

1. First year following implementation:

2. Second and subsequent years: There will be a limited increase in costs resulting from the requirement for medical records retention. There will be no effect on competition. Reporting and paperwork requirements: This amendment mandates that medical records be kept as part of a methylene chloride medical surveillance program.

(3) Effects on the promulgating administrative body: The promulgating body will not be affected by the adoption of these revisions.

(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: This amendment mandates that medical records be kept as part of a methylene chloride medical surveillance program. There are no other reporting or paperwork requirements as a result of these changes.

(4) Assessment of anticipated effect on state and local revenues: These revisions will have no anticipated effect on state and local revenues.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Current state and federal funding.

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

(a) Geographic area in which administrative regulation will be implemented: Undetermined; no public comments were received.

(b) Kentucky: Undetermined; no public comments were received.

(7) Assessment of alternative methods; reasons why alternative were rejected: Alternative methods were not considered as these proposed regulations are adopted by reference from federal regulations published in the Federal Register.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographic area in which implemented and on Kentucky: These proposed amendments will enhance worker safety throughout Kentucky.

(b) State whether detrimental effect on environment and public health would result if not implemented:

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

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: There is no conflicting, overlapping, or duplication as a result of adoption of these proposed amendments.

(a) Necessity of proposed regulation if in conflict:

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

(10) Any additional information or comments:

(11) TIERING: Was tiering applied? No. Kentucky's Occupational Safety and Health Program regulations affect all employers with one or more employees. Inspections are conducted at the facilities of those industries or firms that pose higher risks to worker safety and health, those employers from which the KYOSH Program has received worker complaints or referrals, or where a workplace fatality

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(or accident resulting in the hospitalization of three or more employees) has occurred.

### FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. PL 91-596 (Occupational Safety and Health Act of 1970, Section 18(c)(2)).

2. State compliance standards. These amendments adopt federal regulations.

3. Minimum or uniform standards contained in the federal mandate. The amendments incorporate a new standard, 29 CFR 1910.1052, "Occupational Exposure to Methylene Chloride", as published in the Federal Register, Volume 62, Number 7, January 10, 1997 update 29 CFR 1910.1000, "Air Contaminants", to reflect the changes to the permissible exposure limit for methylene chloride.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? This proposed amendment is identical to the federal regulation.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. These revisions impose no stricter, additional or different responsibilities than federal standards.

### FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? Yes

2. State whether this administrative regulation will affect the local government or only a part or division of the local government. These amendments affect local government entities that work with methylene chloride.

3. State the aspect or service of local government to which this administrative regulation relates. The proposed amendments affect the safety and health of employees of local government who work with methylene chloride.

4. How does this administrative regulation affect the local government or any service it provides? The purpose of these amendments is to comply with federal regulations relating to occupational safety and health. There will be no increase or decrease in local government revenues or significant expenditures. These proposed amendments will not affect the number of local government employees.

### STATEMENT OF EMERGENCY 803 KAR 2:403E

This emergency administrative regulation incorporates by reference, a publication in the Federal Register, dated January 10, 1997, which changes the entry for the methylene chloride in the "substance" column of Appendix A of 29 CFR 1926.55, and refers the reader to the new applicable standard, 29 CFR 1910.1052, for the permissible exposure limit values of methylene chloride. It is necessary to promulgate this emergency administrative regulation to comply with the federal mandate, 29 CFR 1953.23, requiring implementation of the federal standard, or one (1) more stringent, within six (6) months of the date of promulgation of the new federal standard, and to keep the state program as effective as the federal program. This emergency administrative regulation shall be replaced by an ordinary administrative regulation. The "Notice of Intent to Promulgate Administrative Regulation" shall be filed with the Regulations Compiler on August 14, 1997.

PAUL E. PATTON, Governor

JOE NORSWORTHY, Chairman

### LABOR CABINET

Department of Workplace Standards  
Division of Occupational Safety and Health Compliance  
Division of Occupational Safety and  
Health Education and Training

### 803 KAR 2:403E. Occupational health and environmental controls.

RELATES TO: KRS 338.051, 338.061, 29 CFR 1926.50-.66  
STATUTORY AUTHORITY: KRS 338.051(3), 338.061, 29 CFR 1926.50-.66

EFFECTIVE: August 14, 1997

NECESSITY, FUNCTION, AND CONFORMITY: KRS 338.051 and 338.061 authorize the Kentucky Occupational Safety and Health Standards Board to adopt and promulgate occupational safety and health administrative regulations and standards. Express authority to incorporate by reference established federal standards and national consensus standards is also given to the board. The following administrative regulation contains those standards to be enforced by the Division of Occupational Safety and Health Compliance in the area of construction.

Section 1. Definitions. As used in the material incorporated by reference in Section 2 of this administrative regulation:

(1) "Area director" means Director, Division of Occupational Safety and Health, Kentucky Labor Cabinet;

(2) "Assistant secretary" means Secretary of Labor, Kentucky Labor Cabinet;

(3) "U.S. Department of Labor" means Kentucky Labor Cabinet.

Section 2. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) 29 CFR Part 1926.50-.66, Subpart D, "Environmental Controls", revised as of July 1, 1995, published by the Office of the Federal Register, National Archives and Records Services, General Services Administration.

(b) Revisions to 29 CFR 1926.53, "Ionizing Radiation", as published in Federal Register, Volume 61, Number 120, June 20, 1996, are incorporated by reference.

(c) Revisions to 29 CFR 1926.55, "Gases, Vapors, Fumes, Dusts, and Mists", as published in Federal Register, Volume 61, Number 46, March 7, 1996, are incorporated by reference.

(d) 29 CFR 1926.55, Appendix, is revised as follows:

1. Revisions to 29 CFR 1926.55, Appendix A, "1970 American Conference of Governmental Industrial Hygienists' Threshold Limit Values", as published in Federal Register, Volume 61, Number 214, November 4, 1996, are incorporated by reference.

2. Revisions to 29 CFR 1926.55, Appendix A, "1970 American Conference of Governmental Industrial Hygienists' Threshold Limit Values", as published in Federal Register, Volume 62, Number 7, January 10, 1997, are incorporated by reference.

(e) Revisions to 29 CFR 1926.57, "Ventilation", as published in Federal Register, Volume 61, Number 46, March 7, 1996, are incorporated by reference.

(f) Revisions to 29 CFR 1926.59, "Hazard Communication", as published in Federal Register, Volume 61, Number 120, June 20, 1996, are incorporated by reference.

(g) 29 CFR 1926.60, "Methylenedianiline", is revised, as follows:

1. Revisions to Appendix A of 29 CFR 1926.60, as published in Federal Register, Volume 61, Number 120, June 20, 1996, are incorporated by reference.

2. Revisions to Appendix B of 29 CFR 1926.60, as published in Federal Register, Volume 61, Number 120, June 20, 1996, are incorporated by reference.

3. Revisions to Appendix C of 29 CFR 1926.60, as published in Federal Register, Volume 61, Number 120, June 20, 1996, are incorporated by reference.

4. Revisions to Appendix D of 29 CFR 1926.60, as published in Federal Register, Volume 61, Number 120, June 20, 1996, are incorporated by reference.

5. Revisions to Appendix E of 29 CFR 1926.60, as published in Federal Register, Volume 61, Number 120, June 20, 1996, are incorporated by reference.

(h) Revisions to 29 CFR 1926.61, "Retention of DOT Markings, Placards and Labels", as published in Federal Register, Volume 61, Number 120, June 20, 1996, are incorporated by reference.

(2) This material may be inspected, copied, or obtained at Kentucky Labor Cabinet, Division of Education and Training, 1047 U.S. 127 South, Suite 4, Frankfort, Kentucky 40601. Office hours are 8 a.m. - 4:30 p.m. (ET), Monday through Friday.

JOE NORSWORTHY, Chairman

APPROVED BY AGENCY: August 6, 1997

FILED WITH LRC: August 14, 1997 at 9 a.m.

#### REGULATORY IMPACT ANALYSIS

Agency Contact: Kembra Taylor, T. P. Chancellor

(1) Type and number of entities affected: The amendments to this regulation affect all employers in the construction industry within the jurisdiction of the KYOSH Program.

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

(a) Cost of living and employment in the geographic area in which the administrative regulation will be implemented: There are no costs or savings resulting from the promulgation of this amendment. This emergency regulation incorporates by reference, a publication in the Federal Register, dated January 10, 1997, which changes the entry for the methylene chloride in the "substance" column of Appendix A of 29 CFR 1926.55, and refers the reader to the new applicable standard, 29 CFR 1910.1052, for the permissible exposure limit values of methylene chloride.

(b) Cost of doing business in the geographic area in which the administrative regulation will be implemented: There will essentially be little cost effect from this revision. OSHA has made this general industry standard applicable to construction in order to avoid gaps in coverage and to protect workers in the construction industry where the use of methylene chloride is not prevalent.

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

1. First year following implementation:

2. Second and subsequent years: There are no additional factors regarding these revisions will increase or decrease costs. There will be no effect on competition. Reporting and paperwork requirements: This amendment will not entail any reporting or additional paperwork requirements.

(3) Effects on the promulgating administrative body: The promulgating body will not be affected by the adoption of these revisions.

(a) Direct and indirect costs or savings:

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements: There will be no reporting or paperwork requirements as a result of these changes.

(4) Assessment of anticipated effect on state and local revenues: These revisions will have no anticipated effect on state and local revenues.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Current state and federal funding.

(6) To the extent available from the public comments received,

the economic impact, including effects of economic activities arising from administrative regulation, on:

(a) Geographic area in which administrative regulation will be implemented: Undetermined; no public comments were received.

(b) Kentucky: Undetermined; no public comments were received.

(7) Assessment of alternative methods; reasons why alternative were rejected: Alternative methods were not considered as these proposed regulations are adopted by reference from federal regulations published in the Federal Register.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographic area in which implemented and on Kentucky: These proposed amendments will enhance worker safety throughout Kentucky.

(b) State whether detrimental effect on environment and public health would result if not implemented:

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

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: There is no conflicting, overlapping, or duplication as a result of adoption of these proposed amendments.

(a) Necessity of proposed regulation if in conflict:

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

(10) Any additional information or comments:

(11) TIERING: Was tiering applied? No. Kentucky's Occupational Safety and Health Program regulations affect all employers with one or more employees. Inspections are conducted at the facilities of those industries or firms that pose higher risks to worker safety and health, those employers from which the KYOSH Program has received worker complaints or referrals, or where a workplace fatality (or accident resulting in the hospitalization of three or more employees) has occurred.

#### FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. PL 91-596 (Occupational Safety and Health Act of 1970, Section 18(c)(2)).

2. State compliance standards. These amendments adopt federal regulations.

3. Minimum or uniform standards contained in the federal mandate. This emergency regulation incorporates by reference, a publication in the Federal Register, dated January 10, 1997, which changes the entry for the methylene chloride in the "substance" column of Appendix A of 29 CFR 1926.55, and refers the reader to the new applicable standard, 29 CFR 1910.1052, for the permissible exposure limit values of methylene chloride.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? This proposed amendment is identical to the federal regulation.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. These revisions impose no stricter, additional or different responsibilities than federal standards.

#### 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 amendment affects local government entities who perform construction work.

3. State the aspect or service of local government to which this

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administrative regulation relates. The proposed regulation affects the safety and health of employees of local government who perform construction activities.

4. How does this administrative regulation affect the local government or any service it provides? The purpose of the amendments is to comply with federal regulations relating to occupational safety and health. There will be no increase or decrease in local government revenues or significant expenditures. These proposed amendments will not affect the number of local government employees.

### STATEMENT OF EMERGENCY 803 KAR 2:411E

This emergency administrative regulation incorporates, by reference, a publication in the Federal Register, dated November 25, 1996, which makes minor corrections to the final rule on Safety Standards Used in the Construction Industry. It is necessary to promulgate this emergency administrative regulation to comply with the federal mandate, 29 CFR 1953.23, requiring implementation of the federal standard, or one (1) more stringent, within six (6) months of the date of promulgation of the new federal standard, and to keep the state program as effective as the federal program. This emergency administrative regulation shall be replaced by an ordinary administrative regulation. The "Notice of Intent to Promulgate Administrative Regulation" shall be filed with the Regulations Compiler on August 14, 1997.

PAUL E. PATTON, Governor  
JOE NORSWORTHY, Chairman

### LABOR CABINET Department of Workplace Standards Division of Occupational Safety and Health Compliance Division of Occupational Safety and Health Education and Training

#### 803 KAR 2:411E. Scaffolds.

RELATES TO: KRS 338.051, 338.061, 29 CFR 1926

STATUTORY AUTHORITY: KRS 338.051(3), 338.061, 29 CFR 1926

EFFECTIVE: August 14, 1997

NECESSITY, FUNCTION, AND PURPOSE: KRS 338.051 and 338.061 authorize the Kentucky Occupational Safety and Health Standards Board to adopt and promulgate occupational safety and health administrative regulations. Express authority to incorporate by reference established federal standards and national consensus standards is also given to the board. The following administrative regulation contains those standards to be enforced by the Division of Occupational Safety and Health Compliance in the area of construction.

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

(a) 29 CFR Part 1926.450-.453, revised as of July 1, 1996, published by the Office of the Federal Register, National Archives and Records Services, General Services Administration.

(b) The revisions to 29 CFR 1926, Subpart L, "Scaffolds", as published in the Federal Register, Volume 61, Number 170, August 30, 1996, are incorporated by reference.

(c) The revisions to 29 CFR 1926, Subpart L, "Scaffolds", as published in the Federal Register, Volume 61, Number 228, November 25, 1996, are incorporated by reference.

(2) This material may be inspected and copied at: Kentucky Labor Cabinet, Division of Education and Training, U.S. 127 South,

Frankfort, Kentucky 40601. Office hours are 8 a.m. - 4:30 p.m. (ET), Monday through Friday.

JOE NORSWORTHY, Chairman

APPROVED BY AGENCY: August 6, 1997

FILED WITH LRC: August 14, 1997 at 9 a.m.

### REGULATORY IMPACT ANALYSIS

Agency Contact: Kembra Taylor, W. L. Ralston

(1) Type and number of entities affected: The amendment to this regulation affects all employers in the construction industry within the jurisdiction of the KYOSH Program.

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

(a) Cost of living and employment in the geographic area in which the administrative regulation will be implemented: There are no costs or savings resulting from the promulgation of this amendment. The amendment to this regulation incorporates, by reference, a publication in the Federal Register, November 25, 1996, which makes minor corrections to the final rule on safety standards used in the construction industry.

(b) Cost of doing business in the geographic area in which the administrative regulation will be implemented: There will be no cost effected from this revision.

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

1. First year following implementation:

2. Second and subsequent years: There are no additional factors regarding this revision will increase or decrease costs. There will be no affect on competition. Reporting and paperwork requirements: This amendment will not entail any reporting or additional paperwork requirements.

(3) Effects on the promulgating administrative body: The promulgating body will not be affected by the adoption of this revision.

(a) Direct and indirect costs or savings:

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements: There will be no reporting or paperwork requirements as a result of this change.

(4) Assessment of anticipated effect on state and local revenues: This revision will have no anticipated effect on state and local revenues.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Current state and federal funding.

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

(a) Geographic area in which administrative regulation will be implemented: Undetermined; no public comments were received.

(b) Kentucky: Undetermined; no public comments were received.

(7) Assessment of alternative methods; reasons why alternative were rejected: Alternative methods were not considered as this proposed amendment incorporates by reference corrections to federal standards published in the Federal Register.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographic area in which implemented and on Kentucky: This proposed amendment will enhance worker safety throughout Kentucky.

(b) State whether detrimental effect on environment and public health would result if not implemented:

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

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: There is

no conflicting, overlapping, or duplication as a result of adoption of this amendment.

(a) Necessity of proposed regulation if in conflict:

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

(10) Any additional information or comments:

(11) TIERING: Was tiering applied? No. Kentucky's Occupational Safety and Health Program regulations affect all employers with one or more employees. Inspections are conducted at the facilities of those industries or firms that pose higher risks to worker safety and health, those employers from which the KYOSH Program has received worker complaints or referrals, or where a workplace fatality (or accident resulting in the hospitalization of three or more employees) has occurred.

#### FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. PL 91-596 (Occupational Safety and Health Act of 1970, Section 18(c)(2)).

2. State compliance standards. This amendment adopts corrections to federal standards.

3. Minimum or uniform standards contained in the federal mandate. The amendment incorporates corrections, as published in the Federal Register, Volume 61, Number 228, November 25, 1996, to the previously adopted regulations in 29 CFR 1926.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? This amendment is identical to the federal standard.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. This revision imposes no stricter, additional or different responsibilities than federal standards.

#### 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 amendment affects local government entities who perform construction work.

3. State the aspect or service of local government to which this administrative regulation relates. The amendment affects the safety and health of employees of local government who perform construction activities.

4. How does this administrative regulation affect the local government or any service it provides? The purpose of the amendment is to comply with federal regulations relating to occupational safety and health. There will be no increase or decrease in local government revenues or significant expenditures. The amendment will not affect the number of local government employees.

#### STATEMENT OF EMERGENCY

803 KAR 2:425E

This emergency administrative regulation incorporates, by reference, a publication in the Federal Register, dated January 10, 1997, which creates a new standard for methylene chloride in the construction industry, which is identical to the standard newly created for general industry. It is necessary to promulgate this emergency administrative regulation to comply with the federal mandate, 29 CFR 1953.23, requiring implementation of the federal standard, or one (1) more stringent, within six (6) months of the date of promulgation of

the new federal standard, and to keep the state program as effective as the federal program. This emergency administrative regulation shall be replaced by an ordinary administrative regulation. The "Notice of Intent to Promulgate Administrative Regulation" shall be filed with the Regulations Compiler on August 14, 1997.

PAUL E. PATTON, Governor

JOE NORSWORTHY, Chairman

#### LABOR CABINET

Department of Workplace Standards  
Division of Occupational Safety and Health Compliance  
Division of Occupational Safety and Health Education and Training

#### 803 KAR 2:425E. Toxic and hazardous substances.

RELATES TO: KRS 338.051, 338.061, 29 CFR 1926

STATUTORY AUTHORITY: KRS 338.051(3), 338.061, 29 CFR 1926

EFFECTIVE: August 14, 1997

NECESSITY, FUNCTION, AND CONFORMITY: KRS 338.051 and 338.061 authorize the Kentucky Occupational Safety and Health Standards Board to adopt and promulgate occupational safety and health administrative regulations. Express authority to incorporate by reference established federal standards and national consensus standards is also given to the board. The following administrative regulation contains those standards to be enforced by the Division of Occupational Safety and Health Compliance in the area of construction.

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

(a) 29 CFR 1926.1100-.1148 revised as of July 1, 1996 [1995], published by the Office of the Federal Register, National Archives and Records Services, General Services Administration.

(b) ~~29 CFR 1926.1101, "Occupational Exposure to Asbestos", is amended, as follows:~~

~~1. The amendment to 29 CFR 1926.1101, "Occupational Exposure to Asbestos", as published in the Federal Register, Volume 60, Number 134, July 13, 1995 is incorporated by reference.~~

~~2. The amendment to 29 CFR 1926.1101, "Occupational Exposure to Asbestos", as published in the Federal Register, Volume 60, Number 189, September 29, 1995 is incorporated by reference.~~

~~3. The amendment to 29 CFR 1926.1101, "Occupational Exposure to Asbestos", as published in the Federal Register, Volume 61, Number 165, August 23, 1996 is incorporated by reference.~~

(c) The addition of 29 CFR 1910.1152, "Methylene Chloride", as published in the Federal Register, Volume 62, Number 7, January 10, 1997 is incorporated by reference. [The revision to 29 CFR 1926.1102, "Coal tar pitch volatiles; interpretation of term", as published in the Federal Register, Volume 61, Number 120, June 20, 1996, is incorporated by reference.

(d) ~~29 CFR 1926.1103, "13 Carcinogens", is revised, as follows:~~

~~1. The amendment to 29 CFR 1926.1103, "13 Carcinogens", as published in the Federal Register, Volume 61, Number 46, March 7, 1996, is incorporated by reference.~~

~~2. The amendment to 29 CFR 1926.1103, "13 Carcinogens (4-Nitrobiphenyl, etc.)", as published in the Federal Register, Volume 61, Number 120, June 20, 1996, is incorporated by reference.~~

(e) ~~29 CFR 1926.1104, "alpha Naphthylamine", is revised, as follows:~~

~~1. The amendment to 29 CFR 1926.1104, "alpha Naphthylamine", as published in the Federal Register, Volume 61, Number 46, March 7, 1996, is incorporated by reference.~~

~~2. The amendment to 29 CFR 1926.1104, "alpha Naphthylamine", as published in the Federal Register, Volume 61, Number 120, June~~



20, 1996, is incorporated by reference.

(f) 29 CFR 1926.1106, "Methyl chloromethyl ether", is revised, as follows:

1. The amendment to 29 CFR 1926.1106, "Methyl chloromethyl ether", as published in the Federal Register, Volume 61, Number 46, March 7, 1996, is incorporated by reference.

2. The amendment to 29 CFR 1926.1106, "Methyl chloromethyl ether", as published in the Federal Register, Volume 61, Number 120, June 20, 1996, is incorporated by reference.

(g) 29 CFR 1926.1107, "3,3'-Dichlorobenzidine (and its salts)", is revised, as follows:

1. The amendment to 29 CFR 1926.1107, "3,3'-Dichlorobenzidine (and its salts)", as published in the Federal Register, Volume 61, Number 46, March 7, 1996, is incorporated by reference.

2. The amendment to 29 CFR 1926.1107, "3,3'-Dichlorobenzidine (and its salts)", as published in the Federal Register, Volume 61, Number 120, June 20, 1996, is incorporated by reference.

(h) 29 CFR 1926.1108, "bis chloromethyl ether", is revised, as follows:

1. The amendment to 29 CFR 1926.1108, "bis chloromethyl ether", as published in the Federal Register, Volume 61, Number 46, March 7, 1996, is incorporated by reference.

2. The amendment to 29 CFR 1926.1108, "bis chloromethyl ether", as published in the Federal Register, Volume 61, Number 120, June 20, 1996, is incorporated by reference.

(i) 29 CFR 1926.1109, "beta naphthylamine", is revised, as follows:

1. The amendment to 29 CFR 1926.1109, "beta naphthylamine", as published in the Federal Register, Volume 61, Number 46, March 7, 1996, is incorporated by reference.

2. The amendment to 29 CFR 1926.1109, "beta naphthylamine", as published in the Federal Register, Volume 61, Number 120, June 20, 1996, is incorporated by reference.

(j) 29 CFR 1926.1110, "Benzidine", is revised, as follows:

1. The amendment to 29 CFR 1926.1110, "Benzidine", as published in the Federal Register, Volume 61, Number 46, March 7, 1996, is incorporated by reference.

2. The amendment to 29 CFR 1926.1110, "Benzidine", as published in the Federal Register, Volume 61, Number 120, June 20, 1996, is incorporated by reference.

(k) 29 CFR 1926.1111, "4 Aminodiphenyl", is revised, as follows:

1. The amendment to 29 CFR 1926.1111, "4 Aminodiphenyl", as published in the Federal Register, Volume 61, Number 46, March 7, 1996, is incorporated by reference.

2. The amendment to 29 CFR 1926.1111, "4 Aminodiphenyl", as published in the Federal Register, Volume 61, Number 120, June 20, 1996, is incorporated by reference.

(l) 29 CFR 1926.1112, "Ethyleneimine", is revised, as follows:

1. The amendment to 29 CFR 1926.1112, "Ethyleneimine", as published in the Federal Register, Volume 61, Number 46, March 7, 1996, is incorporated by reference.

2. The amendment to 29 CFR 1926.1112, "Ethyleneimine", as published in the Federal Register, Volume 61, Number 120, June 20, 1996, is incorporated by reference.

(m) 29 CFR 1926.1113, "beta Propiolactone", is revised, as follows:

1. The amendment to 29 CFR 1926.1113, "beta Propiolactone", as published in the Federal Register, Volume 61, Number 46, March 7, 1996, is incorporated by reference.

2. The amendment to 29 CFR 1926.1113, "beta Propiolactone", as published in the Federal Register, Volume 61, Number 120, June 20, 1996, is incorporated by reference.

(n) 29 CFR 1926.1114, "2 Acetylaminofluorene", is revised, as follows:

1. The amendment to 29 CFR 1926.1114, "2 Acetylaminofluorene", as published in the Federal Register, Volume 61, Number 46, March 7, 1996, is incorporated by reference.

2. The amendment to 29 CFR 1926.1114, "2 Acetylaminofluorene", as published in the Federal Register, Volume 61, Number 120, June 20, 1996, is incorporated by reference.

(o) 29 CFR 1926.1115, "4 Dimethylaminoazobenzene", is revised, as follows:

1. The amendment to 29 CFR 1926.1115, "4 Dimethylaminoazobenzene", as published in the Federal Register, Volume 61, Number 46, March 7, 1996, is incorporated by reference.

2. The amendment to 29 CFR 1926.1115, "4 Dimethylaminoazobenzene", as published in the Federal Register, Volume 61, Number 120, June 20, 1996, is incorporated by reference.

(p) 29 CFR 1926.1116, "N Nitrosodimethylamine", is revised, as follows:

1. The amendment to 29 CFR 1926.1116, "N Nitrosodimethylamine", as published in the Federal Register, Volume 61, Number 46, March 7, 1996, is incorporated by reference.

2. The amendment to 29 CFR 1926.1116, "N Nitrosodimethylamine", as published in the Federal Register, Volume 61, Number 120, June 20, 1996, is incorporated by reference.

(q) The amendment to 29 CFR 1926.1117, "Vinyl Chloride", as published in the Federal Register, Volume 61, Number 120, June 20, 1996, is incorporated by reference.

(r) The amendment to 29 CFR 1926.1118, "Inorganic Arsenic", as published in the Federal Register, Volume 61, Number 120, June 20, 1996, is incorporated by reference.

(s) 29 CFR 1926.1127, "Cadmium", is revised, as follows:

1. The amendment to Appendix A to 1926.1127, as published in the Federal Register, Volume 61, Number 120, June 20, 1996, is incorporated by reference.

2. The amendment to Appendix B to 1926.1127, as published in the Federal Register, Volume 61, Number 120, June 20, 1996, is incorporated by reference.

3. The amendment to Appendix C to 1926.1127, as published in the Federal Register, Volume 61, Number 120, June 20, 1996, is incorporated by reference.

4. The amendment to Appendix D to 1926.1127, as published in the Federal Register, Volume 61, Number 120, June 20, 1996, is incorporated by reference.

5. The amendment to Appendix E to 1926.1127, as published in the Federal Register, Volume 61, Number 120, June 20, 1996, is incorporated by reference.

6. The amendment to Appendix F to 1926.1127, as published in the Federal Register, Volume 61, Number 120, June 20, 1996, is incorporated by reference.

(t) The amendment to 29 CFR 1926.1128, "Benzene Arsenic", as published in the Federal Register, Volume 61, Number 120, June 20, 1996, is incorporated by reference.

(u) The amendment to 29 CFR 1926.1129, "Coke Oven Emissions", as published in the Federal Register, Volume 61, Number 120, June 20, 1996, is incorporated by reference.

(v) The amendment to 29 CFR 1926.1144, "1,2 dibromo 3-chloropropane", as published in the Federal Register, Volume 61, Number 120, June 20, 1996, is incorporated by reference.

(w) The amendment to 29 CFR 1926.1145, "Acrylonitrile", as published in the Federal Register, Volume 61, Number 120, June 20, 1996, is incorporated by reference.

(x) The amendment to 29 CFR 1926.1147, "Ethylene Oxide", as published in the Federal Register, Volume 61, Number 120, June 20, 1996, is incorporated by reference.

(y) The amendment to 29 CFR 1926.1148, "Formaldehyde", as published in the Federal Register, Volume 61, Number 120, June 20, 1996, is incorporated by reference.

(z) The amendment to Appendix A to Part 1926, as published in the Federal Register, Volume 61, Number 46, March 7, 1996, is incorporated by reference.]

(2) This material may be inspected, obtained, and copied at: Kentucky Labor Cabinet, Division of Education and Training, U.S. 127

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South, Frankfort, Kentucky 40601. Office hours are 8 a.m. - 4:30 p.m. (EST), Monday through Friday.

JOE NORSWORTHY, Chairman

APPROVED BY AGENCY: August 6, 1997

FILED WITH LRC: August 14, 1997 at 9 a.m.

### REGULATORY IMPACT ANALYSIS

Agency Contact: Kembra Taylor, W. L. Ralston

(1) Type and number of entities affected: The amendments to this regulation affect all employers in the construction industry within the jurisdiction of the KYOSH Program.

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

(a) Cost of living and employment in the geographic area in which the administrative regulation will be implemented: There are no costs or savings resulting from the promulgation of this amendment. This emergency regulation incorporates, by reference, a publication in the Federal Register, dated January 10, 1997, which creates a new standard for methylene chloride in the construction industry, which is identical to the to the standard newly created for general industry.

(b) Cost of doing business in the geographic area in which the administrative regulation will be implemented: There will be no cost effected from this revision.

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

1. First year following implementation:

2. Second and subsequent years: There are no additional factors regarding these revisions will increase or decrease costs. There will be no effect on competition. Reporting and paperwork requirements: This amendment will not entail any reporting or additional paperwork requirements.

(3) Effects on the promulgating administrative body: The promulgating body will not be affected by the adoption of these revisions.

(a) Direct and indirect costs or savings:

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements: There will be no reporting or paperwork requirements as a result of these changes.

(4) Assessment of anticipated effect on state and local revenues: These revisions will have no anticipated effect on state and local revenues.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Current state and federal funding.

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

(a) Geographic area in which administrative regulation will be implemented: Undetermined; no public comments were received.

(b) Kentucky: Undetermined; no public comments were received.

(7) Assessment of alternative methods; reasons why alternative were rejected: Alternative methods were not considered as these proposed regulations are adopted by reference from federal regulations published in the Federal Register.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographic area in which implemented and on Kentucky: These proposed amendments will enhance worker safety throughout Kentucky.

(b) State whether detrimental effect on environment and public health would result if not implemented:

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

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: There is

no conflicting, overlapping, or duplication as a result of adoption of these proposed amendments.

(a) Necessity of proposed regulation if in conflict:

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

(10) Any additional information or comments:

(11) TIERING: Was tiering applied? No. Kentucky's Occupational Safety and Health Program regulations affect all employers with one or more employees. Inspections are conducted at the facilities of those industries or firms that pose higher risks to worker safety and health, those employers from which the KYOSH Program has received worker complaints or referrals, or where a workplace fatality (or accident resulting in the hospitalization of three or more employees) has occurred.

### FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. PL 91-596 (Occupational Safety and Health Act of 1970, Section 18(c)(2)).

2. State compliance standards. These amendments adopt federal regulations.

3. Minimum or uniform standards contained in the federal mandate. This emergency regulation incorporates, by reference, a publication in the Federal Register, dated January 10, 1997, which creates a new standard for methylene chloride in the construction industry, which is identical to the to the standard newly created for general industry.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? This proposed amendment is identical to the federal regulation.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. These revisions impose no stricter, additional or different responsibilities than federal standards.

### FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? Yes

2. State whether this administrative regulation will affect the local government or only a part or division of the local government. These amendments affect local government entities who perform construction work.

3. State the aspect or service of local government to which this administrative regulation relates. The proposed regulations affect the safety and health of employees of local government who perform construction activities.

4. How does this administrative regulation affect the local government or any service it provides? The purpose of the amendments is to comply with federal regulations relating to occupational safety and health. There will be no increase or decrease in local government revenues or significant expenditures. These proposed amendments will not affect the number of local government employees.

### STATEMENT OF EMERGENCY 803 KAR 2:500E

This emergency administrative regulation incorporates, by reference, a publication in the Federal Register, dated January 10, 1997, which creates a new standard for methylene chloride in the shipyard industry, which is identical to the to the standard newly created for general industry. This administrative regulation also changes the



incorporation by reference of the Code of Federal Regulations to include the most recently published applicable version. It is necessary to promulgate this emergency administrative regulation to comply with the federal mandate, 29 CFR 1953.23, requiring implementation of the federal standard, or one (1) more stringent, within six (6) months of the date of promulgation of the new federal standard, and to keep the state program as effective as the federal program. This emergency administrative regulation shall be replaced by an ordinary administrative regulation. The "Notice of Intent to Promulgate Administrative Regulation" shall be filed with the Regulations Compiler on August 14, 1997.

PAUL E. PATTON, Governor  
JOE NORSWORTHY, Chairman

**LABOR CABINET**

**Department of Workplace Standards  
Division of Occupational Safety and Health Compliance  
Division of Occupational Safety and  
Health Education and Training**

**803 KAR 2:500E. Maritime employment.**

RELATES TO: KRS 338.051, 338.061, 29 CFR 1915, 1917, 1918, 1919

STATUTORY AUTHORITY: KRS 338.051(3), 338.061, 29 CFR 1915, 1917, 1918, 1919

EFFECTIVE: August 14, 1997

NECESSITY, FUNCTION, AND CONFORMITY: KRS 338.051 and 338.061 authorize the Kentucky Occupational Safety and Health Standards Board to adopt and promulgate occupational safety and health administrative regulations. Express authority to incorporate by reference established federal standards and national consensus standards is also given to the board. The following administrative regulation contains those standards to be enforced by the Division of Occupational Safety and Health Compliance in the area of Maritime employment.

Section 1. Definitions. As used in the material incorporated by reference in Section 2 of this administrative regulation:

- (1) "Administration" means the Kentucky Occupational Safety and Health Program, Frankfort, Kentucky;
- (2) "Area director" means Director, Division of Occupational Safety and Health, Kentucky Labor Cabinet;
- (3) "Assistant secretary" means Secretary of Labor, Kentucky Labor Cabinet;
- (4) "U.S. Department of Labor" means Kentucky Labor Cabinet or U.S. Department of Labor.

Section 2. Incorporation by Reference. (1) The following is incorporated by reference:

(a) Chapter 29, Part 1915 of the Code of Federal Regulations, revised as of July 1, 1996 [1995], published by the Office of the Federal Register, National Archives and Records Services, General Services Administration.

1. The revision to 29 CFR 1915.1000, "Air Contaminants", as published in the Federal Register, Volume 62, Number 7, January 10, 1997, is incorporated by reference.

2. 29 CFR 1910.1052, "Methylene Chloride", as published in the Federal Register, Volume 62, Number 7, January 10, 1997, is incorporated by reference. [The revision to 29 CFR 1915.5, "Incorporation by Reference", as published in the Federal Register, Volume 61, Number 102, May 24, 1996, is incorporated by reference.

2. The revision to 29 CFR 1915.32, "Toxic Cleaning Solvents", as published in the Federal Register, Volume 61, Number 102, May 24, 1996, is incorporated by reference.

3. The revision to 29 CFR 1915.33, "Chemical Paint and

Preservative Removers", as published in the Federal Register, Volume 61, Number 102, May 24, 1996, is incorporated by reference.

4. The revision to 29 CFR 1915.34, "Mechanical Paint Removers", as published in the Federal Register, Volume 61, Number 102, May 24, 1996, is incorporated by reference.

5. The revision to 29 CFR 1915.35, "Painting", as published in the Federal Register, Volume 61, Number 102, May 24, 1996, is incorporated by reference.

6. The revision to 29 CFR 1915.134, "Abrasive Wheels", as published in the Federal Register, Volume 61, Number 102, May 24, 1996, is incorporated by reference.

7. The revision to 29 CFR 1915.135, "Powder Actuated Fastening Tools", as published in the Federal Register, Volume 61, Number 102, May 24, 1996, is incorporated by reference.

8. The revision to 29 CFR 1915.152, "General Requirements", as published in the Federal Register, Volume 61, Number 102, May 24, 1996, is incorporated by reference.

9. The corrections to 29 CFR 1915.152, "General Requirements", as published in the Federal Register, Volume 61, Number 115, June 13, 1996, is incorporated by reference.

10. The revision to 29 CFR 1915.153, "Eye and Face Protection", as published in the Federal Register, Volume 61, Number 102, May 24, 1996, is incorporated by reference.

11. The revision to 29 CFR 1915.154, "Respiratory Protection", as published in the Federal Register, Volume 61, Number 102, May 24, 1996, is incorporated by reference.

12. The revision to 29 CFR 1915.155, "Head Protection", as published in the Federal Register, Volume 61, Number 102, May 24, 1996, is incorporated by reference.

13. The revision to 29 CFR 1915.156, "Foot Protection", as published in the Federal Register, Volume 61, Number 102, May 24, 1996, is incorporated by reference.

14. The revision to 29 CFR 1915.157, "Hand and Body Protection", as published in the Federal Register, Volume 61, Number 102, May 24, 1996, is incorporated by reference.

15. The revision to 29 CFR 1915.158, "Lifesaving Equipment", as published in the Federal Register, Volume 61, Number 102, May 24, 1996, is incorporated by reference.

16. The revision to 29 CFR 1915.159, "Personal Fall Arrest Systems", as published in the Federal Register, Volume 61, Number 102, May 24, 1996, is incorporated by reference.

17. The revision to 29 CFR 1915.160, "Positioning Device Systems", as published in the Federal Register, Volume 61, Number 102, May 24, 1996, is incorporated by reference.

18. 29 CFR 1915 Subpart I Appendix A, "Nonmandatory Guidelines for Hazard Assessment, Personal Protective Equipment (PPE) Selection, and PPE Training Program", as published in the Federal Register, Volume 61, Number 102, May 24, 1996, is incorporated by reference.

19. The revision to 29 CFR 1915.1000, "Air Contaminants", as published in the Federal Register, Volume 61, Number 214, November 4, 1996, is incorporated by reference.

20. The revision to 29 CFR 1915.1002, "Coal tar pitch volatiles: interpretation of term", as published in the Federal Register, Volume 61, Number 120, June 20, 1996, is incorporated by reference.

21. 29 CFR 1915.1003, "13 Carcinogens", is revised, as follows:

a. The revisions to 29 CFR 1915.1003, "13 Carcinogens", as published in the Federal Register, Volume 61, Number 46, March 7, 1996, are incorporated by reference.

b. The revision to 29 CFR 1915.1003, "13 Carcinogens (4-Nitrobiphenyl, etc.)", as published in the Federal Register, Volume 61, Number 120, June 20, 1996, is incorporated by reference.

22. 29 CFR 1915.1004, "alpha Naphthylamine" is amended, as follows:

a. The revisions to 29 CFR 1915.1004, "alpha Naphthylamine", as published in the Federal Register, Volume 61, Number 46, March 7, 1996, are incorporated by reference.

b. The revision to 29 CFR 1915.1004, "alpha Naphthylamine", as published in the Federal Register, Volume 61, Number 120, June 20, 1996, is incorporated by reference.

23. 29 CFR 1915.1006, "Methyl chloromethyl ether" is amended, as follows:

a. The revisions to 29 CFR 1915.1006, "Methyl chloromethyl ether", as published in the Federal Register, Volume 61, Number 46, March 7, 1996, are incorporated by reference.

b. The revision to 29 CFR 1915.1006, "Methyl chloromethyl ether", as published in the Federal Register, Volume 61, Number 120, June 20, 1996, is incorporated by reference.

24. 29 CFR 1915.1007, "3,3'-Dichlorobenzidine (and its salts)" is amended, as follows:

a. The revisions to 29 CFR 1915.1007, "3,3'-Dichlorobenzidine (and its salts)", as published in the Federal Register, Volume 61, Number 46, March 7, 1996, are incorporated by reference.

b. The revision to 29 CFR 1915.1007, "3,3'-Dichlorobenzidine (and its salts)", as published in the Federal Register, Volume 61, Number 120, June 20, 1996, is incorporated by reference.

25. 29 CFR 1915.1008, "bis-Chloromethyl ether" is amended, as follows:

a. The revisions to 29 CFR 1915.1008, "bis-Chloromethyl ether", as published in the Federal Register, Volume 61, Number 46, March 7, 1996, are incorporated by reference.

b. The revision to 29 CFR 1915.1008, "bis-Chloromethyl ether", as published in the Federal Register, Volume 61, Number 120, June 20, 1996, is incorporated by reference.

26. 29 CFR 1915.1009, "beta Naphthylamine" is amended, as follows:

a. The revisions to 29 CFR 1915.1009, "beta Naphthylamine", as published in the Federal Register, Volume 61, Number 46, March 7, 1996, are incorporated by reference.

b. The revision to 29 CFR 1915.1009, "beta Naphthylamine", as published in the Federal Register, Volume 61, Number 120, June 20, 1996, is incorporated by reference.

27. 29 CFR 1915.1010, "Benzidine" is amended, as follows:

a. The revisions to 29 CFR 1915.1010, "Benzidine", as published in the Federal Register, Volume 61, Number 46, March 7, 1996, are incorporated by reference.

b. The revisions to 29 CFR 1915.1010, "Benzidine", as published in the Federal Register, Volume 61, Number 120, June 20, 1996, are incorporated by reference.

28. 29 CFR 1915.1011, "4 Aminodiphenyl" is amended, as follows:

a. The revisions to 29 CFR 1915.1011, "4 Aminodiphenyl", as published in the Federal Register, Volume 61, Number 46, March 7, 1996, are incorporated by reference.

b. The revisions to 29 CFR 1915.1011, "4 Aminodiphenyl", as published in the Federal Register, Volume 61, Number 120, June 20, 1996, are incorporated by reference.

29. 29 CFR 1915.1012, "Ethyleneimine", is amended, as follows:

a. The revisions to 29 CFR 1915.1012, "Ethyleneimine", as published in the Federal Register, Volume 61, Number 46, March 7, 1996, are incorporated by reference.

b. The revisions to 29 CFR 1915.1012, "Ethyleneimine", as published in the Federal Register, Volume 61, Number 120, June 20, 1996, are incorporated by reference.

30. 29 CFR 1915.1013, "beta Propiolactone" is amended, as follows:

a. The revisions to 29 CFR 1915.1013, "beta Propiolactone", as published in the Federal Register, Volume 61, Number 46, March 7, 1996, are incorporated by reference.

b. The revisions to 29 CFR 1915.1013, "beta Propiolactone", as published in the Federal Register, Volume 61, Number 120, June 20, 1996, are incorporated by reference.

31. 29 CFR 1915.1014, "2 Acetylaminofluorene" is amended, as follows:

a. The revisions to 29 CFR 1915.1014, "2 Acetylaminofluorene", as published in the Federal Register, Volume 61, Number 46, March 7, 1996, are incorporated by reference.

b. The revisions to 29 CFR 1915.1014, "2 Acetylaminofluorene", as published in the Federal Register, Volume 61, Number 120, June 20, 1996, are incorporated by reference.

32. 29 CFR 1915.1015, "4 Dimethylaminoazobenzene" is amended, as follows:

a. The revisions to 29 CFR 1915.1015, "4 Dimethylaminoazobenzene", as published in the Federal Register, Volume 61, Number 46, March 7, 1996, are incorporated by reference.

b. The revisions to 29 CFR 1915.1015, "4 Dimethylaminoazobenzene", as published in the Federal Register, Volume 61, Number 120, June 20, 1996, are incorporated by reference.

33. 29 CFR 1915.1016, "N Nitrosodimethylamine" is amended, as follows:

a. The revisions to 29 CFR 1915.1016, "N Nitrosodimethylamine", as published in the Federal Register, Volume 61, Number 46, March 7, 1996, are incorporated by reference.

b. The revisions to 29 CFR 1915.1016, "N Nitrosodimethylamine", as published in the Federal Register, Volume 61, Number 120, June 20, 1996, are incorporated by reference.

34. The revisions to 29 CFR 1915.1017, "Vinyl Chloride", as published in the Federal Register, Volume 61, Number 120, June 20, 1996, are incorporated by reference.

35. The revisions to 29 CFR 1915.1018, "Inorganic Arsenic", as published in the Federal Register, Volume 61, Number 120, June 20, 1996, are incorporated by reference.

36. The revisions to 29 CFR 1915.1020, "Access to Employee Exposure and Medical Records", as published in the Federal Register, Volume 61, Number 120, June 20, 1996, are incorporated by reference.

37. The revisions to 29 CFR 1915.1025, "Lead", as published in the Federal Register, Volume 61, Number 120, June 20, 1996, are incorporated by reference.

38. The revisions to 29 CFR 1915.1027, "Cadmium", as published in the Federal Register, Volume 61, Number 120, June 20, 1996, are incorporated by reference.

39. The revisions to 29 CFR 1915.1028, "Benzene", as published in the Federal Register, Volume 61, Number 120, June 20, 1996, are incorporated by reference.

40. The revisions to 29 CFR 1915.1030, "Bloodborne Pathogens", as published in the Federal Register, Volume 61, Number 120, June 20, 1996, are incorporated by reference.

41. The revisions to 29 CFR 1915.1044, "1,2 dibromo 3-chloropropane", as published in the Federal Register, Volume 61, Number 120, June 20, 1996, are incorporated by reference.

42. The revisions to 29 CFR 1915.1045, "Acrylonitrile", as published in the Federal Register, Volume 61, Number 120, June 20, 1996, are incorporated by reference.

43. The revisions to 29 CFR 1915.1047, "Ethylene Oxide", as published in the Federal Register, Volume 61, Number 120, June 20, 1996, are incorporated by reference.

44. The revisions to 29 CFR 1915.1048, "Formaldehyde", as published in the Federal Register, Volume 61, Number 120, June 20, 1996, are incorporated by reference.

45. The revisions to 29 CFR 1915.1050, "Methylenedianiline", as published in the Federal Register, Volume 61, Number 120, June 20, 1996, are incorporated by reference.]

3. [46.] The revisions to 29 CFR 1915.1101, "Occupational Exposure to Asbestos", as published in the Federal Register, Volume 61, Number 165, August 23, 1996.

[47. The revisions to 29 CFR 1915.1120, "Redesignated as 29 CFR 1915.1020", as published in the Federal Register, Volume 61, Number 120, June 20, 1996, are incorporated by reference.

48. The revisions to 29 CFR 1915.1200, "Hazard Communication", as published in the Federal Register, Volume 61, Number 120,

June 20, 1996, are incorporated by reference.

49. The revisions to 29 CFR 1915.1450, "Occupational Exposure to Hazardous Exposure to Hazardous Chemicals in Laboratories", as published in the Federal Register, Volume 61, Number 120, June 20, 1996, are incorporated by reference.]

(b) Chapter 29 Part 1917 of the Code of Federal Regulations, revised as of July 1, 1996 [1995], published by the Office of the Federal Register, National Archives and Records Services, General Services Administration.

(c) Chapter 29 Part 1918 of the Code of Federal Regulations, revised as of July 1, 1996 [1995], published by the Office of the Federal Register, National Archives and Record Services, General Services Administration.

(d) Chapter 29 Part 1919 of the Code of Federal Regulations, revised as of July 1, 1996 [1995], published by the Office of the Federal Register, National Archives and Records Services, General Services Administration.

(2) This material may be inspected, copied, or obtained at Kentucky Labor Cabinet, Division of Education and Training, 1047 U.S. 127 South, Frankfort, Kentucky 40601. Office hours are 8 a.m. - 4:30 p.m.

JOE NORSWORTHY, Chairman

APPROVED BY AGENCY: August 6, 1997

FILED WITH LRC: August 14, 1997 at 9 a.m.

#### REGULATORY IMPACT ANALYSIS

Agency Contact: Kembra Taylor, T. P. Chancellor

(1) Type and number of entities affected: The amendments to this regulation affect all public sector employers having maritime operations.

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

(a) Cost of living and employment in the geographic area in which the administrative regulation will be implemented: There are no costs or savings resulting from the promulgation of this amendment. This emergency regulation incorporates, by reference, a publication in the Federal Register, dated January 10, 1997, which creates a new standard for methylene chloride in the shipyard industry, which is identical to the to the standard newly created for general industry. This regulation also changes the incorporation by reference of the Code of Federal Regulations to include the most recently published applicable version.

(b) Cost of doing business in the geographic area in which the administrative regulation will be implemented: There will be no cost effected from the first revision.

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

1. First year following implementation:

2. Second and subsequent years: There are no additional factors regarding these revisions will increase or decrease costs. There will be no affect on competition. Reporting and paperwork requirements: This amendment will entail the production and retention of training and medical records for covered employees.

(3) Effects on the promulgating administrative body: The promulgating body will not be affected by the adoption of these revisions.

(a) Direct and indirect costs or savings:

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements: There will be no reporting or paperwork requirements as a result of these changes.

(4) Assessment of anticipated effect on state and local revenues: These revisions will have no anticipated effect on state and local revenues.

(5) Source of revenue to be used for implementation and

enforcement of administrative regulation: Current state and federal funding.

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

(a) Geographic area in which administrative regulation will be implemented: Undetermined; no public comments were received.

(b) Kentucky: Undetermined; no public comments were received.

(7) Assessment of alternative methods; reasons why alternative were rejected: Alternative methods were not considered as these proposed regulations are adopted by reference from federal regulations published in the Federal Register.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographic area in which implemented and on Kentucky: These proposed amendments will enhance worker safety throughout Kentucky.

(b) State whether detrimental effect on environment and public health would result if not implemented:

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

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: There is no conflicting, overlapping, or duplication as a result of adoption of these proposed amendments.

(a) Necessity of proposed regulation if in conflict:

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

(10) Any additional information or comments:

(11) TIERING: Was tiering applied? No. Kentucky's Occupational Safety and Health Program regulations affect all employers with one or more employees. Inspections are conducted at the facilities of those industries or firms that pose higher risks to worker safety and health, those employers from which the KYOSH Program has received worker complaints or referrals, or where a workplace fatality (or accident resulting in the hospitalization of three or more employees) has occurred.

#### FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. PL 91-596 (Occupational Safety and Health Act of 1970, Section 18(c)(2)).

2. State compliance standards. These amendments adopt federal regulations and correct and clarify a definition.

3. Minimum or uniform standards contained in the federal mandate. This emergency regulation incorporates, by reference, a publication in the Federal Register, dated January 10, 1997, which creates a new standard for methylene chloride in the shipyard industry, which is identical to the to the standard newly created for general industry. This regulation also changes the incorporation by reference of the Code of Federal Regulations to include the most recently published applicable version.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? This proposed amendment is identical to the federal regulation.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. These revisions impose no stricter, additional or different responsibilities than federal standards.

#### FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? Yes

2. State whether this administrative regulation will affect the local

government or only a part or division of the local government. These amendments affect local government entities that conduct maritime operations.

3. State the aspect or service of local government to which this administrative regulation relates. The proposed regulations in Section 2 affect the safety and health of employees of local government who work in maritime operations.

4. How does this administrative regulation affect the local government or any service it provides? The purpose of the amendments to Section 2 is to comply with federal regulations relating to occupational safety and health. There will be no increase or decrease in local government revenues or significant expenditures. These proposed amendments will not affect the number of local government employees.

#### STATEMENT OF EMERGENCY 900 KAR 6:050E

This emergency administrative regulation establishes the process for review of applications for Certificates of Need by the Cabinet for Health Services. This administrative regulation must be promulgated as an emergency in order to protect the health and welfare of the citizens of the Commonwealth. The Kentucky General Assembly has found that the certificate of need process is necessary to ensure that the citizens of the Commonwealth will have safe, adequate and efficient medical care. The existing certificate of need emergency administrative regulation which the cabinet has been operating under is set to expire on July 21, 1997. It is necessary to implement 900 KAR 6:050E on an emergency basis in order to ensure that the cabinet will be able to administer the certificate of need process as intended by the legislature, thereby maintaining continued oversight of the provision of quality health care within the state. This administrative regulation differs from the previous emergency administrative regulation in the following ways: It: (1) changes the batching cycles for applications for certificates of need; (2) simplifies the application forms; (3) changes the reporting requirements for exempt facilities; and (4) provides for hearings as ordered by the Kentucky Supreme Court in the case of *Humana of Kentucky v. NKC Hospital*, 71 S.W.2d 369 (1988). This emergency administrative regulation shall be replaced by an ordinary administrative regulation. The Notice of Intent for the ordinary administrative regulation will be filed with the Regulations Compiler on July 21, 1997.

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

#### CABINET FOR HEALTH SERVICES Office of Certificate of Need

#### 900 KAR 6:050E. Certificate of need administrative regulation.

RELATES TO: KRS 216B.010 to 216B.130, 216B.455, 216B.990  
STATUTORY AUTHORITY: KRS 13A.350, 216B.040  
EFFECTIVE: July 21, 1997

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health Services is required by statute to administer Kentucky's Certificate of Need Program and to promulgate administrative regulations as necessary. This administrative regulation sets forth those regulations necessary to the orderly administration of the Certificate of Need Program.

Section 1. Definitions. (1) "Administrative escalation" means an approval from the cabinet to increase the capital expenditure authorized on a previously issued certificate of need.

(2) "Cabinet" means the Cabinet for Health Services.

(3) "Certificate of Need Newsletter" means the monthly newsletter

published by the cabinet regarding certificate of need matters.

(5) "Days" means calendar days.

(6) "Division of Licensing and Regulation" means the Cabinet for Health Services, Office of the Inspector General, Division of Licensing and Regulation.

(7) "Emergency circumstances" means situations that pose an imminent threat to the life, health, or safety of any citizen of the Commonwealth.

(8) "Formal review" means the review of those applications for certificate of need which are reviewed within ninety (90) days from the commencement of the review as provided by KRS 216B.062(1) and which are reviewed for compliance with the review criteria set forth at KRS 216B.040 and Section 6 of this administrative regulation.

(9) "Improvement" means change or addition to the premises of an existing facility that enhances its ability to deliver the services that it is authorized to offer under its existing license or an approved certificate of need.

(10) "Long-term care beds" means nursing home beds, intermediate care beds, skilled nursing beds, nursing facility beds, and Alzheimer disease facility beds.

(11) "Nonsubstantive review" means expedited review of an application for certificate of need which has been granted nonsubstantive review status pursuant to the provisions of KRS 216B.095 and Section 7 of this administrative regulation.

(12) "Proposed service area" means the geographic area and population the applicant proposes to serve.

(13) "Public information channels" means the Office of Communications in the Cabinet for Health Services.

(14) "Public notice" means notice given through:

(a) Public information channels; or

(b) The cabinet's Certificate of Need Newsletter.

(15) "Show cause hearing" means a hearing before the cabinet at which a person is required to explain or demonstrate why the person should not be required to obtain a certificate of need or not be subject to the penalties provided by KRS 216B.990 for specific violations of the provisions of KRS Chapter 216B.

Section 2. Letter of Intent. (1) The Certificate of Need Letter of Intent (Form #1) shall be filed with the cabinet by all applicants for a certificate of need. This shall:

(a) Include those applicants requesting nonsubstantive review under the provisions of Section 8 of this administrative regulation.

(b) Not include those applicants requesting nonsubstantive review under the provisions of KRS 216B.095(a) through (e).

(2) Upon receipt of a letter of intent, the cabinet shall provide the sender with written acknowledgment of receipt of the letter and shall publish notice of such receipt in the next published certificate of need newsletter.

(3) An application for a certificate of need shall not be processed until such time as the letter of intent has been on file with the cabinet for thirty (30) days.

Section 3. Certificate of Need Application. (1) All applicants for a certificate of need shall file an application with the cabinet on the appropriate Certificate of Need Application (Forms 2A, 2B, 2C or 2D).

(2) When filing an application for certificate of need, the applicant shall file an original and two (2) copies of the appropriate certificate of need application, together with the prescribed fee set forth in 900 KAR 6:020 with the cabinet on or before the deadlines established by Section 4 of this administrative regulation.

(3) Neither formal nor nonsubstantive review of an application for a certificate of need shall begin until the application has been deemed complete by the cabinet.

(4) The cabinet shall not deem an application complete unless:

(a) The applicant has provided the cabinet with all of the information necessary to complete the application; or

(b) The applicant has declined to submit the requested informa-

tion and has requested that its application be reviewed as submitted.

(5) Once an application has been declared complete, the applicant may not submit additional information regarding the application unless the information is introduced at a public hearing.

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

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

(7) An application that has been declared complete, may only be amended at a public hearing, and may then only be amended to:

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

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

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

(10) An application that is not declared complete with a year from the date that it is filed shall expire and shall not be placed on public notice or reviewed for approval.

Section 4. Timetable for Submission of Applications. (1) The cabinet's timetable for giving public notice for applications deemed complete for both formal and nonsubstantive review shall be as follows:

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

- 1. February; and
- 2. August.

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

- 1. March; and
- 2. September.

(c) Public notice for mobile services and private pay/third party payor home health agencies shall be given on the third Thursday of the following months:

- 1. April; and
- 2. October.

(d) Public notice for ambulance, air ambulance providers, day health care programs, and rehabilitation agencies shall be given on the third Thursday of the following months:

- 1. May; and
- 2. November.

(e) Public notice for personal care beds shall be given on the third Thursday of the following months:

- 1. June; and
- 2. December.

(f) Public notice for long term care beds and intermediate care beds for Mental Retardation and Developmentally Disabled facilities shall be given on the third Thursday of June.

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

- 1. January; and
- 2. July.

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

(i) Provided that a letter of intent was on file for on or before June 2, 1997, any application for a certificate of need for a health facility or health service which would have qualified for nonsubstantive review under the provisions of 900 KAR 6:015E and which was filed on or before July 2, 1997 and declared complete pursuant to Section 6 of this administrative regulation, shall be placed on the August 21, 1997 public notice and processed under the nonsubstantive review provisions of Section 8 of this administrative regulation.

(j) Any application for a certificate of need for a health facility or health service which was filed on or before July 2, 1997, and which qualifies for nonsubstantive review under the provisions of this administrative regulation, shall be reviewed for completeness pursuant to Section 6 of this administrative regulation, shall be placed on public notice according to Section 4 of this administrative regulation and shall be processed under the nonsubstantive review provisions of Section 8 of this administrative regulation.

Section 5. Certificate of Need Review. (1) Prior to being reviewed for the approval or denial of a certificate of need, all applications for certificate of need shall be reviewed for completeness pursuant to Section 6 of this administrative regulation.

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

(3) If granted nonsubstantive review status under Section 8 of this administrative regulation, an application for certificate of need shall be reviewed for approval or denial of the certificate of need according to the nonsubstantive review criteria set forth at Section 8 of this administrative regulation.

Section 6. Completeness Review. (1) Within fifteen (15) days of the deadline for deeming an application complete for the next appropriate batching cycle, the cabinet shall determine whether the application is complete, for applications for both formal review and nonsubstantive review.

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

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

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

(3) If the cabinet finds that the application for nonsubstantive review is complete, the cabinet shall notify the applicant in writing that the application has been deemed complete.

(4) A decision to grant or deny nonsubstantive review status will be made within ten (10) days of the date the applicant is notified that the application has been deemed complete.

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

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

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

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

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

(a) Notify the applicant in writing that:

1. The application for formal review has been deemed complete; and

2. Review of the application for the approval or denial of a certificate of need shall begin upon public notice being given; and

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

(8) If, upon the receipt of the additional information requested, the cabinet finds that an application for nonsubstantive review is complete, the cabinet shall notify the applicant in writing that:

(a) The application has been deemed complete; and

(b) A decision to grant or deny nonsubstantive review status will be made within ten (10) days of the date that the application was deemed complete.

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

(a) Request the information necessary to complete the application; and

(b) Inform the applicant that its application shall not be deemed complete and shall not be placed on public notice until:

1. The applicant submits the information necessary to complete the application; or

2. The applicant requests in writing that its application be reviewed as submitted.

(10) Once an application has been deemed complete, an applicant shall not submit additional information to be made part of the public record unless:

(a) The information is introduced at a hearing; or

(b) In the case of a deferred application, the additional information is submitted prior to the date that the application must be declared complete as provided for in Section 5 of this administrative regulation.

Section 7. Considerations for Formal Review. In determining whether to approve or deny a certificate of need, the cabinet's review of applications under formal review shall be limited to the following considerations:

(1) Consistency with plans.

(a) Whether the proposal is consistent with the current State Health Plan.

(b) Whether the proposal is consistent with applicable biennial budget authorizations and limitations.

(c) Whether the proposal would adversely impact health care costs in the Commonwealth.

(d) In determining whether an application is consistent with the State Health Plan, the cabinet shall apply the latest inventories and need analysis figures maintained by the cabinet and the version of the State Health Plan in effect at the time of the cabinet's decision.

(2) Need.

(a) Whether the applicant has identified a need for the proposal in the geographic area defined in the application.

(b) Whether the applicant has demonstrated that it is able to meet the need identified in the geographic area defined in the application.

(3) Accessibility. Whether the health facility or health service proposed in the application will be accessible in terms of timeliness, amount, duration, and personnel sufficient to provide the services proposed.

(4) Interrelationships and linkages.

(a) Whether it is necessary for the applicant to establish linkages with other health services, health facilities, and elements of the health care system within the region and the state in order to achieve comprehensive care, proper utilization of services, and efficient functioning of the health care system within the Commonwealth.

(b) If it is necessary for the applicant to establish linkages with other health services, health facilities, and elements of the health care system in the region and the state in order to achieve comprehensive care, proper utilization of services, and efficient functioning of the health care system within the Commonwealth, whether such linkages have been or will be established.

(5) Costs, economic feasibility, and resource availability.

(a) Whether it is economically feasible for the applicant to implement and operate the proposal.

(b) If applicable, whether the cost of alternative ways of meeting the need identified in the geographic area defined in the application would be a more effective and economical use of resources.

(6) Quality of services.

(a) Whether the applicant is prepared to and capable of undertaking and carrying out the responsibilities involved in the proposal in a manner consistent with appropriate standards and requirements established by the cabinet.

(b) Whether the applicant has the ability to comply with applicable licensure requirements. The fact that there is not an applicable licensure category shall not constitute grounds for disapproving an application.

Section 8. Nonsubstantive Review. (1) In addition to the projects specified in KRS 216B.095(3)(a) through (e), the cabinet may grant nonsubstantive review status to an application for which a certificate of need is required in circumstances wherein:

(a) The proposal involves the establishment or expansion of a health facility or health service for which there are no standards or review criteria in the State Health Plan.

(b) The proposal involves the establishment or expansion of an ambulatory surgery center by:

1. An ambulatory surgery center that is existing and operating by July 15, 1997, if such ambulatory surgery center was initially established as a private office or clinics of physicians; or

2. An entity that has filed a letter of intent by July 18, 1997 to establish an ambulatory surgery center and such letter of intent expressly states that the proposal is for the establishment of an ambulatory surgery center by a facility which would otherwise be considered the private office or clinic of physicians.

(2) If an application is denied nonsubstantive review status, the application shall automatically be placed in the formal review process.

(3) If an application is granted nonsubstantive review status, notice of the decision to grant nonsubstantive review status shall be given to the applicant and all known affected persons.

(4) If an application is granted nonsubstantive review status, any affected person other than the applicant may request a hearing by filing a request for a hearing within ten (10) days of the notice of the decision to conduct nonsubstantive review. The provisions of Section 16 of this administrative regulation shall govern the conduct of all nonsubstantive review hearings.

(5) If an application for certificate of need is granted nonsubstantive review status there shall be a presumption that the facility or service is needed, and the cabinet shall approve applications for certificate of need that have been granted nonsubstantive review status, unless the presumption of need is rebutted by clear and convincing evidence that there is not a need for the proposed facility or service in the geographic area defined in the application.

(6) The cabinet shall approve or disapprove an application which has been granted nonsubstantive review status within thirty-five (35) days of the date that notice is given that nonsubstantive review status has been granted.

(7) If a certificate of need is denied following nonsubstantive review, the applicant may:

(a) Request that the cabinet reconsider its decision pursuant to KRS 216B.090 and Section 16 of this administrative regulation;

(b) Request that the application be placed in the next cycle of the formal review process; or



(c) Seek judicial review pursuant to KRS 216B.115.

Section 9. Notice of Decision. (1) The cabinet shall notify the applicant and any party to the proceeding of the final action on a certificate of need application.

(2) Written notification of approval shall include:

(a) Verification that the review criteria for approval have been met;

(b) If the application is inconsistent with any review criteria, the reasons for approval despite the inconsistency;

(c) Notice of appeal rights; and

(d) The amount of capital expenditure authorized, where applicable.

(3) Written notification of disapproval shall include:

(a) The reason for the disapproval; and

(b) Notice of appeal rights.

(4) An application for certificate of need that is disapproved shall not be refiled for a period of twelve (12) months, absent a showing of a significant change in circumstances.

Section 10. Deferral of an Application. (1) An applicant may defer review of an application by notifying the cabinet of its wish to defer review of its application at any time prior to the entry of a decision to approve or deny the application.

(2) If deferral is requested, the application shall be deferred to the next regular batching cycle and shall be placed on public notice.

(3) If an application is deferred, an applicant may update its application by providing additional information to the cabinet at least twenty-five (25) days prior to the date that the deferred application is placed on public notice.

(4) In order for a hearing to be held on a deferred application, a hearing shall be requested by either the applicant or an affected person within:

(a) Ten (10) days of the deferred application being placed on public notice if the application has been granted nonsubstantive review status; or

(b) Fifteen (15) days of the deferred application being placed on public notice if the application is being reviewed under the provision of formal review.

Section 11. Withdrawal of an Application. (1) An applicant may withdraw an application for certificate of need at any time prior to the entry of a decision to deny or approve the application by notifying the cabinet in writing of the decision to withdraw the application. If a hearing has been scheduled or held on the application, the applicant shall also notify all parties to the proceedings in writing of the applicant's decision to withdraw the application.

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

Section 12. Emergency Circumstance. (1) If emergency circumstance arise, a licensed health facility or licensed health service may proceed to alleviate the emergency without first obtaining a certificate of need provided:

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

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

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

(a) A detailed description of the emergency;

(b) The steps taken to alleviate the emergency;

(c) The location or geographic area where the emergency service is being provided; and

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

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

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

Section 13. Transfer of a Certificate of Need. Certificates of need issued to an existing facility for purposes other than replacement of the facility may be transferred to the new owner of the facility if the change of ownership occurs prior to implementation of the project for which the certificate of need was issued.

Section 14. Location of New and Replacement Facilities. A certificate of need approved for the establishment of a new facility or the replacement of an existing facility is valid only for the location stated on the certificate.

Section 15. Filings. (1) The filing of all documents required by this administrative regulation shall be made by filing such documents with the Office of Certificate of Need, 1st Floor, Health Services Building, 275 East Main Street, Frankfort, Kentucky 40621 on or before 4:30 p.m. eastern time on the due date.

(2) Filings of documents, other than certificate of need applications, may be made by facsimile transmission provided that:

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

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

(4) The Office of Certificate of Need shall endorse by file stamp the date that each filing is received and such endorsement shall constitute the filing of the document.

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

(6) The last day of the period so computed is to be included, unless it is a Saturday, a Sunday or legal state holiday, in which event the period runs until 4:30 p.m. eastern time of the first working day following a Saturday, Sunday, or legal state holiday.

Section 16. Hearings. (1) Hearings on certificate of need matters shall be held by hearing officers from the Cabinet for Health Services' Administrative Hearings Branch. A hearing officer shall not act on any matter in which the hearing officer has a conflict of interest as defined in KRS 45A.340. Any party may file with the cabinet a petition for removal based upon a conflict of interest supported by affidavit.

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

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

(a) Mailed to the applicant and all known affected persons providing the same or similar service in the proposed service area, not less than ten (10) days prior to the date of the hearing; and

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

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

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

- (6) The hearing officer may convene a preliminary conference.
  - (a) The purposes of the conference are to:
    1. Formulate and simplify the issues;
    2. Identify additional information and evidence needed for the hearing; and
    3. Dispose of pending motions.
  - (b) A written summary of the preliminary conference and the orders thereby issued shall be made a part of the record.
  - (c) The hearing officer may tape record the conference or if requested by a party to the proceedings arrange for a stenographer to be present at the expense of the requesting party.
  - (d) During the preliminary conference, the hearing officer may:
    1. Instruct the parties to:
      - a. Formulate and submit a list of genuine contested issues to be decided at the hearing;
      - b. Raise and address issues that can be decided before the hearing; or
      - c. Formulate and submit stipulations to facts, laws, and other matters.
    2. Prescribe the manner and extent of the participation of the parties or persons who shall participate;
    3. Rule on any pending motions for discovery or subpoenas; or
    4. Schedule dates for the submission of prefiled testimony, further preliminary conferences, and submission of briefs and documents.
- (7) At least five (5) days prior to the scheduled date of any nonsubstantive review hearings and at least seven (7) days prior to the scheduled date of all other hearings, all persons wishing to participate as a party to the proceedings shall file two (2) copies of the following for each affected application with the cabinet and serve copies on all other known parties to the proceedings:
  - (a) Witness List, Form #3;
  - (b) Exhibit List, Form #4 and attached exhibits; and
  - (c) Notice of Appearance, Form #5.
- (8) The hearing officer shall convene the hearing and shall state the purpose and scope of the hearing or the issues upon which evidence shall be heard. All parties appearing at the hearing shall enter an appearance by stating their names and addresses.
- (9) Each party shall have the opportunity to:
  - (a) Present its case;
  - (b) Make opening statements;
  - (c) Call and examine witnesses;
  - (d) Offer documentary evidence into the record;
  - (e) Make closing statements; and
  - (f) Cross-examine opposing witnesses on:
    1. Matters covered in direct examination; and
    2. At the discretion of the hearing officer, upon other matters relevant to the issues.
- (10) A party that is a corporation shall be represented by an attorney licensed to practice in the Commonwealth of Kentucky.
- (11) The hearing officer may:
  - (a) Allow testimony or other evidence on issues not previously identified in the preliminary order which may arise during the course of the hearing, including any additional petitions for intervention which may be filed;
  - (b) Act to exclude irrelevant, immaterial or unduly repetitious evidence; and
  - (c) Question any party or witness.
- (12) The hearing officer shall not be bound by the Kentucky Rules of Evidence. Relevant hearsay evidence may be allowed, at the discretion of the hearing officer.
- (13) The hearing officer shall have discretion to designate the order of presentation of evidence and the burden of proof as to persuasion.
- (14) Witnesses shall be examined under oath or affirmation.
- (15) Witnesses may, at the discretion of the hearing officer:
  - (a) Appear through deposition or in person; and
  - (b) Provide written testimony in accordance with the following:

1. The written testimony of a witness shall be in the form of questions and answers or a narrative statement;
2. The witness shall authenticate the document under oath; and
3. The witness shall be subject to cross-examination.

(16) 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 and provided that the documents to be considered for acceptance are listed on and attached to the party's Exhibit List (Form #4) and filed with the hearing officer and other parties at least seven (7) working days before the hearing.

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

(18) The hearing officer may take official notice of facts which are not in dispute, or of generally-recognized technical or scientific facts within the agency's special knowledge.

(19) 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 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.

(20) In the case of a hearing on an application for a certificate of need, the hearing officer may, upon the agreement of the applicant, continue a hearing beyond the review deadlines established by KRS 216B.062(1) and 216B.095(1).

(21) The cabinet shall forward a copy of the hearing officer's final decision by U.S. mail to each party to the proceedings. The original hearing decision shall be filed in the administrative record maintained by the cabinet.

Section 17. Requests for Reconsideration. (1) In order to be considered, requests for reconsideration shall be filed within fifteen (15) days of the date of the notice of the cabinet's final decision relating to:

- (a) Approval or disapproval of an application for a certificate of need;
- (b) An advisory opinion entered after a public hearing; or
- (c) Revocation of a certificate of need.

(2) A copy of the request for reconsideration shall be served on all parties to the proceedings.

(3) A party to the proceedings shall have seven (7) days from the date of service of the request for reconsideration to file a response to the request with the cabinet.

(4) The cabinet shall enter a decision to grant or deny a request for reconsideration within thirty (30) days of the request being filed.

(5) If reconsideration is granted:

(a) A hearing shall be held by the cabinet in accordance with the provisions of Section 16 of this administrative regulation within thirty (30) days of the date of the decision to grant reconsideration; and

(b) A final decision shall be entered by the cabinet no later than thirty (30) days following the conclusion of the hearing.

(6) If reconsideration is granted on the grounds that a public hearing was not held pursuant to KRS 216B.085, the applicant shall have the right to waive the reconsideration hearing if the deficiencies in the application can be adequately corrected by submission of written documentation to be made a part of the record without a hearing.

Section 18. Show Cause Hearings. (1) The cabinet may conduct a show cause hearing on its own initiative or at the request of any person, to include hearings requested pursuant to *Humana of Kentucky v. NKC Hospitals, Ky.*, 751 S.W.2d 369 (1988), in order to determine whether a person has established or is operating a health facility or health service in violation of the provisions of KRS Chapter 216B or these administrative regulations.



(2) Show cause hearings shall be conducted in accordance with the provisions of Section 16 of this administrative regulation.

(3) Prior to convening a show cause hearing, the cabinet shall give the person suspected or alleged to be in violation not less than twenty (20) days' notice of its intent to conduct a hearing.

(4) The notice shall advise the person of:

(a) The allegations against him;

(b) Any facts determined to exist which support the existence of the allegation; and

(c) The statute or administrative regulation alleged to have been violated.

(5) A hearing officer shall convene the hearing and shall allow the person to establish through testimony or other evidence any grounds in support of its position that no action should be taken by the cabinet.

(6) Within thirty (30) days of the conclusion of the hearing, the hearing officer shall issue a final decision on the matter.

(7) A copy of the final decision shall be mailed to the person or his legal representative with the original hearing decision filed in the administrative record maintained by the cabinet.

(8) If a violation is found to have occurred, the cabinet shall take action as provided by KRS Chapter 216B.

Section 19. Administrative Escalations. (1) No person may obligate a capital expenditure in excess of the amount authorized by an existing certificate of need unless the person has received an administrative escalation or an additional certificate of need from the cabinet.

(2) Requests for administrative escalations shall be submitted to the cabinet on the Cost Escalation Form, Form #6.

(3) The cabinet shall authorize administrative escalations for funds which have not been obligated and which do not exceed the following limits provided there is not a substantial change in the project:

(a) Twenty (20) percent of the capital expenditure authorized on the original certificate of need or \$100,000, whichever is greater, if the capital expenditure authorized on the certificate of need is less than \$500,000;

(b) Twenty (20) percent of the capital expenditure if the capital expenditure authorized on the certificate of need is \$500,000 to \$4,999,999;

(c) Ten (10) percent of the amount in excess of \$5,000,000, plus \$1,000,000, for projects where the capital expenditure authorized on the certificate of need is \$5,000,000 to \$24,999,999;

(d) Five (5) percent of the amount in excess of \$25,000,000, plus \$3,000,000, where the capital expenditure authorized on the certificate of need is \$25,000,000 to \$49,999,999; and

(e) Two (2) percent of the amount in excess of \$50,000,000, plus \$4,250,000, where the capital expenditure authorized on the certificate of need is \$50,000,000 or more.

(4) If an administrative escalation is authorized, the certificate of need holder shall submit any additional certificate of need application fee required by the increased capital expenditure.

(5) The escalation of a capital expenditure in excess of the limits set forth in subsection (3) of this section, shall constitute a substantial change in a project and shall require a certificate of need pursuant to KRS 216B.061(1)(e).

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

Section 20. Timetables and Standards for Implementation. (1) As a condition for the issuance of a certificate of need, a holder of a certificate of need shall submit progress reports on the Certificate of Need Six (6) Month Progress Report, Form #7, at the six (6) month intervals specified in this section.

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

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

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

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

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

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

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

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

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

(a) The submission of additional reports as specified in subsections (16) through (18) of this section; or

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

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

(7) If the cabinet determines that required elements have not been completed for reasons other than those set forth in paragraph (a) of this subsection, it shall notify the holder of the certificate of need, in writing, that it has determined to revoke the certificate of need.

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

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

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

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

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

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

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

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

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

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

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

(a) Construction or renovation projects:

1. Copy of deed or lease of land;

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

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

4. Enforceable contract with a construction contractor.

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

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

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

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

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

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

(a) The first progress report shall include:

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

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

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

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

2. For construction projects;

(a) Schedule for project completion with projected dates;

(b) Documentation of final financing;

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

(d) Enforceable construction contract.

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

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

(19) The cabinet or its designee may grant no more than two (2) extensions of six (6) months for good cause shown when the certificate holder of long-term care beds has failed to comply with the above relevant progress report requirements.

(20) Within six (6) months following licensure of a project for which a certificate of need has been issued, the certificate holder shall submit documentation that services are being provided to all of the licensed service area. Failure to provide such documentation shall constitute grounds for revocation of the certificate of need and the license for those areas where service is not being provided.

(22) If the project involves a capital expenditure, a final cost

breakdown shall be included in the final progress report.

Section 21. Biennial Review. (1) Certificate of need holders may be subject to biennial review to determine whether they are in compliance with the terms as listed on their certificate of need.

(2) Biennial review may be conducted within sixty (60) days of the second anniversary of the final progress report and at twenty-four (24) month intervals thereafter.

(3) The cabinet or its designee shall provide sixty (60) days' advance written notification to the subject of any biennial review, including the following:

(a) When the biennial review will be initiated;

(b) Request for information necessary for the review to which the cabinet does not have ready access; and

(c) A deadline for response to the request for information.

(4) The cabinet shall notify the certificate of need holder of any finding that it is not in compliance with the terms of its certificate of need, and shall provide the certificate of need holder with a reasonable period of time in which to demonstrate a good faith effort to remedy the specified deficiencies.

(5) The cabinet may institute disciplinary proceedings, including but not limited to revocation of the certificate of need for willful failure to comply with the terms of the certificate of need as determined by a biennial review.

(6) The cabinet shall notify the Division of Licensing and Regulation of any adverse findings under this subsection.

Section 22. Advisory Opinions. (1) The cabinet shall issue advisory opinions regarding matters related to certificate of need on its own initiative or upon request from any person.

(2) Requests for advisory opinions shall be filed with the cabinet and shall be accompanied by the Request for Advisory Opinion Form, Form Number #8.

(3) In rendering an advisory opinion, a proposal shall be considered to constitute an improvement within the definition of a nonclinically related expenditure exempt from review if the proposed expenditure meets the definition of an improvement contained in Section 1 of this administrative regulation.

(4) The cabinet may require verification of information and request additional documentation at its discretion prior to issuing an advisory opinion.

(5) The cabinet shall issue a written advisory opinion within thirty (30) days of receipt of a completed request for an advisory opinion or of receipt of additional information.

(6) Public notice of the advisory opinion shall be published in the monthly certificate of need newsletter.

(7) An affected person may request a public hearing regarding an advisory opinion in writing within thirty (30) days of the public notice of the advisory opinion.

(8) The public hearing shall be held within forty-five (45) days of the date of the filing of the request and shall be conducted in accordance with the provisions of Section 16 of this administrative regulation.

(9) The cabinet shall enter a final decision regarding the advisory opinion, within forty-five (45) days of the completion of the public hearing.

(10) If a public hearing is not requested, the advisory opinion shall be the final action of the cabinet.

Section 23. Notification of the Addition of a Health Service. (1) Health facilities that make additions to an existing health service for which there are review criteria in the State Health Plan but for which a certificate of need is not required, or add equipment for which there are review criteria in the State Health Plan but for which a certificate of need is not required, shall notify the cabinet that such a service or equipment has been added within ten (10) days of such addition.

(2) Notification of the Addition of a Health Service or Equipment

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(Form #10) shall be used in making such notification.

Section 24. Material Incorporated by Reference. (1) The following forms necessary for the administration of the Certificate of Need Program are hereby incorporated by reference:

- (a) Letter of Intent (Form #1);
- (b) Certificate of Need Application - Formal Review (Form #2A);
- (c) Certificate of Need Application for Ground Ambulance and Air Ambulance Service Providers (Form #2B);
- (d) Certificate of Need Application for Change of Location, Replacement, or Cost Escalation (Form #2C);
- (e) Witness List (Form #3);
- (f) Exhibit List (Form #4);
- (g) Notice of Appearance (Form #5);
- (h) Administrative Escalation (Form #6);
- (i) Six (6) Month Progress Report (Form #7);
- (j) Advisory Opinion Request (Form #8);
- (k) Acquisition of a Health Facility, Notice of Intent (Form #9); and
- (l) Notification of the Addition of a Health Service or Equipment (Form #10).

(2) These forms may be inspected and copied at the Cabinet for Health Services, 275 E. Main Street, Frankfort, Kentucky 40621, between the hours of 8 a.m. and 4:30 p.m., Monday through Friday.

JOHN GRAY, Executive Director

JOHN H. MORSE, Secretary

APPROVED BY AGENCY: July 18, 1997

FILED WITH LRC: July 21, 1997 at 3 p.m.

### REGULATORY IMPACT ANALYSIS

Agency Contact Person: John Gray, Executive Director

(1) Type and number of entities affected: All applicants for and holders of certificates of need.

(2) Direct and indirect cost or savings to those affected:

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comment received: No public comments were received on this issue.

(b) Cost of doing business in the geographical areas in which the administrative regulation will be implemented, to the extent available from the public comment received: No public comments were received on this issue.

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

1. First year following implementation: This administrative regulation maintains the compliance, reporting and paperwork requirements contained in 900 KAR 6:015E.

2. Second and subsequent years: Same

(3) Effects on the promulgating administrative body:

(a) Direct and indirect cost or savings:

1. First year: None

2. Continuing cost 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 anticipated effect on state or local revenues. The Certificate of Need Program is an established program that has been in existence for 25 years. This administrative regulation does not alter the fees already associated with the certificate of need process.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Funds have already been budgeted for the operation of the certificate of need process.

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

(a) Geographical area in which administrative regulation will be implemented: No public comments were received on this issue.

(b) Kentucky: No public comments were received on this issue.

(7) Assessment of alternative methods; reasons why alternatives were rejected: No alternative methods were considered. The Cabinet for Health Services is mandated by statute (KRS Chapter 216B) to promulgate administrative regulations setting forth certificate of need procedures.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: The certificate of need process was established by the Kentucky General Assembly to help contain health care costs in order that the citizens of the Commonwealth might enjoy cost-effective health care.

(b) State whether a detrimental effect on environment and public health would result if not implemented: A detrimental effect on environment and public health would result if this administrative regulation is not implemented.

(c) If detrimental effect would result, explain detrimental effect: If this administrative regulation is not implemented there will be no control over the proliferation of health facilities and health services in the Commonwealth.

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

(a) Necessity of proposed regulation if in conflict: 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:

(11) TIERING: Is tiering applied? No. This administrative regulation applies equally to all health services and health facilities in the Commonwealth.

### 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 administrative regulation will affect only those local governments that hold or apply for certificates of need.

3. State the aspect or service of local government to which this administrative regulation relates. This administrative regulation relates to health services and health facilities provided by local governments.

4. How does this administrative regulation affect the local government or any service it provides? This administrative regulation affects health services provided by local government by setting forth the requirements for obtaining and maintaining certificates of need.

### STATEMENT OF EMERGENCY

902 KAR 17:041E

This emergency administrative regulation incorporates by reference the 1997 update to the State Health Plan for facilities and services, which is used by the Cabinet for Health Services in its review of applications for certificates of need. Since meaningful review of certificate of need applications is dependent upon the State Health Plan containing updated health facility and health service inventories as well as updated need projections, it is necessary to promulgate this administrative regulation as an emergency service. An ordinary administrative regulation is not sufficient because an ordinary administrative regulation would not become effective until late 1997. The State Health Plan contains review criteria that relates to the quality of health facilities and health services. Failure to promulgate this administrative regulation as an emergency would mean that the cabinet's review of certificate of need applications

would be limited as to the necessary data and information relating to quality of service delivery and would thus pose a threat to the health and safety of the citizens of Kentucky. It is, therefore, necessary to promulgate this emergency administrative regulation in order to meet the statutory requirement of annually updating the State Health Plan, and the need to provide current information to be used in the review of applications for certificate of need. The submission of this administrative regulation constitutes approval of the 1997 update to the State Health Plan for facilities and services. This emergency administrative regulation shall be replaced by an ordinary administrative regulation. The Notice of Intent for the ordinary administrative regulation was filed with the Regulations Compiler on July 22, 1997.

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

**CABINET FOR HEALTH SERVICES**  
**Department for Health Services**

**902 KAR 17:041E. State Health Plan for facilities and services.**

RELATES TO: KRS 216B.010 to 216B.130  
STATUTORY AUTHORITY: KRS 216B.010, 216B.015, EO 96-862

EFFECTIVE: July 23, 1997

NECESSITY, FUNCTION, AND CONFORMITY: Executive Order 96-862, effective July 2, 1996, reorganizes the Cabinet for Human Resources, establishes and creates the Cabinet for Health Services, changes the name of the Department for Health Services to Department for Public Health and its programs under the Cabinet for Health Services. KRS 216B.015 requires the Cabinet for Health Services to oversee development and annual updating of the State Health Plan. The State Health Plan is a critical element of the certificate of need process for which the cabinet is given responsibility in KRS Chapter 216B.

Section 1. Updating of Inventories and Need Analysis. (1) The cabinet shall update the inventory of licensed or certificate of need approved health services and health facilities contained in the State Health Plan on a periodic basis to reflect any changes in inventory resulting from certificate of need or licensure actions related to health services or health facilities.

(2) The most current update shall be used in making certificate of need decisions.

(3) Notice of such updates shall be published in the cabinet's certificate of need newsletter.

Section 2. Incorporation by Reference. (1) The 1997 update to the 1996-1998 Kentucky State Health Plan is hereby incorporated by reference.

(2) This material may be inspected, copied, or obtained at the Cabinet for Health Services, 275 East Main Street, Frankfort, Kentucky 40601.

(3) This material shall be available for review during the normal business week, Monday through Friday, 8 a.m. to 4:30 p.m.

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

APPROVED BY AGENCY: July 23, 1997

FILED WITH LRC: July 23, 1997 at 3 p.m.

**REGULATORY IMPACT ANALYSIS**

Agency Contact Person: Charles Kendell, Branch Manager, Health Policy and Analysis Branch

(1) Type and number of entities affected: KRS 216B.015(18)

requires the Cabinet for Health Services to oversee the development and annual updating of the State Health Plan, a critical element of the certificate of need process.

(2) Direct and indirect costs or savings to those affected: None

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

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

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

1. First year following implementation: 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: 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: None

(8) Assessment of expected benefits: None

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

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

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

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

(a) Necessity of proposed regulation if in conflict:

(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 due to the number of facilities, the size of the facilities, and the generic operations of the facilities.

**STATEMENT OF EMERGENCY**  
**904 KAR 2:006E**

The administrative regulation 904 KAR 2:006E, Technical requirements for the Kentucky Transitional Assistance Program (K-TAP), implements the technical requirements for the Kentucky Transitional Assistance Program (K-TAP). This emergency administrative regulation is needed to comply with the mandated requirements pursuant to the approved Title IV-A state plan as required by 42 USC 601 et seq. The passage of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 has eliminated entitlement to the Aid to Families with Dependent Children (AFDC) program and has created the Temporary Assistance for Needy Families block grant program, called the Kentucky Transitional Assistance Program (K-TAP) in Kentucky. The Cabinet for Families and Children is required to include the mandatory provisions of 42 USC 601 et seq. in the Title

IV-A state plan. References to Aid to Families with Dependent Children (AFDC) have been changed to Kentucky Transitional Assistance Program (K-TAP). Job Opportunities and Basic Skills (JOBS) has been changed to Kentucky Works. The deadline imposed by the Department of Health and Human Services for the complete Title IV-A state plan for implementation of the mandated requirements of the cabinet's Title IV-A block grant program was October 18, 1996. Therefore, in order to meet this deadline by the U.S. Department of Health and Human Services, this emergency regulation must be placed in effect immediately in order to amend the requirements in 904 KAR 2:006. An ordinary administrative regulation would not allow sufficient time to meet the time frames. The emergency administrative regulation filed on April 30, 1997, was withdrawn and this substantially different emergency amendment to this administrative regulation promulgated. This emergency administrative regulation is substantially different from the withdrawn emergency administrative regulation because of the eligibility requirement of school attendance for a child sixteen (16) to eighteen (18) years old. This emergency administrative regulation will be replaced by an ordinary administrative regulation. The notice of intent for the ordinary administrative regulation is being filed concurrently with this emergency administrative regulation.

PAUL E. PATTON, Governor  
 VIOLA P. MILLER, Secretary

**CABINET FOR FAMILIES AND CHILDREN**  
**Department for Social Insurance**  
**Division of Management and Development**

**904 KAR 2:006E. Technical requirements for the Kentucky Transitional Assistance Program (K-TAP) [~~AFDC~~].**

RELATES TO: KRS 205.010, 205.200(2), (3), 45 CFR 205.10, 205.52, 232.11-12, 232.40-48, 233.10, 233.40, 233.50, 233.90, 233.100, "Expansion of Definition of Specified Caretaker Relative", Transmittal No. ACF-AT-91-33 (December 12, 1991), U.S. Department of Health and Human Services, Administration for Children & Families, Office of Family Assistance, "Determining AFDC Eligibility When the Only Dependent Child Receives Foster Care Benefits", Transmittal No. ACF-AT-94-5 (February 28, 1994), U.S. Department of Health and Human Services, Administration for Children and Families, Office of Family Assistance, 8 USC 1611-1645, 42 USC 601 et seq., 602, PL 104-208

STATUTORY AUTHORITY: KRS 194.050(1), 205.010, 205.200(2), (3), 42 USC 601 et seq., EO 96-862

EFFECTIVE: August 14, 1997

NECESSITY, FUNCTION, AND CONFORMITY: Executive Order 96-862, effective July 2, 1996, reorganized the Cabinet for Human Resources and placed the Department for Social Insurance and its programs under the Cabinet for Families and Children. The Cabinet for Families and Children [~~Human Resources~~] has the responsibility under the provisions of KRS Chapter 205 to administer the assistance program of Aid to Families with Dependent Children, now named the Kentucky Transitional Assistance Program, the block grant program funded under 42 USC 601 et seq. KRS 205.200(2) requires that the conditions of eligibility to receive money grants from Aid to Families with Dependent Children, now named the Kentucky Transitional Assistance Program, be prescribed by administrative regulations in conformity with 42 USC 602 and federal regulations. This administrative regulation sets forth the technical requirements of school attendance, residence, citizenship, deprivation, living with a relative, age, one (1) category of assistance, work registration, cooperation in child support enforcement activities, strikers, minor teenage parent provisions, time limits and potential entitlement for other programs for eligibility for benefits from the Kentucky Transitional Assistance Program [~~Aid to Families with Dependent Children~~].

Section 1. Definitions. (1) "Battered or subjected to extreme cruelty" means an individual who has been subjected to:

(a) Physical acts that resulted in, or threatened to result in, physical injury to the individual;

(b) Sexual abuse;

(c) Sexual activity involving a dependent child;

(d) Being forced as the caretaker relative of a dependent child to engage in nonconsensual sexual acts or activities;

(e) Threats of, or attempts at, physical or sexual abuse;

(f) Mental abuse; or

(g) Neglect or deprivation of medical care. [~~"Aid to Families with Dependent Children (AFDC)" means a money payment program for children who are deprived of parental support or care due to death, continued absence, physical or mental incapacity of a parent.~~

(2) "~~Aid to Families with Dependent Children Unemployed Parent (AFDC UP)~~" means AFDC benefits are paid when both parents are in the home and at least one (1) parent is unemployed.]

(2) [(3)] "Child" means an individual who:

(a) Prior to September 1, 1997, is:

1. Age seventeen (17) or under; or

2. Age [~~if~~] eighteen (18), and:

a. In regular full-time attendance in high school or equivalent level of vocational or technical school; and

b. Expected to complete a course of study;

(i) Before reaching age nineteen (19); or

(ii) During the month of the 19th birthday;

(b) On or after September 1, 1997, is:

1. Age fifteen (15) or under; or

2. Age sixteen (16), seventeen (17) or eighteen (18); and

a. In regular full-time attendance in high school or equivalent level of vocational or technical school; and

b. Expected to complete a course of study before reaching age nineteen (19) or during the month of the 19th birthday; or

3. Under age eighteen (18) and a high school graduate.

(3) "Domestic violence" means "battered or subjected to extreme cruelty" as defined in subsection (1) of this section.

(4) "Kentucky Transitional Assistance Program (K-TAP)", Kentucky's Temporary Assistance for Needy Families (TANF) program, means a money payment program for children who are deprived of parental support or care due to:

(a) Death, continued voluntary or involuntary absence of a parent;

(b) Physical or mental incapacity of one (1) parent when both parents are in the home; or

(c) Unemployment of at least one (1) parent when both parents are in the home.

(5) "Kentucky Works" means a program which assists recipients in obtaining gainful employment and self-support.

(6) "Minor teenage parent" means an individual who:

(a) Has not attained eighteen (18) years of age;

(b) Is not married or is married and not living with the spouse; and

(c) Has a minor child in the applicant's or recipient's care.

(7) "~~Deprivation~~" means ~~loss of parental support due to the unemployment, death, voluntary or involuntary absence, or incapacity of a child's natural or adoptive parent.~~

(5) "Job Opportunities and Basic Skills (JOBS)" means a program which assists recipients of AFDC in obtaining the necessary education and training that will lead to gainful employment and self-support.]

[(6)] "Parent" means the natural, adoptive, or adjudicated (including administrative establishment of paternity) parent of the child.

(8) [(7)] "Principal wage earner (PWE)" means the parent who earned the greater amount of income in the twenty-four (24) months immediately preceding the month of application for K-TAP [AFDC] benefits based on the deprivation of unemployment.

(9) [(8)] "Prior labor market attachment (PLMA)" means the parent has earned not less than fifty (50) dollars during each of six (6) or

more calendar quarters ending on March 31, June 30, September 30 or December 31, with any thirteen (13) calendar quarter period ending within one (1) year of the application, for K-TAP [AFDC] benefits based on the deprivation of unemployment.

(10) "Qualified alien" means an alien who, at the time the alien applies for, receives, or attempts to receive K-TAP, is:

(a) Lawfully admitted for permanent residence under 8 USC 1101 et seq.;

(b) Granted asylum under 8 USC 1158;

(c) A refugee who is admitted to the United States under 8 USC 1157;

(d) Paroled into the United States under 8 USC 1182(d)(5) for a period of at least one (1) year;

(e) An alien whose deportation is being withheld under 8 USC 1253(h);

(f) Granted conditional entry pursuant to 8 USC 1153(a)(7) as in effect prior to April 1, 1980; or

(g) Lawfully residing in any state and is:

1. A veteran as defined in 38 USC 101 with a discharge characterized as 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 paragraph (g)1 or 2 of this subsection;

(h) Battered or subjected to extreme cruelty in the United States by:

1. A spouse or a parent; or

2. A member of the spouse or parent's family residing in the same household as the alien and the spouse or parent consented to, or acquiesced in, the battery or cruelty; or

(i) A child of an alien who has been battered or subjected to extreme cruelty in the United States by:

1. A spouse or a parent of the alien without the active participation of the alien in the battery or cruelty; or

2. A member of the spouse or parent's family residing in the same household as the alien and the spouse or parent consented or acquiesced to the battery or cruelty.

(j) Provisions in paragraph (h) and (i) of this subsection shall apply only if:

1. The alien no longer resides in the household with the individual responsible for the battery or cruelty;

2. There is a substantial connection between the battery or cruelty and the need for the benefit; and

3. The alien has been approved or has a petition pending for:

a. Status as a spouse or child of a United States citizen pursuant to clause (ii), (iii), or (iv) of 8 USC 1154(a)(1)(A);

b. Classification pursuant to clause (ii) or (iii) of 8 USC 1154(a)(1)(B); or

c. Suspension of deportation and adjustment of status pursuant to 8 USC 1254(a)(3).

(11) "Second chance home" means an entity that provides a minor teenage parent a supportive and supervised living arrangement in which a minor teenage parent is required to learn parenting skills, including child development, family budgeting, health and nutrition, and other skills to promote long-term economic independence and the well-being of the child of the minor teenage parent.

(12) ~~(9)~~ "Striker" means an employed individual who is participating in:

(a) A work stoppage;

(b) A concerted slowdown of work; or

(c) An interruption of operations at his place of employment.

(13) ~~(40)~~ "Supplemental Security Income (SSI)" means monthly cash payments made under the authority of:

(a) 42 USC 1381 to 1385 to the aged, blind and persons with a disability;

(b) 42 USC 1382e; or

(c) 42 USC 1382.

(14) "Unemployed parent" (UP) case means K-TAP benefits paid to a family when both parents are in the home and at least one (1) parent is unemployed.

(15) "Work" means the following:

(a) Except for two (2) parent cases, for all families work means at least twenty (20) hours or more per week of:

1. Unsubsidized employment;

2. Subsidized employment;

3. Work experience;

4. Community services; or

5. Participation in work programs established by the cabinet.

(b) For two (2) parent cases work means at least thirty-five (35) hours or more per week of:

1. Unsubsidized employment;

2. Subsidized employment;

3. Work experience;

4. Community services; or

5. Participation in work programs established by the cabinet.

Section 2. Age and School Attendance. (1) The definition of a "child", as specified in Section 1 of this administrative regulation shall be met for at least one (1) person in the home.

(2) Verification of school attendance shall be required for:

(a) A child who is:

1. Prior to September 1, 1997, eighteen (18) years of age, in order to determine his continuing eligibility; or

2. On or after September 1, 1997, sixteen (16), seventeen (17) or eighteen (18) years of age, in order to determine his continuing eligibility; or

(b) A minor teenage parent pursuant to Section 18(1) of this administrative regulation. [A child who is sixteen (16) to eighteen (18) years of age and living in an active JOBS county, in order to determine his status as exempt or nonexempt for participation in the JOBS program, as specified in 904 KAR 2:370.]

(3) Full- and part-time school attendance is defined in 904 KAR 2:016E, Standards for need and amount for Kentucky Transitional Assistance Program (K-TAP). ~~[-AFDC-]~~

(4) Unless the parent states the child shall not reenter school, a child shall be considered in regular attendance in months in which he is not attending because of:

(a) Official school or training program vacation;

(b) Illness;

(c) Convalescence; or

(d) Family emergency.

(5) On or after September 1, 1997, verification of a high school diploma for a child under age eighteen (18) who is a high school graduate shall be required.

Section 3. Enumeration. (1) Each person included in the K-TAP [AFDC] case shall furnish his Social Security number or apply for a number if one has not been issued.

(2) Refusal to furnish the Social Security number or apply for a number shall result in the ineligibility of the person whose Social Security number is not furnished ~~[verified]~~.

(3) The agency shall assist an individual in making application for a Social Security number, if needed.

Section 4. Residence and Citizenship. (1) Residence. A resident shall be ~~[ie]~~ anyone who:

(a) Is living in the state voluntarily and not for a temporary purpose; or

(b) Entered the state with a job commitment or seeking employment; and

(c) Is not receiving assistance funded by a block grant program under 42 USC 601 et seq. [AFDC benefits] from another state.

(2) Citizenship.

(a) Except as provided in paragraphs (b) and (c) of this subsec-



tion, K-TAP [AFDC] shall be provided only to United States [- citizens.]

(b) A qualified alien, as defined in Section 1(10) of this administrative regulation, who entered the United States before August 22, 1996, who is otherwise eligible for K-TAP, shall be eligible for assistance.

(c) A qualified alien, as defined in Section 1(10) of this administrative regulation, who entered the United States on or after August 22, 1996, shall not be eligible for K-TAP for a period of five (5) years beginning on the date of the alien's entry into the United States. The following exceptions apply to this provision:

1. An alien who is admitted to the United States as a refugee under 8 USC 1157;

2. An alien who is granted asylum under 8 USC 1158;

3. An alien whose deportation is being withheld under 8 USC 1253(h); or

4. An alien who is lawfully residing in Kentucky and is:

a. A veteran as defined in 38 USC 101 with a discharge characterized as an honorable discharge and not on account of alienage;

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

c. The spouse or unmarried dependent child of an individual described in clause a or b of this subparagraph.

(d) [-

2. Aliens lawfully admitted for permanent residence; or

3. Aliens otherwise permanently residing in the United States under color of law.

(b) Failure of the parent or other adult, applying for or receiving benefits, to sign a citizenship or alien status declaration shall cause the needs of the parent or other adult to be removed from the case.

Section 5. Deprivation. (1) To be eligible for K-TAP [AFDC], a child shall be in need and shall be deprived of parental support or care [meet the definition of deprivation] as specified in Section 1(4) of this administrative regulation.

(2) A specific deprivation factor shall be verified for each child for whom assistance is approved.

Section 6. Deprivation Due to Death. The death of either parent shall qualify a child as deprived due to death.

Section 7. Deprivation Due to Absence. (1) To be considered deprived due to absence, a needy child shall be physically separated from the parent and:

(a) The nature of the absence of the parent interrupts or terminates the parent's functioning as a provider of maintenance, physical care, or guidance for the child; and

(b) The known or indefinite duration of absence precludes counting on the parent's performance of his function in planning for the present support or care of the child.

(2) Absence may be voluntary or involuntary.

(a) Voluntary absence includes:

1. Divorce;

2. Legal separation;

3. Marriage annulment;

4. Desertion:

a. Of thirty (30) days or more if:

(i) The parent voluntarily leaves; or

(ii) The parent refuses to accept the child into his home; or

b. Of less than thirty (30) days if:

(i) The child leaves the parent because the parent was requiring the child to live under circumstances hazardous to the health or morals of the child; or

(ii) One (1) of the parents in the home is required by the court to leave the home because that parent was requiring the child to live under circumstances hazardous to the health or morals of the child; or

(iii) The child is voluntarily placed with relatives following a finding by the Department for Social Services that the home is unsuitable; or

(iv) The child is placed by the court with a specified relative other than the parent; or

(v) The child is eligible and receiving benefits based on the unemployment or the incapacity of a parent and one (1) of the parents subsequently leaves the home; or

(vi) Both parents are absent from the home;

5. Forced separation of seven (7) days or more; or

6. Birth out-of-wedlock.

(b) Involuntary absence includes:

1. Commitment to a penal institution for thirty (30) days or more;

2. Long-term hospitalization;

3. Deportation; or

4. Single parent adoption.

(3) A parent who is a convicted offender but is permitted to live at home while serving a court-imposed sentence by performing unpaid public work or unpaid community service during the workday shall be [ie] considered absent from the home.

Section 8. Deprivation Due to Incapacity. (1) Each determination of a deprivation of incapacity shall be based on a full consideration and assessment of the following factors affecting the claimant:

(a) Medical;

(b) Social; and

(c) Economic.

(2) If a verified medical condition exists, then all relevant social and economic factors shall be considered to determine whether the parent's condition is the cause of and results in the parent's inability to support or care for the child.

(3) Incapacity exists in a case when the following criteria are met:

(a) It is medically determined that one (1) parent has a physical or mental disability, illness or impairment which was:

1. Present at the time of application; and

2. Which has continued or is expected to last for a period of at least thirty (30) calendar days.

(b) The thirty (30) day period may include a period in which the claimant is undergoing:

1. Planned diagnostic studies; or

2. Evaluation of rehabilitation potential; and

(c) It is determined by nonmedical evaluation that the disability, illness or impairment is debilitating to the extent of reducing substantially or eliminating the parent's ability to support or care for an otherwise eligible child.

(4) A determination regarding incapacity shall be made by:

(a) Field staff if the following criteria are met:

1. The parent declares physical inability to work;

2. The worker observes some physical or mental limitation; and

3. The parent:

a. Is receiving SSI; or

b. Is age sixty-five (65) or over; or

c. Has been determined to meet the definition of blindness as contained in 42 USC 1382c or 42 USC 416 by the Social Security Administration; or

d. Has been determined to meet the definition of permanent and total disability as contained in 42 USC 1382c or 42 USC 416 by either:

(i) The Social Security Administration; or

(ii) The medical review team of the Department for Social Insurance; or

e. Has previously been determined to be incapacitated or permanently and totally disabled by the medical review team, hearing officer, appeal board, or court of proper jurisdiction with no reexamination requested and there is no visible improvement in condition; or

f. Is receiving Retirement, Survivors and Disability Insurance, federal black lung benefits, or railroad retirement benefits based on disability as evidenced by an award letter; or



g. Is receiving Veterans Administration benefits based on 100 percent disability, as verified by an award letter; or

h. Is currently hospitalized and a statement from the attending physician indicates that incapacity will continue for at least thirty (30) days. If application was made prior to the admission, the physician is also requested to indicate if incapacity existed as of application date; or

i. Is recovering from surgery, illness or injury which requires a period of time for recovery, up to six (6) weeks, as specified by a physician statement. Periods longer than six (6) weeks shall be determined through the medical review team; or

j. Is on approved sick leave recovering from surgery, illness or injury for the duration of the approved sick leave if the employer is holding the job for the individual's return, as verified by the employer; or

k. Is a woman in a high risk pregnancy, during the duration of the pregnancy, as verified by physician statement.

(b) The medical review team, consisting of a licensed physician and a social worker employed by the agency, if a determination by field staff is precluded.

(5) Factors to be considered by the medical review team in making the medical determination shall include:

(a) The claimant's medical history and subjective complaints regarding an alleged physical or mental disability, illness or impairment; and

(b) Competent medical testimony relevant to:

1. Whether a physical or mental disability, illness or impairment exists;

2. Whether the disability, illness or impairment is sufficient to reduce the parent's ability to support or care for a child; and

3. Whether the disability, illness or impairment is likely to last thirty (30) days.

(6) Factors to be considered in making the nonmedical evaluation shall include:

(a) The claimant's:

1. Age;

2. Employment history;

3. Vocational training;

4. Educational background; and

5. Subjective complaints regarding the alleged effect of the physical or mental condition on the claimant's ability to support or care for the child; and

(b) The extent and accessibility of employment opportunities available in the claimant's area of residence.

(7) In determining the extent and accessibility of available employment opportunities, the limited employment opportunities of individuals with a disability shall be taken into account; and

(a) Available printed materials that provide information regarding available employment opportunities shall be researched;

(b) The local Department for Employment Service office shall be contacted regarding accessible employment opportunities within the claimant's area of residence; and

(c) The claimant shall be referred, if necessary, for further appraisal of his abilities.

(8) A written report shall be made of the determination under this subsection.

(9) Each claimant shall be provided timely and adequate notice of and an opportunity for a fair hearing as provided in 904 KAR 2:055E.

Section 9. Deprivation Due to Unemployment. (1) The determination that a child is deprived of parental support due to the unemployment of a parent when both parents are in the home shall be based on the determination that the principal wage earner meets the criteria of unemployment and has a PLMA.

(2) The determination of the PWE shall include the following:

(a) If the agency is unable to secure primary evidence of earnings

to determine which parent is the PWE, the agency shall designate the PWE using the best evidence available.

(b) ~~[b-]~~ If both parents earned identical amounts of income, or no income, the agency shall designate the parent meeting the criteria of unemployment, as specified in subsection (3) of this section.

(c) Earnings of each parent shall be considered in determining the PWE regardless of when their relationship began.

(d) The PWE designation shall remain with the same parent as long as assistance is received on the basis of the same application.

(3) Unemployment. A parent shall be considered to be unemployed if:

(a) Employed less than 100 hours in a calendar month; or

(b) Employment exceeds 100 hours in a particular month, but the work is intermittent and the excess is of a temporary nature. This would be evidenced by the fact that the parent:

1. Was under the 100 hour standard in the prior two (2) months; and

2. Is expected to be under the 100 hour standard in the following month.

(4) PLMA shall be established if the parent:

(a) Attests to an employment history meeting the definition in Section 1~~(9)~~ ~~[(5)]~~ of this administrative regulation;

(b) Within twelve (12) months prior to application, received unemployment compensation; or

(c) Is currently receiving unemployment compensation or is potentially eligible, has made application for and complies with the requirements to receive unemployment insurance benefits.

(5) In determining whether or not criteria in subsection (4) of this section is met, the following shall be taken into consideration:

(a) Participation in the Kentucky Works [JOBS] Program shall be considered as earning an income in determining PLMA.

(b) Full-time attendance, as defined by the school or institution, may be substituted for two (2) of the six (6) calendar quarters. Qualifying activities shall be:

1. An elementary;

2. Secondary; or

3. Vocational or technical training course designed to prepare the individual for gainful employment.

(c) Gross income from self-employment and farming qualify as earned income in determining PLMA. The self-employed individual does not have to realize a profit to meet this requirement.

(6) Restrictions. Unemployment shall not exist if the PWE:

(a) Is on strike;

(b) Is temporarily unemployed:

1. Due to weather conditions or lack of work;

2. If there is a job to return to; and

3. Return can be anticipated within thirty (30) days or at the end of a normal vacation period;

(c) Is unavailable for full-time employment;

(d) Is under contract for employment, unless a written statement from the employer verifies that the individual is subject to release from the contract if full-time employment is secured;

(e) Has not met the criteria of unemployment for at least thirty (30) days;

(f) Is not:

1. Registered for work under Section 14 of this administrative regulation; or

2. Subject to Kentucky Works [JOBS], as specified in 904 KAR 2:370E; or

(g) Has refused a bona fide offer of employment or training for employment without good cause in the thirty (30) days prior to [AFDC-]UP eligibility or during the course of receipt of [AFDC-] UP benefits. Good cause exists if criteria specified in 904 KAR 2:016E, Section 4(4)(a)1, 2, 3, or 4 are met.

Section 10. Living with a Specified Relative. To be eligible for K-TAP [AFDC] a needy child shall be living in the home of a relative as

follows:

- (1) A blood relative, including:
  - (a) Father;
  - (b) Mother;
  - (c) Grandfather;
  - (d) Grandmother;
  - (e) Brother;
  - (f) Sister;
  - (g) Uncle;
  - (h) Aunt;
  - (i) Nephew;
  - (j) Niece;
  - (k) First cousin; and
  - (l) First cousin once removed;
- (2) A relative of the half-blood;
- (3) Preceding generations denoted by prefixes of:
  - (a) Grand;
  - (b) Great;
  - (c) Great-great; or
  - (d) Great-great-great;
- (4) A stepfather, stepmother, stepbrother, stepsister;
- (5) Any person listed in subsections (1) through (4) of this section

if the alleged father has had paternity established through the administrative determination process as specified in Section 11 of this administrative regulation.

(6) An adoptive parent, the natural and other legally adopted child and other relative of the adoptive parent.

(7) The husband or wife of any person listed in subsections (1) through (6) of this section, even if the marriage may have terminated, providing termination occurred after the birth of the child.

(a) For K-TAP [AFDC] eligibility purposes, a couple that has been considered married by a state with common-law marriage provisions shall be considered married.

(b) The statement of the applicant or recipient that he resides in a state which recognizes common-law marriage shall be accepted as verification by the agency.

(8) Cash assistance shall not be provided for a child who is absent, or expected to be absent, from the home for a period of thirty (30) consecutive days unless good cause exists. Good cause for absence, or expected absence, of the child from the home for a period of thirty (30) consecutive days, shall exist if the parent continues to exercise care and control of the child and the child is absent due to: [If the specified relative continues to exercise control over the child, a child is considered as living in the home even when temporarily absent for:]

- (a) Medical care;
- (b) Attendance at school including boarding school;
- (c) College or vocational school;
- (d) Emergency foster care, as verified by the Department for Social Services; or

(e) If it is intended that the child will return to the home and the parent or specified relative maintains parental control of the child, short visits with friends or relatives.

(9) A child shall be removed from the benefit group the first administratively feasible month following thirty (30) days from the date the child is placed in emergency foster care. If the only eligible child in the benefit group is absent due to emergency foster care, the otherwise eligible parent or parents in the benefit group shall:

- (a) Remain eligible for sixty (60) days from the date the child is placed in emergency foster care; and
- (b) If no other eligible child is in the benefit group, be discontinued the first administratively feasible month following sixty (60) days from the date the child is placed in emergency foster care.

(10) If a specified relative fails to notify the agency of a thirty (30) consecutive day or more absence of the child for a reason other than one (1) of the good cause reasons listed in subsection (8) of this section, the specified relative shall not be eligible for his share of K-

TAP benefits during the period of the child's unreported absence of thirty (30) consecutive days or more. Ineligible benefits received by the specified relative and child during the period of the child's unreported absence of thirty (30) consecutive days or more shall be recouped pursuant to Section 10 of 904 KAR 2:016E.

Section 11. Administrative Establishment of Paternity. (1) An administrative determination of paternity as set forth in this administrative regulation shall be used only to establish relationship for K-TAP eligibility and shall be [is] limited to situations in which the following types of evidence are present:

- (a) A birth certificate listing the alleged parent; or
- (b) Legal documents such as:
  1. Hospital records;
  2. Juvenile court records;
  3. Wills; and
  4. Other court records which clearly indicate the relationship of the alleged parent or relative; or
- (c) Receipt of statutory benefits as a result of the alleged parent's circumstances; or
- (d) A sworn statement or affidavit of either parent acknowledging paternity plus one (1) of the following:
  1. School records;
  2. Bible records;
  3. Immigration records;
  4. Naturalization records;
  5. Church documents, such as baptismal certificates;
  6. Passport;
  7. Military records;
  8. U.S. Census records; or
  9. Notarized [Sworn] statement or affidavit from an individual

having specific knowledge about the relationship between the alleged parent and child.

(2) Rebuttal of administrative paternity may occur if:

(a) The parent or, in the absence of the parent, the caretaker relative alleges the evidence present in subsection (1)(a) or (b) of this section is erroneous and provides substantiation of the erroneous information; and

(b) The parent or caretaker relative provides a notarized [sworn] statement or affidavit acknowledging the erroneous information and containing the correct information on the actual alleged parent.

(3) Presence of the notarized [sworn] statement or affidavit specified in subsection (2)(b) of this section shall [with] serve as rebuttal to the evidence present in subsection (1)(a) or (b) of this section and a determination of paternity shall [with] not be acknowledged.

Section 12. One (1) Category of Assistance. (1) A child or adult relative shall not be eligible for K-TAP [AFDC] if receiving SSI.

(2) If a child who receive SSI meets the K-TAP [AFDC] requirements of age, deprivation and living in the home of a specified relative, the specified relative may be approved for K-TAP [AFDC] if all other eligibility factors are met.

(3) If a child who receives foster care benefits meets the K-TAP [AFDC] requirements of age, deprivation and living in the home of a specified relative, the specified relative may be approved for K-TAP [AFDC] if all other eligibility factors are met.

Section 13. Strikers. (1) A family shall be ineligible for benefits for any month in which the parent, with whom the child is living is, on the last day of the month, participating in a strike; and

(2) A specified relative other than the parent shall be ineligible for benefits for any month if, on the last day of the month, the relative is participating in a strike.

Section 14. Work Registration. (1) An adult applicant or recipient of the K-TAP benefit group [in a case based on the deprivation of

~~unemployment, the PWE and the second parent~~ shall register for work except for a member who is:

- (a) Under age eighteen (18);
  - (b) Age sixty (60) or over;
  - (c) Age eighteen (18) or nineteen (19) years old in full-time school attendance as set forth in Section 1(11) of 904 KAR 2:016E;
  - (d) Receiving benefits based on 100 percent disability;
  - (e) An individual who has received benefits based on 100 percent disability within the past twelve (12) months but lost the benefits due to income or resources and not an improvement in the disability; or
  - (f) Employed thirty (30) hours or more per week at minimum wage or more (with the Department for Employment Services if:
    - ~~(a) He resides in a non-JOBS county; or~~
    - ~~(b) He resides in a JOBS county and is exempt from participation as specified in 904 KAR 2:370].~~
- (2) Failure of an adult member in the assistance group ~~(the PWE or the second parent)~~ to register for work shall result in:
- (a) For an applicant, denial of the application for the benefit group; or
  - (b) For a recipient, pro rata reduction of the grant ~~(removal of the needs of the individual who fails to register).~~

Section 15. Kentucky Works. ~~[JOBS Training Program]~~ The technical requirements for participation in the Kentucky Works ~~[JOBS]~~ Program are specified in 904 KAR 2:370E.

Section 16. Cooperation in Child Support Enforcement Activities.

(1) The Department for Social Insurance shall attempt to secure parental support, and if necessary establish paternity, for children receiving K-TAP ~~[AFDC]~~ based on the following voluntary absence deprivation factors:

- (a) Divorce;
- (b) Desertion;
- (c) Birth out-of-wedlock;
- (d) Legal separation;
- (e) Forced separation; or
- (f) Marriage annulment.

(2) With the exception of good cause reasons, specified in subsection (4) of this section, avoidance of the twenty-five (25) percent reduction of the amount of the payment maximum in K-TAP benefits pursuant to subsection (7) of this section shall be ~~(inclusion of a specified relative in the AFDC budget is)~~ dependent upon the applicant's or recipient's ~~(his)~~ cooperation in child support activities. This includes ~~(but is not limited to):~~

- (a) Identifying the noncustodial ~~(absent)~~ parent or obligor;
  - (b) Providing information to assist in the location of the noncustodial ~~(absent)~~ parent or obligor;
  - (c) Establishing paternity; and
  - (d) Forwarding child support payments received to the agency.
- (3) The Cabinet for Families and Children ~~(Human Resources)~~ shall provide written notice to the applicant or recipient that he may claim good cause for refusing to cooperate.

(4) The applicant or recipient shall be determined to have "good cause" for failing to cooperate only when one (1) or more of the following criteria is met:

- (a) The applicant or recipient's cooperation is reasonably anticipated to result in physical or emotional harm of a serious nature to the child; or
- (b) The applicant or recipient's cooperation is reasonably anticipated to result in physical or emotional harm of a serious nature to himself to such an extent that it would reduce his capacity to care for the child adequately; or
- (c) The child was conceived as a result of incest or forcible rape and the department believes it would be detrimental to the child to require the applicant's or recipient's cooperation; or
- (d) Legal proceedings for adoption of the child by a specific family are pending before a court of competent jurisdiction and the depart-

ment believes it would be detrimental to the child to require the applicant's or recipient's cooperation; or

(e) The applicant or recipient is being assisted by a public or licensed private social service agency:

- 1. To resolve whether to keep the child or release him for adoption; and
- 2. Discussion has not gone on for more than three (3) months; and
- 3. The cabinet believes it would be detrimental to the child to require the applicant's or recipient's cooperation.

(5) Unless an extension is granted, the applicant or recipient shall have twenty (20) days from the date the good cause claim is filed to provide evidence to substantiate the claim.

(a) Evidence upon which a determination of good cause shall be made includes ~~(but is not limited to):~~ the following:

- 1. Birth certificates, medical, or law enforcement records indicating that the child was conceived as a result of incest or forcible rape;
- 2. Court documents or other records indicating legal proceedings for adoption of the child by a specific family are pending before a court of competent jurisdiction;
- 3. Records (court, medical, criminal, child protective services, social services, psychological or law enforcement) indicating the noncustodial parent or obligor, ~~(absent)~~ or the alleged parent might inflict physical or emotional harm on the child or caretaker relative;

4. A written statement from a public or licensed private social service agency that assistance is being given to the applicant or recipient to resolve the issue of whether to keep the child or relinquish the child for adoption and the issue has not been pending more than three (3) months; or ~~(and)~~

5. Notarized statements from individuals, other than the applicant or recipient, with knowledge of the circumstances which provide the basis for the "good cause" claim.

(b) In each good cause determination based upon anticipation of serious emotional harm to the child or caretaker relative, the following shall be considered:

- 1. The present emotional state of the individual subject to emotional harm;
- 2. The emotional health history of the individual;
- 3. The extent and probable duration of the individual's emotional impairment; and
- 4. The extent of involvement required by the individual in establishing paternity or enforcing support obligations.

(c) When the good cause claim is based on the anticipation of physical harm to the child or caretaker relative, and corroborative evidence is not submitted:

- 1. The agency shall conduct an investigation if it is believed that:
  - a. Corroborative evidence is not available; and
  - b. The claim is credible without corroborative evidence.
- 2. If the agency conducts an investigation of a good cause claim, it shall not contact the noncustodial parent or obligor, ~~(absent)~~ or the alleged parent regarding support unless the contact is necessary to establish the good cause claim.

3. If it is necessary for the agency to make the contact, the worker shall notify the applicant or recipient of the proposed contact to either:

- a. Obtain permission for the contact; or
- b. To enable the applicant or recipient to:
  - (i) Present additional evidence or information so that such contact is unnecessary;
  - (ii) Withdraw the application for assistance or request discontinuance of K-TAP ~~(AFDC)~~; or
  - (iii) Have the good cause claim denied.

(6) After receipt of evidence to substantiate the good cause claim or conducting an investigation, the agency shall:

- (a) Document the case;
- (b) Determine that:

1. Good cause exists and support activities cannot be initiated without endangering:

- a. The best interests of the child; or
- b. The physical or emotional health of the child or the relative; or

2. ~~Good cause exists and support activities can be initiated without endangering the physical or emotional health of the child or the relative; or~~

3. Good cause does not exist.

(c) Advise the applicant or recipient ~~[specified relative]~~ in writing of the result of the good cause claim determination; and

(d) Identify each case in which good cause is established, but may be subject to change, for subsequent review.

(7) If the specified relative refuses to cooperate without good cause criteria being claimed, or claimed but not deemed to be met by the agency:

(a) K-TAP benefits shall be reduced by twenty-five (25) percent of the amount of the maximum payment for the appropriate family size pursuant to Section 8 of 904 KAR 2:016E; ~~(The relative shall be ineligible for benefits;)~~ and

(b) The agency shall attempt to obtain a protective payee to administer the K-TAP [AFDC] payment on behalf of the child.

(8) If, after the reduction of the K-TAP payment ~~[exclusion from the grant]~~ for failure to cooperate, the specified relative states he will cooperate, the agency shall:

(a) Remove the twenty-five (25) percent reduction in benefits effective the first administratively feasible month if the individual states he will cooperate and verification of cooperation is provided timely; ~~(Add the specified relative to the case effective with the date the individual states he will cooperate;)~~

(b) Remove the protective payee from the case; and

(c) Not authorize back payments for the period of time for which the individual did not cooperate.

Section 17. Potential Entitlement for Other Programs. (1) An applicant or recipient shall apply for and comply with the requirements to receive any benefit if potential entitlement exists.

(2) Except for the PWE in an [AFDC]-UP case, failure to apply for another benefit or comply with its requirements shall result in ineligibility for K-TAP [AFDC].

(3) If a PWE or second parent in an [AFDC]-UP case fails to apply for unemployment insurance benefits or comply with its requirements, the PWE or second parent shall have his needs removed from the case.

(4) If an applicant or recipient voluntarily reduces the amount of benefits received from another source, other than for the purpose of reimbursing the source for a previous overpayment, this action shall result in ineligibility.

Section 18. Minor Teenage Parents. (1) A minor teenage parent shall participate in educational activities directed toward the attainment of a high school diploma, or its equivalent, or a cabinet-approved alternate education or training program if the minor teenage parent:

(a) Has a minor child at least twelve (12) weeks of age in his care; and

(b) Has not completed a high school education (or its equivalent).

(2) Except as provided in subsection (4) of this section, a minor teenage parent and his minor child shall reside in:

(a) A place of residence maintained by:

1. A parent;

2. A legal guardian;

3. An adult relative as described in Section 10 of this administrative regulation; or

(b) An appropriate adult supervised supportive living arrangement, that includes a second chance home or maternity home, taking into consideration the needs and concerns of the minor teenage parent.

(3) The cabinet shall provide or assist the minor teenage parent

in locating a second chance home, maternity home, or other appropriate adult supervised supportive living arrangement if:

(a) The minor teenage parent does not have:

1. A parent, legal guardian or appropriate adult relative as described in Section 10 of this administrative regulation who is living or whose whereabouts are known; or

2. A living parent, legal guardian, or other appropriate adult relative as described in Section 10 of this administrative regulation who otherwise meets applicable state criteria to act as the legal guardian of the minor teenage parent, who would allow the minor teenage parent to live in the home of the parent, guardian, or relative as described in Section 10 of this administrative regulation; or

(b) The cabinet determines:

1. The minor teenage parent or the minor child of the teenage parent is being or has been subjected to serious physical or emotional harm, sexual abuse, or exploitation in the residence of the minor teenage parent's own parent or legal guardian; or

2. Substantial evidence exists of an act or failure to act that presents an imminent or serious harm if the minor teenage parent and the minor child lived in the same residence with the minor teenage parent's own parent or legal guardian.

(4) The requirement in subsection (2) of this section shall be waived if:

(a) The cabinet determines living in the place of residence maintained by the parent, legal guardian, or adult relative as described in Section 10 of this administrative regulation is not in the best interest of the minor child taking into consideration the needs and concerns of the minor child; or

(b) The cabinet determines the minor teenage parent's current living arrangement is appropriate.

(5) If circumstances change and the current arrangement ceases to be appropriate based on the needs and concerns of the minor teenage parent, the cabinet shall assist the minor teenage parent in finding an alternate appropriate arrangement.

(6) The minor teenage parent shall complete a "Teen Parent Personal Responsibility Plan", form KW-202TP.

(7) If the minor teenage parent is determined to be ineligible for K-TAP as a result of not complying with provisions found in Section 18 of this administrative regulation, payments to a protective payee shall continue for the eligible child of the minor teenage parent.

(8) Even if exemption criteria is met and the cabinet determines the minor teenage parent's current living arrangement is appropriate, a minor teenage parent and his child, who do not reside in a place of residence maintained by a parent, legal guardian, other adult relative as described in Section 10 of this administrative regulation, second chance home or maternity home, shall be considered an adult regarding benefit time limitations pursuant to Section 19 of this administrative regulation.

Section 19. Benefit Time Limits. (1) K-TAP shall not be provided to a benefit group, as defined by Section 1 of 904 KAR 2:016E, that includes an adult, or minor teenage parent pursuant to Section 18(8) of this administrative regulation, who has received assistance for sixty (60) months from a program funded under 42 USC 601 et seq., whether or not consecutive.

(2) A month or months of assistance received by an otherwise eligible benefit group shall not be counted toward the sixty (60) months lifetime limit:

(a) If the benefit group contains an adult who is battered or subjected to extreme cruelty pursuant to Section 23 of this administrative regulation; or

(b) During a month or months the benefit group is not issued a K-TAP check in accordance with 904 KAR 2:050E.

(3) After assistance has been received for sixty (60) months, an otherwise eligible benefit group containing one (1) of the following individuals shall be allowed an extension of the sixty (60) months time limit, during the period the individual:

- (a) Is battered or subjected to extreme cruelty;
- (b) Has a physical or mental disability prohibiting work as determined by the cabinet;
- (c) Is required to provide constant care of a household member who is a parent, spouse or child with a disability and no alternative care arrangement is available; or
- (d) Is a grandparent caring for an eligible child who would otherwise be placed in foster care.
- (4) If otherwise eligible, a benefit group containing a member who has lost a job within thirty (30) days of reaching the sixty (60) month time limit shall receive a three (3) month extension of the time limitation.
- (5) Each month of participation in the wage supplementation component of Kentucky Works, pursuant to Section 2 of 904 KAR 2:370E, shall count toward the sixty (60) month lifetime limit.
- (6) Within twenty-four (24) months of receiving K-TAP assistance, whether or not consecutive, a parent or caretaker relative receiving assistance, shall work or participate in approved work activities as defined in Section 1(15) of this administrative regulation.
- (7) Time limitations shall apply to a sanctioned or penalized individual as defined in 904 KAR 2:016E, Section 1.

Section 20. Receiving Assistance in Two (2) or More States. K-TAP assistance shall be denied for ten (10) years to a person who has:

- (1) Been convicted in federal or state court of having made a fraudulent statement or representation committed after August 22, 1996, with respect to the place of residence of the individual in order to receive assistance simultaneously from two (2) or more states:
  - (a) Under a program funded under:
    - 1. 42 USC 601 et seq.;
    - 2. 42 USC 1396; or
    - 3. 7 USC 2011 et seq.; or
  - (b) For benefits received under supplemental security income.
- (2) The requirement in subsection (1) of this section shall not apply to a conviction for any months beginning after the granting of a pardon by the President of the United States with respect to the conduct which was the subject of the conviction.

Section 21. Fugitive Felons. (1) K-TAP assistance shall not be provided to:

- (a) An individual fleeing to avoid prosecution, or custody or confinement after conviction, for a crime, or an attempt to commit a crime, committed or attempted to be committed after August 22, 1996, which is a felony; or
- (b) Violating a condition of probation or parole imposed under federal or state law.
- (2) Subsection (1) of this section shall not apply with respect to conduct of an individual for any month beginning after the President of the United States grants a pardon with respect to the conduct.

Section 22. Denial of Assistance for Drug Felons. (1) An individual convicted under federal or state law of an offense committed after August 22, 1996, classified as a felony by the law of the jurisdiction involved and which has as an element the possession, use or distribution of a controlled substance as defined in 21 USC 802(6), shall not be eligible for K-TAP benefits.

(2) Each individual applying for K-TAP benefits shall be required to state in writing whether the individual or any member of the household has been convicted of a crime described in subsection (1) of this section.

Section 23. Domestic Violence. (1)(a) A K-TAP applicant or recipient shall be screened for a history of domestic violence.

(b) If the applicant or recipient is identified as a victim of domestic violence or with a history of domestic violence and at risk of further domestic violence as determined by the cabinet, the individual shall

be referred to counseling and supportive services.

(2) If compliance with the following K-TAP requirements would make it more difficult for an individual receiving K-TAP to escape domestic violence or unfairly penalize the individual who is or has been victimized by domestic violence, or an individual who is at risk of further domestic violence, as determined by the cabinet, the individual shall not be required to meet:

- (a) Residency requirements pursuant to Section 4 of this administrative regulation;
- (b) Child support cooperation requirements pursuant to Section 16 of this administrative regulation;
- (c) Time limitations, for so long as necessary and otherwise eligible, pursuant to Section 19 of this administrative regulation; or
- (d) Work requirements pursuant to Section 19 of this administrative regulation.

Section 24. Immunizations. (1) Except as provided under KRS 214.036, a recipient of K-TAP shall maintain current immunizations for an under school age child, pursuant to the Cabinet for Health Services, Department for Public Health Immunization Schedule in 902 KAR 2:060.

(2) The parent or caretaker relative shall be sanctioned, as defined in 904 KAR 2:016E, Section 1(24), for failure to maintain current immunizations.

Section 25. Material Incorporated by Reference. (1) Forms necessary to establish technical eligibility requirements for the K-TAP [AFDC] Program, with the exception of Kentucky Works [JOBS] participation, are being incorporated effective August 14, 1997 [December 1, 1993]. These forms include:

- (a) PA-1C Supplement D, revised 5/97 [3/92];
- (b) PA-14, revised 2/97 [11/91];
- (c) PA-33D, revised 2/97 [11/92];
- (d) PA-121, revised 2/97 [8/87];
- (e) PA-219, revised 4/97; [PA-125, revised 6/83;
- (f) PA-125 Supplement A, revised 6/83;
- (g) PA-125 Supplement B, revised 12/82;
- (h) PA-125.1, revised 5/90;
- (i) [(h)] PA-511, revised 10/92;
- (j) [(h)] PAFS-252, issued 5/97;
- (k) [(h)] KA-125, revised 12/96 [7/92];
- (l) [(h)] KA-125, Supplement A, revised 12/96 [11/93];
- (m) [(h)] KA-125, Supplement B, revised 12/96 [7/92];
- (n) [(h)] KA-125, Supplement C, revised 12/96 [7/92];
- (o) KW-202TP, issued 2/97;
- (p) [(h)] CS-333, revised 5/97; [10/91]; and
- (q) [(h)] CS-333.1, revised 5/97 [9/86].

(2) Material incorporated by reference may be inspected and copied at the Department for Social Insurance, 275 East Main Street, Frankfort, Kentucky 40621. Office hours are 8 a.m. to 4:30 p.m.

JOHN L. CLAYTON, Commissioner

VIOLA P. MILLER, Secretary

APPROVED BY AGENCY: July 18, 1997

FILED WITH LRC: August 14, 1997 at 11 a.m.

#### REGULATORY IMPACT ANALYSIS

Agency Contact Person: Marty Mason, Director

(1) Type and number of entities affected: The affected entities are families who apply for or receive benefits under the Temporary Assistance for Needy Families (TANF) block grant program called Kentucky Transitional Assistance Program (K-TAP), the program which replaces the Aid to Families with Dependent Children program (AFDC). As of May 1997, approximately 63,467 families in Kentucky (monthly average) receive K-TAP.

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

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comment received: To be determined after the publication of the notice of intent.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comment received: To be determined after the publication of the notice of intent.

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

1. First year following implementation: The individuals who are applicants or recipients of AFDC, now K-TAP, who are minor teenage parents will have additional compliance, reporting or paperwork requirements due to the completion of a Personal Responsibility Plan. This form, KW-202TP, will be completed by the minor teenage parent. This form assists the minor teenage parent in outlining future goals to be achieved by the minor teenage parent and her child. Individuals required to complete the form will be interviewed during the next case recertification and will not be required to make a special trip to the office to complete the form; therefore, the individual will not be fiscally impacted by the completion of this form. Verification of school attendance and living arrangements for minor teenage parents will also be required. These 2 eligibility requirements are mandated by 42 USC 601 et seq. The individual will be assisted by the caseworker in obtaining any required verification for these two eligibility requirements. The other change involves adults having to work register. Adults will be required to register for work. The applicant or recipient will not be required to make a special trip to the local office. Individuals required to complete the form will be interviewed during the next case recertification and will not be required to make a special trip to the office, but will be able to comply with these requirements during application or recertification interviews. Therefore, the adult will not be fiscally impacted by the registering for work.

2. Second and subsequent years: Same

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: The breakdown of costs and savings to the agency for the first year are listed below:

II. Time limits - a 5 year limit and a 2 year limit for work: No immediate cost impact-budget neutral.

III. Minor teenage parent and domestic violence provisions effective 2/1/97, is no cost impact to the Department for Social Insurance for the first year (SFY 97). There may be discontinued cases due to the minor teenage parent requirement of living in an adult supervised setting; however, the cost savings in benefits to the agency would be negligible. The second chance home provides a minor teen parent with support which would be budget neutral to the agency. Minor teenage parents who are determined by the cabinet to be allowed to waive requirements of adult supervised setting would be budget neutral to the agency for benefit costs for the first year (SFY 97).

IV. Qualified alien provisions are budget neutral to the agency effective 2/1/97.

V. Grant reduction of 25 percent of grant maximum due to noncooperation of child support activities effective March 1, 1997, is budget neutral to the agency.

VI. K-TAP form revisions, printing and system form revisions effective February 1, 1997, is \$10,200 costs to the agency for the first year (SFY 97).

VII. Ineligibility of 16 to 18 year olds not in school effective 9/1/97 is \$2,000,000 savings to the agency for the first year (SFY 98).

VIII. Adding good cause for absence of a child for 60 days due to emergency foster effective 8/1/97 is \$14,000 cost to the agency for the first year (SFY 98).

IX. Continuing costs or savings: The breakdown of costs and savings to the agency for the second year are as listed below: X

Time limits - a 5 year limit and a 2 year limit for work: No immediate cost impact-budget neutral.

XI. Minor teenage parent and domestic violence provisions - For the second (SFY 98) and subsequent year, it is estimated that the total cost of staff time to the Department for Social Services (DSS) to provide the services to carry out the minor teenage parent and domestic violence provisions is between \$198,100 and \$296,900. There may be discontinued cases due to the minor teenage parent requirement of living in an adult supervised setting; however, the cost savings in benefits to the agency (DSI) would be negligible. The second chance home provides a minor teen parent with support which would be budget neutral to the agency (DSI). Minor teenage parents who are determined by the cabinet to be allowed to waive requirements of adult supervised setting would be budget neutral to the agency (DSI) for benefit costs for the second year (SFY 98).

XII. Qualified alien provisions are budget neutral to the agency.

XIII. Grant reduction of 25 percent of grant maximum due to noncooperation of child support activities is budget neutral to the agency.

XIV. K-TAP form revisions, printing and system form revisions is no cost to the agency for the second year (SFY 98).

XV. Ineligibility of 16 to 18 year olds not in school is \$2,400,000 savings to the agency for the second (SFY 99) year.

XVI. Adding good cause for absence of a child for 60 days due to emergency foster effective is \$14,000 cost to the agency for the second year (SFY 99).

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 funds and state 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 determined after the publication of the notice of intent.

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

(7) Assessment of alternative methods; reasons why alternatives were rejected: Alternative methods were not considered since the state is responsible under federal requirements to implement the requirements for the program funded under 42 USC 601 et seq.

(8) Assessment of expected benefits:

(a) Identify effects on public welfare and environmental welfare of the geographical area in which implemented and on Kentucky: This administrative regulation is needed to comply with the mandated requirements found in 42 USC 601 et seq., and to implement the Kentucky Transitional Assistance Program (K-TAP) that replaces the Aid to Families with Dependent Children program.

(b) State whether a harmful effect on environment and public health would result if not implemented: A detrimental effect on public welfare would result if this amendment is not implemented.

(c) If detrimental effect would result, explain detrimental effect: Public assistance benefits received by needy Kentuckians may be jeopardized if Kentucky does not meet the mandates delineated in our Title IV-A state plan as required by the Personal Responsibility and Work Opportunity Reconciliation Act of 1996. If public assistance benefits received by needy Kentuckians are jeopardized, these individuals would lose a source of support for their family including assistance for supportive services such as transportation and child care which enables the parent to remain employed.

(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



## ADMINISTRATIVE REGISTER - 528

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

(10) Any additional information or comments: The emergency administrative regulation filed on April 30, 1997, was withdrawn and this substantially different emergency amendment to this administrative regulation promulgated. This emergency administrative regulation is substantially different from the withdrawn emergency administrative regulation because of the change in the definition of a child to require school attendance for a child 16 to 18 years old. Also, if the only child in the benefit group is absent due to emergency foster care, provisions are added to allow continuation of assistance for 60 days for the parent.

(11) TIERING: Is tiering applied? No (Explain why tiering was or was not used) Tiering was not applied since application of policy is applied in a like manner for all individuals as set forth through federal requirements.

### FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 42 USC 601 et seq.
2. State compliance standards. KRS 205.200
3. Minimum or uniform standards contained in the federal mandate. None
4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate. No
5. Justification for the imposition of the stricter standards, or additional or different responsibilities or requirements. None

### STATEMENT OF EMERGENCY 904 KAR 2:016E

The administrative regulation 904 KAR 2:016E, Standards for need and amount for the Kentucky Transitional Assistance Program (K-TAP), implements the financial requirements for the Kentucky Transitional Assistance Program (K-TAP). This emergency administrative regulation is needed to comply with the mandated requirements pursuant to the approved Title IV-A state plan as required by 42 USC 601 et seq. The passage of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 has eliminated entitlement to the Aid to Families with Dependent Children (AFDC) program and has created the Temporary Assistance for Needy Families block grant program, called the Kentucky Transitional Assistance Program (K-TAP) in Kentucky. The Cabinet for Families and Children is required to include the mandatory provisions of 42 USC 601 et seq. in the Title IV-A state plan. References to Aid to Families with Dependent Children (AFDC) have been changed to Kentucky Transitional Assistance Program (K-TAP). Job Opportunities and Basic Skills (JOBS) has been changed to Kentucky Works to conform with 904 KAR 2:370E. The deadline imposed by the Department of Health and Human Services for the complete Title IV-A state plan for implementation of the mandated requirements of the cabinet's Title IV-A block grant program was October 18, 1996. Therefore, in order to meet this deadline by the U.S. Department of Health and Human Services, this emergency administrative regulation must be placed in effect immediately in order to amend the requirements in 904 KAR 2:016. An ordinary administrative regulation would not allow sufficient time to meet the time frames. The emergency administrative regulation filed on April 30, 1997, was withdrawn and this substantially different emergency amendment to this administrative regulation promulgated. This emergency administrative regulation is substantially different from the withdrawn emergency administrative regulation because of income and resource changes of the family which contains a wage supplementation participant in Kentucky Works will be disregarded for the first six (6) months of participation in the wage supplementation

component. Also, earnings of a child under eighteen (18) who is a high school graduate will be disregarded. This emergency administrative regulation will be replaced by an ordinary administrative regulation. The Notice of Intent for the ordinary administrative regulation is being filed concurrently with this emergency administrative regulation.

PAUL E. PATTON, Governor  
VIOLA P. MILLER, Secretary

### CABINET FOR FAMILIES AND CHILDREN Department for Social Insurance Division of Management and Development

### 904 KAR 2:016E. Standards for need and amount for the Kentucky Transitional Assistance Program (K-TAP). [~~AFDC~~]

RELATES TO: KRS [47-044,] 205.200(2), 205.210(1), 205.211, 42 CFR 435.831, 45 CFR 233, 233.20(a)(13), 25 USC 1408, 42 USC 602[~~(a)(8)(A)(viii), 602(a)(13), 602(a)(39), PL 103-66 §13736, 13742~~], "Treatment of Retroactive SSI and Child Support Collected During the SSI Retroactive Period", Transmittal No. ACF-AT-93-20 (November 2, 1993), U.S. Department of Health and Human Services, Administration for Children and Families, Office of Family Assistance, Transmittal No. ACF-AT-94-17 (August 3, 1994), U.S. Department of Health and Human Services, Administration for Children and Families, Office of Family Assistance

STATUTORY AUTHORITY: KRS 194.050(1), 205.200(2), 42 USC 601 et seq., EO 96-862

EFFECTIVE: August 14, 1997

NECESSITY, FUNCTION, AND CONFORMITY: Executive Order 96-862, effective July 2, 1996, reorganized the Cabinet for Human Resources and placed the Department for Social Insurance and its programs under the Cabinet for Families and Children. The Cabinet for Families and Children is required to administer the public assistance programs. KRS 205.200(2) and 205.210(1) require that the secretary establish the standards of need and amount of assistance for the Aid to Families with Dependent Children Program, now named the Kentucky Transitional Assistance Program (K-TAP), the block grant program funded by 42 USC 601 et seq. This administrative regulation sets forth the standards of [by which] the need for and the amount of a Kentucky Transitional Assistance Program payment including Relocation Assistance Program and Family Alternatives Diversion [an aid to families with dependent children assistance payment is established].

Section 1. Definitions. (1) [~~Aid to families with dependent children (AFDC) means a money payment program for children who are deprived of parental support or care due to death, continued absence, physical or mental incapacity or unemployment of a parent.~~

(2) "Benefit group" means a group composed of one (1) or more children and may include as specified relative any person specified in 904 KAR 2:006E, Section 10 [3].

(a) The benefit group shall include:

1. The dependent child;

2. The child's [eligible] parent living in the home with the needy child who is:

a. Eligible for K-TAP; or

b. Ineligible for K-TAP due to benefit time limitations pursuant to 904 KAR 2:006E, Section 19; and

3. All eligible siblings living in the home with the needy child.

(b) If the benefits to the household would be greater by excluding an otherwise eligible child related by subsidized adoption to the other members, this child shall not be included in the benefit group.

(c) If the dependent child's parent is a minor living in the home with his eligible parent, the minor's parent shall also be included in the benefit group if the minor's parent applied for assistance.

(d) The incapacitated or unemployed natural or adoptive parent



of the child who is living in the home shall be included as second parent if the technical eligibility factors are met.

(2) ~~[(3)]~~ "Beyond the control" means:

(a) Loss or theft of the money;

(b) The individual to whom the lump sum was designated no longer lives in the household, making the lump sum income inaccessible; or

(c) Expenditure of the lump sum income to meet extraordinary expenses, that are not included in the K-TAP [AFDC] Standard of Need.

(3) ~~[(4)]~~ "Burial space" means a space and certain related services used for the remains of a deceased person. This includes:

(a) A grave site;

(b) Costs to open and close the grave;

(c) A crypt;

(d) A mausoleum space;

(e) A casket;

(f) A vault;

(g) An urn; and

(h) A headstone.

(4) ~~[(5)]~~ "Change in circumstances" means a change in income and or dependent care expenses which affects the ongoing K-TAP [AFDC] payment. This shall include:

(a) Beginning or ending employment;

(b) Change in employers or obtaining additional employment;

(c) Increase or decrease in the number of work hours;

(d) Increase or decrease in the rate of pay;

(e) Increase or decrease in the dependent care expense due to a change in provider, number of hours of care, number of individuals for whom care is given, or amount charged; or

(f) Change in farm cropping arrangements or type of self-employment activities.

(5) ~~[(6)]~~ "Claimant" means the individual responsible for an overpayment.

(6) ~~[(7)]~~ "Countable income" means income which remains after excluded income and appropriate deductions are removed from gross income.

(7) ~~[(8)]~~ "Deduction" means an amount subtracted from gross income to determine countable income.

(8) ~~[(9)]~~ "Excluded income" means income that is received but not counted in the gross income test.

(9) "Family Alternatives Diversion (FAD) Program" means the Kentucky Transitional Assistance Program benefit paid to a FAD eligible family to meet a short-term need.

(10) "Full-time employment" means employment of thirty (30) hours per week or 130 hours per month or more.

(11) "Full-time school attendance" means a workload of at least:

(a) The number of hours required by the individual program for participation in an adult basic education program, a general educational development program or a literacy program; or

(b) Twelve (12) semester hours or more in a college or university; or six (6) semester hours or more during the summer term; or the equivalent in a college or university if other than a semester system is used; or

(c) The number of hours required by the individual high school or [a] vocational school to fulfill their definition of full time.

(12) "Gross income limitation standard" means 185 percent of ~~the sum of~~ the assistance standard, as set forth in Section 8 of this administrative regulation.

(13) ~~["Job opportunities and basic skills (JOBS)" means a program which assists recipients of AFDC in obtaining the necessary education and training that will lead to gainful employment and self-support.~~

(14) "Job Training Partnership Act Program (JTPA)" means a program that prepares youth and unskilled adults for entry into the labor force. Only those individuals who are certified as eligible for the program can benefit from JTPA funds.

(14) "Kentucky Transitional Assistance Program (K-TAP)", Kentucky's Temporary Assistance for Needy Families (TANF) Program, means a money payment program for children who are deprived of parental support or care due to:

(a) Death, continued voluntary or involuntary absence of a parent;

(b) Physical or mental incapacity of one (1) parent when both parents are in the home; or

(c) Unemployment of at least one (1) parent when both parents are in the home.

(15) "Kentucky Works" means a program which assists recipients of K-TAP in obtaining gainful employment and becoming self-sufficient.

(16) ~~[(15)]~~ "Lump sum income" means income that does not occur on a regular basis, and does not represent accumulated monthly income received in a single sum.

(17) ~~[(16)]~~ "Minor" means any person who is under the age of eighteen (18) or under the age of nineteen (19) in accordance with 904 KAR 2:006E, Section 1 [45 CFR 233.90(b)(3)]. EXCEPTION: For the purpose of deeming income, a minor parent is a parent ~~considered any person~~ under the age of eighteen (18).

(18) ~~[(17)]~~ "Part-time employment" means employment of less than thirty (30) hours per week or 130 hours per month or not employed throughout the entire month.

(19) ~~[(18)]~~ "Part-time school attendance" means a workload of anything less than "full-time school attendance."

(20) "Penalized individual" means a person who is required to be included in the benefit group but fails to fulfill an eligibility requirement which causes a pro rata reduction in benefits of the benefit group. If otherwise eligible, a penalized individual remains a member of the benefit group.

(21) ~~[(19)]~~ "Prospective budgeting" means computing the amount of assistance based on income and circumstances which will exist in the month(s) for which payment is made.

(22) ~~[(20)]~~ "Recoupment" means recovery of overpayments of assistance payments.

(23) "Relocation Assistance Program (RAP)" means the K-TAP benefit for a RAP eligible K-TAP recipient to meet moving related expenses when a specific job opportunity exists for the K-TAP recipient requiring the recipient to relocate in order to access the employment.

(24) ~~[(21)]~~ "Sanctioned individual" means any person who is required to be included in the benefit group but who is excluded from the benefit group due to failure to fulfill an eligibility requirement.

(25) ~~[(22)]~~ "Self-employment income" means income from a business enterprise from which no taxes are withheld prior to receipt of the income by the individual.

(26) ~~[(23)]~~ "Supplemental security income (SSI)" means monthly cash payments made under the authority of:

(a) 42 USC 1381 to 1385 to the aged, blind and disabled;

(b) 42 USC 1382e; or

(c) 42 USC 1382.

(27) ~~[(24)]~~ "Unavailable" means that the income is not accessible to the K-TAP [AFDC] benefit group for use toward basic food, clothing, shelter, and utilities.

(28) ~~[(25)]~~ "Work expense standard deduction" means a deduction from earned income intended to cover mandatory pay check deductions, union dues, tools and transportation.

Section 2. Resource Limitations. (1) Real and personal property shall be considered if:

(a) Available to the benefit group; and

(b) Owned in whole or in part by:

1. An applicant or recipient;

2. A sanctioned or penalized individual; or

3. The parent of a dependent child, even if the parent is not an applicant or recipient, if the dependent child is living in the home of the parent.

(2) The amount that can be reserved by each benefit group shall not be in excess of \$2,000 ~~[\$1,000]~~ equity value excluding those items specifically listed in subsection (3) of this section:

(3) Excluded resources. The following resources shall be excluded from consideration:

- (a) One (1) owner-occupied home;
- (b) ~~Equity value up to \$1,500 for~~ One (1) motor vehicle;
- (c) Basic household items essential for day-to-day living, including:
  - 1. Furniture;
  - 2. Appliances; and
  - 3. Clothing.
- (d) Gift or inheritance not legally available until a later date;
- (e) Nonessential item with a value of less than fifty (50) dollars;
- (f) All resources of a recipient of SSI or the state supplementation program living in the home;
- (g) Equity value of all equipment, livestock or other inventory used in a farming or self-employment enterprise;
- (h) Crops and animals raised for home consumption.
- (i) Real property which the benefit group is making a good faith effort to sell, for a period of nine (9) months or less. If excluded:
  - 1. The benefit group shall agree to repay K-TAP ~~[AFDC]~~ benefits received beginning with the first month of the exemption.
  - 2. Any amount of K-TAP ~~[AFDC]~~ paid during that period that would not have been paid if the disposal of property had occurred at the beginning of the period is considered an overpayment.
  - 3. The amount of the repayment shall not exceed the net proceeds of the sale.
  - 4. If the property has not been sold within the nine (9) months, or if eligibility stops for any other reason, the entire amount of assistance paid during the nine (9) month period shall be treated as an overpayment;
- (j) Children's toys and bicycles;
- (k) Household pets;
- (l) Resources of a child excluded from the K-TAP ~~[AFDC]~~ grant;
- (m) Resources of an individual not receiving assistance but living in the home including:
  - 1. The stepparent;
  - 2. Parent or legal guardian of a minor parent;
  - 3. The spouse of a nonresponsible specified relative; or
  - 4. The spouse of a minor dependent child;
- (n) Amount of the K-TAP ~~[AFDC]~~ grant;
- (o) Proceeds (sale price less indebtedness) from the sale of a home, including initial or down payment from land contract sale, for six (6) months if client plans to invest in another home.
- (p) Funds in an individual retirement account, retirement or deferred compensation account during the period of unavailability;
- (q) Excluded income, as specified in Section 4 of this administrative regulation;
- (r) Principal and accrued interest of an irrevocable trust during periods of unavailability;
- (s) One (1) burial space per K-TAP ~~[AFDC]~~ family member;
- (t) \$1,500 of the value of prepaid burial funds and cash surrender value of burial insurance policies per family member;
- (u) Principal of a verified loan;
- (v) Up to \$12,000 to Aleutians and \$20,000 to individuals of Japanese ancestry for payment made by the United States Government to compensate for hardship experienced during World War II;
- (w) Payment made from the Agent Orange Settlement Fund issued by Aetna Life and Casualty to veterans or their survivors;
- (x) Earned income tax credit payments in the month of receipt and the following month;
- (y) Any payment received from the Radiation Exposure Compensation Trust Fund; ~~and~~
- (z) A nonrecurring lump sum SSI retroactive payment that is made to a K-TAP ~~[an AFDC]~~ recipient who is not ongoing eligible for SSI, in the month paid and the next following month; and

(aa) Up to a total of \$5,000 in individual development accounts, excluding interest accruing, pursuant to subsection (7) of this section.

(4) Disposition of resources.

(a) An applicant or recipient shall not have transferred or otherwise divested himself of property without fair compensation in order to qualify for assistance.

(b) The household's application shall be denied, or assistance discontinued if:

- 1. It is determined by the cabinet that the transfer was made expressly for the purpose of qualifying for assistance; and
- 2. The uncompensated equity value of the transferred property, when added to total resources, exceeds the resource limit.
- (c) The time period of ineligibility shall be based on the resulting amount of excess resources and begins with the month of transfer.
- (d) If the amount of excess transferred resources does not exceed \$500, the period of ineligibility shall be one (1) month; the period of ineligibility shall be increased one (1) month for every \$500 increment up to a maximum of twenty-four (24) months.
- (5) Lifetime care agreement.

(a) The existence of a valid agreement between the applicant or recipient and another individual or organization in which the applicant or recipient has surrendered his resources in exchange for lifetime care shall make the case ineligible.

(b) The agreement shall be considered invalid if the individual or organization with whom the agreement was made provides a written statement that the resources have been exhausted.

(6) Resources held jointly by more than one (1) person.

(a) Bank accounts requiring one (1) signature for withdrawals.

1. Unless the other owner is a recipient of SSI, the total balance of the account is considered available to the K-TAP ~~[AFDC]~~ applicant or recipient.

2. If the other owner receives SSI, the balance is divided evenly by the number of owners and only the K-TAP ~~[AFDC]~~ applicant or recipient's share is considered available.

(b) For bank accounts which require more than one (1) signature for withdrawals, determine the K-TAP ~~[AFDC]~~ applicant or recipient's share by obtaining a written statement from the other owners as to the division.

(c) If there is no predetermined allocation of shares from a business enterprise, determine applicant or recipient's available share by dividing the value of the business enterprise by the number of owners.

(d) If resources are held jointly other than those listed in paragraphs (a) through (c) of this subsection, the applicant or recipient's share is determined by dividing the value of the resource by the number of owners.

(e) Rebuttal of ownership may be accomplished if the applicant or recipient asserts he does not contribute to or benefit from a jointly held resource and he provides:

1. A written statement regarding ownership, who deposits and withdraws; and

2. A written statement from each of the other owners which corroborates the applicant's or recipient's statement, unless the account holder is a minor or is incompetent; and

3. Verification that the applicant's or recipient's name has been removed from the resource.

(7)(a) To be considered an exempt resource, the individual development account shall have been established on or after May 1, 1997, funded through periodic contributions by a member of the benefit group using funds derived from earned income which was earned after May 1, 1997, for a qualified purpose;

(b) A qualified purpose to establish an individual development account shall be for:

1. Postsecondary educational expenses which shall include:

a. Tuition and fees required for the enrollment or attendance of a student at an eligible educational institution; and

b. Fees, books, supplies and equipment required for courses of

instruction at an eligible educational institution;

c. An eligible educational institution shall be:

(i) An institution described in 20 USC 1088(a)(1) or 1141(a); or

(ii) An area vocational education school as defined by 20 USC 2471(4)(C) or (D);

2. First home purchase which includes:

a. Costs of acquiring, constructing, or reconstructing a residence; and

b. Usual or reasonable settlement, financing, or other closing costs;

3. Business capitalization expenditures for a business that does not contravene any law or public policy, as determined by the cabinet, pursuant to a qualified plan. A qualified plan shall:

a. Include capital, plant, equipment, working capital, and inventory expenses;

b. Be approved by a financial institution; and

c. Include a description of services or goods to be sold, a marketing plan, and projected financial statements. Assistance of an experienced entrepreneurial advisor may be required; or

4. Other purpose allowed by federal regulations or clarifications.

(c) Funds held in an individual development account shall not be withdrawn except for one (1) or more of the qualified purposes listed in paragraph (b) of this subsection;

(d) To be considered an exempt resource, an individual development account shall be matched by funds from:

1. A nonprofit organization described in 26 USC 501(c)(3) and exempt from taxation under 26 USC 501(a); or

2. Funding permitting, a state or local government agency acting in cooperation with an organization described in subparagraph 1 of this paragraph.

Section 3. Income Limitations. In determining eligibility for K-TAP [AFDC] the following shall apply:

(1) Gross income test.

(a) The total gross non-K-TAP [AFDC] income shall not exceed the gross income limitation standard. This income includes:

1. Income of the benefit group;

2. Income of a parent who does not receive SSI or state supplementation;

3. Income of a sanctioned or penalized individual;

4. An amount deemed available from the parent of a minor parent living in the home with the benefit group;

5. An amount deemed available from a stepparent living in the home;

6. An amount deemed available from the spouse of a minor dependent child living in the home; and

7. An amount deemed available from an alien's sponsor and sponsor's spouse if living with the sponsor.

(b) Excluded income types specified in Section 4(1) of this administrative regulation shall apply.

(c) If total gross income exceeds the gross income limitation standard, the benefit group is ineligible.

(2) Applicant eligibility test.

(a) An applicant eligibility test shall be applied if:

1. The gross income is below the gross income limitation standard; and

2. The benefit group has not received assistance during the four (4) months prior to the month of application; or

3. The benefit group has a member added to the case and that member:

a. Has earned income; and

b. Has not received assistance during the four (4) months prior to being added to the case.

(b) The total gross income after application of excluded income and deduction policy set forth in Section 4(1) and (2) of this administrative regulation shall be compared to the [assistance] standard of need set forth in Section 8 of this administrative regulation.

(c) If income exceeds this standard, the benefit group is ineligible.

(d) For a benefit group which meets the gross income test but has received assistance any time during the four (4) months prior to the application month, the applicant eligibility test shall not apply.

(3) Benefit calculation.

(a) If the benefit group meets the criteria set forth in subsections (1) and (2) of this section, benefits shall be determined by subtracting excluded income and applicable deductions in Section 4(1), (2), and (3) of this administrative regulation.

(b) If the benefit group's income, after subtracting excluded income and applicable deductions, exceeds the [benefit] standard of need for the appropriate benefit group size as set forth in Section 8 of this administrative regulation, the benefit group is ineligible.

(c) Amount of assistance shall be determined prospectively.

(4) Ineligibility period.

(a) A period of ineligibility shall be established for a benefit group whose income in the month of application or during any month for which assistance is paid exceeds the limits as set forth in subsections (2) or (3) of this section due to receipt of lump sum income.

(b) The ineligibility period shall be:

1. The number of months which equals the quotient of the division of total countable income by the standard of need as set forth in Section 8 of this administrative regulation for the appropriate benefit group size; and

2. Effective with the month of receipt of the nonrecurring lump sum amount.

(c) The ineligibility period shall be recalculated if any of the following circumstances occur:

1. The standard of need set forth in Section 8 of this administrative regulation increases and the amount of grant the benefit group would have received also changes;

2. Income, which caused the calculation of the ineligibility period, has become unavailable for reasons that were beyond the control of the benefit group;

3. The benefit group incurs and pays necessary medical expenses not reimbursable by a third party;

4. An individual, who is required to be a member of the benefit group, joins the K-TAP [AFDC] household during an established ineligibility period; or

5. The benefit group reapplies during an established ineligibility period and the agency determines that policy has changed to exclude the criteria originally used to establish the ineligibility period.

Section 4. Excluded Income and Deductions [Income]. All gross non-K-TAP [AFDC] income received or anticipated to be received by the benefit group, sanctioned or penalized individual, natural parent, spouse of a dependent child and parent of a minor parent living in the home with the benefit group and stepparent living in the home, shall be considered with the application of excluded income and deduction policy as set forth in the following subsections:

(1) Gross income test. Incomes listed in this subsection shall be excluded:

(a) Deductions applicable to stepparent income, income of the spouse of a minor dependent child, or income of the parent of a minor parent in the home with the benefit group, as set forth in Section 6 of this administrative regulation;

(b) Deductions applicable to alien sponsor's income, as set forth in Section 7 of this administrative regulation;

(c) Deductions applicable to self-employment income;

(d) [Earnings received by a dependent child from participation in programs under the program for a period not to exceed six (6) months within a given calendar year;

(e) ~~Unearned income received by a dependent child from participation in a JTPA program;~~

(f) The difference between the standard of need and the payment maximum for the benefit group, as specified in Section 8 of this administrative regulation, for households in which a member receives

a JTPA stipend;

(e) ~~[(g)]~~ Value of United States Department of Agriculture program benefits including:

1. Donated foods;
2. Supplemental food assistance received under 42 USC 1771;
3. Special food service program for children under 42 USC 1775;
4. Nutrition program for the elderly under 42 USC 3001; and
5. The monthly food stamp allotment;

(f) ~~[(h)]~~ Reimbursement for transportation in performance of employment duties, if identifiable;

(g) ~~[(i)]~~ The value of Kentucky Works [JOBS] supportive services payments ~~[and self-initiated supportive services payments]~~ authorized under 904 KAR 2:017E;

(h) ~~[(j)]~~ Nonemergency medical transportation payments;

(i) ~~[(k)]~~ Payments from complementary programs if no duplication exists between the other assistance and the assistance provided by the K-TAP [AFDC] program;

(j) ~~[(l)]~~ Educational grants, loans, scholarships, including:

1. Payments obtained and used under conditions that preclude their use for current living costs; and
2. All education grants and loans to any undergraduate made or insured under any program administered by:

- a. The United States Commissioner of Education; or
- b. The Bureau of Indian Affairs.

(k) ~~[(m)]~~ Highway relocation assistance;

(l) ~~[(n)]~~ Urban renewal assistance;

(m) ~~[(o)]~~ Federal disaster assistance and state disaster grants;

(n) ~~[(p)]~~ Home produce utilized for household consumption;

(o) ~~[(q)]~~ Housing subsidies received from federal, state or local governments;

(p) ~~[(r)]~~ Receipts distributed to members of certain Indian tribes by the federal government under 25 USC 459, 1261 and 1401;

(q) ~~[(s)]~~ Funds distributed per capita to or held in trust for members of any Indian tribe by the federal government under 25 USC 459, 1261 and 1401;

(r) ~~[(t)]~~ Payments for supporting services or reimbursement of out-of-pocket expenses made to individual volunteers serving under programs authorized by 42 USC 5001 and 42 USC 5011, including:

1. Foster grandparents;
2. Senior health aides;
3. Senior companions;
4. Service Corps of Retired Executives; and
5. Active Corps of Executives;

(s) ~~[(u)]~~ Payments to "Volunteers in Service to America" (VISTA) participants under 42 USC 1451 if less than the minimum wage under state or federal law, whichever is greater;

(t) ~~[(v)]~~ Payments from the Cabinet for Families and Children, Department for Social Services, for child foster care, or adult foster care;

(u) ~~[(w)]~~ Payments made under the Low Income Home Energy Assistance Program under 42 USC 8621, and other energy assistance payments which are made to an energy provider or provided in-kind;

(v) ~~[(x)]~~ The first fifty (50) dollars of child support payments collected in a month which represents the current month's support obligation ~~[and is returned to the assistance group];~~

(w) ~~[(y)]~~ For a period not to exceed six (6) months within a given year, Earnings of a dependent child attending ~~[in full-time]~~ school ~~[attendance];~~

(x) Earnings of a dependent child under eighteen (18) who is a high school graduate;

(y) ~~[(z)]~~ Nonrecurring gifts of thirty (30) dollars or less received per calendar quarter for each individual included in the assistance group;

(z) ~~[(aa)]~~ The principal of a verified loan;

(aa) ~~[(bb)]~~ Up to \$12,000 to Aleuts and \$20,000 to individuals of Japanese ancestry for payments made by the United States Govern-

ment to compensate for hardships experienced during World War II;

(bb) ~~[(ee)]~~ Income of an individual receiving SSI;

(cc) ~~[(dd)]~~ The essential person's portion of the SSI check;

(dd) ~~[(ee)]~~ Income of an individual receiving mandatory or optional state supplementary payments;

(ee) ~~[(ff)]~~ The advance payment or refund of earned income tax credit;

(ff) ~~[(gg)]~~ Payments made directly to a third party on behalf of the applicant or recipient by a nonresponsible person;

(gg) ~~[(hh)]~~ Child support received in a month for which the K-TAP [AFDC] payment is suspended;

(hh) ~~[(ii)]~~ In-kind income;

(ii) ~~[(jj)]~~ Income of a technically ineligible child;

(jj) ~~[(kk)]~~ Payments made from the Agent Orange Settlement Fund;

(kk) K-TAP ~~[(ll)]~~ [AFDC] back payments;

(ll) ~~[(mm)]~~ Income of legal guardian of a minor parent, unless the guardian meets the degree of relationship as specified in 904 KAR 2:006E, Section 10;

(mm) ~~[(nn)]~~ Payments made from the Radiation Exposure Compensation Trust Fund;

(nn) ~~[(oo)]~~ Up to \$2,000 per year of income received by individual Indians denied from leases or other uses of individually-owned trust or restricted lands; and

(oo) ~~[(pp)]~~ Payments made to individuals because of their status as victims of Nazi persecution.

(2) Applicant eligibility test. Excluded income in subsection (1) of this section and any applicable deduction listed in this subsection shall be applied:

(a) ~~[Earnings received from participation in the Job Corps Program under JTPA by an AFDC child;~~

(b) ~~Earnings of a dependent child in full-time school attendance for a period not to exceed six (6) months within a given year;~~

(c) ~~Standard work expense deduction of ninety (90) dollars for full-time and part-time employment; and~~

(d) ~~On or after November 1, 1995, if the caregiver is not the parent, legal guardian or a member of the benefit group, the dependent care disregard shall:~~

1. Be allowed as a work expense for:

a. An able bodied child age thirteen (13) or over and not under court supervision;

b. An incapacitated adult living in the home and receiving K-TAP [AFDC];

c. A sanctioned individual whose earned income is considered available to the K-TAP [AFDC] household;

d. At the option of the recipient, a K-TAP ~~[An AFDC]~~ case which would otherwise be ineligible for K-TAP [AFDC] without the benefit of the disregard for child care; or

e. The month of application for K-TAP [AFDC] benefits; and

2. Shall not exceed:

a. \$175 per month per individual for full-time employment; or

b. \$150 per month per individual for part-time employment; or

c. \$200 per month per individual for child under age two (2).

(3) Benefit calculation. After eligibility is established, exclude or deduct all incomes listed in subsections (1) and (2) of this section as well as deductions listed in this subsection:

(a) Child support payments assigned and actually forwarded or paid to the department; and

(b) First thirty (30) dollars and one-third (1/3) of the remainder of earned income not already deducted for each member of the benefit group.

1. The one-third (1/3) portion of this deduction shall not be applied to an individual after the fourth consecutive month it has been applied to his earned income.

2. The thirty (30) dollar portion of this deduction shall be applied concurrently with the one-third (1/3) deduction and for an additional eight (8) consecutive months following the expiration of the concurrent

period.

3. These deductions shall not be available to the individual until he has not been a recipient for twelve (12) consecutive months; and

(c) One (1) time only disregard per employed adult member of the benefit group, the amount of the first two (2) full calendar months earnings for employment which began on or after May 1, 1997.

1. The two (2) months earnings disregard shall be consecutive and shall not be cumulative.

2. If otherwise eligible, a sanctioned or penalized member of the benefit group may receive the two (2) months earnings disregard. [Earnings of a child in full time school attendance or earnings of a child in part time school attendance, if not working full time.]

(4) Exceptions. Deductions from earnings in subsections (2)(a) ~~(e)~~ and (b) ~~(f)~~ and (3)(b) of this section shall not apply for any month in which the individual:

(a) Reduces, terminates, or refuses to accept employment within the period of thirty (30) days preceding such month, unless good cause exists as follows:

1. The individual is unable to engage in the employment or training for mental or physical reasons; or

2. The individual has no way to get to and from the work site or the site is so far removed from the home that commuting time would exceed three (3) hours per day; or

3. Working conditions at a prospective job or training site would be a risk to the individual's health or safety; or

4. A bona fide offer of employment at a minimum wage customary for this work in the community was not made; or

5. The child care arrangement is terminated through no fault of the applicant or recipient; or

6. The available child care does not meet the needs of the child, for example, a ~~disabled~~ child with a disability; or

7. The parent is temporarily absent from work on approved educational leave; or

8. ~~[The JOBS participant leaves employment in an attempt to improve skills, become self-sufficient and leave the AFDC rolls; or~~

9. ~~The individual is needed in the home to care for another ill or incapacitated household member and no other household member is available to provide needed care.~~

(b) Requests assistance be terminated for the primary purpose of evading the four (4) month limitation on the deduction in subsection (3)(b) of this section;

(c) Fails to report an increase in earnings, which impacts eligibility, within ten (10) days of the change, unless good cause exists as follows:

1. The benefit group has been directly affected by a natural disaster;

2. An immediate family member living in the home was institutionalized or died during the ten (10) day report period; or

3. The responsible relative in the case, and if different, the member employed, is out of town for the entire ten (10) day report period.

(5) Changes in income and resources of the benefit group that contains a member who is participating in the wage supplementation component of Kentucky Works shall be disregarded for the first six (6) months of wage supplementation component participation.

Section 5. Direct Child Care Payments. With the exception of those circumstances outlined in Section 4(2)(b) ~~(e)~~ of this administrative regulation, on or after November 1, 1995, child care expenses incurred as a result of employment shall:

(1) Be made directly to the provider, in an amount equal to the actual cost, up to a payment maximum based on local market rates in administrative regulation 904 KAR 2:017E; and

(2) Be authorized upon the receipt of appropriate verification of the cost of care.

(3) After October 1, 1997, child care payments shall be paid according to 905 KAR 2:150E.

Section 6. Income and Resources of an Individual Not Included in the Benefit Group. (1) The income provisions of this section shall apply to the following individuals, living in the home but not included in the benefit group, as described in subsection (2) of this section:

(a) A stepparent;

(b) The spouse of a minor dependent child;

(c) The spouse of a specified relative other than a parent;

(d) A parent barred from receiving assistance due to failure to meet alien status; or

(e) A parent of a minor parent.

(2) Income. The gross income of the individual is considered available to the benefit group, subject to the following deductions:

(a) The first ninety (90) dollars of the gross earned income;

(b) An amount equal to the K-TAP [AFDC assistance] standard of need for the appropriate family size, as set forth in Section 8 of this administrative regulation, for:

1. The support of the individual; and

2. Any other person living in the home if:

a. His needs are not taken into consideration in the K-TAP [AFDC] eligibility determination; and

b. He is or may be claimed as a dependent for purposes of determining his federal personal income tax liability by the individual.

(c) Any amount actually paid to a person not living in the home who is or may be claimed by him as a dependent for purposes of determining his personal income tax liability by the individual;

(d) Payments for alimony or child support to a person not living in the home by the individual;

(e) Income of an SSI recipient who is listed in subsection (1) of this section; or

(f) A retroactive SSI payment, which is counted in determining eligibility and the amount of payment to the K-TAP [AFDC] unit in the month received, in any subsequent month.

(3) Sanction exception. The income of any sanctioned individual is not eligible for the deductions listed in this section.

(4) ~~[Resources.]~~ Resources which belong solely to the stepparent, spouse of a minor dependent child, spouse of a specified relative other than a parent or parent of a minor parent are not considered in determining eligibility of the parent, minor dependent child, or specified relative other than a parent or the benefit group.

Section 7. Alien Income and Resources. (1) For the purposes of this section the alien's sponsor and sponsor's spouse (if living with the sponsor) shall be referred to as sponsor.

(2) The gross non-K-TAP [AFDC] income and resources of an alien's sponsor shall be deemed available to the alien, subject to deductions set forth in this section, for a period of three (3) years following entry into the United States.

(3) If an individual is sponsoring two (2) or more aliens, the income and resources shall be prorated among the sponsored aliens.

(4) A sponsored alien is ineligible for any month in which adequate information on the sponsor or sponsor's spouse is not provided.

(5) If an alien is sponsored by an agency or organization, which has executed an affidavit of support, that alien is ineligible for benefits for a period of three (3) years from date of entry into the United States, unless it is determined that the sponsoring agency or organization:

(a) Is no longer in existence; or

(b) Does not have the financial ability to meet the alien's needs.

(6) The provisions of this subsection shall not apply to those aliens identified in subsection (5) of this section.

(a) Income. The gross income of the sponsor is considered available to the benefit group subject to the following deductions:

1. Twenty (20) percent of the total monthly gross earned income, not to exceed \$175;

2. An amount equal to the K-TAP [AFDC assistance] standard of need for the appropriate family size as set forth in Section 8 of this

administrative regulation of:

- a. The sponsor; and
  - b. Other persons living in the household:
    - (i) Who are or may be claimed by the sponsor as dependents in determining his federal personal income tax liability; and
    - (ii) Whose needs are not considered in making a determination of eligibility for K-TAP [AFDC];
  3. Amounts paid by the sponsor to nonhousehold members who are or may be claimed as dependents in determining his federal personal tax liability;
  4. Actual payments of alimony or child support paid to nonhousehold members; and
  5. Income of a sponsor receiving SSI or K-TAP [AFDC].
- (b) Resources. Resources deemed available to the alien shall be the total amount of the resources of the sponsor and sponsor's spouse determined as if he were a K-TAP [an AFDC] applicant in this state, less \$1,500.

Section 8. Payment Maximum. (1) The K-TAP [AFDC] payment maximum includes amounts for food, clothing, shelter, and utilities.

(2)(a) Countable income, as determined by the provisions of Section 9 of this administrative regulation, is subtracted in determining eligibility for and the amount of the K-TAP [AFDC] assistance payment, as follows:

Effective December 1, 1995		
Number of Eligible Persons	Payment Maximum	Standard of Need
1 person	\$186	\$394
2 persons	\$225	\$460
3 persons	\$262	\$526
4 persons	\$328	\$592
5 persons	\$383	\$658
6 persons	\$432	\$724
7 or more persons	\$482	\$790

(b) The gross income limit is as follows for the appropriate family size:

Number of Eligible Persons	Maximum Gross Income Limits
<u>1 Person</u>	<u>\$729</u>
<u>2 Persons</u>	<u>\$851</u>
<u>3 Persons</u>	<u>\$974</u>
<u>4 Persons</u>	<u>\$1096</u>
<u>5 Persons</u>	<u>\$1218</u>
<u>6 Persons</u>	<u>\$1340</u>
<u>7 or more persons</u>	<u>\$1462</u>

(3) Since the payment maximum does not meet full need, effective July 1, 1989, a forty-five (45) percent ratable reduction shall be applied to the deficit between the family's countable income and the standard of need for the appropriate family size.

(4)(a) The assistance payment shall be fifty-five (55) percent of the deficit or the payment maximum, whichever is the lesser amount.

(b) As a result of applying the forty-five (45) percent ratable reduction listed in subsection (3) of this section, an eligible payment to an otherwise eligible family with no income shall be calculated in accordance with KRS 205.200(2).

Section 9. Best Estimate. (1) The agency shall compute the benefit using its best estimate of income which will exist in the payment month.

(2) The following methods shall be used by the agency to calculate a best estimate:

(a) For cases with earned income, other than self-employment earned income:

1. The agency:
  - a. Shall not round cents to the nearest dollar before adding or multiplying hourly or daily earnings; but
  - b. Shall round cents to the nearest dollar before adding or multiplying weekly, biweekly, semimonthly, monthly, quarterly, or annual amounts.
2. Unless it does not represent the ongoing situation, the agency shall use income from all pay periods in the preceding two (2) calendar months.
3. The agency shall determine a monthly amount by:
  - a. Adding gross income from each pay period;
  - b. Dividing by the total number of pay periods considered;
  - c. Converting the pay period figure to a monthly figure by multiplying a weekly amount by four and one-third ( $4 \frac{1}{3}$ ), a biweekly amount by two and one-sixth ( $2 \frac{1}{6}$ ), or a semimonthly amount by two (2); and
  - d. Rounding to the nearest dollar.
4. If income has recently begun and the applicant or recipient has not received two (2) calendar months of earned income, the agency shall compute the anticipated monthly income by:
  - a. Multiplying the hourly rate by the estimated number of hours to be worked in a pay period; or
  - b. Multiplying the daily rate by the estimated number of days to be worked in the pay period; and
  - c. Converting the resulting pay period figure to a monthly amount by multiplying a weekly amount by four and one-third ( $4 \frac{1}{3}$ ), a biweekly amount by two and one-sixth ( $2 \frac{1}{6}$ ), or a semimonthly amount by two (2); and
  - d. Rounding to the nearest dollar.

(b) For cases with unearned income, other than unearned self-employment income, the agency shall determine a monthly amount by:

1. ~~(Net)~~ Rounding cents to the nearest dollar;
2. Using the gross monthly amount of continuing, stable unearned income received on a monthly basis;
3. Unless it does not represent the ongoing situation, averaging the amount of nonstable unearned income received in the three (3) prior calendar months.

(c) For cases with self-employment income:

1. If the self-employment enterprise has been in operation for at least a year, the agency shall prorate the income by dividing the income from the last calendar year by twelve (12).

2. If the self-employment enterprise has been in operation for less than a year, the agency shall prorate the income by dividing by the number of months the business has been in existence.

3. The agency shall determine profit by:

- a. Rounding the total gross income to the nearest dollar;
- b. Rounding the total amount of allowable expenses to the nearest dollar;
- c. Dividing each by twelve (12), or the appropriate number of months, and rounding to the nearest dollar; and
- d. Subtracting the rounded monthly expense from the rounded monthly income.

(3) The best estimate shall be recalculated:

- (a) At six (6) month intervals for cases with:
  1. Earned or unearned income other than self-employment; or
  2. Income from a self-employment enterprise which has not been in existence for at least one (1) year;
- (b) At twelve (12) month intervals for cases with a self-employment enterprise which has been in existence for at least one (1) year;
- (c) Whenever the agency becomes aware of a change in circumstances; or
- (d) To reflect a mass change in the standard of need or payment maximum [payment] standard as set forth in Section 8 of this administrative regulation.

Section 10. K-TAP [AFDC] Recoupment. Except for those over-



payments in administrative regulation 904 KAR 2:017E, the following provisions are effective for all overpayments discovered on or after April 1, 1982, regardless of when the overpayment occurred.

(1) Necessary action will be taken promptly to correct and recoup any overpayments.

(2) Overpayments, including assistance paid pending hearing decisions, shall be recovered from:

(a) The claimant;

(b) The overpaid assistance unit;

(c) Any assistance unit of which a member of the overpaid assistance unit has subsequently become a member; or

(d) Any individual member of the overpaid assistance unit whether or not currently a recipient.

(3) Overpayments shall be recovered through:

(a) Repayment by the individual to the cabinet; or

(b) Reduction of future K-TAP [AFDC] benefits, which shall result in the assistance group retaining, for the payment month, family income and liquid resources of not less than ninety (90) percent of the amount of assistance paid to a like size family with no income in accordance with Section 8 of this administrative regulation; or

(c) Civil action in the court of appropriate jurisdiction.

(4) In cases which have both an overpayment and an underpayment, the cabinet shall offset one against the other in correcting the payment to current recipients.

(5) Neither reduction in future benefits nor civil action shall be taken except after notice and an opportunity for a fair hearing as specified in 904 KAR 2:055E is given and the administrative and judicial remedies have been exhausted or abandoned.

Section 11. Avoiding an Overpayment. (1) A K-TAP [An AFDC] recipient may voluntarily return a benefit check to avoid an overpayment if:

(a) The case is totally ineligible for the month for which the check is issued; and

(b) The check has not been reduced for recoupment of a previous overpayment.

(2) If a check is voluntarily returned, the agency shall determine whether or not the recipient is due a refund as described in Section 12 of this administrative regulation.

Section 12. Refund. A recipient shall be due a refund in the following situations:

(1) The agency recoups an amount in excess of the actual overpayment;

(2) The agency offsets an overpayment and an underpayment and finds a balance owed to the recipient;

(3) A recipient voluntarily returns a K-TAP [an AFDC] check to avoid an overpayment and the current month obligation of child support was collected by the agency during the month the K-TAP [AFDC] check was intended to cover, leaving a balance owed to the recipient.

Section 13. Correction of Underpayments. The following provisions apply to all K-TAP [AFDC] payments:

(1) The department shall promptly correct an underpayment to:

(a) A current K-TAP [AFDC] recipient; and

(b) One who would be a current recipient if the error causing the underpayment had not occurred.

(2) The difference between the payment received by the recipient and the actual entitlement amount shall be issued to the underpaid assistance group.

(3) In a determination of ongoing eligibility, the corrective payment to the assistance group shall not be considered as income or a resource in:

(a) The month the payment is paid; or

(b) The next following month.

Section 14. Family Alternatives Diversion (FAD). (1) The cabinet shall make available in limited areas family alternatives diversion assistance to eligible families to allow the family to maintain self-sufficiency. The cabinet shall expand the program into additional areas until statewide implementation is completed.

(2) To qualify for family alternatives diversion benefits, the K-TAP benefit group as defined in Section 1(1) of this administrative regulation shall:

(a) Meet K-TAP income and resource requirements pursuant to Sections 2, 3(1), 4(1), and 6 of this administrative regulation;

(b) Meet technical requirements of K-TAP pursuant to 904 KAR 2:006E;

(c) Not be currently receiving ongoing K-TAP benefits;

(d) Have a verified short-term need to include:

1. Transportation;

2. Child care;

3. Child support;

4. Housing; or

5. Employment related problem.

(e) Be determined by the cabinet to be self-supporting or would be self-supporting if the short-term need is met; and

(f) Not have received a FAD payment anytime during the previous twelve (12) months.

(3) The Transitional Assistance Self-assessment Survey Form, FA-1, shall be used to screen applicants for K-TAP and to determine eligibility for FAD along with the FA-2, Family Alternatives Assessment form.

(4) The cabinet shall determine through the screening process if a potential K-TAP eligible benefit group may be an eligible family to receive FAD benefits. The K-TAP eligible benefit group shall be notified of the option to decline FAD benefits in lieu of applying for ongoing K-TAP benefits. FAD shall be utilized instead of K-TAP if requested by the benefit group and if the benefit group is deemed eligible for FAD.

(5)(a) The benefit group's countable gross income shall include the earned and unearned income listed in Sections 3 and 4 of this administrative regulation.

(b) The benefit group's gross income shall be computed using the best estimate of income pursuant to Section 9 of this administrative regulation.

(c) The benefit group's total gross earned and unearned income as determined in paragraph (b) of this subsection shall be compared to the maximum gross income scale for K-TAP pursuant to Section 8(2)(b) of this administrative regulation.

(d) If the benefit group's total gross earned and unearned income exceed the maximum gross income limit for the appropriate benefit group size, pursuant to Section 8(2) of this administrative regulation, the family shall not be eligible for a FAD payment.

(e) The total FAD payment for an eligible family shall be the amount necessary to resolve the emergency, not to exceed \$1,500 per application for FAD.

(f) The amount of the eligible FAD payment may be issued in one (1) or more checks or vouchers to the eligible FAD benefit group or to a vendor for payment of the short-term need, as determined by the cabinet.

(g) As long as TANF funding is used, receipt of a FAD payment shall count as one (1) month of K-TAP assistance for purposes of the sixty (60) month time limit of assistance if all eligible payments are issued in one (1) month. If payments are issued in more than one (1) month, the corresponding number of months shall be counted toward the sixty (60) month time limit for receipt of K-TAP.

(h) An eligible benefit group may only be approved for FAD once in a twelve (12) month period.

(6) Receipt of a FAD payment shall exclude the benefit group from receiving ongoing K-TAP benefits for twelve (12) months unless nonreceipt would result in:

(a) Abuse or neglect of a child, as determined by the cabinet; or



(b) The parent's inability to provide adequate care or supervision due to the loss of employment through no fault of the parent as determined by the cabinet.

(7) An application shall be taken or a referral made for the following benefits as needed for a FAD eligible family:

(a) Food Stamps;

(b) Medicaid; and

(c) Child care.

(8) For a FAD eligible benefit group, referrals for other services shall be made as needed to:

(a) Other agencies including:

1. The Division of Child Support Enforcement;

2. The Department for Social Services;

3. The Cabinet for Health Services; and

4. The Department for Employment Services; or

(b) Charitable organizations.

(9) Other services shall be offered as needed through the Department for Employment Services or other contractors to the FAD eligible benefit group to include the following services:

(a) Job search;

(b) Job readiness assessment; and

(c) Life skills.

(10) Hearing rights for FAD shall be the same as hearing rights for a K-TAP recipient pursuant to 904 KAR 2:055E.

Section 15. Relocation Assistance Program. (1) If an employment opportunity exists for a K-TAP recipient and relocation to the area of the employment would be required in order to access the employment, the K-TAP recipient may qualify for a Relocation Assistance Program payment. To qualify the applicant for the Relocation Assistance Program shall:

(a) Be a current recipient of K-TAP;

(b) Have a verified offer of employment with wages in an amount equal to thirty (30) hours or more per week at the minimum hourly wage rate; and

(c) Be required to move to access the verified offer of employment and have a new residence available.

(2) The eligible payment shall be issued to assist an eligible K-TAP recipient in meeting moving related expenses. Moving related expenses shall include:

(a) Moving van rental to the area of the verified employment;

(b) Apartment or house rental for the first month's rent in the area of the verified employment; and

(c) Security deposit, utility hook-up fees, or other moving related fees approved by the cabinet for the apartment or house listed in paragraph (b) of this subsection.

(3) The Relocation Assistance Program payment amount shall be a payment of:

(a) \$500; or

(b) Up to \$900 based on the actual verified moving related expenses as listed in subsection (2) of this section.

(4) An otherwise eligible recipient of the Relocation Assistance Program shall receive no more than two (2) payments in a five (5) year period; however, additional payments may be received with approval of management staff of the Department for Social Insurance.

(5) The cabinet shall assist the applicant for relocation assistance to determine if income received from employment from the new location is sufficient to cover living expenses at the new residence including the completion of a household budget with the applicant in order to make this determination.

(6) The offer of employment, including hourly wage and number of hours, and the availability of a new residence shall be verified by written statement or phone contact.

(7) The cabinet shall provide follow-up case management to assist the family with the transition.

(8) Families who are not currently receiving K-TAP but would be eligible for K-TAP may receive assistance to relocate through FAD.

(9) A K-TAP recipient may refuse without penalty any offer of employment which would require relocation.

(10) Hearing rights for the Relocation Assistance Program shall be the same as hearing rights for a K-TAP recipient pursuant to 904 KAR 2:055E.

Section 16. Material Incorporated by Reference. (1) Forms necessary for the determination of financial eligibility and recovery of overpayments in the K-TAP [AFDC] Program are incorporated effective August 1, 1997 [December 1, 1993]. These forms include:

(a) PA-30.2, revised 2/97 [7/85];

(b) PA-35, revised 2/97 [2/91];

(c) [PA-36, revised 1/85;

(d)] PA-37, revised 2/97 [4/95];

(e) PA-412, revised 1/91; and

(f) PA-415, revised 11/89.]

(d) FA-1, revised 2/97;

(e) FA-2, revised 8/97; and

(f) RA-1, revised 2/97.

(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: July 18, 1997

FILED WITH LRC: August 14, 1997 at 11 a.m.

#### REGULATORY IMPACT ANALYSIS

Agency Contact Person: Marty Mason, Director

(1) Type and number of entities affected: The affected entities are families who apply for or receive benefits under the Temporary Assistance for Needy Families (TANF) block grant program called Kentucky Transitional Assistance Program (K-TAP), the program which replaces the Aid to Families with Dependent Children program (AFDC). As of May 1997, approximately 63,467 families in Kentucky (monthly average) receive K-TAP.

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

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comment received: To be determined after the publication of the notice of intent.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comment received: To be determined after the publication of the notice of intent.

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

1. First year following implementation: The individuals who are applicants or recipients of AFDC, now K-TAP, will not have any additional compliance, reporting or paperwork requirements, except for the completion of a self assessment form, FA-1, and the FA-2 Family Alternatives Assessment for applicants of this program, in locations where Family Alternatives Diversion is available and for completion of a RA-1 for applicants of Relocation Assistance Program.

2. Second and subsequent years: Same

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: The breakdown of costs and savings to the agency for the first year are listed below:

II. Excluding one (1) vehicle per household effective February 1, 1997, is \$50,000 cost to the agency for the first year (SFY 97).

III. Relocation assistance - A K-TAP payment of \$500 up to \$900 to meet moving related expenses in order to access employment

effective February 1, 1997, is \$100,000 cost to the agency for the first year (SFY 97).

IV. Family alternative diversion - A 1 time payment in lieu of on-going cash assistance payments to maintain self-sufficiency is budget neutral to the agency.

V. Alien income and resources policy is budget neutral to the agency.

VI. Ratable reduction is no change in current policy and is budget neutral to the agency.

VII. K-TAP form revisions is a cost of \$33,800 to the agency for the first year (SFY 97).

VIII. Disregard of earnings for 2 months effective May 1, 1997, is a cost of \$262,000 to the agency for the first year (SFY 97). Even though there is a 2 month cost to the agency, there will be long-term savings due to clients getting jobs and going off K-TAP benefits. That savings is indeterminable.

IX. Increase in the resource limit from \$1,000 to \$2,000 per family effective May 1, 1997, is a cost to the agency for the first year (SFY 97) due to the possible increase in eligible recipients; however, the cost to the agency is indeterminable.

X. Exemption of individual development accounts effective May 1, 1997, is cost neutral to the agency for the first year (SFY 97).

XI. Elimination of the 6 month period in a year to consider earnings of a dependent child in school attendance effective May 1, 1997, is cost neutral to the agency for the first year (SFY 97).

XII. Disregard financial changes for a family with a member participating in wage supplementation component of Kentucky Works (diverting the K-TAP grant to an employer who has hired the recipient and is paying wages to the individual) effective August 1, 1998, is cost neutral to the agency for the first year (SFY 98).

XIII. Disregard of earnings of a dependent child under 18 who is a high school graduate, effective August 1, 1997, is minimal; however, the projection is indeterminable for the first year (SFY 98).

XIV. Continuing costs or savings: The breakdown of costs and savings to the agency for the second year are listed below:

XV. A cost of excluding 1 vehicle per household is \$300,000 for the second (SFY 98) as a cost to the agency.

XVI. Relocation assistance - A K-TAP payment of \$500 up to \$900 to meet moving related expenses in order to access employment is \$710,400 for the second year (SFY 98).

XVII. Family alternative diversion - A 1 time payment in lieu of on-going cash assistance payments to maintain self-sufficiency is budget neutral to the agency for the second year (SFY 98).

XVIII. Alien income and resources is budget neutral to the agency for the second year (SFY 98).

XIX. Ratable reduction is no change in current policy and is budget neutral to the agency for the second year (SFY 98).

XX. K-TAP form revisions is no cost to the agency for the second year (SFY 98).

XXI. Disregard of earnings for 2 months is a cost of \$419,200 to the agency for the second year (SFY 98). Even though there is a 2 month cost to the agency, there will be long-term savings due to clients getting jobs and going off K-TAP benefits. That savings is indeterminable.

XXII. Increase in the resource limit from \$1000 to \$2,000 per family is a cost to the agency for the second year (SFY 98) due to the possible increase in eligible recipients; however, the cost to the agency is indeterminable.

XXIII. Exemption of individual development accounts is cost neutral to the agency for the second year. (SFY 98)

XXIV. Elimination of the 6 month period in a year to consider earnings of a dependent child in full-time school attendance is cost neutral to the agency for the second year (SFY 98).

XXV. Disregard financial changes for a family with a member participating in wage supplementation component of Kentucky Works (diverting the K-TAP grant to an employer who has hired the recipient and is paying wages to the individual) effective August 1, 1997, is

cost neutral to the agency for the second year (SFY 99).

XXVI. Disregard of earnings of a dependent child under 18 who is a high school graduate, effective August 1, 1997, is minimal; however, the projection is indeterminable for the second year (SFY 99).

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 funds and state 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 determined after the publication of the notice of intent.

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

(7) Assessment of alternative methods; reasons why alternatives were rejected: Alternative methods were not considered since the state is responsible under federal requirements to implement a program funded under 42 USC 601 et seq.

(8) Assessment of expected benefits:

(a) Identify effects on public welfare and environmental welfare of the geographical area in which implemented and on Kentucky: This administrative regulation is needed to comply with the mandated requirements found in 42 USC 601 et seq., and to implement the Kentucky Transitional Assistance Program (K-TAP) that replaces the Aid to Families with Dependent Children Program.

(b) State whether a harmful effect on environment and public health would result if not implemented: A detrimental effect on public welfare would result if this amendment is not implemented.

(c) If detrimental effect would result, explain detrimental effect: Public assistance benefits received by needy Kentuckians may be jeopardized if Kentucky does not meet the mandates delineated in our Title IV-A state plan as required by the Personal Responsibility and Work Opportunity Reconciliation Act of 1996. If public assistance benefits received by needy Kentuckians are jeopardized, these individuals would lose a source of support for their family including assistance for supportive services such as transportation and child care which enables the parent to remain employed.

(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: The emergency administrative regulation filed on April 30, 1997, was withdrawn and this substantially different emergency amendment to this administrative regulation promulgated. This emergency administrative regulation is substantially different from the withdrawn emergency administrative regulation because of the addition of the exclusion of financial changes for a family with a wage supplementation participant and disregard of earnings of a child who is a high school graduate under age 18.

(11) TIERING: Is tiering applied? No (Explain why tiering was or was not used) Tiering was not applied since application of policy is applied in a like manner for all individuals as set forth through federal requirements.

#### FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate.  
42 USC 601 et seq.

2. State compliance standards. KRS 205.200

3. Minimum or uniform standards contained in the federal mandate. None

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate. No

5. Justification for the imposition of the stricter standards, or additional or different responsibilities or requirements. None

**STATEMENT OF EMERGENCY**  
**904 KAR 2:050E**

The administrative regulation 904 KAR 2:050E, Time and manner of payments, implements benefit payment requirements for the Kentucky Transitional Assistance Program (K-TAP). This emergency administrative regulation is needed to comply with the mandated requirements pursuant to the approved Title IV-A state plan as required by 42 USC 601 et seq. and to conform with the provisions found in 904 KAR 2:006E, 2:016E, 2:017E, and 2:370E. The passage of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 has eliminated entitlement to the Aid to Families with Dependent Children (AFDC) program and has created the Temporary Assistance for Needy Families block grant program, called the Kentucky Transitional Assistance Program (K-TAP) in Kentucky. The Cabinet for Families and Children is required to include the mandatory provisions of 42 USC 601 et seq. in the Title IV-A state plan. References to Aid to Families with Dependent Children (AFDC) have been changed to Kentucky Transitional Assistance Program (K-TAP) to conform with the provisions in 904 KAR 2:006E and 2:016E. The deadline imposed by the Department of Health and Human Services for the complete Title IV-A state plan for implementation of the mandated requirements of the cabinet's Title IV-A block grant program was October 18, 1996. Therefore, in order to meet this deadline by the U.S. Department of Health and Human Services, this emergency administrative regulation must be placed in effect immediately in order to amend the requirements in 904 KAR 2:050. An ordinary administrative regulation would not allow sufficient time to meet the time frames. The emergency administrative regulation filed on May 30, 1997, was withdrawn and this substantially different emergency amendment to this administrative regulation promulgated. This emergency administrative regulation is substantially different from the withdrawn emergency administrative regulation because of wage supplementation component provisions to coincide with 904 KAR 2:370E. This emergency administrative regulation will be replaced by an ordinary administrative regulation.

PAUL E. PATTON, Governor  
VIOLA P. MILLER, Secretary

**CABINET FOR FAMILIES AND CHILDREN**  
**Department for Social Insurance**  
**Division of Management and Development**

**904 KAR 2:050E. Time and manner of payments.**

RELATES TO: KRS 205.220(1), 45 CFR 255.3, 42 USC 601 et seq.

STATUTORY AUTHORITY: KRS 194.050(1), 45 CFR 255.3, 42 USC 601 et seq., EO 96-862

EFFECTIVE: August 14, 1997

NECESSITY, FUNCTION, AND CONFORMITY: Executive Order 96-862, effective July 2, 1996, reorganized the Cabinet for Human Resources and placed the Department for Social Insurance and its programs under the Cabinet for Families and Children. The Cabinet for Families and Children [Human Resources] shall, under the provisions of KRS Chapter 205, administer the assistance programs of Kentucky Transitional Assistance Program (K-TAP) and Kentucky

Works [Aid to Families with Dependent Children (AFDC), Job Opportunities and Basic Skills (JOBS)] and a state funded program of money payments to those persons who are aged, blind and have a disability who are disadvantaged by the implementation of the Supplemental Security Income (SSI) Program. In addition KRS 205.245 provides for money payments to certain other persons who are aged, blind or have a disability. The cabinet shall make payments, described in 904 KAR 2:015, for the persons with mental illness or mental retardation (MIMR) supplement program. This administrative regulation sets forth the time and the manner in which payments are made.

Section 1. Authorization of Kentucky Transitional Assistance Program (K-TAP) [AFDC] Assistance Payments. (1) Method of payment.

(a) If the monthly eligible amount is twenty-five (25) dollars or more per month, prior to any recoupment, a payment may [shall] be issued monthly by check and

[~~(b) A payment~~] shall be issued prospectively; or

(b) If the monthly eligible amount is ten (10) dollars or more per month and less than twenty-five (25) dollars per month, prior to any recoupment, a payment may be made monthly or quarterly by check no later than the last day of the month following the month in which the quarter ends. A quarter shall begin with either the first, fourth, seventh, or tenth months of the year.

(2) Initial payment.

(a) A Kentucky Transitional Assistance Program (K-TAP) [AFDC] approval shall not be made for any period prior to the date of application.

(b) The effective date of an initial payment for a Kentucky Transitional Assistance Program (K-TAP) [AFDC] approval shall be the date an application is filed if all eligibility factors are met as of that date.

(c) If all eligibility factors are not met as of the day of application, the approval shall be effective the date on which all factors are met.

(3) Subsequent and special payments.

(a) Except in situations specified in paragraphs (b), (c), and (d) of this subsection, a subsequent Kentucky Transitional Assistance Program (K-TAP) [AFDC] payment shall be made for an entire month in which all technical eligibility factors are met as of the first day of the month.

(b) A subsequent Kentucky Transitional Assistance Program (K-TAP) [AFDC] payment shall not be made to an individual for any month in which the amount of the benefit payment, prior to any recoupment, would be less than ten (10) dollars.

(c) An otherwise eligible [Any] individual [who is denied a payment for this reason] shall be deemed a recipient of Kentucky Transitional Assistance Program (K-TAP) [AFDC] for all other purposes if a Kentucky Transitional Assistance Program (K-TAP) check is not received pursuant to paragraph (b) of this subsection or subsection (1)(b) of this subsection.

(d) [~~(e)~~] A special payment shall be issued:

1. When the regular monthly payment received is less than the entitled amount based on the household circumstances; and

2. For a period of up to twelve (12) months preceding the month of error correction, if the error existed in the preceding months.

(4) Inalienability of payments.

(a) A Kentucky Transitional Assistance Program (K-TAP) [AFDC] payment is unconditional and is exempt from any remedy for the collection of a debt, lien or encumbrance from any individual or agency other than the cabinet.

(b) The cabinet shall initiate recoupment to recover overpayment of benefits.

(5) Eligible payee.

(a) A money payment shall usually be issued in the name of the eligible applicant.

(b) A protective payment may be made to a third party payee if:

1. A determination has been made by the agency that poor money management is contributing to the unsuitability of the home for a needy child; [or]

2. The payee has refused, without good cause as specified in 904 KAR 2:006E and 904 KAR 2:370E, to participate in the Kentucky Works [Job Opportunities and Basic Skills (JOBS)] Program or the Child Support Program; or

3. A minor teenage parent has not complied with provisions found in 904 KAR 2:006E, Section 18. The protective payment to a third party payee shall be for the eligible child of the minor teenage parent.

(c) A Kentucky Transitional Assistance Program (K-TAP) [AFDC] payment for the month of death may be reissued to:

1. The widow or widower;
2. The parent;
3. The guardian; or
4. The executor or administrator of the estate.

(d) If the payment is reissued to an executor or administrator, a copy of the appointment order shall be obtained as verification.

(6) A K-TAP check shall not be issued to an eligible K-TAP recipient who is a wage supplementation participant pursuant to 904 KAR 2:370E, Section 2. The amount of the eligible payment for the benefit group containing a wage supplementation participant shall be diverted to the contracted employer of the wage supplementation participant. The otherwise eligible wage supplementation participant shall be deemed a recipient of Kentucky Transitional Assistance Program (K-TAP) for all other purposes.

Section 2. Supportive Services for Kentucky Works [JOBS] Participants. (1) A Kentucky Works [JOBS] supportive services or child care payment shall be made by check and shall be made monthly. After October 1, 1997, child care payments shall be paid according to 905 KAR 2:150.

(2) A supportive services payment for a Kentucky Works [JOBS] participant shall be made according to the type of service provided, as follows:

- (a) A child care payment shall be issued:
  1. On a one (1) month retrospective cycle;
  2. Directly to the provider; and

3. Within thirty (30) days of receipt of appropriate verification, as specified in 904 KAR 2:017E; or

4. After October 1, 1997, according to 905 KAR 2:150.

(b) Transportation.

1. A transportation payment shall be made prospectively, ~~not to exceed ninety three (93) dollars a month,~~ for anticipated transportation costs.

2. A transportation payment shall be made directly to the Kentucky Transitional Assistance Program (K-TAP) [AFDC] recipient.

(c) Other approved supportive services payments shall be made:

1. Directly to the provider; and
2. Within thirty (30) days of receipt of appropriate verification of service delivery of billing, as specified in 904 KAR 2:017E.

Section 3. Authorization of a State Supplementation Payment. (1) Method of payment.

- (a) A payment shall be issued monthly by check; and
- (b) A payment shall be issued prospectively.

(2) Initial payment.

(a) The effective date for State Supplementation Program (SSP) approval shall be the first day of the month in which:

1. An application is filed; and
2. All eligibility factors are met.

(b) A State Supplementation Program (SSP) approval shall be made for the entire month during any part of which eligibility factors are met.

(3) Subsequent and special payments.

(a) A State Supplementation Program (SSP) payment shall be made for an entire month in which eligibility factors are met as of the

first day of the month.

(b) A special payment shall be made:

1. When the regular monthly payment received is less than the entitled amount based on the household circumstances; and

2. For a period of up to twelve (12) months preceding the month of error correction, if the error existed in the preceding months.

(4) Inalienability of a payment.

(a) A State Supplementation Program (SSP) money payment is unconditional and is exempt from any remedy for the collection of a debt, lien or encumbrance from any individual or agency other than the cabinet.

(b) The cabinet may initiate recoupment to recover overpayment of benefits.

(5) Eligible payee.

(a) A money payment shall usually be issued in the name of the eligible applicant.

(b) A money payment may be issued to:

1. The legally appointed committee or guardian; or
2. The person serving as the representative payee for another statutory benefit such as SSI.

(c) A State Supplementation Program (SSP) payment for the month of death may be reissued to:

1. The widow or widower;
2. The parent;
3. The guardian; or
4. The executor or administrator of the estate.

(d) If the payment is reissued to an executor or administrator, a copy of the appointment order shall be obtained as verification.

Section 4. Authorization of Persons with Mental Illness or Mental Retardation (MIMR) Supplement Program Payment. (1) Method of payment.

(a) The MIMR supplement payment shall be made:

1. Quarterly;
2. By the last day of the month following the month in which the certified quarter ends.

(b) The training reimbursement payment for the MIMR Supplement Program shall be issued within thirty (30) days of receipt of appropriate documentation, as specified in 904 KAR 2:015.

2. Initial payment.

(a) Following the notification of the cabinet by the personal care home (PCH) of its intent to participate, the effective date of the MIMR supplement shall be the first day of a quarter in which certification requirements contained in 904 KAR 2:015 are met.

(b) MIMR approvals shall be made:

1. For the entire quarter during any part of which certification factors are met, unless a conditional rating is received from the Office of the Inspector General; and

2. If a conditional rating occurs, payment shall be made only for eligible months as specified in 904 KAR 2:015.

(3) Subsequent payments shall be made for any month within a quarter in which eligibility factors are met.

(4) Eligible payee.

(a) Payment for the MIMR supplement shall be made to the participating PCH, meeting MIMR certification requirements, for an eligible calendar quarter, as specified in 904 KAR 2:015.

(b) Payment for the MIMR training reimbursement shall be made to the participating PCH.

JOHN L. CLAYTON, Commissioner

VIOLA P. MILLER, Secretary

APPROVED BY AGENCY: July 18, 1997

FILED WITH LRC: August 14, 1997 at 11 am.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Marty Mason, Director

(1) Type and number of entities affected: The affected entities are families who apply for or receive benefits under the Kentucky Transitional Assistance Program (K-TAP). The AFDC program was replaced by the Temporary Assistance for Needy Families (TANF) block grant program called Kentucky Transitional Assistance Program (K-TAP) as the result of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996. As of March 1997, approximately 63,497 families in Kentucky are receiving benefits from K-TAP.

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

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comment received: To be determined after the publication of the notice of intent.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comment received: To be determined after the publication of the notice of intent.

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

1. First year following implementation: The individuals who are applicants or recipients of AFDC, now K-TAP, will not have any additional compliance, reporting or paperwork requirements.

2. Second and subsequent years: Same

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year:

I. Diverting grants of wage supplementation participants to the employer is budget neutral to the agency for the first year (SFY 98).

II. Requiring protective payees for the eligible child of a minor teenage parent who does not comply with requirements of living in an adult supervised setting is no impact to the agency for the first year (SFY 98).

III. Issuing quarterly checks for monthly amounts of \$10 and over and under \$25 is budget neutral to the agency.

2. Second and subsequent years: Same

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 funds and state 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 determined after the publication of the notice of intent.

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

(7) Assessment of alternative methods; reasons why alternatives were rejected: Alternative methods were not considered since the state is responsible under federal requirements to implement a program funded under 42 USC 601 et seq.

(8) Assessment of expected benefits: The emergency amendments to this administrative regulation is needed to comply with the mandated requirements in 42 USC 601 et seq. and to conform with the mandates found in 904 KAR 2:006E and 2:016E.

(b) State whether a harmful effect on environment and public welfare would result if not implemented: A detrimental effect on public welfare would result if this amendment is not implemented.

(c) If detrimental effect would result, explain detrimental effect: Public assistance benefits received by needy Kentuckians may be jeopardized if Kentucky does not meet the mandated requirements delineated in Kentucky's Title IV-A state plan as required by the Personal Responsibility and Work Opportunity Reconciliation Act of

1996.

(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: References to Aid to Families with Dependent Children (AFDC) have been changed to Kentucky Transitional Assistance Program (K-TAP) to conform with the provisions in 904 KAR 2:006E and 2:016E.

(11) TIERING: Is tiering applied? No (Explain why tiering was or was not used) Tiering was not applied since application of policy is applied in a like manner for all individuals as set forth through federal requirements.

#### FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 42 USC 601 et seq.

2. State compliance standards. KRS 205.200

3. Minimum or uniform standards contained in the federal mandate. None

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate. No

5. Justification for the imposition of the stricter standards, or additional or different responsibilities or requirements. None

#### STATEMENT OF EMERGENCY 906 KAR 1:120E

This emergency administrative regulation sets out the process by which a long-term care facility may informally dispute deficiencies issued for failure to meet federal requirements for participation in the Medicare or Medicaid Programs. Failure to enact this administrative regulation on an emergency basis would result in the loss of federal funds. The emergency administrative regulation shall be replaced by an ordinary administrative regulation. The notice of intent to promulgate an administrative regulation will be filed with the Regulations Compiler at the same time as this emergency administrative regulation is filed.

PAUL E. PATTON, Governor  
JOHN MORSE, Secretary

#### CABINET FOR HEALTH SERVICES Office of Inspector General Division of Licensing and Regulation

#### 906 KAR 1:120E. Informal dispute resolution.

RELATES TO: KRS 13A.100(1), 42 CFR 488.301

STATUTORY AUTHORITY: KRS 194.030(12)(b), 42 CFR 488.331, EO 96-862

EFFECTIVE: July 23, 1997

NECESSITY, FUNCTION, AND CONFORMITY: As part of its agreement with the Health Care Financing Administration, the Cabinet for Health Services is required to establish an informal dispute resolution process in accordance with 42 CFR 488.331. This administrative regulation sets out the process by which a provider may informally dispute deficiencies. 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) "Deficiency" means a failure to meet a

federal requirement for participation in the Medicare or Medicaid Program.

(2) "Director" means the Director of the Division of Licensing and Regulation, or his designee.

(3) "Enforcement action" means remedies applied to effect prompt compliance by a provider with program requirements.

(4) "Immediate jeopardy" means as defined in 42 CFR 488.301.

(5) "Plan of correction" means a description of actions by a provider to correct deficiencies.

(6) "Provider" means a facility subject to the requirements of 42 CFR 488.331.

(7) "Regional program manager" means the regional program manager responsible for the survey and survey team, or his designee.

(8) "Statement of deficiencies" means the written notification to the provider describing how the provider fails to meet participation requirements.

(9) "Substandard quality of care" means as defined in 42 CFR 488.301.

Section 2. Request for Informal Dispute Resolution. (1) A provider shall have one (1) informal opportunity to dispute cited deficiencies and scope and severity assessments that constitute substandard quality of care or immediate jeopardy.

(2) A provider may request informal dispute resolution upon receipt of the statement of deficiencies.

(3) A request shall be in writing and shall:

(a) Specify the deficiencies in dispute.

(b) Explain the dispute and provide a detailed basis for the dispute.

(4) Documents, if any, shall be attached to the request.

(5) The request and attachments shall be delivered to the regional program manager on or before the mandated return date for the plan of correction.

(6) A request for informal dispute resolution shall not delay any enforcement action.

Section 3. Review Process. (1) The regional program manager and appropriate survey staff shall make the determination regarding the resolution of the dispute.

(2) The provider shall be advised verbally of the determination, with written confirmation to follow.

TIMOTHY L. VENO, Inspector General

JOHN MORSE, Secretary

APPROVED BY AGENCY: July 23, 1997

FILED WITH LRC: July 23, 1997 at 3 p.m.

#### REGULATORY IMPACT ANALYSIS

Agency Contact Person: Ralph Von Derau

(1) Type and number of entities affected: There are presently 314 long-term care facilities certified to participate in the Medicare or Medicaid 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: To be determined after the Notice of Intent public hearing.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comment received: To be determined after the Notice of Intent public hearing.

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

1. First year following implementation: Paperwork related to requests for informal dispute resolution. No additional reporting

requirements imposed.

2. Second and subsequent years: Same

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings: Administrative costs associated with the informal dispute resolution process are allocated to a federal billing code.

1. First year: Unable to anticipate.

2. Continuing costs or savings: Unable to anticipate.

3. Additional factors increasing or decreasing costs: No additional factors.

(b) Reporting and paperwork requirements: Paperwork related to informal dispute resolution determinations.

(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: Title XVIII and XIX federal 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 determined after the Notice of Intent public hearing.

(b) Kentucky: To be determined after the Notice of Intent public hearing.

(7) Assessment of alternative methods; reasons why alternatives were rejected: 42 CFR 488.331 mandates an informal dispute resolution process.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: This administrative regulation sets forth the process by which long-term care facilities may informally dispute deficiencies.

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

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

(9) Identify any statute, administrative regulation or governmental policy which may be in conflict, overlapping, or duplication:

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

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

(10) Any additional information or comments:

(11) TIERING: Is tiering applied? No. This informal dispute resolution process applies to all long-term care facilities participating in the Medicare or Medicaid Programs.

#### FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 42 CFR 488.331.

2. State compliance standards.

3. Minimum or uniform standards contained in the federal mandate. 42 CFR 488.331 requires that the state have in place an informal dispute resolution process for providers who are dissatisfied with deficiencies issued for failure to meet federal requirements for participation in the Medicare or Medicaid Programs.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by federal mandate? No. Specific provisions for the informal dispute resolution process are set forth in this administrative regulation.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements.



**STATEMENT OF EMERGENCY**  
**907 KAR 1:022E**

This administrative regulation is promulgated as an emergency in order to implement policy changes to comply with a Franklin Circuit Court order regarding high intensity ventilator services. Failure to enact this administrative regulation would place the department in violation of the Franklin Circuit Court order regarding high intensity ventilator services and pose an imminent threat to the health and welfare of individuals in need of high intensity ventilator services by limiting access and services to this lifesaving medical service. This administrative regulation also revises policy to be in compliance with federal statutes concerning Preadmission Screening and Annual Resident Review (PASARR). This emergency administrative language differs from the emergency administrative regulation on the same subject matter that was filed on January 17, 1997 as follows: the administrative regulation contains revisions to PASARR policy to comply with federal law. This emergency administrative regulation shall be replaced by an ordinary administrative regulation filed with the Regulations Compiler.

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

**CABINET FOR HEALTH SERVICES**  
**Department for Medicaid Services**

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

RELATES TO: KRS 205.520, 42 CFR 430, 431, 432, 433, 435, 440, 441, 442, 447, 455, 456, 42 USC 1396a, b, c, d, g, i, l, n, o, p, r, r-2, r-3, r-5, s

STATUTORY AUTHORITY: KRS 194.050, 205.520[~~42 CFR 430, 431, 432, 433, 435, 440, 441, 442, 447, 455, 456, 42 USC 1396, 1396a, b, c, d, g, i, l, n, o, p, r, r-2, r-3, r-5, s~~], EO 96-862

EFFECTIVE: August 14, 1997

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health Services, Department for Medicaid Services, [Human Resources] has responsibility to administer the Medicaid Program. 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 ~~authorizes~~ empowers the cabinet, by administrative regulation, to comply with a [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 ~~establishes~~ sets forth the provisions relating to nursing facility and intermediate care facility for the mentally retarded services for which payment shall be made by the Medicaid Program ~~on~~ in behalf of both the categorically needy and medically needy recipients.

Section 1. Definitions. The following definitions shall be applicable:

(1) "Department" means the Department for Medicaid Services or its designee.

(2) "High intensity nursing care services" means care provided to Medicaid eligible individuals who meet high intensity patient status criteria by nursing facilities (NFs) and nursing facilities with waiver participating in the Medicaid Program with the care provided in beds also participating in the Medicare Program. High intensity nursing care patient status criteria shall be equivalent to skilled nursing care standards under Medicare.

(3) "Intermediate care facility for the mentally retarded" (ICF-MR) means a licensed intermediate care facility for the mentally retarded certified to the Department for Medicaid Services as meeting all standards for intermediate care facilities for the mentally retarded.

(4) "Intermediate care for the mentally retarded and persons with related conditions services" means care provided to Medicaid eligible individuals who meet ICF-MR patient status criteria by ICF-MRs participating in the Medicaid Program.

(5) "Intermittent high intensity services" means the individual requires high intensity nursing services at regular or irregular intervals, but not on a twenty-four (24) hour per day basis.

(6) "Low intensity nursing care services" means care provided to Medicaid eligible individuals who meet low intensity patient status criteria by nursing facilities (NFs) or nursing facilities with waiver (NFs-W) participating in the Medicaid Program. Low intensity nursing care patient status criteria shall be equivalent to the former intermediate care patient status standards.

(7) "Nursing facility" (NF) means a facility which has a license as a nursing facility and which is certified to the Department for Medicaid Services by the state survey agency as meeting nursing facility standards. Hospital swing beds providing services in accordance with 42 USC 1395tt and 42 USC 1396l shall also be considered nursing facilities if the swing beds are certified to the department as meeting requirements for the provision of swing bed services under federal laws and regulations.

(8) "Nursing facility with waiver" (NF-W) means a facility which has a license as a nursing facility and which is certified to the Department for Medicaid Services by the state survey agency as meeting all nursing facility requirements except for the nurse staffing requirement for which a Medicaid waiver has been granted by the survey agency. Some nursing facilities with waiver do not meet Medicare participation requirements.

(9) "Patient status" means that the individual has care needs meeting the criteria set forth in this administrative regulation for treatment in the institutional setting.

(10) "Stable medical condition" means one which is capable of being maintained in accordance with a planned treatment regimen requiring a minimum amount of medical supervision without significant change or fluctuation in the patient's condition or treatment regimen. ["Patient status" means that the individual has care needs meeting the criteria set forth in this administrative regulation for treatment in the institutional setting.]

(2) "Intermittent high intensity services" means the individual requires high intensity nursing services at regular or irregular intervals, but not on a twenty four (24) hour per day basis.

(3) "Stable medical condition" means one which is capable of being maintained in accordance with a planned treatment regimen requiring a minimum amount of medical supervision without significant change or fluctuation in the patient's condition or treatment regimen.

(4) "Nursing facility" (NF) means a facility which has a license as a nursing facility and which is certified to the Department for Medicaid Services by the state survey agency as meeting nursing facility standards. A facility which is certified to the department as meeting skilled nursing facility standards based on a survey agency survey made prior to October 1, 1990 shall be deemed to meet the requirements for participation as a nursing facility until the first survey agency survey of the facility which occurs on or after October 1, 1990. Hospital swing beds providing services in accordance with 42 USC 1395tt and 42 USC 1396l shall also be considered nursing facilities if the swing beds are certified to the department as meeting requirements for the provision of swing bed services under federal laws and regulations. Each nursing facility shall have Medicare participatory status in at least twenty (20) percent of the facility's Medicaid participating beds (but not less than ten (10) beds); if the facility has less than ten (10) Medicaid participating beds, all participating beds shall participate in the Medicare Program).

(5) "Nursing facility with waiver" (NF-W) means a facility which has a license as a nursing facility and which is certified to the Department for Medicaid Services by the state survey agency as meeting all nursing facility requirements except for the nurse staffing requirement for which a Medicaid waiver has been granted by the



survey agency; some nursing facilities with waiver do not meet Medicare participation requirements. A facility which is certified to the department as meeting intermediate care facility standards based on a survey agency survey made prior to October 1, 1990 shall be deemed to meet the requirements for participation as a nursing facility with waiver until the first survey agency survey of the facility which occurs on or after October 1, 1990. If a facility which has a Medicaid waiver chooses to participate in the Medicare Program, the facility shall be required to have Medicare participatory status in at least twenty (20) percent of the facility's Medicaid participating beds (but not less than ten (10) beds; if the facility has less than ten (10) Medicaid participating beds, all participating beds shall participate in the Medicare Program).

(6) "Intermediate care facility for the mentally retarded" (ICF-MR) means a licensed intermediate care facility for the mentally retarded certified to the Department for Medicaid Services as meeting all standards for intermediate care facilities for the mentally retarded.

(7) "High intensity nursing care services" means care provided to Medicaid eligible individuals who meet high intensity patient status criteria by nursing facilities (NFs) and nursing facilities with waiver participating in the Medicaid Program with the care provided in beds also participating in the Medicare Program. High intensity nursing care patient status criteria shall be equivalent to skilled nursing care standards under Medicare.

(8) "Low intensity nursing care services" means care provided to Medicaid eligible individuals who meet low intensity patient status criteria by nursing facilities (NFs) or nursing facilities with waiver (NFs-W) participating in the Medicaid Program. Low intensity nursing care patient status criteria shall be equivalent to the former intermediate care patient status standards.

(9) "Intermediate care for the mentally retarded and persons with related conditions services" means care provided to Medicaid eligible individuals who meet ICF-MR patient status criteria by ICF-MRs participating in the Medicaid Program.]

Section 2. Participation Requirements. Each facility desiring to participate as a nursing facility, nursing facility with waiver, or ICF-MR shall meet the following requirements:

(1) An application for participation shall be made [to the cabinet] using the procedures specified by the [Commissioner,] Department for Medicaid Services[, Cabinet for Human Resources]. A vendor number shall be assigned to the facility by the department [cabinet] when enrollment is completed [participation status is achieved].

(2) Each nursing facility shall be required to have participatory status in the program of health care known as Medicare in at least twenty (20) percent of the facility's Medicaid participating beds [(f) but not less than ten (10) beds. (g) If the facility has less than ten (10) Medicaid participating beds, all participating beds shall participate in the Medicare Program.] before the conditions of participation for Medicaid shall be deemed met].

(3) If a nursing facility with waiver chooses to participate in the Medicare Program, the facility shall meet Medicare participation requirements in at least twenty (20) percent of the facility's Medicaid participating beds [(f) but not less than ten (10) beds. (g) If the facility has less than ten (10) Medicaid participating beds, all participating beds shall participate in the Medicare Program. (h)]

(4) Each nursing facility and nursing facility with waiver shall be required to comply with the preadmission screening and annual resident review requirements specified in 42 USC 1396r and 907 KAR 1:755E [effective with regard to admissions and resident stays occurring on or after January 1, 1989]. Facilities failing to comply with these [this] requirement shall be subject to disenrollment, with exclusion from participation to be accomplished in accordance with 907 KAR 1:671, [1:220, Terms and conditions of provider participation; provider appeals, and federal regulations at] 42 CFR 431.153 and 431.154.

(5) A facility shall be required to be certified by the state survey

agency as meeting NF, NF-W, or ICF-MR status[; a facility not appropriately certified shall not participate in the Medicaid Program except for appropriately certified SNFs or ICFs during the grandfathered period which ends upon the facility's first survey by the state survey agency on or after October 1, 1990].

(6) A facility shall have appropriate accreditation to provide specialized rehabilitation services [as approved by the state]. A facility shall be considered accredited if [Appropriate accreditation shall have occurred when] the facility has been accredited by: [a nationally recognized accrediting agency or organization]

(a) [such as] The Commission on Accreditation of Rehabilitation Facilities (CARF); or

(b) The Joint Commission on Accreditation of Health care Organizations (JCAHO).

Section 3. Provision of Service. (1) Payment for high intensity, low intensity and ICF-MR services shall be limited to those services meeting the care definitions shown in Section 1 of this administrative regulation.

(a) A nursing facility or nursing facility with waiver shall [may] provide and receive payments for high intensity services provided to Medicaid eligible individuals meeting high intensity patient status criteria if the services are provided in beds also participating in the Medicare Program. [and]

(b) A nursing facility or nursing facility with waiver shall [may] provide and receive payments for low intensity services provided to Medicaid eligible individuals meeting low intensity patient status criteria if [when] the services are provided in any Medicaid participating beds. [(g)]

(c) An ICF-MR shall [may] provide and receive payments for ICF-MR services only.

(2) A participating nursing facility may be certified in accordance with standards and conditions specified in the [907-KAR-1:545; Incorporation by reference of the] nursing facility services manual to operate a unit providing preauthorized specialized rehabilitation services for persons with brain injuries.

(3) A participating nursing facility may be certified in accordance with standards and conditions specified in the nursing facility services manual to operate a unit providing care for persons who are ventilator dependent.

Section 4. Determining Patient Status. The department [Professional staff of the cabinet, or a peer review organization operating under its lawful authority pursuant to the terms of its agreement with the cabinet,] shall review and evaluate the health status and care needs of the individual [recipient] in need of institutional care giving consideration to the medical diagnosis, care needs, services and health personnel required to meet these needs and the feasibility of meeting the needs through alternative institutional or noninstitutional services.

(1) An individual [A patient] shall not qualify for Medicaid patient status unless the individual [person] is qualified for admission, and continued stay as appropriate, under the preadmission screening and annual resident review criteria specified in 42 USC 1396r and 907 KAR 1:755E [with regard to admissions and resident stays occurring on or after January 1, 1989].

(2) Individuals [Patients] qualify for high intensity nursing care if [when] their needs mandate high intensity nursing or high intensity rehabilitation services on a daily basis and if [when, as a practical matter,] the care can only be provided on an inpatient basis. If [Where] the inherent complexity of a service prescribed for an individual [a patient] exists to the extent that it can be safely or effectively performed only by or under the supervision of technical or professional personnel, the individual shall [patient would] qualify for high intensity nursing care. An individual [A patient] with an unstable medical condition manifesting a combination of care needs in the following areas shall qualify for high intensity nursing care:

- (a) Intravenous, intramuscular, or subcutaneous injections and hypodermoclysis or intravenous feeding;
- (b) Nasogastric or gastrostomy tube feedings;
- (c) Nasopharyngeal and tracheotomy aspiration;
- (d) Recent or complicated ostomy requiring extensive care and self-help training;
- (e) In-dwelling catheter for therapeutic management of a urinary tract condition;
- (f) Bladder irrigations in relation to previously indicated stipulation;
- (g) Special vital signs evaluation necessary in the management of related conditions;
- (h) Sterile dressings;
- (i) Changes in bed position to maintain proper body alignment;
- (j) Treatment of extensive decubitus ulcers or other widespread skin disorders;
- (k) Receiving medication recently initiated, which requires high intensity observation to determine desired or adverse effects or frequent adjustment of dosage;
- (l) Initial phases of a regimen involving administration of medical gases; or

(m) Receiving services which would qualify as high intensity rehabilitation services if ~~when~~ provided by or under the supervision of a qualified therapist(s), for example: ongoing assessment of rehabilitation needs and potential; therapeutic exercises which must be performed by or under the supervision of a qualified physical therapist; gait evaluation and training; range of motion exercises which are part of the active treatment of a specific disease state which has resulted in a loss of, or restriction of, mobility; maintenance therapy when the specialized knowledge and judgment of a qualified therapist is required to design and establish a maintenance program based on an initial evaluation and periodic reassessment of the patient's needs, and consistent with the patient's capacity and tolerance; ultrasound, short wave, and microwave therapy treatments; hot pack, hydrocollator infrared treatments, paraffin baths, and whirlpool (in cases where the patient's condition is complicated by circulatory deficiency, areas of desensitization, open wounds, fractures or other complications, and the skills, knowledge, and judgment of a qualified physical therapist are required); and services by or under the supervision of a speech pathologist or audiologist when necessary for the restoration of function in speech or hearing.

(3) An individual shall be determined to meet low intensity patient status if ~~when~~ the individual requires intermittent high intensity nursing care, continuous personal care or supervision in an institutional setting. In making the decision as to patient status, the following criteria shall be applicable:

(a) An individual with a stable medical condition requiring intermittent high intensity services not provided in a personal care home shall be considered to meet patient status.

(b) An individual with a stable medical condition, who has a complicating problem which prevents the individual from caring for himself in an ordinary manner outside the institution shall be considered to meet patient status. For example, ambulatory cardiac and hypertensive patients may be reasonably stable on appropriate medication, but have intellectual deficiencies preventing safe use of self-medication, or other problems requiring frequent nursing appraisal, and thus be considered to meet patient status.

(c) An individual with a stable medical condition manifesting a significant combination of the following care needs shall be determined to meet low intensity patient status if ~~when~~ the professional staff determines that the combination of needs can be met satisfactorily only by provision of intermittent high intensity nursing care, continuous personal care or supervision in an institutional setting:

- 1. Assistance with wheelchair;
- 2. Physical or environmental management for confusion and mild agitation;
- 3. Must be fed;
- 4. Assistance with going to bathroom or using bedpan for

elimination;

- 5. Old colostomy care;
- 6. In-dwelling catheter for dry care;
- 7. Changes in bed position;
- 8. Administration of stabilized dosages of medication;
- 9. Restorative and supportive nursing care to maintain the individual ~~[patient]~~ and prevent deterioration of his condition;
- 10. Administration of injections during time licensed personnel is available;

11. Services that could ordinarily be provided or administered by the individual but due to physical or mental condition is not capable of self-care; or

12. Routine administration of medical gases after a regimen of therapy has been established.

(d) An individual shall not generally be considered to meet patient status criteria if ~~when~~ care needs are limited to the following:

- 1. Minimal assistance with activities of daily living;
- 2. Independent use of mechanical devices, for example, assistance in mobility by means of a wheelchair, walker, crutch(es) or cane;
- 3. Limited diets such as low salt, low residue, reducing and other minor restrictive diets;
- 4. Medications that can be self-administered or the individual requires minimal supervision.

(4) ~~An individual [Evaluation of patient status for persons with mental disorders or mental retardation. A person]~~ with a mental disorder or mental retardation meeting the health status and care needs specified in subsections (2) and (3) of this section shall generally be considered to meet patient status. However, these individuals shall be specifically excluded from coverage in the following situations:

(a) If ~~when~~ the ~~department~~ ~~[cabinet]~~ determines that in the individual case the combination of care needs are beyond the capability of the facility, and that placement in the facility is inappropriate due to potential danger to the health and welfare of the individual ~~[patient]~~, other patients in the facility, or staff of the facility; and

(b) If ~~when~~ the nursing care needs result directly and specifically from a mental disorder; i.e., are essentially symptoms of the mental disorder; and

(c) If ~~when~~ the individual ~~[patient]~~ does not meet the preadmission screening and annual resident review criteria specified in 42 USC 1396r and 907 KAR 1:755E for entering or remaining in a facility.

(5) An individual shall be determined to meet patient status for an intermediate care facility for the mentally retarded and ~~individuals~~ ~~[persons]~~ with related conditions when the individual requires physical or environmental management or rehabilitation for moderate to severe retardation. In making the decision as to patient status the following criteria shall be applicable:

(a) An individual with significant developmental disabilities and significantly subaverage intellectual functioning who requires a planned program of active treatment to attain or maintain the individual's optimal level of functioning, but does not necessarily require nursing facility or nursing facility with waiver services, shall be considered to meet patient status.

(b) An individual requiring a protected environment while overcoming the effects of developmental disabilities and subaverage intellectual functioning shall be considered to meet patient status while:

- 1. Learning fundamental living skills;
- 2. Learning to live happily and safely within his own limitations;
- 3. Obtaining educational experiences that will be useful in self-supporting activities; or
- 4. Increasing his awareness of his environment.

(c) An individual with a psychiatric primary diagnosis or needs shall be considered to meet patient status criteria only if:

- 1. ~~when~~ The individual also has care needs as shown in

paragraph (a) or (b) of this subsection;

2. The mental care needs are adequately handled in a supportive environment (i.e., the intermediate care facility for the mentally retarded); and

3. The individual does not require psychiatric inpatient treatment.

(d) An individual that does not require a planned program of active treatment to attain or maintain the individual's optimal level of functioning shall not be considered to meet patient status.

(e) An ~~(It shall be the policy of the cabinet that no)~~ individual shall not be denied patient status solely due to advanced age, or length of stay in an institution, or history of previous institutionalization, if the individual qualifies for patient status on the basis of all other factors.

(f) With regard to an individual with a "related condition" (not mental retardation) the illness or ailment shall have manifested itself prior to the individual's 22nd birthday.

Section 5. Reevaluation of Need for Service. Nursing facility, nursing facility with waiver, and ICF-MR services shall be provided if the health status and care needs are within the scope of program benefits as described in Sections 3 and 4 of this administrative regulation. Patient status shall be reevaluated at least once every six (6) months. If a reevaluation of care needs reveals that the individual ~~[patient]~~ no longer requires high intensity, low intensity, or intermediate care for the mentally retarded services and payment is no longer appropriate in the facility, payment shall continue for ten (10) days to permit orderly discharge or transfer to an appropriate level of care.

Section 6. Preauthorization of Provision of Specialized Rehabilitation Services for Individuals ~~[Persons]~~ with Brain Injuries. Individuals ~~[Patients]~~ who are brain injured and meet usual high intensity nursing facility patient status criteria or as qualified under subsection (5) of this section may be provided care in a certified unit providing specialized rehabilitation services for persons with brain injuries (i.e., brain injury unit) if [when] the care is preauthorized by [staff of] the department [for Medicaid Services] using criteria specified in this section. For coverage to occur, authorization of coverage shall be granted prior to admission of the individual with the brain [head] injury into the certified brain [head] injury unit, or if previously admitted to the unit with other third party coverage, authorization shall be granted prior to exhaustion of those benefits.

(1) Injuries within the scope of benefits shall be:

(a) Central nervous system injury from physical trauma;

(b) Central nervous system damage from anoxia or hypoxic episodes; and

(c) Central nervous system damage from allergic conditions, toxic substances and other acute medical/clinical incidents.

(2) The following is a list of indicators for admission and continued stay:

(a) The individual sustained a traumatic brain injury with structural, nondegenerative brain damage and is medically stable;

(b) The individual shall not be in a persistent vegetative state;

(c) The individual demonstrates physical, behavioral, and cognitive rehabilitation potential;

(d) The individual requires coma management; and

(e) The individual has sustained diffuse brain damage caused by anoxia, toxic poisoning, or encephalitis.

(3) The determination as to whether preauthorization is appropriate shall be made taking into consideration the following:

(a) The presenting problem;

(b) The goals and expected benefits of the admission;

(c) The initial estimated time frames for goal accomplishment; and

(d) The services needed.

(4) The following is a list of conditions which shall [are] not be considered brain injuries requiring specialized rehabilitation under this section:

(a) Strokes treatable in nursing facilities providing routine rehabilitation services;

(b) Spinal cord injuries in which there are no known or obvious injuries to the intracranial central nervous system;

(c) Progressive dementias and other mentally impairing conditions;

(d) Depression and psychiatric disorders in which there is no known or obvious central nervous system damage;

(e) Mental retardation and birth defect related disorders of long standing; and

(f) Neurological degenerative, metabolic and other medical conditions of a chronic, degenerative nature.

(5) An individual ~~[A patient]~~ may qualify for coverage under the brain injury program if the patient meets low-intensity level of care and has sufficient neurobehavioral sequelae resulting from the brain injury which when taken in combination require an intensity of care which is equal to high intensity nursing care, if the following criteria are met:

(a) The individual ~~[patient]~~ shall not have previously received specialized rehabilitation services (individuals ~~[persons]~~ discharged for the purpose of transfer to another brain injury facility are not considered to have "previously received specialized rehabilitation services") as provided for in this section;

(b) The individual ~~[patient]~~ shall have the potential for rehabilitation;

(c) The care shall be prior authorized on an individual basis by the Department for Medicaid Services; and

(d) The care shall be authorized for no more than six (6) months at any one (1) time.

Section 7. Requirements, Standards and Preauthorization of Certified Distinct Part Nursing Facility Ventilator Services. Individuals who are ventilator dependent and meet usual high intensity nursing facility patient status criteria may be provided care in a certified distinct part ventilator nursing facility unit providing specialized ventilator services if the care is preauthorized using criteria specified in this Section and the Nursing Facilities Services Manual.

(1) Facility participation criteria.

(a) The nursing facility shall operate a program of ventilator care within a certified distinct part nursing facility unit which meets the needs of all ventilator patients admitted to the unit.

(b) The unit shall have not less than twenty (20) beds certified for the provision of ventilator care.

(c) The unit shall be required to have an average patient census of not less than fifteen (15) patients during the calendar quarter preceding the beginning of the facility's rate year or the quarter for which certification is being granted in order to qualify as a distinct part ventilator nursing facility unit.

(d) The unit shall have a ventilator machine owned by the facility for each certified bed with an additional back up ventilator machine required for every ten (10) beds.

(e) The facility shall have an appropriate program for discharge planning and weaning from the ventilator.

(2) Patient criteria and service characteristics. The following describe patient criteria and treatment characteristics for distinct part ventilator nursing facilities:

(a) The individual shall be considered ventilator (or respiration stimulating mechanism) dependent if the individual requires such mechanical support for twelve (12) or more hours per day and requires twenty-four (24) hours per day high intensity specialty nursing care; or

(b) The individual shall be considered ventilator (or respiration stimulating mechanism) dependent if the individual is in an active weaning program ordered by and under the management of a physician and reviewed and approved by the department; and

1. The goal of the active weaning program is to attain the least mechanical support in the least invasive manner that is consistent with the maximal function of the individual and ultimately no mechanical respiratory support;

2. The individual demonstrates steady progress in decreasing the number of hours and dependence upon the ventilator (or respiration stimulating mechanism) as documented in the individual's physician and nursing progress notes; and

3. The individual requires twenty-four (24) hours per day high intensity specialty nursing care.

(c) An individual shall not be considered ventilator dependent due to being in an active weaning program if:

1. The individual is no longer demonstrating steady progress in decreasing the number of hours and dependence upon the ventilator (or respiration stimulating mechanism; or

2. The individual has been off the ventilator (or respiration stimulating mechanism) for seventy-two (72) consecutive hours.

(d) Admissions from hospitalization or other location shall demonstrate two (2) weeks clinical and physiologic stability including applicable weaning attempts prior to transfer; and

(e) A physician's order specifies that the services shall not be provided in an alternative setting due to the medical stability and safety needs of the individual.

(3) Patient status determinations shall be made taking into consideration the following factors and those defined in the Nursing Facility Services Manual, Section IV-B, C and D;

(a) Alternative care possibilities;

(b) Goals for patient care;

(c) Primary hypoventilation, restrictive lung, ventilatory muscular dysfunction, and obstructive airway disorders needs which may necessitate mechanical ventilator and related care;

(d) Nonhospital management factors and needs;

(e) Patient treatment characteristics;

(f) Home care potential;

(g) Suitability of transfer to the ventilator care unit;

(h) Provision of an appropriate place of care; and

(i) Other facility admission indicators as shown in the Nursing Facility Services Manual.

Section 8. Reserved Bed Days. The department [cabinet] shall cover reserved bed days in accordance with the following specified upper limits and criteria.

(1) Reserved bed days for nursing facilities and nursing facilities with waiver shall be covered for a maximum of fourteen (14) days per absence for a hospital stay with an overall maximum of forty-five (45) days per provider during the calendar year. Reserved bed days shall be covered for a maximum of fifteen (15) days per provider during the calendar year for leaves of absence other than for hospitalization.

(2) For intermediate facilities for the mentally retarded and individuals [persons] with related conditions, reserved bed days shall be covered for a maximum of forty-five (45) days per provider within a calendar quarter. Reserved bed days for hospital stays shall not exceed fifteen (15) days per stay. No more than thirty (30) consecutive reserved bed days (for hospital stay(s) plus leave(s) of absence, or leave of absence only) shall be approved for coverage.

(3) Coverage during an individual's [a recipient's] absence for hospitalization or leave of absence shall be contingent on the following conditions being met:

(a) The individual [person] shall be in Medicaid payment status in the level of care he/she is authorized to receive and shall have been a resident of the facility at least overnight. Individuals [Persons] for whom Medicaid is making Medicare coinsurance payments shall not be considered to be in Medicaid payment status for purposes of this policy;

(b) The individual may [person can] be reasonably expected to return to the same level of care;

(c) Due to demand at the facility for beds at that level, there is a likelihood that the bed would be occupied by some other patient were it not reserved;

(d) The hospitalization shall be for treatment of an acute condition, and not for testing, brace-fitting, etc.; and

(e) For leaves of absence other than for hospitalization, the individual's [patient's] physician orders and plan of care provide for such leaves. Leaves of absence include visits with relatives and friends, and leaves to participate in state-approved therapeutic or rehabilitative programs.

~~[Section 8. The provisions of this administrative regulation shall apply to covered services provided on or after July 15, 1994.]~~

#### Section 9. Preadmission Screening and Annual Resident Review.

(1) Prior to admission of an individual, an NF shall conduct a level I PASARR in accordance with 907 KAR 1:755E, Section 4.

(2) Compliance with 907 KAR 1:755E is required in order for an individual to be admitted to an NF.

Section 10. Incorporation by Reference. (1) "Medicaid Nursing Facility Services Manual", Department for Medicaid Services, July 1997 edition, is incorporated by reference.

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

LARRY A. MCCARTHY, Deputy Commissioner

JOHN H. MORSE, Secretary

APPROVED BY AGENCY: August 5, 1997

FILED WITH LRC: August 14, 1997 at 3 p.m.

#### REGULATORY IMPACT ANALYSIS

Agency Contact Person: Trish Howard or Karen Doyle

(1) Type and number of entities affected: Nursing facilities participating in the Medicaid Program and approximately 20 Medicaid recipients who are ventilator dependent.

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

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

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

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

1. First year following implementation: None

2. Second and subsequent years: None

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: See companion regulation 907 KAR 1:025E.

2. Continuing costs or savings: See companion regulation 907 KAR 1:025E.

3. Additional factors increasing or decreasing costs: See companion regulation 907 KAR 1:025E.

(b) Reporting and paperwork requirements: None

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

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Federal and state matching funds.

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

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

(b) Kentucky: To be determined after the Notice of Intent public hearing which will be held in accordance with KRS Chapter 13A requirement.

(7) Assessment of alternative methods; reasons why alternatives were rejected: No viable alternatives were identified.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: Will assure adequate access to medically necessary ventilator nursing facility beds for Medicaid recipients.

(b) State whether a detrimental effect on environment and public health would result if not implemented: Yes

(c) If detrimental effect would result, explain detrimental effect: May pose an imminent threat to the public health, safety, or welfare of Medicaid recipients.

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

(a) Necessity of proposed regulation if in conflict:

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

(10) Any additional information or comments: \*See companion regulation 907 KAR 1:025E.

(11) TIERING: Is tiering applied? (Explain why tiering was or was not used) Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it. Disparate treatment of any person or entity subject to this administrative regulation could raise questions of arbitrary action on the part of the agency. The "equal protection" and "due process" clauses of the Fourteenth Amendment of the U.S. Constitution may be implicated as well as Sections 2 and 3 of the Kentucky Constitution.

#### FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. Pursuant to 42 USC 1396a et seq., the Commonwealth of Kentucky has exercised the option to establish a Medicaid Program for indigent Kentuckians. Having elected to offer Medicaid coverage, the state must comply with federal requirements contained in 42 USC 1396 et seq.

2. State compliance standards. This administrative regulation does not set compliance standards.

3. Minimum or uniform standards contained in the federal mandate. This administrative regulation does not set minimum or uniform standards.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No. This administrative regulation does not set stricter requirements.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. No additional standard or responsibilities are imposed.

#### STATEMENT OF EMERGENCY 907 KAR 1:025E

This administrative regulation is promulgated as an emergency in order to: (a) Implement policy changes to comply with a Franklin Circuit Court Order regarding high intensity ventilator services; (b) Include requirements for distinct part twenty (20) bed nursing facility unit that includes a fifteen (15) bed census requirement for payment purposes; (c) Revise language in Section 4(2)(b); (d) Delete references to dual licensed beds which were to be converted to nursing facility beds by December 31, 1996, in accordance with KRS 216B.020; (e) Incorporate changes in federal law with respect to Preadmission Screening and Annual Resident Review (PASSAR);

and (f) Failure to enact this administrative regulation would place the department in violation of the Franklin Circuit Court Order relating to high intensity ventilator services, would not implement state statutory mandate of removing the category of dual licensure beds effective December 31, 1996 and would not comply with federal law. This emergency administrative language differs from the emergency administrative regulation on the same subject matter that was filed on January 17, 1997 as follows: revises PASARR requirements to comply with federal law. This emergency administrative regulation shall be replaced by an ordinary administrative regulation filed with the Regulations Compiler.

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

#### CABINET FOR HEALTH SERVICES Department for Medicaid Services Division of Administration and Development

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

RELATES TO: KRS 205.520, 42 CFR 430, 431, 432, 433, 435, 440, 441, 442, 447, 456, 42 USC 1396a, b, c, d, g, i, l, n, o, p, r, r-2, r-3, r-5, s

STATUTORY AUTHORITY: KRS 194.050, 205.520, 42 CFR 430, 431, 432, 433, 435, 440, 441, 442, 447, 456, 456; 42 USC 1396a, b, e, d, g, i, l, n, o, p, r, r-2, r-3, r-5, s; EO 96-862

EFFECTIVE: August 14, 1997

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health Services, Department for Medicaid Services (Human Resources) has responsibility to administer the Medicaid Program. Executive Order 96-862, effective July 2, 1996, reorganized the Cabinet for Human Resources and placed the Department for Medicaid Services and the Medicaid Program under the Cabinet for Health Services. KRS 205.520 empowers the cabinet by administrative regulation, to comply with any requirement that may be imposed, or opportunity presented, by federal law for the provision of medical assistance to Kentucky's indigent citizenry. This administrative regulation sets forth the method for determining amounts payable by the Medicaid Program [cabinet] for nursing care facility services and intermediate care facility for the mentally retarded services.

Section 1. Definitions. (1) "All other costs" means other care-related costs, other operating costs, capital costs, and indirect ancillary costs.

(2) "Allowable cost" means that portion of the facility's cost which may be allowed by the department [cabinet] in establishing the reimbursement rate. Cost shall be considered allowable if the item of supply or service is necessary for the provision of the appropriate level of patient care and the cost incurred by the facility is within cost limits established by the department [cabinet], i.e., the allowable cost is "reasonable."

(3) "Ancillary services" means those direct services for which a separate charge is customarily made, and which, except for ventilator therapy services, and brain injury unit services are retrospectively settled on the basis of reasonable allowable cost at the end of the facilities' fiscal year. Ancillary services shall be limited to the following:

- (a) Physical, occupational and speech therapy;
- (b) Laboratory procedures;
- (c) X-ray;
- (d) Oxygen and other related oxygen supplies;
- (e) Respiratory therapy (excluding the routine administration of oxygen);
- (f) Psychological and psychiatric therapy (for intermediate care facilities for the mentally retarded only); and

(g) Ventilator therapy services, subject to the coverage limitations shown in the Nursing Facility Reimbursement Manual.

(4) "Basic per diem cost" means for each major cost category (nursing services costs and all other costs) shall be the computed rate arrived at if ~~[when]~~ otherwise allowable costs are trended and adjusted in accordance with the inflation factor, the occupancy factor, and the median cost center per diem upper limits.

(5) "Department" means the Department for Medicaid Services or its designee.

(6) "Hospital based nursing facilities" means those nursing facilities in the same building with or attached to an acute care hospital and which share common administration, nursing staff, and ancillary services with the hospital; however, those facilities classified as hospital based skilled nursing facilities on June 30, 1989 shall remain classified as hospital based nursing facilities.

(7) ~~[(6)]~~ "Incentive factor" means the comparison of the basic per diem cost (for facilities qualifying for a cost savings incentive) with the upper limit for the appropriate cost arrays using the cost savings incentive (CSI) percentage (and taking into consideration the maximum allowable CSI amount for each cost array) to arrive at the actual dollar amount of cost savings incentive return to be added to the basic per diem cost.

(8) ~~[(7)]~~ "Inflation factor" means the comparison of allowable routine service costs, not including fixed or capital costs, with an inflation rate to arrive at projected current year cost increases, which when added to allowable costs, including fixed or capital costs, yields projected current year allowable costs.

(9) ~~[(8)]~~ "ICF-MRs" means intermediate care facilities for the mentally retarded.

(10) ~~[(9)]~~ "Maximum allowable cost" means the maximum amount which may be allowed to a facility as reasonable cost for provision of an item of supply or service while complying with limitations expressed in related federal or state regulations.

(11) ~~[(10)]~~ "Necessary function" means that had the owner not rendered services pertinent to the operation of the institution, the institution would have had to employ another person to perform the service.

(12) ~~[(11)]~~ "Nursing facilities with waiver (NFs-W)" means facilities certified to the Medicaid Program by the state survey agency as meeting all NF requirements except the nurse staffing requirement for which an NF waiver has been granted by the survey agency.

(13) ~~[(12)]~~ "Nursing facility (NFs)" means a facility certified to the Medicaid Program by the state survey agency as meeting all nursing facility requirements, and in at least twenty (20) percent of the facility's Medicaid participating beds (but not less than ten (1) beds meeting all conditions of participation in the Medicare Program. The phrase "nursing facility" also includes a nursing facility with waiver, as provided for in 42 USC 1396r(b)

(4)(C)(ii), unless the context specifies otherwise.

(14) ~~[(13)]~~ "Nursing facility with a mental retardation specialty" (NF-MRS) means a nursing facility in which at least fifty-five (55) percent of the patients have demonstrated special needs relating to the diagnosis of mental retardation.

(15) ~~[(14)]~~ "Nursing services costs" means the direct costs associated with nursing services.

(16) ~~[(15)]~~ "Occupancy factor" means the imposition of an assumed level of occupancy used in computing unadjusted basic per diem rates.

(17) ~~[(16)]~~ "PRO" means peer review organization.

(18) ~~[(17)]~~ "Prospective rate" means a payment rate of return for routine services based on allowable costs and other factors, and includes the understanding that except as specified the prospective rate shall not be retroactively adjusted, either in favor of the facility or the department ~~[cabinet]~~.

(19) ~~[(18)]~~ "Routine services" means the regular room, dietary, medical social services, nursing services, minor medical and surgical supplies, and the use of equipment and facilities. Routine services

shall include the following:

(a) All general nursing services, including administration of oxygen and related medications, handfeeding, incontinency care and tray services;

(b) Items which are furnished routinely and relatively uniformly to all patients, such as patient gowns, water pitchers, basins and bed pans. Personal items such as paper tissues, deodorants, and mouthwashes shall be allowable as routine services if generally furnished to all patients;

(c) Items stocked at nursing stations or on the floor in gross supply and distributed or utilized individually in small quantities, such as alcohol, applicators, cotton balls, band-aids and tongue depressors;

(d) Items which are utilized by individual patients but which are reusable and expected to be available in an institution providing a nursing facility level of care, such as ice bags, bed rails, canes, crutches, walkers, wheelchairs, traction equipment, and other durable medical equipment;

(e) Laundry services including personal clothing to the extent it is the normal attire for everyday facility use, but excluding dry cleaning costs; and

(f) Other items or services generally available or needed within a facility unless specifically identified as ancillary services. (Items excluded from reimbursement include private duty nursing services and ambulance services costs.)

(20) ~~[(19)]~~ "Upper limit" means the maximum level at which the department ~~[cabinet]~~ shall reimburse, on a facility by facility basis, for routine services.

Section 2. Reimbursement for Nursing Facilities, ~~[(NFs)]~~ Including Nursing Facilities with Waiver~~(s)]~~ and Intermediate Care Facilities for the Mentally Retarded (ICF-MRs). (1) All nursing facilities, ~~[(NFs)]~~ ~~[(including nursing facilities with waiver)]~~ or intermediate care facilities for the mentally retarded (ICF-MRs) participating in the Medicaid Program shall be reimbursed in accordance with this administrative regulation.

(2) Payments made shall be in accordance with the requirements set forth in 42 CFR 447.250 through 42 CFR 447.280 and the coverage requirements specified in 907 KAR 1:022~~[(Nursing facility and intermediate care facility for the mentally retarded services)]~~.

(3)(a) A nursing facility desiring to participate in Medicaid shall be required to have at least twenty (20) percent of its Medicaid participating beds ~~[(but not less than ten (10) beds)]~~ ~~[(for)]~~ A facility with less than ten (10) beds, shall have all beds~~[(s)]~~ participate in the Medicare Program unless the nursing facility has been granted a waiver of the nursing facility nurse staffing requirement and, as a result, cannot participate in Medicare.

(b) If a nursing facility with waiver chooses to participate in the Medicare Program, the facility shall be required to have at least twenty (20) percent of its Medicaid participating beds ~~[(but not less than ten (10) beds)]~~ ~~[(s)]~~ If the facility has less than ten (10) beds, all beds shall ~~[(s)]~~ participate in the Medicare Program.

(4) The Medicaid Program does not recognize multilevel nursing facilities, and therefore all participating beds in nursing facilities (including nursing facilities with waiver but not including ICF-MRs) shall be reimbursed at the same rate established for the entire facility.

Section 3. Basic Principles of Reimbursement. (1) Payment shall be on the basis of rates which have been determined by the department ~~[cabinet]~~ to be reasonable and adequate to meet the costs which are required to be incurred by efficiently and economically operated facilities in order to provide care and services in conformity with applicable state and federal laws, regulations, and quality and safety standards, in accordance with the requirements set forth in 42 USC 1396(a)(13)(A).

(2) Payment amounts shall be arrived at by application of the reimbursement principles developed by the department ~~[cabinet]~~ and



contained in the ~~[Kentucky Medicaid Program]~~ Nursing Facility Reimbursement Manual, ~~revised July 1, 1995 which is incorporated by reference in this administrative regulation and supplemented by the use of the Medicare reimbursement principles. The Kentucky Medicaid Program Nursing Facility Reimbursement Manual may be reviewed during regular working hours (8 a.m. to 4:30 p.m. eastern standard time) in the Office of the Commissioner, Department for Medicaid Services, 275 East Main Street, Frankfort, Kentucky 40621. Copies may also be obtained from that office upon payment of the appropriate fee allowed by 200 KAR 1:020.~~

Section 4. Implementation of the Payment System. The ~~department's~~ ~~[cabinet's]~~ reimbursement system shall be supported by the Medicare Principles of Reimbursement, with the system utilizing the principles as guidelines in unaddressed policy areas. The ~~[cabinet's]~~ reimbursement system shall include the following specific policies, components or principles:

(1) Prospective payment rates for routine services shall be set by the ~~department~~ ~~[cabinet]~~ on a facility by facility basis, and shall not be subject to retroactive adjustment except as specified in this section of the administrative regulation, including the provisions contained in subsections (13) and (14) of this section.

(a) Prospective rates shall be cost based annually, and may be revised on an interim basis in accordance with procedures set by the ~~department~~ ~~[cabinet]~~.

(b) An adjustment to the prospective rate (subject to the maximum payment for that type of facility) shall be considered only if a facility's increased costs are attributable to one (1) of the following reasons:

1. Governmentally imposed minimum wage increases;
2. The direct effect of new licensure requirements or new interpretations of existing requirements by the appropriate governmental agency as issued in administrative regulation or written policy which affects all facilities within the class; or
3. Other governmental actions that result in an unforeseen cost increase.

(c)1. The amount of any prospective rate adjustment shall not exceed that amount by which the cost increase resulting directly from the governmental action exceeds on an annualized basis the inflation allowance amount included in the prospective rate for the general cost area in which the increase occurs. For purposes of this determination, costs shall be classified into two (2) general areas, salaries and other.

2. The effective date of interim rate adjustment shall be the first day of the month in which the adjustment is requested or in which the cost increase occurred, whichever is later.

(2)(a) The prospective rate shall not exceed, on a facility by facility basis, an administratively established maximum payment for that type of facility as applicable (except that ICF-MRs shall have no administratively set upper limit).

(b)1. The state shall set a uniform rate year for NFs and ICF-MRs (July 1 - June 30) by taking the latest available cost data which are ~~[is]~~ available as of May 16 of each year and trending the facility costs to July 1 of the rate year. If the latest available cost report period cost data have not been audited or desk reviewed prior to rate setting for the universal year beginning July 1, the [with] prospective rates based on cost reports which are not audited or desk reviewed shall be subject to adjustment when the audit or desk review is completed.

2. ~~[Appropriate cost report adjustments shall be made for the period between July 1, 1990 and October 1, 1990 to account for the fact a nursing facility rate adjustment related to nursing home reform shall be made effective October 1, 1990.~~

3. Partial year, or budgeted cost data may be used if a full year's data is unavailable. Unaudited reports shall be subject to adjustment to the audited amount.

(c) Facilities paid on the basis of partial year or budgeted cost reports shall have their reimbursement settled back to allowable cost,

with usual upper limits applied.

(d) Facilities whose rates are subject to settlement back to cost will not be included in the arrays until the facilities are no longer subject to cost settlement.

(e) The following specific policies shall be used with regard to determination, application, and exclusion from upper limits.

1. Nursing facility arrays. For purposes of setting upper limits the freestanding NFs (exclusive of the NF-MRs, NF-institutions for mental disease, and NF-pediatric facilities) shall be divided into urban and rural arrays.

a. The urban array shall include all facilities within a standard metropolitan statistical area.

b. The rural array shall include all facilities in nonstandard metropolitan statistical area counties.

c. For purposes of arraying, current multilevel facilities (i.e., NF and ICF) shall be considered as one (1) facility, and the composite or overall rate for the facility shall be paid for services rendered in either level during the period of time preceding the first survey agency occurring on or after October 1, 1990 (with separate levels ceasing to exist for Medicaid purposes at the time of the first survey).

d. The urban and rural arrays shall be further broken down into a nursing cost center array and an "other cost center" array for each.

2. Nursing facility upper limits. The following NF upper limits shall be applied:

a. The upper limit for nursing costs for freestanding NFs shall be set at 115 percent of the median of the array of each facility's cost per case mix unit (urban or rural as applicable). The upper limit for "other costs" for freestanding NFs shall be set at 115 percent of the median of the allowable per diem cost array for the facilities (urban or rural as applicable);

b. The upper limit for hospital based nursing facilities shall be set at 125 percent of the appropriate upper limit for freestanding facilities; and

c. The upper limit for NF-MRS shall be set at 120 percent of the appropriate upper limit for freestanding facilities.

3. Exclusions from nursing facility upper limits. The following exclusions from usual NF payment methodology and upper limits shall be applied.

a. Nursing facilities designated as institutions for mental diseases or as pediatric facilities shall be reimbursed at full reasonable and allowable prospective cost;

b. Hospital swing beds shall be paid at the average of NF payments for the preceding calendar year. The swing bed rates shall change effective January 1, 1991 and each January 1 thereafter;

c. ~~[Hospital dual licensed beds shall be paid at the hospital-based facility upper limits;~~

d. Facilities recognized as providing distinct part ventilator dependent care shall be paid at an all-inclusive (excluding drugs which shall be reimbursed through the pharmacy program) fixed rate. A distinct part ventilator unit of not less than twenty (20) beds shall be required with a requirement that the facility have a ventilator patient census of at least fifteen (15) patients. The patient census shall be based upon the quarter preceding the beginning of the rate year, or upon the quarter preceding the quarter for which certification is requested if the facility did not qualify for participation as a distinct part ventilator care unit at the beginning of the rate year. The fixed rate for hospital-based facilities shall be \$460 per day, and the fixed rate for freestanding facilities shall be \$250 per day. The rates shall be increased or decreased based on the Data Resources, Inc. rate of inflation indicator for the nursing facility services for each rate year beginning with the July 1, 1997 rate year. Costs of distinct part ventilator nursing facility units shall be excluded from allowable cost for purposes of rate setting and settlement of nursing facility cost reports; and

d. ~~[which shall be equal to projected costs; and~~

e. Facilities which are Medicaid certified head injury units providing preauthorized specialized rehabilitation services for persons with brain injuries shall be paid at an all-inclusive (excluding drugs



which shall be reimbursed through the pharmacy program) fixed rate which shall be set at \$360 per diem. Facilities providing preauthorized specialized rehabilitation services for persons with brain injuries with rehabilitation complicated by neurobehavioral sequelae shall be paid an all-inclusive (excluding drugs) negotiated rate which shall not exceed the facilities' usual and customary charges.

4. Other factors relating to costs and upper limit determination shall be:

a. If the department [~~eabinet~~] has made a separate rate adjustment as compensation to the facilities for minimum wage updates, the department [~~eabinet~~] shall then adjust downward trending and indexing factors to the extent necessary to remove from the factors costs relating to the minimum wage updates already provided for by the separate rate adjustment. The purpose of the adjustment to the factors shall be to avoid paying the facilities twice for the same costs. If the trending and indexing factors include costs related to a minimum wage increase, the department [~~eabinet~~] shall not make a separate rate adjustment, and the minimum wage costs shall not be deleted from the trending and indexing factors.

b. The allowable per diem cost for NFs (excluding swing beds, dual licensed hospital beds, and facilities with all inclusive rates) shall include (through June 30, 1991) thirty-eight (38) cents for nurse aide training; and one (1) dollar and thirty-eight (38) cents for implementation of universal precautions for disease control; and four (4) cents for medical director costs; these allowable cost amounts shall not be subject to adjustment or cost settlement.

c. A special access and treatment fee shall be added to the facility per diem (without regard to upper limits) for each individual identified as having care needs associated with high infectious or communicable diseases with limited treatment potential, such as hepatitis B, methicillin-resistant staphylococcus aureus (MRSA), acquired immune deficiency syndrome (AIDS), or who test positive for human immunodeficiency virus (HIV).

d. The maximum payment amounts for the prospective uniform rate year shall be adjusted each July 1 so that the maximum payment amount in effect for the rate year shall be related to the cost reports used in setting the facility rates for the rate year.

e. For purposes of administrative ease in computations, normal rounding may be used in establishing the maximum payment amount, with the maximum payment amount rounded to the nearest five (5) cents. Upon being set, the arrays and upper limits shall not be altered due to revisions or corrections of data except as specified in this subsection.

(3) The reasonable direct cost of ancillary services provided by the facility as a part of total care shall be compensated on a reimbursement cost basis as an addition to the prospective rate except for ventilator therapy and brain injury unit services which shall be paid on the basis of all-inclusive rates.

(a) Ancillary services reimbursement shall be subject to a year-end audit, retroactive adjustment and final settlement.

(b) Ancillary costs may be subject to maximum allowable cost limits under federal regulations.

(c) Any percentage reduction made in payment of current billed charges shall not exceed twenty-five (25) percent, except:

1. In the instance of individual facilities where the actual retroactive adjustment for a facility for the previous year reveals an overpayment by the department [~~eabinet~~] exceeding twenty-five (25) percent of billed charges; or

2. Where an evaluation by the department [~~eabinet~~] of an individual facility's current billed charges shows the charges to be in excess of average billed charges for other comparable facilities serving the same area by more than twenty-five (25) percent.

(4) Interest expense used in setting the prospective rate shall be an allowable cost if permitted under Medicare principles and if it meets these additional criteria:

(a) It represents interest on long-term debt existing at the time the vendor enters the program or represents interest on any new long-

term debt, the proceeds of which are used to purchase fixed assets relating to the provision of the appropriate level of care. If the debt is subject to variable interest rates found in balloon-type financing, renegotiated interest rates shall be allowable. The form of indebtedness may include mortgages, bonds, notes and debentures when the principal is to be repaid over a period in excess of one (1) year; or

(b) It is other interest for working capital and operating needs that directly relate to providing patient care. The form of the indebtedness may include notes, advances and various types of receivable financing;

(c) For both paragraphs (a) and (b) of this subsection, interest on a principal amount used to purchase goodwill or other intangible assets shall not be considered an allowable cost.

(5) Compensation to owner/administrators shall be considered an allowable cost provided that it is reasonable, and that the services actually performed are a necessary function.

(a) Compensation shall include the total benefit received by the owner for the services he renders to the institution, excluding fringe benefits routinely provided to all employees and the owner/administrator.

(b) Payment for services requiring a licensed or certified professional performed on an intermittent basis shall not be considered a part of compensation. Reasonableness of compensation shall be based on total licensed beds (all levels).

(c) Compensation for owners and nonowner administrators (except for nonowner administrators of intermediate care facilities for the mentally retarded and dual licensed pediatric facilities) shall not exceed the amounts specified in the Nursing Facility Reimbursement Manual.

(6) The allowable cost for services or goods purchased by the facility from related organizations shall be the cost to the related organization, except if ~~if when~~ it can be demonstrated that the related organization is in fact equivalent to any other second party supplier, i.e., a relationship for purposes of this payment system is not considered to exist. A relationship shall be considered to exist if ~~if when~~ an individual (or individuals) possesses five (5) percent or more of ownership or equity in the facility and the supplying business. However, an exception to the relationship shall be determined to exist if ~~if when~~ fifty-one (51) percent or more of the supplier's business activity of the type carried on with the facility is transacted with persons and organizations other than the facility and its related organizations.

(7) The amount allowable for leasing costs shall not exceed the amount which would be allowable based on the computation of historical costs, except that for nursing facilities entering into lease/rent arrangements as intermediate care facilities prior to April 22, 1976, intermediate care facilities for the mentally retarded entering into lease/rent arrangements prior to February 23, 1977, and nursing facilities entering into lease/rent arrangements as skilled nursing facilities prior to December 1, 1979, the department [~~eabinet~~] shall determine the allowable costs of these arrangements based on the general reasonableness of the costs.

(8) Certain costs not directly associated with patient care shall not be considered allowable costs. Costs which shall not be allowable include political contributions, travel and related costs for trips outside the state (for purposes of conventions, meetings, assemblies, conferences, or any related activities), specified vehicle costs as shown in the ~~(Kentucky Medicaid Program)~~ Nursing Facility Reimbursement Manual, and legal fees for unsuccessful lawsuits against the department [~~eabinet~~]. However, costs (excluding transportation costs) for training or educational purposes outside the state shall be ~~[are]~~ allowable costs unless the costs are incurred by administrators or owners.

(9) To determine the gain or loss on the sale of a facility for purposes of determining a purchaser's cost basis in relation to depreciation and interest costs, the following methods shall be used for changes of ownership occurring before July 18, 1984:

(a) Determine the actual gain on the sale of the facility.

(b) Add to the seller's depreciated basis two-thirds (2/3) of one (1) percent of the gain for each month of ownership since the date of acquisition of the facility by the seller to arrive at the purchaser's cost basis.

(c) Gain shall be defined as any amount in excess of the seller's depreciated basis as computed under program policies at the time of the sale, excluding the value of goodwill included in the purchase price.

(d) A sale shall be any bona fide transfer of legal ownership from an owner(s) to a new owner(s) for reasonable compensation, which shall usually be fair market value. Lease-purchase agreements or other similar arrangements which do not result in transfer of legal ownership from the original owner to the new owner shall not be considered sales until legal ownership of the property is transferred.

(e) If an enforceable agreement for a change of ownership was entered into prior to July 18, 1984, the purchaser's cost basis shall be determined in the manner set forth in paragraphs (a) through (d) of this subsection.

(10) Valuation of capital assets.

(a) ~~No~~ Increase in valuation in relation to depreciation and interest costs shall not be allowed for changes of ownership occurring after July 18, 1984 and before October 1, 1985 except as shown in subsection (9)(e) of this section with regard to enforceable agreements for a change of ownership entered into prior to July 1, 1984.

(b) For bona fide changes of ownership entered into on or after October 1, 1985 the depreciation and interest costs shall be increased in valuation in accordance with 42 USC 1396a(a) (13)(C) and the Reimbursement Manual at pages 350.03 - 350.10 and 352.08-352.09 effective for services provided on or after July 1, 1995.

1. The payment increases resulting from the increases in valuation shall be limited to a projected annual amount of \$3,000,000, taking into account Medicaid occupancy from the prior year Medicaid cost report, with the payments made as an add-on to the usual payment rates and not subject to the usual upper limits. If projected add-on payments would otherwise exceed \$3,000,000 on an annual basis the add-on amounts shall be reduced proportionately for each facility, i.e., the same percentage reduction shall be applied to all facilities qualifying for the rate add-on.

2. Facilities qualifying for the rate add-on shall be those facilities with a bona fide change of ownership on or after October 1, 1985 and before the beginning of the rate year for which the add-on is applicable. For the rate year beginning July 1, 1995, the notice of change of ownership and necessary cost data to compute the rate add-on shall be provided to the department by not later than September 30, 1995. For subsequent rate years, the notice of change of ownership and necessary cost data to compute the rate add-on shall be provided to the department by July 31 of the affected rate year.

(11) Each facility shall maintain and make available any records (in a form acceptable to the department ~~ecabinet~~) which the department ~~ecabinet~~ may require to justify and document all costs to and services performed by the facility. The department ~~ecabinet~~ shall have access to all fiscal and service records and data maintained by the provider, including unlimited on-site access for accounting, auditing, medical review, utilization control and program planning purposes.

(12) The following shall apply with regard to the annual cost report required of the facility:

(a) The year-end cost report shall contain information relating to prior year cost, and shall be used in establishing prospective rates and setting ancillary reimbursement amounts;

(b) New items or expansions representing a departure from current service levels for which the facility requests prior approval by the program shall be so indicated with a description and rationale as a supplement to the cost report;

(c) Department ~~ecabinet~~ approval or rejection of projections or expansions shall be made on a prospective basis in the context that if expansions and related costs are approved they shall be considered

when actually incurred as an allowable cost. Rejection of items or costs shall represent notice that the costs shall not be considered as part of the cost basis for reimbursement. Unless otherwise specified, approval shall relate to the substance and intent rather than the cost projection; and

(d) If ~~When~~ a request for prior approval of projections or expansions is made, absence of a response by the department ~~ecabinet~~ shall not be construed as approval of the item or expansion.

(13) The department ~~ecabinet~~ shall perform a desk review of each year-end cost report and ancillary service cost to determine the necessity for and scope of a field audit in relation to routine and ancillary service cost. If a field audit is not necessary, the report shall be settled without a field audit. Field audits shall be conducted when determined necessary. A desk review or field audit shall be used for purposes of verifying cost to be used in setting the prospective rate or for purposes of adjusting prospective rates which have been set based on unaudited data; audits may be conducted annually or at less frequent intervals. An audit of ancillary cost shall be conducted as needed.

(14) Year-end adjustments of the prospective rate and a retroactive cost settlement shall be made if:

(a) Incorrect payments have been made due to computational errors (other than the omission of cost data) discovered in the cost basis or establishment of the prospective rate.

(b) Incorrect payments have been made due to misrepresentation on the part of the facility (whether intentional or unintentional).

(c) A facility is sold and the funded depreciation account is not transferred to the purchaser.

(d) The prospective rate has been set based on unaudited cost reports and the prospective rate is to be adjusted based on audited reports with the appropriate cost settlement made to adjust the unaudited prospective payment amounts to the correct audited prospective payment amounts.

(15) The department ~~ecabinet~~ may develop and utilize methodology to assure an adequate level of care. Facilities determined by the department ~~ecabinet~~ to be providing less than adequate care may have penalties imposed against them in the form of reduced payment rates.

(16) Each facility shall submit the required data for determination of the prospective rate no later than sixty (60) days following the close of the facility's fiscal year. This time limit may be extended at the specific request of the facility (with the department's ~~ecabinet's~~ concurrence).

(17) Allowable prior year cost, trended to the beginning of the rate year and indexed for inflation, shall be subject to adjustment based on a comparison of costs with the facility's occupancy rate (i.e., the occupancy factor) as determined in accordance with procedures set by the department ~~ecabinet~~.

(a) The occupancy rate shall not be less than actual bed occupancy, except that it shall not exceed ninety-eight (98) percent of certified bed days (or ninety-eight (98) percent of actual bed usage days, if more, based on prior year utilization rates).

(b) The minimum occupancy rate shall be ninety (90) percent of certified bed days for facilities with less than ninety (90) percent certified bed occupancy.

1. The department ~~ecabinet~~ may impose a lower occupancy rate for newly constructed or newly participating facilities, or for existing facilities suffering a patient census decline as a result of a competing facility newly constructed or opened serving the same area.

2. The department ~~ecabinet~~ may impose a lower occupancy rate during the first two (2) full facility fiscal years an existing nursing facility participates in the program under this payment system.

(18) Qualifying nursing facilities (but not including swing beds, ~~dual licensed hospital beds,~~ institutions for mental diseases, pediatric facilities, and facilities with all-inclusive rates) shall earn a cost savings incentive.

(a) Facilities qualifying for the cost savings incentive (except for

NF-MRSs) shall be those facilities whose rate within the applicable cost array is not in excess of 110 percent of the median of the array.

(b) The cost savings incentive shall be computed at ten (10) percent of the difference between the facility's cost and the upper limit for the array with the cost savings incentive amount limited to not more than one (1) dollar and fifty (50) cents per day per facility for each cost array.

(c) NF-MRSs shall qualify for the cost savings incentive if the NF-MRS has costs less than the NF-MRS upper limit, and the cost savings incentive shall be ten (10) percent of the difference between the facility rate and the upper limit for the class of facility with the cost savings incentive amount limited to not more than one (1) dollar and fifty (50) cents per day per facility for each cost array.

(19) Intermediate care facilities for the mentally retarded may qualify for a cost incentive and investment factor (CIIF) allowance based on a comparison of the facility rate with the CIIF schedule shown in this subsection. ~~(No)~~ Return for investment risk shall not be made to nonprofit facilities, and publicly owned and operated facilities shall not receive the incentive or investment return. Cost incentive and investment schedule for intermediate care facilities for the mentally retarded:

(Effective 10-1-90)

Basic Per Diem Cost	Investment Factor Per Diem Amount	Incentive Factor Per Diem Amount
\$ 96.99 & below	\$1.38	\$.87
97.00 -102.99	1.29	\$.75
103.00 -108.99	1.18	\$.62
109.00 -114.99	1.06	\$.47
115.00 -120.99	.92	\$.31
121.00 -126.99	.76	\$.13
127.00 -133.49	*.53	----

\*There is no maximum payment limit for intermediate care facilities for the mentally retarded.

(20) Hold harmless. The NFs (but not including swing beds or dual licensed hospital beds) shall be entitled to a "hold harmless" amount for the period from October 1, 1990 through June 30, 1992.

(a) This hold harmless amount shall be the amount, if any, by which the July 1, 1990 allowable facility rate plus an adjustment for ancillary costs shifted to routine costs (less a nurse aide training per diem allowance of one (1) dollar and twenty (20) cents) exceeds the allowable facility rate as computed on October 1, 1990 and July 1, 1991 (excluding the revised nurse aide training per diem allowance and other per diem add-ons in recognition of OBRA 87 requirements) under the revised reimbursement system.

(b) For hold harmless purposes, the July 1, 1990 rate shall be increased by an inflation allowance using the appropriate data resources, incorporated index for inflation.

(21) An adjustment shall be made to the usual rate for ICF-MRs, institutions for mental diseases, and pediatric facilities to account for those medical supplies, catheters, syringes, and diapers not payable under the pharmacy program (and no longer payable as ancillaries under the nursing facility payment system) which are thus included under the routine cost category.

(22) Case-mix. The nursing costs for each facility shall be divided by the average case weight (as measured by each patient's needs with regard to activities of daily living and special needs using a standardized measurement as shown in the Nursing Facility Reimbursement Manual with a range from one (1.0) (lowest level of intensity) to 4.12 (highest level of intensity) to derive the facility average case unit cost.

~~(a) [1. The average case weight for the period October 1, 1990 through June 30, 1991 shall be based on Medicaid patient level of~~

~~care determinations made during the period July 1, 1990 through September 30, 1990 for each facility. (The peer review organization (PRO) shall first determine whether a patient is high intensity, low intensity, or neither. For patients meeting patient status (high or low intensity), the PRO will then determine the case weight).~~

2-] The average case weight [thereafter] shall be based on all level of care determinations made during the period covered by the cost report (or as appropriate the most recent period available or a projection if a fully or partial cost report is not available).

(b) The facility nursing rate shall be adjusted for each quarter throughout the year and shall be the product of the average case unit cost (subject to upper limits and with the cost savings incentive adjustment as appropriate) times the average case weight for the prior quarter (as determined using standard methodology and point-in-time analysis). The actual facility payment amount for nursing care shall thus be subject to adjustment each calendar quarter based on changes in facility average case weight, though the average case unit cost (based on prior year costs) remains the same.

(23) Nursing home reform costs.

(a) Effective October 1, 1990 and thereafter, facilities shall be required to request preauthorization for costs that must be incurred to meet nursing home reform costs in order to be reimbursed for the costs.

1. The preauthorization request shall show the specific reform action that is involved and appropriate documentation of necessity and reasonableness of cost.

2. Upon authorization by the Medicaid agency, the cost shall be allowable.

3. A request for a payment rate adjustment may then be submitted to the Medicaid agency with documentation of actual cost incurred.

4. The allowable additional amount shall then be added on the facility's rate (effective with the date the additional cost was incurred) without regard to upper limits or the cost savings incentive factor (i.e., the authorized nursing home reform cost shall be passed through at 100 percent of reasonable and allowable cost).

(b) Preauthorization shall not be required for nursing home reform costs incurred during the period July 1, 1990 through September 30, 1990; however, the actual costs incurred shall be subject to tests of reasonableness and necessity and shall be fully documented at time of the request for rate adjustment.

(c) Facilities may request multiple preauthorizations and rate adjustments (add-ons) as necessary for implementation of nursing home reform.

(d) Facility costs incurred prior to July 1, 1990 shall not (except for the costs previously recognized in a special manner, i.e., the universal precautions add-on and the nurse aide training add-on) be recognized as being nursing home reform costs.

(e) The special nursing home reform rate adjustment shall be requested using forms and methods specified by the department [agency].

(f) A nursing home rate adjustment shall be included within the cost base for the facility in the rate year following the rate year for which the adjustment was allowed.

(g) Interim rate adjustments for nursing home reform shall not be allowed for periods after June 30, 1993.

(24) The provider tax on nursing facilities shall be considered allowable cost; for the period of July 1, 1993 through June 30, 1994 appropriate rate adjustment shall be made as a rate add-on, with no offset against the inflation allowance. For subsequent rate periods, the cost basis shall be adjusted as appropriate to reflect the cost of the provider tax.

Section 5. Prospective Rate Computation. The prospective rate for each facility (taking into account the factors described in this administrative regulation and the case mix methodology shown in the Nursing Facility Reimbursement Manual) shall reflect the following:

- (1) The adjusted allowable cost for the facility;
- (2) Adjustments to allowable cost related to occupancy;
- (3) Adjustments to allowable cost related to application of upper limits;
- (4) Adjustments to allowable cost related to application of the cost savings incentive factor, or for ICF-MRs, the cost incentive and investment schedule;
- (5) Rates shall be recomputed quarterly based on revisions in the case mix assessment classification which affects the nursing services component as described in the Nursing Facility Reimbursement Manual. ~~[; however,]~~ The cost basis and the upper limits shall be revised annually using the latest available cost reports and assessments from each provider;
- (6) Adjustments as appropriate for costs shifted from ancillary to routine;
- (7) Nursing home reform adjustments; and
- (8) Hold harmless adjustments.

Section 6. Reimbursement Review and Appeal. Participating facilities may appeal department ~~[cabinet]~~ decisions as to application of the general policies and procedures in accordance with 907 KAR 1:671~~[; Conditions of Medicaid provider participation; enrollment; documentation of services; disclosure; claims processing; withholding overpayments; appeals process; and sanctions].~~

Section 7. Reimbursement for Required Services under PASARR.

- (1) Prior to an admission of any individual, the NF shall conduct a level I and PASARR in accordance with 907 KAR 1:755E, Section 4.
- (2) The department shall reimburse an NF for service delivered to an individual only if the NF complies with the requirements of 907 KAR 1:755E.
- (3) Failure to comply with 907 KAR 1:755E shall be grounds for termination of the NF's participation in Medicaid.

Section 8. Incorporation by Reference. (1) "Nursing Facility Reimbursement Manual", Department for Medicaid Services, July, 1997, edition is incorporated by reference.

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

~~[Section 7. Implementation Date. The provisions of this administrative regulation shall be effective with regard to payments for services provided on or after July 1, 1995.]~~

LARRY A. MCCARTHY, Deputy Commissioner  
JOHN H. MORSE, Secretary

APPROVED BY AGENCY: August 5, 1997  
FILED WITH LRC: August 14, 1997 at 3 p.m.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Trish Howard or Karen Doyle

(1) Type and number of entities affected: Nursing facilities participating in the Medicaid Program, approximately 20 Medicaid recipients who are ventilator dependent, all Medicaid recipients entering into a nursing facility who must be screened by the Preadmission Screening and Annual Resident Review (PASARR).

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

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

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

of Intent public hearing which will be held in accordance with KRS Chapter 13A requirement.

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

1. First year following implementation: None
2. Second and subsequent years: None
- (3) Effects on the promulgating administrative body:
  - (a) Direct and indirect costs or savings:
    1. First year: \$3,358,000 (Costs)\*
    2. Continuing costs or savings: \$3,358,000 (Costs)\*
  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. Federal matching funds of 70.09% equaling \$2,353,622.20 and state matching funds of 29.91% equaling \$1,004,377.80. State revenue will come from the collection of provider taxes in excess of the budgeted amount.

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

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

(b) Kentucky: To be determined after the Notice of Intent public hearing which will be held in accordance with KRS Chapter 13A requirement.

(7) Assessment of alternative methods; reasons why alternatives were rejected: No viable alternatives were identified.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: Will assure adequate access to medically necessary ventilator nursing facility beds for Medicaid recipients and ensure that facilities are reimbursed for services if annual resident reviews are not completed.

(b) State whether a detrimental effect on environment and public health would result if not implemented: Yes

(c) If detrimental effect would result, explain detrimental effect: May pose an imminent threat to the public health, safety, or welfare of Medicaid recipients.

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

(a) Necessity of proposed regulation if in conflict:

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

(10) Any additional information or comments: \*See companion regulation 907 KAR 1:022E.

(11) TIERING: Is tiering applied? (Explain why tiering was or was not used) Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it. Disparate treatment of any person or entity subject to this administrative regulation could raise questions of arbitrary action on the part of the agency. The "equal protection" and "due process" clauses of the Fourteenth Amendment of the U.S. Constitution may be implicated as well as Sections 2 and 3 of the Kentucky Constitution.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. Pursuant to 42 USC 1396a et. seq., the Commonwealth of Kentucky has exercised the option to establish a Medicaid Program for indigent Kentuckians. Having elected to offer Medicaid coverage, the state must comply with federal requirements contained in 42 USC 1396 et seq.

2. State compliance standards. This administrative regulation does not set compliance standards.

3. Minimum or uniform standards contained in the federal mandate. This administrative regulation does not set minimum or uniform standards.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No. This administrative regulation does not set stricter requirements.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. No additional standard or responsibilities are imposed.

# **STATEMENT OF EMERGENCY** **907 KAR 1:755E**

This emergency administrative regulation is being promulgated to comply with 42 USC 1396r(b) and recent Health Care Financing Administration (HCFA) directives concerning the annual resident review process. Failure to revise the annual review to optional status could result in the denial of Medicaid payments to nursing facilities for failure to comply with the mandatory requirement. Denial of Medicaid payment could result in an individual losing a bed in a nursing facility. As a result, the loss of payments for medical care could place the health and welfare of an individual in jeopardy. This emergency administrative regulation clarifies that failure to perform an annual review is no longer, in and of itself, grounds to deny Medicaid payment. This new emergency administrative regulation shall be replaced by an ordinary administrative regulation filed with the Regulations Compiler.

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

## **CABINET FOR HEALTH SERVICES** **Department for Medicaid Services** **Division of Administration and Development**

### **907 KAR 1:755E. Preadmission Screening and Annual Resident Review Program.**

RELATES TO: KRS 205.520, 42 CFR 483.100-483.138, 42 USC 1396r

STATUTORY AUTHORITY: KRS 194.050, EO 96-862

EFFECTIVE: August 14, 1997

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health Services, Department for Medicaid Services, has responsibility to administer the Medicaid Program. Executive Order 96-862, effective July 2, 1996, reorganized the Cabinet for Human Resources (CHR) and placed the Department for Medicaid Services (DMS) and the Medicaid Program under the Cabinet for Health Services (CHS). KRS 205.520 authorizes the cabinet, by administrative regulation, to comply with a 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 establishes the program requirements and payment provisions for preadmission screening and annual resident review (PASARR).

Section 1. Definitions. The following definitions shall be applicable:

(1) "Appropriate placement" means the admission to a nursing facility of an individual with mental illness, mental retardation, or a related condition only when:

(a) The individual's needs are such that he meets the level of care standards for nursing facility admission as established in 907 KAR 1:022E; and

(b) The individual's needs for treatment can be met by the level of services delivered in the nursing facility alone or, when necessary, through nursing facility services supplemented by specialized services provided by or arranged for through the Department for Mental Health and Mental Retardation Services as established in Section 5 of this administrative regulation.

(2) "Department for Mental Health and Mental Retardation Services" (DMHMRS) means the state agency or its designee with the responsibility for both the evaluation and determination functions for individuals with serious mental illness, mental retardation, or a related condition.

(3) "Exempted hospital discharge" is defined in 42 CFR 483.106 as an individual:

(a) Who is admitted to any nursing facility directly from a hospital after receiving acute inpatient care at the hospital;

(b) Who requires nursing facility services for the condition for which he received care in the hospital; and

(c) Whose attending physician has certified, prior to admission to the nursing facility, that the individual is likely to require less than thirty (30) days nursing facility services.

(4) "Interfacility transfer" means an individual who is transferred from one (1) nursing facility to another nursing facility, with or without an intervening hospital stay.

(5) "Level of care of nursing facility services" means those standards as defined in 907 KAR 1:022E, Section 4 and in 907 KAR 1:025E.

(6) "Mental retardation" means an individual's condition which has been determined to have a level of retardation (mild, moderate, severe or profound) as defined in 42 CFR 483.102.

(7) "New admission" means an individual who is admitted to a nursing facility (NF) for the first time or who is not a readmission or an exempted hospital discharge.

(8) "Nursing facility" (NF) means a facility as defined in 907 KAR 1:022E.

(9) "Preadmission screening and annual resident review" (PASARR) means the process which:

(a) Screens and identifies an individual with a serious mental illness, mental retardation, or a related condition prior to admission to a NF;

(b) Results in a determination, based on a physical and mental evaluation of each individual with mental illness, mental retardation, or a related condition of the appropriateness of the individual's admission to a NF; and

(c) Identifies appropriate services if the individual is admitted to a NF.

(10) "PRO" means a peer review organization which is under contract with the department.

(11) "Provisional admission" means an individual is admitted to a NF for fourteen (14) days or less before a PASARR level II is required and:

(a) Meets the NF's level of care as established in 907 KAR 1:022E; and

(b) Who has been diagnosed with delirium, as defined in 42 CFR 483.130, which precludes an accurate diagnosis and assessment until the delirium clears; or

(c) Who is in need of respite for in-home care givers and to whom the individual with serious mental illness, mental retardation, or a related condition is expected to return after fourteen (14) days.

(12) "Readmission" means an individual who is readmitted to a NF from a hospital to which he was transferred for the purpose of receiving acute inpatient care.

(13) "Related condition" is defined in 42 CFR 483.1009 as a severe, chronic disability that shall meet the following conditions:

(a) Cerebral palsy or epilepsy; or

(b) Any other condition, other than mental illness, found to be closely related to mental retardation because it results in impairment of general intellectual functioning or adaptive behavior similar to that

of a person with mental retardation, and requires treatment or services similar to those required for these persons; and

- (c) Is manifested before the person reaches age twenty-two (22);
- (d) Is likely to continue indefinitely; and
- (e) Results in substantial functional limitations in three (3) or more

of the following areas of major life activity:

- 1. Self-care;
- 2. Understanding and use of language;
- 3. Learning;
- 4. Mobility;
- 5. Self-direction; and
- 6. Capacity for independent living.

(14) "Serious mental illness" means an individual's condition which meets the definition in 42 CFR 483.102.

(15) "Significant change" means that the individual's condition has immediate treatment needs requiring a comprehensive reassessment and material change in plan of care.

(16) "Specialized services for mental illness" is defined in 42 CFR 483.120 as the implementation of an individualized plan of care:

- (a) Developed and supervised by a physician;
- (b) Provided by an interdisciplinary team of qualified mental health professionals;

(c) Prescribes specific therapies and activities for the treatment of persons who are experiencing an acute episode of serious mental illness which necessitates continuous supervision by trained mental health personnel; and

(d) Requires the level of intensity provided in a psychiatric inpatient hospital.

(17) "Specialized services for mental retardation or a related condition" is defined in 42 CFR 483.120 and 483.440(a)(1) as the continuous, aggressive and consistent implementation of a program of specialized and generic training, treatment, health and related services, which are comparable to services an individual receives in an intermediate care facility for the mentally retarded-developmentally disabled (ICFMR), or in a community based waiver program which provides services to persons with the mental retardation or a related condition in which twenty-four (24) hour supervision is available that is directed toward:

- (a) The acquisition of the skills necessary for the person to function with as much self-determination and independence as possible;
- (b) The prevention or deceleration of regression or loss of current optimal functional status; and
- (c) The coordination and interaction, at all times and in all settings, of all staff and the individual served, in the implementation of the specified individual program plan (IPP) objectives for the individual.

Section 2. General Applicability. (1) The provisions of this administrative regulation shall be applicable to an individual applying for admission to, or continued stay in, a nursing facility (NF) participating in the Kentucky Medicaid Program.

(2) Pursuant to 42 CFR 483.106(e)(2), DMHMRS shall be responsible for PASARR determination and evaluation functions.

(a) The Division of Mental Retardation of DMHMRS shall be responsible for determining and evaluating whether an individual applying for admission to a NF needs NF services and specialized services for mental retardation.

(b) The Division of Mental Health of DMHMRS shall be responsible for determining whether an individual applying for admission to a NF has a mental illness.

(c) The department may delegate the authority to evaluate whether an individual who is applying for admission to an NF needs NF services and specialized services for mental illness to the Division of Mental Health.

(d) The Division of Mental Health may delegate the evaluation function except that the designee shall not be a NF or an entity that

has a direct relationship or indirect affiliation or relationship with a NF.

(3) For nursing facility reimbursement of services by the Medicaid Program, an individual shall be Medicaid eligible and meet the usual patient care criteria specified in 907 KAR 1:022E and 907 KAR 1:025E.

Section 3. Deemed Consent for PASARR. An individual applying for admission to, or requesting a continued stay in, a nursing facility participating in Medicaid shall be deemed to have given consent for the department to make the determination of appropriateness for the individual to enter or remain in the facility using the standards specified 42 USC 1396r.

Section 4. Responsibility for Performing the Level I PASARR. (1) A nursing facility, prior to admitting an individual, except a readmission or an interfacility transfer, shall conduct a level I PASARR. The level I PASARR is an identification function. The level I PASARR process shall comply with the requirements of 42 CFR 483.128.

(2) If a positive response is noted in the level I PASARR, a level II PASARR shall be performed prior to the individual's admission to an NF unless he is a provisional admission, readmission, interfacility transfer or exempt hospital discharge.

(a) The Level II PASARR is the evaluation and determination if an individual needs NF and specialized services.

(b) The individual or legal guardian of an individual who is identified in the level I PASARR as suspected of having a mental illness, mental retardation, or a related condition shall be notified by the NF of a referral to DMHMRS for level II PASARR.

(3) If a level II PASARR is required, it shall be the responsibility of the nursing facility to contact DMHMRS to perform the level II PASARR as follows:

(a) For a new admission, an NF shall first conduct a level I PASARR prior to admission, notify DMHMRS if a level II PASARR is necessary, and complete the level II PASARR prior to admission.

(b) For an exempt hospital discharge, a NF shall first conduct a level I PASARR prior to admission and shall notify DMHMRS prior to the end of the exempt thirty (30) days if the individual is found to require more than thirty (30) days of NF care. DMHMRS shall conduct a level II PASARR evaluation and complete the determination within forty (40) calendar days of the date of admission to the NF.

(c) For a provisional admission pending clearing of delirium, DMHMRS shall conduct a level II PASARR and make an evaluation and determination of the need for specialized services within nine (9) working days of the referral to DMHMRS and the referral to DMHMRS shall be made within the fourteen (14) day provisional admission.

(d) If a significant change in the individual's condition occurs, the NF shall notify DMHMRS within twenty-one (21) days and DMHMRS shall complete the level II PASARR within nine (9) working days.

(e) The level II PASARR process shall comply with the requirements of 42 CFR 483.130 through 483.136.

(4) A NF shall transmit to the PRO a completed copy of an individual's PASARR prior to or simultaneously with a request for certification of level of care for an individual's admission to a NF.

Section 5. Responsibility for Performing the Level II PASARR. DMHMRS shall be responsible for:

(1) Determining whether an individual entering or remaining in a NF is mentally ill, mentally retarded or has a related condition;

(2) Determining whether the individual requires the level of services provided by a NF in accordance with 42 CFR 483.132;

(3) If the nursing facility level of service is required, determining if the individual requires specialized services or services of a lesser intensity than specialized services for mental illness, mental retardation, or a related condition in accordance with 42 CFR 483.134 and 483.136;

(4) Contracting with mental health-mental retardation centers for evaluations and determinations if the individual is mentally ill, mentally



retarded, has a related condition or requires specialized services;

(5) Contracting with other agencies, organizations or entities, if necessary, to fulfill DMHMRS' requirements with regard to the PASARR function so long as it retains ultimate control and responsibility for the performance of its obligations under CFR 483.100 - 138 and this administrative regulation; and

(6) Notifying the individual or his legal guardian of the written findings of the level II report and explaining the meaning of the report.

Section 6. Payments for PASARR Evaluations and Determinations. (1) The department shall reimburse DMHMRS for the cost of providing PASARR services under this administrative regulation.

(2) The department's reimbursement to DMHMRS for this purpose shall not exceed the actual cost to DMHMRS, including contract costs, of implementing and operating the PASARR program.

(3) The department shall reimburse a NF only if:

(a) The level I and, if required, level II PASARR are completed prior to a new admission and in a timely fashion as established in Sections 4 and 5 of this administrative regulation; or

(b) A review is required because of a significant change in the individual's condition, and it is performed in a timely fashion in accordance with Sections 4 and 5 of this administrative regulation.

(c) When a level I and, if required, a level II PASARR is not timely completed prior to admission or a subsequent review is required but not timely performed in accordance with Section 8 of this administrative regulation, but the required PASARR is performed at a later date, reimbursement shall be made for NF services provided after the PASARR is completed if the individual is determined to need NF level of care.

(4) The department shall not reimburse a NF for specialized services provided to an individual who is mentally ill, mentally retarded, or has a related condition and is in a NF. However, services of a lesser intensity than specialized services shall be provided by a NF to an individual so identified in a level II PASARR.

Section 7. Admissions Criteria under PASARR. (1) An admission to a Medicaid participating NF shall be in accordance with 42 USC 1396r.

(2) An individual who is mentally ill, mentally retarded, or has a related condition may be admitted to a NF when:

(a) The PASARR determines that he requires NF level of care; and

(b) A determination of the need for specialized services for mental illness, mental retardation, or a related condition is made.

(3) An individual who is mentally ill, mentally retarded, or has a related condition and who does not require NF level of care shall not be admitted to a NF regardless of whether he requires specialized services for mental illness or mental retardation.

Section 8. Criteria for Subsequent Reviews. (1) An individual in a Medicaid participating NF shall not be subject to mandatory annual resident review in accordance with 42 USC 1396r. However, if an individual experiences a significant change in condition, a PASARR is required as established in Sections 4 and 5 of this administrative regulation.

(2) An individual who is determined not to be mentally ill, mentally retarded, or have a related condition shall not be subject to further PASARR activity.

(3) An individual who is determined to be mentally ill, mentally retarded, or has a related condition but who requires the level of care provided by a NF may remain in the facility. A determination as specified in Section 5 of this administrative regulation, shall be made as to whether specialized services for mental illness, mental retardation, or a related condition are required.

(4) An individual who is mentally ill, mentally retarded, or has a related condition but who is determined not to require the level of care provided by a NF may remain in the facility if he has continuously

resided in a NF for thirty (30) months or more before the date of the determination. If he requires specialized services for mental illness, mental retardation, or a related condition, DMHMRS shall be responsible for the cost of such services.

(5) An individual who is mentally ill, mentally retarded, or has a related condition and who is determined not to require the level of care provided by a NF but does require specialized services and who has resided in a NF for less than thirty (30) consecutive months shall be discharged from the NF to an appropriate setting where specialized services shall be provided or arranged. The individual shall be advised by DMHMRS of his discharge rights in accordance with 42 CFR 431.200 through 431.260 and 483.12.

(6) An individual who is mentally ill, mentally retarded, or has a related condition and who is determined not to require the level of care provided by a NF and does not require specialized services, regardless of length of stay, shall be discharged. The individual shall be advised by DMHMRS of his discharge rights in accordance with 42 CFR 431.200 through 431.250 and 483.12.

Section 9. Responsibility of the Department for Inappropriately Placed Persons. (1) The department shall be responsible for the orderly discharge of an individual determined through the PASARR process to be inappropriately placed.

(2) DMHMRS shall be responsible for providing, or arranging for the provision of, specialized services to an individual for whom such a need has been determined.

Section 10. Appeals. An individual who is determined not to require NF services or specialized services as a result of a PASARR determination by DMHMRS may appeal using the following process:

(1) If an individual is determined not suitable for admission to or continued stay in a NF as a result of the PASARR process, the individual shall receive a notice from DMHMRS which advises the individual of the negative decision, the reason for the negative decision, the procedure and time frame for requesting an appeal, and the right to legal or other appropriate representation.

(2) An individual in a NF shall be allowed ten (10) days from the date of the notice to transfer from the facility, and shall not be required to move during the appeal process, if the determination is appealed within the ten (10) day period.

(3) The individual shall appeal the determination within thirty (30) days of its issuance.

(4) The individual, attending physician, and the facility, shall be notified of the date, time, and place of the hearing.

(5) The initial hearing shall be conducted by DMHMRS and shall review the basis of the PASARR decision. A decision shall be rendered within thirty (30) days of the notice of appeal and shall state the grounds upon which the decision was made.

(6) If the decision of DMHMRS is adverse to the individual, the individual shall be informed of and have the right to appeal within twenty (20) days the initial decision of DMHMRS by filing a request for appeal with the Division of Administrative Review in the Department for Social Insurance. The hearing shall be conducted in accordance with KRS Chapter 13B and 904 KAR 2:055.

(7) The individual may appeal the decision but, if an appeal is requested, the request shall be made within twenty (20) days of the notice of the decision.

(8) If requested, the appeal hearing shall be conducted by a hearing officer employed by the Division of Administrative Review, Department for Social Insurance, in accordance with 904 KAR 2:055.

LARRY A. MCCARTHY, Deputy Commissioner

JOHN H. MORSE, Secretary

APPROVED BY AGENCY: August 5, 1997

FILED WITH LRC: August 14, 1997 at 3 p.m.

REGULATORY IMPACT ANALYSIS



Agency Contact Person: Trish Howard or Karen Doyle

(1) Type and number of entities affected: Approximately 17,000 Medicaid recipients residing in 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: To be determined after the administrative regulation public hearing which will be held in accordance with KRS Chapter 13A requirement.

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

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

1. First year following implementation: None

2. Second and subsequent years: None

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings: Any savings obtained from removal of mandatory annual reviews are expected to be utilized in the other required reviews.

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: To be determined after the administrative regulation public hearing which will be held in accordance with KRS Chapter 13A requirement.

(7) Assessment of alternative methods; reasons why alternatives were rejected: No viable alternatives were identified.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: The implementation of this administrative regulation should improve availability and access of medically necessary nursing facility services for medically needy Medicaid recipients.

(b) State whether a detrimental effect on environment and public health would result if not implemented: Yes

(c) If detrimental effect would result, explain detrimental effect: Failure to implement this regulation could possibly result in denial of Medicaid payments to nursing facilities for failure to comply with mandatory annual review requirement. Loss of payments for medical care could place the health and welfare of an individual in jeopardy.

(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? Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it. Disparate treatment of any person or entity subject to this administrative regulation could raise questions of arbitrary action on the part of the agency. The "equal protection" and "due process" clauses of the

Fourteenth Amendment of the U.S. Constitution may be implicated as well as Sections 2 and 3 of the Kentucky Constitution.

#### FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate regarding preadmission screening and annual resident reviews. Pursuant to 42 USC 1396a et seq., the Commonwealth of Kentucky has exercised the option to establish a Medicaid Program for indigent Kentuckians. Having elected to offer Medicaid coverage, the state must comply with federal requirements contained in 42 USC 1396 et seq.

2. State compliance standards. This administrative regulation sets compliance standards in conformity with federal law.

3. Minimum or uniform standards contained in the federal mandate. This administrative regulation sets minimum or uniform standards in conformity with federal law.

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.

#### STATEMENT OF EMERGENCY

907 KAR 1:765E

This emergency administrative regulation is being promulgated to repeal an administrative regulation regarding the preadmission screening and annual residential review (PASARR). This action must be taken on an emergency basis in order to comply with a federal mandate and to remain in compliance with federal statutes regarding residential review requirements. Failure to enact this administrative regulation on an emergency basis could impact the department's compliance with federal Medicaid requirements. An ordinary administrative regulation is not sufficient due to the fact that the administrative regulation being repealed is obsolete and is in conflict with a federal mandate pertaining to preadmission screening and annual resident review (PASARR). This emergency administrative regulation will not be replaced by an ordinary administrative regulation since it is a repealer.

PAUL E. PATTON, Governor

JOHN H. MORSE, Secretary

#### CABINET FOR HEALTH SERVICES

Department For Medicaid Services

Division of Administration and Development

907 KAR 1:765E. Repeal of 907 KAR 1:460.

RELATES TO: KRS 205.520

STATUTORY AUTHORITY: KRS 194.050, 205.520(3), EO 96-862

EFFECTIVE: August 14, 1997

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health Services, Department for Medicaid Services, has responsibility to administer the Medicaid Program. 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 authorizes the cabinet, by administrative regulation, to comply with a requirement that may be imposed, or opportunity presented, by federal law for the provisions of medical assistance to Kentucky's indigent citizenry. This administrative regulation repeals 907 KAR 1:460 which is no longer needed because the information contained

## ADMINISTRATIVE REGISTER - 558

in this administrative regulation is obsolete. Regulatory requirements for this topic are specified in 907 KAR 1:755.

Section 1. 907 KAR 1:460, Coverage and payment for preadmission screening and annual residential review (PASARR), is hereby repealed.

LARRY A. MCCARTHY, Deputy Commissioner  
JOHN H. MORSE, Secretary

APPROVED BY AGENCY: August 5, 1997

FILED WITH LRC: August 14, 1997 at 3 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on September 22, 1997 at 9 a.m. in the Health Services Auditorium, Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by September 15, 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 canceled. The hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: Mae B. Lewis, Cabinet Regulation Coordinator, Cabinet for Health Services, Office of the Counsel, 275 East Main Street - 4th Floor - West, Frankfort, Kentucky 40621, (502) 564-7900, (502) 564-7573 (Fax).

### REGULATORY IMPACT ANALYSIS

Agency Contact Person: Trish Howard or Karen Doyle

(1) Type and number of entities affected: Approximately 17,000 Medicaid recipients residing in 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: \$0

2. Continuing costs or savings: \$0

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: None

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

None

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Federal and state matching funds.

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

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

(b) Kentucky: None: Repealer 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: The promulgation of this administrative regulation removes the mandatory requirement for annual resident reviews.

(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: 42 USC 1396r (conflict).

(a) Necessity of proposed regulation if in conflict: To repeal 907 KAR 1:460.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: Yes (See 9(a)).

(10) Any additional information or comments: None

(11) TIERING: Is tiering applied? Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it. Disparate treatment of any person or entity subject to this administrative regulation could raise questions of arbitrary action on the part of the agency. The "equal protection" and "due process" clauses of the Fourteenth Amendment of the U.S. Constitution may be implicated as well as Sections 2 and 3 of the Kentucky Constitution.

### FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate regarding preadmission screening and annual resident reviews (PASARR). Pursuant to 42 USC 1396a et seq., the Commonwealth of Kentucky has exercised the option to establish a Medicaid Program for indigent Kentuckians. Having elected to offer Medicaid coverage, the state must comply with federal requirements contained in 42 USC 1396 et seq.

2. State compliance standards. This administrative regulation sets compliance standards in conformity with federal law.

3. Minimum or uniform standards contained in the federal mandate. This administrative regulation sets minimum or uniform standards in conformity with federal law.

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.

# ADMINISTRATIVE REGULATION AS AMENDED BY PROMULGATING AGENCY AND REVIEWING SUBCOMMITTEE

**COMPILER'S NOTE:** The administrative regulations contained in this section were amended by the promulgating agency and the Administrative Regulation Review Subcommittee at its meeting on August 12, 1997.

## GENERAL GOVERNMENT CABINET State Board of Elections (As Amended)

**31 KAR 4:020. Election costs, county clerk reimbursement and form.**

RELATES TO: KRS 117.343

STATUTORY AUTHORITY: KRS 117.015(1), 117.343

NECESSITY, FUNCTION, AND CONFORMITY: KRS 117.343 provides that a county clerk may be reimbursed by the State Board of Elections for the costs of employing personnel necessary for the conduct of elections, registration of voters, and purgation of voters. This administrative regulation is necessary to provide a method and form for a county clerk to request reimbursement for these costs. [To provide a method and form for the reimbursement to the county clerks for the cost of employing office personnel necessary for the conduct of elections including the registration and purgation of voters.]

Section 1. Reimbursement shall be based on the number of registered voters for the general election held in November.

Section 2. Incorporation by Reference. (1) DOA-48, (April 1997 Edition), State Board of Elections, is incorporated by reference.

(2) It may be inspected, copied, or obtained at the office of the State Board of Elections, 140 Walnut Street, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m., EST. [The form for reimbursement, Finance and Administration Cabinet], DOA 48(A), (April 1997 edition) [revised 1/94,] is incorporated by reference [herein]. Copies of the DOA 48A [reimbursement form] may be inspected or obtained at the office of the State Board of Elections, 140 Walnut Street (Room 71, Capitol Building), Frankfort, Kentucky 40601, between the hours of 8 a.m. through 4:30 p.m., EST, Monday through Friday.]

JOHN Y. BROWN III, Chairman

APPROVED BY AGENCY: April 18, 1997

FILED WITH LRC: June 10, 1997 at 3 p.m.

## KENTUCKY TEACHERS' RETIREMENT SYSTEM (As Amended)

**102 KAR 1:175. Investment policies.**

RELATES TO: KRS 161.430

STATUTORY AUTHORITY: KRS 161.310, 161.430

NECESSITY, FUNCTION, AND CONFORMITY: KRS 161.430 provides that the board of trustees shall have full power and responsibility for the purchase, sale, exchange, transfer, or other disposition of the investments and money of the Teachers' Retirement System. This administrative regulation establishes investment policies and procedures to carry out these responsibilities.

Section 1. (1) The board of trustees shall appoint [hereby

appoints] an investment committee in accordance with the provisions of KRS 161.430(1) [consisting of the executive secretary and two (2) trustees]. The trustees shall be named at the beginning of each fiscal year. The executive secretary shall act on behalf of the investment committee in administering the [these] investment policies and procedures established in this administrative regulation. To ensure a timely market transaction [transactions], the executive secretary and the deputy executive secretary for investments may make a purchase or sale of an investment instrument [are authorized to make purchases and sales of investment instruments] without prior board approval if the action conforms to the provisions established in this administrative regulation.

(2) The board shall be provided a quarterly report [reports] reflecting a complete record of each [all] investment transaction that occurred during that quarter [transactions].

(3) The following limitations shall apply to a staff employee who is delegated a transaction responsibility: [The board places the following limits on staff employees who are delegated transaction responsibilities:]

(a) The investment committee shall be provided a complete record of each investment transaction or holding [investment transactions and holdings] on a regular basis.

(b) The staff shall maintain a file of investment directives that indicates the committee's separate review of each specific long-term investment.

(c) An "authorization [All "authorizations] for investment" shall be approved by the executive secretary or the deputy executive secretary for investments.

Section 2. Funds of the Teachers' Retirement System shall be invested within a class or category of investment instruments in accordance with the limitations on an asset class established in subsection (4) of this section.

(1) The assets allocation parameters shall be structured to:

(a) Maximize return;

(b) Provide a prudent diversification of assets; and

(c) Preserve the capital of the Teachers' Retirement System.

(2) The board shall:

(a) Assume a secure investment that provides long-term growth to the fund; and

(b) Not arbitrarily compromise security to enhance the prospects of a return.

(3) The investment committee and the board shall be mindful of the fund's liquidity and its capability of meeting a short- or long-term obligation.

(4) The following limitations shall apply to the asset classes in which funds are invested:

(a) There shall not be a limit on the amount of investments owned by the system that are guaranteed by the United States government.

(b) The amount invested in corporate debt obligations shall not equal more than thirty-five (35) percent of the assets of the system at book value.

(c) The amount invested in common stocks or preferred stock shall not equal more than sixty (60) percent of the assets of the system at book values. The amount invested in a stock portfolio designed to replicate a general, United States stock index shall not equal more than twenty-five (25) percent of the assets of the system at book value.

(d) The amount invested in real estate shall not equal more than ten (10) percent of the assets of the system at book value. Real estate shall include real estate equity, a real estate lease

agreement, a mortgage on real estate that is not guaranteed by the United States government, and a share in a real estate investment trust.

(e) The amount invested in venture capital investments shall not equal more than one (1) percent of the assets of the system at book value. At least seventy-five (75) percent of the venture capital investments shall be in state.

(f) The amount invested in an additional category or categories of investments shall not equal more than ten (10) percent of the assets of the system at book value. The board shall approve by resolution an additional category or categories of investments. [The board of trustees hereby establishes classes or categories of investment instruments that may be used in investing funds of the Teachers' Retirement System and the board specifies certain limits on the asset classes. The asset allocation parameters are structured in order to maximize return while at the same time provide a prudent diversification of assets and preserve the capital of the Teachers' Retirement System. The board is interested in assuming secure investments that will provide long-term growth to the fund. The board shall not arbitrarily compromise security in order to enhance the prospects of return. The investment committee and the board shall be mindful of the fund's liquidity and its capability at meeting both short and long-term obligations. In this regard:

(1) There shall be no limit on the amount of investments owned by the system that are guaranteed by the United States government.

(2) Not more than thirty-five (35) percent of the assets of the system at book value shall be invested in corporate debt obligations.

(3) Not more than sixty (60) [forty-five (45)] percent of the assets of the system at book value shall be invested in common stocks or preferred stocks. Not more than twenty-five (25) percent of the assets of the system at book value shall be invested in a stock portfolio designed to replicate a general United States stock index.

(4) Not more than ten (10) percent of the assets of the system at book value shall be invested in real estate. This would include real estate equity, real estate lease agreements, mortgages on real estate that are not guaranteed by the United States government, and shares in real estate investment trusts.

(5) Not more than one (1) percent of the assets of the system at book value shall be invested in venture capital investments providing at least seventy-five (75) percent of these [such] investments must be in state.

(6) Not more than ten (10) percent of the assets of the system at book value shall be invested in any additional category or categories of investments. The board shall approve by resolution any [such] additional category or categories of investments.]

Section 3. (1) The parameters that govern asset allocation shall reflect the overriding concerns by the board of trustees to:

(a) Preserve [of preserving] the capital assets of the fund;

(b) Provide [while at the same time, providing] opportunities for the fund to realize a rate of growth that will surpass the rate of inflation; and

(c) Meet the long-term financial obligations of the Teachers' Retirement System.

(2) An investment shall:

(a) Be identified as a fixed income or equity holding; and

(b) Comply with the guidelines for an investment established in subsections (3) and (4) of this section. [Investments of the system can be identified as fixed income or equity holdings. The board has established criteria for each of these broad groups.]

(3) The [4] specific guidelines associated with a fixed income investment shall be [investments are] as follows:

(a) A fixed income investment shall:

1. Be a direct obligation of:

a. The United States government, a United States government agency, state government, or an entity that is organized under the laws of the United States, including a United States corpora-

tion that was established in the United States and has a substantial portion of the company owned by a foreign interest; or

b. The Dominion of Canada, if the total of Canadian obligations does not exceed five (5) percent of the book value of the entire portfolio; and

2. Not be a foreign debt unless the debt is approved by the board of trustees as an additional category of investments. [Fixed income investments shall be direct obligations of the United States government, United States government agencies, state governments, or entities that are organized under the laws of the United States. Fixed income investments may be direct obligations of the Dominion of Canada. However, Canadian obligations shall not exceed five (5) percent of the book value of the entire portfolio. The system is prohibited from owning other foreign debt unless it is approved by the board of trustees as an additional category of investments. The system may acquire the obligations of United States corporations that are established in the United States even when substantial portions of the companies are owned by foreign interests.]

(b) A fixed income investment shall [investments should] be rated at the time of purchase within the three (3) highest credit classifications identified by one (1) of the major rating services. A private placement debt investment shall be [investments are] subject to the same credit qualifications as each [other] fixed income investment [investments].

(c) An investment purchase shall not equal more than twenty-five (25) percent of a single publicly traded debt issue. [Not more than twenty-five (25) percent of any single publicly traded debt issue may be purchased as an investment] unless the investment has a book value of less than \$25,000,000. A private placement debt investment [investments] shall not exceed \$20,000,000 in book value for each investment.

(d) Unless the issuer is the United States government or one (1) of its agencies, the amount invested in the securities of a single issuer shall not equal more than five (5) percent of the assets of the system at book value. [Not more than five (5) percent of the assets of the system at book value shall be invested in the securities of a single issuer, except when the issuer is the United States government or its agencies.]

(e) 1. An investment in a mortgage shall be:

a. A first mortgage on property located within the United States; or

b. A mortgage guaranteed by the United States government.

2. A return on a mortgage investment shall reflect its marketability and cash flow. [Investments in mortgages shall be first mortgages and on property within the United States unless the mortgages are guaranteed by the United States government. Returns on mortgage investments should reflect their marketability and reliability of cash flow.]

(f) The management of a fixed income investment shall be regarded as active.

1. If a security can be sold to the long-term benefit of the system, it shall be sold.

2. A bond may be swapped to take advantage of a yield spread between various qualities of bonds or the yield curve that differentiates bond returns by maturity.

3. A security may be sold at a loss if an alternative investment will add to the value of the fund and recoup the loss in a reasonable period of time.

4. The board of trustees and the investment committee shall make each investment for the general enrichment and security of the fund. [The management of fixed income investments will be regarded as active. When a security can be sold to the long-term benefit of the system, it will be sold. Bonds may be swapped in order to take advantage of yield spreads between various qualities of bonds or the yield curve that differentiates bond returns by maturity. On occasion securities will be sold at a loss if alternative investments would add to the value of the fund and would recoup the loss in a

reasonable period of time. The board of trustees and the investment committee shall make all investments for the general enrichment and security of the fund.]

(4) The [(2)] specific guidelines associated with an equity investment shall be [investments are] as follows:

(a) The system shall not buy bullion, a stamp, rare coin, or other collectible.

(b) The system shall not:

1. Invest in a foreign currency without specific approval from the board of trustees. If the board of trustees approves the purchase of foreign equity, the system may settle a security transaction in a foreign city; and

2. Domicile a security or maintain a cash account in a foreign country. [The system shall not buy bullion, stamps, rare coins, and other collectibles. The system shall not invest in foreign currencies. If the board of trustees were to approve the purchase of foreign equity, the system would be permitted to settle security transactions in foreign cities. However, in any event, the system shall not domicile securities in foreign countries or maintain cash accounts in foreign countries.]

(c) A stock investment shall be with a corporation that is [(b) All stock investments shall be with corporations that are] created under the laws of the United States or that is [are] a component of a major United States stock exchange index unless approved by the board as an additional category of investments. The system may acquire equity in a United States corporation that operates in a foreign country [corporations that operate in foreign countries].

(d) [(e)] Due to the greater risk associated with stock ownership, a stock investment shall [stock investments should] be expected to yield a higher return on investment than the highest quality bond [bonds].

(e) [(f)] The system's position in a single stock shall not exceed two (2) percent of the system's assets at book value. The system's position in a single stock shall not exceed five (5) percent of the outstanding stock for that company unless the investment is part of a venture capital program approved by the board of trustees or the investment committee.

(f) A real estate investment shall be judged on its [(e) Real estate investments are judged on their] total return potential. The system shall not acquire undeveloped land unless development plans are imminent.

(g) A [(f) All] real estate purchase that is [purchases that are] conducted on a triple net lease basis shall [must] involve a company [companies] that at the time of the initial agreement generates [can generate] one (1) of the three (3) highest crediting ratings with a national credit rating service.

(h) 1. Except as provided in subparagraph 2 of this paragraph, the board of trustees and the investment committee shall avoid the incurrence of a loss.

2. The system may sell equity at a price below its cost to the system if an alternative investment would provide a higher return and permit the loss to be recouped within a reasonable period of time.

[(g) On occasion, the system may sell equity at a price below its cost to the system. Although the board of trustees and the investment committee shall avoid the incurrence of losses, losses will be tolerated when alternative investments would provide a higher return and permit losses to be recouped within a reasonable period.]

Section 4. The investment committee shall evaluate [evaluates] the performance and services of an [the] investment counselor [counselors]. The committee through the board of trustees shall employ an investment counselor [- employs investment counselors] annually. The committee shall review [reviews] the performance of a counselor recommendation [recommendations] and compare the performance [compares them] to anticipated performance, efforts of other counselors, and appropriate market indices. The system may

utilize the services of a consultant to evaluate a counselor or ascertain ~~[consultants in evaluating counselors. Consultants also may be utilized in ascertaining]~~ the combined effect of several investment counselors and the overall risk levels associated with the investment portfolio. A consultant shall evaluate [The consultants evaluate] the effectiveness of an investment manager [managers] in maintaining prescribed styles of investment. A periodic report shall be [Periodic reports are] prepared to identify and document the efforts of an investment counselor. An annual report on the performance and service of each investment counselor [counselors. Annual reports] shall be provided to the board with recommendations from the investment committee.

PAT N. MILLER, Executive Secretary

APPROVED BY AGENCY: March 17, 1997

FILED WITH LRC: June 12, 1997 at 11 a.m.

GENERAL GOVERNMENT CABINET  
Kentucky State Board of Examiners  
and Registration of Landscape Architects  
(As Amended)

201 KAR 10:010. ~~[Duties of]~~ Board personnel.

RELATES TO: KRS 323A.210

STATUTORY AUTHORITY: KRS 323A.210(2)(b)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 323A.210(1)(c) requires the board to keep complete and accurate records. ~~[and]~~ This administrative regulation requires ~~[is fashioned to require]~~ the board secretary to be responsible for accurate and complete records of all board transactions, and the ~~[with a board appointed]~~ executive director to be responsible for administrative functioning of the board.

Section 1. Duties of ~~[the]~~ Board Personnel. (1) The board secretary shall be responsible for accurate and complete records of all transactions of the board.

(2) The board shall appoint an executive director who shall ~~[will]~~ be responsible for the administrative functioning of the board.

(3) The executive director shall forward to each applicant:

(a) The application form incorporated by reference in 201 KAR 10:040; and

(b) A copy of the:

1. ~~[Forms;~~

~~(b)]~~ Board ~~[a copy of the]~~ administrative regulations; and

2. ~~[(c) A copy of]~~ Applicable statutes. ~~[the Act along with all applications to the applicants.]~~

JOSEPH H. CLARK, President

APPROVED BY AGENCY: April 14, 1997

FILED WITH LRC: June 9, 1997 at noon

GENERAL GOVERNMENT CABINET  
Kentucky State Board of Examiners  
and Registration of Landscape Architects  
(As Amended)

201 KAR 10:040. Applications.

RELATES TO: KRS 323A.040, 323A.050, 323A.060, 323A.070

STATUTORY AUTHORITY: KRS 323A.210(2)(b)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 323A.210 authorizes the board to promulgate ~~[adopt all reasonable]~~ administrative regulations necessary to implement KRS Chapter 323A. ~~[and]~~ This administrative regulation establishes the ~~[is intended to]~~

establish] procedures for the filing and processing of an application [applications] for registration as a landscape architect [architects] [in this state].

Section 1. Filing of Applications. (1) An applicant for registration as a landscape architect shall file a completed Application for Registration to Practice Professional Landscape Architecture. The application shall:

(a) Be filed during regular business hours at the office of the board;

(b) Include an attached photograph of the applicant showing the face of the applicant at least three-fourths (3/4) of an inch wide;

(c) List at least five (5) references in accordance with Section 3 of this administrative regulation;

(d) Be received by the board by February 1 to be considered for the examination;

(e) Be signed by the applicant, certifying that the applicant:

1. Is familiar with the provisions of KRS Chapter 323A, relating to the practice of landscape architecture; and

2. Subscribes to and agrees to abide by the applicable statutes and administrative regulations promulgated by the board; and

(f) Be notarized. [An application [Applications] for registration as a landscape architect may be filed [received at any time] during regular business hours at the office of the board.]

(2) An application [But applications] for a written examination [examinations] shall be filed with the processing fee prescribed in 201 KAR 10:050, Section 1(6), at the [prescribed fee in such] office of the board at least four (4) months [or ~~(6) weeks~~] prior to the beginning [opening] date of an examination [the examinations].

(3) Except as provided in subsection (2) of this section, a fee [fees] prescribed in 201 KAR 10:050, Section 1(6), [(2) All fees payable by applicants] shall accompany the application [the] [applications].

Section 2. Additional Information. (1)(a) [(3)] The board may require [reserves the right to request] additional information[, including a personal appearance,] from an [each] applicant, including [together with any necessary] documentary evidence, to establish the applicant's age, education, or experience if it determines that documentation submitted by the applicant to the board is insufficient [in cases where questions concerning qualifications may arise].

(b) The board may require an applicant to appear before it to establish the applicant's age, education, or experience if it determines that documentation submitted by the applicant to the board is insufficient. [Personal appearances before the board shall be at a time and place designated by the board.]

(2) An application may be disapproved for failure, without just cause, to comply with a written request from the board made pursuant to subsection (1) of this section:

(a) For additional information within sixty (60) days of the request; or

(b) To appear before the board.

(3)(a) [(4)] The board may [reserves the right to] retain [any and all] a document [documents] submitted as evidence of qualification pursuant to the provisions of this section. [qualifications for registration.]

(b) A photostatic copy [copies] of an original document [documents] may be submitted if it is they are notarized as a true copy [true copies].

[(5) Failure to comply with a written request from the board for additional evidence or information or to appear before the board when deemed necessary within sixty (60) days of such notice may be sufficient and just cause for the disapproval of the application.]

Section 3. Personal References. (1) The application shall list at

least five (5) citizens of the United States as a personal reference for the applicant. Three (3) of the five (5) persons listed as a reference shall be a registered professional landscape architect. A personal reference for an applicant:

(a) Shall not be a:

1. Relative of the applicant; or

2. Member of the board; and

(b) May be contacted by the board for information relating to the applicant's character and professional ability. [A member [(6) Members] of the board shall [may] not serve as a personal reference for an applicant.]

(2) A member of the board [referencees; however, they] may be listed as a person [persons] who has [have] supervised the work of an [the] applicant.

[(7) The board reserves the right to exercise the discretion provided in the act by requiring the applicants to qualify by either:

(a) Passing the regular written or written and oral examinations; or

(b) Having a satisfactory examination record from another state, providing it is deemed equal in all respects to that given in Kentucky.]

Section 4. Reciprocity. An applicant [(8) All applicants] who seeks [seek] registration under KRS 323A.050(1) shall submit:

(1) [(a)] Satisfactory proof of registration in good standing in a state [states] in which the applicant is licensed; and

(2) [(b)] A statement that licensure in the state [these states] [any state or states of present registration and shall indicate whether registration] was obtained:

(a) [(1)] Under a grandfather clause; [or]

(b) [(2)] By examination; or

(c) [(3)] Other means, including an explanation of the other means. [in the particular state in which registration was granted.]

Section 5. Board Consideration of Applications. (1) Each applicant [(9) All applicants] shall be considered individually by the board and passed or rejected by a roll call vote.

(2) Approval of an applicant shall [will] require a majority vote of the board.

(3) The action taken by the board shall be recorded in the board minutes.

(4) A copy of the letter from the board notifying an applicant of the board's decision regarding application.

[(10) An outline of the action taken by the board shall be placed with each application.

[(11) The board reserves the right to establish or change the classification under which the applicant is claiming eligibility.]

Section 6. Professional Landscape Architectural Experience. (1) [(12)] Military experience shall be acceptable if [to the board provided] it has been gained [spent] in landscape architecture as defined by the provisions of KRS 323A.010(3) [in the Act].

(2) [(13)] The sale or [sales and] installation of a product [products] such as landscape materials (plants and construction) shall not be considered a professional service [services].

(3) [Any] A plan or sketch [Plans or sketches] drawn by a [the same] person solely for the promotion or [and] sale of that person's [his own] products shall not be considered a professional service [services].

Section 7. Incorporation by Reference. (1) "Application for Registration to Practice Professional Landscape Architecture", August 1997 Edition, Kentucky State Board of Examiners and Registration of Landscape Architects, is incorporated by reference.

(2) It may be inspected, copied, or obtained at the Kentucky State Board of Examiners and Registration of Landscape Architects, 160 Democrat Drive, Frankfort, Kentucky 40601,



Monday through Friday, 8 a.m. to 4:30 p.m.

JOSEPH H. CLARK, President  
APPROVED BY AGENCY: April 14, 1997  
FILED WITH LRC: June 9, 1997 at noon

GENERAL GOVERNMENT CABINET  
Kentucky State Board of Examiners  
and Registration of Landscape Architects  
(As Amended)

201 KAR 10:070. Seals.

RELATES TO: KRS 323A.080[, 323A.110]  
STATUTORY AUTHORITY: KRS 323A.080, 323A.210  
NECESSITY, FUNCTION, AND CONFORMITY: KRS 323A.080 requires that a licensed landscape architect secure an embossed circular seal of the design prescribed by the administrative regulation of the board and that a working drawing, specification or report prepared by, or under the supervision of, the individual, partnership, or firm bear the imprint of the seal. This administrative regulation prescribes the design and size of the required seal. [This administrative regulation sets forth the requirement [(KRS 323A.080)] for obtaining and the use of a standard landscape architect seal for use in the practice of landscape architecture in the state.]

Section 1. Licensees' Seal. [(4)] The seal required by KRS 323A.080 shall:

- (1) Be two (2) inches in diameter; and
- (2) Contain the following information in the impression of the seal: [be in the following format:]

[(2) The seal shall be two (2) inches in diameter with the information contained therein arranged as hereinafter described. The impression of the seal shall contain the following information:]

(a) The words "State of Kentucky" at the top between the two (2) knurled circles; [and]

(b) The words "Registered Landscape Architect" in a like position at the bottom;

(c) The individual's name [shall be] placed horizontally in the circular field; and

(d) The individual's certificate number [shall be] placed horizontally beneath the name. [Each licensee shall obtain a rubber stamp or embossed seal following the wording and format adopted by the board provided minor modifications as to size and marginal lines may be approved by the board as long as the seal is easily legible.]

(2) An impression of the seal shall be affixed over the licensee's signature on all documents prepared by him or under his immediate and responsible supervision for use in the Commonwealth of Kentucky.

(3) The use of one's seal on any plans, drawing, specifications, reports or other instruments of service which were not prepared by him or under his immediate and responsible supervision, or permitting one's name to be used for the purpose of assisting any person to evade the provisions of KRS Chapter 323A shall subject such person to suspension or revocation of license.]

JOSEPH H. CLARK, President  
APPROVED BY AGENCY: April 14, 1997  
FILED WITH LRC: June 9, 1997 at noon

GENERAL GOVERNMENT CABINET  
Kentucky State Board of Examiners  
and Registration of Landscape Architects  
(As Amended)

201 KAR 10:080. Continuing education.

RELATES TO: KRS 323A.100(1), 323A.210(2)(a)  
STATUTORY AUTHORITY: KRS 323A.210(2)(a), (b)  
NECESSITY, FUNCTION, AND CONFORMITY: KRS 323A.100(1) requires a landscape architect to complete the approved continuing education contact hours established by an administrative regulation promulgated by the board. KRS 323A.210(2)(a) authorizes [empowers] the board to promulgate [adopt] administrative regulations [as are necessary] to establish a program of continuing education for registrants [under this chapter]. This [proposed] administrative regulation establishes the continuing education requirements for a landscape architect [architects] [is intended to establish these administrative regulations].

Section 1. [General Statement. Each in-state and out-of-state registrant shall be required to meet the continuing education requirements of these administrative regulations for professional development as a condition for registration renewal. Continuing education obtained by a registrant shall maintain, improve or expand skills and knowledge obtained prior to initial licensure or to develop new and relevant skills and knowledge.]

Section 2. Definitions. (1) "Annually" or [and] "continuing education year" means a twelve (12) month period from July 1 of a calendar year through June 30 of the following calendar year.

(2) "Board" is defined by KRS 323A.010(1). [means the State Board of Examiners and Registration of Landscape Architects of Kentucky.]

(3) "Clock hour" means fifty (50) minutes of actual instruction.

(4) "Continuing education unit" or [and] "CEU" means ten (10) clock hours of continuing education experience approved by the board.

(5) "LARE" means the landscape architectural registration exam.

(6) "Self-directed study" means a course of study in which a registrant takes and passes an examination offered by the sponsor after the registrant reviews material, views a video [videoes], or listens to an audio tape [tapes].

(7) "Sponsor" means an individual, organization, association, institution, or other entity that provides educational activity for the purpose of fulfilling the continuing education requirements of this administrative regulation.

(8) "Tour" means a review or inspection of a landscape architectural element [elements] specified in the definition of "practice of landscape architecture" established by KRS 323A.010(3). [Contact (clock) hour not less than fifty (50) minutes of instruction.]

(2) Sponsor—an individual, organization, association, institution, or other entity which provides an educational activity for the purpose of fulfilling the continuing education requirements of these guidelines.

(3) Annual—a twelve (12) month period beginning July 1 of a given year and extending to June 30 of the following year.

(4) Board—the legal state entity having jurisdiction to register, licensee or institute legal proceedings against a licensee for the practice of landscape architecture and as defined in KRS Chapter 323A.

(5) UNE—Uniform National Exam.

(6) Committee—the Professional Development Review Committee.

(7) Continuing education unit (CEU)—ten (10) contact hours of participation in an organized continuing education experience under responsible sponsorship, capable direction and qualified instruction as approved by the "Council on the Continuing Education Unit".]



Section 2. General Statement. ~~[(1) A registrant shall not be renewed if a registrant has not met the continuing education requirements established by the provisions of this administrative regulation.~~

~~[(2)] Continuing education obtained by a registrant shall maintain, improve or expand skills and knowledge obtained prior to initial license or develop new and relevant skills and knowledge.~~

Section 3. Continuing (Professional Development) Education Requirements. ~~[To demonstrate that a licensed landscape architect maintains an acceptable level of competency:]~~ (1) A registrant ~~[licensee]~~ shall acquire ~~[the following clock hours:]~~

~~[(1)] [meet the continuing education requirements as prescribed by the board for each year of registration. The requirements shall be obtained and documented to the board prior to the time of licensure renewal. The following are the continuing education requirements as prescribed by the board:]~~

~~[(1)] Eight (8) contact hours of continuing education shall be obtained between November 1990 and June 30, 1992.~~

~~[(2)] Ten (10) contact hours of continuing education shall be obtained between July 1, 1992 and June 30, 1993.~~

~~[(3)] Twelve (12) contact hours of continuing education shall be obtained between July 1, 1993 and June 30, 1994.~~

~~[(4)] Fifteen (15) contact hours of continuing education shall be obtained between July 1, 1994 and June 30, 1995.~~

~~[(5)] A total of fifteen (15) clock hours of continuing education [hours] [shall be obtained by a registrant] annually. [each licensed landscape architect each year after 1995:]~~

~~[(2)] A registrant may be credited for a maximum of seven and one-half (7 1/2) clock hours of continuing education for a tour [tours] annually.~~

~~[(3)] A registrant may carry forward a maximum of fifteen (15) clock hours of continuing education [hours may be carried over for a maximum of one (1) year to apply] to meet the subsequent year's requirements.~~

Section 4. ~~[Professional Development Committee. (1) The board shall form a Professional Development Review committee and provide guidelines for its operation. The committee shall be composed of five (5) registered professional landscape architects. At least one (1) board member shall be a member of the Professional Development Review committee.~~

~~[(2)] Members shall be appointed by the board and serve a term of office for two (2) years.~~

~~[(3)] Members shall be appointed in staggered terms with three (3) members being appointed in one (1) year and two (2) members being appointed the following year.~~

~~[(4)] The board shall appoint a chairman and a secretary at the first meeting of every calendar year to serve a one (1) year period.~~

~~[(5)] The secretary shall keep minutes of the meeting to document all transactions of the committee and shall submit a report to the Board.~~

~~[(6)] The committee shall meet at least once per quarter of a year or when called to order by the chairman.~~

~~[(7)] Duties of the committee shall be to review and approve all sponsors and programs as being relevant to the practice of landscape architecture. Further, the committee shall establish the methods for documentation needed to fulfill continuing education credits for licensing.~~

Section 5. ~~Approval of Continuing Education [Educational] Programs. (1) The board shall:~~

~~[(a)] Approve a continuing education program [programs] that it determines:~~

~~1. Is [Are] relevant to the practice of landscape architecture; and~~

~~2. Furthers the competence of a registrant; and~~

~~[(b)] Determine the number of clock hours allowed.~~

~~[(2)(a)] A sponsor shall obtain the approval of the board at least~~

sixty (60) days prior to the date on which the sponsor intends to conduct a continuing education program that is to be offered, presented, or advertised as meeting the continuing education requirements established for a registrant [registrants].

~~[(b)] A sponsor shall submit a copy [copies] of the continuing education program for which it seeks approval, including a copy of the hand-out materials and agenda and a description of the presenter, teacher, or speaker. [materials, agenda, presenters, teachers, or speakers.]~~

~~[(c)] A sponsor shall not offer, present, or advertise a [continuing education] program [to registrants] as a continuing education program that meets the continuing education requirements for a registrant [registrants] unless it has obtained the approval of the board.~~

~~[(3)] A registrant who completes an educational program that has not been submitted to the board for approval shall [may] receive continuing education credit if:~~

~~[(a)] The registrant submits to the board a copy of the continuing education program, including a copy of the hand-out materials and agenda and a description of the presenter, teacher, or speaker [materials, agenda, presenters, teachers, or speakers]; and~~

~~[(b)] The board determines that the program meets the requirements established in subsection (1)(a) of this section. [is relevant to the practice of landscape architecture and furthers the competence of a registrant:]~~

~~[(4)] A continuing education credit shall [credits may] be given for self-directed study if a registrant:~~

~~[(a)] Prior to taking the course, has:~~

~~1. Submitted to the board a copy of the course description, including a detailed summary of the course; and~~

~~2. Received approval of the course by the board; and~~

~~[(b)] Submitted proof to the board that the registrant has passed the examination given by the sponsor.~~

~~[(5)] Continuing education credits shall be given for one-half (1/2) the number of hours, not to exceed seven and a half (7 1/2) hours, of a tour if the registrant has:~~

~~[(a)] Submitted to the board:~~

~~1. A description of the tour; and~~

~~2. Proof that the tour was related to the practice of landscape architecture as defined by KRS 323A.010(3); and~~

~~[(b)] Received approval of the tour by the board.~~

~~[(6)] The number of clock hours for which credit shall be given for a continuing education program shall be the number of clock hours approved by the board.~~

~~[(7)] [The sponsor or attendee shall submit to the committee documents or other materials for evaluation. The committee shall approve those activities which will further the competence of a licensee and determine the number of contact hours allowed.]~~

~~[(2)] The conversion of university credits to clock [contact] hours shall be [from other units is as follows]:~~

~~[(a)] [One (1) continuing education unit (CEU) — ten (10) contact hours.~~

~~[(b)] One (1) university quarter hour of credit shall equal ten (10) clock [—thirty (30) contact] hours.~~

~~[(b)] [(e)] One (1) university semester hour of credit shall equal fifteen (15) clock [—forty five (45) contact] hours.~~

Section 5. (1) ~~[6. Professional Development Requirement.]~~ Continuing education activities ~~[which satisfy the professional development requirement]~~ shall include:

~~[(a)] A [—but not be limited to,] college or [and] university course [courses];~~

~~[(b)] An activity [Activities] for which a CEU was [CEUs were] approved by the board; [awarded continuing education units (CEUs)] and~~

~~[(c)] The portion of a technical meeting, seminar, or other course that was: [those] [Portions of technical meetings, seminars, or other courses that:]~~

1. ~~[which] [Are]~~ Related to landscape architectural practice or management; and

2. ~~Approved by the board. [as approved by the Professional Development Review Committee.]~~

(2)(a) ~~A landscape architect who teaches [architects who teach] [teaching] a continuing education course [program] shall be credited with the number of clock [given contact] hours equal to the time spent teaching the course. [program. Continuing education contact hours less than one (1) hour shall not be counted as credit towards the annual continuing education requirements. Although, partial hours in increments of one-half (1/2) of an hour above one (1) hour shall be acceptable. In addition, travel and self directed study are acceptable with prior approval of the Professional Development Review Committee and the board.]~~

(b) Credit shall not be given for repeated instruction of the same course.

(3) A registrant shall obtain the board's approval prior to completing a continuing education activity that has not been accredited by the board.

Section 6. Reporting of Continuing Education Activities. (1) Upon license renewal, a registrant shall report continuing education activities for the continuing education period ending June 30.

(2) The report of continuing education activities shall include:

- (a) Name of activity;
- (b) Date of activity;
- (c) Location of activity; and
- (d) Contact hours earned.

(3) The report of continuing education activities shall contain the following affidavit of compliance:

I certify that I attended the above continuing education courses and that the hours attended are correct. By certifying that I attended the above listed courses, I understand that my license to practice Landscape Architecture in the Commonwealth of Kentucky may be revoked if ~~[should]~~ I falsify any of the information or if I did not attend a listed course ~~[the listed courses]~~. I understand that the Kentucky State Board of Examiners and Registration of Landscape Architects has the right to verify my attendance to the above listed courses. I have retained in my files a registration receipt, canceled check or other acceptable verification of my attendance to the above listed course ~~[conference(s)]~~.

(4) The report of continuing education activities shall be made:

(a) On a "Continuing Education Approval Request and Affidavit Form ~~[(Form #CE-1)]~~"; or

(b) By a written statement containing the:

- 1. Information specified by subsection (2) of this section; and
- 2. Affidavit of compliance established by subsection (3) of this section.

(5) The report of continuing education activities shall be:

- (a) Signed by the registrant; and
- (b) Affixed with the registrant's seal.

(6) A registrant shall maintain for two (2) continuing education years documentation verifying successful completion of the annual requirement.

~~[Section 7. Certificate of Completion. A sponsor shall provide each participant, within thirty (30) days after completion, a certificate of completion form as provided by the committee. The form shall state the participant's full name, and the number of contact hours authorized by the committee for that sponsor's program. If a sponsor does not provide a certificate of completion, the participant shall obtain an affidavit for their attendance from the board and the affidavit shall be properly completed so that credit for participation can be obtained. The certificate of completion or affidavit of completion shall be filed with the board in order to obtain the continuing education credit. Failure by a registrant to submit a truthful and accurate affidavit may result in revocation of a registrant's license. The board will maintain~~

~~all records of continuing education.]~~

Section 7. Verification of Continuing Education Activities. (1) Following each renewal period, the board shall require between [at least] five (5) and [no more than] fifteen (15) percent of the registrants, chosen randomly, to furnish documentation of the completion of the appropriate number of CEU's for the previous renewal period, including hours carried forward from the previous year.

(2) Documentation of attendance and participation in a continuing education activity shall be made by:

(a) Submission of an official document, including a: ~~[deedments, such as:]~~

- 1. Transcript ~~[Transcripts]~~;
- 2. Certificate ~~[Certificates]~~ of attendance;
- 3. Affidavit ~~[Affidavits]~~ signed by the instructor; or ~~[instructors];~~
- 4. Receipt for a fee ~~[Receipts for fees]~~ paid to a sponsor; or

(b) If evidence specified in paragraph (a) of this subsection is not issued by a sponsor, a written summary of attendance and participation.

(3) To verify that an activity listed by a registrant qualifies as a continuing education activity, the board shall determine if the activity had the prior approval of the board. If the activity has not been approved by the board, the board shall determine if the activity meets the requirements of Section 4(1) of this administrative regulation for approval as a continuing education activity.

(a) If the activity qualifies as continuing education, the board shall include the number of clock hours earned for that activity in determining if the applicant obtained the required fifteen (15) hours of continuing education.

(b) If the activity does not qualify as continuing education, the board shall deduct the number of clock hours claimed for that activity from the total number of clock hours earned by the registrant. After this calculation, if a registrant does not have the required fifteen (15) hours of continuing education, the board shall send written notification to the registrant that:

1. The registrant did not meet the continuing education requirements because an activity listed on the applicant's form as a continuing education activity did not qualify for continuing education credit; and

2. The board shall suspend his license if the requirements of subsection (4) of this section are not met.

(4) The license of the registrant shall be suspended if the registrant fails to:

(a) Complete the required number of continuing education clock hours within sixty (60) days of the notification from the board; and

(b) Submit to the board a completed and updated "Continuing Education Approval Request and Affidavit Form" within sixty-five (65) days of the notification from the board. ~~[The board shall deny approval of a continuing education activity if:~~

~~(a) The sponsor of a continuing education activity had not obtained board approval prior to conducting the activity; or~~

~~(b) If a registrant had not obtained board approval prior or subsequent to completing the continuing education activity; and~~

~~(c) The board determines that the continuing education activity does not meet the requirements of Section 4(1) of this administrative regulation;~~

~~(4) If the board denies approval of a continuing education activity completed by a registrant pursuant to subsection (3) of this section, the board shall suspend the license of a registrant, if:~~

~~(a) Disapproval of the continuing education activity results in the registrant having completed less than fifteen (15) hours of continuing education for the continuing education year; and~~

~~(b) The registrant fails to:~~

~~1. Complete the number of continuing education clock hours required to meet the fifteen (15) hour continuing education requirement for the continuing education year, within sixty (60) days of~~

notification; and

2. Notify the board on "Continuing Education Approval Request and Affidavit Form CE 1", as provided by Section 6(2) through (6) of this administrative regulation that the registrant has completed the number of continuing education clock hours required to meet the fifteen (15) hour continuing education requirements for the continuing education year, within sixty five (65) days of notification.]

Section 8. Reciprocity. (1) Credit for continuing education earned by a registrant who does not reside in Kentucky shall be granted if:

(a) The registrant:

1. ~~[(a)]~~ Is registered in another state having continuing education requirements equal to, or more stringent than, the requirements established by the provisions of this administrative regulation; and

2. ~~[(b)]~~ Has met all requirements for registration in the state in which the registrant resides; and

(b) The other state certifies to the board that:

1. Its continuing education requirements are equal to, or more stringent than, the requirements established in this administrative regulation; and

2. The registrant has met its requirements for the current renewal period. ~~[- The state shall certify to the board that their continuing education requirements are equal to or more stringent and shall certify that the registrant has met their requirements for the current renewal period.]~~

(2) The number of clock hours earned in a registrant's state of residence shall be credited against the clock hours required by the provisions of this administrative regulation.

(3) If a registrant obtains a license in Kentucky by reciprocity, the registrant shall be exempt from the continuing education requirements established by the provisions of this administrative regulation until the renewal period following licensure in Kentucky.

~~[Section 8. Reciprocity. Continuing education reciprocity may be granted from a registrant's resident state.~~

~~(1) If a registrant does not reside in the state, and is registered in another state having continuing education requirement equal to, or more stringent to these requirements, and the registrant meets all other requirements of that state or district to maintain registration. The state shall certify to the board that their continuing education requirements are equal to or more stringent and shall certify that the registrant has met their requirements for the current renewal period.~~

~~(2) If the required number of contact hours required for continuing education of a registrant's resident state be less than those required by the board, contact hours obtained in the registrant's resident state may be credited against the contact hours required by the board.]~~

Section 9. Exempt Registrant. (1) A registrant shall be exempt from the continuing education requirements:

(a) For the period of initial licensure;

(b) During the period of time in which the registrant has an inactive license in accordance with the provisions of Section 10 of this administrative regulation; or

(c) If the board approves a written request for an exemption submitted by the registrant in accordance with the provisions of subsection (2) of this section.

(2) A registrant may request an exemption from the continuing education requirements by submitting written document that the registrant was:

(a) Employed or assigned to duty outside the United States for a period exceeding 120 consecutive days during the calendar year; or

(b) Unable to complete the requirements because of:

1. Physical disability;

2. Personal illness; or

3. Illness of a family member or dependent. [A registrant shall be exempt from continuing education requirements:

(a) For the period of initial licensure; or

(b) If a registrant is exempt pursuant to Section 10 of this administrative regulation.

(2) A registrant shall be exempt from continuing education requirements if:

(a) During the continuing education year, the registrant was:

1. Employed as a landscape architect; and

2. Employed or assigned to duty outside the United States for a period exceeding 120 consecutive days in a calendar year; or

3. Unable to complete continuing education requirements due to:

a. Physical disability;

b. Personal illness or illness of a family member or dependent; and

(b) The registrant's request for exemption under the provisions of paragraph (a) of this subsection has been reviewed and approved by the board. [A registrant may make a formal request in writing to the board that he may be granted exempt status. The board shall respond in writing sixty (60) days after the receipt to the registrant's request. An individual on said status shall be exempt from the requirements of this section during this period. The registrant shall not be allowed to use the title, "landscape architect," or to practice landscape architecture in the state during this time. The board shall update and make available for public inspection a list naming all exempt registrants. A registrant, if on exempt status for five (5) or more years, shall be classified as lapsed, and his license will be suspended and the board may proceed with a hearing for revocation or suspension of a registrant's license.]

Section 10. Inactive License. (1) A registrant [Registrants] may choose to inactivate his [their] license.

(2) During the period a license is inactive, a registrant shall:

(a) Be exempt from the provisions of this administrative regulation; and

(b) Not practice landscape architecture, or use a title conveying that the registrant is a landscape architect.

Section 11. Reinstatement of Suspended or Inactive License. (1) Prior to reinstatement of a suspended or inactive license, a registrant shall complete the number of CEU's required for the annual renewal of the license times the number of years the license was suspended or inactive.

(2) The number of CEU's required by subsection (1) of this section shall not exceed thirty (30) clock hours.

~~[Section 10. Reinstatement to Active Registration. A registrant who wishes to reinstate a registration may be required as determined by the board to satisfy one (1) of the following requirements:~~

~~(1) Complete all the continuing education requirements multiplied by the number of years of exempt status.~~

~~(2) Complete the Uniform National Examination within one (1) year immediately prior to application for reinstatement.]~~

~~[Section 12. Noncompliance. If a registrant, who is not exempt from the provisions of this administrative regulation, fails to satisfy the continuing education requirement for license renewal, the registrant's license shall be suspended by the board.]~~

~~[Section 11. Exemption. A registrant may be exempt from the professional development educational requirements for one (1) of the following reasons:~~

~~(1) New registrants by way of UNE shall be exempt for their first renewal period.~~

~~(2) If a registrant is employed as a landscape architect and is employed or assigned to duty outside the United States for a period of time exceeding 120 consecutive days in a calendar year, he shall be exempt from the fifteen (15) contact hours required during that renewal period.~~

~~(3) Due to physical disability, illnesses, hardships, or other extenuating circumstances as reviewed and approved by the board. The board may request supporting documentation.~~

Section 12. Disciplinary Action. Failure of a registrant to satisfy the continuing education requirement for registration renewal may be cause to deny license renewal for the licensee.]

Section 12. ~~(13.)~~ Incorporation by Reference. (1) "Continuing Education Approval Request and Affidavit Form" ~~([3/97])~~ Form # CE-1), March 1997 edition, Kentucky State Board of Examiners and Registration of Landscape Architects, is incorporated by reference.

(2) It may be inspected, copied, or obtained at Kentucky State Board of Examiners and Registration of Landscape Architects, 160 Democrat Drive, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m. ~~[Noncompliance. A registrant who does not satisfy the continuing education requirement for registration renewal shall be suspended, and the registrant so notified following the renewal date. The registrant shall comply with the continuing education requirements of the prior year within six (6) months following the renewal date or the board may proceed with a hearing for revocation of a registrant's license. The contact hours needed to fulfill the prior annual period requirement shall not be included in computing the subsequent renewal period.]~~

JOSEPH H. CLARK, President

APPROVED BY AGENCY: April 14, 1997

FILED WITH LRC: June 9, 1997 at noon

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

**301 KAR 2:111. Deer and turkey hunting on federal areas.**

RELATES TO: KRS 150.025(1), 150.170, 150.370, 150.390

STATUTORY AUTHORITY: KRS 150.025(1), ~~150.170, 150.390~~

NECESSITY, FUNCTION, AND CONFORMITY: KRS 150.025(1)

authorizes the department to promulgate administrative regulations relating to game and fish, including seasons and limits, and to make these administrative regulations apply statewide or to limited areas of the state. This administrative regulation establishes consistent deer and turkey hunting season frameworks ~~(seasons)~~ on federal areas. ~~[This amendment is necessary to establish consistent season frameworks for federal areas, to allow the taking of fallow deer at Land Between the Lakes, and to change tagging requirements at Reelfoot National Wildlife Refuge.]~~

Section 1. General Requirements. (1) Unless otherwise stipulated in this administrative regulation, the provisions of 301 KAR 2:172 and 301 KAR 2:140 shall apply.

(2) On the areas listed in this administrative regulation, a hunter ~~(hunters)~~ shall:

(a) Obtain a permit from the area ~~[permission to hunt, in the form of area permits,]~~ before hunting.

(b) Not hunt deer or turkey except on assigned hunting dates.

(c) Remain in assigned areas.

(d) Have ~~[Unless exempted by KRS 150.170, have in their possession]~~ the signature portion of a valid deer or turkey permit in his possession.

(e) Unless otherwise specified in this administrative regulation, tag deer with area tags issued on the area in lieu of the state deer tag.

(f) Keep the area tag attached to the deer until the carcass is processed.

(g) Check deer at a designated check station before leaving the area.

(3) If hunting is not precluded by other priorities, Land Between the Lakes, Fort Campbell, Fort Knox, Bluegrass Ordnance Depot Activity, Reelfoot National Wildlife Refuge and the West Kentucky National Guard Training Site may allow firearm or archery hunting for antlered or antlerless deer from September 1 through January 31.

~~[(3) Hunters may obtain specific information about application procedures and deadlines, permit fees, or other hunting requirements from the appropriate federal agency.]~~

Section 2. Land Between the Lakes. (1) ~~[Deer archery or gun hunting [quota and youth quota hunts]: antlered or antlerless white-tailed or fallow deer as specified on permit on assigned areas and dates between September 15 and January 31 [15].~~

~~(2)]~~ A person shall not take more than:

(a) Two (2) deer during archery hunts; and

(b) One (1) deer during quota hunts.

(2) [(3)] Turkey archery hunts: one (1) turkey of either sex during deer archery hunt.

(3) [(4)] Quota hunters shall:

(a) Apply in advance at Land Between the Lakes.

(b) Check in prior to hunting.

(4) [(5)] A person ~~(Persons)~~ shall tag a:

(a) Harvested turkey ~~(turkeys)~~ with the appropriate state turkey tag.

(b) Harvested deer with either:

1. The appropriate state antlered or antlerless state deer tag; or

2. A wildlife management area tag issued by Land Between the Lakes.

(5) [(6)] A person:

(a) ~~(Persons)~~ Harvesting deer or turkey shall take the entire or field-dressed carcass to a Land Between the Lakes check station before leaving Land Between the Lakes.

(b) [(7)] ~~(Persons)~~ Shall not hunt deer or turkey with crossbows.

Section 3. Fort Campbell. (1) ~~[Deer archery or gun hunting [Youth, gun or archery deer hunts]: antlered or antlerless deer as specified on permit on assigned areas and dates between September 15 and January 31 [15].~~

~~(2)]~~ Turkey, either sex:

(a) Deer archery hunters may take turkey.

(b) Firearm season: Fort Campbell may permit turkey firearm hunting on assigned areas and dates between October 15 and December 31.

(c) Turkeys taken at Fort Campbell shall be ~~(are)~~ bonus birds.

(2) [(3)] White turkey.

(a) A person ~~(Hunters)~~ may take one (1) white turkey of either sex during open Fort Campbell hunting seasons.

(b) Statewide and post limits and tagging requirements do not apply to white turkey.

Section 4. ~~[Fort Knox. Deer archery or gun hunting [or archery hunts]: antlered or antlerless deer as specified on permit on assigned areas and dates between September 15 and January 31 [15].~~

Section 5. Bluegrass Ordnance Depot Activity. ~~Deer archery or gun hunting [or archery hunts]: antlered or antlerless deer as specified on permit on assigned areas and dates between September 15 and January 31 [15].~~

Section 6. Reelfoot National Wildlife Refuge. (1) ~~[Deer archery or gun hunting [quota hunts]: antlered or antlerless deer as specified on permit on assigned areas and dates between September 15 and January 31 [15].~~

(2)] Bag limits. A person shall not take more than:

(a) Four (4) deer.

(b) Two (2) deer by firearms. ~~(The refuge bag limit is four (4)~~

deer. More than two (2) deer shall not be taken by gun.]

(2) ~~[(3)]~~ Tagging deer.

(a) A quota hunter ~~[Quota hunters]~~ shall tag deer with a tag issued by Reelfoot National Wildlife Refuge.

(b) An archery hunter ~~[Archery hunters]~~ shall tag deer with the appropriate state tag.

(3) ~~[(4)]~~ An archery hunter ~~[Deer hunters]~~ shall check harvested deer at the nearest open state check station.

[Section 7. West Kentucky National Guard Training Site. Antlered or antlerless deer as specified on permit on assigned areas and dates between September 15 and January 31.]

C. THOMAS BENNETT, Commissioner

ANN R. LATTA, Secretary

MIKE BOATWRIGHT, Chairman

APPROVED BY AGENCY: March 7, 1997

FILED WITH LRC: June 13, 1997 at 8 a.m.

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

**301 KAR 2:125. Small game and furbearer hunting on federal areas.**

RELATES TO: KRS 150.010, 150.025(1), 150.092(1), 150.250, ~~[150.015, 150.021, 150.170, 150.175, 150.300, 150.340, 150.360, 150.365,]~~ 150.370, 150.680, ~~[150.390, 150.400, 150.410,]~~ 150.990

STATUTORY AUTHORITY: KRS ~~[150.015, 150.021,]~~ 150.025(1) ~~[, 150.170, 150.175]~~

NECESSITY, FUNCTION, AND CONFORMITY: KRS 150.025 authorizes the department to promulgate administrative regulations establishing seasons for taking wildlife, and to make these administrative regulations apply to a limited area or to the entire state. This administrative regulation establishes consistent season frameworks on federal areas within the Commonwealth that lie outside the regular season dates. ~~[To establish exceptions to statewide small game and furbearer hunting on federal areas. The substance of this administrative regulation was formerly contained in 301 KAR 2:040. Substantive changes from 301 KAR 2:040 consist of changes in hunting season dates and removal of the requirements that trappers apply for a drawing at Land Between the Lakes.]~~

Section 1. On the areas listed in this administrative regulation:

(1) Season dates, bag limits and other requirements of 301 KAR 2:251, 2:049 and 2:050 shall apply unless specified otherwise in this administrative regulation.

(2) A person shall:

(a) Obtain permission, in the form of area permits, before hunting.

(b) Not hunt except on assigned dates and in assigned areas; and

(c) Obey other conditions of use imposed by the agency controlling the area.

Section 2. If hunting is not precluded by other area priorities ~~[In addition to the season dates specified by 301 KAR 2:251,]~~ Fort Campbell, Fort Knox, Land Between the Lakes, Bluegrass Ordnance Depot Activity and Reelfoot National Wildlife Refuge may allow hunting as specified in 301 KAR 2:251, and for:

(1) ~~[For]~~ Squirrels, from June 1 through June 14;

(2) ~~[For]~~ Quail and rabbit, no earlier than November 1 nor later than the last day of February;

(3) ~~[For]~~ Furbearers, no earlier than October 1 nor later than the last day of February;

(4) ~~[For]~~ Frogs, year round.

(5) ~~[For]~~ Crows, for a maximum of 124 days between September 1 and the last day of February.

Section 3. Fort Knox shall not allow ~~[may allow no]~~ more than thirty (30) days of grouse hunting between October 1 and the last day of February.

Section 4. On Land Between the Lakes, a person hunting the species listed in this administrative regulation shall not use:

(1) Crossbows;

(2) Shotgun slugs or shot larger than BB; or

(3) Center-fire rifles or center-fire handguns, except during designated groundhog or coyote hunts.

~~[Section 2. Fort Campbell. (1) Exceptions to statewide seasons and limits.~~

~~(a) Squirrels: third Saturday in August through the last Sunday in January.~~

~~(b) Quail: Thanksgiving day through the last Sunday in February.~~

~~(c) Rabbit: Thanksgiving day through the last Sunday in February; bag limit five (5); possession limit ten (10).~~

~~(d) Raccoon, foxes and opossum: taking with gun or dogs; Thanksgiving day through the last Sunday in January; limit one (1) per person.~~

~~(e) Groundhog: the second Saturday in May through the second Sunday in August.~~

~~(f) Coyote: May 1 through May 30 in Areas 16-51, and during legal hunts for other species.~~

~~(g) Frogs: year round; daily and possession limit, ten (10).~~

~~(h) Crow: Thanksgiving Day through the last Sunday in February.~~

~~(i) Bobcat: no open season.~~

~~(2) Posthunting requirements.~~

~~(a) Persons shall not hunt on:~~

~~1. Tuesdays or Wednesdays except when Tuesday or Wednesday is a federal holiday;~~

~~2. December 25 or January 1.~~

~~(b) Persons shall obtain permission for each hunt at Building #6645.~~

~~(c) Hunters shall stay within assigned areas.~~

~~(d) Hunters shall obtain a fifteen (15) dollar posthunting permit.~~

~~(e) Hunters between the ages of twelve (12) and eighteen (18) shall possess a valid hunter safety certificate.~~

Section 3. Fort Knox. (1) Exceptions to statewide seasons and limits.

(a) Furbearer trapping: no open season.

(b) Grouse: December 1 through December 31; daily limit, one (1).

(2) Post requirements.

(a) Persons shall obtain permission for each hunt at the Hunt Control Office.

(b) Hunters shall stay in their assigned areas.

(c) Hunters thirty-eight (38) years of age and younger shall possess their own hunter safety certificate.

(d) Hunters shall not use pistols, centerfire rifles or crossbows.

(e) Hunters shall not possess loaded firearms:

1. While in a vehicle;

2. While in a nonhunting area;

3. During nonhunting hours; or

4. After having taken the legal game bag limit.

(f) Persons shall not operate vehicles off maintained roads, except as otherwise authorized.

Section 4. Land Between the Lakes. (1) Exceptions to statewide seasons or limits.

(a) Squirrels:

1. The third Saturday in August through the fourth Friday in

September:

2. December 1 through January 31; and  
2. During deer archery season by legally licensed and equipped deer archery hunters:

(b) Quail and rabbit: December 1 through the last day of February.

(c) Raccoon and opossum: Tuesday, Thursday, Friday and Saturday nights, December 1 through January 31 in designated areas.

(d) Fox chasing: the third Saturday in August through the third Saturday in September south of Highway 68, from sunset to sunrise.

(e) Fox and bobcat gun and archery hunting: December 1 through January 31.

(f) Groundhog: March 15 through March 31, and during the LBL deer archery season by legally licensed and equipped deer archery hunters.

(g) Coyote: daylight hours only by legally licensed hunters during LBL open seasons with firearms or archery equipment specified for that season.

(h) Trapping season, furbearers and bobcats: fourteen (14) consecutive days beginning the second Monday in January.

(i) Crow: December 1 through the last day of February.

(2) General requirements:

(a) Persons hunting the species listed in this section shall not use:

1. Crossbows.

2. Shotgun slugs or shot larger than BB.

3. Center fire rifles or center fire handguns, except that groundhog hunters may use center fire rifles during the spring groundhog season.

(b) Hunters shall remove harvested groundhogs from Land Between the Lakes.

(c) Persons shall not use firearms to hunt groundhogs in Hunt Area 8 or the portion of Hunt Area 9 designated as the off highway vehicle area.

(3) Trapping requirements:

(a) Persons shall obtain Land Between the Lakes Hunter Use Permit before trapping.

(b) Persons shall not trap outside of designated areas.

(c) Trappers shall report their harvest in accordance with LBL instructions.

(4) Field trials and dog training requirements:

(a) Bird dog, beagle and raccoon hound training season: October 1 through October 31 in designated areas.

(b) Field trials: September 1 through March 31, on a scheduled basis only.

(c) Hunters shall equip their dogs with collars bearing the owner's name, address, and telephone number.

(d) Hunters shall not use dogs from the fourth Saturday in September through November 30, except during authorized field trials in designated dog training hunt areas.

(e) Persons shall submit written requests for field trials at least ten (10) days prior to the proposed trial date.

(f) Approval to conduct field trials shall be granted to established field trial clubs with a department field trial permit issued pursuant to KRS 150.370(2)(b).

(g) Field trial participants shall be listed on the club roster for that trial.

(5) Requirements for bobcat hunting and trapping:

(a) The limit is two (2) bobcats per person per season by any legal method.

(b) The bobcat harvest quota is twenty four (24). If the quota of twenty four (24) bobcats will be filled prior to January 31, the season shall close. Land Between the Lakes shall give a minimum of twenty-four (24) hours notice of the time and date of closure.

(c) Hunters or trappers shall have bobcats tagged by taking the entire carcass, skinned or unskinned, to LBL check stations, Golden

Pond Administrative Office, or Patrol Office for checking:

1. Before leaving LBL; or

2. Within forty-eight (48) hours of harvest.

(d) Persons shall not hunt or call bobcats except during daylight hours.

(e) Persons shall not use electronic or amplified calls to hunt bobcats.

Section 5. Reelfoot National Wildlife Refuge. (1) Exceptions to statewide seasons or limits:

(a) Squirrels: the last Saturday in August through September 30 in areas designated by signs as open to public hunting.

(b) Raccoon:

1. Four (4) consecutive nights beginning the third Wednesday in October;

2. Four (4) consecutive nights beginning the fourth Wednesday in October;

3. Hunting hours, 7:30 p.m. to 12 midnight.

4. No bag or possession limits.

5. Hunters shall check in and out at designated check stations, and shall present harvested raccoons for inspection and tagging at the refuge check station.

(2) General requirements:

(a) Hunters shall have in their possession a Refuge Hunt Brochure.

(b) Persons shall not hunt other species on this area.

(c) Hunters shall remain in assigned areas.]

C. THOMAS BENNETT, Commissioner

ANN R. LATTA, Secretary

MIKE BOATWRIGHT, Chairman

APPROVED BY AGENCY: March 7, 1997

FILED WITH LRC: June 13, 1997 at 8 a.m.

# JUSTICE CABINET

## Kentucky Department of Corrections (As Amended)

### 501 KAR 6:020. Corrections policies and procedures.

RELATES TO: KRS Chapters 196, 197, 439

STATUTORY AUTHORITY: KRS 196.035, 197.020, 439.470, 439.590, 439.640

NECESSITY, FUNCTION, AND CONFORMITY: KRS 196.035, 197.020, 439.470, 439.590, and 439.640 authorize the Justice Cabinet and Department of Corrections to promulgate administrative regulations necessary and suitable for the proper administration of the department or any division therein. These policies and procedures are incorporated by reference in order to comply with the accreditation standards of the American Correctional Association. This administrative regulation establishes the policies and procedures for the Department of Corrections.

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

(a) "Department of Corrections Policies and Procedures, Volume I, April 14, 1997": ["April 14 [February 12], 1997 Edition", Department of Corrections, is incorporated by reference.

(b) It may be inspected, copied, or obtained at the Office of the General Counsel, Department of Corrections, State Office Building, 501 High Street, Frankfort, Kentucky 40601, (502) 564-2024, facsimile (502) 564-6494, Monday through Friday, 8 a.m. to 4:30 p.m.

(2) Department of Corrections Policies and Procedures include:]

1.1 Legal Assistance for Corrections Staff

1.2 News Media



# ADMINISTRATIVE REGISTER - 570

01-04-01	The operation of Contracted Adult Correctional Facilities	18.1	Classification of the Inmate
1.6	Extraordinary Occurrence Reports	18.5	Custody and Security Guidelines
1.9	Institutional Duty Officer	18.7	Transfers
1.11	Population Counts and Reporting Procedures	18.9	Out-of-state Transfers
1.12	Operation of Motor Vehicles by Department of Corrections Employees	18-10-01	Parole Progress Reports
2.1	Inmate Canteen	18.11	Kentucky Correctional Psychiatric Center Transfer Procedures
2.2	Warden's Fund	18.12	Referral Procedure for Inmates Adjudicated Guilty But Mentally Ill
2.10	Surplus Property	18.13	Population Categories
3.12	Institutional Staff Housing	18.15	Protective Custody
4.2	Staff Training and Development <u>(Amended 4/14/97)</u>	18.17	Interstate Agreement on Transfers
4.3	Firearms and Chemical Agents Training <u>(Amended 4/14/97)</u>	18.18	International Transfer of Inmates
4.7	Uniformed Employee Dress Code	19.1	Government Services Projects
6.1	Open Records Law	19.2	Community Services Projects
7.2	Asbestos Abatement	19.3	Inmate Wage Program
8.1	Occupational Exposure to Bloodborne Pathogens	20.1	Educational Programs and Educational Good Time
<del>8.4</del>	<del>Emergency Preparedness</del>	21.1	Staffing Pattern for the First Incarceration Shock Treatment Program (FIST)
<del>9.1</del>	<del>Use of Force <u>(Amended 4/14/97)</u></del>	21.2	Phase I: Program Selection Assessment Criteria
9.4	Transportation of Inmates to Funerals or Bedside Visits	21.3	Program Schedule - Phase II and Phase III
9.5	Execution	21.4	Platoon Size and Composition
9.6	Contraband <del><u>(Amended 2/12/97)</u></del>	21.5	Physical Conditions Program Component
<del>9.7</del>	<del>Storage, Issue and Use of Weapons Including Chemical Agents</del>	21.6	Group and Individual Counseling
9.8	Search Policy <del><u>(Amended 2/12/97)</u></del>	21.7	Drug and Alcohol Abuse Counseling and Treatment
<del>9.9</del>	<del>Transportation of Inmates</del>	21.8	Work Programs Component
9.10	Security Inspections <u>(Amended 4/14/97)</u>	21.9	Education and Life Management
<del>9.11</del>	<del>Tool Control <u>(Amended 4/14/97)</u></del>	21.10	Auxiliary Services
9.18	Informants <u>(Amended 4/14/97)</u>	21.11	Offenses and Penalties
9.19	Found Lost or Abandoned Property <u>(Amended 4/14/97)</u>	22.1	Privilege Trips
10.2	Special Management Inmates	23.1	Religion
10.3	Safekeepers	25.1	Gratuities
10.4	Special Needs Inmates	25.2	Public Official Notification of Release of an Inmate
11.2	Nutritional Adequacy of the Diet for Inmates	25.3	Prerelease Program
11.3	Special Diet Procedures	25.4	Inmate Furloughs
11.4	Alternative Diet	25.6	Community Center Program
13.1	Pharmacy Policy and Formulary	25.7	Expedient Release
13.2	Health Maintenance Services	25.8	Extended Furloughs
13.3	Medical Alert System	25.10	Administrative Release of Inmates
13.4	Health Program Audits	25.11	Victim Notification
13.5	Acquired Immune Deficiency Syndrome		
13.6	Sex Offender Treatment Program		
13.7	Involuntary Psychotropic Medication Policy		
13.8	Substance Abuse Treatment Program		
13.9	Dental Services		
<u>14.1</u>	<u>Investigation of Missing Inmate Property (Added 4/14/97)</u>	27-01-01	Probation and Parole Procedures
14.2	Personal Hygiene Items <u>(Amended 4/14/97)</u>	27-02-01	Duties of Probation and Parole Officers
14.3	Marriage of Inmates <u>(Amended 4/14/97)</u>	27-03-01	Workload Formula Supervisor/Staff Ratio
14.4	Legal Services Program	27-05-01	Testimony, Court Demeanor and Availability of Legal Services
14.6	Inmate Grievance Procedures	27-06-01	Availability of Supervision Services
15.1	Hair and Grooming Standards	27-06-02	Equal Access to Services
15.2	Offenses and Penalties	27-07-01	Cooperation with Law Enforcement Agencies
15.3	Meritorious Good Time	27-08-01	Use of Force
15-05-01	Restoration of Forfeited Good Time	27-09-01	Kentucky Community Resources Directory
15.6	Adjustment Procedures and Programs	27-11-01	Intensive Supervision
15.7	Inmate Account Restriction	27-12-01	Supervision: Case Classification
15.8	Unauthorized Substance Abuse Testing	27-12-02	Risk Assessment
16.1	Inmate Visits	27-12-03	Initial Interview
16.2	Inmate Correspondence	27-12-04	Conditions of Regular Supervision/Request for Modification
16.3	Telephone Calls	27-12-05	Releasee's Report
16.4	Inmate Packages	27-12-06	Grievance Procedures for Offenders
17-01-01	Inmate Personal Property	27-12-07	Employment, Education/Vocational Referral
17.2	Assessment Center Operations	27-12-08	Supervision Plan
17.3	Controlled Intake of Inmates	27-12-09	Casebook
		27-12-10	Guidelines for Monitoring Supervision Fee
		27-12-11	Guidelines for Monitoring Financial Obligations Ordered

**(b) "Department of Corrections Policies and Procedures, Volume II, April 14, 1997":**

**(c) "Department of Corrections Policies and Procedures, Volume III, April 14, 1997":**



# ADMINISTRATIVE REGISTER - 571

	by the Releasing Authority
27-12-12	Other Financial Obligations (Not Ordered by Releasing Authority)
27-12-13	Community Service Work
27-12-14	Client Travel Restrictions
27-13-01	Drug and Alcohol Testing of Offenders
27-13-02	Alcohol Detection
27-14-01	Interstate Compact Transfers
27-14-02	Interstate Compact Out-of-state Probation and Parole Violation
27-15-01	Supervision Report; Violations, Unusual Incidents
27-16-01	Search; Seizure; Chain of Custody; Disposal of Evidence
27-17-01	Absconder Procedures
27-18-01	Probation and Parole Issuance of Detainer/Warrant
27-19-01	Preliminary Revocation Hearing
27-20-01	Division of Probation and Parole Controlled Intake Program
27-20-02	Prisoner Intake Notification
27-20-03	Prisoner Status Change
27-21-01	Apprehension and Transportation of Probation and Parole Violators
27-22-01	Fugitive Unit - Apprehensions
27-22-02	Fugitive Unit - Transportation of Fugitives
27-23-01	In-state Transfer
27-24-01	Closing Supervision Report
27-24-02	Reinstatement of Clients to Active Supervision
27-25-01	Application for Final Discharge from Parole
27-26-01	Assistance to Former Clients and Dischargees
27-27-01	Restoration of Civil Rights
27-28-01	Firearms/Explosives: Application for Relief from Disability
27-29-01	Parole Review Dates Modification
28-01-01	Probation and Parole Investigation Reports (Introduction, Definitions, Confidentiality, Timing, and General Comments)
28-01-02	Probation and Parole Investigation Reports (Administrative Responsibilities)
28-01-03	Probation and Parole Investigation Reports (Presentence/Postsentence Investigation Interview Procedure)
28-01-04	Probation and Parole Investigation Reports (Presentence/Postsentence Verification, Composition, Case Material and Submission Schedules)
28-01-05	Probation and Parole Investigation Reports (Computation of Jail Custody Credit)
28-01-06	Probation and Parole Investigation Reports (Misdemeanant Presentence Investigation Reports for the Circuit and District Courts)
28-01-07	Probation and Parole Investigation Reports (Supplemental Postsentence Investigation Report, Case Material, and Submission Schedule)
28-01-08	Probation Parole Investigation Reports (Partial Investigation Reports and Submission Schedule)
28-01-09	Release of Information of Factual Content on Presentence/Postsentence Investigation Reports
28-02-01	Expedient Release Program
28-03-01	Parole Plans/Halfway Houses/Extended Furlough/Sponsorship/Gradual Release
28-04-01	Furlough Verifications
28-05-01	Out-of-state Investigations

**(d) "Department of Corrections Policies and Procedures, Volume IV, April 14, 1997" (text confidential pursuant to KRS 197.025):**

<u>8.4</u>	<u>Emergency Preparedness</u>
<u>9.1</u>	<u>Use of Force</u>
<u>9.7</u>	<u>Storage, Issue and Use of Weapons Including Chemical Agents</u>

<u>9.9</u>	<u>Transportation of Inmates</u>
<u>9.10</u>	<u>Security Inspections</u>
<u>9.11</u>	<u>Tool Control</u>

**(2) This material, except for the policies listed in subsection (1)(d) of this section, may be inspected, copied, or obtained at the Office of General Counsel, Department of Corrections, State Office Building, Frankfort, Kentucky 40601, (502) 564-2024, facsimile (502) 564-6494, Monday through Friday, 8 a.m. to 4:30 p.m.**

DOUG SAPP, Commissioner

APPROVED BY AGENCY: April 7, 1997

FILED WITH LRC: April 14, 1997 at 4 p.m.

PUBLIC HEARING: A public hearing on this regulation shall be held on May 21, 1997 at 9 a.m. in the Fifth Floor Conference Room of the State Office Building. Individuals interested in being heard at this hearing shall notify this agency in writing by May 14, 1997, five working days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Jack Damron or Tamela Biggs, Staff Attorneys, Department of Corrections, 2nd Floor, State Office Building, Frankfort, Kentucky 40601, telephone number (502) 564-2024, facsimile number (502) 564-6494.

## REGULATORY IMPACT ANALYSIS

Agency Contact Person: Tamela Biggs

(1) Type and number of entities affected: 2,948 employees of the correctional institutions, 8,729 inmates, 14,211 parolees and probationers, and all visitors to state correctional institutions.

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

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented: None

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented: None

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

1. First year following implementation: None

2. Second and subsequent years: None

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: None

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: Policy revisions.

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

None

(5) Source of revenue to be used for implementation and enforcement of administrative regulation is the funds budgeted for this 1996-1998 biennium.

(6) Economic impact, including effects of economic activities arising from administrative regulation, on:

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

(b) Kentucky: None

(7) Assessment of alternative methods; reasons why alternatives

were rejected: None

(8) Assessment of expected benefits:

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

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

(c) If detrimental effect would result, explain detrimental effect: N/A

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

(a) Necessity of proposed administrative regulation if in conflict: N/A

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: N/A

(10) Any additional information or comments: None

(11) TIERING: Is tiering applied? No. Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it. Disparate treatment of any person or entity subject to this administrative regulation could raise questions of arbitrary action on the part of the agency. The "equal protection" and "due process" clauses of the 14th Amendment of the U.S. Constitution may be implicated as well as Sections 2 and 3 of the Kentucky Constitution.

**JUSTICE CABINET**  
**Department of Juvenile Justice**  
**(As Amended)**

**505 KAR 1:020. Internal grievance procedure.**

RELATES TO: KRS 605.095, 605.100

STATUTORY AUTHORITY: KRS 15A.160, 15A.210, 605.150

NECESSITY, FUNCTION, AND CONFORMITY: KRS 15A.210 requires the Justice Cabinet to adopt administrative regulations to operate secure juvenile detention facilities. This administrative regulation is necessary to establish an internal grievance procedure for a resident of a juvenile detention facility.

Section 1. Definitions. (1) "Designated hearing officer" means a supervisory level member of the clinical staff chosen by the facility superintendent to conduct the grievance procedure hearing.

(2) "Grievance aide" means a resident who has been chosen to provide aid to another resident in the grievance procedure.

(3) "Work day" means Monday through Friday exclusive of holidays.

Section 2. Applicability. A resident may file a grievance if it is believed that they have been affected by a violation of a:

- (1) Department policy or procedure; or
- (2) Facility rule or procedure.

Section 3. Grievance Aides. A grievance aide shall:

(1) Be:

- (a) Selected by the facility superintendent;
- (b) Trained in the grievance procedure; ~~and~~

(c) Required to be able to read and write at a skill level appropriate to this position; and

(d) In the final stages of treatment; and

(2) Assist other residents in drafting and presenting a formal grievance.

Section 4. Procedure. (1) Informal.

(a) Prior to filing the grievance, an effort shall be made to resolve the grievance informally.

(b) The resident shall talk with the staff person involved and attempt to resolve the grievance informally.

(2) Formal.

(a) If unable to resolve the issue informally, the resident shall fully complete an internal grievance form and provide the following information:

1. The circumstances of the issue being grieved;
2. Efforts made to informally resolve the issue; and
3. The desired resolution.

(b) A copy of the form:

1. Shall be included in the resident's orientation package;
2. May be obtained in the open dorm area; and
3. Shall be provided upon request.

(c) The resident may be assisted by a grievance aide. If the resident or grievance aide are unable to adequately express the grievance in writing, the resident shall:

1. Request a hearing, in writing, from the designated hearing officer within two (2) work days of occurrence of the event that raised the issue; and

2. Be permitted to present the grievance verbally.

(d) A hearing shall be conducted by the designated hearing officer within three (3) work days of receiving a written grievance, in accordance with paragraph (a) of this subsection or an oral request for hearing, in accordance with paragraph (c) of this subsection. ~~[the grievance.]~~ The following shall be present at the hearing:

1. The aggrieved resident;
2. The grievance aide; and
3. Witnesses deemed material by the parties.

(e) The designated hearing officer shall within three (3) work days of the conclusion of the hearing present a written response to the resident.

(f) Within two (2) work days of receiving a decision, a resident shall:

1. Forward his grievance to the facility director or superintendent if he is dissatisfied and wishes to have the decision reviewed; and
2. Submit to the director or superintendent the information provided at the hearing.

(g) Within three (3) work days of receiving the grievance, the director or superintendent shall hold a joint meeting with the:

1. Designated hearing officer;
2. Resident; and
3. Grievance aide.

(h) The director or superintendent shall:

1. Review all information necessary to resolve the issue; and
2. Present a written response to the resident within five (5) work days of the meeting.

(i) The following shall be forwarded to the regional director and department ombudsman at the time the final resolution is submitted to the resident:

1. A copy of the final resolution made by the director or superintendent;
2. A copy of the grievance; and
3. Information submitted by the parties relating to the grievance.

Section 5. General Requirements. (1) Time requirements.

(a) If a resident fails to comply with the time requirements of this administrative regulation, the grievance shall be dismissed.

(b) If the staff fail to comply with the time requirements, the grievance shall be resolved in the resident's favor.

(c) Due to unavailability of an essential party, the time frames may be extended with the:

1. Written agreement of the resident and the hearing officer; and
2. Approval of the director or superintendent.

(2) If the hearing officer, director or superintendent is to be absent, he shall appoint a person to stand in for his position, who ~~[the person standing in for those positions]~~ shall:

- (a) Be responsible for the handling of a grievance; and
- (b) Exercise the same powers as the absent official.

(3) If a hearing officer, director or superintendent is directly involved in a grievance, it shall be handled by his supervisor, respectively.

Section 6. Incorporation by Reference. (1) "Internal Grievance Form", (2-9-97 edition), Department of Juvenile Justice, is incorporated by reference.

(2) It may be inspected, copied or obtained at the Office of the Ombudsman, Department of Juvenile Justice, 320 West Main Street, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

RALPH E. KELLY, ED.D., Commissioner

APPROVED BY AGENCY: June 13, 1997

FILED WITH LRC: June 13, 1997 at 11 a.m.

# EDUCATION, ARTS, AND HUMANITIES CABINET

Kentucky Board of Education

Department of Education

Office of District Support Services

(As Amended)

## 702 KAR 7:065. Designation of agent to manage high school interscholastic athletics.

RELATES TO: KRS 156.070

STATUTORY AUTHORITY: KRS 156.070

NECESSITY, FUNCTION, AND CONFORMITY: KRS 156.070

requires [gives] the Kentucky Board of Education (KBE) to manage and control [the management and control of] the common schools, including interscholastic athletics in the schools, and authorizes [and allows] the KBE to designate an agency to manage athletics [pursuant to rules approved by the KBE]. This administrative regulation designates an agent for high school athletics; establishes the [and sets forth] financial planning and review processes for the agent; and incorporates by reference [that agent. Also, this administrative regulation adopts] the bylaws, procedures and rules of the [that] agent.

Section 1. The Kentucky High School Athletic Association (KHSAA) shall be [is hereby designated as] the Kentucky Board of Education's agent to manage interscholastic athletics at the high school level in the common schools, including a private school [any private schools] desiring to associate with KHSAA and to compete with a common school [the common schools].

Section 2. [The KHSAA shall meet the following conditions in order] To remain eligible to maintain the designation as the agent to manage interscholastic athletics, the KHSAA shall:

(1) Accept four (4) at-large members appointed by the Kentucky Board of Education to its governing body;

(2) Sponsor an annual meeting of its member schools;

(3) Provide for each member school to have a vote on constitution and bylaw changes submitted for consideration at the annual meeting;

(4) Provide for regional postseason tournament net revenues to be distributed to the member schools in that region participating in that sport, utilizing a share approach determined by the schools within that region playing that sport;

(5) Require its governing body to establish [The governing body shall set] goals and objectives and perform a self-assessment and submit them annually to the KBE.

(6) Advise the Department of Education of all legal action brought against the KHSAA;

(7) Permit a board of control member [members] to serve a maximum of two (2) four (4) year terms with no region represented for

more than eight (8) years;

(8) Employ a [the] commissioner and evaluate that person's performance annually and establish all staff positions upon recommendation of the commissioner;

(9) Permit the commissioner to employ [all] other personnel [deemed] necessary to perform the staff responsibilities;

(10) Permit the Board of Control to assess fines on a member school [member schools];

(11) Utilize a trained independent hearing officer [officers] instead of an eligibility committee [eligibility committees] for an appeal [appeals]; and

(12) Establish a philosophical statement of principles to use as a guide in an eligibility case [cases].

Section 3. Financial Planning and Review Requirements. (1) KHSAA shall submit the following financial documents to the KBE:

(a) Draft budget for the next two (2) years in November of each year;

(b) Annual audit with KHSAA Commissioner's letter addressing an exception [any exceptions] within thirty (30) days of receipt of the audit; and

(c) Midyear and end-of-year budget status reports by July 30 and January 30, respectively.

(2) KHSAA shall submit a strategic plan to KBE by June 1 of each year.

(3) KHSAA shall submit a midyear and annual report by July 30 and January 30, respectively.

(4) KHSAA shall complete an annual review of its bylaws by October 30 of each year, including the following:

(a) Athletic appeals;

(b) Eligibility rules;

(c) Duties of school officials;

(d) Contests; and

(e) Requirements for officials and coaches.

(5) KHSAA shall submit to KBE a report of all athletic appeals and their disposition by September 1 of each year. The annual report on appeals shall include the name of the individual[~~s~~], grade, school, and the action taken by KHSAA.

Section 4. The bylaws, tournament rules, due process procedures, and officials' rules of the KHSAA Handbook, 1997-98 [1996-97] shall apply to high school interscholastic athletics in Kentucky.

Section 5. Incorporation by Reference. (1) "Kentucky High School Athletic Association 1997-98 Handbook", 1997 Edition, Kentucky High School Athletic Association, is incorporated by reference.

(2) [as revised, adopted, and approved on June 11, 1997 [1996], are hereby incorporated by reference.] This material may be inspected and copied at the Office of Legal Services, Department of Education, First Floor, Capital Plaza Tower, Frankfort, Monday through Friday, 8 a.m. through 4:30 p.m.

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

Wilmer S. Cody, Commissioner of Education

JOSEPH W. KELLY, Chairman

APPROVED BY AGENCY: June 12, 1997

FILED WITH LRC: June 12, 1997 at 1 p.m.

## ADMINISTRATIVE REGISTER - 574

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

704 KAR 20:165. Qualifications for professional school positions.

RELATES TO: KRS 161.020, 161.028, 161.030

STATUTORY AUTHORITY: KRS 161.028, 161.030

NECESSITY, FUNCTION, AND CONFORMITY: KRS 161.020 requires appropriate certification for a professional education position in a Kentucky public school. This administrative regulation establishes certificate qualifications for the positions in a local school district for which a specific certificate is not available. [KRS 161.020 requires appropriate certification for professional education position in Kentucky public schools; however, professional education positions are established in the local school districts for which a corresponding certification is not issued. In this administrative regulation the Education Professional Standards Board establishes qualifications for these assignments.]

Section 1. This administrative regulation shall not apply to a position for which a specific certificate is available under another administrative regulation promulgated by the board.

**Section 2.** School Business Administrator. The qualifications for the position of school business administrator shall be one (1) of the following:

- (1) Kentucky certification for school superintendent;
- (2) A bachelor's or advanced degree in business; or
- (3) Valid Kentucky certification for school business administrator issued prior to September 1, 1994.

Section 3. ~~[2-]~~ Director of Districtwide Services. A director of districtwide services shall [may] qualify for this position on the basis of certification either as a school superintendent, supervisor of instruction, school business administrator, or principal. ~~[This administrative regulation does not apply to any position for which a specific certificate is available, such as director of pupil personnel.]~~

Section 4. ~~[3-]~~ Director of Federally Supported Programs. A director of federally supported programs shall [may] qualify for this position on the basis of certification either as a school superintendent, supervisor of instruction, or school principal.

Section 5. ~~[4-]~~ Consultant. A consultant in elementary education, special education, or in an academic subject field shall [may] qualify for the position on the basis of the following:

- (1) Master's degree or nondegree fifth-year program;
- (2) Certification in the appropriate subject field or service area; and
- (3) Three (3) years of teaching experience in the appropriate subject field or service area.

Section 6. ~~[5-]~~ Reading Program Consultant. A reading program consultant shall [may] qualify for the position on the basis of certification as a reading specialist.

Section 7. ~~[6-]~~ Gifted Education Coordinator. A gifted education coordinator shall [may] qualify for the position on the basis of the following:

- (1) A master's degree or nondegree fifth-year program;
- (2) A certificate endorsement for teacher of gifted education; and
- (3) Three (3) years of teaching experience.

Section 8. ~~[7-]~~ Special Education Work Study Program Coordinator. A special education work study program coordinator shall

~~[may]~~ qualify for the position on the basis of certification as a teacher of exceptional children.

Section 9. ~~[8-]~~ Professional Development Coordinator. The professional development coordinator shall [may] qualify for the position on the basis of certification as a principal or supervisor of instruction.

Section 10. ~~[9-]~~ Instructional Television Coordinator. An instructional television coordinator shall [may] qualify for the position on the basis of certification for classroom teaching.

Section 11. ~~[10-]~~ Instructional Coordinator. The instructional coordinator shall [may] qualify for the position on the basis of certification for supervisor of instruction or school principal at the appropriate level.

Section 12. ~~[11-]~~ School Health Coordinator. A school health coordinator shall [may] qualify for the position on the basis of certification for classroom teaching or certification for school nurse.

Section 13. ~~[12-]~~ Chapter I Remedial Mathematics. A teacher ~~[Teachers]~~ holding a valid early elementary certificate, grades K-4, shall [may] qualify for teaching mathematics in a Chapter I program [programs] in grades 5-8.

Section 14. ~~[13-]~~ Teachers for Alternative Schools. A classroom teacher in an alternative school shall [may] qualify on the basis of a [any] certificate valid for classroom teaching.

Section 15. ~~[14-]~~ Instructional Technology Director. An instructional technology director shall [may] qualify on the basis of a [any] certificate valid for classroom teaching.

Section 16. ~~[15-]~~ Federal Grant Coordinator - School Level. A federal grant coordinator at the school level shall [may] qualify on the basis of a [any] certificate valid for classroom teaching.

Section 17. ~~[16-]~~ Job Training Partnership Act Teacher. A teacher in the JTPA Program shall [may] qualify on the basis of a [any] certificate valid for classroom teaching.

Section 18. ~~[17-]~~ Family Resource Center Director. A family resource center director shall [may] qualify on the basis of a [any] valid certificate issued by the Educational Professional Standards Board if the position is reported as certified.

Section 19. ~~[18-]~~ Migrant Advocate. A migrant advocate shall [may] qualify on the basis of a [any] certificate valid for classroom teaching.

Section 20. ~~[19-]~~ Home and Hospital Teacher. A home and hospital teacher shall [may] qualify on the basis of a [any] certificate valid for classroom teaching.

Section 21. ~~[20-]~~ Dean of Students. A dean of students shall [may] qualify on the basis of an instructional leadership certificate - school principal.

Section 22. ~~[21-]~~ Testing Coordinator. A testing coordinator shall [may] qualify on the basis of an individual intellectual assessment certificate, psychometrist certificate, supervisor certificate, or guidance certificate.

ROSA WEAVER, Chair

APPROVED BY AGENCY: May 12, 1997

FILED WITH LRC: May 22, 1997 at 4 p.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 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 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 professional certificate for instructional leadership - school principal shall be issued to an applicant who has completed an approved program of preparation and requirements, including assessments.

(2) The provisional and professional certificate for instructional leadership - school principal shall be valid for the position of school principal or school assistant principal for all grade levels.

(3) Prerequisites for admission to the program of preparation for the provisional and professional certificate for instructional leadership - school principal shall include:

(a) Qualification for a Kentucky classroom teaching certificate;

(b) A 2.5 grade point average on a 4.0 scale on all collegiate preparation;

(c) Successful completion of a generic test of communication skills, general knowledge, and professional education concepts approved by the Education Professional Standards Board as a condition for the issuance of a Kentucky classroom teaching certificate or other test authorized for this purpose by the appropriate state agency recognized by the Education Professional Standards Board through contract with Interstate Agreement on Qualification of Educational Personnel; and

(d) Successful completion of the Kentucky Teacher Internship Program, as provided in 704 KAR 20:045, or two (2) years of successful teaching experience outside the state of Kentucky.

Section 2. Kentucky Administrator Standards for Preparation and Certification. The approved program of preparation for the provisional certificate for instructional leadership - school principal shall include a master's degree in education and shall be designed to address recommendations of relevant professional organizations including the National Policy Board for Educational Administration, the University Council for Educational Administration, the National Council of Professors of Educational Administration, the National Association of Secondary School Principals, and the American Association of School Administrators and to prepare a candidate for the position of School Principal as specified in the following Administrator Standards adopted by the Education Professional Standards Board:

(1) Administrator standard I. The administrator is the instructional leader who guides, facilitates, and supports the curriculum, instruction, and assessment;

(2) Administrator standard II. The administrator practices positive, promotional, and proactive communication strategies (oral and written) for effective parent, community, school involvement to improve the learning environment for all students; and

(3) Administrator standard III. The administrator is the organiza-

tional leader and manager who acts within legal and ethical guidelines to accomplish educational purposes.

Section 3. Assessment Prerequisites for the Provisional Certificate for Instructional Leadership - School Principal. (1) An applicant for certification as a school principal, including vocational principal, shall attain the specified minimum score on each of the following assessments prior to receiving the provisional certificate, except as provided by KRS 161.027(6):

(a) Kentucky Specialty Test of Instructional and Administrative Practices, with a score of eighty-five (85) percent correct responses; and

(b) The written test of applied knowledge approved by the Education Professional Standards Board.

(2) 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.

Section 4. Statement of Eligibility for Internship. A statement of eligibility for internship for the provisional certificate for instructional leadership - school principal shall be issued for a five (5) year period to an applicant who:

(1) Has successfully completed an approved program of preparation;

(2) Has three (3) years of full-time teaching experience; and

(3) Has successfully completed the appropriate assessment requirements for the school principal certification or qualifies for a one (1) year period of completion of assessments under KRS 161.027(6).

Section 5. (1) A professional certificate for instructional leadership - school principal, level I, shall be issued upon successful completion of the principal internship as provided in KRS 161.027 and 704 KAR 20:470.

(2) The renewal of the professional certificate for instructional leadership - school principal, level I, shall require a recommendation from the approved recommending authority regarding the successful completion of an approved level II program. The certificate shall be valid for five (5) years.

(3) In addition to the requirements of KRS 161.027(9), each subsequent five (5) year renewal of the professional certificate for instructional leadership - school principal, level II, shall require:

(a) Successful completion of two (2) years of experience as a school principal within the preceding five (5) years; or

(b) If the applicant has not successfully completed the two (2) years of experience, completion of three (3) semester hours of additional graduate credit directly related to the position of school principal for each required year of experience the applicant has not completed.

Section 6. Implementation 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 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.

(a) A candidate formally admitted to an approved preparation program for school principal under 704 KAR 20:380, 704 KAR 20:390, or 704 KAR 20:400 by September 1, 1997, shall be eligible for the instructional leadership-school principal, all grades certificate upon:

1. Completion of the program in which the candidate is enrolled as identified in this subsection;

2. The successful completion of an approved additional three (3) to six (6) graduate semester hours. The additional graduate semester

hours shall be designed to address content of the preparation program not addressed in 704 KAR 20:380, 704 KAR 20:390, or 704 KAR 20:400;

3. A recommendation from the institution of higher education for the appropriate certificate; and

4. Successful completion of the required assessment in effect at the time of application for the certificate.

(b) A candidate who holds a valid Kentucky principal certificate shall be eligible for the instructional leadership-school principal, all grades certificate upon:

1. Enrollment in an approved program of preparation that shall:

a. Be designed to address leadership at all grade levels;

b. ~~[-shall]~~ Include school-based experiences; and

c. Not ~~[-and shall]~~ require ~~[no]~~ more than three (3) to six (6) additional hours of graduate credit; and

2. A recommendation from the institution of higher education for the appropriate certificate.

(3) A candidate who fails 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 shall take adequate steps to inform a candidate in these programs regarding the implementation dates identified in this section.

ROSA WEAVER, Chair

APPROVED BY AGENCY: March 24, 1997

FILED WITH LRC: May 22, 1997 at 4 p.m.

**FINANCE AND ADMINISTRATION CABINET  
School Facilities Construction Commission  
(As Amended)**

750 KAR 2:010. Education Technology Funding Program guidelines.

RELATES TO: KRS 157.615, 157.650, 157.655, 157.660, 157.665 [Chapter 157]

STATUTORY AUTHORITY: KRS 157.615, 157.655(3), 157.660(3) [157.650-157.665]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 157.617(1) authorizes the commission to promulgate administrative regulations necessary for the orderly conduct of its affairs, which includes the education technology funding program. KRS 157.660(3) requires the commission to promulgate administrative regulations by which a district that receives an offer of assistance but does not have the local match shall be able to accumulate a credit for the state offer of assistance for a period not to exceed three (3) years. This administrative regulation establishes the procedures and guidelines for determining the eligibility and level of participation for a local public school district, for making an offer of assistance to a school district, for verifying a local public school district funding match, and for the accumulation of credits by a local public school district that maintains its eligibility. ~~[The School Facilities Construction Commission is to promote a partnership between the state and local public school districts to help meet the educational technology needs of Kentucky's students. The General Assembly has appropriated funds for administrative support and for offers of assistance to local public school districts. This administrative regulation describes procedures and the guidelines the School Facilities Construction Commission will utilize in determining the eligibility and level of participation for each local public school district, for making offers of assistance to school districts, for verifying local public school district funding matches, and for the accumulation of credits by local public school districts that~~

~~maintain their eligibility.]~~

Section 1. Sources of Local Matching Funds. A local public school district shall match the state offer of assistance from:

(1) Its general fund;

(2) The proceeds of a revenue bond or note that is:

(a) Issued on behalf of a district to purchase technology equipment supported by the district's general fund; and

(b) To be retired within three (3) years from the date of issuance;

(3) A vendor or third party lender lease;

(4) A grant from a private source; or

(5) Interest earned by a district on a school building construction account, if the interest is not already committed for expenditure on the construction project. ~~[Local public school districts may match the state offer of assistance from their general fund; from the proceeds of revenue bonds or notes issued on behalf of a district to purchase technology equipment supported by the district's general fund and which are to be retired within three (3) years from the date of issuance; vendor or third party lender leases; from grants from private sources, or from interest earned by a district on any school building construction account, provided that such interest is not already committed for expenditure on the construction project.]~~

Section 2. Offers of Assistance. (1) Funds available within the Education Technology Escrow Account shall be distributed to a local school ~~district [districts]~~ for installation of the Kentucky Education Technology System ("KETS") through the cooperative program established by KRS 157.650 to 157.665, and as provided by this section. ~~[Section 2 of this administrative regulation.]~~ ~~[Subject to approval by the Secretary of the Finance and Administration Cabinet, approximately one-half (1/2) of available funds shall be allocated to local school districts each year during the 1992-94 biennium.]~~

(2) Upon certification of the rate of participation to the commission, the commission's executive director shall notify an eligible district in writing of:

(a) The amount the district is entitled to receive; and

(b) The conditions KRS 157.655(1) and 157.660(2) requires the district to meet if it accepts the offer of acceptance. ~~[Upon certification of the rate of participation to the commission, the commission's executive director shall notify each eligible district in writing of the amount the district is entitled to receive, and the conditions the district must meet, if it accepts the offer of assistance. Conditions districts must meet to be eligible for assistance are: the district has an unmet technology need as defined in KRS 157.615(15); or an obligation to pay for technology acquired before April 3, 1992; commitment by the district of local school funds equal to the amount of state assistance available to the district under the formula in KRS 157.660(1); and past [except as provided by KRS 157.655(2), during the 1992-94 biennium,] expenditure of state and local technology funds in the priority order listed in the district's technology plan as approved by the state board; and, the sequence of events and deadlines to be met by the local school district in fulfilling its educational technology needs.]~~

Section 3. Acceptance of Offers of Assistance. (1) The local board of education shall notify the commission in writing whether it accepts an offer of assistance within sixty (60) days after receipt of the offer of assistance. The local board's response shall indicate how much of the amount of the offer ~~[that]~~ the district plans to accept. If a school district does not have local matching funds available when the commission's offer of assistance is received, the district may accumulate credits for up to three (3) years from the date of the offer of assistance. If a district does not respond within sixty (60) days after receipt of the offer of assistance, it shall be deemed to have rejected the offer of assistance and the amount of the offer shall be redistrib-

uted to remaining eligible districts. Upon written request received from a district within the original sixty (60) day period, a single thirty (30) day extension in responding to an offer of assistance shall [may] be granted by the executive director.

(2) The local school district shall provide to the commission a copy [copies] of its [their] board's minutes reflecting acceptance of an offer [offers] of assistance. ~~[Except as provided in subsection (3) of this section,]~~ Upon acceptance of an offer [offers] of assistance, a [each] local school district shall establish ~~[in the district's depository bank]~~ an "Education Technology [Matching] Fund[s—Restricted Account]", which shall bear interest on the balance [balances] in the fund [account]. The [All] interest received on the fund [accounts] shall be applied to meet educational technology needs in the school district. The district [districts] shall provide the commission evidence of a journal entry certifying ~~[with a copy of a bank deposit ticket verifying deposit of the]~~ local matching funds in the technology fund [account].

~~[(3) If a district receives a grant or grants from private sources to serve as the local matching funds, and as a condition of the grant the grant funds are deposited in a trust or similar bank account, the district may submit to the commission a copy of a bank statement showing that the local matching funds are available for expenditure from such account, in lieu of opening an Education Technology Restricted Fund Account.]~~

~~[Section 4. Bond Issuance Procedures. The commission shall provide technical advice with reference to the issuance of bonds, or entering into lease agreements to meet district technology needs, to all local school districts who request such advice.]~~

DR. ROBERT TARVIN, Executive Director  
APPROVED BY AGENCY: June 13, 1997  
FILED WITH LRC: June 13, 1997 at 11 a.m.

**PUBLIC PROTECTION AND REGULATION CABINET**  
**Kentucky Racing Commission**  
**(As Amended)**

**811 KAR 1:090. Stimulants and drugs.**

RELATES TO: KRS 230.630(1), (3), 230.640, 230.700

STATUTORY AUTHORITY: KRS 230.630(3), (4), (7)

NECESSITY, FUNCTION, AND CONFORMITY: To regulate conditions under which harness racing shall be conducted in Kentucky. The function of this administrative regulation is to provide for the testing of horses for stimulants and drugs and the administrative regulation of stimulants and drugs.

Section 1. (1) Except as provided herein, at every meeting where pari-mutuel wagering is permitted, a urine test, or blood test, or both shall be conducted to determine the presence of:

- (a) Drug;
- (b) Stimulant;
- (c) Sedative;
- (d) Depressant; or
- (e) Medicine.

(2) The tests shall be conducted on the:

(a) Winning horse in every heat and race;

(b) Winning horse and second place horse in every perfecta or quinella race;

(c) Winning horse, or the second and third place horses in a trifecta, or each of them.

(3) The judges may order a horse in a race to be subjected to a urine test, or blood test, or both.

(4) The winning horse and second place horse in every heat or dash of a race at a track with a total purse in excess of \$5,000

may be subjected to a blood test, or a urine test, or both tests.

(5) A test shall be made by a qualified veterinarian and by a laboratory designated by the commission.

(6)(a) A positive test during a time trial shall be treated as a violation.

(b) The winning time shall be disallowed, and the trainer of record shall be:

- 1. Fined; or
- 2. Suspended; or
- 3. Fined and suspended.

(7) In its discretion, or at the request of a member, the commission may authorize or require a blood test, or urine test, or other test of a horse racing at a meeting.

Section 2. (1)(a) When a blood or urine sample is taken by a veterinarian, the owner, trainer or authorized agent shall be present.

(b) A sample shall be:

- 1. Placed in two (2) containers;
- 2. Immediately sealed, with the signature of the representative of the owner or trainer on the container.

(c) One (1) part of the sample shall be placed in a depository under the supervision of the presiding judge or other agency designated by the commission to be safeguarded until the report on the chemical analysis of the other portion of the split sample has been received.

(2) If a positive report has been received, an owner or trainer may request the commission to have the other portion of the split sample:

(a) Inserted with a subsequent group sent for testing; or

(b) Sent to another chemist for analysis, the cost of which shall be paid by the owner or trainer.

Section 3. (1) If there is a positive test finding the presence of a drug, stimulant, sedative, or depressant in the postrace test, the:

(a) Laboratory shall immediately notify the presiding judge; and

(b) Presiding judge shall immediately report the finding to the commission.

(2) If a positive report is received from the laboratory by the presiding judge:

(a) The person held responsible shall be notified; and

(b) A thorough investigation shall be conducted by or on behalf of the judges.

(3)(a) A time shall be set by the judges for a hearing to dispose of the matter.

(b) The time set for the hearing shall not exceed four (4) racing days after the responsible person was notified.

(c) The hearing shall be continued if the judges determine that circumstances justify a continuance.

(4) If the chemical analysis of blood, urine, or other sample of the postrace test taken from a horse indicates the presence of a forbidden narcotic, stimulant, depressant, or local anesthetic, it shall be considered prima facie evidence that the forbidden substance had been administered to the horse.

(5) Upon receipt of written notification of a positive test finding, the judges shall immediately suspend the horse from further participation in racing.

Section 4. A person who administers, influences, or conspires with another person to administer to a horse a drug, medicament, stimulant, depressant, narcotic, or hypnotic within forty-eight (48) hours of a race in which the horse participates, shall be subject to the penalties provided in Section 15 of this administrative regulation.



Section 5. If the postrace test or tests prescribed in Section 1 of this administrative regulation disclose the presence in a horse of a drug, stimulant, depressant or sedative, in any amount, it shall be presumed that the substance was administered by the person having control, care, or custody of the horse with the intent to affect the:

- (1) Speed or condition of the horse; and
- (2) Result of the race in which it participated.

Section 6. A horse shall not be tubbed in ice in the paddock prior to its racing commitment.

Section 7. (1) A trainer shall be responsible at all times for the condition of all horses trained by him.

(2) A trainer shall not start a horse or permit a horse in his custody to be started if he knows, or if by the exercise of reasonable care he might have known or have cause to believe, that the horse has received a drug, stimulant, sedative, depressant, medicine or other substance that could result in a positive test.

(3) A trainer shall guard or cause to be guarded each horse trained by him in a manner and for a period of time prior to racing the horse necessary to prevent a person not employed by or connected with the owner or trainer from administering a drug, stimulant, sedative, depressant, or other substance that could result in a postrace positive test.

Section 8. (1) An owner, trainer, driver, or agent of the owner, having the care, custody, or control of a horse shall not refuse to submit the horse to tests:

(a) Required by the provisions of this administrative regulations; or

(b) Ordered by the judges.

(2) The owner, trainer, driver, or agent of the owner of a horse that refuses to submit to a prerace blood test shall be required to submit the horse to a postrace blood test, or urine test, or both tests regardless of its finish.

(3) An owner, trainer, driver, or agent of the owner, having the care, custody, or control of a horse who refuses to comply with the provisions of this section shall be subject to fine, or suspension, or both, pursuant to Section 15 of this administrative regulation.

Section 9. (1) A horse in which an offense was detected pursuant to the provisions of this administrative regulation shall be placed last in the order of finish.

(2) The winnings of a horse in which an offense was detected pursuant to the provisions of this administrative regulation shall be:

(a) Forfeited; and

(b) Paid over to the commission for redistribution among the remaining horses in the race entitled to them.

(3) A forfeiture and redistribution of winnings shall not effect the distribution of the pari-mutuel pools at tracks where pari-mutuel wagering is conducted, if the distribution of pools is made upon the official placing at the conclusion of the heat or dash.

Section 10. Prerace Blood Test. If there is a prerace blood test that shows that there is an element present in the blood indicative of a stimulant, depressant, or unapproved medicament, the:

(1) Horse shall immediately be scratched from the race; and

(2) Officials shall conduct an investigation to determine if Section 5 of this administrative regulation was violated.

Section 11. Hypodermic Syringe Prohibited. (1) Except for a

licensed veterinarian approved by the commission, a person shall not have a hypodermic syringe, hypodermic needle, or other device that can be used for the injection or other infusion into a horse of a drug, stimulant, or narcotic:

(a) Within the grounds of a licensed harness race track; or

(b) In or upon the premises which he occupies, or has a right to occupy; or

(c) In his personal property or effects.

(2) A licensed harness racing association upon the grounds of which horses are lodged or kept shall use every reasonable effort to prevent a violation of this section.

Section 12. (1) A veterinarian practicing on the grounds of an extended pari-mutuel meeting shall:

(a) Keep a log of his activities on "Veterinary Report Of Horses Treated"; and

(b) Submit a copy of "Veterinary Report Of Horses Treated" to the commission office of the track each day of a race meeting.

(2) The log shall include the:

(a) Name of horse;

(b) Nature of ailment;

(c) Type of treatment; and

(d) Date and hour of treatment.

(3) The veterinarian shall report to the presiding judge any internal medication given by him by injection or orally to a horse after he has been declared to start in any race.

Section 13. (1) A veterinarian practicing veterinary medicine on a race track where a race meeting is in progress or any other person using a needle or syringe shall:

(a) Use only one (1) time disposable type needles; and

(b) Not reuse a disposable needle.

(2) The disposable needles shall be kept in his possession until disposed of by him off the track.

(3) A veterinarian, assistant veterinarian or his employee shall not leave a needle or syringe with anyone on a race track where a race meeting is in progress except upon written authorization from the commission.

Section 14. (1) Approval and prescription of lasix for racing shall be made:

(a) By the commission veterinarian, or a licensed veterinarian approved by the commission; and

(b) If the:

1. Commission or licensed veterinarian has seen the horse bleed from the nostrils; or

2. Horse has been scoped and declared a bleeder by the commission veterinarian or a licensed veterinarian.

(2) If the commission veterinarian or a licensed veterinarian approved by the commission agrees that the horse is a bleeder, the horse shall qualify and meet the standards of the meeting.

(3) Only the commission veterinarian may administer lasix prior to a race, including qualifying, nonbetting, pari-mutuel races, and time trials.

(4) The use of oral lasix shall be forbidden.

(5) The commission shall keep a record of horses using lasix for the first time.

(6) A schedule for scoping shall be maintained by the commission veterinarian.

(7) No more than 250 milligrams four (4) hours prior to a race shall be administered.

(8) A fee of ten (10) dollars shall be paid to the commission veterinarian when lasix is administered to a horse.

(9) If a trainer no longer wishes to use lasix:

(a) A "Termination of Lasix" shall be submitted to the commission office at the track; and

(b) Before being allowed to race without lasix, a horse shall:

1. Perform in a qualifying race without the use of lasix; and

2. Meet the standards of the meeting; and

(c) A horse shall qualify and meet the standards of the meeting prior to being permitted to use lasix again.

(10)(a) Testing shall be quantitative, and with those exceeding thirty (30) nanograms per milliliter of blood tested resulting in a warning to the owner.

(b) Testing shall be at random, not to exceed six (6) samples per day.

(c) A mutual decision to take random samples shall be made by the commission veterinarian and the judges.

(d) A second violation of this subsection shall result in a fine against the owner, not to exceed \$5,000.

(11)(a) If a horse bleeds through normal treatment with lasix, the horse shall not be eligible to race for 120 days.

(b) After 120 days, the horse shall again qualify on lasix. If the horse bleeds, it shall not be eligible to race for one (1) year.

Section 15. Unless otherwise provided, the penalty for violation of the provisions of this administrative regulation shall be:

(1) A fine not to exceed \$5,000;

(2) Suspension not to exceed one (1) year;

(3) A fine not to exceed \$5,000, and a suspension not to exceed one (1) year; or

(4) Expulsion.

Section 16. Material Incorporated by Reference. (1) The following documents are incorporated by reference:

(a) "Termination of Lasix, KRC-1(8/97)"; and

(b) "Veterinary Report Of Horses Treated, KRC-2(8/97)".

(2) This material may be inspected, copied, or obtained at Kentucky Racing Commission, 4063 Iron Works Pike, Lexington, Kentucky 40511, Monday through Friday, 8 a.m. to 4:30 p.m. [At every meeting except as stated herein where pari-mutuel wagering is permitted, the winning horse in every heat and/or race shall be subjected to a urine test and/or a blood test and the winning horse and second place horse in every perfecta or quinella race shall [may] be subjected to a urine test and/or a blood test for the purpose of determining thereby the presence of any drug, stimulant, sedative, depressant, or medicine. The winning horse and/or the second and third horses in a trifecta shall [may] be tested the same as in the rule above. Also, the judges shall [may] order any horse in a race to be subjected to a urine, blood and/or saliva test. Such tests shall be made only by qualified veterinarians and by laboratories designated by the commission. In addition to the above, the winning horse and second horse in every heat or dash of a race at any track with a total purse in excess of \$5,000 may be subjected to both blood and a urine test. Positive tests during time trials shall be treated as a violation. The winning time shall be disallowed and the trainer of record may be fined, suspended or both.

(2) The commission may, in its discretion, or at the request of a member, authorize or direct a saliva, blood, urine or other test of any horse racing at any meeting.

Section 2. (1) During the taking of the blood and/or urine sample by the veterinarian, the owner, trainer or authorized agent shall [may] be present at all times. Samples so taken shall be placed in two (2) containers and shall immediately be sealed and the evidence of such sealing indicated thereon by the signature of the representative of the owner or trainer. One (1) part of the sample is to be placed in a depository under the supervision of the presiding judge and/or any other agency the commission shall [may] designate to be safeguarded until such time as the report on the chemical analysis of the other portion of the split sample is received.

(2) Should a positive report be received, an owner or trainer shall have the right to have the other portion of the split sample inserted in

with a subsequent group being sent for testing or may demand that it be sent to another chemist for analysis, the cost of which shall [will] be paid by the party requesting the test.

Section 3. (1) Whenever there is a positive test finding the presence of any drug, stimulant, sedative or depressant present, in the postrace test, the laboratory shall immediately notify the presiding judge who shall immediately report such findings to the commission.

(2) When a positive report is received from the laboratory by the presiding judge, the persons held responsible shall be notified and a thorough investigation shall be conducted by or on behalf of the judges. A time shall be set by the judges for a hearing to dispose of the matter. The time set for the hearing shall not exceed four (4) racing days after the responsible persons were notified. The hearing shall [may] be continued, if in the opinion of the judges, circumstances justify such action.

(3) Should the chemical analysis of saliva, blood, urine or other sample of the postrace test taken from a horse indicate the presence of a forbidden narcotic, stimulant, depressant, or local anesthetic, it shall be considered prima facie evidence that such has been administered to the horse.

(4) Upon receipt of written notification of a positive test finding, the judges shall not cause the immediate suspension of the horse from further participation in racing.

Section 4. Any person or persons who shall administer or influence or conspire with any other person or persons to administer to any horse any drug, medicament, stimulant, depressant, narcotic or hypnotic to such horse within forty eight (48) hours of his race, shall be subject to penalties provided in this rule. No horse shall be tubbed in ice in the paddock prior to their racing commitment.

Section 5. Whenever the postrace test or tests prescribed in Section 1 disclose the presence in any horse of any drug, stimulant, depressant or sedative, in any amount whatsoever, it shall be presumed that the same was administered by the person or persons having control and/or care and/or custody of such horse with the intent thereby to affect the speed or condition of such horse and the result of the race in which it participated.

Section 6. A trainer shall be responsible at all times for the condition of all horses trained by him. No trainer shall start a horse or permit a horse in his custody to be started if he knows, or if by the exercise of reasonable care he might have known or have cause to believe, that the horse has received any drug, stimulant, sedative, depressant, medicine or other substance that could result in a positive test. Every trainer must guard or cause to be guarded each horse trained by him in such manner and for such period of time prior to racing the horse so as to prevent any person not employed by or connected with the owner or trainer from administering any drug, stimulant, sedative, depressant, or other substance resulting in a postrace positive test.

Section 7. Any owner, trainer, driver or agent of the owner, having the care, custody and/or control of any horse who shall refuse to submit such horse to a saliva test or other tests as herein provided or ordered by the judges shall be guilty of a violation of this rule. Any horse that refuses to submit to a prerace blood test shall be required to submit to a postrace saliva and urine test regardless of its finish.

Section 8. Any horse in which an offense was detected under any section of this rule shall be placed last in the order of finish and all winnings of such horse shall be forfeited and paid over to the commission for redistribution among the remaining horses in the race entitled to same. No such forfeiture and redistribution of winnings shall effect the distribution of the pari-mutuel pools at tracks where pari-mutuel wagering is conducted, when such distribution of pools is

made upon the official placing at the conclusion of the heat or dash.

~~Section 9. Prerace Blood Test. Where there is a prerace blood test which shows that there is an element present in the blood indicative of a stimulant, depressant or any unapproved medicament, the horse shall immediately be scratched from the race and an investigation conducted by the officials to determine if there was a violation of Section 4 of this administrative regulation.~~

~~Section 10. Hypodermic Syringe Prohibited. No person except a licensed veterinarian approved by the commission shall have within the grounds of a licensed harness race track in or upon the premises which he occupies, or has a right to occupy, or in his personal property or effects any hypodermic syringe, hypodermic needle, or other devices which can be used for the injection or other infusion into a horse of a drug, stimulant or narcotic. Every licensed harness racing association upon the grounds of which horses are lodged or kept, is required to use all reasonable effort to prevent violation of this rule.~~

~~Section 11. (1) All veterinarians practicing on the grounds of an extended pari-mutuel meeting shall keep a log of their activities on a form provided by the commission and shall submit a copy of it to the commission office of the track each day of a race meeting. The log shall include:~~

- ~~(a) Name of horse;~~
- ~~(b) Nature of ailment;~~
- ~~(c) Type of treatment;~~
- ~~(d) Date and hour of treatment.~~

~~(2) It shall be the responsibility of the veterinarian to report to the presiding judge any internal medication given by him by injection or orally to any horse after he has been declared to start in any race.~~

~~Section 12. (1) Any veterinarian practicing veterinary medicine on a race track where a race meeting is in progress or any other person using a needle or syringe shall use only one (1) time disposable type needles and a disposable needle shall not be reused. The disposable needles shall be kept in his possession until disposed of by him off the track.~~

~~(2) No veterinarian, assistant veterinarian or employee of same shall leave a needle or syringe with anyone on a race track where a race meeting is in progress except upon written authorization from the commission.~~

~~Section 13. (1) Only the commission veterinarian or a licensed veterinarian approved by the commission may approve and prescribe the use of lasix for racing providing that the commission veterinarian or a licensed veterinarian approved by the commission actually sees the horse bleed from the nostrils or the horse is scoped and declared a bleeder. [The commission veterinarian must accompany the practitioner when a horse is scoped.] If the commission veterinarian or a licensed veterinarian approved by the commission agrees that the horse is a bleeder, the horse shall qualify and meet the standards of the meeting. Only the commission veterinarian shall administer lasix prior to a race, which includes qualifying, nonbetting, pari-mutuel races and time trials. The use of oral lasix is forbidden. A schedule for scoping will be maintained by the commission veterinarian. The Kentucky [Harness] Racing Commission shall keep a record of horses using lasix for the first time.~~

~~(2) [A lasix use form (blue) must be submitted to the commission office at the track for approval of the use of lasix.~~

~~(3) If the trainer no longer wishes to use lasix, a no-use form (white) must be submitted to the commission office at the track and the horse must perform in a qualifying race without the use of lasix and meet the standards of the meeting before being allowed to race without lasix. To be permitted to use lasix again, the horse must qualify and meet the standards of the meeting.~~

~~(3) [(4)] No more than 250 milligrams four (4) hours prior to a race shall be administered.~~

~~(4) [(5)] A fee of ten (10) dollars is to be paid to the commission veterinarian at the time of service by those who wish to have lasix administered to their horses; this fee to cover the services of the commission veterinarian and the cost of testing.~~

~~(5) [(6)] Testing will be quantitative, with those exceeding thirty (30) nanograms per milliliter of blood tested resulting in a warning to the owner. Testing will be at random, not to exceed six (6) samples per day. A mutual decision to take random samples will be made by the commission veterinarian and the judges. A second violation shall result in a fine against the owner, not to exceed \$5,000.~~

~~(6) [(7)] Should a horse bleed through normal treatment with lasix, the horse would not be eligible to race for 120 days. After 120 days, the horse must again qualify on lasix. Should the horse bleed again, it would not be eligible to race for one (1) year.~~

~~Section 14. The penalty for violation of any sections of this rule, unless otherwise provided, shall be a fine of not to exceed \$5,000, suspension for a fixed or indeterminate time, or both; or expulsion.]~~

RICHARD "SMITTY" TAYLOR, Chairman  
APPROVED BY AGENCY: June 9, 1997  
FILED WITH LRC: June 13, 1997 at noon

**CABINET FOR HEALTH SERVICES**  
Department for Public Health  
Division of Environmental Health  
and Community Safety  
(As Amended)

**902 KAR 100:073. Use of radionuclides in the healing arts.**

RELATES TO: KRS 211.842 to 211.852, 211.990(4), 10 CFR 35  
STATUTORY AUTHORITY: KRS 194.050, 211.090, 211.844, 10  
CFR 35, EO 96-862

NECESSITY, FUNCTION, AND CONFORMITY: Executive Order 96-862, effective July 2, 1996, reorganizes the Cabinet for Human Resources and places the Department for Public Health and its programs under the Cabinet for Health Services. KRS 211.844 authorizes the Cabinet for Health Services [Human Resources] to provide by administrative regulation for the registration and licensing of the possession or use of sources of ionizing or electronic product radiation and the handling and disposal of radioactive waste. This administrative regulation provides requirements and provisions for the use of radioactive material in the healing arts and for issuance of licenses authorizing the medical use of radioactive material; and establishes requirements for specific licensees to possess, use, and transfer radioactive material for medical uses.

Section 1. License Required. (1) A person shall not manufacture, produce, prepare, compound, acquire, receive, possess, use, or transfer radioactive material for medical use except in accordance with a specific license issued by the cabinet, another agreement state or the U.S. Nuclear Regulatory Commission, or as authorized in subsections (2) and (3) of this section. [pursuant to 902 KAR Chapter 100.]

(2) Unless prohibited by license condition, an individual may receive, possess, use, or transfer radioactive material in accordance with the requirements in this administrative regulation under the supervision of an authorized user as provided in Section 8 of this administrative regulation.

(3) An individual may prepare unsealed radioactive material for medical use in accordance with this administrative regulation under the supervision of an authorized nuclear pharmacist or authorized user as described in Section 8 of this administrative regulation, unless

prohibited by license condition.

Section 2. License Amendments. A licensee shall apply for and receive a license amendment before:

- (1) Using radioactive material for a method or type of medical use not permitted by the license issued under this administrative regulation;
- (2) Permitting anyone, except a visiting authorized user or visiting authorized nuclear pharmacist described in Section 10 of this administrative regulation, to work as an authorized user or authorized nuclear pharmacist under the license;
- (3) Changing a radiation safety officer or teletherapy physicist;
- (4) Ordering radioactive material in excess of the amount, or radionuclide or form different than specified on the license;
- (5) Adding to or changing the areas of use or address of use identified in the application or on the license; ~~and~~
- (6) Changing statements, representations, and procedures which are incorporated into the license; and
- (7) Conducting research involving human subjects using radioactive material. The licensee shall submit provisions for implementing the requirements of Section 61(3)(a), (b), and (c) of this administrative regulation with the application for amendment.

Section 3. Notifications. A licensee shall notify the cabinet in writing within thirty (30) days if an authorized user, authorized nuclear pharmacist, radiation safety officer, or teletherapy physicist permanently discontinues performance of duties under the license.

Section 4. As Low as Reasonably Achievable (ALARA) Program. (1) A licensee shall develop and implement a written program to maintain radiation doses and releases of radioactive material in effluents to unrestricted areas as low as reasonably achievable (ALARA) in accordance with 902 KAR 100:015, Section 2.

(2) To satisfy the requirement of this section:

(a) The management, radiation safety officer, and authorized users shall participate in the establishment, implementation, and operation of the program as required by this administrative regulation or the Radiation Safety Committee; or

(b) For licensees that are not medical institutions, management and authorized users and authorized nuclear pharmacists shall participate in the program as required by the radiation safety officer.

(3) The ALARA Program shall include an annual review by the Radiation Safety Committee for licensees that are medical institutions or management, and the radiation safety officer for licensees that are not medical institutions.

(a) The review shall consist of:

1. Summaries of the types and amounts of radioactive material used;
2. Occupational dose reports; and
3. Continuing education and training for personnel who work with, or in the vicinity of, radioactive material.

(b) The purpose of the review shall be to ensure that individuals make every reasonable effort to maintain occupational doses, doses to the general public, and releases of radioactive material ALARA, taking into account the state of technology and the cost of improvements in relation to benefits.

(4) The licensee shall retain a current written description of the ALARA Program for the duration of the license. The written description shall include:

(a) A commitment by management to keep occupational doses ALARA;

(b) A requirement that the radiation safety officer brief management once each year on the radiation safety program;

(c) Personnel exposure investigation levels that, if exceeded, shall [will] initiate a prompt investigation by the radiation safety officer of the cause of the exposure; and [a consideration of actions that may be taken to reduce the probability of recurrence.]

(d) Personnel exposure action levels that, if exceeded, shall [will] initiate a prompt investigation by the radiation safety officer of the cause of the exposure and a consideration of actions that may be taken to reduce the probability of recurrence.

Section 5. Radiation Safety Officer. (1) A licensee shall appoint a radiation safety officer responsible for implementing the radiation safety program. The licensee, through the radiation safety officer, shall ensure that radiation safety activities are being performed in accordance with approved procedures and regulatory requirements in the daily operation of the licensee's radioactive material program.

(2) The radiation safety officer shall:

(a) Investigate overexposures, misadministrations, accidents, spills, losses, thefts, unauthorized receipts, uses, transfers, disposals, and other deviations from approved radiation safety practice and implement corrective actions as necessary;

(b) Implement written policy and procedures for:

1. Authorizing the purchase of radioactive material;
2. Receiving and opening packages of radioactive material;
3. Storing radioactive material;
4. Keeping an inventory record of radioactive material;
5. Using radioactive material safely;
6. Taking emergency action if control of radioactive material is lost;
7. Performing periodic radiation surveys;
8. Performing checks of survey instruments and other safety equipment;
9. Disposing of radioactive material;
10. Training personnel who work in or frequent areas where radioactive material is used or stored; and
11. Keeping a copy of:
  - a. Records and reports required by 902 KAR 100:017, 902 KAR 100:019 [902 KAR 100:020], 902 KAR 100:021, 902 KAR 100:035, 902 KAR 100:040, 902 KAR 100:050, 902 KAR 100:052, 902 KAR 100:058, 902 KAR 100:060, 902 KAR 100:070, 902 KAR 100:073, and 902 KAR 100:165;
  - b. 902 KAR Chapter 100: [This administrative regulation;]
  - c. Each licensing request;
  - d. License and amendments; and
  - e. Written policy and procedures required by 902 KAR 100:017, 902 KAR 100:019, [902 KAR 100:020], 902 KAR 100:021, 902 KAR 100:035, 902 KAR 100:040, 902 KAR 100:050, 902 KAR 100:052, 902 KAR 100:058, 902 KAR 100:060, 902 KAR 100:070, 902 KAR 100:073, and 902 KAR 100:165; and

(c) For medical use not sited at a medical institution, approve or disapprove radiation safety program changes with the advice and consent of management prior to submittal to the cabinet for licensing action; or

(d) For medical use sited at a medical institution, assist the Radiation Safety Committee in the performance of its duties.

(e) Written policy and procedures required by 902 KAR 100:017, 902 KAR 100:019, [902 KAR 100:020], 902 KAR 100:021, 902 KAR 100:035, 902 KAR 100:040, 902 KAR 100:050, 902 KAR 100:052, 902 KAR 100:058, 902 KAR 100:060, 902 KAR 100:070, 902 KAR 100:073, and 902 KAR 100:165; and

(c) For medical use not sited at a medical institution, approve or disapprove radiation safety program changes with the advice and consent of management prior to submittal to the cabinet for licensing action; or

(d) For medical use sited at a medical institution, assist the Radiation Safety Committee in the performance of its duties.

(e) Written policy and procedures required by 902 KAR 100:017, 902 KAR 100:019, [902 KAR 100:020], 902 KAR 100:021, 902 KAR 100:035, 902 KAR 100:040, 902 KAR 100:050, 902 KAR 100:052, 902 KAR 100:058, 902 KAR 100:060, 902 KAR 100:070, 902 KAR 100:073, and 902 KAR 100:165; and

Section 6. Radiation Safety Committee. A medical institution licensee shall establish a Radiation Safety Committee to oversee the use of radioactive material.

(1) The committee shall meet the following administrative requirements:

(a) Membership shall consist of at least three (3) individuals and shall include:

1. An authorized user of each type of use permitted by the license;

2. The radiation safety officer;

3. A representative of the nursing service;

4. A representative of management who is not an authorized user or a radiation safety officer; and

5. Other members as the licensee deems appropriate.

(b) The committee shall meet at least once each calendar quarter.

(c) To establish a quorum and to conduct business, one-half (1/2)

of the committee's membership shall be present, including the radiation safety officer and the management's representative.

(d) The minutes of each Radiation Safety Committee meeting shall include:

1. Date of the meeting;
2. Members present;
3. Members absent;
4. Summary of deliberations and discussions;
5. Recommended actions and the numerical results of all ballots;

and

6. Document reviews required in Sections 4(3) [2] and 6(2) of this administrative regulation.

(e) The committee shall provide each member with a copy of the meeting minutes and retain one (1) copy until the cabinet authorizes its disposition.

(2) To oversee the use of licensed material, the committee shall:

(a) Be responsible for monitoring the institutional program to maintain occupational doses ALARA;

(b) Review, on the basis of safety and with regard to the training and experience standards of this administrative regulation, and approve or disapprove an individual who is to be listed as an authorized user, an authorized nuclear pharmacist, the radiation safety officer, or teletherapy physicist before submitting a license application or request for amendment or renewal;

(c) Review on the basis of safety, and approve or disapprove each proposed method of use of radioactive material;

(d) Review on the basis of safety, and approve with the advice and consent of the radiation safety officer and the management representative, or disapprove procedures and radiation safety program changes prior to submittal to the cabinet for licensing action;

(e) Review quarterly, with the assistance of the radiation safety officer, occupational radiation exposure records of personnel working with radioactive material;

(f) Review quarterly, with the assistance of the radiation safety officer, incidents involving radioactive material with respect to cause and subsequent actions taken;

(g) Review annually, with the assistance of the radiation safety officer, the radioactive material program; and

(h) Establish a table of investigational and action levels for occupational dose that, if exceeded, shall initiate investigations and considerations of action by the radiation safety officer.

Section 7. Statement of Authorities and Responsibilities. (1) A licensee shall provide sufficient authority and organizational freedom to the radiation safety officer and the Radiation Safety Committee to:

- (a) Identify radiation safety problems;
- (b) Initiate, recommend, or provide solutions; and
- (c) Verify implementation of corrective actions.

(2) A licensee shall:

(a) Establish in writing the authorities, duties, responsibilities, and radiation safety activities of the radiation safety officer and the Radiation Safety Committee; and

(b) Retain the current edition of these statements as a record until the cabinet terminates the license.

Section 8. Supervision. (1) A licensee who permits the receipt, possession, use, or transfer of radioactive material by an individual under the supervision of an authorized user as allowed by Section 1 of this administrative regulation shall:

(a) Instruct the supervised individual in the principles of radiation safety appropriate to that individual's use of radioactive material and in the licensee's written quality management program and provide reinstruction as needed;

(b) Require the supervised individual to follow the instructions of the supervising authorized user, follow the written radiation safety and quality management procedures established by the licensee, and comply with the regulations of this administrative regulation and

license conditions with respect to the use of radioactive material;

(c) Review the supervised individual's use of radioactive material and [;

~~(e) Review~~ records kept to reflect this use ~~[of radioactive materials];~~

(d) Require an ~~[the]~~ authorized user to be immediately available to communicate with the supervised individual; and

~~(e) [Require the authorized user to be physically present and available to the supervised individual on one (1) hour notice; and~~

~~(f)]~~ Require that only those individuals specifically trained, and designated by the authorized user, shall be permitted to administer radionuclides or radiation to patients or human research subjects.

(2) A licensee who permits the receipt, possession, production, preparation, compounding, or transfer of ~~[shall require the supervised individual receiving, possessing, using, or transferring]~~ radioactive material under the supervision of an authorized nuclear pharmacist or authorized user as allowed by Section 1 of this administrative regulation shall ~~[to]~~:

(a) Instruct the supervised individual in the preparation of radioactive material for medical use and principles of and procedures for radiation safety and in the licensee's written quality management plan, as appropriate to that individual's use or radioactive material;

(b) Require the supervised individual to follow the instructions given in subsection (3)(a) of this section and to comply with the regulations of this administrative regulation and license conditions; and

(c) Require the supervising authorized nuclear pharmacist or physician who is an authorized user to review the work of the supervised individual as it pertains to preparing radioactive material for medical use and the records kept to reflect the work.

(3) A licensee that supervises an individual is responsible for the acts and omissions of the supervised individual. ~~[Follow the instructions of the supervising authorized user;~~

~~(b) Follow the procedures established by the radiation safety officer; and~~

~~(c) Comply with 902 KAR Chapter 100 and the license conditions with respect to the use of radioactive material.]~~

Section 9. Quality Management Program. (1) An applicant or licensee shall establish and maintain a written quality management program to provide high confidence that radioactive material or radiation from radioactive material shall be administered as directed by the authorized user, unless otherwise excepted by the cabinet.

(2) The quality management program shall include written policies and procedures to meet the following specific objectives:

(a) Prior to administration, a written directive is prepared for:

1. A teletherapy radiation dose;
2. A gamma stereotactic radiosurgery radiation dose;
3. A brachytherapy radiation dose;
4. An administration of quantities greater than thirty (30) microcuries of either sodium iodide I-125 or I-131; or
5. A therapeutic administration of a radiopharmaceutical, other than sodium iodide I-125 or I-131;

(b) If, because of the patient's or human research subject's condition, a delay in order to provide a written revision to an existing written directive would jeopardize the patient's or human research subject's health, an oral revision to an existing written directive shall be acceptable. The oral revision shall be documented immediately in the patient's or human research subject's record, and a revised written directive shall be signed by the authorized user within forty-eight (48) hours of the oral revision;

(c) A written revision to an existing written directive may be made for a diagnostic or therapeutic procedure if the revision is dated and signed by an authorized user prior to the administration of the radiopharmaceutical dosage, brachytherapy dose, gamma stereotactic radiosurgery dose, teletherapy dose, or next teletherapy fractional dose;

(d) If, because of the emergent nature of the patient's or human research subject's condition, a delay in order to provide a written directive would jeopardize the patient's or human research subject's health, an oral directive shall be acceptable, provided the information contained in the oral directive is documented immediately in the patient's or human research subject's record and a written directive is prepared within twenty-four (24) hours of the oral directive;

(e) Prior to each administration, the patient's or human research subject's identity shall be verified by more than one (1) method as the individual named in the written directive;

(f) ~~((e))~~ Final plans for treatment and related calculations for brachytherapy, teletherapy, and gamma stereotactic radiosurgery shall be as specified in the respective written directives;

(g) ~~((f))~~ Each administration shall be specified in the written directive; and

(h) ~~((g))~~ An unintended deviation from the written directive shall be identified and evaluated, and appropriate action shall be taken.

(3) A licensee shall develop procedures for, and conduct a review of, the quality management program. The review shall include, since the last review, an evaluation of a representative sample of patient and human research subject administrations, recordable events, and misadministrations to verify compliance with the quality management programs.

(a) Reviews shall be conducted at intervals not to exceed twelve (12) months;

(b) Reviews shall be evaluated to determine the effectiveness of the quality management program and, if required, modifications shall be made to meet the objectives of subsection (1) of this section; and

(c) Records of each review shall be retained, including the evaluations and findings, for three (3) years. The records shall be in an auditable form.

(4) A licensee shall evaluate and respond, within thirty (30) days after discovery of the recordable event, to each recordable event. The licensee shall:

(a) Assemble relevant facts, including the cause;

(b) Identify corrective action required to prevent recurrence; and

(c) Retain a record of the relevant facts and corrective action taken for three (3) years. The records shall be in an auditable form.

(5) If a written directive is required in subsection (1)(a) of this section, the licensee shall retain the written directive and a record of each administered radiation dose or radiopharmaceutical dosage for three (3) years after the date of administration. The written directive shall be in an auditable form.

(6) A licensee shall modify the quality management program to increase the program's efficiency if the program's effectiveness is not decreased. The licensee shall furnish the modification to the Radiation Control Program ~~[Branch]~~ within thirty (30) days after the modification has been made.

(7) An applicant for a new license shall submit to the Radiation Control Program ~~[Branch]~~ a quality management program as part of the application for a license, and implement the program upon issuance of the license ~~[by the Radiation Control Branch]~~.

~~((8)) An existing licensee shall submit to the Radiation Control Branch, by December 31, 1994, a written certification that the quality management program has been implemented and a copy of the program.~~

Section 10. Visiting Authorized User and Visiting Authorized Nuclear Pharmacist. (1) A licensee may permit a visiting authorized user or visiting authorized nuclear pharmacist to use licensed material for medical use under the terms of the licensee's license for sixty (60) days each year if:

(a) The visiting authorized user has the prior written permission of the licensee's management and, if the use occurs on behalf of an institution, the institution's Radiation Safety Committee;

(b) The licensee has a copy of the cabinet, another agreement state, or U.S. Nuclear Regulatory Commission license that identifies

the visiting authorized user by name as an authorized user for medical use or the visiting authorized nuclear pharmacist as an authorized nuclear pharmacist for nuclear pharmacy use. The supervising authorized user need not be present for each use of radioactive material; and

(c) Only those procedures for which the visiting authorized user or visiting authorized nuclear pharmacist is specifically authorized by the cabinet, another agreement state, or U.S. Nuclear Regulatory Commission license are performed by that individual.

(2) A licensee need not apply for a license amendment in order to permit a visiting authorized user or visiting authorized nuclear pharmacist to use licensed material as described in this section.

(3) A licensee shall retain copies of the records specified in this section for five (5) years from the date of the last visit.

Section 11. Mobile Nuclear Medicine Service Administrative Requirements. (1) The cabinet shall license mobile nuclear medicine services in accordance with this administrative regulation and applicable requirements of 902 KAR 100:012, 902 KAR 100:015, 902 KAR 100:019 ~~[400:020]~~, 902 KAR 100:021, 902 KAR 100:035, 902 KAR 100:040, 902 KAR 100:050, 902 KAR 100:060, 902 KAR 100:070, 902 KAR 100:073, and 902 KAR 100:165 ~~[400:016 to serve clients not licensed for medical use by the cabinet]~~.

(2) Mobile nuclear medicine service licensees shall retain for three (3) years after the last provision of service a letter signed by the management of each location where services are rendered that authorizes use of radioactive material.

(3) A mobile nuclear medicine service shall not have radioactive material delivered directly from the manufacturer or the distributor to the client's address of use unless the client is licensed by the cabinet.

(4) If a mobile nuclear medicine service provides services to a client licensed by the cabinet to provide the same services, the client is responsible for:

(a) Assuring that services are conducted in accordance with 902 KAR Chapter 100 and the terms and conditions of the client's license; and

(b) Maintaining records required by 902 KAR Chapter 100 and conditions of the license.

Section 12. Notifications, Records and Reports of Misadministrations. (1)(a) If a misadministration occurs, the licensee shall notify the:

1. Cabinet by telephone no later than the next calendar day after discovery of the misadministration;

2. Referring physician of the affected individual receiving the misadministration ~~[patient]~~; and

3. Individual ~~[Patient]~~ or a responsible relative or guardian, unless:  
a. The referring physician agrees to inform the individual ~~[patient]~~;

or  
b. The referring physician believes, based on medical judgment, that telling the individual ~~[patient]~~ or the individual's ~~[patient's]~~ responsible relative or guardian may be harmful to one or the other.

(b) Notifications of individuals in paragraph (a)2 and 3 of this subsection shall be made within twenty-four (24) hours after the licensee discovers the misadministration. If the referring physician, individual ~~[patient]~~, or the individual's ~~[patient's]~~ responsible relative or guardian cannot be reached within twenty-four (24) hours, the licensee shall notify them as soon as practicable.

(c) The licensee shall not be required to notify the individual ~~[patient]~~ or the individual's ~~[patient's]~~ responsible relative or guardian without first consulting the referring physician.

(d) The licensee shall not delay medical care for the individual ~~[patient]~~, including necessary remedial care as a result of the misadministration, because of the notification requirements of this subsection.

(2) Within fifteen (15) days after discovery of the ~~[a]~~ misadministration, the licensee shall report, in writing, to the cabinet ~~and shall~~



~~furnish a copy of the report or a brief description of both the event and consequences as they may affect the patient, if a statement is included that the report submitted to the cabinet can be obtained from the licensee, to the patient or the patient's responsible relative or guardian if either was previously notified by the licensee as required by this section.~~

(a) The written report shall include:

1. The licensee's name;
2. Prescribing physician's name;
3. A brief description of the event;
4. Effect on the individual ~~[patient]~~;
5. ~~Action taken to prevent recurrence;~~
6. ~~Why the event occurred;~~
6. ~~[7.] What improvements are needed to prevent recurrence;~~

~~[and]~~

7. Action taken to prevent recurrence;

8. If the licensee informed the individual ~~[patient]~~ or the individual's ~~[patient's]~~ responsible relative or guardian, and if not, why; ~~and~~

9. Information provided to the individual or individual's responsible relative or guardian. ~~[not].~~

(b) The report shall not include the individual's ~~[patient's]~~ name or other information that may lead to identification of the individual ~~[patient]~~.

(3) A licensee shall retain a record of each misadministration for five (5) years. The record shall contain:

(a) Names of individuals involved in the event, including:

1. The prescribing physician;
2. Allied health personnel;
3. The individual who received the misadministration ~~[patient]~~; and
4. Individual's ~~[Patient's]~~ referring physician;

(b) Individual's ~~[Patient's]~~ Social Security or identification number, if one has been assigned;

(c) A brief description of the misadministration event;

(d) Effect on the individual ~~[patient]~~; ~~[and]~~

(e) Action taken to prevent recurrence; ~~and~~

(f) What improvements are needed to prevent recurrence.

(4) Aside from the notification requirement, nothing in this section shall affect rights or duties of licensees, and physicians in relation to each other, individuals receiving misadministrations ~~[patients]~~, or responsible relatives or to the individual's guardians.

Section 13. Suppliers. A licensee shall use for medical use only:

(1) Radioactive material manufactured, produced, prepared, compounded, labeled, packaged, and distributed in accordance with a license issued pursuant to 902 KAR 100:040 and 902 KAR 100:058, equivalent regulations of another agreement state, or the U.S. Nuclear Regulatory Commission; ~~[and]~~

(2) Reagent kits, radiopharmaceuticals, and radiobiologics manufactured, labeled, packaged, and distributed in accordance with an approval issued by the U.S. Department of Health and Human Services, Food and Drug Administration;

(3) Radiopharmaceuticals compounded from a prescription in accordance with the administrative regulations of the State Board of Pharmacy; or

(4) Brachytherapy sources manufactured and distributed in accordance with a license issued by the cabinet, equivalent regulations of another agreement state, or the U.S. Nuclear Regulatory Commission.

Section 14. Quality Control of Diagnostic ~~[Imaging]~~ Equipment. A licensee shall establish written quality control procedures for diagnostic equipment used for ~~[to obtain images from]~~ radionuclide studies.

(1) As a minimum, the procedures shall include:

(a) Quality control procedures recommended by equipment manufacturers; or

(b) Procedures approved by the cabinet.

(2) The licensee shall conduct quality control procedures in accordance with written procedures.

dance with written procedures.

Section 15. Possession, Use, Calibration, and Check of Dose Calibrators. (1) A medical use licensee authorized to administer radiopharmaceuticals shall:

(a) Possess a dose calibrator and use the calibrator to measure the amount of activity administered to each patient or human research subject; or

(b) In the case where an ionization type dose calibrator cannot be used effectively to verify administered activity, use an alternative method. The alternative method shall be approved by the cabinet in writing and shall provide for acceptable verification of constancy, accuracy, linearity, and geometry dependence as applicable.

(2) A licensee shall ensure the constancy, accuracy, linearity, and geometry dependence of the dose calibrator as follows:

(a) Constancy shall be checked with a dedicated check source at the beginning of each day of use. The check shall be done on a frequently used setting with a sealed source of not less than ~~[ten (10) microcuries of radium-226 or]~~ fifty (50) microcuries of a ~~[other]~~ photon-emitting radionuclide with a half-life greater than ninety (90) days;

(b) Accuracy shall be tested upon installation and at intervals not to exceed twelve (12) months by assaying at least two (2) sealed sources containing different radionuclides, whose ~~[the]~~ activity the manufacturer has determined within five (5) percent of the stated activity, with a minimum activity of ~~[ten (10) microcuries for radium-226 and]~~ fifty (50) microcuries ~~[for other photon-emitting radionuclides]~~, and at least one (1) having a principal photon energy between 100 keV and 500 keV;

(c) Linearity shall be tested upon installation and at intervals not to exceed three (3) months over the range of use between ~~[thirty (30) ten (10)]~~ microcuries and the highest dosage administered; and

(d) Geometry dependence shall be tested upon installation over the range of volumes and volume configurations for which it shall be used. The licensee shall keep a record of this test for the duration of the use of the dose calibrator.

(3) A licensee shall mathematically correct dosage readings for geometry or linearity errors that exceeds ten (10) percent if the dosage is greater than ~~[thirty (30) ten (10)]~~ microcuries, and shall repair or replace the dose calibrator if the accuracy or constancy error exceed ten (10) percent.

(4) A licensee shall perform checks and tests required by this section following adjustment or repair of the dose calibrator.

(5) A licensee shall retain a record of each check and test required by this section for three (3) years. The records required shall include:

(a) For subsection (2)(a) of this section, the:

1. Model and serial number of the dose calibrator;
2. Identity and calibrated activity of the radionuclide contained in the check source;
3. Date of the check;
4. Activity measured;
5. Instrument settings; and
6. Initials of the individual who performed the check;

(b) For subsection (2)(b) of this section, the:

1. Model and serial number of the dose calibrator;
2. Model and serial number of each source used and identity of the radionuclide contained in the source and its activity;
3. Date of the test;
4. Results of the test;
5. Instrument settings; and
6. Signature of the individual who performed the test ~~[radiation safety officer]~~;

(c) For subsection (2)(c) of this section, the:

1. Model and serial number of the dose calibrator;
2. Calculated activities;
3. Measured activities;
4. Date of the test; and



5. Signature of the individual who performed the test [~~radiation safety officer~~]; and

(d) For subsection (2)(d) of this section, the:

1. Model and serial number of the dose calibrator;
2. Configuration and calibrated activity of the source measured;
3. Activity of the source;
4. Activity measured and instrument setting for each volume measured;

5. Date of the test; and

6. Signature of the individual who performed the test [~~radiation safety officer~~].

Section 16. Calibration and Check of Survey Instruments. (1) A licensee shall ensure that the survey instruments used to show compliance with this administrative regulation have been calibrated before first use, annually, and following repair.

(2) A licensee shall:

(a) Calibrate required scale readings up to 1000 millirems per hour with a radiation source;

(b) Calibrate two (2) readings for each scale, separated by at least fifty (50) percent of scale rating; and

(c) Conspicuously note on the instrument the apparent dose rate from a dedicated check source as determined at the time of calibration, and the date of calibration.

(3) A licensee shall consider a point as calibrated if:

(a) The indicated dose rate differs from the calculated dose rate by not more than ten (10) percent; and

(b) The indicated dose rate differs from the calculated dose rate by not more than twenty (20) percent and a correction chart or graph is conspicuously attached to the instrument.

(4) A licensee shall check each survey instrument for proper operation with the dedicated check source before each day of use. The licensee shall not be required to keep records of these checks.

(5) A licensee shall retain a record of each calibration required in this section for three (3) years. The record shall include:

(a) A description of the calibration procedure;

(b) A description of the source used and the certified dose rates from the source;

(c) Rates indicated by the instrument being calibrated;

(d) Correction factors deduced from the calibration data;

(e) Signature of the individual who performed the calibration; and

(f) Date of calibration.

(6) A licensee shall obtain the services of individuals licensed by the cabinet, the U.S. Nuclear Regulatory Commission, or another agreement state, to perform calibrations of survey instruments.

~~[(7) Records of calibrations which contain information required by subsection (5) of this section shall be maintained by the licensee.]~~

Section 17. Assay of Radiopharmaceutical Dosages. A licensee shall:

(1) Assay, before medical use, the activity of each photon-emitting radiopharmaceutical dosage that contains more than thirty (30) [~~ten (10)~~] microcuries of a photon-emitting radionuclide;

(2) Assay, before medical use, the activity of each radiopharmaceutical dosage emitting alpha or beta radiation as the radiation of principal interest, unless the radiopharmaceutical has been obtained:

(a) In unit dose form, calibrated by the supplier for individual patients or human research subjects; and

(b) From a supplier participating in a measurement quality assurance program with the National Institute of Standards and Technology, designed to ensure unit doses have a calibration traceable to a national standard [with a desired activity of ten (10) microcuries or less of a photon-emitting radionuclide to verify that the dosage shall not exceed ten (10) microcuries]; and

(3) Retain a record of the assays required by this section for three (3) years. The record shall contain the:

(a) Generic name, trade name, or abbreviation of the radiophar-

maceutical, lot number, expiration dates, and the radionuclide;

(b) Patient's or human research subject's name and identification number if one has been assigned;

(c) Prescribed dosage and activity of the dosage at the time of assay, or a notation that the total activity is less than thirty (30) [~~ten (10)~~] microcuries;

(d) Date and time of the assay and administration; and

(e) Initials of the individual who performed the assay.

Section 18. Authorization for Calibration and Reference Sources. A person authorized by Section 1 of this administrative regulation for medical use of radioactive material may receive, possess, and use the following radioactive material for check, calibration, and reference use:

(1) Sealed sources, not exceeding fifteen (15) millicuries per source, manufactured and distributed by persons specifically licensed pursuant to 902 KAR 100:040 and 902 KAR 100:058, equivalent provisions of the U.S. Nuclear Regulatory Commission, or another agreement state;

(2) Radioactive materials ~~listed in Sections 29 and 31 of this administrative regulation~~ with a half-life of 100 days or less in individual amounts not to exceed fifteen (15) millicuries;

(3) Radioactive materials ~~listed in Sections 29 and 31 of this administrative regulation~~ with a half-life greater than 100 days in individual amounts not to exceed 200 microcuries; and

(4) Technetium-99m in individual amounts not to exceed fifty (50) millicuries.

Section 19. Requirements for Possession of Sealed Sources and Brachytherapy Sources. (1) A licensee in possession of a sealed source or brachytherapy source shall:

(a) Follow the radiation safety and handling instructions supplied by the manufacturer or equivalent instructions approved by the cabinet; and

(b) Maintain the instructions for the duration of source use in a legible form convenient to users.

(2) A licensee in possession of a sealed source shall assure that:

(a) The source is tested for leakage before its first use unless the licensee has a certificate from the supplier indicating that the source was tested within six (6) months before transfer to the licensee; and

(b) The source is tested for leakage at intervals not to exceed six (6) months or at intervals approved by the cabinet, another agreement state, or the U.S. Nuclear Regulatory Commission.

(3) To satisfy the leak test requirements of this section, a licensee shall assure that:

(a) Leak tests are capable of detecting the presence of 0.005 microcurie of radioactive material on the test sample, or in the case of radium, the escape of radon at the rate of 0.001 microcurie per twenty-four (24) hours;

(b) Test samples are taken from the source or from the surfaces of the device in which the source is mounted or stored on which radioactive contamination may accumulate; and

(c) Test samples are taken with the source in the "off" position.

(4) A licensee shall retain leak test records for five (5) years. The records shall contain:

(a) Model number and serial number if assigned, of each source tested;

(b) Identity of each source radionuclide and its estimated activity;

(c) Measured activity of each test sample expressed in microcuries;

(d) A description of the method used to measure each test sample;

(e) Date of the test; and

(f) Signature of the radiation safety officer.

(5) If the leak test reveals the presence of 0.005 microcurie or more of removable contamination, the licensee shall:

(a) Immediately withdraw the sealed source from use and store

it in accordance with the requirements of 902 KAR 100:019 and 902 KAR 100:060; and

(b) File a report with the cabinet within five (5) days of receiving the leak test results, describing the:

1. Equipment involved;
2. Test results; and
3. Action taken.

(6) A licensee need not perform a leak test on the following sources:

(a) Sources containing only radioactive material with a half-life of less than thirty (30) days;

(b) Sources containing only radioactive material as a gas;

(c) Sources containing 100 microcuries or less of beta or photon-emitting material, or ten (10) microcuries or less of alpha-emitting material;

(d) Seeds of iridium-192 encased in nylon ribbon; and

(e) Sources stored and not being used. The licensee shall test each source for leakage before use or transfer, unless it has been tested for leakage within six (6) months before the date of use or transfer.

(7) A licensee in possession of a sealed source or brachytherapy source shall conduct a physical inventory of sources at intervals not to exceed three (3) months. The licensee shall retain each inventory record for five (5) years, and the inventory records shall contain:

- (a) Model number of each source;
- (b) Serial number, if one has been assigned;
- (c) Identity of each source radionuclide and its estimated activity;
- (d) Location of each source;
- (e) Date of the inventory; and
- (f) Signature of the radiation safety officer.

(8) A licensee in possession of a sealed source or brachytherapy source shall survey with a radiation survey instrument, at intervals not to exceed three (3) months, the areas where sources are stored. This requirement shall not apply to:

- (a) Teletherapy sources in teletherapy units; or
- (b) Sealed sources in diagnostic devices.

(9) A licensee shall retain a record of ~~each~~ surveys required in this section for three (3) years. The record shall include:

- (a) Date of the survey;
- (b) A sketch of each area surveyed;
- (c) Measured dose rate at several points in each area expressed in millirems per hour;
- (d) Model and serial number of the survey instrument used to make the survey; and
- (e) Signature of the individual who performed the survey ~~(radiation safety officer)~~.

Section 20. Syringe Shields. (1) A licensee shall keep syringes that contain radioactive material to be administered in a radiation shield.

(2) A licensee shall require each individual who prepares or administers radiopharmaceuticals to use a syringe radiation shield, unless the use of the shield is contraindicated for that patient or human research subject.

Section 21. Syringe Labels. A licensee shall conspicuously label each syringe, or syringe radiation shield that contains a syringe with a radiopharmaceutical, unless the radiopharmaceutical is to be administered immediately, with the:

- (1) Radiopharmaceutical name or its abbreviation;
- (2) Type of diagnostic study or therapy procedure to be performed; or
- (3) Patient's or human research subject's name, ~~unless the radiopharmaceutical is to be administered immediately~~.

Section 22. Vial Shields. A licensee shall require each individual preparing or handling a vial that contains a radiopharmaceutical to

keep the vial in a vial radiation shield.

Section 23. Vial Shield Labels. A licensee shall conspicuously label each vial radiation shield that contains a vial of a radiopharmaceutical with the radiopharmaceutical name or its abbreviation.

Section 24. Surveys for Contamination and Ambient Radiation Dose Rate. (1) A licensee shall survey with a radiation detection survey instrument at the end of each day of use areas where radiopharmaceuticals are routinely prepared for use or administered.

(2) A licensee shall survey at least weekly with a radiation detection survey instrument ~~[at least weekly]~~ areas where radiopharmaceuticals or radioactive wastes are stored.

(3) A licensee shall conduct the dose rate surveys to measure dose rates as low as one-tenth (0.1) millirem per hour.

(4) A licensee shall establish dose rate action levels for the surveys and require that the individual performing the survey immediately notify the radiation safety officer if a dose rate exceeds an action level.

(5) A licensee shall survey weekly for removable contamination ~~[weekly]~~ in areas where radiopharmaceuticals are routinely prepared for use, administered, or stored.

(6) A licensee shall conduct the contamination surveys to detect contamination on each wipe sample of 2000 disintegrations per minute.

(7) A licensee shall establish removable contamination action levels for the surveys, and require that the individual performing the survey immediately notify the radiation safety officer if contamination exceeds action levels.

(8) A licensee shall retain a record of each survey for three (3) years. The record shall include:

- (a) Date of the survey;
- (b) A sketch of each area surveyed;
- (c) Action levels established for each area;
- (d) Measured dose rate at several points in each area expressed in millirems per hour or the removable contamination in each area expressed in disintegrations per minute per 100 square centimeters;
- (e) Serial and model number of the instrument used to make the survey or analyze the samples; and
- (f) Initials of the individual who performed the survey.

Section 25. Release of Patients Containing Radiopharmaceuticals or ~~[Permanent]~~ Implants. (1) A licensee may ~~[shall not]~~ authorize release from its control ~~(confinement for medical care)~~ a patient or human research subject administered a radiopharmaceutical or permanent or temporary implant containing radioactive material, if the total effective dose equivalent to another individual from exposure to the released individual is not likely to exceed five-tenths (0.5) rem.

(2) The licensee shall provide the patient or human research subject with oral and written instructions on actions recommended to maintain doses to other individuals as low as is reasonably achievable if the total effective dose equivalent to another individual is likely to exceed one-tenth (0.1) rem.

(3) If the dose to a breast-feeding infant or child may exceed one-tenth (0.1) rem with no interruption of breast-feeding, the instructions shall also include:

- (a) Guidance on the interruption or discontinuation of breast-feeding; and
- (b) Information on the consequences of failure to follow the guidance.

(4) The licensee shall maintain a record of the basis for authorizing the release of a patient or human research subject, for three (3) years after the date of release, if the total effective dose equivalent is calculated using:

- (a) The retained activity rather than the activity administered;
- (b) An occupancy factor less than 0.25 at one (1) meter;
- (c) The biological or effective half-life; or

(d) Considering the shielding by the tissue.

(5) The licensee shall maintain a record, for three (3) years after the date of release, that instructions were provided to a breast-feeding woman if the radiation dose to the infant or child from continued breast-feeding may result in a total effective dose equivalent exceeding one-tenth (0.1) rem. ~~until:~~

(a) The dose rate from the patient is less than five (5) millirems per hour at a distance of one (1) meter; or

(b) The activity in the patient is less than thirty (30) millicuries.

(2) A licensee shall not authorize release from confinement for medical care a patient administered a permanent implant until the dose rate from the patient is less than five (5) millirems per hour at a distance of one (1) meter.]

Section 26. Mobile Nuclear Medicine Service Technical Requirements. A licensee providing mobile nuclear medicine service shall:

(1) Transport to each address of use only syringes or vials containing prepared radiopharmaceuticals or radiopharmaceuticals intended for reconstitution of radiopharmaceutical kits;

(2) Bring into each address of use radioactive material to be used and, before leaving, remove unused radioactive material and associated radioactive waste;

(3) Secure or keep under constant surveillance and immediate control radioactive material if in transit or at an address of use;

(4) Check survey instruments and dose calibrators for constancy and response as required in Sections 15 and 16 of this administrative regulation, and check other transported equipment for proper function before medical use at each address of use;

(5) Carry a calibrated survey meter in each vehicle being used to transport radioactive material and, before leaving a client address of use, survey areas of radiopharmaceutical use with a radiation detection survey instrument to ensure that radiopharmaceuticals and associated radioactive waste have been removed; and

(6) Retain a record of each survey for three (3) years. The record shall include:

(a) Date of the survey;

(b) A sketch of each area surveyed;

(c) Measured dose rate at several points in each area of use expressed in millirems per hour;

(d) Model and serial number of the instrument used to make the survey; and

(e) Initials of the individual who performed the survey.

Section 27. Storage of Volatiles and Gases. A licensee shall store:

(1) Volatile radiopharmaceuticals and radioactive gases in the shippers' radiation shield and container; and

(2) Use a multidose container in a properly functioning fume hood.

Section 28. Decay-in-storage. (1) A licensee shall hold radioactive material with a physical half-life of less than sixty-five (65) days for decay-in-storage before disposal in ordinary trash, and shall be exempt from the requirements of 902 KAR 100:021, Section 1 if the licensee:

(a) Holds radioactive material for decay a minimum of ten (10) half-lives;

(b) Monitors radioactive material at the container surface before disposal as ordinary trash and determines that its radioactivity cannot be distinguished from the background radiation level with a radiation detection survey instrument set on its most sensitive scale and with no interposed shielding;

(c) Removes or obliterates radiation labels; and

(d) Separates and monitors each generator column individually with radiation shielding removed to ensure that its contents have decayed to background radiation level before disposal.

(2) For radioactive material disposed in accordance with this

section, the licensee shall retain a record of each disposal for three (3) years. The record shall include the:

(a) Date of the disposal;

(b) Date on which the radioactive material was placed in storage;

(c) Radionuclides disposed;

(d) Model and serial number of the survey instrument used;

(e) Background dose rate;

(f) Radiation dose rate measured at the surface of each waste container; and

(g) Name of the individual who performed the disposal.

Section 29. Use of Radiopharmaceuticals for Uptake, Dilution, or Excretion Studies. ~~[(4)]~~ A licensee shall use ~~[the following prepared radiopharmaceuticals]~~ for diagnostic studies involving the measurement of uptake, dilution, or excretion any unsealed radioactive material prepared for medical use that is:

(1) Obtained from a manufacturer or preparer licensed in accordance with 902 KAR 100:058, equivalent regulations of another agreement state, or the U. S. Nuclear Regulatory Commission; or

(2) Prepared by an authorized nuclear pharmacist, a physician who is an authorized user and meets the requirements specified in Section 49 of this administrative regulation, or an individual under the supervision of either as specified in Section 8 of this administrative regulation.]:

(a) ~~Iodine 131 as sodium iodide, iodinated human serum albumin (IISA), labeled rose bengal, or sodium iodohippurate;~~

(b) ~~Iodine 125 as sodium iodide or iodinated human serum albumin (IISA);~~

(c) ~~Cobalt 57 as labeled cyanocobalamin;~~

(d) ~~Cobalt 58 as labeled cyanocobalamin;~~

(e) ~~Cobalt 60 as labeled cyanocobalamin;~~

(f) ~~Chromium 51 as sodium chromate or labeled human serum albumin;~~

(g) ~~Iron 59 as citrate;~~

(h) ~~Technetium 99m as pertechnetate; or~~

(i) Radioactive material in a radiopharmaceutical for a diagnostic use involving measurements of uptake, dilution, or excretion for which the Food and Drug Administration (FDA) has:

1. Accepted a "Notice of Claimed Investigational Exemption for a New Drug" (IND);

2. Approved a "New Drug Application" (NDA); or

3. Issued a biological product license.

(2) A licensee using a radiopharmaceutical for a clinical procedure other than one specified in the product label or package insert instructions shall comply with the product label or package insert instructions regarding physical form, route of administration, and dosage range.]

Section 30. Possession of Survey Instrument. A licensee authorized to use radioactive material for uptake, dilution, and excretion studies shall possess a portable radiation detection survey instrument capable of detecting dose rates over the range one-tenth (0.1) millirem per hour to fifty (50) millirems per hour. The instrument shall be operable and calibrated in accordance with Section 16 of this administrative regulation.

Section 31. Use of Radiopharmaceuticals, Generators, and Reagent Kits for Imaging and Localization Studies. (1) A licensee shall use ~~[one (1) of the following radiopharmaceuticals, generators, and reagent kits]~~ for imaging and localization studies, radioactive material prepared for medical use that is either:

(a) Obtained from a manufacturer or preparer licensed in accordance with 902 KAR 100:058, equivalent agreement state requirements or the U. S. Nuclear Regulatory Commission; or

(b) Prepared by an authorized nuclear pharmacist, a physician who is an authorized user and who meets the requirements specified in Section 50 of this administrative regulation, or an individual under

the supervision of either as specified in Section 8 of this administrative regulation. ~~[Molybdenum-99/technetium-99m generators for the elution or extraction of technetium-99m as pertechnetate;~~

~~(b) Technetium-99m as pertechnetate;~~

~~(c) Prepared radiopharmaceuticals and reagent kits for the preparation of the following technetium-99m labeled radiopharmaceuticals:~~

- ~~1. Sulfur colloid;~~
- ~~2. Pentetate sodium;~~
- ~~3. Human serum albumin microspheres;~~
- ~~4. Polyphosphate;~~
- ~~5. Macroaggregated human serum albumin;~~
- ~~6. Etidronate sodium;~~
- ~~7. Stannous pyrophosphate;~~
- ~~8. Human serum albumin;~~
- ~~9. Medronate sodium;~~
- ~~10. Glucoptate sodium;~~
- ~~11. Oxidronate sodium;~~
- ~~12. Disofenin; and~~
- ~~13. Succimer;~~

~~(d) Iodine-131 as sodium iodide, iodinated human serum albumin, macroaggregated iodinated human serum albumin, colloidal (macroaggregated) iodinated human serum albumin, rose bengal, or sodium iodohippurate;~~

~~(e) Iodine-125 as sodium iodide or fibrinogen;~~

~~(f) Chromium-51 as human serum albumin;~~

~~(g) Gold-198 in colloidal form;~~

~~(h) Mercury-197 as chlormerodrin;~~

~~(i) Selenium-75 as selenomethionine;~~

~~(j) Strontium-85 as nitrate;~~

~~(k) Ytterbium-169 as pentetate sodium;~~

~~(l) Gallium-67 as citrate;~~

~~(m) Indium-111 as chloride or DTPA;~~

~~(n) Tin-113/indium-113m generators for the elution of indium-113m as chloride;~~

~~(o) Yttrium-87/strontium-87m generators for the elution of strontium-87m;~~

~~(p) Thallium-201 as chloride;~~

~~(q) Iodine-123 as sodium iodide or iodohippurate; or~~

~~(r) Radioactive material in a diagnostic radiopharmaceutical, except aerosol or gaseous form, or a generator or reagent kit for preparation and diagnostic use of a radiopharmaceutical containing radioactive material for which the Food and Drug Administration has accepted a "Notice of Claimed Investigational Exemption for a New Drug" (IND), approved a "New Drug Application" (NDA), or issued a biological product license.~~

~~(2) A licensee using radiopharmaceuticals for clinical procedures shall comply with the product label or package insert regarding physical form, route of administration, and dosage range.~~

~~(3) A licensee shall elute generators in compliance with Section 32 of this administrative regulation and prepare radiopharmaceuticals from kits in accordance with the manufacturer's instructions.~~

~~(4) Technetium-99m pentetate as an aerosol for lung function studies shall not be subject to the restrictions in subsection (2) of this section.~~

~~(2) [(6)] If the conditions of Section 33 of this administrative regulation are met, a licensee shall use radioactive aerosols or gases only if specific application has been made to and approved by the cabinet.~~

Section 32. Permissible Radionuclide Contaminant ~~[Molybdenum-99]~~ Concentration. (1) A licensee shall not administer to humans a radiopharmaceutical containing more than:

(a) 0.15 microcurie of molybdenum-99 per millicurie of technetium-99m;

(b) 0.02 microcurie of strontium-82 per millicurie of rubidium-82;

or

(c) 0.2 microcurie of strontium-85 per millicurie of rubidium-82.

(2) A licensee preparing ~~[technetium-99m]~~ radiopharmaceuticals from radionuclide ~~[molybdenum-99/technetium-99m]~~ generators shall measure the ~~[molybdenum-99]~~ concentration of radionuclide contaminant in each elute or extract, as appropriate for the generator system, to determine compliance with limits specified in subsection (1) of this section.

(3) ~~[This testing shall be conducted according to written procedures and by personnel specifically trained to perform the test.]~~

(4) A licensee required to measure radionuclide contaminant ~~[molybdenum]~~ concentration shall retain a record of each measurement for three (3) years. The record shall include, for each elution or extraction tested ~~[of technetium-99m]~~, the:

(a) Measured activity of the radiopharmaceutical ~~[technetium]~~ expressed in millicuries;

(b) Measured activity of contaminant ~~[molybdenum]~~ expressed in microcuries;

(c) Ratio of the measurements in subsection (4)(a) and (b) of this section ~~[measures]~~ expressed as microcuries of contaminant ~~[molybdenum]~~ per millicurie of radiopharmaceutical ~~[technetium]~~;

(d) Date of the test; and

(e) Initials of the individual who performed the test.

(4) [(6)] A licensee shall report immediately to the cabinet each occurrence of contaminant ~~[molybdenum-99]~~ concentration exceeding the limits specified in this section.

Section 33. Control of Aerosols and Gases. (1) A licensee who administers radioactive aerosols or gases shall do so with a system that shall keep airborne concentrations within the limits prescribed by 902 KAR 100:019, Sections 2, 3, and 10.

(2) A system shall:

(a) Be directly vented to the atmosphere through an air exhaust that meets the requirements of subsection (1) of this section; or

(b) Provide for collection and decay or disposal of the aerosol or gas in a shielded container.

(3) A licensee shall administer radioactive gases only in rooms that are at negative pressure compared to surrounding rooms.

(4) Before receiving, using, or storing a radioactive gas, a licensee shall calculate the amount of time needed after a release to reduce the concentration in the area of use to the occupational limit listed in 902 KAR 100:019.

(a) The calculation shall be based on the highest activity of gas handled in a single container and the measured available air exhaust rate.

(b) A copy of the calculations shall be recorded and retained for the duration of the license.

(5) A licensee shall post the time calculated in this section at the area of use and require that, in case of a gas spill, individuals evacuate the room until the posted time has elapsed.

(6) A licensee shall check the operation of collection systems monthly and measure the ventilation rates in areas of use at intervals not to exceed six (6) months. Records shall be maintained for three (3) years.

Section 34. Possession of Survey Instruments. (1) A licensee authorized to use radioactive material for imaging and localization studies shall possess a portable radiation:

(a) Detection survey instrument capable of detecting dose rates over the range of one-tenth (0.1) millirem per hour to fifty (50) millirems per hour; and

(b) Measurement survey instrument capable of measuring dose rates over the range one (1) millirem per hour to 1000 millirems per hour.

(2) Instruments shall be operable and calibrated in accordance with Section 16 of this administrative regulation.

Section 35. Use of Radiopharmaceuticals for Therapy. A licensee

shall use for therapeutic administration radioactive material prepared for medical use that is either one (1) of the following prepared radiopharmaceuticals:

(1) Obtained from a manufacturer or preparer licensed in accordance 902 KAR 100:058, equivalent agreement state requirements, or the U.S. Nuclear Regulatory Commission; or

(2) Prepared by an authorized nuclear pharmacist, a physician who is an authorized user and who meets the requirements specified in Section 51 of this administrative regulation, or an individual under the supervision of either as specified in Section 8 of this administrative regulation. [Iodine-131 as iodide for treatment of hyperthyroidism, cardiac dysfunction, and thyroid carcinoma;

(2) Phosphorus-32 as soluble phosphate for treatment of polycythemia vera, leukemia, and bone metastases;

(3) Phosphorus-32 as colloidal chromic phosphate for intracavitary treatment of malignant effusions;

(4) Gold-198 as colloid for intracavitary treatment of malignant effusions; or

(5) Radioactive material in a radiopharmaceutical and for a therapeutic use for which the Food and Drug Administration has accepted a "Notice of Claimed Investigational Exemption for a New Drug" (IND), or approved a "New Drug Application" (NDA). The licensee shall comply with the package insert instructions regarding indications and method of administration.]

Section 36. Safety Instruction. (1) A licensee shall provide oral and written radiation safety instruction for personnel caring for patients or human research subjects undergoing radiopharmaceutical therapy. Refresher training shall be provided at intervals not to exceed one (1) year.

(2) The instruction shall describe the licensee's procedures for:

(a) Patient or human research subject control;

(b) Visitor control;

(c) Contamination control;

(d) Waste control; and

(e) Notification of the radiation safety officer or authorized user in case of the patient's or human research subject's death or medical emergency.

(3) A licensee shall keep a record of individuals receiving instruction.

(a) The record shall include:

1. Description of the instruction;

2. Date of instruction; and

3. Name of the individual who gave the instruction.

(b) The record shall be maintained for inspection by the cabinet for three (3) years.

Section 37. Safety Precautions. (1) For each patient or human research subject receiving radiopharmaceutical therapy and hospitalized for compliance with Section 25 of this administrative regulation, a licensee shall:

(a) Provide a private room with a private sanitary facility;

(b) Post the patient's or human research subject's door with a "Caution: Radioactive Material" sign, and note on the door or on the patient's or human research subject's chart where and how long visitors may stay in the patient's or human research subject's room;

(c) Authorize visits by individuals under eighteen (18) years of age only on a case-by-case basis with the approval of the authorized user after consultation with the radiation safety officer;

(d) Promptly after administration of the dosage, measure the dose rates in contiguous restricted and unrestricted areas with a radiation measurement survey instrument to demonstrate compliance with the requirements of 902 KAR 100:019, Section 10 and retain for three (3) years a record of the [each] survey that includes:

1. Time and date of the survey;

2. Plan of the area or list of points surveyed;

3. Measured dose rate at several points expressed in millirems

per hour;

4. Model and serial number of the instrument used to make the survey; and

5. Initials of the individual who made the survey;

(e) Monitor material and items removed from the patient's or human research subject's room to determine that contamination cannot be distinguished from the natural background radiation level with a radiation detection survey instrument set on its most sensitive scale and with no interposed shielding, or handle these materials and items as radioactive waste;

(f) ~~Provide the patient with radiation safety guidance that shall help to keep radiation dose to household members and the public ALARA before authorizing release of the patient;~~

(g) Survey the patient's or human research subject's room and private sanitary facility for removable contamination with a radiation detection survey instrument before assigning another patient or human research subject to the room. The room shall not be re-occupied until removable contamination is less than 200 disintegrations per minute per 100 square centimeters; and

(g) ~~(h)~~ Measure the thyroid burden of each individual who helped prepare or administer a dosage of iodine-131 within three (3) days after administering the dosage, and retain for the period required by 902 KAR 100:019, Section 34(1), a record of:

1. Each thyroid burden measurement;

2. Date of measurement;

3. Name of the individual whose thyroid burden was measured; and

4. Initials of the individual who made the measurements.

(2) A licensee shall notify the radiation safety officer or the authorized user immediately if the patient or human research subject dies or has a medical emergency.

Section 38. Possession of Survey Instruments. A licensee authorized to use radioactive material for radiopharmaceutical therapy shall possess a portable radiation detection survey instrument capable of detecting dose rates over the range one-tenth (0.1) millirem per hour to fifty (50) millirems per hour, and a portable radiation measurement survey instrument capable of measuring dose rates over the range one (1) millirem per hour to 1000 millirems per hour. The instruments shall be operable and calibrated in accordance with Section 16 of this administrative regulation.

Section 39. Use of Sealed Sources for Diagnosis. A licensee shall use the following sealed sources in accordance with the manufacturer's radiation safety and handling instructions:

(1) Iodine-125 as a sealed source in a device for bone mineral analysis;

(2) Americium-241 as a sealed source in a device for bone mineral analysis;

(3) Gadolinium-153 as a sealed source in a device for bone mineral analysis; and

(4) Iodine-125 as a sealed source in a portable device for imaging.

Section 40. Availability of Survey Instrument. A licensee authorized to use radioactive material as a sealed source for diagnostic purposes shall have available for use a portable radiation detection survey instrument capable of detecting dose rates over the range one-tenth (0.1) millirem per hour to fifty (50) millirems per hour, or a portable radiation measurement survey instrument capable of measuring dose rates over the range one (1) millirem per hour to 1000 millirems per hour. The instrument shall be operable and calibrated in accordance with Section 16 of this administrative regulation.

Section 41. Use of Sources for Brachytherapy. A licensee shall use the following sources in accordance with the manufacturer's

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radiation safety and handling instructions:

- (1) Cesium-137 as a sealed source in needles and applicator cells for topical, interstitial, and intracavitary treatment of cancer;
- (2) Cobalt-60 as a sealed source in needles and applicator cells for topical, interstitial, and intracavitary treatment of cancer;
- (3) Gold-198 as a sealed source in seeds for interstitial treatment of cancer;
- (4) Iodine-125 as a sealed source in seeds for interstitial treatment of cancer;
- (5) Iridium-192 as seeds encased in nylon ribbon for interstitial treatment of cancer;
- (6) ~~Radium-226 as a sealed source in needles or applicator cells for topical, interstitial, and intracavitary treatment of cancer;~~
- ~~(7) Radon-222 as seeds for interstitial treatment of cancer;~~
- ~~(8) Palladium-103 as a sealed source in seeds for interstitial treatment of cancer; and~~
- ~~(9) Strontium-90 as a sealed source in an applicator for treatment of superficial eye conditions.~~

Section 42. Safety Instruction. (1) A licensee shall provide oral and written radiation safety instruction to personnel caring for a patient or human research subject receiving implant therapy. Refresher training shall be provided at intervals not to exceed one (1) year.

(2) The instruction shall describe:

- (a) Size and appearance of the brachytherapy sources;
- (b) Safe handling and shielding instructions in case of a dislodged source;
- (c) Procedures for patient or human research subject control;
- (d) Procedures for visitor control; and
- (e) Procedures for notification of the radiation safety officer or authorized user if the patient or human research subject dies or has a medical emergency.

(3) A licensee shall maintain for three (3) years a record of individuals receiving instruction. The record shall include:

- (a) Description of the instruction;
- (b) Date of instruction; and
- (c) Name of the individual who gave the instruction.

Section 43. Safety Precautions. (1) For each patient or human research subject receiving implant therapy and not released from licensee control in accordance with Section 25 of this administrative regulation, a licensee shall:

(a) Not place the patient or human research subject in the same room with a patient or human research subject who is not receiving radiation therapy unless the licensee can demonstrate compliance with the requirement of 902 KAR 100:019, Section 10, at a distance of one (1) meter from the implant;

(b) Post the patient's or human research subject's door with a "Caution: Radioactive Materials" sign, and note on the door or the patient's or human research subject's chart where and how long visitors may stay in the patient's or human research subject's room;

(c) Authorize visits by individuals under eighteen (18) years of age only on a case-by-case basis with the approval of the authorized user after consultation with the radiation safety officer;

(d) Promptly after implanting the sources, survey the dose rates in contiguous restricted and unrestricted areas with a radiation measurement survey instrument to demonstrate compliance with 902 KAR 100:019, Section 10, and retain for three (3) years a record of each survey that includes:

1. Time and date of the survey;
2. A sketch of the area or list of points surveyed;
3. Measured dose rate at several points expressed in millirems per hour;
4. Model and serial number of the instrument used to make the survey; and
5. Initials of the individual who made the survey; ~~and~~  
(e) ~~Provide the patient with radiation safety guidance that will help~~

~~keep the radiation dose to household members and the public ALARA before releasing the patient if the patient was administered a permanent implant).~~

(2) A licensee shall notify the radiation safety officer or authorized user immediately if the patient or human research subject dies or has a medical emergency.

Section 44. Brachytherapy Sources Inventory. (1) If brachytherapy sources are returned to an area of storage from an area of use, the licensee shall immediately count or otherwise verify the number returned to ensure that sources taken from the storage area have been returned.

(2) A licensee shall make a record of brachytherapy source utilization which includes the:

- (a) Names of the individuals permitted to handle the sources;
- (b) Number and activity of sources removed from storage including the:

1. Room number of use and patient's or human research subject's name;

2. Time and date sources were removed from storage;

3. Number and activity of sources in storage after the removal;

4. Initials of the individual who removed the sources from storage; and

(c) Number and activity of sources returned to storage, including the:

1. Room number of use and patient's or human research subject's name;

2. Time and date sources were returned to storage;

3. Number and activity of sources in storage after the return;

4. Initials of the individual who returned the sources to storage.

(3) Immediately after implanting sources in a patient or human research subject and immediately after removal of sources from a patient or human research subject, a licensee shall make a radiation survey of the patient or human research subject and the area of use to confirm that no sources have been misplaced. The licensee shall make a record of each survey.

(4) A licensee shall maintain the records required in this section for three (3) years.

Section 45. Release of Patients or Human Research Subjects Treated with Temporary Implants. (1) Immediately after removing the last temporary implant source from a patient or human research subject, a licensee shall make a radiation survey of the patient or human research subject with a radiation detection survey instrument to confirm that sources have been removed.

~~(2) A licensee shall not release from confinement for medical care a patient treated by temporary implants until the sources have been removed.~~

~~(3)~~ A licensee shall maintain a record of [patient] surveys which demonstrate compliance with this section for three (3) years. The record shall include the:

(a) Date of the survey;

(b) Name of the patient or human research subject;

(c) Dose rate from the patient or human research subject expressed as millirems per hour as [and] measured within one (1) meter from the patient or human research subject; [and]

(d) Model and serial number of the instrument used to make the survey; and

(e) Initials of the individual who made the survey.

Section 46. Possession of Survey Instruments. A licensee authorized to use radioactive material for implant therapy shall possess a portable radiation detection survey instrument capable of detecting dose rates over the range one-tenth (0.1) millirem per hour to fifty (50) millirems per hour, and a portable radiation measurement survey instrument capable of measuring dose rates over the range one (1) millirem per hour to 1000 millirems per hour. The instruments



shall be operable and calibrated in accordance with Section 16 of this administrative regulation.

Section 47. Training for Nonexperienced Radiation Safety Officer. Except as provided in Section 48 of this administrative regulation, an individual fulfilling the responsibilities of the radiation safety officer as provided in Section 5 of this administrative regulation shall:

- (1) Be certified by the:
  - (a) American Board of Health Physics in Comprehensive Health Physics;
  - (b) American Board of Radiology ~~(in Radiological Physics, Therapeutic Radiological Physics, or Medical Nuclear Physics);~~
  - (c) American Board of Nuclear Medicine;
  - (d) American Board of Science in Nuclear Medicine; ~~or~~
  - (e) Board of Pharmaceutical Specialties in Nuclear Pharmacy ~~or Science~~;
  - (f) American Board of Medical Physics in radiation oncology physics;
  - (g) Royal College of Physicians and Surgeons of Canada in nuclear medicine;
  - (h) American Osteopathic Board of Radiology; or
  - (i) American Osteopathic Board of Nuclear Medicine; or
- (2) Have 200 hours of classroom and laboratory training including:
  - (a) Radiation physics and instrumentation;
  - (b) Radiation protection;
  - (c) Mathematics pertaining to the use and measurement of radioactivity;
  - (d) Radiation biology;
  - (e) Radiopharmaceutical chemistry; and
  - (f) One (1) year of full time experience in radiation safety at a medical institution under the supervision of the individual identified as the radiation safety officer on the cabinet, another agreement state, or U.S. Nuclear Regulatory Commission license that authorizes the medical use of radioactive material; or
- (3) Be an authorized user for those radioactive material uses that come within the radiation safety officer's responsibilities.

Section 48. Training for Experienced Radiation Safety Officer. An individual identified as a radiation safety officer on a license issued by the cabinet, another agreement state, or U.S. Nuclear Regulatory Commission ~~[license]~~ before June 27, 1990 who oversees only the use of radioactive material for which the licensee was authorized on that date, need not comply with the training requirements of Section 47 of this administrative regulation.

Section 49. Training for Uptake, Dilution, or Excretion Studies. Except as provided in Sections 56 and 57 of this administrative regulation, the licensee shall require the authorized user of a radiopharmaceutical listed in Section 29 of this administrative regulation to be a physician who:

- (1) Is certified in:
  - (a) Nuclear medicine by the American Board of Nuclear Medicine;
  - (b) Diagnostic radiology by the American Board of Radiology;
  - (c) Diagnostic radiology or radiology ~~[within the previous five (5) years]~~ by the American Osteopathic Board of Radiology; ~~or~~
  - (d) Nuclear medicine by the American Osteopathic Board of Nuclear Medicine; or
  - (e) Nuclear medicine by the Royal College of Physicians and Surgeons of Canada; or
- (2) Has completed forty (40) hours of instruction in basic radionuclide handling techniques applicable to the use of prepared radiopharmaceuticals, and twenty (20) hours of supervised clinical experience.
  - (a) To satisfy the basic instruction requirement, forty (40) hours of classroom and laboratory instruction shall include:
    1. Radiation physics and instrumentation;
    2. Radiation protection;

3. Mathematics pertaining to the use and measurement of radioactivity;
4. Radiation biology; and
5. Radiopharmaceutical chemistry.

(b) To satisfy the requirement for twenty (20) hours of supervised clinical experience, training shall be under the supervision of an authorized user at a medical institution, and shall include:

1. Examining patients or human research subjects and reviewing their case histories to determine suitability for radionuclide diagnosis, limitations, or contraindications;
  2. Selecting the suitable radiopharmaceuticals and calculating and measuring the dosages;
  3. Administering dosages to patients or human research subjects and using syringe radiation shields;
  4. Collaborating with the authorized user in the interpretation of radionuclide test results; and
  5. Patient or human research subject follow-up; or
- (3) Has successfully completed a six (6) month training program in nuclear medicine as part of a training program approved by the Accreditation Council for Graduate Medical Education that included:
- (a) Classroom and laboratory training;
  - (b) Work experience; and
  - (c) Supervised clinical experience in the topics identified in this section.

Section 50. Training for Imaging and Localization Studies. Except as provided in Sections 56 or 57 of this administrative regulation, the licensee shall require the authorized user of a radiopharmaceutical, generator, or reagent kit specified in Section 31 of this administrative regulation to be a physician who:

- (1) Is certified in:
  - (a) Nuclear medicine by the American Board of Nuclear Medicine;
  - (b) Diagnostic radiology by the American Board of Radiology;
  - (c) Diagnostic radiology or radiology ~~[within the previous five (5) years]~~ by the American Osteopathic Board of Radiology; ~~or~~
  - (d) Nuclear medicine by the American Osteopathic Board of Nuclear Medicine; or
  - (e) Nuclear medicine by the Royal College of Physicians and Surgeons of Canada; or

- (2)(a) Has completed:
  1. 200 hours of instruction in basic radionuclide handling techniques applicable to the use of prepared radiopharmaceuticals, generators, and reagent kits;
  2. 500 hours of supervised work experience; and
  3. 500 hours of supervised clinical experience.
- (b) To satisfy the basic instruction requirement, 200 hours of classroom and laboratory training shall include:
  1. Radiation physics and instrumentation;
  2. Radiation protection;
  3. Mathematics pertaining to the use and measurement of radioactivity;
  4. Radiopharmaceutical chemistry; and
  5. Radiation biology.
- (c) To satisfy the requirement for 500 hours of supervised work experience, training shall be under the supervision of an authorized user at a medical institution, and shall include:
  1. Ordering, receiving, and unpacking radioactive materials safely and performing the related radiation surveys;
  2. Calibrating dose calibrators and diagnostic instruments and performing checks for proper operation of survey meters;
  3. Calculating and safely preparing patient or human research subject dosages;
  4. Using administrative controls to prevent the misadministration of radioactive material;
  5. Using emergency procedures to contain spilled radioactive material safely and using proper decontamination procedures; and
  6. Eluting technetium-99m from generator systems, assaying and



testing the elute for molybdenum-99 and alumina contamination, and processing the elute with reagent kits to prepare technetium-99m labeled radiopharmaceuticals.

(d) To satisfy the requirement for 500 hours of supervised clinical experience, training shall be under the supervision of an authorized user at a medical institution, and shall include:

1. Examining patients or human research subjects and reviewing their case histories to determine suitability for radionuclide diagnosis, limitations, or contraindications;
  2. Selecting the suitable radiopharmaceuticals and calculating and measuring the dosages;
  3. Administering dosages to patients or human research subjects and using syringe radiation shields;
  4. Collaborating with the authorized user in the interpretation of radionuclide test results; and
  5. Patient or human research subject follow-up; or
- (3) Has successfully completed a six (6) month training program in nuclear medicine approved by the Accreditation Council for Graduate Medical Education that included:
- (a) Classroom and laboratory training;
  - (b) Work experience; and
  - (c) Supervised clinical experience in the topics identified in this section.

Section 51. Training for Therapeutic Use of Radiopharmaceuticals. Except as provided in Section 56 of this administrative regulation, the licensee shall require the authorized user of a radiopharmaceutical listed in Section 35 of this administrative regulation for therapy to be a physician who:

- (1) Is certified in ~~[by]~~:
- (a) Nuclear medicine by the American Board of Nuclear Medicine; [or]
- (b) ~~[The American Board of Radiology in]~~ Radiology, therapeutic radiology or radiation oncology by the American Board of Radiology;
- (c) Nuclear medicine or radiation oncology by the American Osteopathic Board of Radiology after 1984; or
- (d) Nuclear medicine by the Royal College of Physicians and Surgeons of Canada; or

(2) Has completed eighty (80) hours of instruction in basic radionuclide handling techniques applicable to the use of therapeutic radiopharmaceuticals, and has supervised clinical experience.

(a) To satisfy the requirement for instruction, eighty (80) hours of classroom and laboratory training shall include:

1. Radiation physics and instrumentation;
2. Radiation protection;
3. Mathematics pertaining to the use and measurement of radioactivity; and
4. Radiation biology.

(b) To satisfy the requirement for supervised clinical experience, training shall be under the supervision of an authorized user at a medical institution, and shall include use of:

1. Iodine-131 for diagnosis of thyroid function and the treatment of hyperthyroidism or cardiac dysfunction in ten (10) individuals;
2. Soluble phosphorus-32 for the treatment of ascites, polycythemia vera, leukemia, or bone metastases in three (3) individuals;
3. Iodine-131 for treatment of thyroid carcinoma in three (3) individuals; ~~[and]~~
4. Colloidal chromic phosphorus-32 or of colloidal gold-198 for intracavitary treatment of malignant effusions in three (3) individuals; and
5. Strontium-89 as strontium chloride for the treatment of pain associated with bone metastases in three (3) individuals.

Section 52. Training for Therapeutic Use of Brachytherapy Sources. Except as provided in Section 56 of this administrative regulation, the licensee shall require the authorized user using a brachytherapy source specified in Section 41 of this administrative

regulation for therapy to be a physician who:

- (1) Is certified in:
  - (a) Radiology, therapeutic radiology, or radiation oncology by the American Board of Radiology;
  - (b) Radiation oncology by the American Osteopathic Board of Radiology;
  - (c) Radiology, with a specialization in radiotherapy, as a British "Fellow of the Faculty of Radiology" or "Fellow of the Royal College of Radiology"; or
  - (d) Therapeutic radiology by the Canadian Royal College of Physicians and Surgeons; or
- (2)(a) Is in the active practice of therapeutic radiology, and has completed:

1. 200 hours of instruction in basic radionuclide handling techniques applicable to the therapeutic use of brachytherapy sources;
  2. 500 hours of supervised work experience; and
  3. A minimum of three (3) years of supervised clinical experience.
- (b) To satisfy the requirement for instruction, 200 hours of classroom and laboratory training shall include:
1. Radiation physics and instrumentation;
  2. Radiation protection;
  3. Mathematics pertaining to the use and measurement of radioactivity; and
  4. Radiation biology.

(c) To satisfy the requirement for 500 hours of supervised work experience, training shall be under the supervision of an authorized user at a medical institution, and shall include:

1. Ordering, receiving, and unpacking radioactive materials safely and performing the related radiation surveys;
2. Checking survey meters for proper operation;
3. Preparing, implanting, and removing sealed sources;
4. Using administrative controls to prevent the misadministration of radioactive material; and
5. Using emergency procedures to control radioactive material.

(d) To satisfy the requirement for a period of supervised clinical experience, training shall include one (1) year in a formal training program approved by the Residency Review Committee for Radiology of the Accreditation Council for Graduate Medical Education or the Committee on Postdoctoral Training of the American Osteopathic Association, and an additional two (2) years of clinical experience in therapeutic radiology under the supervision of an authorized user at a medical institution. The supervised clinical experience shall include:

1. Examining individuals and reviewing their case histories to determine suitability for brachytherapy treatment, and limitations or contraindications;
2. Selecting the proper brachytherapy sources, dose, and method of administration;
3. Calculating the dose; and
4. Postadministration follow-up and review of case histories in collaboration with the authorized user.

Section 53. Training for Teletherapy. Except as provided in Section 56 of this administrative regulation, the licensee shall require the authorized user of a sealed source specified in 902 KAR 100:017, Section 2, in a teletherapy unit to be a physician who:

- (1) Is certified in:
  - (a) Radiology, therapeutic radiology, or radiation oncology by the American Board of Radiology;
  - (b) Radiation oncology by the American Osteopathic Board of Radiology;
  - (c) Radiology, with specialization in radiotherapy, as a British "Fellow of the Faculty of Radiology" or "Fellow of the Royal College of Radiology"; or
  - (d) Therapeutic radiology by the Canadian Royal College of Physicians and Surgeons; or
- (2)(a) Is in the active practice of therapeutic radiology, and has completed:

1. 200 hours of instruction in basic radionuclide techniques applicable to the use of a sealed source in a teletherapy unit;

2. 500 hours of supervised work experience; and

3. A minimum of three (3) years of supervised clinical experience.

(b) To satisfy the requirement for instruction, the classroom and laboratory training shall include:

1. Radiation physics and instrumentation;

2. Radiation protection;

3. Mathematics pertaining to the use and measurement of radioactivity; and

4. Radiation biology.

(c) To satisfy the requirement for supervised work experience, training shall be under the supervision of an authorized user at an institution, and shall include:

1. Review of the full calibration measurements and periodic spot checks;

2. Preparing treatment plans and calculating treatment times;

3. Using administrative controls to prevent misadministrations;

4. Implementing emergency procedures to be followed in the event of the abnormal operation of a teletherapy unit or console; and

5. Checking and using survey meters.

(d) To satisfy the requirement for a period of supervised clinical experience, training shall include:

1. One (1) year in a formal training program approved by the Residency Review Committee for Radiology of the Accreditation Council for Graduate Medical Education or the Committee on Postdoctoral Training of the American Osteopathic Association; and

2. An additional two (2) years of clinical experience in therapeutic radiology under the supervision of an authorized user at a medical institution. The supervised clinical experience shall include:

a. Examining individuals and reviewing their case histories to determine suitability for teletherapy treatment, and limitations or contraindications;

b. Selecting the proper dose and how it is to be administered;

c. Calculating the teletherapy doses and collaborating with the authorized user in the review of patients' or human research subjects' progress and consideration of the need to modify originally prescribed doses as warranted by patients' or human research subjects' reaction to radiation; and

d. Postadministration follow-up and review of case histories.

Section 54. Training for Ophthalmic Use of Strontium-90. Except as provided in Section 56 of this administrative regulation, the licensee shall require the authorized user using only strontium-90 for ophthalmic radiotherapy to be a physician who is:

(1) Certified in radiology, therapeutic radiology, or radiation oncology by the American Board of Radiology; or

(2) In the active practice of therapeutic radiology or ophthalmology, and has completed twenty-four (24) hours of instruction in basic radionuclide handling techniques applicable to the use of strontium-90 for ophthalmic radiotherapy and a period of supervised clinical training in ophthalmic radiotherapy.

(a) To satisfy the requirement for instruction, the classroom and laboratory training shall include:

1. Radiation physics and instrumentation;

2. Radiation protection;

3. Mathematics pertaining to the use and measurement of radioactivity; and

4. Radiation biology.

(b) To satisfy the requirement for a period of supervised clinical training in ophthalmic radiotherapy, training shall be under the supervision of an authorized user at a medical institution and shall include the use of strontium-90 for the ophthalmic treatment of five (5) individuals that includes:

1. Examination of each individual to be treated;

2. Calculation of the dose to be administered;

3. Administration of the dose; and

4. Follow-up and review of each individual's case history.

Section 55. Training for Use of Sealed Sources for Diagnosis. Except as provided in Section 56 of this administrative regulation, the licensee shall require the authorized user, using a sealed source in a device specified in Section 39 of this administrative regulation, to be a physician, dentist, or podiatrist who:

(1) Is certified in:

(a) Radiology, diagnostic radiology ~~[with special competence in nuclear radiology]~~, therapeutic radiology, or radiation oncology by the American Board of Radiology;

(b) Nuclear medicine by the American Board of Nuclear Medicine;

(c) Diagnostic radiology or radiology by the American Osteopathic Board of Radiology; or

(d) Nuclear medicine by the Royal College of Physicians and Surgeons of Canada; or

(2) Has completed eight (8) hours of classroom and laboratory instruction in basic radionuclide handling techniques specifically applicable to the use of the device. To satisfy the requirement for instruction, the training shall include:

(a) Radiation physics, mathematics pertaining to the use and measurement of radioactivity, and instrumentation;

(b) Radiation biology; and

(c) Radiation protection and training in the use of the device for the purposes authorized by the license.

Section 56. Training for Experienced Authorized Users. Practitioners of the healing arts identified as authorized users for ~~the~~ human use of radioactive material on ~~a~~ ~~the~~ cabinet, another agreement state, or U. S. Nuclear Regulatory Commission license, before June 27, 1990, who perform only those methods of use for which they were authorized on that date, need not comply with the training requirements of Section 47 through Section 55 of this administrative regulation.

Section 57. Physician Training in a Three (3) Month Program. A physician who, before July 1, 1984, began a three (3) month nuclear medicine training program approved by the Accreditation Council for Graduate Medical Education and has successfully completed the program, shall be exempted from the requirements of Section 49 or 50 of this administrative regulation.

Section 58. Training for an Authorized Nuclear Pharmacist. The licensee shall require the authorized nuclear pharmacist to be a pharmacist who:

(1) Has current board certification as a nuclear pharmacist by the Board of Pharmaceutical Specialties; or

(2) Has completed 700 hours in a structured educational program consisting of:

(a) Didactic training in the following areas:

1. Radiation physics and instrumentation;

2. Radiation protection;

3. Mathematics pertaining to the use and measurement of radioactivity;

4. Chemistry of radioactive material for medical use;

5. Radiation biology; and

(b) Supervised experience in a nuclear pharmacy involving:

1. Shipping, receiving, and performing related radiation surveys;  
2. Using and performing checks for proper operation of dose calibrators, survey meters, and, if appropriate, instruments used to measure alpha-or beta-emitting radionuclides;

3. Calculating, assaying, and safely preparing dosages for patients or human research subjects;

4. Using administrative controls to avoid mistakes in the administration of radioactive material;

5. Using procedures to prevent or minimize contamination and using proper decontamination procedures; and

(c) Has obtained written certification, signed by a preceptor authorized nuclear pharmacist, that the above training has been satisfactorily completed and the individual has achieved a level of competency sufficient to independently operate a nuclear pharmacy.

Section 59. Recentness of Training. The training and experience specified in Sections 47 through 58 ~~(55)~~ of this administrative regulation shall have been obtained within the seven (7) ~~(five-5)~~ years preceding the date of application or the individual shall have had continuing applicable experience since the required training and experience was completed.

Section 60. Training for Experienced Nuclear Pharmacists. (1) A licensee shall apply for and receive a license amendment identifying an experienced nuclear pharmacist as an authorized nuclear pharmacist before the licensee allows the individual to work as an authorized nuclear pharmacist.

(2) A pharmacist who has completed a structured educational program as specified in Section 58 of this administrative regulation, before the effective date of this administrative regulation, and who is working in a nuclear pharmacy may qualify as an experienced nuclear pharmacist.

(3) An experienced nuclear pharmacist need not comply with the requirements of a preceptor statement as required by Section 58(2)(c) of this administrative regulation and recentness of training in Section 59 of this administrative regulation to qualify as an authorized nuclear pharmacist.

Section 61. Exemptions. A licensee possessing a Type A specific license of broad scope for medical use is exempt from the following:

(1) The provisions of Section 2(2) of this administrative regulation;

(2) The provisions of Section 2(5) of this administrative regulation regarding additions to or changes in the areas of use only at the addresses specified in the license; and

(3) Provisions of Section 2(6) of this administrative regulation regarding conducting research involving human subjects provided:

(a) The research is conducted, funded, supported, or regulated by a federal agency that has implemented the federal policy for the protection of human subjects;

(b) Informed consent is obtained from the human subjects; and

(c) Prior review and approval of the research activities are obtained from an institutional review board as defined and described in the federal policy for the protection of human subjects.

Section 62. Food and Drug Administration (FDA), Other Federal and State Requirements. Nothing in this administrative regulation relieves the license from complying with applicable FDA, other federal and state requirements governing radioactive drugs or devices.

Section 63. Material Incorporated by Reference. (1) The following is incorporated by reference: Federal Register, Volume 56, No. 117, Tuesday, June 18, 1991, Federal Policy for the Protection of Human Subjects, Department of Health and Human Services, 45 CFR Part 48; National Science Foundation, 45 CFR Part 690; Department of Transportation, 49 CFR Part 11.

(2) Federal Register, Volume 56, No. 117, Tuesday, June 18, 1991, Federal Policy for the Protection of Human Subjects, may be viewed or copied at the Office of the Commissioner of Health Services, 275 East Main Street, Frankfort, Kentucky 40621, 8 a.m. until 4:30 p.m., Monday through Friday.

RICE C. LEACH, Commissioner

JOHN MORSE, Secretary

APPROVED BY AGENCY: June 9, 1997

FILED WITH LRC: June 12, 1997 at 2 p.m.

CABINET FOR FAMILIES AND CHILDREN  
Department for Social Insurance  
Division of Management and Development  
(As Amended)

904 KAR 3:020. Financial requirements.

RELATES TO: KRS 194.050, 7 CFR 273.1, 273.2, 273.8, 273.9, 273.10, 273.11, 273.12, 7 USC 2014, 2017(d), PL 104-193, sec. 911  
STATUTORY AUTHORITY: KRS 194.050, 7 CFR 271.4, EO 96-862

NECESSITY, FUNCTION, AND CONFORMITY: Executive Order 96-862, effective July 2, 1996, reorganized the Cabinet for Human Resources and placed the Department for Social Insurance and its programs under the Cabinet for Families and Children. The Cabinet for Families and Children has responsibility to administer a Food Stamp Program. KRS 194.050 provides that the secretary shall, by administrative regulation, develop policies and operate programs concerned with the welfare of the citizens of the Commonwealth. This administrative regulation sets forth the financial eligibility requirements used by the cabinet in the administration of the Food Stamp Program.

Section 1. Financial Eligibility Requirements. (1) Pursuant to federal ~~(in accordance with)~~ regulations promulgated by the Food and Consumer Service, of the United States Department of Agriculture, national uniform standards of financial eligibility for the Food Stamp Program shall be composed of the following criteria:

(a) Income limitations; and

(b) Resource limitations.

(2) Participation in the program shall be limited to a household that is prevented from obtaining a more nutritious diet because of its income. ~~[Participation in the program shall be limited to those households whose incomes are determined to be a substantial limiting factor in permitting them to obtain a more nutritious diet.]~~

(3) The income eligibility standards shall be:

(a) Derived from the federal income poverty guidelines pursuant to 42 USC 9902(2) for the forty-eight (48) contiguous states; and

(b) Adjusted annually each October 1, as published in the Federal Register, Volume 62, Number 73, on April 16, 1997; ~~[The income eligibility standards shall be derived from the Office of Management and Budget's nonfarm income poverty guidelines.]~~

Section 2. Countable Income. All nonexcluded income shall be considered in determining eligibility, including the following: ~~[All income from any source shall be counted, except income specifically excluded in Section 3 of this administrative regulation, including:]~~

(1) Wages earned by a household member, including all wages received by a striker in accordance with the provision at 904 KAR 3:035, Section 5 ~~(6)~~(9).

(2) The gross income of a self-employment enterprise, including the total gain from the sale of any capital goods or equipment related to the business, excluding the cost of doing business;

(3) Training allowance from vocational and rehabilitative programs recognized by federal, state or local governments, to the extent that they are not reimbursements;

(4) Payments under 42 USC 1451 shall be considered earned income unless specifically excluded in Section 3 of this administrative regulation;

(5) The earned or unearned income of an ineligible household member or nonhousehold member pursuant to ~~[as set forth in]~~ 904 KAR 3:035, Section 5 ~~(6)~~(3) and 4;

(6) Assistance payments from federal or federally aided public assistance including:

(a) Supplemental security income;

(b) Kentucky Transitional Assistance Program ~~[Aid to families with dependent children];~~

- (c) General assistance programs; or
- (d) Other assistance programs based on need;
- (7) Annuities;
- (8) Pensions;
- (9) Retirement, veteran's or disability benefits;
- (10) Worker's or unemployment compensation;
- (11) Strike pay;
- (12) Old-age survivors or Social Security benefits;
- (13) Foster care payments for children or adults, except as excluded in Section 3(16) of this administrative regulation;
- (14) Gross income derived from rental property:

(a) Minus the cost of doing business; and

(b) Shall be considered as earned income if the household member is actively engaged in the management of the property an average of twenty (20) hours or more per week; [Gross income minus the cost of doing business derived from rental property in which a household member is not actively engaged in the management of the property at least twenty (20) hours a week;]

(15) Wages earned by a household member which are garnished or diverted by an employer and paid to a third party for a household expense;

(16) Support or alimony payments made directly to the household from a nonhousehold member ~~[nonhousehold members]~~. This shall include ~~[includes]~~ any portion of a payment ~~[such payments]~~ returned to the household by the cabinet;

(17) Any portion of the following, that are not excludable pursuant to Section 3(6) of this administrative regulation:

(a) Scholarship;

(b) Education grant;

(c) Fellowship;

(d) Deferred payment education loan; or

(e) Veterans educational benefit; ~~[The portion of scholarships, educational grants, fellowships, deferred payment loans for education, and veterans educational benefits which are not excludable pursuant to ~~[under]~~ Section 3(6) of this administrative regulation;]~~

(18) A payment from:

(a) A government sponsored program;

(b) A dividend;

(c) Interest;

(d) A royalty;

(e) Similar direct money payments, from any source, which could be construed as a gain or benefit; ~~[Payments from government sponsored programs, dividends, interest, royalties, and all other direct money payments from any source which can be construed to be a gain or benefit;]~~

(19) Monies withdrawn or dividends which are or could be received from a trust fund;

(20) That amount of monthly income of an alien's sponsor and the sponsor's spouse (if living with the sponsor) that has been deemed to be that of the alien as set forth in 904 KAR 3:035, Section 5(11) ~~[6(12)]~~;

(21) The portion of means tested assistance monies:

(a) From a:

1. Federal welfare program;

2. State welfare program; or

3. Local welfare program; and

(b) Withheld for purposes of recouping an overpayment resulting from the household's intentional failure to comply with that program's requirements; ~~[The portion of means tested Assistance monies from a federal, state, or local welfare program which are withheld for purposes of recouping an overpayment which resulted from the household's intentional failure to comply with that program's requirements;]~~

(22) Earnings ~~of~~ ~~[to]~~ an individual who is participating in on-the-job training programs under 29 USC 1501 unless the individual is under;

(a) Nineteen (19) years of age; and

~~(b) ~~[under]~~ The parental control of another adult member; and~~  
(23) Portions of Indian Per Capita payments made pursuant to 25 USC 459, 25 USC 1261, and 25 USC 1401 in excess of \$2,000 per payment per individual, effective September 1, 1989.

Section 3. Income Exclusions. The following payments shall not be considered as income:

(1) Money:

(a) Withheld from an assistance payment;

(b) From earned income;

(c) From another income source; or

(d) Received from another income source which is voluntarily or involuntarily returned to repay a prior overpayment received from that income source, except as specified in Section 2(21) of this administrative regulation; ~~[Money withheld from an assistance payment, earned income or other income source, or monies received from any income source which are voluntarily or involuntarily returned, to repay a prior overpayment received from that income source, except as specified in Section 2(21) ~~[(14)]~~ of this administrative regulation;]~~

(2) Child support income shall be considered as follows:

(a) A child support payment shall be excluded if:

1. Received by a recipient of the Kentucky Transitional Assistance Program; and

2. It must be transferred to the Division of Child Support Enforcement to maintain eligibility in K-TAP; ~~[Child support payments received by recipients of the Kentucky Transitional Assistance Program ~~[Aid to Families with Dependent Children]~~ which must be transferred to the Division of Child Support Enforcement to maintain eligibility for Kentucky Transitional Assistance Program ~~[Aid to Families with Dependent Children]~~ benefits, shall be excluded;]~~

(b) Any portion of child support monies returned to the household receiving Kentucky Transitional Assistance Program benefits ~~[Aid to Families with Dependent Children]~~ by the cabinet shall not be excluded;

(3) Any gain or benefit which is not in the form of money payable directly to the household;

(4) A money payment that is ~~[Money payments that are]~~ not legally obligated and otherwise payable directly to a household; but is ~~[are]~~ paid to a third party for a household expense;

(5) Income:

(a) Received:

1. In the certification period; and

2. Too infrequently or irregularly to be reasonably anticipated; and

(c) Not in excess of thirty (30) dollars per quarter; ~~[Any income in the certification period which is received too infrequently or irregularly to be reasonably anticipated, but not in excess of thirty (30) dollars in a quarter;]~~

(6) Educational income:

(a) Including a:

1. Deferred payment educational loan on which repayment does not begin within sixty (60) days after receipt;

2. Grant;

3. Scholarship;

4. Fellowship;

5. Veterans educational benefit; and

6. Similar form of income;

(b) Awarded to a household member enrolled in one (1) of the following recognized institutions as defined by 904 KAR 3:010, Section 1(22):

1. Institution of postsecondary education;

2. School for a disabled person;

3. Vocation education program; or

4. Program providing for completion of a secondary school diploma or its equivalent;

(c) To the extent that it does not exceed the amount used for

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or made available as an allowance as determined by the:

1. School;
2. Institution;
3. Program; or
4. Grantor;

(d) For payment of:

1. Tuition;
2. Transportation;

3. Miscellaneous personal expenses, other than room and board;

4. An origination fee for an educational loan;
5. An insurance premium for an educational loan;

6. Dependent care, except that costs that exceed the amount excludable from income shall be deducted pursuant to Section 5 of this administrative regulation;

(e) For payment of mandatory fees relating to the course of study, including the rental or purchase of:

1. Equipment;
2. Material;
3. Books;

4. Supplies; [Educational income shall be excluded as follows:

(a) Educational income, including:

1. Educational loans on which payment is deferred;
2. Grants;
3. Scholarships;
4. Fellowships;
5. Veteran educational benefits;
6. And the like;

(b) Awarded to a household member enrolled at one (1) of the following recognized institutions as defined by 904 KAR 3:010, Section 1(22):

1. Institution of postsecondary education;
2. School for persons with a disability;
3. Vocational education program; or

4. A program that provides for completion of a secondary school diploma or the equivalent thereof;

(c) Is excluded to the extent that it does not exceed the amount used for or made available as an allowance determined by such:

1. School;
2. Institution;
3. Program; or
4. Other grantor; for

(d) Expenses of the student, including:

1. Tuition;

2. Mandatory fees related to the pursuit of the course of study involved, including the rental or purchase of any:

- a. Equipment;
- b. Material; and
- c. Supplies;
3. Books;
4. Supplies;
5. Transportation;

6. [Other] Miscellaneous personal expenses (other than room and board (living expenses));

7. Origination fees for educational [such] loans; and
8. Insurance premiums for educational [such] loans; and
9. Dependent care;

(e) Dependent care costs which exceed the amount excludable from income shall be deducted from income pursuant to Section 5 of this administrative regulation.

(f) An educational loan on which repayment must begin within sixty (60) days after receipt of the loan shall not be considered a deferred repayment loan.

(7) A loan, other than an educational loan on which payment is deferred, from a:

(a) Private individual; or

(b) Commercial institution; [All loans from private individuals or

commercial institutions, other than educational loans on which repayment is deferred;]

(8) A reimbursement for a past or future expense, other than normal living expenses, to the extent they do not:

(a) Exceed actual expenses; and

(b) Represent a gain or benefit to the household; [Reimbursements for past or future expenses, other than normal living expenses, to the extent they do not exceed actual expenses, and do not represent a gain or benefit to the household;]

(9) Money received and used for the care and maintenance of a third party beneficiary who is not a household member;

(10) The earned income of a child who is:

- (a) A member of the household;
- (b) An elementary or secondary school student; and
- (c) Age seventeen (17) [twenty-one (21)] years or younger;

(11) Money received in the form of a nonrecurring lump-sum payment;

(12) The cost of producing self-employment income. If the cost of producing farm self-employment income exceeds the income derived from self-employment farming, the loss [such losses] shall be offset against any other countable income in the household;

(13) Income specifically excluded by a federal statute from consideration as income for the purpose of determining Food Stamp Program eligibility; [Any income specifically excluded by any other federal statute from consideration as income for the purpose of determining eligibility for the Food Stamp Program;]

(14) An energy assistance payment or allowance [payments or allowances] that are made pursuant to [under]:

(a) Any federal law, except 42 USC 601 et seq., including utility reimbursements made by:

1. The Department of Housing and Urban Development; and
2. Rural and Economic Community and Development; or

(b) A one (1) time payment or allowance made pursuant to a federal or state law for the costs of:

1. Weatherization; or
2. Emergency repair; or
3. Replacement of an:

a. Unsafe; or

b. Inoperative furnace; or

c. Other heating or cooling device. [A state or local law if certified as excludable energy payments by the Food and Consumer Service;]

(15) A cash donation [donations] based on need received from nonprofit charitable organizations, not to exceed \$300 in a federal fiscal year quarter;

(16) A foster care payment [payments] for a foster child if [children when] the household requests that the child [foster children] be excluded from the household in determining eligibility;

(17) Up to \$12,000 to Aleuts and \$20,000 to individuals of Japanese ancestry for payments made by the U.S. to compensate for hardships experienced during World War II;

(18) Monies received under Section 3507 of the Internal Revenue Code (advanced payment of earned income credit);

(19) Indian Per Capita payments made pursuant to 25 USC 459, 25 USC 1261 and 25 USC 1401, as distribution from judgment awards and trust funds of \$2,000 or less per individual per payment.

(20) Any amount of income necessary for the fulfillment of an approved plan for achieving self-support of a household member pursuant to [as provided under] 42 USC 1382a(b)(4)(B)(iv);

(21) On-the-job training payments that are received pursuant to 29 USC 1630 through 1635.

Section 4. Income Eligibility Standards. Participation in the Food Stamp Program shall be limited to those households whose incomes fall at or below the applicable standards as established by the Food and Consumer Service and which are set forth below:

(1) A household [Households] which contain a member who is elderly or has a disability as defined in 904 KAR 3:010, Section 1(9)

or (11), shall have their net income compared to 100 percent of the federal income poverty guidelines.

(2) A household in which all members are recipients of the Kentucky Transitional Assistance Program or Supplemental Security Income shall:

(a) Be categorically eligible; and

(b) Not be required to meet the eligibility standards for:

1. Gross income; or

2. Net income; [Households in which all members are recipients of the Kentucky Transitional Assistance Program [Aid to Families with Dependent Children] or Supplemental Security Income shall be categorically eligible and shall not be required to meet either the gross or net income eligibility standards.]

(3) All other households shall have their gross income (total income after excluded income has been disregarded but before any deductions have been made) compared to 130 percent of the federal income poverty guidelines and their net income compared to 100 percent of the federal income poverty guidelines.

Section 5. Income Deductions. The following shall be allowable income deductions:

(1) A standard deduction per household per month which shall be periodically adjusted by the Food and Consumer Service to reflect changes in the cost of living for a prior period of time as determined by the Food and Consumer Service;

(2) Twenty (20) percent of gross earned income that is reported within ten (10) days of the date that the change of income becomes known to the household;

(3) A payment:

(a) For the actual cost for the care of:

1. A child; or

2. Other dependent;

(b) Not to exceed:

1. \$200 per month per dependent child under age two (2); and

2. \$175 per month for each other dependent; and

(c) Necessary for a household member to:

1. Seek, accept, or continue employment;

2. Attend training; or

3. Pursue education preparatory to employment; [Payments

for the actual cost for the care of:

(a) A child; or

(b) Other dependent;

(c) Not to exceed:

1. \$200 per month per dependent child under age two (2); and

2. \$175 per month for each other dependent;

(d) When necessary for a household member to:

1. Seek, accept or continue employment;

2. Attend training; or

3. Pursue education preparatory to employment;

(4) [The monthly shelter cost deduction shall be determined as follows:

(a) Monthly shelter cost in excess of fifty (50) percent of the household's income after all other allowable deductions have been made;

(b) The shelter deduction shall not exceed the excess shelter maximum established by the Food and Consumer Service, except that households containing an elderly or disabled member shall not be subject to the maximum.

(c) The excess shelter maximum shall be adjusted periodically by the Food and Consumer Service to reflect changes in the cost of living for a prior period of time.

(d) Allowable monthly shelter expenses shall include the following expenses:

1. Continuing charges for the shelter occupied by the household, including rent, mortgage, or other continuing charges leading to the ownership of the shelter such as loan repayments for the purchase of a mobile home, including interest on the payments;

2. Property taxes, state and local assessments, and insurance on the structure itself, but no separate cost of insuring furniture or personal belongings;

3. The cost of:

a. Heating and cooking fuel;

b. Cooling;

c. Electricity;

d. Water and sewage;

e. Garbage and trash collection fees;

f. The telephone standard deduction; and

g. Fees charged by the utility provider for the initial installation of the utility;

4. The shelter costs for the home if temporarily not occupied by the household because of:

a. Employment or training away from home;

b. Illness; or

c. Abandonment caused by a natural disaster or casualty loss; and

d. If the household intends to return to the home;

e. The current occupants of the home are not claiming the shelter costs for food stamp purposes; and

f. The home is not leased or rented during the absence of the household; and

5. Charges for the repair of the home which was substantially damaged or destroyed due to a natural disaster such as a fire or flood, unless such costs are reimbursed by:

a. Private or public relief agencies;

b. Insurance companies; or

c. From any other source.

(e) The cabinet shall develop a standard utility allowance for use in calculating shelter cost for those households which receive Low Income Home Energy Assistance Program benefits or which incur heating or cooling (by air conditioning units only) costs separate and apart from their rent or mortgage payments.

(f) If the household is not entitled to the utility standard or the homeless [shelter] standard allowance, the household will be given the option of choosing between actual utility expenses and the basic utility allowance.

1. The basic utility allowance shall be adjusted annually; and

2. Shall be allowed as an option to a household that is billed for:

a. Electricity (nonheating and noncooling);

b. Water or sewage;

c. Garbage or trash; or

d. Cooking fuel.

(g) The standard utility allowance shall be adjusted at least annually to reflect changes in the cost of utilities.

~~(5)~~ ~~[(H)]~~ The cabinet shall use a homeless [shelter] standard allowance of shelter expenses for households in which all members are homeless and are not receiving free shelter throughout the calendar month, unless that household verifies higher expenses.

(5) Allowable medical expenses in excess of thirty-five (35) dollars per month incurred by a household member who meets the definition of being elderly or having a disability as specified by 904 KAR 3:010, Section 1(9) and (11):

(a) Including:

1. Medical and dental care;

2. Hospitalization or outpatient treatment and nursing care;

3. Medication and medical supplies;

4. Health and hospitalization premiums;

5. Dentures, a hearing aid, eyeglasses, prosthetics; and

6. Similar medical expenses; and

(b) Excluding special diet costs;

~~[(6)]~~ ~~[(5)]~~ Allowable medical expenses, excluding special diets, in excess of thirty-five (35) dollars per month incurred by any household member who meets the definition of being elderly or having a disability as specified by 904 KAR 3:010, Section 1(9) and (11) [(10)], including, but not limited to:



- (a) Medical and dental care;
- (b) Hospitalization or outpatient treatment and nursing care;
- (c) Medication and medical supplies;
- (d) Health and hospitalization premiums; and
- (e) Dentures, hearing aids, eyeglasses and prosthetics.]

(6) [(7)] [(6)] Actual child support payments made by a household member shall be allowed as a deduction if:

(a) The household member is legally obligated to pay child support; and

(b) Verification is provided showing payments are currently being made.

**Section 6. Monthly Shelter Cost Deduction.** (1) The monthly shelter cost deduction shall be that amount in excess of fifty (50) percent of the household's income after all allowable deductions have been made.

(2) The shelter deduction shall not exceed the excess shelter maximum of \$250, except that a household shall not be subject to the maximum if a member is:

- (a) Elderly; or
- (b) Disabled.

(3) The excess shelter maximum shall be adjusted periodically by the Food and Consumer Service to reflect change in the cost of living.

(4) Allowable monthly shelter expenses shall include the following:

(a) Continuing charges for the shelter occupied by the household including:

- 1. Rent;
- 2. Mortgage;
- 3. Payment on mobile home loan;
- 4. Interest on payments; and
- 5. Similar charges leading to ownership of the shelter;
- (b) Property taxes;
- (c) State and local assessments;
- (d) Insurance on the structure itself;
- (e) The cost of:

- 1. Heating and cooking fuel;
- 2. Cooling;
- 3. Electricity;
- 4. Water and sewage;
- 5. Garbage and trash collection fees;
- 6. Telephone standard deduction;
- 7. A fee charged by a utility provider for the initial installation of the utility;

(f) The shelter costs for the home if:

- 1. Temporarily unoccupied by the household because of:
  - a. Employment or training away from home;
  - b. Illness; or
  - c. Abandonment caused by a natural disaster or casualty loss;

2. The current occupants are not claiming shelter costs for food stamp purposes; and

3. The home is not leased or rented during the absence of the household;

(g) A charge for the repair of the home if substantially damaged or destroyed by fire, flood, or other natural disaster, except to the extent the costs are reimbursed by:

- 1. A private or public relief agency;
- 2. Insurance; or
- 3. A similar source;

(5) The standard utility allowance shall be used to calculate shelter cost for a household:

(a) Receiving Low Income Home Energy Assistance Program benefits; or

(b) Incurring costs, separate from its rent or mortgage payment, for:

1. Heating; or

2. Cooling (by air conditioning unit only).

(6) The standard utility allowance shall be:

- (a) \$168 for a household of one (1);
- (b) \$187 for a household of two (2);
- (c) \$189 for a household of three (3); and
- (d) \$196 for a household of four (4) or more;

(7) If the household is not entitled to the utility standard or homeless standard allowance, it shall be given the option of choosing the:

- (a) Actual utility expense; or
- (b) Basic utility allowance of \$122;
- (8) The basic utility allowance shall be:
  - (a) Adjusted annually; and
  - (b) Allowed as an option to a household billed for:
    - 1. Electricity (nonheating and noncooling);
    - 2. Water or sewage;
    - 3. Garbage or trash; or
    - 4. Cooking fuel.

**Section 7. [6-] Resources.** (1) Uniform national resource standards of eligibility shall be utilized.

(2) Eligibility shall be denied or terminated if the total value of a household's liquid and nonliquid resources, not exempt under Section 7 of this administrative regulation exceed:

- (a) \$3000 for all households with one (1) or more members, when at least one (1) member is sixty (60) years or older; or
- (b) \$2000 for any other household.

(3) A household which is categorically eligible as specified in Section 4(2) of this administrative regulation shall be considered as having met the food stamp resource requirement.

(4) A household member who receives benefits from Kentucky Transitional Assistance Program [Aid to Families with Dependent Children] or Supplemental Security Income shall be considered categorically eligible and to have satisfied the Food Stamp Program's resource limits as specified in subsection (2) of this section.

**Section 8. [7-] Exempt Resources.** The following resources shall not be considered in determining eligibility:

(1) The home and surrounding property which is not separated from the home by intervening property owned by others;

(2) Household goods;

(3) Personal effects;

(4) [including] One (1) burial plot per household member;

(5) [(4)] The cash value of life insurance policies; and

(6) [(5)] A pension fund, except:

(a) A Keogh plan that does not involve a contractual relationship with an individual who is not a household member; and

(b) An Individual Retirement Account; [Pension funds (except that Keogh plans which involve no contractual relationship with individuals who are not household members and Individual Retirement Accounts shall not be exempt);]

(7) The value of one (1) [(6)] prepaid burial plan per household member shall be excluded as follows:

(a) The entire value of a prepaid burial plan shall be excluded if, prior to the date the household member becomes eligible to participate in the Food Stamp Program, the money is not accessible to the household because it is held in an active irrevocable funeral trust agreement with the funeral home as the agent; or

(b) The equity value of a prepaid burial plan that is accessible to the household shall be excluded up to an amount of \$1,500; [plans if a contractual agreement for repayment must be signed in order to withdraw any funds;]

(8) [(7)] A licensed or unlicensed vehicle [vehicles] that is [are] excluded pursuant to [as specified in] Section 8 of this administrative regulation;

(9) [(8)] Property which annually produces income consistent with



its fair market value, even if only used on a seasonal basis;

(10) ~~(9)~~ Property which is essential to the employment or self-employment of a household member;

(11) ~~(10)~~ An installment contract ~~[Installment contracts]~~ for the sale of land or buildings if the contract or agreement is producing income consistent with its fair market value;

(12) ~~(11)~~ A governmental payment that is ~~[Any governmental payments which are]~~ designated for the restoration of a home damaged in a disaster, if the household is subject to legal sanction if funds are not used as intended;

(13) ~~(12)~~ A resource, of which the ~~[Resources whose]~~ cash value is not accessible to the household;

(14) ~~(13)~~ A resource which has ~~[Resources which have]~~ been prorated as income;

(15) ~~(14)~~ Indian lands held jointly with the tribe, or land that can be sold only with the approval of the Department of the Interior's Bureau of Indian Affairs;

(16) ~~(15)~~ A resource which is ~~[Resources which are]~~ excluded for food stamp purposes by express provision of federal statute;

(17) ~~(16)~~ Up to \$12,000 to Aleuts and \$20,000 to individuals of Japanese ancestry for payments made by the U.S. to compensate for hardships experienced during World War II;

(18) ~~(17)~~ Income which is withheld by the employer to pay certain expenses directly to a third party as a vendor payment to the extent that the remainder of the withheld income is not accessible to the household at the end of the year;

(19) ~~(18)~~ Indian per capita payments made pursuant to 25 USC 459, 25 USC 1261, and 25 USC 1401, as distribution from judgment awards and trust funds, of \$2,000 or less per individual per payment.

(20) ~~(19)~~ Purchases of \$2,000 or less which are made solely with Indian per capita payments after December 31, 1981 but prior to January 12, 1983;

(21) ~~(20)~~ The earned income tax credit income received by any member of the household for a period of twelve (12) months from receipt if the member was:

(a) Participating in the Food Stamp Program at the time the credits were received; and

(b) Participated in the program continuously during the twelve (12) month period of exclusion; and

(22) ~~(21)~~ A resource, except a vehicle, which cannot be sold for a significant amount of funds for the support of the household.

[Section 8. Vehicles. (1) The entire value of any licensed vehicle shall be excluded if the vehicle is:

(a) Used over fifty (50) percent of the time for income producing purposes;

(b) Annually producing income consistent with its fair market value, even if used only on a seasonal basis;

(c) Necessary for long distance travel, other than daily commuting, that is essential to the employment of a:

1. Household member; or

2. Ineligible alien; or

3. Disqualified person; if:

4. The resources of the individual are being considered available to the household.

(d) Used as the household's home;

(e) Necessary to transport a:

1. Household member with a physical disability, ineligible alien, or disqualified person, if:

a. The resources of the individual are being considered available to the household; and

b. Regardless of the purpose of the transportation.

2. The exclusion is limited to one (1) vehicle per physically disabled household member.

3. A vehicle shall be considered necessary for the transportation of a household member with a physical disability if:

a. The vehicle is specially equipped to meet the specific needs of

the person with a disability; or

b. The vehicle is a special type of vehicle that makes it possible to transport the disabled person; however

c. The vehicle need not have special equipment or be used primarily by or for the transportation of the household member with a physical disability to be excluded.

(f) The value of a vehicle that a household depends upon to carry fuel for heating or water for home use when such transported fuel or water is the primary source of fuel or water for the household;

(2) The exclusion in subsection (1)(a) through (d) of this section shall apply when the vehicle is not in use because of temporary unemployment.

(3) A licensed vehicle not excluded under subsection (1) of this section shall:

(a) Individually be evaluated for fair market value; and

(b) That portion of the value which exceeds \$4,650 [4550] shall be attributed in full toward the household's resource level, regardless of any encumbrances on the vehicles.

(4) A licensed vehicle shall also be evaluated for its equity value, except for:

(a) A vehicle excluded in subsection (1) of this section;

(b) One (1) licensed vehicle per household, regardless of the use of the vehicle; and

(c) Any other vehicle used to transport:

1. A household member; or

a. An ineligible alien; or

b. A disqualified household member; whose

c. Resources are being considered available to the household;

2. To and from:

a. Employment; or

b. Training; or

c. Education which is preparatory to employment; or

d. To seek employment in compliance with the Food Stamp Employment and Training Program as specified in 904 KAR 3:042 [3:041].

(5) A vehicle customarily used to commute to and from employment shall be covered by this equity exclusion during a temporary period of unemployment.

(6) The equity value of a licensed vehicle not covered by this exclusion, and of an unlicensed vehicle not excluded by Section 7(7);

(8) and (9) of this administrative regulation shall be attributed toward the household's resource level.

(7) In the event a licensed vehicle is assigned both a fair market value in excess of \$4,650 [4,550] and an equity value, only the greater of the two (2) amounts shall be counted as a resource.]

Section 9. Vehicles. (1) The entire value of a licensed vehicle shall be excluded from the resources of a household if it is:

(a) Used for an income producing purpose over fifty (50) percent of the time;

(b) Annually producing income consistent with its fair market value, even if used only on a seasonal basis;

(c) Necessary for long distance travel, other than daily commuting, essential to the employment of a:

1. Household member;

2. Ineligible alien; or

3. Disqualified person;

(d) Used as the household's home;

(e) Necessary to transport, regardless of the purpose, a:

1. Household member with a physical disability;

2. Ineligible alien; or

3. Disqualified person;

(f) The sole means to carry:

1. Fuel for heating the home; or

2. Water for home use;

(2) The exclusion in subsection (1)(a) through (e) of this section shall be applicable if a vehicle is not in use because of

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### temporary unemployment;

(3) The exclusions under subsection (1)(c) and (e) of this section shall be:

(a) Applicable if the resources of the individual are being considered available to the household; and

(b) Limited to one (1) vehicle per physically disabled household member;

(4) A vehicle shall be considered necessary for the transportation of a household member with a physical disability, regardless of special equipment, if it:

(a) Meets the specific needs of the person with a disability;  
or

(b) Makes it possible to transport the disabled person;

(5) A licensed vehicle not excluded under subsection (1) of this section shall be:

(a) Individually evaluated for fair market value; and

(b) Attributed in full toward the household's resource level:

1. For that portion of the value exceeding \$4,650; and

2. Regardless of the amount of an encumbrance on the vehicle;

(6) A licensed vehicle shall be evaluated for its equity value, unless it is:

(a) Excluded in subsection (1) of this section;

(b) The only licensed vehicle for the household, regardless of use;

(c) Used:

1. As transportation for:

a. Employment;

b. Training;

c. Education preparatory to employment; or

d. Seeking employment in compliance with the Food Stamp

Employment and Training Program, pursuant to 904 KAR 3:042;  
or

2. By the following, whose resources are considered available to the household:

a. Household member;

b. Ineligible alien; or

c. Disqualified household member;

(7) A vehicle customarily used to commute to and from employment shall be covered by this equity exclusion during a temporary period of unemployment;

(8) The following shall be attributed to a household's resource level:

(a) The equity value of a licensed vehicle not covered by this exclusion; and

(b) An unlicensed vehicle not excluded by Section 7(8) through (10) of this administrative regulation;

(9) If a licensed vehicle is assigned a fair market value in excess of \$4,650 and an equity value, the greater of these two (2) amounts shall be counted as a resource.

Section 10. [9.] Transfer of Resources. A household which has transferred resources knowingly for the purpose of qualifying or attempting to qualify for food stamps shall be disqualified from participation in the program for up to one (1) year from the date of the discovery of the transfer.

Section 11. [40.] Failure to Comply with Other Programs. (1) Except as provided in subsection (2) of this section, if the benefits of a household are reduced under a federal, state, or local law relating to a means-tested public assistance program for the failure of a member of the household to perform an action required under the law or program, for the duration of the reduction, the food stamp allotment of the household shall be reduced by twenty-five (25) percent.

(2) If the benefits of a household are reduced pursuant to a federal, state, or local law relating to a means-tested public assistance program for the failure of a household member to perform a

work requirement, the individual shall be subject to the disqualification procedures pursuant to the 904 KAR 3:042.

JOHN L. CLAYTON, Commissioner

VIOLA P. MILLER, Secretary

APPROVED BY AGENCY: June 11, 1997

FILED WITH LRC: June 13, 1997 at 11 a.m.

### CABINET FOR FAMILIES AND CHILDREN

Department for Social Insurance

Division of Management and Development

(As Amended)

### 904 KAR 3:042. Food Stamp Employment and Training Program.

RELATES TO: KRS 194.050, 7 CFR 273.7, 7 USC 2015(d) [PL 403-66]

STATUTORY AUTHORITY: KRS 194.050, EO 96-862

NECESSITY, FUNCTION, AND CONFORMITY: Executive Order 96-862, effective July 2, 1996, reorganized the Cabinet for Human Resources and placed the Department for Social Insurance and its programs under the Cabinet for Families and Children. The Cabinet for Families and Children is required to administer a Food Stamp Employment and Training Program. KRS 194.050 provides that the secretary shall, by administrative regulation, develop policies and operate programs concerned with the welfare of the citizens of the Commonwealth. This administrative regulation sets forth the technical eligibility requirements used by the cabinet in the administration of the Food Stamp Employment and Training Program. [Administrative regulation 904 KAR 3:041 has expired and this administrative regulation corrects a deficiency on that administrative regulation that was found by the Interim Joint Committee on Health and Welfare by deleting an age factor to the priority status criteria listed in Section 3(2) of this administrative regulation.]

Section 1. Definitions. (1) "Conciliation" means a fifteen (15) day period that is used to determine why noncompliance with food stamp employment and training requirements occurred.

(2) "Exempt" means an individual who is excused by the agency from participation in the employment and training program.

(3) ["Primary wage earner" means the household member providing the most earned income in the prior two (2) months.

(4) "Voluntary quit" means the household member voluntarily and without good cause quits a job of twenty (20) hours or more a week. [self-termination of employment by a household member on a voluntary basis.]

(4) "Voluntary reduction in work effort" means the:

(a) Household member reduces his work effort; and

(b) After the reduction, the individual is working less than thirty (30) hours per week.

Section 2. Work Registration. (1) Except those meeting exempt criteria in subsection (4) of this section, all household members shall be required to register for work:

(a) At the initial application for food stamps; and

(b) Every twelve (12) months following the initial application.

(2) Work registration shall be completed by:

(a) The member required to register; or

(b) The person making application for the household.

(3) Unless otherwise exempt, a person who is an [persons who are] excluded household member [members] of the food stamp case, shall be required to register for work during periods of disqualification, including an: [-These individuals are:]

(a) Ineligible alien [aliens];

(b) Individual [Individuals] disqualified for refusing to provide or

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apply for a Social Security number; and

(c) Individual ~~[Individuals]~~ disqualified for intentional program violation.

(4) The following shall be exempt from work registration requirements:

(a) A person:

1. Younger than sixteen (16) years of age; or

2. ~~[a person]~~ Sixty (60) years of age or older;

(b) A person age sixteen (16) or seventeen (17) who is:

1. Not a head of a household;

2. ~~[or who is]~~ Attending school; or

3. Enrolled in an employment training program on at least a half-time basis;

(c) A person with a physical or mental disability;

(d) A household member subject to and complying with any work requirement in the Kentucky Transitional Assistance Program (K-TAP) ~~[Aid to Families with Dependent Children Program]~~;

(e) A parent or other household member who is responsible for the care of:

1. A dependent child under age six (6); or

2. An incapacitated person;

(f) A person who:

1. Receives unemployment compensation; or

2. ~~[a person who]~~ Has applied for, but ~~[has]~~ not yet received, ~~[began to receive,]~~ unemployment compensation, if he was required ~~[that person was required]~~ to register for work with the Department for Employment Services as a part of the unemployment compensation application process;

(g) A regular participant in a:

1. Substance abuse program; or

2. Alcohol treatment and rehabilitation program;

(h) A person who is employed or self-employed and:

1. Working a minimum of thirty (30) hours weekly; or

2. Receiving weekly earnings at least equal to the federal minimum wage multiplied by thirty (30) hours;

(i) A migrant or seasonal farm worker who:

1. Meets the criteria in paragraph (h) of this subsection; and

2. Is under contract or similar agreement with an employer or crew chief to begin employment within thirty (30) days; or

(j) A student enrolled at least half time in any recognized school, training program, or institution of higher education, if one (1) meeting student status has ~~[provided that those meeting student status have]~~ met the eligibility conditions in 904 KAR 3:025, Section 3.

(5) A household member who loses exemption status due to a change in circumstances that are subject to the reporting requirements of the Food Stamp Program shall work register:

(a) When the change is reported, if the change is:

1. A change in the source of income or in the amount of gross monthly income totaling more than twenty-five (25) dollars, unless the amount change is in a K-TAP ~~[an Aid to Families with Dependent Children]~~ grant;

2. Any change in household composition, including the addition or loss of a household member;

3. A change in residence and the resulting change in shelter costs;

4. The acquisition of a nonexempt licensed vehicle or loss of a vehicle exemption for a household member who has a physical disability;

5. A change in total resources that reach or exceed the allowable maximum; or

(b) At the household's next recertification if the change in circumstance involves a change not subject to reporting requirements in paragraph (a) of this subsection.

(6) All nonexempt household members shall be subject to the following work requirements:

(a) Keep the initial assessment interview;

(b) Provide requested verification by mail or in person by

completing the following forms:

1. J/ET-108, "Job Search Contact Report"; or

2. ET-111, "Employment and Training Program Verification Form";

(c) Participate in a Food Stamp Employment and Training Program if assigned;

(d) Respond to any request for additional information regarding employment status or availability for work;

(e) If potential employment is not unsuitable in accordance with Section 8 of this administrative regulation, report to an employer referred to by the food stamp employment and training worker or designee ~~[Report to an employer if referred by the food stamp employment and training worker or designee provided that the potential employment is not unsuitable as designated in Section 8 (7) of this administrative regulation]; and~~

(f) Accept a bona fide offer of suitable employment at a wage not less than state or federal minimum wage.

(7) A household member who is exempt or ~~[Household members who are exempt or those]~~ completing the work registration requirements may volunteer to participate in the Food Stamp Employment and Training Program.

(8) The food stamp employment and training worker shall explain to the food stamp applicant:

(a) The work requirements for each nonexempt household member;

(b) The rights and responsibilities of the work registered household members; and

(c) The consequences of failing to comply.

(9) Each household member required to register shall be provided an ET-101, "Food Stamp Employment and Training Program Fact Sheet". ~~[notified in writing of the requirements in subsection (6) of this section.]~~

Section 3. Employment and Training Participation. (1) A work registrant who resides in a county offering a Food Stamp Employment and Training Program shall participate in the program based upon a priority status. ~~[Work registrants who reside in a county which offers a Food Stamp Employment and Training Program shall be required to participate in the Food Stamp Employment and Training Program based on priority status.]~~

(2) Priority status shall be determined from whether a work registrant:

(a) Has:

1. A high school diploma;

2. A general equivalency diploma (GED); or

3. Not had employment in the last twelve (12) months;

(b) Is:

1. A veteran; or

2. Subject to the work requirement pursuant to 904 KAR 3:025, Section 3(8). ~~[Priority status shall be determined if the work registrant:~~

~~(a) Has no high school diploma or general equivalency diploma (GED);~~

~~(b) Has no employment in the last twelve (12) months; [or]~~

~~(c) Is a veteran; or~~

~~(d) Is subject to the work requirement pursuant to 904 KAR 3:025, Section 3(8).]~~

(3) A food stamp employment and training participant shall:

(a) Be placed in:

1. Education;

2. Skills training;

3. Job search activities; or

4. Workfare;

(b) If otherwise eligible, be reimbursed for:

1. Miscellaneous expenses incurred while participating up to twenty-five (25) dollars per month; and

2. Dependent care expenses, in accordance with subsection

(4) of this section; and

(c) Complete and file with the department an ET-111, "Employment and Training Program Verification Form" to be reimbursed pursuant to paragraph (b) of this subsection.

(4) The child care maximum payments as specified in 904 KAR 2:017, shall not exceed:

(a) \$200 per month, per child under two (2) years of age; or

(b) \$175 per month, per child for all other eligible dependent children for child care expenses incurred on or after September 1, 1994. [Food stamp employment and training participants shall:

(a) Be placed in education, skills training, [or] job search activities, or workfare;

(b) Be reimbursed for miscellaneous and dependent care expenses, if otherwise eligible, up to:

1. The child care maximum payments as specified in 904 KAR 2:017 not to exceed \$200 per month per child under two (2) years of age or \$175 per month per child for all other eligible dependent children for child care expenses incurred on or after September 1, 1994; and

2. Twenty five (25) dollars a month for miscellaneous expenses incurred while participating in the Food Stamp Employment and Training Program.]

(5) A participant who does not meet the criteria in subsection (2) of this section shall not be selected to participate in a food stamp employment and training component unless they insist upon participating.

(6) If a participant withdraws or is terminated, voluntarily or involuntarily from the program, he shall:

(a) Be provided with one (1) of the following forms:

1. ET-102 Supplement A, "Employment and Training Program Noncompliance/Good Cause Reimbursement Verification" form;

2. ET-114, "Notice of Termination from the Employment and Training Program"; or

3. ET-116, "Notice of Voluntary Participant Termination from the Food Stamp Employment and Training Program"; and

(b) Complete and file the applicable form with the department to be reimbursed in accordance with subsection (3)(b) of this section.

[(4) Those participants who do not meet the criteria in subsection (2) of this section shall not be selected to participate in a Food Stamp Employment and Training component unless they are adamant about participating.]

Section 4. Components. (1) A county [All counties] offering the Employment and Training Program shall offer the following services and activities:

(a) [(4)] Educational components including [shall be]:

1. [(a)] Literacy programs;

2. [(b)] Adult basic education (ABE);

3. [(c)] General equivalency diploma (GED); and

4. [(d)] Community college.

(b) [(2)] Skills training components including [shall be]:

1. [(a)] Vocational school;

2. [(b)] On-the-job training; and

3. [(c)] Kentucky Domestic Violence Association (KDVA).

(c) [(3)] Job search components including [shall be]:

1. [(a)] Job seeking skills training;

2. [(b)] Group job search; and

3. [(c)] Individual job search;

(d) A workfare component titled the Work Experience Program (WEP).

(2) An individual participating in the JOB search components of subsection (1)(c) of this section shall complete and file with the department the following forms:

(a) J/ET 108, "Job Search Contact Report"; and

(b) ET-111, "Employment and Training Program Verification Form".

(3) [(2)] An individual who selects to participate in the WEP component, pursuant to subsection (1)(d) of this section, shall be considered to have satisfied the work requirement pursuant to 904 KAR 3:025, Section 3(8), by:

(a) Accepting the offer of a work site placement established by the Department for Employment Services; and

(b) Working at the assigned work site placement for the minimum monthly number of required hours pursuant to subsection (3) or (4) of this section.

(4) [(3)] The minimum number of hours that a WEP participant shall perform each month to satisfy the work requirement pursuant to 904 KAR 3:025, Section 3(8), shall be determined by comparing the monthly food stamp allotment to the Work Experience Program table that is incorporated into this administrative regulation by reference.

(5) [(4)] If the food stamp household's active members include more than one (1) individual who wants to satisfy the work requirement pursuant to 904 KAR 3:025, Section 3(8), through WEP, the minimum monthly number of work hours that each individual is required to perform shall be determined by:

(a) Dividing the food stamp allotment by the number of individuals who are subject to the work requirement; and

(b) Comparing the individual pro rata share of the food stamp allotment to the Work Experience Program table.

Section 5. Conciliation. (1) If [When] a food stamp employment and training participant fails to comply with Food Stamp Employment and Training Program: [requirements, a conciliation period shall be initiated.]

(a) He shall complete and file with the department an ET-102, "Conciliation Contact and Request for Information" form; and

(b) A conciliation period shall be initiated.

(2) Conciliation shall be used to:

(a) Determine the reason for the noncompliance; and

(b) Allow the participant the opportunity to resolve the problem in order to continue participation.

(3) Conciliation shall last [lasts] for fifteen (15) days and in that time the food stamp employment and training worker shall:

(a) Determine good cause for noncompliance; or

(b) Encourage the participant to resume food stamp employment and training activity; or

(c) Recommend disqualification for failure to comply with program requirements.

(4) If the participant resumes food stamp employment and training activity, application of a sanction shall not be required [no further action is required toward applying a sanction].

(5) If conciliation is unsuccessful and the participant does not provide good cause or refuses to comply, a disqualification shall be imposed.

Section 6. Determining Good Cause. (1) Good cause shall be determined in instances where:

(a) The work registrant has failed to comply with:

1. [(a)] Work registration requirements pursuant to [as specified in] Section 2 [(4)] of this administrative regulation;

2. [(b)] Employment and training requirements pursuant to [as specified in] Section 3 of this administrative regulation; or

(b) Pursuant to Sections 1 and 9 of this administrative regulation, the household member has voluntarily and without good cause:

1. Quit a job; or

2. Reduced his work effort.

[(c) Voluntary quit requirements as specified in Section 9 of this administrative regulation.]

(2) Good cause for an individual described in subsection (1) of this section [failing to meet work registration and employment and training requirements] shall take into consideration the [include] circumstances beyond the control of the individual, [registrant] including:

- (a) Illness;
- (b) Illness of another household member requiring the presence of the registrant;
- (c) A household emergency;
- (d) Unavailability of transportation; and
- (e) Inadequate child care for children who have reached age six (6) but are under age twelve (12).

Section 7. Disqualification. [Sanctions in the Food Stamp Employment and Training Program.] (1) Disqualifications shall be imposed on a household member who is [as follows]:

(a) A mandatory participant who [If the nonprimary wage earner] fails to comply with the food stamp employment and training requirements, including work registration; or

(b) [He] Determined to have voluntarily and without good cause quit a job or reduced the work effort pursuant to Sections 1 and 9 of this administrative regulation.

(2) An individual disqualified from participation in the Food Stamp Program, pursuant to subsection (1) of this section, shall be ineligible to receive food stamp benefits until the latter of:

(a) The date the individual complies; or

(b) The following:

1. Two (2) months for the first violation;

2. Four (4) months for the second violation; or

3. Six (6) months for the third or subsequent violation. [An individual who is determined to be disqualified from participation in the Food Stamp Program pursuant to subsection (1) of this section, the individual] shall be ineligible to receive food stamp benefits until the latter of the date the individual complies; or

(a) [for] Two (2) months for the first violation;

(b) Four (4) months for the second violation; and

(c) Six (6) months for the third or any subsequent violation.]

(b) If the primary wage earner fails to comply with food stamp employment and training requirements, the entire household shall be ineligible to receive food stamp benefits for two (2) months.]

(3) [(2)] Following the minimum period of ineligibility, pursuant to subsection (2) of this section, a disqualified member shall:

(a) Make reapplication for food stamps; or

(b) Request that he be added to an active food stamp case to initiate a cure for his noncompliance. [If a disqualification is imposed, the disqualified member shall make reapplication for food stamps or request that the member be added to an active food stamp case to initiate a cure for noncompliance following the minimum period of ineligibility pursuant to subsection (2) of this section.]

(4) [(3)] Ineligibility pursuant to subsection [as outlined in subsections (1) and] (2) of this section shall continue [continues] until the ineligible member:

(a) Becomes exempt from the work registration; or [Leaves the household;]

(b) Serves the disqualification period pursuant to subsection (2) of this section; and [Becomes exempt from work registration;]

(c) Complies with the requirements of:

1. Work registration [requirements]; or

2. The Employment and Training Program.

[(d) The two (2) month disqualification period expires, whichever occurs first;]

(5) A disqualified [(4) If an ineligible] household member who joins a new household shall be treated as follows: [and;]

(a) He [The disqualified member] shall remain [Is the primary wage earner, the entire new household then becomes] ineligible for the remainder of the disqualification period pursuant to subsection (2) of this section; and [-or]

(b) His [The disqualified individual's] income and resources shall be counted [together] with the income and resources of the new household; and [Is not the primary wage earner, only he remains ineligible for the remainder of the disqualification period.]

(c) He [The disqualified individual] shall not be included in the household size when determining the food stamp allotment.

Section 8. Unsuitable Employment. Employment shall be considered unsuitable by the agency if:

(1) The wage offered is less than the highest of the following:

(a) The applicable:

1. Federal minimum wage; or

2. State minimum wage; or

(b) Eighty (80) percent of the federal minimum wage if the federal or state minimum wage is not applicable. [The wage offered is less than the highest of the following:

(a) The applicable federal minimum wage;

(b) The applicable state minimum wage; or

(c) Eighty (80) percent of the federal minimum wage if neither the federal nor state minimum wage is applicable.]

(2) The employment offered is on a piece-rate basis and the average hourly yield the employee can reasonably expect to earn is less than the applicable hourly wage specified in subsection (1) of this section.

(3) The household member, as a condition of employment or continuing employment, is required to join, resign from, or refrain from joining any legitimate labor organization.

(4) The work offered is at a site subject to a strike or lockout at the time of the offer, unless the strike has been enjoined under 29 USC 178 and 45 USC 152.

(5) The household member or worker involved can demonstrate that:

(a) The degree of risk to health and safety is unreasonable;

(b) He is physically or mentally unsuited to perform the employment as documented by:

1. Medical evidence; or

2. Reliable information from another source;

(c) The employment offered within the first thirty (30) calendar days of registration is not in the member's major field of experience;

(d) Daily commuting time exceeds two (2) hours per day, not including transportation of a child to and from a child care facility;

(e) The distance to the place of employment:

1. Prohibits walking; and

2. Public and private transportation to the job site is unavailable;

(f) The working hours or nature of the employment interferes with the member's religious:

1. Observances;

2. Convictions; or

3. Beliefs. [In addition, employment shall be considered unsuitable if the household member involved can demonstrate or the worker otherwise becomes aware that:

(a) The degree of risk to health and safety is unreasonable;

(b) The member is physically or mentally unsuited to perform the employment. This shall be documented by medical evidence or by reliable information from other sources;

(c) The employment offered within the first thirty (30) calendar days of registration is not in the member's major field of experience as demonstrated by the individual or if the worker otherwise becomes aware;

(d) Daily commuting time exceeds two (2) hours a day, not including transporting a child to and from a child care facility;

(e) The distance to the place of employment prohibits walking and neither public nor private transportation is available to transport the member to the job site; or

(f) The working hours or nature of the employment interferes with the member's religious observances, convictions or beliefs.]

Section 9. Voluntary Quit. (1) An individual shall not be eligible

to participate in the program if:

(a) He meets the definition of:

1. Voluntary quit, pursuant to Section 1(3) of this administrative regulation; or

2. Voluntary reduction in work effort, pursuant to Section 1(4) of this administrative regulation; and

(b) The voluntary quit or reduction in work effort is done:

1. Without good cause; and

2. Within sixty (60) days of food stamp application. [An individual who meets the definition of voluntary quit or voluntary reduction in work effort, pursuant to Section 1(3) and (4) of this administrative regulation, [A primary wage earner who voluntarily quits a job of twenty (20) hours or more a week] without good cause sixty (60) days or less prior to the date of food stamp application shall not be eligible to participate in the program.]

(2) The disqualification period for an individual described in subsection (1) of this section shall be imposed pursuant to Section 7 of this administrative regulation. [voluntary quit shall be:

(a) Ninety (90) days from the date of quit if the individual is an applicant; and

(b) Ninety (90) days beginning with the first of the month after all normal procedures for taking adverse action have been taken if the individual is in an active food stamp case.]

(3) Good cause for leaving employment shall include [includes] criteria in Section 6 of this administrative regulation and the following:

(a) Discrimination by the employer based on:

1. Age;
2. Race;
3. Sex;
4. Color;
5. Disability;
6. Religious beliefs;
7. National origin; or
8. Political beliefs;

(b) Work demands or conditions that render continued employment unreasonable, as in working without being paid on time;

(c) Acceptance of employment by the individual [head of household], or enrollment of at least half time in any recognized school, training program or institution of higher education, that requires the individual [head of household] to leave employment;

(d) Acceptance of employment by any other household member or enrollment at least half time in any recognized school, training program or institution of higher education in another county or similar political subdivision which requires the individual [head of household] to leave employment;

(e) Resignation of a person [Resignations of persons] under age sixty (60) which are recognized by the employer as retirement;

(f) Employment which becomes unsuitable by not meeting criteria in Section 8 after the acceptance of the employment;

(g) Acceptance of a bona fide offer of employment;

1. Of;

a. More than twenty (20) hours a week; or

b. In which the weekly earnings are equivalent to the federal minimum wage multiplied by twenty (20) hours; and

2. That, [which,] because of circumstances beyond the control of the household member [primary wage earner];

a. [subsequently either] Does not materialize; or

b. Results in employment of less than that listed in subparagraph 1 of this paragraph. [twenty (20) hours a week or weekly earnings of less than the federal minimum wage multiplied by twenty (20) hours; and]

(h) Leaving a job in connection with patterns of employment in which workers frequently move from one (1) employer to another as in migrant farm labor or construction work.

(4) Good cause for voluntary quit or reduction in work effort shall be verified if questionable.

Section 10. Curing Disqualification [Sanction] for Voluntary Quit or Reduction in Work Effort. (1) An individual [A household] may begin participation in the Food Stamp Program following the voluntary quit disqualification period, pursuant to Section 7(2) of this administrative regulation, if he [it] applies again and is determined eligible.

(2) Following the minimum period of disqualification imposed pursuant to Section 7(2) of this administrative regulation, eligibility and participation may be reestablished by:

(a) Securing new employment comparable to the job quit in terms of:

1. Salary; or

2. Hours; and

(b) Increasing the number of hours worked, to the amount worked prior to the work effort reduction and disqualification.

[Eligibility may be reestablished following the minimum period of disqualification imposed pursuant to Section 7(2) of this administrative regulation [during a disqualification period] and the household member shall, if otherwise eligible, be allowed to resume participation if he [the member who caused the disqualification]:

(a) Secures new employment which is comparable in salary or hours to the job which was quit; or

(b) Increases the number of work hours that he was working prior to the reduction in work effort that caused the imposition of the disqualification period.]

(3) If an individual becomes exempt from work registration, the disqualification period imposed pursuant to Section 7(2) of this administrative regulation shall end and the individual shall be eligible to apply to participate in the Food Stamp Program. [Leaves the household.

(3) A work registrant who:

(a) Is required to participate in the:

1. Food Stamp Employment and Training Program; or

2. Aid to Families with Dependent Children, Job Opportunities and Basic Skills Program as specified in 904 KAR 2:006 and 904 KAR 2:370; and

(b) If fails to participate shall be ineligible to receive food stamp benefits for two (2) months unless:

1. Good cause exists;

2. The noncompliant individual was participating in a Job Opportunities and Basic Skills Program component which is more stringent than the components of the Food Stamp Employment and Training Program; or

3. The noncompliant Job Opportunities and Basic Skills Program participant is otherwise exempt from work registration in the Food Stamp Employment and Training Program.

(e) An individual who is not sanctioned in the Food Stamp Program as meeting the criteria in paragraph (b)2 of this subsection shall be work registered in the Food Stamp Employment and Training Program unless otherwise exempt by subsection 2 of this section.]

Section 11. Hearing Process. If aggrieved by an action that affects participation, a work registrant may request a hearing in accordance with 904 KAR 3:070. [Work registrants shall have the same opportunity to request a hearing pursuant to [as specified in] 904 KAR 3:070.]

Section 12. To have a reimbursement check for employment or training replaced after loss or theft, a person shall complete and file with the department an ET-112, "Affidavit" form. [Replacements for employment and training reimbursement checks that are lost or stolen shall be made by completing appropriate forms.]

Section 13. The Community Service Program (CSP). (1) An individual who participates in CSP shall be considered to have satisfied the work requirement pursuant to 904 KAR 3:025, Section 3(8), by:

(a) Establishing a work placement with a public or private



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nonprofit community service agency;

(b) Working, at a minimum, for the community service agency the required number of hours pursuant to subsections (2) or (3) of this section;

(c) Providing verification from the community service provider of:  
1. The number of hours of community service that the individual intends to perform each month; and

2. At each subsequent recertification or change in household composition, the number of community service hours that the individual actually performed during the certification period.

(2) The number of hours of community service that an individual shall perform each month to satisfy the work requirement pursuant to 904 KAR 3:025, Section 3(8), shall be determined by comparing the monthly food stamp allotment to the Community Service Program table that is incorporated into this administrative regulation by reference.

(3) If the food stamp household's active members include more than one (1) individual who wants to satisfy the work requirement pursuant to 904 KAR 3:025, Section 3(8), through CSP, the monthly number of community service hours that each individual shall perform shall be determined by:

(a) Dividing the food stamp allotment by the number of individuals who are subject to the work requirement; and

(b) Comparing the individual pro rata share of the food stamp allotment to the Community Service Program table.

(4) Choosing to satisfy the work requirement pursuant to 904 KAR 3:025, Section 3(8), through CSP shall be [is]:

(a) Voluntary; and

(b) Self-initiated.

Section 14. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Food Stamp Employment and Training Program Fact Sheet" ET-101, (7/93 edition), Department for Employment Services;

(b) "Conciliation Contact and Request for Information" ET-102, (8/93 edition), Department for Employment Services;

(c) "Employment and Training Program Noncompliance/Good Cause Reimbursement Verification" ET 102 Supplement A, (7/95 edition), Department for Employment Services;

(d) "Job Search Contact Report" J/ET 108, (7/95 edition), Department for Employment Services;

(e) "Employment and Training Program Verification Form" ET 111, (7/93 edition), Department for Employment Services;

(f) "Affidavit" ET-112, (10/90 edition), Department for Employment Services;

(g) "Notice of Termination from the Employment and Training Program" ET-114, (7/95 edition), Department for Employment Services;

(h) "Notice of Voluntary Participant Termination from the Food Stamp Employment and Training Program" ET-116, (7/95 edition), Department for Employment Services;

(i) "The Community Service Program Table", (2/97 edition), Department for Employment Services;

(j) "The Work Experience Program Table", (3/97 edition), Department for Employment Services.

(2) This material may be inspected, copied, or obtained at the Department for Social Insurance, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m. [Material incorporated by reference. (1) Forms necessary for participation in the Food Stamp Employment and Training Program are being incorporated. These forms include:

(a) ET-101, revised 7/93;

(b) ET-102, revised 8/93;

(c) ET-102 Supplement A, revised 7/95 [12/91];

(d) J/ET-108, revised 7/95 [9/91];

(e) ET-111, revised 7/93;

(f) ET-112, revised 10/90;

(g) ET-114, revised 7/95 [12/91];

(h) ET-116, revised 7/95;

(i) The Community Service Program Table, issued 2/97;

(j) The Work Experience Program Table, issued 3/97, [12/93.]

(2) Material incorporated by reference may be inspected and copied at the Department for Social Insurance, 275 East Main Street, Frankfort, Kentucky 40621. Office hours are 8 a.m. to 4:30 p.m.]

JOHN L. CLAYTON, Commissioner

VIOLA P. MILLER, Secretary

APPROVED BY AGENCY: June 11, 1997

FILED WITH LRC: June 13, 1997 at 11 a.m.

## CABINET FOR HUMAN RESOURCES

Department for Medicaid Services

Division of Administration

and Development

(As Amended)

907 KAR 1:645. Resource standards for Medicaid.

RELATES TO: KRS 205.520, 42 CFR Part 435

STATUTORY AUTHORITY: KRS 194.050, 205.520, [42-CFR 435;] EO 96-862

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health Services, Department for Medicaid Services has responsibility to administer the Medicaid Program. 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 authorizes [empowers] the cabinet, by administrative regulation, to comply with a [any] requirement that may be imposed, or opportunity presented, by federal law for the provision [provisions] of medical assistance to Kentucky's indigent citizenry. This administrative regulation establishes the [sets forth] resource standards for determining eligibility for Medicaid. [by which eligibility is determined.]

Section 1. Definitions. (1) "ABD" means an individual who is aged, blind, or has a disability.

(2) "K-TAP" is [means as] defined in 907 KAR 1:011.

(3) "Poverty level guidelines" means the official poverty income guidelines promulgated by the Department of Health and Human Services, United States government, pursuant to the provisions of 42 USC 9902(2). [that are revised annually.]

(4) "Real property" means land or an interest in land with an improvement, permanent fixture, mineral, or appurtenance [any improvements, permanent fixtures, minerals, or appurtenances] considered to be a permanent part of the land, and a building [buildings] with an improvement or permanent fixture [any improvements or permanent fixtures] attached.

(5) "Resources" mean cash money and [any] other personal property or real property that an individual owns; has the right, authority or power to convert to cash; and is not legally restricted for support and maintenance.

(6) "SSI" means the Social Security Administration Program called supplemental security income.

Section 2. Resource Limitations. (1) For the medically needy as defined [described] in 907 KAR 1:011, the upper limit for resources for a family size of one (1) and for family size of two (2) shall be [is set at] \$2,000 and \$4,000 respectively, with fifty (50) dollars for each additional member.

(2) For a pregnant woman or a child [women and children] meeting the following criteria, resources shall be disregarded:



- (a) A child under age one (1);
- (b) A child who is at least [Children] age one (1) but under age six (6);
- (c) A child who is at least [Children] age six (6) but under age nineteen (19) born after September 30, 1983 who is [is] eligible under federal poverty level guidelines.
- (3) For a qualified Medicare beneficiary [beneficiaries], specified low-income Medicare beneficiary, or [beneficiaries and] qualified working disabled individual [working individuals], resources shall be limited to twice the allowable amount for the SSI Program.
- (4) For a pass-through recipient [recipients] as defined [described] in 907 KAR 1:640, resources shall be limited to the allowable amounts for the SSI Program.

Section 3. Resource Exclusions. (1) A homestead, occupied or abandoned, household, personal effects, and farm equipment without limitation on value shall be excluded from consideration.

(2) Equity of \$6,000 in income-producing, nonhomestead real property, business or nonbusiness, essential for self-support, shall be excluded from consideration. The value of property (including the tools of a tradesperson and the machinery and livestock of a farmer) that is essential for self-support for the individual or spouse, or family group in the instance of a family [families] with a child [children], and which is used in a trade or business or by the individual or member of the family group as an employee shall be excluded from consideration as a resource.

(3) For a family related Medicaid case [eases], the value of other-wise countable real property (whether income producing or non-income producing) shall [may] be excluded from consideration for six (6) months if the individual can demonstrate that he is trying to dispose of the property properly. An additional three (3) months shall [may] be allowed for the disposal at the request of the recipient if efforts to dispose of the property within the six (6) month period have been unsuccessful.

(4) For an ABD Medicaid case [eases], real property or nonreal property shall be excluded from consideration if it can be demonstrated that there was a reasonable effort to sell the property at fair market value within a year of application for Medicaid.

(5) (a) Except as provided in paragraph (b) of this subsection, equity of \$4,500 in an automobile [automobiles] shall be excluded from consideration.

(b) If an automobile is used for employment, to obtain medical treatment of a specific or regular medical problem, or if specially equipped for use [(for example, used] by an individual with a disability the total value of the automobile shall be excluded.

(6) A burial reserve [Burial-reserves] of up to \$1,500 per individual, which may be in the form of a burial agreement[(s)], prepaid burial [burials] or similar arrangement [arrangements], trust fund[(s)], life insurance policy [policies], or other identifiable fund [funds] shall be excluded from consideration.

(a) The cash surrender value of life insurance shall be considered if [when] determining the total value of burial reserves.

(b) If a burial fund is [burial funds are] commingled with another fund [funds], the applicant shall have [has up to] thirty (30) days to separately identify the burial reserve amount.

(c) Interest or other appreciation of value of an excluded burial reserve or space shall be excluded as a resource if the amount is left to accumulate as a part of the burial reserve or space.

(7) A burial trust, burial space, plot, vault, crypt, mausoleum, urn, casket, or other repository which is [Burial trusts, burial spaces, plots, vaults, crypts, mausoleums, urns, caskets, and other repositories which are] customarily and traditionally used for the remains of a deceased person [persons] shall be excluded from consideration as a countable resource without regard to value.

(8) For an ABD Medicaid case [eases], proceeds from the sale of a home shall be excluded from consideration for three (3) months from the date of receipt if used to purchase another home. For a

family related Medicaid case [eases], proceeds from the sale of a home shall be excluded from consideration for six (6) months from the date of receipt if used to purchase another home.

(9) Resources of an individual who is blind or has a disability shall be excluded if the resources are included in [necessary to fulfill] an approved plan for achieving self-support (PASS) [shall be excluded].

(10) A payment or benefit from a federal statute, other than an SSI benefit, [Payments or benefits from federal statutes, other than SSI benefits,] shall be excluded from consideration as a resource if precluded from consideration in an SSI determination [SSI determinations] of eligibility by the specific terms of the statute.

(11) Disaster relief assistance shall be excluded from consideration.

(12) Cash or in-kind replacement for repair or replacement of an excluded resource shall be excluded from consideration if used to repair or replace the excluded resource within nine (9) months of the date of receipt.

(13) A [The] life interest that a Medicaid applicant or recipient has [applicants or recipients may have] in real estate or other property shall be excluded from consideration as an available resource.

(14) Real property other than the homestead shall be excluded from consideration if:

(a) The property is jointly owned and its sale would cause loss of housing for the other owner or owners;

(b) Its sale is barred by a legal impediment; or

(c) The owner's reasonable efforts to sell by informing the public of his intention to sell the property at fair market value have been unsuccessful.

(15) A cash payment [Cash payments] intended specifically to enable an applicant or recipient [applicants or recipients] to pay for a medical or social service [services] shall not be considered as a resource in the month of receipt or for one (1) calendar month following the month of receipt. If the cash is still being held at the beginning of the second month following its receipt, it shall be considered a resource.

(16) An [Any] amount received which is a result of an underpayment or [(for example,] a retroactive payment of benefits from retirement, survivors, and disability insurance benefits or SSI shall be excluded as a resource for the first six (6) months following the month in which the amount is received.

(17) A federal Republic of Germany reparation payment [payments] shall not be considered as an available resource.

(18) An amount received from a victim's compensation fund established by a state to aid victims of crime shall be:

(a) Completely excluded as a resource if the individual can show that the amount was paid as compensation for expenses incurred or losses suffered as a result of a crime; or

(b) Excluded as a resource for nine (9) months if the individual can show that the amount was paid for pain and suffering.

[Any amount received from a victim's compensation fund established by a state to aid victims of crime shall be completely excluded as a resource if the individual can show that the amount was paid as compensation for expenses incurred or losses suffered as a result of a crime; otherwise the resource shall be excluded as a resource for nine (9) months for pain and suffering.]

(19) An Austrian social insurance payment [payments] based[, in whole or in part,] on a wage credit [wage credits] granted under paragraphs 500-506 of the Austrian General Social Insurance Act shall be excluded from resource consideration.

(20) An individual retirement account [accounts], Keogh plan or [plans and] other tax deferred asset [assets] shall be excluded as a resource [resources] until withdrawn.

Section 4. Resource Exemptions. A resource which is [Resources which are] exempted from consideration for purposes of computing

eligibility for the SSI Program shall be exempted from consideration by the department, ~~[following money payment program shall be exempted from consideration by the department]~~

- (1) SSI; and
- (2) K-TAP, using AFDC methodologies in effect prior to July 16, 1996.]

JOHN H. MORSE, Commissioner, Secretary  
APPROVED BY AGENCY: April 11, 1997  
FILED WITH LRC: April 14, 1997 at 9 a.m.

**CABINET FOR HEALTH SERVICES**  
**Department for Medicaid Services**  
**Division of Administration and Development**  
**(As Amended)**

**907 KAR 1:655. Spousal impoverishment and nursing facility requirements for Medicaid.**

RELATES TO: KRS 205.520

STATUTORY AUTHORITY: KRS 194.505, 42 CFR 435, 42 USC 1396a, d, r-5, EO 96-862

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health Services has responsibility to administer the Medicaid Program. 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 authorizes ~~[empowers]~~ the cabinet, by administrative regulation, to comply with a ~~[any]~~ requirement that may be imposed, or opportunity presented, by federal law for the provision ~~[provisions]~~ of medical assistance to Kentucky's indigent citizenry. This administrative regulation establishes ~~[sets forth]~~ spousal impoverishment and nursing facility requirements for Medicaid eligibility determinations.

Section 1. Definitions. (1) "Assigned support right" means the assignment of the support right of an institutionalized individual to the state or Medicaid Program.

(2) "Community spouse" means the spouse of an institutionalized spouse, who remains at home in the community and is not living in a medical institution or nursing facility or participating in a home and community based services (HCBS) waiver program.

(3) "Community spouse maintenance standard" means the income standard to which a community spouse's income is compared for purposes of determining the amount of the allowance ~~[allowances]~~ used in the posteligibility calculation.

(4) "Continuous period of institutionalization" means thirty (30) or more consecutive days of institutional care in a medical institution or nursing home (or both) and may include thirty (30) consecutive days of receipt of HCBS (or a combination of both). ~~[A continuous period of institutionalization terminates if an individual has been out of a medical institution or nursing facility, or HCBS waiver program, for thirty (30) consecutive days.]~~

(5) "Countable resources" means ~~[are]~~ resources not subject to exclusion in the Medicaid Program.

(6) "Department" means the Department for Medicaid Services or its designee.

(7) "Dependent child ~~[children]~~" means the couple's child ~~[children]~~ (including a child ~~[children]~~ gained through adoption) who lives with the community spouse and is ~~[are]~~ claimed as a dependent ~~[dependents]~~ by either spouse under the Internal Revenue Service Code.

(8) "Dependent parent ~~[parents]~~" means a parent ~~[parents]~~ of either member of a couple who lives with the community spouse and is ~~[are]~~ claimed as a dependent ~~[dependents]~~ by either spouse under the Internal Revenue Service Code.

(9) "Dependent sibling ~~[siblings]~~" means a brother or sister of either member of a couple (including a half-brother, half-sister or sibling ~~[half brothers and half sisters and siblings]~~ gained through adoption) who resides with the community spouse and is ~~[are]~~ claimed as a dependent ~~[dependents]~~ by either spouse under the Internal Revenue Service Code.

(10) "Gross income" means nonexcluded income which would be used to determine eligibility prior to income disregards.

(11) "Income" is ~~[as]~~ defined in 907 KAR 1:650.

(12) "Institutionalized individual" is defined in 907 KAR 1:650.

(13) "Institutionalized spouse" means an individual who is in a medical institution or nursing facility, or participates in an HCBS waiver program, with a spouse who is not in a medical institution or nursing facility or HCBS waiver program if the individual is likely to be in the medical institution or nursing facility or waiver program for at least thirty (30) consecutive days while the community spouse remains out of a medical institution or nursing facility or HCBS waiver program.

(14) "Likely to remain in an institution" means a determination by the cabinet based on a physician's written statement that an individual in a medical institution, nursing facility, or HCBS waiver program is expected to remain in that setting or program for thirty (30) consecutive days.

(15) "Living apart" means ~~[is defined as]~~ not sharing a common household, whether due to estrangement, disability, or illness, and includes ~~[Living apart may mean]~~ living in a medical institution, special school, or in foster care ~~[and the status continues]~~ even if the individual makes a visit ~~[visits]~~ to the home.

(16) "Living with" means ~~[is defined as]~~ sharing a common living arrangement or household but does not include living in the same room in a long term care facility.

(17) "Medical institution or nursing facility" means a hospital, nursing facility, or intermediate care facility for the mentally retarded.

(18) "Minor ~~[Minors]~~" means the couple's minor child who is ~~[children]~~ (under age twenty-one (21) who lives with a community spouse and is ~~[are being]~~ claimed as a dependent ~~[dependents]~~ by either spouse under the Internal Revenue Service Code.

(19) "Month after the month of separation" means the first day of the month that follows the month in which an individual ceases living in the same household of the Medicaid budget unit.

(20) "Monthly income allowance ~~[allowances]~~" means an amount:

(a) ~~[amounts]~~ Deducted in the posteligibility calculation for maintenance needs of a community spouse or ~~[spouses and]~~ other family member; and

(b) Equal to the difference between a spouse's and other family member's income and the appropriate maintenance needs standards. ~~[members. The allowances shall be based on the deficit remaining after spouses' and other family members' income is compared to appropriate maintenance needs standards.]~~

(21) "Other family member ~~[members]~~" means a child who is ~~[children who are]~~ either a minor or dependent, a dependent parent or dependent sibling ~~[dependent parents and dependent siblings]~~ of either member of a couple and who resides with the community spouse.

(22) "Other family member's maintenance standard" means an amount equal to one-third (1/3) of the difference between the income of the other family member ~~[members]~~ and the standard maintenance amount.

(23) "Otherwise available income" means income to which the community spouse has ~~[spouses have]~~ access and control, including ~~[Available income of the community spouse includes]~~ gross income that would be used to determine eligibility under Medicaid without benefit of disregards for ~~[including]~~ federal, state and local taxes; child support payments; or ~~[and]~~ other court ordered obligation. ~~[obligations, etc.]~~

(24) "Resources" is defined in 907 KAR 1:650.

(25) "Resource assessment" means the assessment, at the beginning of the first continuous period of institutionalization (beginning on or after September 30, 1989) of the institutionalized spouse upon request by either spouse, of the ~~joint resource, of the~~ joint resources of a couple when a member of the couple enters a medical institution or nursing facility or becomes a participant in an HCBS waiver program.

(26) "Significant (or extreme) financial duress" means a ~~exists when either~~ member of a couple establishes to the satisfaction of a hearing officer that the community spouse needs income above the level permitted by the community spouse maintenance standard to provide for medical, remedial, or other support needs of the community spouse to permit the community spouse to remain in the community.

(27) "Spousal protected resource amounts" means ~~are~~ resources deducted from a couple's combined resources for the community spouse ~~[spouses]~~ in an eligibility determination ~~[determinations]~~ for the institutionalized spouse ~~[spouses]~~. ~~[Amounts above spousal protected resource amounts are used to determine eligibility for institutionalized spouses.]~~

(28) "Spousal resource allowances" means the differences in the dollar value of resources protected for community spouses and the value of the resources actually held in the name of community spouses.

~~(29)~~ "Spouse" means a person legally married to another under state law.

~~(29)~~ ~~[(30)]~~ "Standard maintenance amount" means one-twelfth (1/12) of the federal poverty income guidelines for a family unit of two (2) members (with revisions of the official poverty line applied for Medicaid provided during and after the second calendar quarter that begins after the date of publication of the revisions) multiplied by 150 percent.

~~(30)~~ ~~[(31)]~~ "State spousal resource standard" means the amount of a couple's combined countable resources determined necessary by the department for a community spouse ~~[spouses]~~ to maintain himself ~~[themselves]~~ in the community.

~~(31)~~ ~~[(32)]~~ "Support right" means the right of an institutionalized spouse ~~[spouses]~~ to receive support from a community spouse ~~[spouses]~~ under state law.

(32) "Termination of institutionalization" means an individual has been out of a medical institution, nursing facility, or HCBS waiver program, for thirty (30) consecutive days.

(33) "Undue hardship" means that Medicaid eligibility of the institutionalized spouse cannot be established on the basis of assigned support rights and the spouse is subject to discharge from the medical institution, nursing facility, or HCBS waiver program due to inability to pay.

Section 2. Resource Assessment. (1) Pursuant to 42 USC 1396r-5(c)(1)(B), an assessment of the joint resources of an institutionalized spouse and the community spouse shall be made upon request of either spouse at the beginning of a continuous period of institutionalization of the institutionalized spouse and upon receipt of relevant documentation of resources.

(2) The department shall complete the assessment within forty-five (45) days if the necessary documentation or verification is provided in a timely manner.

(3) Upon completion of ~~[(4)]~~ the resource assessment ~~[is complete]~~, each spouse shall:

(a) Receive a copy of the assessment; and

(b) Be notified ~~[notification]~~ that the right of appeal of the assessment shall exist at the time ~~[as]~~ the institutionalized spouse applies for Medicaid.

Section 3. Protection of Income and Resources of the Couple for Maintenance of the Community Spouse. ~~[42 USC 1396r-5 provides for special treatment of income and resources for certain institutional-~~

~~ized spouses specified in 42 USC 1396r-5.]~~

(1) ~~[Provisions for]~~ Treatment of income. The following income provisions shall apply ~~[be applicable]~~ for an individual beginning a continuous period of institutionalization ~~[individuals institutionalized]~~ on or after September 30, 1989:

(a) Separate treatment of income. Except as provided in paragraph (b) of this subsection, during a ~~[any]~~ month in which an institutionalized spouse is in the institution, income of the community spouse shall not be deemed available to the institutionalized spouse.

(b) Attribution of income. In determining the income of an institutionalized spouse or community spouse, after the institutionalized spouse has been determined or redetermined to be eligible for Medicaid, ~~[regardless of any state laws relating to community property or the division of marital property,]~~ the provisions of 42 USC 1396r-5(b)(2) ~~[(A), (B), (C), and (D)]~~ shall apply ~~[be applicable]~~.

(2) ~~[Provisions for]~~ Treatment of resources. The following resource provisions shall apply ~~[be applicable]~~ for an individual ~~[individuals]~~ beginning a continuous period of institutionalization on or after September 30, 1989.

(a) Attribution of resources at the time of an initial eligibility determination ~~[determinations]~~. Except as provided in subsection 4(b) of this section, in determining the resources of an institutionalized spouse at the time of application for a benefit ~~[benefits]~~ under Medicaid, ~~[regardless of any state laws relating to community property or the division of marital property, all]~~ the resources held by either the institutionalized spouse, community spouse, or both, shall be considered to be available to the institutionalized spouse.

(b) Nonattributed resources. The following protected amounts shall be deducted from a couple's combined countable resources at the time of the determination of initial eligibility of the institutionalized spouse:

1. The state resource standard; and

2. If applicable, an additional amount ~~[amounts]~~ transferred under a court support order; or

3. If applicable, an additional amount designated by a hearing officer.

(c) Exceptions to resource ineligibility by assignment of support rights. The institutionalized spouse shall not be ineligible by reason of resources determined under paragraphs (a) and (b) of this subsection to be available for the cost of care in the following circumstances:

1. ~~[(4)]~~ The institutionalized spouse has assigned to the department his right ~~[any rights]~~ to support from the community spouse;

2. ~~[(4)]~~ The institutionalized spouse lacks the ability to execute an assignment due to physical or mental impairment and ~~[but]~~ the state has the right to bring a support proceeding against a community spouse without the assignment; or

3. ~~[(4)]~~ The department determines that denial of eligibility would work an undue hardship.

(d) Separate treatment of resources after eligibility for benefits is established.

1. During the continuous period in which an institutionalized spouse is in an institution and after the month in which an institutionalized spouse is determined to be eligible for a Medicaid benefit, the ~~[benefits,]~~ resources of the community spouse shall not be deemed available to the institutionalized spouse.

2. Resources of the institutionalized spouse protected for the needs of the community spouse ~~[but not transferred to the community spouse within six (6) months of the initial eligibility determination]~~ shall be considered available to the institutionalized spouse if the resources are not transferred to the community spouse within six (6) months of the initial eligibility determination.

(e) Excess value of an automobile. The equity value of an automobile in excess of the ~~[prescribed]~~ limits established by ~~[as described in]~~ 907 KAR 1:645 shall not be included as a countable resource.

(3) Protecting income for the community spouse. The following

provisions shall apply ~~[be applicable]~~ with regard to protecting income for the community spouse:

(a) The following allowances shall be offset from income of an institutionalized spouse. After an institutionalized spouse is determined or redetermined to be eligible for Medicaid, in determining the amount of the spouse's income that is to be applied monthly to payment for the costs of care in the institution, there shall be deducted from the spouse's monthly income the following amounts in the following order:

1. A personal needs allowance ~~[allowable]~~ of forty (40) dollars plus a ~~[any]~~ mandatory withholding ~~[withholdings]~~ from income, including a ~~[(for example,)]~~ mandatory payroll deduction that is ~~[deductions that are]~~ a condition of employment and federal, state and local taxes that the government requires the payer to deduct before payment is made to the payee;

2. A community spouse monthly income allowance ~~[-but only]~~ to the extent income of the institutionalized spouse is made available to, or for the benefit of, the community spouse;

3. A family allowance determined in accordance with the definition of other family member's maintenance standard; and

4. An amount ~~[Amounts]~~ for incurred expenses for medical or remedial care for the institutionalized spouse.

(b) Establishment of the community spouse maintenance standard. The community spouse maintenance standard shall be set at \$1,500 per month, to be increased for each calendar year after 1989 by the same percentage as the percentage increased in the consumer price index for all urban consumers (all items; U.S. city average) between September 1988 and the September before the calendar year involved ~~[-the maintenance standard may be increased for an individual, as appropriate, by a hearing officer].~~

(c) Court ordered support. If a court has entered an order against an institutionalized spouse for monthly income for the support of the community spouse, the community spouse monthly income allowance for the spouse shall not be ~~[not]~~ less than the amount ~~[of the monthly income so]~~ ordered.

(4) Permitting transfer of resources to a community spouse. The following provisions shall apply ~~[be applicable]~~ with regard to a transfer ~~[transfers]~~ of resources from an institutionalized spouse:

(a) Permitted transfer. An institutionalized spouse may, without regard to the usual prohibition against disposal of assets for less than fair market value, transfer to the community spouse (or to another for the sole benefit of the community spouse) an amount equal to the state spousal ~~[community spouse]~~ resource standard ~~[allowance]~~, but only to the extent the resources of the institutionalized spouse are transferred to, or for the sole benefit of, the community spouse. The transfer shall be made as soon as practicable after the initial determination of eligibility, taking into account the time necessary to obtain a court order under paragraph (c) of this subsection.

(b) Establishment of the state spousal resource standard ~~[community spouse resource allowance]~~.

1. The state spousal resource standards ~~[community spouse resource allowance]~~ shall be set at \$60,000, to be increased for each calendar year after 1989 by the same percentage as the percentage increase in the consumer price index for all urban consumers (all items; U.S. city average) between September 1988 and the September before the calendar year involved;

2. For an individual, the spousal protected resource amount ~~[allowance]~~ may be a higher amount established by a hearing officer, or a higher amount transferred under a court order as specified in paragraph (c) of this subsection.

(c) Transfers under court orders. ~~[As specified in 42 USC 1396f-(f)(3).]~~ If a court has entered an order against an institutionalized spouse for the support of a community spouse, the usual prohibition against disposal of assets for less than fair market value shall not apply to the amount ~~[amounts]~~ of resources transferred pursuant to the order for the support of the spouse.

(5) Prohibited transfers. Except for a transfer ~~[transfers]~~ of

resources to the community spouse as specified in subsection (4) of this section, the transfer of resource policies established by ~~[defined in]~~ 907 KAR 1:650 shall ~~apply~~.

(6) Requirement for notice and fair hearings. The following notice and fair hearings requirements shall apply ~~[be applicable]~~:

(a) Notice.

1. The department shall send the notification required by subparagraph 2 of this paragraph to:

a. Both spouses upon a determination of eligibility for Medicaid of an institutionalized spouse; or

b. The spouse making the request upon a request by either the institutionalized spouse, the community spouse, or a representative acting on behalf of either spouse.

2. The notice shall state: ~~[Notice. Upon a determination of eligibility for Medicaid of an institutionalized spouse, or the community spouse, or a representative acting on behalf of either spouse, the department shall notify both spouses if Medicaid eligibility of the institutionalized spouse is being determined or the spouse making the request (if that is the situation) of:]~~

a. [-] The amount of the community spouse monthly income allowance;

b. [-] The amount of a ~~[any]~~ family allowance;

c. [-] The method of computing the amount of the community spouse resources allowance; and

d. [-] The spouse's right to a fair hearing in accordance with 907 KAR 1:560.

(b) Fair hearings. Both the institutionalized spouse and community spouse shall be entitled to a fair hearing in accordance with 907 KAR 1:560 if the spouse is dissatisfied with the action of the agency including determination of the following:

1. The community spouse monthly income allowance;

2. The amount of monthly income determined to be otherwise available to the community spouse;

3. The attribution of resources at the time of the initial eligibility determination; or

4. The determination of the community spouse resource allowance.

(c) Revision of monthly maintenance needs allowance. If either the institutionalized spouse or community spouse establishes during the hearing that the community spouse needs income above the level otherwise provided by the monthly maintenance needs allowance, due to an exceptional circumstance ~~[circumstances]~~ resulting in significant financial duress, an amount adequate to provide the necessary additional income ~~[that is necessary]~~ shall be substituted for the monthly maintenance needs allowance.

(d) Revision of community spouse resource allowance. If either spouse established during the hearing process that the community spouse resource allowance (in relation to the amount of income generated by an allowance) is inadequate to raise the community spouse's income to the monthly maintenance needs allowance, there shall be substituted for the community spouse resource allowance an amount adequate to provide the monthly maintenance needs allowance.

Section 4. Specified Individuals in Nursing Facilities. For an individual who is ~~[individuals who are]~~ aged, blind, or has ~~[have]~~ a disability and who is in a nursing facility ~~[facilities]~~ not subject to treatment as the institutionalized spouse of a community spouse as shown in Section 3 of this administrative regulation, the following requirements with respect to income limitations and treatment of income shall apply ~~[be applicable]~~:

(1) In determining eligibility, the appropriate medically needy standard or special income level, disregards, and exclusions from income shall be used. In determining patient liability for the cost of institutional care, gross income shall be used as provided ~~[shown]~~ in subsections (2) and (3) of this section.

(2) Income protected for basic maintenance shall be forty (40)

dollars monthly plus ~~[any]~~ mandatory withholdings. Mandatory withholdings shall:

(a) Include ~~[items such as]~~ minimum state and federal taxes; and  
(b) ~~[but shall]~~ Not include ~~[items such as]~~ court-ordered child support, alimony, or ~~[and]~~ similar payment ~~[payments]~~ resulting from an action ~~[actions]~~ by the recipient.

(a) For an individual ~~[individuals]~~ receiving the ninety (90) dollars reduced Veterans Administration (VA) improved pension benefits, the personal needs allowance shall be ninety (90) dollars effective with the month that the VA payment is reduced.

(b) An amount ~~[Amounts]~~ excluded under a plan to achieve self-support (PASS), as an income related work expense (IRWE) or blind work expense (BWE) shall be considered an increased personal needs allowance for a [all] Medicaid recipient ~~[recipients]~~ except a recipient ~~[these]~~ for whom a quarterly spenddown process as established ~~[described]~~ in 907 KAR 1:640 is applicable.

(c) ~~[All]~~ Income in excess of the amount protected for basic maintenance shall be applied to the cost of care exempt as follows:

1. Available income in excess of the basic maintenance allowance shall be first conserved as needed to provide for the needs of a [the] minor child ~~[children]~~ up to the appropriate family size amount from the scale as established by ~~[specified in]~~ 907 KAR 1:640, Section 2(1).

2. Remaining available income shall be applied to the incurred costs of medical and remedial care that are not subject to payment by a third party (except that the incurred costs may be reimbursed under another public program of the state or ~~[of]~~ political subdivision of the state), including Medicare and health insurance premiums or ~~[and]~~ medical care recognized under state law but not covered under the state's Medicaid plan.

(3) The basic maintenance standard allowed the individual during the month of entrance into or exit from the nursing facility shall take into account the home maintenance costs.

(4) If an individual loses eligibility for a supplementary payment due to entrance into a participating nursing facility, and the supplementary payment is not discontinued on a timely basis, the amount of an ~~[any]~~ overpayment shall be considered as available income to offset the cost of care to the Medicaid Program ~~[if actually available for payment to the provider]~~.

(5) A supplemental security income (SSI) or state supplementation payment ~~[payments]~~ received by a specified institutionalized Medicaid eligible individual ~~[individuals]~~ in accordance with 42 USC 1382(e)(1)(G) shall be excluded from consideration as either income or a resource. The payment ~~[payments]~~ shall not be used in the posteligibility process to increase the patient liability.

Section 5. Special Needs Contributions for Institutionalized Individuals. A voluntary payment ~~[payments]~~ made by a relative or other party on behalf of a nursing facility resident or patient shall not be considered as available income if made to obtain a special privilege, service, or item not covered by the Medicaid Program. A special service or item shall ~~[Examples of special services or items]~~ include television or ~~[and]~~ telephone service, private room or bath, or a private duty nursing service. ~~[services, etc.]~~

JOHN H. MORSE, Commissioner, Secretary  
APPROVED BY AGENCY: April 11, 1997  
FILED WITH LRC: April 11, 1997 at 2 p.m.

CABINET FOR HEALTH SERVICES  
Department for Medicaid Services  
Division of Administration and Development  
(As Amended)

907 KAR 1:665. Special income requirements for alternative intermediate services for individuals with mental retardation (AIS-MR), hospice, and home and community based services (HCBS).

RELATES TO: KRS 205.520, 42 CFR Part 435, 42 USC 1396a, n

STATUTORY AUTHORITY: KRS 194.050, 205.520 ~~[42 CFR 435, 42 USC 1396a, n]~~, EO 96-862

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health Services has responsibility to administer the Medicaid Program. 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 authorizes ~~[empowers]~~ the cabinet, by administrative regulation, to comply with a ~~[any]~~ requirement that may be imposed or opportunity presented by federal law for the provision ~~[provisions]~~ of medical assistance to Kentucky's indigent citizenry. This administrative regulation establishes ~~[sets forth]~~ special income requirements for alternative intermediate services for individuals with mental retardation (AIS-MR), hospice, and home and community based services (HCBS).

Section 1. Definitions. (1) "AIS-MR" means alternative intermediate services for individuals with mental retardation.

(2) "Basic maintenance" means the amount of income that may be retained by the applicant for living and personal expenses.

(3) "Categorically needy" means an individual ~~[individuals]~~ with income below 300 percent of the supplemental security income (SSI) standard who has ~~[have]~~ been receiving AIS-MR, hospice or HCBS for thirty (30) consecutive days.

(4) "HCBS" means home and community based services.

(5) "Income deeming" means the amount of income which is considered available to a Medicaid applicant from a spouse or parent.

(6) "Institutionalized" means residing in a nursing facility or receiving AIS-MR, hospice, or HCBS benefits.

(7) "SSI" means the Social Security Administration Program called supplemental security income.

(8) "SSI general exclusion" means the twenty (20) dollars disregard ~~from income~~ allowed by the Social Security Administration in an ~~[for]~~ SSI determination ~~[determinations]~~.

(9) "SSI standard" means the amount designated by the Social Security Administration as the federal benefit rate.

Section 2. Special Income Requirements for AIS-MR Recipients. Medicaid eligibility for a participant ~~[participants]~~ in AIS-MR shall be determined taking into consideration the special provisions contained in this ~~[the]~~ section and in 907 KAR 1:655~~[, Spousal impoverishment and nursing facility requirements for Medicaid]~~.

(1) Institutional deeming rules shall be applicable in accordance with 907 KAR 1:655~~[, Spousal impoverishment and nursing facility requirements for Medicaid]~~.

(2) The following AIS-MR services program participants shall be determined to be eligible as categorically needy under a special income level, which ~~[the special income level]~~ shall be 300 percent of the SSI standard:

(a) A participant ~~[Those who participate]~~ in the AIS-MR program for thirty (30) consecutive days, including the ~~[any]~~ actual days of institutionalization within that period; and

(b) A participant who does not ~~[Those who]~~ have income ~~[not]~~ in excess of 300 percent of the SSI standard for an individual.

(3) Income protected for basic maintenance of the AIS-MR

participant in the posteligibility determination for an individual ~~[individuals]~~ eligible as medically needy or on the basis of the special income level of 300 percent of the federal SSI standard, shall be the standard for the federal SSI program in addition to the SSI general exclusion from income.

(4) If an AIS-MR services program participant has income in excess of 300 percent of the SSI standard, eligibility of the participant shall be determined on a spenddown basis for an individual who is institutionalized, with the cost of AIS-MR services projected if eligibility is determined on a monthly basis.

(5) Eligibility shall continue on the same basis as for an institutionalized individual if [when] the cost of care is greater than the recipient's adjusted monthly income or the recipient is eligible based on the special income level of 300 percent of the SSI level.

(6) In the posteligibility determination, the basic maintenance needs allowance shall include a [includes any] mandatory withholding [withholdings] from income. Mandatory withholdings shall:

(a) Include [for example] state and federal taxes; and

(b) [but shall] Not include [items such as] court ordered child support, alimony, or a [and] similar payment [payments] resulting from an action [actions] by the recipient.

Section 3. Special Provisions for Hospice Recipients. Medicaid eligibility for a participant in [participants under] the Medicaid hospice program shall be determined by [if necessary to establish eligibility for Medicaid benefits for cases with income in excess of the usual basic maintenance standard] taking into consideration the special provisions contained in this section.

(1) Income protected for basic maintenance shall be:

(a) The standard for the SSI program in addition to the SSI general exclusion from income for the hospice participant in the posteligibility determination for a noninstitutionalized individual [individuals] eligible on the basis of the special income level of 300 percent of the federal SSI standard;

(b) The usual medically needy standard established [as shown] in 907 KAR 1:640~~[income standards for Medicaid]~~, Section 2, plus the SSI general exclusion for a [the] noninstitutionalized medically needy participant, who [participants (all of whom)] shall spenddown on a quarterly basis;

(c) The medically needy standard for the appropriate family size plus the SSI general exclusion for the institutionalized medically needy;

(d) Forty (40) dollars per month for the hospice participant institutionalized in a long-term care facility.

(2) If eligibility is determined for an institutionalized monthly spenddown case, the attributed cost of care against which monthly available income of the hospice participant shall be applied shall be the hospice routine home care per diem (for the hospice providing care) as established by 42 USC 1395f(1) [the Medicare Program] plus the private pay rate for the nursing facility.

(3) Eligibility shall continue on the same monthly basis as for an institutionalized individual if [when] the recipient is eligible based on the special income level of 300 percent of the SSI level.

(4) A hospice participant shall [may] be eligible for a benefit [benefits] based on this section [only] if he has elected coverage under the Medicaid Hospice Program rather than the regular Medicaid Program.

(5) Institutional deeming rules shall apply [be applicable] in accordance with 907 KAR 1:655~~[Spousal impoverishment and nursing facility requirements for Medicaid]~~, with regard to the categorically needy including a participant [all participants] eligible on the basis of the special income level of 300 percent of the SSI standard and an [these] institutionalized hospice recipient [recipients] eligible on a monthly spenddown basis.

(6) Community deeming procedures shall be used in accordance with 907 KAR 1:660~~[Relative responsibility requirements for Medicaid]~~, for a [all] noninstitutionalized hospice recipient who is:

(a) A [recipients who are] medically needy individual, who shall spenddown [individuals (all of whom spenddown)] on a quarterly basis; and

(b) Not eligible under the special income level.

(7) In the posteligibility determination of available income, the basic maintenance needs allowance shall include a [includes any] mandatory withholding [withholdings] from income. Mandatory withholdings shall:

(a) Include [for example] state and federal taxes; and

(b) [but shall] Not include [items such as] child support, alimony, or a [and] similar payment [payments] resulting from an action [actions] by the recipient.

Section 4. Special Provisions for Recipients Participating in the HCBS Waiver Program. Medicaid eligibility for a participant [participants] under HCBS shall be determined if [when] necessary to establish eligibility for Medicaid benefits for a case [cases] with income in excess of the basic maintenance standard taking into consideration the special provisions established [contained] in this section and in 907 KAR 1:655~~[Spousal impoverishment and nursing facility requirements for Medicaid]~~.

(1) Income protected for the basic maintenance of an HCBS program participant who is [participants who are] eligible as medically needy or under the special income level established [shown] in this section shall be the standard used for an individual in the federal SSI program in addition to the SSI general exclusion from income.

(2) An HCBS program participant [participants] who participates in the HCBS program for thirty (30) consecutive days, including the [any] actual days of institutionalization within that period, and who has [have] income not in excess of 300 percent of the SSI standard for an individual shall be determined to be eligible as categorically needy under a special income level which shall be [i.e., the special income level is] 300 percent of the SSI standard.

(3) If an HCBS program participant has income in excess of 300 percent of the SSI standard, eligibility of the participant shall be determined on a spenddown basis for an individual who is institutionalized, with the cost of HCBS projected if eligibility is determined on a monthly basis.

(4) Institutional deeming rules shall apply [be applicable] in accordance with 907 KAR 1:655~~[Spousal impoverishment and nursing facility requirements for Medicaid]~~.

(5) In the posteligibility determination of available income, the basic maintenance needs allowance shall include a [includes any] mandatory withholding [withholdings] from income. Mandatory withholdings shall:

(a) Include [for example] state and federal taxes; and

(b) [but shall] Not include [items such as] child support, alimony, or a [and] similar payment [payments] resulting from an action [actions] by the recipient.

JOHN H. MORSE, Commissioner, Secretary  
APPROVED BY AGENCY: April 11, 1997  
FILED WITH LRC: April 14, 1997 at 9 a.m.



ADMINISTRATIVE REGULATIONS AMENDED AFTER PUBLIC HEARING  
OR RECEIPT OF WRITTEN COMMENTS

TRANSPORTATION CABINET  
Department of Highways  
Permits Branch  
(Amended After Hearing)

603 KAR 3:080. Advertising devices.

RELATES TO: KRS 177.830 to 177.890, 23 USC 131, 23 CFR Part 750

STATUTORY AUTHORITY: KRS 177.860, 23 USC 131, 23 CFR Part 750

NECESSITY, FUNCTION, AND CONFORMITY: KRS 177.860 authorizes the Department of Highways to establish reasonable standards for advertising devices on or visible from interstate, parkway and federal-aid primary highways. This administrative regulation is the means used by the Department of Highways to establish those standards. In addition KRS 177.867 requires the Department of Highways to pay just compensation for the removal of legally-erected advertising devices which are not in compliance with current state law or administrative regulation. This administrative regulation sets forth standards for determining when the Department of Highways shall pay just compensation. There are two (2) federal laws which govern the control of outdoor advertising devices. The "Highway Beautification Act", 23 USC Part 131, as amended, is a federal mandate. However, states which comply with the earlier enacted "Bonus Act" must establish more stringent controls over the placement of outdoor advertising devices than the general federal mandate. Kentucky's authorizing statutes, originally enacted in 1960, require the control of outdoor advertising devices to be consistent with the more stringent "Bonus Act" and Kentucky has entered into an agreement with the Federal Highway Administration setting forth the specific standards for the control of outdoor advertising devices. [This administrative regulation is consistent with the "Bonus Act" and our bonus agreement with the Federal Highway Administration. The inconsistency resulted from] A recent Kentucky Supreme Court decision regarding zoning requirements necessitated a change in the administrative regulation. The change in the administrative regulation is consistent with the Supreme Court's decision and, the Transportation Cabinet believes, our Agreement with the Federal Highway Administration. The Federal Highway Administration is evaluating the Supreme Court decision to determine if they agree that consistency with the Bonus Act continues. A recent change in 23 USC Part 131 mandates that outdoor advertising devices be controlled on all road segments on the National Highway System. The few segments of that system on which outdoor advertising devices were not previously controlled have been included in this administrative regulation to comply with the federal mandate.

Section 1. Definitions. (1) ~~["Advertising device" or "device" means as defined in KRS 177.830(5).~~

~~(2) "Abandoned" or "discontinued" means that for a period of one (1) year or more that the device:~~

- ~~(a) Has not displayed any advertising matter;~~
- ~~(b) Has displayed obsolete advertising matter; or~~
- ~~(c) Has needed substantial repairs.~~

~~A notice that the device is for sale, rent, or lease shall not be considered advertising matter.~~

~~(2) "Advertising device" or "device" means as defined in KRS 177.830(5).~~

~~(3) "Activity boundary line" means the delineation on a property of those regularly used buildings, parking lots, storage and process areas which are an integral part of and essential [contiguous] to the~~

primary business activity which takes place on the property. In an industrial park, the service road shall be considered within the activity boundary line for the industrial park as a separate entity.

(4) "Allowed" means legal to exist without a permit from the Department of Highways.

(5) "Billboard" or "off-premise advertising device" means a device that contains a message relating to an activity or product that is foreign to the site on which the device and message are located or an advertising device erected by a company or individual for the purpose of selling advertising messages for profit.

(6) "Centerline of the highway" means a line equidistant from the edges of the median separating the main traveled ways of a divided highway, or the centerline of the main traveled way of a nondivided highway.

(7) "Commercial or industrial activities" means as defined in KRS 177.830(9).

(8) "Commercial or industrial enterprise" means any activity carried on for financial gain except that it shall not include:

- (a) Leasing of property for residential purposes;
- (b) Agricultural activity or animal husbandry; or
- (c) Operation or maintenance of an advertising device.

~~(9) "Commercially or industrially developed area" means [as it is applied to interstate and parkway highways only];~~

~~(a) Any area within 100 feet (thirty and five-tenths (30.5) meters) of, and including any area where there are located within the protected area at least ten (10) separate commercial or industrial enterprises, not one of the structures from which one (1) of the enterprises is being conducted is located at a distance greater than 1620 feet (493.8 meters) from any other structure from which one (1) of the other enterprises is being conducted; and~~

~~(b)1. The land use for the area as of September 21, 1959 was clearly established by state law as industrial or commercial; or~~

~~2. The land use for the area was within an incorporated municipality as the boundaries existed on September 21, 1959 and is currently zoned for commercial or industrial use at the time of the application for an advertising device permit; and~~

~~(c) Not less than ten (10) of the enterprises referred to in paragraph (a) of this subsection are at the time of the permit application and were on March 10, 1960, located in an area governed by state or local zoning laws and in compliance with the state and local zoning laws and administrative regulations. If there was no local zoning ordinance in effect on March 10, 1960 or if there is no local zoning ordinance in effect at the time of the permit application, the provisions of paragraph (a) of this subsection shall not be applicable.~~

~~(10) [(9)] "Commercial or industrial zone" means as defined in KRS 177.830(7).~~

~~(11) [(10)] "Comprehensively zoned" means, as it is applied to FAP highways only, that each parcel of land under the jurisdiction of the zoning authority has been placed in some zoning classification.~~

~~(12) [(11)] "Department" means the Department of Highways within the Kentucky Transportation Cabinet.~~

~~(13) [(12)] "Destroyed" means that the advertising device has sustained damage by any means in excess of fifty (50) percent of the entire advertising device which includes supports, poles, guys, struts, panels, facing, and bracing. The damage is such that to be structurally and visually acceptable, one (1) or more of the following remedies is essential:~~

- ~~(a) Adding guys or struts;~~
- ~~(b) Adding new supports or poles by splicing or attaching to existing supports;~~
- ~~(c) Adding separate new auxiliary supports or poles;~~
- ~~(d) Adding new or replacement peripheral or integral structural~~



bracing or framing; or

(e) Adding new or replacement panels or facings.

(14) "Electronic sign" means an on-premise advertising device whose message may be changed by electrical or electronic process, and includes the device known as the electronically changeable message center for advertising on-premise activities.

(15) ~~[(13)]~~ "Erect" means to construct, build, raise, assemble, place, affix, attach, create, paint, draw or in any way bring into being or establish, but it shall not include any of the foregoing activities when performed as an incident to the change of advertising message or customary maintenance or repair of an advertising device.

(16) ~~[(14)]~~ "Federal-aid primary highway" or "FAP highway" means as defined in KRS 177.830(3) and 23 USC 103(b) and as it existed on June 1, 1991. ~~[(14)]~~ [The FAP highways are listed in Section 44 of this administrative regulation.]

(17) ~~[(15)]~~ "Identifiable" means capable of being related to a particular product, service, business or other activity even though there is no written message to aid in establishing the relationship.

(18) ~~[(16)]~~ "Interstate highway" means as defined in KRS 177.830 (2) and 23 USC 131(t).

(19) ~~[(17)]~~ "Legible" means capable of being read without visual aid by a person of normal visual acuity, or capable of conveying an advertising message to a person of normal visual acuity.

(20) ~~[(18)]~~ "Main traveled way" means the traveled way of a highway on which through traffic is carried. In the case of a divided highway, each direction has its own main traveled way. It does not include such facilities as frontage roads, turning roadways, access ramps, or parking areas.

(21) "National highway system" or "NHS" means the Kentucky highways defined in 23 USC 103 excluding the highways which are part of the interstate, parkway, or FAP system of highways.

(22) ~~[(19)]~~ "Nonbillboard off-premise advertising device" means, as it is applicable to FAP and NHS highways only, an advertising device not located on the property which it is advertising and limited to advertising for a city, church, or civic club which includes any nationally, regionally or locally known religious or nonprofit organization.

(23) ~~[(20)]~~ "Nonconforming advertising device" means an off-premise advertising device which was lawfully erected but does not comply with the provisions of state law or administrative regulation passed at a later date or which later fails to comply with state law or administrative regulation due to changed conditions similar to the following:

(a) Zoning change ~~[changes]~~;

(b) Highway relocation;

(c) Highway reclassification; or

(d) Change in restriction ~~[Changes in restrictions]~~ on size, spacing or distance.

(24) ~~[(21)]~~ "Official sign" means a sign located within the highway right-of-way installed by or on behalf of the Department of Highways or other public agency having jurisdiction. Included ~~[in these signs]~~ are:

(a) A sign ~~[Signs]~~ denoting the location of underground utilities;

(b) A sign ~~[Signs]~~ required by a federal, state, or local government ~~[governments]~~ to delineate boundaries of a reservation, park, or district ~~[reservations, parks or districts]~~;

(c) A street sign ~~[signs]~~ or traffic control sign ~~[signs]~~; or

(d) A sign ~~[Signs]~~ required by state law.

(25) ~~[(22)]~~ "On-premise advertising device" means an advertising device that contains a message relating to an [the primary] activity conducted or the sale of goods and services [a primary product] within the boundaries of the property on which the device is located. It does not mean a sign which generates rental income.

(26) ~~[(23)]~~ "Parkway" means any highway in Kentucky originally constructed as a toll road whether or not a toll for the use of the highway is currently being collected. As it relates to an advertising device, a parkway ~~[advertising devices, parkways]~~ shall be considered

the equivalent of an interstate highway [highways].

(27) ~~[(24)]~~ "Permitted" means legal to exist only if a permit is issued from the Department of Highways.

(28) ~~[(25)]~~ "Primary business or activity" means that the sale of one product or a business activity which takes precedence over ~~[any or all]~~ other product sales or business activities.

(29) ~~[(26)]~~ "Protected area" means all areas within the boundaries of this Commonwealth which are adjacent to and within 660 feet (210.17 [200.64] meters) of the state-owned highway right-of-way of the interstate, parkway, NHS, and FAP highways and those areas which are outside urban area boundary lines and beyond 660 feet (210.17 [200.64] meters) from the right-of-way of an [all] interstate, parkway, NHS, or [and] FAP highway [highways] within the Commonwealth. If this highway [Where these highways] terminate at a state boundary which is not perpendicular or normal to the center line of the highway, "protected area" also means all of these areas inside the boundaries of the Commonwealth which are adjacent to the edge of the right-of-way of an interstate highway in an adjoining state.

~~[(27)]~~ "Public service information" means information allowed on an on-premise advertising device which may be illuminated by any flashing, moving or intermittent light or lights and which shall be limited to time, temperature, date, and current weather conditions.

(28) "Public service sign" means, as it is applicable to FAP highways only, a sign erected or located on a school bus shelter.

(30) ~~[(29)]~~ "Public service message" means a message pertaining to an activity or service which is performed for the benefit of the public and not for profit or gain of a particular person, firm or corporation or information such as time or temperature. [This definition shall apply to signs on school bus shelters on FAP highways only.]

(31) ~~[(30)]~~ "Routine change of message" means, as it relates to a nonconforming advertising device, the message change on an advertising device from one (1) advertised product or activity to another. This includes the lamination or preparation of the existing panels or facings at a plant or factory for the changing of messages when this is the normal operating procedure of a company.

(32) ~~[(31)]~~ "Routine maintenance" means, as it relates to a nonconforming advertising device:

(a) The maintenance of an advertising device which is limited to replacement of nuts and bolts, nailing, riveting or welding, cleaning and painting, or manipulating to level or plumb the device;

(b) The routine change of message; and

(c) The lamination or preparation of existing panels or facings at a location other than that of the advertising device.

(d) Routine maintenance shall not mean:

1. Adding guys or struts for the stabilization of the device or substantially changing the device; or

2. Replacement or repair of panels, poles, or facings or the addition of new panels, poles, or facings;

(33) ~~[(32)]~~ "Traveled way" means the portion of a roadway dedicated to the movement of vehicles, exclusive of shoulders.

(34) ~~[(33)]~~ "Turning roadway" means a connecting roadway for traffic, turning between two (2) intersecting legs of an interchange.

(35) ~~[(34)]~~ "Unzoned commercial or industrial area" means as defined in KRS 177.830(8).

(36) ~~[(35)]~~ "Urban area" means as defined in KRS 177.830(10).

(37) ~~[(36)]~~ "Visible" means capable of being seen, whether or not legible or identifiable without visual aid by a person of normal visual acuity and erected for the purpose of being seen from the traveled way.

Section 2. Signs on Highway Right-of-way. (1) Official signs allowed. An advertising device shall not be erected or maintained within or over the state-owned highway right-of-way except a directional or other official sign or signal ~~[signs or signals]~~ erected by or on behalf of the state or other public agency having jurisdiction.

(2) Types of official signs. The following official signs (with size

limitations) may be allowed on state-owned highway right-of-way:

(a) Directional and other official device [devices] including a sign or device [signs or devices] placed by the Department of Highways;

(b) A sign or device [Signs or devices], limited in size to two (2) square feet [0.186 [0.184] square meters], denoting the location of underground utilities; or

(c) A sign [Signs], limited in size to 150 square feet (thirteen and nine-tenths [13.9] [eight tenths (13.8)] square meters), erected by a federal, state, or local government [governments] to delineate boundaries of a reservation, park, or district [reservations, parks or districts].

Section 3. General Conditions Relating to Advertising Devices. The requirements of this section shall apply to an advertising device [devices] on an interstate, parkway, NHS, and FAP highway [highways].

(1) FHWA/Kentucky [Bones] agreement for the control of outdoor advertising.

(a) An advertising device which is [devices which are] visible from an interstate highway, parkway, NHS, or FAP highway [highways, parkways, or FAP highways] shall be governed by the provisions of the agreement between the Kentucky Department of Highways and the Federal Highway Administration which was executed on December 23, 1971.

(b) This agreement is authorized by KRS 177.890 and 23 CFR Part 1.35 and required by 23 CFR Parts 190 and 750.

[(c) The agreement is incorporated by reference in Section 13 of this administrative regulation.]

(2) Advertising device allowed if not visible. An advertising device which is not visible from the main traveled way of the interstate, parkway, NHS, or FAP highway shall be allowed in protected areas.

(3) Visible from more than one (1) highway. If an advertising device is visible from more than one (1) interstate, parkway, NHS, or FAP highway on which control is exercised, the appropriate provisions of this administrative regulation or KRS 177.830 through 177.890 [Chapter 177] shall apply to each of these highways.

(4) Nonconforming advertising device may exist. An off-premise nonconforming, but otherwise legal, advertising device may continue to exist until just compensation has been paid to the owner, if [only so long as] it is:

(a) Not destroyed, abandoned or discontinued;

(b) Subjected to only routine maintenance;

(c) In conformance with local zoning or sign or building restrictions at the time of the erection; and

(d) In compliance with the provisions of Section 4(3) of this administrative regulation and KRS 177.863.

(5) Nonroutine maintenance on a nonconforming device. [(e)] Performance of other than routine maintenance on a nonconforming, but otherwise legal, advertising device shall cause it to lose its legal status and to be classified as illegal.

(6) [(5)] Vandalized nonconforming device.

(a) The owner of a nonconforming, but otherwise legal, advertising device destroyed by vandalism or other criminal or tortious act may apply to the Department of Highways to reerect the advertising device in kind.

(b) The application for the reerection of the advertising device shall contain the following:

1. Plans and pictures showing the proposed new structure to be as exact a duplicate of the destroyed nonconforming advertising device as possible, including the same number of poles, type of stanchion, supports, material of poles or stanchion, and material of facing;

2. Sufficient proof that the destruction was the result of vandalism or other criminal or tortious act;

3. Ownership of the advertising device;

4. Dimensions of the destroyed advertising device;

5. Material used in erection of the destroyed advertising device;

6. Durability of the new device;

7. Stanchion type; and

8. Current lease from land owner.

(c) The Department of Highways shall not issue a notice to reconstruct until all of these conditions have been met.

(d) The owner of the vandalized nonconforming advertising device shall not reerect the advertising device until a notice to reconstruct has been issued by the Department of Highways.

(7) [(6)] Required measuring methods.

(a) To establish a protected area, the distance [protected areas, distances] from the edge of a state-owned highway right-of-way shall be measured horizontally along a line at the same elevation and at a right angle to the centerline of the highway for a distance of 660 feet [210.17 [200.64] meters] inside urban area boundaries and to the horizon outside urban area boundary lines.

(b) 1. A V-shaped or back-to-back type billboard advertising device [devices] shall not be more than fifteen (15) feet apart at the nearest point between the two (2) sign facings and shall be connected by bracing or a maintenance walkway.

2. The angle formed by the two (2) sign facings shall not be greater than forty-five (45) degrees.

(c) The spacing between advertising devices shall be measured as described in KRS 177.863(2)(c).

(8) [(7)] Criteria for off-premise advertising devices. The following criteria are applicable to any off-premise advertising device located in a protected area:

(a) An off-premise advertising device shall not exceed the maximum size stated in KRS 177.863(3)(a);

(b) A V-shaped, double-faced, or back-to-back billboard advertising device [devices] shall be considered as specified in KRS 177.863(2)(b);

(c) 1. A billboard advertising device may contain two (2) messages per direction of travel if the device does not exceed the maximum size stated in KRS 177.863(3)(a);

2. If a billboard advertising device contains two (2) messages on a single facing or panel, each one (1) shall occupy approximately fifty (50) percent of the device;

3. If a billboard advertising device contains two (2) messages in one (1) direction of travel, each on a separate panel or facing where one (1) panel or facing is placed above or beside the other but where the two (2) separate panels or facings are not touching;

(i) There may be a size differential in the panels if dictated by the terrain of the site of the billboard advertising device and if the differential is approved by the Transportation Cabinet prior to the erection of the device; and

(ii) The combined size of the two (2) faces or panels of the advertising device shall not exceed the maximum size stated in KRS 177.863(3)(a).

(d) An on-premise advertising device shall not affect spacing requirements for billboard advertising.

(e) A billboard advertising device may only be illuminated by white lights.

(9) [(8)] Criteria for on-premise advertising devices. The following criteria are applicable to an [all] on-premise advertising device [devices] located in a protected area:

(a) An on-premise advertising device shall not exceed the maximum size specified in KRS 177.863(3)(a) if it is placed within fifty (50) feet (fifteen and two-tenths (15.2) meters) of the advertised activity boundary line [lines].

(b) Not more than [Only] one (1) on-premise device may be located at a distance greater than fifty (50) feet (fifteen and two-tenths (15.2) meters) from the activity boundary line.

2. An individual on-premise business sign erected to advertise one (1) of the businesses in a shopping center, mall, or other combined businesses location shall not be located more than fifty (50) feet (fifteen and two-tenths (15.2) meters) from the activity boundary line of the individual business.

(c) An on-premise advertising device shall not exceed twenty (20) feet (6.09 ~~[42.08]~~ meters) in length, width, or height or 150 square feet (thirteen and eight-tenths (13.8) square meters) in area including border and trim but excluding supports if it is farther than fifty (50) feet from the activity boundary line.

(d)1. An on-premise advertising device shall not be located more than 400 feet (121.9 ~~[421.6]~~ meters), measured within the property boundary, from the advertised activity boundary line.

2. If using a corridor to reach the location of the device, the corridor shall be not less than 100 feet (thirty and five-tenths (30.5) ~~[four tenths (30.4)]~~ meters) in width and shall be contiguous to an integral part of and of the same entitlement as the property on which the advertised activity is located.

3. Any other business activity which is in any manner foreign to the advertised activity shall not be located on or have use of the corridor between the advertised activity and the location of the device.

4. An activity incidental to the primary activity advertised shall not be considered in taking measurements.

5. When taking measurements for the placement of an on-premise industrial park sign as described in paragraph (j) of this subsection, the access road into the industrial park shall be considered an integral part of the property on which the activity is taking place.

6. When taking measurements for the placement of a single on-premise sign advertising a shopping center, mall, or other combined businesses location, the combined parking area shall be considered as within the activity boundary line.

(e) There shall not be requirements for spacing between on-premise advertising devices.

(f) Only the following types of an on-premise advertising device ~~[devices]~~ shall be located so that they are visible from the main traveled way of an interstate, parkway, NHS, or FAP highway:

1. One ~~[These]~~ indicating the name and address of the owner, lessee or occupant of the property on which the advertising device is located;

2. One ~~[These]~~ showing the name or type of business or profession conducted on the property on which the advertising device is located;

3. Information required or authorized by law to be posted or displayed on the property;

4. One ~~[These]~~ advertising the sale or leasing of the property upon which the advertising device is located;

5. One ~~[These]~~ setting forth the advertisement of an activity conducted on or the sale of a product or service ~~[products]~~ on the property where the advertising device is located; or

6. A sign ~~[Signs]~~ with a maximum area of eight (8) square feet (0.743 ~~[0.736]~~ square meters) noting credit card acceptance or trading stamps.

(g) An on-premise advertising device shall advertise only the ~~[primary]~~ activity, service, or ~~[primary]~~ business conducted upon the property on which it is located.

(h) An on-premise electronic sign which contains, includes, or is illuminated by any flashing, intermittent, or moving lights shall only be used to advertise an activity, service, business, or product available on the property on which the sign is located or to present a public service message.

1. The advertising message may contain words, phrases, sentences, symbols, trade-marks, or logos.

2. A single message or segment of a message shall have a display time of at least two (2) seconds including the time needed to move the message onto the sign board, with all segments of the total message to be displayed within ten (10) seconds.

3. A message consisting of only one (1) segment may remain on the sign board any amount of time in excess of two (2) seconds.

4. An electronic sign requiring more than four (4) seconds to change from one (1) single message to another shall be turned off during the change interval.

5. A display traveling horizontally across the sign board shall move between sixteen (16) and thirty-two (32) light columns per second.

6. A display may scroll onto the sign board but shall hold for two (2) seconds including the scrolling time.

7. A display shall not include any art animation or graphic that portray motion, except for movement of a graphic onto or off of the sign board.

(i) Brand or trade names shall not be advertised on an on-premise advertising device when the sale of a product or service ~~[an item]~~ with the brand or trade name is incidental to the primary activity, service, or business.

~~[(i) A marquee type on-premise advertising device, such as a device at a typical theater or cinema, may change messages from advertising one (1) legitimate on-premise activity to another. The message change shall not occur more than one (1) time per day.]~~

(j) An industrial park type on-premise advertising device ~~[devices]~~ which shall be limited in area to 150 square feet (thirteen and eight-tenths (13.8) square meters) may contain ~~[only]~~ the following ~~[messages]~~:

1. The name of the industrial park;

2. The city or county associated with the industrial park; or

3. The name of the individual business or industries located in the industrial park.

(k) A single on-premise sign erected for a shopping center, mall, or other combined businesses location may:

1. Identify each of the individual businesses conducted at the location; or

2. Include a single display area used to advertise on-premise activities.

Section 4. Specific Requirements for Advertising Devices on Interstate and Parkway Highways. (1) Permit if visible. Except for a nonconforming advertising device, an advertising device which is located in a protected area and which is visible from the main traveled way of an interstate or parkway highway shall have an approved permit from the Transportation Cabinet, Department of Highways to be a legal advertising device. Advertising devices closer than fifty (50) feet (fifteen and two-tenths (15.2) meters) to the edge of the main traveled way of any interstate or parkway highway shall not be issued a permit.

(2) Criteria for billboard advertising devices.

(a)1. A billboard advertising device ~~[Billboard advertising devices]~~ may be erected or maintained in a protected area of an interstate or parkway highway if the area is a commercially or industrially developed area as defined in Section 1 of this administrative regulation and if the advertising device complies with the provisions of KRS 177.830 through 177.890 ~~[Chapter 177]~~ and this administrative regulation as well as applicable county or city zoning ordinances or administrative regulations.

2. If a business or industry on which the designation as a commercially or industrially developed area was based is terminated or abandoned, leaving less than ten (10) separate enterprises, the billboard advertising device shall be reclassified as nonconforming.

3. If the Department of Highways reclassifies the device as nonconforming, the owner shall be notified.

(b) A billboard advertising device structure designed to be primarily viewed from an interstate or parkway highway shall not be erected within 500 feet (152.4 meters) of any other off-premise advertising device on the same side of the interstate or parkway highway unless separated by a building, natural obstruction or roadway in such manner that only one (1) off-premise advertising device located within the 500 feet (152.4 meters) is visible from the interstate or parkway highway at any one time.

(3) Prohibited advertising devices. The erection or existence of the following advertising devices shall not be permitted or allowed in a protected area of an interstate or parkway highway ~~[areas]~~:

- (a) An advertising device which is advertising an activity that is illegal under state or federal law, or administrative regulation;
- (b) An obsolete advertising device;
- (c) An advertising device that is not clean, safe, and in good repair;
- (d) An advertising device that is not securely affixed to a substantial structure which is permanently attached to the ground;
- (e) An advertising device which attempts or appears to attempt to direct the movement of traffic or which interfere with, imitate or resemble any official traffic sign, signal or traffic control device;
- (f) An advertising device which prevents the driver of a vehicle from having a clear and unobstructed view of an official sign [signs] or approaching or merging traffic;
- (g) An advertising device which contains, includes or is illuminated by any flashing, intermittent, or moving lights, except for an on-premise device which meets the requirements of Section 3(9)(h) of this administrative regulation [providing public service information];
- (h) An advertising device which uses lighting in any way unless it is so effectively shielded [as] to prevent beams or rays of light from being directed at any portion of the main traveled way of a highway, or unless it is of a low intensity or a low brilliance so as not to cause glare or not to impair the vision of the driver of any motor vehicle or to otherwise interfere with a [any] driver's operation of a motor vehicle;
- (i) An advertising device which moves or has any animated or moving parts;
- (j) An advertising device erected or maintained upon trees or painted or drawn upon rocks or other natural features;
- (k) An advertising device exceeding 1,250 square feet (116.1 [115] square meters) in area, including border and trim but excluding supports;
- (l) An advertising device erected upon or overhanging the right-of-way of any highway; or
- (m) An advertising device which interferes with any official sign, signal or traffic control device.
- (4)(a) To measure distances for the identification of a commercial-ly or industrially developed area, two (2) lines shall be drawn perpendicular to the center line of the controlled interstate or parkway highway, extending from each side of the controlled highway.
- (b) The first perpendicular line shall be drawn 100 feet from the outer edge of the first-encountered separate establishment which is within the area being considered as a commercially or industrially developed area.
- (c) The second perpendicular line shall be drawn 100 feet from the outer edge of the last-encountered separate establishment which is within the area being considered as a commercially or industrially developed area.
- (d) The distance between the first-encountered establishment and the last encountered establishment shall not exceed 1620 feet.
- (e) Each perpendicular line shall extend for a distance of 660 from each edge of the right-of-way of the controlled highway.
- (f) All area within the confines of the lines perpendicular to the center line of the highway shall be considered when establishing a commercially and industrially developed area.
- (g) An enterprise or structure on either side of the controlled interstate or parkway highway within the confines of the lines perpendicular to the centerline of the highway may be counted as part of the ten (10) needed.
- (h) A pictorial representation of an eligible commercially or industrially developed area is on the Transportation Cabinet document entitled "Measurement of Commercially or Industrially Developed Area". [The provisions of KRS 177.860(4) shall not be applicable to an advertising device erected or proposed to be erected in the protected area of an interstate or parkway highway unless it is in an area which is a commercially or industrially developed area as defined in Section 1 of this administrative regulation.]

Section 5. Specific Requirements for Advertising Devices on Federal-aid Primary and National Highway System Highways. (1) Billboard advertising devices on NHS and FAP highways. A billboard advertising device [Billboard advertising devices] may be permitted in a protected area of an NHS or FAP highway if it is [protected areas of FAP highways if they are] located in an unzoned commercial or industrial area [areas] or a commercial or industrial zone [zones] and if the device complies [devices comply] with applicable state, county, or city zoning ordinances or administrative regulations.

(a)1. It shall be legal to have a permitted billboard advertising device in an unzoned commercial and industrial area of an NHS or FAP highway if [as long as] there is a commercial, business, or industrial activity in the area.

2. Upon the termination or abandonment of the business or industry on which the unzoned commercial or industrial area was based, the billboard advertising device shall be reclassified as nonconforming.

3. If the Department of Highways reclassifies the device as nonconforming, the owner shall be notified.

(b) Except for a nonconforming advertising device, a billboard advertising device which is visible from the main traveled way of an NHS or FAP highway and in a protected area shall have an approved permit from the Department of Highways.

(c) An unzoned commercial or industrial area shall not be created when a commercial or industrial activity is located more than 300 feet (ninety-one and four-tenths (91.4) meters) from the right-of-way of the NHS or FAP highway.

(d)1. Minimum spacing between billboard advertising devices in an unzoned commercial or industrial area [areas] shall be 300 feet (ninety-one and four-tenths (91.4) [two-tenths (91.2)] meters) unless separated by a building, roadway, or natural obstruction in a manner that only one (1) device located within the required spacing is visible from the highway at any time.

2. The minimum spacing requirement shall be reduced to 100 feet (thirty and four-tenths (30.4) meters) within an incorporated municipal-ity which does [municipalities which do] not have comprehensive zoning.

(e) Minimum spacing between billboard advertising devices in any comprehensively zoned commercial or industrial area shall be 100 feet (thirty and four-tenths (30.4) meters) unless separated by a building, roadway or natural obstruction in a manner that only one (1) sign located within the required spacing is visible from the highway at any time.

(f) An advertising device [Advertising devices] which meet the criteria set forth in KRS 177.863(1) shall be prohibited.

(2) Establishing limits of an unzoned commercial or industrial area.

(a) In measuring distances for the determination of an unzoned commercial or industrial area near an NHS or FAP highway [high-ways], two (2) lines shall be drawn from the activity boundary line perpendicular to the centerline of the main traveled way to encompass the greatest longitudinal distance along the center line of the highway.

(b) Measurements for establishing unzoned commercial or industrial areas shall begin at the outside edge of the activity boundary lines and shall be measured 700 feet (213.4 [242.8] meters) in each direction.

(3) Nonbillboard off-premise advertising devices on NHS and FAP highways permitted.

(a) The owner of a nonbillboard off-premise advertising device shall apply for a permit in accordance with the procedures set forth in Section 6 of this administrative regulation. A metal tag corresponding to the permit shall not be issued by the Department of Highways.

(b) A nonbillboard off-premise advertising device shall not be permitted on or over the state-owned right-of-way of a NHS or [any] FAP highway.

(c) Only one (1) nonbillboard off-premise advertising device

relating to a particular city, church, or civic organization may be erected in each direction of travel on any one (1) NHS or FAP highway.

(d) Spacing between two (2) nonbillboard off-premise advertising devices shall be 100 feet (thirty and four-tenths (30.4) meters).

(e) A nonbillboard off-premise advertising device shall not affect the spacing requirements for billboards.

(f) A church or civic club type nonbillboard advertising device ~~[devices]~~ which shall be limited in area to eight (8) square feet (0.743 ~~[0.736]~~ square meters) may contain only the following messages:

1. Name and address of the church or civic club;
2. Location and time of meetings, and a directional arrow; or
3. Special events such as Vacation Bible School, revival, etc.

These temporary messages shall be in lieu of the original or a part of the original message and shall not exceed the maximum of eight (8) square feet (0.743 ~~[0.736]~~ square meters) in area.

(4) Public service sign criteria. A public service sign [signs] may be allowed on school bus shelter if it conforms ~~[if they conform]~~ to the following requirements:

(a) The maximum size for a public service sign shall be thirty-two (32) square feet (2.97 ~~[2.944]~~ square meters) in area including border and trim.

(b)1. The public service sign shall contain a message of benefit to the public which occupies not less than fifty (50) percent of the area of the sign.

2. The remainder of the sign may identify the donor, sponsor or contributor of the school bus shelter.

3. The sign shall not contain any other message.

(c) Only one (1) public service sign on each school bus shelter shall face in any one (1) direction of travel.

Section 6. Required Permits for Advertising Devices. (1) Permit required.

(a) Except for a nonconforming advertising device, a permit shall be required from the Department of Highways for any off-premise advertising device located in a protected area of an interstate, parkway, NHS, or FAP highway route.

(b) A permit shall be required for each on-premise advertising device on interstate and parkway highway routes.

(c) Compliance with the provisions of this administrative regulation is required for on-premise advertising devices on NHS and FAP routes.

(d) By January 1, 1994 each permitted off-premise advertising device shall have a metal tag supplied by the department attached to the device.

(2) Application for an advertising device permit.

(a)1. Application for an advertising device permit shall be made on Transportation Cabinet form TC 99-31 as revised in August ~~[March] 1997~~ ~~[December 1995]~~. The application form, completed in triplicate, shall be submitted to the jurisdictional highway district office of the proposed advertising device. ~~[The application form is hereby incorporated by reference in Section 13 of this administrative regulation.]~~

2. The issuance of approved advertising device applications as they relate to the required spacing between billboards shall be determined on a "first-come, first-served" basis.

(b) The application for an advertising device permit shall be accompanied by the following:

1. Vicinity map;
2. Applicant's plot plan;
3. Location, milepoint and sign plans for the advertising device;
4. A copy of all applicable local permits;
5. A copy of the executed lease or ownership of the proposed billboard site, if applicable; and

6. If the request is for an on-premise advertising device, the application shall include a detailed description of the exact wording of the message to be conveyed on the device. This information may be

furnished either by photograph, ~~[or]~~ drawing, or illustration.

(c) The applicant shall submit three (3) copies of all required documentation.

(3) An approved advertising device application shall be valid for only one (1) year. If the device has not been constructed and inspected for compliance in that year, the applicant shall apply for renewal of the approved application prior to the end of the year of validity.

Section 7. Illegal or Unpermitted Advertising Devices. (1) Unpermitted advertising devices. The jurisdictional chief district engineer or his representative shall notify the sign and property owner of an unpermitted or illegal advertising device by registered letter that the advertising device is in violation of Kentucky's advertising device laws or administrative regulation under the following conditions:

(a) The advertising device which is not located on state-owned highway right-of-way has not been issued a permit; or

(b) The advertising device which is not located on state-owned highway right-of-way for which a permit has been issued is found in violation of state law or this administrative regulation.

(2) Content of notice.

(a)1. If the advertising device appears to be eligible for a permit, the owner shall be given a period of ten (10) days from the date of notification by registered letter, to make application for a permit.

2. If by the end of the ten (10) days the owner does not submit a completed application to the Department of Highways, the owner shall be sent a new notice allowing him a period of thirty (30) days from the date of the second notice to remove the device.

(b) If an advertising device previously issued a permit is changed after the device received approval from the Department of Highways, the owner shall be allowed a period of thirty (30) days from the date of notification by registered letter for making the adjustments or corrections necessary to bring the advertising device into compliance with state law or administrative regulation.

(c) If a permit is not necessary for a particular advertising device but the advertising device is not in compliance with KRS Chapter 177 or this administrative regulation, the owner shall be allowed a period of thirty (30) days from the date of notification by registered letter for making any necessary adjustments or corrections to the advertising device.

(d) An advertising device which is ineligible for a permit or otherwise in violation of KRS Chapter 177 or this administrative regulation shall be declared to be a public nuisance and the advertising device shall be removed by the permittee or owner within thirty (30) days after written notification that the advertising device is in violation.

(e) If after the thirty (30) days the noncompliant advertising device remains, the Department of Highways shall notify the owner or permittee of the action which it intends to take to have the noncompliant advertising device removed or otherwise brought into compliance.

(3) Request for reconsideration. ~~[Appeal of notice.]~~

~~[a)]~~ If the permittee or owner disagrees with a [a] ~~[any]~~ notice received from the Department of Highways, within twenty (20) days of receipt of the notice, he may:

[a)] Contact the person who sent the notice to:

1. Request reconsideration;

2. ~~[unofficially protest the notice and to]~~ Attempt to correct a problem ~~[any problems]~~ with his advertising device; or

3. ~~[to]~~ Provide additional information to the Department of Highways.

(b) File an appeal in accordance with Section 9 of this administrative regulation. ~~[If the owner or permittee is not satisfied with the result of his action taken pursuant to paragraph (a) of this subsection, he may appeal to the Transportation Cabinet, Office of General Counsel, 501 High Street, 10th Floor, State Office Building, Frankfort, Kentucky 40622, within twenty (20) days of the date of the Depart-~~

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ment of Highway's written response.

~~(c) The owner or permittee may appeal directly to the Transportation Cabinet, Office of General Counsel at the address set forth in paragraph (b) of this subsection without following the procedure set forth in paragraph (a) of this subsection.]~~

Section 8. Just Compensation for the Removal of an Advertising Device. (1) Buying rights, title, etc. When the Transportation Cabinet determines that it is necessary to remove either a legal or nonconforming advertising device, just compensation shall be paid for the following:

(a) The taking from the owner of the advertising device all right, title, leasehold and interest in the advertising device; or

(b) The taking from the owner of the real property on which the advertising device is located or the right to erect and maintain the advertising device thereon.

(2) Just compensation procedures.

(a) Payment of just compensation shall be determined by an appraisal or value finding.

(b) A nonconforming advertising device shall not qualify for just compensation if:

1. It is destroyed, abandoned, or discontinued;

2. It receives more than routine maintenance; or

3. It does not comply with the provisions of Section 4(3) of this administrative regulation and KRS 177.863.

Section 9. Appeal Procedure. (1)(a) Any party aggrieved by the action of the Transportation Cabinet pursuant to the provisions of this administrative regulation within twenty (20) days of the date of the notice or action may file a written appeal with the Office of General Counsel in the Transportation Cabinet, 501 High Street, Frankfort, Kentucky 40622.

(b) The appeal shall set forth the nature of the complaint and the grounds for the appeal.

(2) The administrative hearing and subsequent procedures shall be conducted pursuant to the provisions of KRS Chapter 13B.

~~[(3) If the appellant wishes to continue the appeal after the administrative hearing set forth in KRS Chapter 13B, the court of proper jurisdiction for the filing of an appeal shall be Franklin Circuit Court.]~~

Section 10. Scenic Byways. (1) On any NHS, FAP, interstate, or parkway highway designated by the Transportation Cabinet as a scenic byway pursuant to 603 KAR 3:090, additional outdoor advertising devices shall not be erected, allowed or permitted after the date of the designation of the highway as scenic.

(2) The outdoor advertising devices legally in existence at the time of designation of the highway as scenic may continue to have routine maintenance.

(3) The sponsor of a scenic byway application ~~[pursuant to 603 KAR 3:090]~~ for a highway which is not an NHS, FAP, interstate, or parkway highway may petition the Transportation Cabinet to impose the outdoor advertising device restrictions set forth in this section.

(4) The following NHS and FAP highways in Kentucky have been designated as scenic byways ~~[pursuant to 603 KAR 3:090]~~:

	From	To
	Milepoints	
(a) Cordell Hull Highway in Barren County:		
KY 70 - From I-65 overpass to KY 90.	5.118	5.359
KY 90 - From KY 70 at Cave City via Happy Valley Road to US 31E (Glasgow Bypass).	.000	9.923
US 31E - From KY 90 to US 68.	14.849	14.258
US 31EX - From US 68 to Washington Street around Courthouse Square in Glasgow.	<u>1.386</u> <del>[1.516]</del>	<u>1.516</u> <del>[1.384]</del>
US 68 - From US 31E to US 31EX.	<u>11.741</u>	<u>12.577</u>
(b) Old Kentucky Turnpike in Larue County:		
US 31E - From the entrance to the Abraham Lincoln Birthplace National Historic Site via Hodgenville to the Nelson County Line.	7.3 <del>[9]</del> 00	20.725
(c) Old Kentucky Turnpike in Nelson County:		
US 31E - From the Larue County Line to US 62 in Bardstown.	.000	14.205
US 62 - From US 31E to US 150.	14.294	14.653
US 150 - From US 62 to entrance of My Old Kentucky Home State Park.	0.000	0.240 <del>[375]</del>
(d) Shakertown Road in Mercer County:		
US 68 - From 1.2 miles east of Shaker Village to 1.2 miles west of Shaker Village.	15.652	13.252
(e) Duncan Hines Scenic Highway in Warren County:		
KY 101 - From US 31W (south) to Edmonson County Line.	11.641	12.850
US 31W <del>[E]</del> - From Duncan Hines former home to KY 446 overpass.	16.559	17.569
(f) Duncan Hines Scenic Highway in Edmonson County:		
KY 101 - From Warren County Line to KY 259 at Rhoda.	0.000	4.131
KY 259 - From KY 101 at Rhoda to KY 70 (east).	9.242	12.096
KY 70 - From KY 259 (south) to KY 259 (north).	12.388	9.939
KY 259 - From KY 238 at Bee Spring to KY 738.	18.998	17.568
(g) Great River Road in Fulton County:		
KY 239 - From Hickman County Line to KY 94 in Cayce.	6.379	3.617
KY 94 - From the Tennessee State Line to KY 1099 west of Hickman.	0.000	10.902
KY 94 - From KY 1099 east of Hickman to KY 239 in Cayce.	13.642	22.121
(h) Great River Road in Hickman County:		
KY 239 - From Fulton County Line to KY 123.	0.000	3.753
KY 123 - From KY 239 to Proposed FAP 94 at Hailwell.	10.048	15.788
KY 123 - From Bottery Road in South Columbus to KY 58.	20.882	21.787
(i) Pine Mountain Road in Letcher County:		

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US 119 - From KY 15 in Whitesburg to KY 806 near Oven Fork.	17.308	9.155
(j) US 68 Segment 1 in Boyle County:		
US 68 - From US 150 in Perryville to US 150 in Perryville.	7.369	7.475
(k) <del>US 68 Segment 1 in Jessamine County:</del>		
<del>US 68 - From Mercer County Line to 0.5 miles south of KY 1980.</del>	<del>0.000</del>	<del>11.610</del>
(l) US 68 Segment 1 in Mercer County:		
US 68 - From US 127 at Mooreland Avenue to Jessamine County Line.	6.752	20.104
(l) US 68 Segment 1 in Jessamine County:		
US 68 - From Mercer County Line to 0.5 miles south of KY 1980.	0.000	10.610
(m) US 68 Segment 2 in Fayette County:		
US 68 - From Swigert Avenue to Bourbon County Line.	10.565	15.767
(n) US 68 Segment 2 in Bourbon County:		
US 27/68 - From Fayette County Line to US 68X in Paris.	0.000	6.765
US 68X - From 10th Street to 8th Street in Paris.	1.366	1.487
US 68X - From Paris Bypass to North Middletown Road in Paris.	2.583	2.772
US 68 - From US 68X to the Nicholas County Line.	2.360	10.814
(o) <del>(n)</del> US 68 Segment 2 in Nicholas County:		
US 68 - From Bourbon County Line to KY 32/36.	0.000	3.717
(p) <del>(o)</del> US 68 Segment 3 in Nicholas County:		
US 68 - From the Licking River Bridge to the Robertson County Line.	11.687	12.211
(q) <del>(p)</del> US 68 Segment 3 in Robertson County:		
US 68 - From Nicholas County Line to the Fleming County Line.	0.000	1.357
(r) <del>(q)</del> US 68 Segment 3 in Fleming County:		
US 68 - From Robertson County Line to the Mason County Line.	0.000	5.423
(s) <del>(r)</del> US 68 Segment 3 in Mason County:		
US 68 - From Fleming County Line to US 62 in Washington.	0.000	11.854
US 62 - From KY 2515 to Ohio State Line.	13.381	18.000
(t) KY 89 (US 421 in Jackson County):		
US 421 - From the junction with KY 89 north to the junction with KY 89 south.	14.261	14.808

Section 11. Identification of NHS and FAP Highways. The following are the FAP highway segments as designated on June 1, 1991 and the current NHS highway segments which are governed by the provisions of this administrative regulation. If in existence, a noncardinal, one (1) way couplet shall also be part of the NHS and FAP system.

	Milepoint	
	From	To
(1) Adair County:		
KY 55 - From Cumberland Parkway in Columbia to the Taylor County Line.	10.059	19.006
KY 80 - From KY 55 (Courthouse Square) via Burkesville RD in Columbia to KY 61 N.	11.775	12.282
KY 61 - From KY 80 in Columbia to Green County Line.	15.248	23.997
(2) Allen County:		
US 231 - From US 31E northwest of Scottsville to Warren County Line.	.000	9.075
US 31E - From Tennessee State Line via Scottsville Bypass to Barren County Line.	.000	19.189
(3) Anderson County:		
US 127 - From Mercer County Line to US 127 Bypass.	.000	2.535
US 127B - From US 127 south of Lawrenceburg to US 127 north of Lawrenceburg.	.000	6.656
US 127 - From US 127 Bypass to Franklin County Line.	8.897	11.120
KY 151 - From US 127 Bypass to Franklin County Line.	.000	4.587
(4) Ballard County:		
US 51 - From Carlisle County Line via 4th Street in Wickliffe to Illinois State Line.	.000	8.297
US 60 - From Green Street in Wickliffe via 4th Street and Lee Street via Barlow and Kevil to McCracken County Line.	.000	16.937
KY 121 - From Carlisle County Line to 4th Street in Wickliffe.	.000	8.609
(5) Barren County:		
KY 70 - From I 65 at Cave City to KY 90.	5.118	5.359
US 68 - From US 31E (South Green Street) to KY 90 at Broadway.	12.577	12.650
KY 90 - From KY 70 at Cave City via Happy Valley Road to US 31E (Glasgow Bypass).	.000	9.923
KY 90 - From US 68 (Broadway) in Glasgow to Metcalfe County Line.	9.923	22.022
US 68 - From US 31E (Glasgow Bypass) via Main Street to US 31EX (Business) (N Race).	11.741	12.577
US 31EX - From Washington Street in Glasgow via South Green Street to US 68 (E Main St).	1.384	1.461
US 31EX - From US 68 (East Main Street) via West Main Street to North Race Street.	1.461	1.516
US 31E - From Allen County Line via Glasgow Bypass to KY 90.	.000	14.849
(6) Bell County:		
US 25E - From Tennessee [Virginia] State Line to Knox County Line.	.000	18.711
		[49.714]
US 119 - From US 25E to Harlan County Line.	.000	15.756



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KY 3085 - From KY 2014 via Old US 25E to Knox County Line.	.000	2.025
(7) Bourbon County:		
US 27 - From Fayette County Line via Lexington Road and Paris Bypass to Harrison County Line.	.000	15.435
US 68 - From US 27 in Paris via Paris Bypass to Nicholas County Line.	.000	10.814
US 460 - From Scott County Line to Paris Bypass.	.000	7.696
US 68X - From 10th Street via Main Street to 8th Street in Paris.	1.366	1.487
US 68X - From Paris Bypass via Carlisle Road to North Middletown Road in Paris.	2.583	2.772
US 460 - From US 68X (Carlisle Road) via North Middletown Road to the Montgomery County Line.	9.150	21.933
KY 627 - From Clark County Line via 10th Street to US 68X (Main Street).	.000	9.511
US 460 - From US 68X (Main Street) via 8th Street to US 27 (Paris Bypass).	7.696	9.150
(8) Boyd County:		
US 23 - From Lawrence County Line via Court Street in Catlettsburg, and Greenup Avenue and Winchester Avenue in Ashland to Greenup Co. Line.	.000	21.042
KY 180 - From south limits of I-64 Interchange to US 60.	.627	2.518
US 60 - From KY 180 near Cannonsburg via 13th Street to Winchester Avenue in Ashland.	4.023	12.198
US 23S - From US 60 (Winchester Avenue) via 13th Street Bridge to Ohio State Line.	.000	.591
(9) Boyle County:		
KY 34 - From US 150 (Main Street) in Danville via Lexington Road to Garrard County Line.	12.406	17.770
KY 52 - From US 150 to Garrard County Line.	.000	5.114
US 127 - From Lincoln County Line to US 150 (3rd and Main Street intersection).	.000	5.440
US 127 - From US 127B near KY 2186 to Mercer County Line.	8.083	10.319
<del>Existing alignment near Bonta Lane.</del>	<del>.000</del>	<del>2.000</del>
<del>US 127 - From proposed alignment near Bonta Lane to south urban limits of Danville.</del>	<del>1.864</del>	<del>2.972</del>
US 127B - From US 127 via the Danville Bypass to US 127 near [at] KY 2168.	.000	5.270
<del>US 127 - From KY 2168 to Mercer County Line.</del>	<del>7.867</del>	<del>9.849</del>
<del>US 127 - From US 127B in Danville via 4th and 3rd Streets to US 150 (Main Street).</del>	<del>2.972</del>	<del>4.967</del>
US 150 - From Washington County Line to US 68 in Perryville.	.000	4.495[5.044]
US 68 - From US 150 in Perryville to US 150 in Perryville.	7.369	7.475
US 150 - From US 68 in Perryville to Lincoln County Line.	4.495	18.766
US 127 - From US 150 at Maple Street Intersection via Main St. to US 150 at 3rd Street Intersection.	5.978	5.440
	<del>[5.495]</del>	<del>[4.957]</del>
US 150B - From US 127 (Hustonville Road) to US 150 (Standford Road).	.000	2.272
(10) Bracken County:		
KY 9 - From Mason County Line to Pendleton County Line.	.000	19.857
(11) Breathitt County:		
KY 15 - From Perry County Line to Wolfe County Line.	.000	27.505
(12) Breckinridge County:		
KY 259 - From Grayson County Line to KY 79.	.000	7.901
KY 79 - From KY 259 to US 60.	5.294	14.990
KY 3199 - From Hancock County Line to US 60X (Business).	.000	1.260[.066]
US 60X - From KY 3199 to US 60 west.	.000	2.500
US 60 - From US 60X (Business) via the Cloverport and Hardinsburg Bypass to the Meade County Line.	3.500	31.788
(13) Bullitt County:		
US 31E - From Spencer County Line via the Harold Bradley Allgood Memorial Highway to the Jefferson County Line.	.000	5.185
<del>to US 31E Mainline (Main St in Mt. Washington.)</del>	<del>.000</del>	<del>2.913</del>
<del>US 160 - From point on US 31E Mainline via Mt. Washington Bypass to another point on US 31E Mainline.</del>	<del>.000</del>	<del>2.000</del>
<del>US 31E - From proposed Mt. Washington Bypass to Jefferson County Line.</del>	<del>5.320</del>	<del>5.465</del>
(14) Caldwell County:		
US 641 - From Lyon County Line to Crittenden County Line.	.000	4.269
(15) Calloway County:		
KY 121 - From US 641 to Graves County Line.	14.075	24.156
US 641 - From Tennessee State Line via Murray to Marshall County Line.	.000	17.444
(16) Campbell County:		
<del>US 27 - From Pendleton County Line to US 27 South.</del>	<del>.000</del>	<del>22.250</del>
US 27 - From Pendleton County Line [US 27 South (York St.)] via new bridge to Ohio State Line.	.000	22.622[.400]
KY 8 - From the Kenton County Line to the I-471 underpass.	.000	.998
KY 1120 - From Kenton County Line to York Street.	.000	.668
KY 1998 - From US 27 to KY 8.	2.813	5.014
KY 471 - From US 27 to I-471 (Eastbound I-275 Overpasses).	.000	.729
KY 9 - From Pendleton County Line to north limits of I-275 Interchange.	.000	17.978
(17) Carlisle County:		
US 51 - From Hickman County Line to proposed location of the Great River Road.	.000	10.725
US 51 - From a point on US 51 Mainline via the proposed Great River Road to the Ballard County Line.	.000	1.800
US 94 - From Hickman County Line via the proposed Great River Road to proposed US 51.	.000	9.000

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KY 121 - From Graves County Line to Ballard County Line.	.000	9.714
(18) Carter County:		
KY 7 - From Elliot County Line to US 60 in Grayson.	.000	10.865
KY 1 - From US 60 to KY 9.	10.646	11.934
KY 9 - From KY 1 and KY 7 to Lewis County Line.	.000	18.262
(19) Casey County:		
US 127 - From Russell County Line to Lincoln County Line.	.000	23.715
(20) Christian County:		
US 41A - From Tennessee State Line to end of north exit ramp of Pennyryle Parkway.	.000	13.611
US 41LP - From KY 107 to northwest urban limits of Hopkinsville at KY 91/1682.	.000	5.100
KY 3493 - From US 41A at a point south of Hopkinsville to KY 107.	.000	1.892
US 41 - From Todd County Line to southbound exit ramp of the Pennyryle Parkway.	.000	10.325
US 41 - From US 68 to US 68 in Hopkinsville.	11.909	12.441
US 68 - From Trigg County Line to Todd County Line.	.000	21.126
KY 1682 - From US 68 to Pennyryle Parkway.	.000	3.904
(21) Clark County:		
KY 627 - From Madison County Line to KY 1958.	.000	6.360
KY 1958 - From KY 627 to north limits of the I-64 interchange.	.000	2.860
KY 627 - From southern limits of I-64 Interchange to Bourbon County Line.	9.154	14.812
(22) Clay County:		
KY 80 - From south limits of interchange ramps of Daniel Boone Parkway to US 421.	7.101	7.537
US 421 - From KY 80 to Jackson County Line.	16.915	32.841
(23) Clinton County:		
KY 90 - From Cumberland County Line to Wayne County Line.	.000	12.816
US 127 - From Tennessee State Line to Russell County Line.	.000	20.967
(24) Crittenden County:		
US 60 - From Livingston County Line to Union County Line.	.000	23.018
US 641 - From Caldwell County Line to US 60.	.000	7.494
(25) Cumberland County:		
KY 90 - From Metcalfe County Line to Clinton County Line.	.000	22.450
KY 61 - From Tennessee State Line to KY 90 West.	.000	13.701
(26) Daviess County:		
Proposed FAP 10 - From US 60 near Maceo to Indiana State Line.	.000	3.800
US 60 - From Owensboro Beltline to US 60 (Lewisport Road).	.000	2.600
US 60 - From US 60 Bypass West of Owensboro to Hancock County Line.	10.179	27.979
US 60B - From US 60 to US 60 (Lewisport Road).	.000	10.212
US 60S - From KY 54 to Owensboro Beltline.	.000	.500
KY 54 - From US 431 (Frederica Street) east limits of US 60 Bypass Interchange.	.000	2.663
US 431 - From McLean County Line to 2nd Street.	.000	14.670
KY 2245 - From US 431 (Frederica Street) via 5th Street to US 631 (Lewis Street).	.000	.246
US 231 - From US 60 Bypass via Hartford Road, Breckinridge Street, 5th Street, Lewis Street and Ohio River Bridge to Indiana State Line.	11.243	15.721
KY 2235 - From US 60 via Triplet Street to US 60.	.000	.145
KY 1467 - From US 231 (5th Street) via Breckinridge Street and Leitchfield Road to 2nd Street.	.000	.234
(27) Edmonson County:		
KY 101 - From Warren County Line to KY 259 at Rhonda.	.000	4.131
KY 259 - From KY 101 at Rhonda to KY 70 eastbound.	9.242	12.096
KY 70 - From KY 259 southbound to KY 259 northbound.	9.939	12.388
KY 259 - From KY 70 westbound to Grayson County Line.	12.096	22.692
(28) Elliott County:		
KY 7 - From Morgan County Line to Carter County Line.	.000	19.312
(29) Fayette County:		
US 27 - From Jessamine County Line via Nicholasville Road, South Limestone, Euclid Avenue, South Upper, Bolivar, <del>and South</del> Broadway, and Paris Pike to Bourbon County Line.	.000	15.767
<del>to US 25.</del>	.000	<del>6.941</del>
US 25 - From Main Street (US 421) via Newtown Pike to KY 922 at Georgetown Street.	14.632	15.237
KY 4 - The entire length of New Circle Road.	.000	19.283
KY 922 - From US 25 (Georgetown Road) via Newtown Pike to north limits of I-75 Interchange.	.000	3.055
<del>[US 27 - From KY 4 (New Circle Road) via Paris Pike to Bourbon County Line.</del>	<del>8.460</del>	<del>15.767</del>
US 60 - From Woodford County Line to I-75	.000	12.805
<del>[US 27/68.</del>	<del>.000</del>	<del>8.162</del>
US 68 - From southeast urban limits of Lexington at Jessamine County Line via Harrodsburg Road to KY 4.	.000	3.110
US 421 - From KY 4 via West Main Street to US 25.	.000	1.798
US 25 - From KY 418 via Richmond Road, East Main Street, and West Main Street to US 421.	8.244	14.632
KY 418 - From US 25 to southeast limits of I-75 Interchange.	.000	2.602
(30) Fleming County:		

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KY 32 - From Rowan County Line to KY 11 at a point southwest of Flemingsburg.	10.615	28.293
KY 11 - From junction with KY 32 at point southwest of Flemingsburg to Mason County Line.	10.630	17.105
	<del>10.860</del>	<del>17.263</del>
US 68 - From Robertson County Line to Mason County Line.	.000	5.423
(31) Floyd County:		
KY 114 - From Magoffin County Line to KY 1428 in Prestonsburg.	.000	12.430
US 23 - From Pike County Line to <u>Johnson County Line.</u>	.000	21.878
<del>[KY 114 ramp.</del>	<del>.000</del>	<del>15.389</del>
KY 80 - From Knott County Line to US 23.	.000	14.435
KY 1428 - From KY 114 in Prestonsburg to KY 321 in Prestonsburg.	15.605	16.091
KY 321 - From KY 1428 in Prestonsburg to <u>KY 3 [US 23] south of Auxier.</u>	.000	4.278
<u>KY 3 - From KY 321 south of Auxier to KY 321 near Auxier.</u>	1.060	2.672
<u>KY 321 - From KY 3 to Johnson County Line.</u>	4.278	5.172
<del>[US 23 - From KY 321 south of Auxier to Johnson County Line.</del>	<del>21.502</del>	<del>24.014</del>
(32) Franklin County:		
US 127 - From Anderson County Line via Capital Plaza-West Frankfort Connector Wilkerson Boulevard to Owen County Line.	.000	21.507
		<del>[22.098]</del>
US 421 - From US 127 (Owenton Road) via Thornhill Bypass to US 460 (Georgetown Road).	3.072	4.523[0]
KY 151 - From Anderson County Line to I-64.	.000	2.222
US 60 - From US 460 at Georgetown Road in Frankfort via Versailles Road to Woodford County Line.	10.716	14.038
US 421 - From US 127 to Henry County Line.	4.523[0]	17.886
US 460 - From US 60 at Versailles Road in Frankfort via Georgetown RD to Scott County Line.	.000	6.114
KY 676 - From US 127 (Lawrenceburg Road) via East-West Connector in Frankfort to US 60 (Versailles Road).	.000	5.287
(33) Fulton County:		
US 51 - From <u>south limits of</u> Purchase Parkway to Hickman County Line.	.000	5.472
KY 239 - From Hickman County Line to KY 94 in Cayce.	6.379	3.617
KY 94 - From the Tennessee State Line to KY 1099 west of Hickman.	0.000	10.902
KY 94 - From KY 1099 east of Hickman to KY 239 in Cayce.	13.642	22.121
KY 1099 - Fulton Bypass from KY 94 west of Hickman to KY 94 east of Hickman.	.000	2.966
(34) Gallatin County:		
KY 35 - From Owen County Line at Sparta to I-71.	.000	2.128
(35) Garrard County:		
US 27 - From Lincoln County Line to Jessamine County Line.	.000	16.510
KY 34 - From Boyle County Line to US 27.	.000	1.610
KY 1295 - From KY 52 to Madison County Line.	.000	6.928
KY 52 - From Boyle County Line to KY 954.	.000	13.476
KY 954 - From KY 52 to Madison County Line.	.000	7.564
(36) Graves County:		
US 45 - From southern interchange of Purchase Parkway to McCracken County Line.	18.950	31.580
KY 80 - From Purchase Parkway via West Broadway to US 45 at 7th Street in Mayfield.	9.638	11.461
KY 58 - From US 45 at 7th Street via East Broadway to Marshall County Line.	5.530	14.881
KY 121 - From Calloway County Line via Murray Road and 5th Street to KY 58 at Broadway.	.000	10.623
US 45 - From KY 80 at Broadway via North 8th Street to KY 121 at Housman Street.	17.219	17.952
KY 121 - From US 45 (North 8th Street) via Housman Street to Carlisle County Line.	10.623	22.559
(37) Grayson County:		
KY 259 - From Edmonson County Line to US 62 westbound.	.000	12.954
US 62 - From KY 259 southbound to KY 259 northbound.	20.787	21.296
KY 259 - From US 62-Eastbound to Breckinridge County Line.	12.954	21.459
(38) Green County:		
KY 61 - From Adair County Line to US 68.	.000	8.194
US 68 - From KY 61 southbound to West Hodgenville Avenue in Greensburg.	11.954	13.616
KY 61 - From KY 88 north of Greensburg to Larue County Line.	9.796	24.344
(39) Greenup County:		
KY 8 - From Lewis County Line to KY 8 Spur at South Portsmouth.	.000	1.956
US 23 - From Boyd County Line to south end of US Grant Bridge.	.000	28.760
KY 8 - From KY 8 Spur to US 23 at south limits of U.S. Grant Bridge in South Portsmouth.	1.956	3.023
KY 8S - From KY 8 via Carl Perkins Bridge to Ohio State Line.	.000	.610
KY 10 - From Lewis County Line to the second landward pier from river's edge in Ohio.	.000	12.844
(40) Hancock County:		
US 60 - From Daviess County Line to KY 3199 in Hawesville.	.000	10.782
KY 3199 - From US 60 in Hawesville to another junction with US 60.	.000	3.301
US 60 - From KY 3199 to Squirrel Tail Hollow Road.	13.666	14.270
		<del>[15.220]</del>
KY 3199 - From another junction with US 60 to the Breckinridge County Line.	3.301	5.558

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KY 69 - From US 60 at Hawesville to Indiana State Line.	13.080 <del>[44.126]</del>	13.972 <del>15.018]</del>
(41) Hardin County:		
US 31WB - From Western Kentucky Parkway to US 31W.	.202	3.704
US 31W - From US 31W Bypass to Meade County Line.	18.818	33.040
US 31W - From Meade County Line to Jefferson County Line.	33.040	37.143
KY 61 - From Larue County Line to US 31W.	.000	5.309
(42) Harlan County:		
US 119 - From Bell County Line <u>along existing and [to] proposed routes [relocation east of Cumberland.</u>	.000	<del>38.082</del>
<u>US 119 - From a point on the US 119 Mainline near Cumberland] to Letcher County Line.</u>	.000	39.182
		<del>[4.100]</del>
	.000	27.632
US 421 - From Virginia State Line to Leslie County Line.		
(43) Harrison County:		
US 27 - From Bourbon County Line to Pendleton County Line.	.000	19.472
(44) Henderson County:		
US 41 - From Pennyriple Parkway to Indiana State Line (north urban limits of Henderson).	13.414	21.193
US 41A - From Dixon Street to the northern most loop of the interchange with US 41.	13.235	17.760
US 60 - From Union County Line to <u>US 41A (Dixon Road) [Henderson Bypass].</u>	.000	10.435
		<del>[8.712]</del>
KY 425 - From US 60 (Morganfield Road) via Henderson Bypass to end of the northbound ramp junction with the Pennyriple Parkway.	.000	6.201
(45) Henry County:		
KY 55 - From Shelby County Line to KY 22 west in Eminence.	.000	1.408
KY 22 - From KY 55 south to KY 55 north.	7.420	7.522
KY 55 - From KY 22 east to US 421.	1.408	4.490
US 421 - From Franklin County Line to Shelby County Line at Pleasureville.	.000	6.434
US 421 - From Shelby County Line near Pleasureville to Trimble County Line.	6.434	25.144
(46) Hickman County:		
US 51 - From Fulton County Line to Carlisle County Line.	.000	14.451
KY 239 - From Fulton County Line to KY 123.	0.000	3.753
KY 123 - From KY 239 to Proposed FAP 94 at Hailwell.	10.048	15.788
KY 123 - From Bottery Road in South Columbus to KY 58.	20.882	21.787
Proposed FAP 94 - From KY 123 at Hailwell <u>along Cole and Chalk Bluff Roads to KY 123 at South Columbus.</u>	.000	6.000
<u>[to .??</u>	.000	<del>10.095]</del>
<u>KY 58 - From KY 123 to KY 80 at Columbus.</u>	0.573	0.761
<u>KY 80 - From KY 58 to KY 123.</u>	0.000	1.526
<u>KY 123 - From KY 80 to Carlisle County Line.</u>	21.787	22.958
(47) Hopkins County:		
KY 281 - From east limits of interchange ramps of Pennyriple Parkway to US 41.	.000	.712
US 41A - From US 41 and KY 281 to Webster County Line.	.000	13.278
(48) Jackson County:		
KY 30 - From Laurel County Line to Owsley County Line.	.000	20.919
US 421 - From Clay County Line to Rockcastle County Line.	.000	29.585
(49) Jefferson County:		
US 31W - From Hardin County Line via Dixie Highway, Bernheim Lane, 22nd Street, Dumesnil Street and 21st Street <u>[to Main Street.</u>	.000	<del>20.292</del>
<u>US 31W - From 21st Street via Market Street] to US 31 east [3E] at Main and 2nd Streets.</u>	.000	22.135
	<del>[20.292]</del>	<del>22.135]</del>
	.000	.741
	.000	.089
US 150 - From Main Street via 21st Street and 22nd Street to I-64.		
US 150T - From 22nd Street to 21st Street.		
US 31 - From US 31E (Main Street) via George Rogers Clark Bridge to 0.02 mile north of 4th Street in Jeffersonville, Indiana.	.000	1.122
US 31E - From Bullitt County Line to US 31W at Main and 2nd Streets.	.000	17.987 <del>[814]</del>
US 42 - From Baxter Avenue to US 60.	.000	.805
US 42 - From I-264 to KY 841.	5.779	8.951
KY 841 - From US 31W at Dixie Highway via Gene Snyder Freeway to I-65.	.000	10.250
KY 841 - From I-71 ramps to US 42.	34.758	37.006
KY 1934 - From KY 1230 (Cane Run Road) to I-264.	.000	7.593
US 60 - From US 42 to Story Avenue.	.000	.123
(50) Jessamine County:		
US 27 - From the Garrard County Line to Fayette County Line.	.000	15.070
US 68 - From Mercer County Line to Fayette County Line.	.000	12.060
(51) Johnson County:		
US 23 - From Floyd County Line to Lawrence County Line.	.000	18.386
US 460 - From Magoffin County Line to US 23 near Paintsville.	.000	7.809
KY 321 - From Floyd County Line to US 23 north of Paintsville.	.000	9.562

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KY 40 - From US 460 to KY 321.	8.741	9.293
	<del>[-.000]</del>	<del>7.700]</del>
(52) Kenton County:		
KY 8 - From 4th Street to the Campbell County Line.	6.434	7.662
KY 1120 - From I-75 to Campbell County Line.	.000	1.212
(53) Knott County:		
KY 15 - From Letcher County Line to Perry County Line.	.000	9.380
KY 80 - From Perry County Line to Floyd County Line.	.000	20.093
(54) Knox County:		
US 25E - From Bell County Line to Laurel County Line.	.000	26.571
KY 90 - From Whitley County Line to 1.621 miles south of US 25E at KY 3041 (Proposed).	.000	2.100
KY 3041 - From 1.621 miles south of US 25E to US 25E.	.000	1.621
KY 3085 - From Bell County Line via Old US 25E to junction with US 25E.	.000	2.140
(55) Larue County:		
KY 61 - From Green County Line via Hodgenville Bypass to Hardin County Line.	.000	13.603
US 31E - From KY 61 south via Hodgenville to Nelson County Line.	6.900	20.725
(56) Laurel County:		
US 25E - From Knox County Line in Corbin to west limits of I-75 ramps.	.000	2.024
US 25 - From Daniel Boone Parkway in London to KY 490.	13.612	16.315
KY 490 - From US 25 to KY 30 at East Bernstadt.	.000	.877
KY 30 - From KY 490 to Jackson County Line.	1.404	9.806
KY 80 - From Pulaski County Line to the Daniel Boone Parkway and US 25 near London.	.000	11.083
KY 192 - From west ramps of I-75 to the Daniel Boone Parkway east of London.	18.190	22.041
(57) Lawrence County:		
US 23 - From Johnson County Line to Boyd County Line.	.000	28.947
KY 645 - From US 23 to Martin County Line.	.000	5.205
(58) Lee County:		
KY 11 - From Owsley County Line via Beattyville to Wolfe County Line.	.000	14.845
(59) Leslie County:		
US 421 - From Harlan County Line via Main Street in Hyden to KY 118 (Hyden Spur).	.000	22.613
KY 118 - From US 421 in Hyden via Hyden Spur to Daniel Boone Parkway.	.000	3.524
(60) Letcher County:		
KY 15 - From US 119 at Whitesburg to KY 7 North at Isom.	.000	9.230
KY 7 - From KY 15 to KY 15.	13.497	14.157
KY 15 - From KY 7 South in Isom to Knott County Line.	9.230	10.675
US 23 - From Virginia State Line along <u>existing and proposed alignment [to US 119]</u> to Pike County Line.	.000	7.07[0]0
US 119 - From Harlan County Line to proposed US 23 near Virginia State Line.	.000	27.798
(61) Lewis County:		
KY 9 - From Carter County Line to Mason County Line.	.000	31.218
KY 8C - From KY 10 to KY 8 south of Quincy.	.000	.127
KY 8 - From KY 8C south of Quincy to Greenup County Line.	28.575	36.910
KY 10 - From KY 9 Greenup County Line.	6.788	19.834
(62) Lincoln County:		
US 27 - From Pulaski County Line via Stanford to Garrard County Line.	.000	21.982
US 127 - From Casey County Line via Hustonville to Boyle County Line.	.000	10.847
US 150 - From Boyle County Line to US 150 Bypass.	.000	4.347
US 150B - From US 150 to US 150.	.000	3.522
US 150 - From US 150/US 150 Bypass near Preacherville Road to Rockcastle County Line.	8.705	19.665
(63) Livingston County:		
US 60 - From McCracken County Line via Smithland, Burna, and Salem to Crittenden County Line.	.000	29.059
US 62 - From Marshall County Line via Lake City to Lyon County Line.	.000	2.854
(64) Logan County:		
US 79 - From Todd County Line via Clarksville Road and 9th Street to US 431 North.	.000	12.135
US 68 - From Todd County Line via Hopkinsville Road, 4th Street and Franklin Street to Warren County Line.	.000	26.567
US 431 - From Tennessee State Line to Muhlenberg County Line.	.000	31.898
US 68X - From US 68 west of Auburn via Old US 68 to US 60 east of Auburn.	.000	3.035
KY 3172 - From KY 73 via Old US 68 to Warren County Line.	.000	2.515
(65) Lyon County:		
US 62 - From Livingston County Line to US 641 at Fairview.	.000	10.465
US 641 - From US 62 at Fairview to Caldwell County Line.	.000	5.715
(66) McCracken County:		
US 45 - From Graves County Line via Lone Oak Road and Jackson Street to US 60 East (Jackson Street).	.000	10.820
US 60 - From Ballard County Line via Hinkleville Road and Park Avenue to US 45 (28th Street) at Laclede.	.000	13.544
US 60 - From US 45 (28th Street) via Jackson Street, 21st Street, Beltline Highway, and Division Street		

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to the Livingston County Line.	13.544	20.028
US 62 - From US 60 to US 68.	12.881	15.513
US 68 - From US 62 to Marshall County Line.	.000	2.677
(67) McCreary County:		
US 27 - From Tennessee State Line to Pulaski County Line.	.000	22.252
KY 90 - From US 27 to Whitley County Line.	.000	11.920
(68) McLean County:		
US 431 - From Muhlenberg County Line to Daviess County Line.	.000	11.573
(69) Madison County:		
KY 1295 - From Garrard County Line to KY 52.	.000	4.529
KY 52 - From KY 1295 via Lancaster Avenue to KY 876.	5.444	10.910
KY 954 - From Garrard County Line to KY 21.	.000	.139
KY 21 - From KY 954 via Lancaster Road and Chestnut Street in Berea to US 25 at Mt. Vernon Road.	6.176	9.115
US 25 - From KY 21 West via Chestnut Street in Berea to KY 21 East.	2.863	3.810
KY 21 - From US 25 at Estill Street via Prospect Street and Big Hill Road in Berea to US 421.	9.115	14.196
KY 876 - From west limits of I-75 interchange in Richmond to KY 52 (Irvine Road).	7.097	10.755
US 25 - From US 421 via Big Hill Avenue to KY 876.	11.960	15.500
US 421 - From US 25 to Rockcastle County Line.	.000	13.031
US 421S - From KY 52 (Irvine Road) to north urban limits of Richmond at US 25.	.000	3.900
US 25 - From proposed Richmond Bypass to northwest limits of I-75 interchange at Richmond.	19.188	20.158
KY 627 - From US 25 west of I-75 to Clark County Line.	.000	6.118
(70) Magoffin County:		
<del>US 460 - From Mountain Parkway to KY 114.</del>	<del>12.546</del>	<del>14.635</del>
KY 114 - From US 460 to Floyd County Line.	.000	5.026
<del>US 460 - From Morgan County Line to Mountain Parkway West.</del>	<del>.000</del>	<del>12.546</del>
<del>US 460 - From KY 114 to Johnson County Line.</del>	<del>.000</del>	<del>20.426</del>
	<del>[14.635]</del>	<del>20.426</del>
(71) Marion County:		
US 68 - From Taylor County Line to KY 55 (Walnut St.).	.000	10.690
KY 55 - From US 68 (Main Street) via Walnut Street to KY 49 (St. Marys Road).	.000	.389
KY 49 - From KY 55 (St. Marys Road) via Walnut Street to KY 49 (Proctor Knott Avenue).	17.815	17.968
KY 55 - From KY 55 (Proctor Knott Avenue) via Walnut and Spalding Avenue to Washington County Line.	.389	4.669
(72) Marshall County:		
KY 58 - From Graves County Line to KY 80.	.000	2.156
KY 80 - From KY 58 to US 68.	.000	16.926
US 68 - From McCracken County Line to Trigg County Line.	.000	28.085
US 641 - From Calloway County Line to US 62.	.000	19.422
US 62 - From I-24 to Livingston County Line.	8.805	12.081
US 641S - From US 641 to Purchase Parkway.	.000	3.519
<u>KY 348 - From Purchase Parkway to US 641.</u>	<u>7.448</u>	<u>8.325</u>
(73) Martin County:		
KY 645 - From KY 40 at a point west of Inez Bypass to KY 3 northbound south of Inez.	4.682	6.605
KY 3 - From KY 645 westbound via Inez Bypass to KY 645 eastbound.	9.709	10.019
KY 645 - From KY 3 southbound via Inez Bypass to KY 40 southeast of Inez.	6.605	7.632
KY 40 - From KY 645 southeast of Inez to West Virginia State Line.	11.900	20.280
KY 645 - From Lawrence County Line to KY 40 at a point west of Inez.	.000	4.682
(74) Mason County:		
KY 11 - From Fleming County Line to KY 9.	.000	8.452
US 68 - From Fleming County Line to US 62 in Washington.	.000	11.854
US 62 - From US 68 in Washington via Lexington Road, Forest Avenue, and Aberdeen Bridge to Ohio State Line.	12.672	18.000
KY 9 - From Lewis County Line to Bracken County Line.	.000	19.554
KY 546S - From KY 9 to Ohio State Line via proposed New Bridge.	.000	4.600
(75) Meade County:		
US 31W - From Hardin County Line to Hardin County Line.	.000	3.827
US 60 - From Breckinridge County Line to US 31W.	.000	15.644
KY 144 - From US 60 to KY 448 near Buck Grove.	25.390	28.665
KY 448 - From KY 144 to KY 1051 (Brandenburg Bypass).	.000	4.392
KY 1051 - From KY 448 via Brandenburg Bypass to KY 79.	.000	2.218
KY 79 - From KY 1051 via Brandenburg Bypass to Indiana State Line.	8.237	9.912
(76) Menifee County:		
US 460 - From Montgomery County Line to Morgan County Line.	.000	19.750
(77) Mercer County:		
US 127 - From Boyle County Line via Danville Road to US 68.	.000	4.402
US 68 - From US 127 at Mooreland Avenue to Jessamine County Line.	6.752	20.104
US 127 - From US 68 to Anderson County Line.	4.402	17.150

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(78) Metcalfe County:		
KY 90 - From Barren County Line to Cumberland County Line.	.000	11.719
(79) Montgomery County:		
US 460 - From Bourbon County Line to KY 686 (Mount Sterling Bypass).	.000	8.281[9]
KY 686 - From US 460 (Maysville Road) via Mount Sterling Bypass to US 460 (Frenchburg Road) at south urban limits of Mount Sterling.	.000	3.460
US 460 - From south urban limits of Mount Sterling to Menifee County Line.	10.702	22.151
(80) Morgan County:		
KY 7 - From US 460 in West Liberty to Elliot County Line.	.000	11.683
KY 203 - From Wolfe County Line to US 460.	.000	3.761
US 460 - From Menifee County Line via West Liberty to Magoffin County Line.	.000	28.634
(81) Muhlenberg County:		
US 431 - From Logan County Line to McLean County Line.	.000	27.779
(82) Nelson County:		
US 31E - From Larue County Line via New Haven Road, Cathedral Street, and Stephen Foster Avenue to Spencer County Line.	.000	27.588
US 62 - From US 31E to US 150.	14.294	14.653
US 150 - From US 62 to Washington County Line.	.000	7.682
(83) Nicholas County:		
US 68 - From Bourbon County Line to Robertson County Line.	.000	12.211
(84) Owen County:		
US 127 - From Franklin County Line to KY 35 at Bromley.	.000	24.687
KY 35 - From US 127 to Gallatin County Line.	.000	4.132
(85) Owsley County:		
KY 30 - From Jackson County Line to KY 11-North.	.000	11.206
KY 11 - From KY 30 to Lee County Line.	14.227	17.307
(86) Pendleton County:		
US 27 - From Harrison County Line to Campbell County Line.	.000	19.422
KY 9 - From Bracken County Line to Campbell County Line.	.000	4.339
(87) Perry County:		
KY 15 - From Knott County Line at Vicco to Breathitt County Line.	.000	25.179
KY 80 - From KY 15 to Knott County Line.	7.910	15.862
(88) Pike County:		
US 23 - From Letcher County Line along proposed and existing alignments to [four lane east of Dorton.	.000	4.200
<del>US 23 - From KY 610 at Dorton via Pikeville to] Floyd County Line.</del>	<del>.000</del>	<del>35.123</del>
	[6.589	35.123]
US 119 - From US 23 north of Pikeville to West Virginia State Line.	.000	29.748
US 460 - From US 23 north of Shalbiana to Virginia State Line.	.000	24.865
		[25.446]
(89) Powell County:		
KY 11 - From Wolfe County Line to Mountain Parkway.	.000	3.504
(90) Pulaski County:		
US 27 - From McCreary County Line to Lincoln County Line.	.000	30.693
KY 80B - From US 27 to KY 80.	.000	2.315
KY 80 - From KY 80 Bypass to Laurel County Line.	21.636	40.393
KY 90 - From Wayne County Line to US 27.	.000	4.169
KY 461 - From KY 80 to Rockcastle County Line.	.000	8.441
(91) Robertson County:		
US 68 - From Nicholas County Line to Fleming County Line.	.000	1.357
(92) Rockcastle County:		
US 150 - From Lincoln County Line to US 25 in Mount Vernon.	.000	10.511
US 25 - From I-75 to US 150.	11.764	13.882
US 421 - From Jackson County Line to Madison County Line.	.000	.601
KY 461 - From Pulaski County Line to US 25.	.000	9.404
US 25 - From KY 461 to I-75.	15.018	15.678
(93) Rowan County:		
KY 32 - From Fleming County Line to south limits of I-64 interchange.	.000	5.784
(94) Russell County:		
US 127 - From Clinton County Line to Casey County Line.	.000	26.998
(95) Scott County:		
US 460 - From Franklin County Line to proposed Georgetown Bypass near Great Crossings.	.000	7.100
Proposed Georgetown Bypass - From US 460 Mainline near Great Crossings to US 25.	.000	3.400
US 460B - From US 25 via US 460 (Georgetown Bypass) to US 62/US 460.	.000	2.891
US 460 - From US 62/US 460B to Bourbon County Line.	8.583	15.421
(96) Shelby County:		
KY 55 - From I-64 [to southwest urban limits of Shelbyville] via Taylorsville Road to US 60	6.246	7.898
KY 55 - From KY 43/KY 2268 to Henry County Line.	9.131	17.850



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<del>and Boone Station Road to Henry County Line.</del>	<del>6.246</del>	<del>17.850</del>
US 60 - From KY 55 South (Taylorsville Road) via Midland Trail and Main Street to KY 55 North (Boone Station Road).	8.589	11.398
<u>KY 2268 - From southend of Clear Creek Bridge via 7th Street and Pleasureville Road to KY 55.</u>	<u>0.000</u>	<u>1.308</u>
KY 53 - From I-64 to US 60 (Frankfort Road) via Mt Eden Road.	6.188[9]	7.978
US 421 - From Henry County Line to Henry County Line.	.000	.661
(97) Simpson County:		
US 31W - From south limits of I-65 Interchange to KY 100.	2.300	6.252[488]
KY 100 - From US 31W Mainline to the I-65 ramps east of I-65.	9.675	12.875
(98) Spencer County:		
US 31E - From Nelson County Line to Bullitt County Line.	.000	2.433
(99) Taylor County:		
KY 55 - From Adair County Line to US 68 (Broadway).	.000	10.293
US 68 - From KY 55 via Broadway to Marion County Line.	4.939	13.600
(100) Todd County:		
US 41 - From Tennessee State Line to Christian County Line.	.000	12.458
US 79 - From Tennessee State Line to Logan County Line.	.000	10.606
US 68 - From Christian County Line to Logan County Line.	.000	14.060
(101) Trigg County:		
US 68 - From Marshall County Line to Christian County Line.	.000	28.115
<u>US 68X - From US 68 west of Cadiz to US 68 east of Cadiz.</u>	<u>0.000</u>	<u>4.519</u>
<u>KY 3468 - From US 68 east of Cadiz via Old US 68 to US 68 west of I-24.</u>	<u>0.000</u>	<u>2.840</u>
		[28.224]
(102) Trimble County:		
US 421 - From Henry County Line to US 42 South.	.000	6.704
US 42 - From US 421 South in Bedford to US 421 North in Bedford.	8.078	8.249
US 421 - From US 42 North to Indiana State Line.	6.704	19.287
(103) Union County:		
KY 56 - From Illinois State Line to proposed Morganfield Bypass.	.000	11.600
KY 56 - From existing US 56 via proposed Bypass to US 60.	.000	1.400
US 60 - From Crittenden County Line to proposed Morganfield Bypass.	.000	15.500
US 60 - From existing US 60 via proposed Bypass to US 60 east of Morganfield.	.000	2.900
US 60 - From proposed Bypass east of Morganfield to Henderson County Line.	18.100	26.069
KY 109 - From Webster County Line to US 60.	.000	1.536
(104) Warren County:		
KY 101 - From I-65 to US 31W.	7.861	11.641
US 31W - From KY 101 south to KY 101 north.	27.869	28.557
KY 101 - From US 31W to Edmonson County Line.	11.641	12.850
US 68 - From Logan County Line to US 31W.	.000	13.060
US 31W - From US 68 to KY 446 Overpass.	14.670	17.569
KY 446 - From US 31W to I-65.	.000	1.090
KY 880 - From KY 185 to US 68.	.000	5.128
KY 185 - From KY 880 to US 68.	.000	.292
US 231 - From Allen County Line to I-65.	.000	9.106
<u>KY 3172 - From Logan County Line via Old US 68 to KY 240.</u>	<u>.000</u>	<u>0.300</u>
(105) Washington County:		
KY 55 - From Marion County Line to US 150.	.000	4.551
KY 555 - From US 150 to north end of Bluegrass Parkway Interchange.	.000	14.738
US 150 - From Nelson County Line to Boyle County Line.	.000	21.359
(106) Wayne County:		
KY 90 - From Clinton County Line to Pulaski County Line.	.000	25.235
(107) Webster County:		
US 41A - From Hopkins County Line to KY 670.	.000	1.324
KY 670 - From US 41A to KY 109.	.000	2.712
KY 109 - From KY 670 to Union County Line.	2.876	14.664
(108) Whitley County:		
KY 90 - From McCreary County Line to US 25W.	.000	8.328
US 25W - From KY 90 to east limits of I-75 ramps.	22.183	29.677
KY 90 - From US 25W along proposed alignment to Knox County Line.	.000	2.000
(109) Wolfe County:		
KY 15 - From Breathitt County Line to KY 191.	.000	9.515
KY 15S - From KY 15 to westbound land of Mountain Parkway.	.000	1.054
KY 11 - From Lee County Line to Powell County Line.	.000	5.317
KY 191 - From KY 15 Spur to KY 203.	.000	10.342
KY 203 - From KY 191 to Morgan County Line.	.000	1.323
(110) Woodford County:		
US 60 - From Franklin County Line to Fayette County Line.	.000	13.039

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Section 12. No Encroachment Permits for Vegetation Control. An encroachment permit shall not be issued pursuant to the provisions of 603 KAR 5:150 for the clearing or trimming of any vegetation on state-owned right-of-way which is in front of an outdoor advertising device.

Section 13. Material Incorporated by Reference. (1) The following material is incorporated by reference:

(a) "The FHWA/Kentucky [Bonus] Agreement for the Control of Outdoor Advertising" between the Kentucky Department of Highways and the Federal Highway Administration, executed December 23, 1971; and

(b) "Application for an Advertising Device Permit," Form TC 99-31, August [March] 1997 [December 1995] edition;

(c) "Measurement of Commercially or Industrially Developed Area," a Transportation Cabinet document effective March 1997.

(2) Material incorporated by reference as a part of this administrative regulation may be viewed, copied, or obtained from the Transportation Cabinet, Permits Branch, 11th Floor, State Office Building, 501 High Street, Frankfort, Kentucky 40622. The telephone number is (502) 564-4105. The business hours are 8 a.m. to 4:30 p.m. eastern time on weekdays.

J.M. YOWELL, P.E., State Highway Engineer

JAMES C. CODELL, III, Secretary

APPROVED BY AGENCY: August 5, 1997

FILED WITH LRC: August 5, 1997 at 11 a.m.

### REGULATORY IMPACT ANALYSIS

Contact person: Sandra Pullen Davis

(1) Type and number of entities affected: All owners of outdoor advertising devices 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: We don't anticipate that the changes proposed in this administrative regulation will cause any change in 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: We don't anticipate that the changes proposed in this administrative regulation will cause any change in 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: It will be easier for persons wanting a changeable message board to comply with the looser standards in this administrative regulation change. However, with the Congressional approval of the National Highway System additional roads have been added to the list of protected highways as required by 23 USC 131. Many of the billboards located within these areas will be reclassified as "nonconforming" allowing only routine maintenance to be performed on those billboards. The billboards will be allowed to continue in existence but not be rebuilt at the end of their useful lives.

2. Second and subsequent years: Same as above.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings: None as a result of the changes to this administrative regulation.

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements: The Transportation Cabinet will have to review all requests for billboard permits. In addition, the cabinet will have to perform a survey of all of the newly protected roads to identify the billboards which will now be classified

as "nonconforming".

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

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: State Road Fund as authorized in the Transportation Cabinet 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: Will be implemented state wide. See below.

(b) Kentucky: The decision to continue not allowing trees on state right of way which are growing in front of billboards according to persons who advertise on or own billboards and who testified at or submitted comments to the public comment hearing will have a detrimental economic impact on their businesses. They testified that a certain percentage of their businesses can be directly attributed to billboard advertisements. If the growth on state right of way hides the advertisement, that portion of the business will be lost. However, others pointed out that there are very few billboards with growth that hides even a portion of the advertisement.

(7) Assessment of alternative methods; reasons why alternatives were rejected: The Transportation Cabinet considered whether permits should be issued to allow trees or other vegetation on state right of way to be cut if the vegetation is blocking a billboard or other advertising device. This alternative was denied because of the strong outpouring of public sentiment against the tree trimming. The Transportation Cabinet was required because of a change in federal law to extend the areas of protection to all segments of the National Highway System. Because of two recent court cases, the Transportation Cabinet was required to amend the administrative regulation as it relates to changeable message boards and commercially and industrially developed areas.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: Since many of the participants at the public comment hearing considered cutting trees in front of billboards to be an environmental issue, not changing the policy of "no tree cutting" will benefit the environment.

(b) State whether a detrimental effect on environment and public health would result if not implemented: Unlikely to be detrimental - just no longer receive the benefits.

(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: Since the Bonus Agreement with the Federal Highway Administration governs much of what Kentucky can or cannot do regarding outdoor advertising devices, the Transportation Cabinet has incorporated it by reference as a part of this administrative regulation.

(11) TIERING: Is tiering applied? Yes. Tiering is applied since there are less stringent standards for the placement of billboards adjacent to FAP highways when compared to the interstate and parkway highways. In addition, there are less stringent standards for on-premise signs when compared to off-premise signs.

### FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 23 USC 131, 23 CFR Part 750 and the Bonus Agreement executed by the Federal Highway Administration and the Kentucky Department of Highways. In addition, 23 USC 131 establishes the prohibition against erecting new billboards on scenic highway.

2. State compliance standards. Outdoor advertising devices are

controlled on the interstate highways, parkways, national highway system, and federal aid primary highways. Interstates and parkways are treated the same with more control imposed on those highways. No new billboards are allowed to be constructed on highways which are FAP, interstate, or parkway which are also designated as scenic.

3. Minimum or uniform standards contained in the federal mandate. Outdoor advertising devices are mandated to be controlled on the interstate highways, parkways, national highway system, and federal aid primary highways. The parkways are required to be treated as interstate highways for billboard control. Scenic highways which are FAP, interstate, or parkways shall not have new billboards erected along them.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? Yes.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. There is more than one federal mandate operating here. The basic mandate is the federal Highway Beautification Act governed by 23 CFR Part 750. However, Kentucky is one of the states which voluntarily agreed in 1961 to stricter controls on outdoor advertising devices within 660 feet of interstate and parkway highways. Kentucky received over \$2.5 million in bonus payments since entering into the Bonus Agreement with FHWA. Violation of the agreement would cause those funds plus others spent in removing billboards to be repaid to the federal government. In addition, Kentucky has not allowed the less stringent controls in "Cotton Areas". This would require an act of the General Assembly as well as requiring the Commonwealth to pay back much federal money received under the bonus agreement.

**CABINET FOR HEALTH SERVICES**  
**Department for Medicaid Services**  
**(Amended After Hearing)**

**907 KAR 1:710. Managed behavioral health care initiative (1915b Waiver).**

RELATES TO: KRS 205.520, 205.6334

STATUTORY AUTHORITY: KRS Chapter 47, Appendix A, Part 1, Sec. G, GB, 51b, 194.025, 194.030, 194.050, 205.520, 205.6320, 205.6332, 205.6334, 205.6336, 205.8453, 42 USC 1315, EO 96-862

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health Services, Department for Medicaid Services, has the responsibility to administer the Medicaid Program. 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 authorizes 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 establishes the terms and conditions under which the Department for Medicaid Services shall provide Medicaid services pursuant to a waiver granted by the Secretary, United States Department of Health and Human Services following a request made by the department pursuant to KRS 205.6334. The waiver provides for the development of a statewide system of capitated, comprehensive risk-bearing managed care plans for behavioral health and establishes standards for access and quality in accordance with KRS 205.6320.

Section 1. Definitions. (1) "Adult with severe mental illness" means an individual over eighteen (18) years of age who has chronic mental illness as defined in KRS 210.005(2) and (3).

(2) "Behavioral health care provider" means a licensed or certified individual or a facility, agency, institution, organization, or business that is employed by or has entered into an agreement with the MBHO

to deliver behavioral health services.

(3) "Behavioral health services" is defined in Section 1(1) of 907 KAR 1:705.

(4) "Behavioral health region" means a partnership region or a grouping of partnership regions designated by the department as a geographical coverage area of an MBHO in Kentucky.

(5) "Capitation payment" is defined in Section 1(2) of 907 KAR 1:705.

(6) "Child with a severe emotional disability" is defined in KRS 200.503(2). [~~Section 1(2) of 907 KAR 1:525~~].

(7) "Clinical practitioner" means a physician or person who is licensed or certified in accordance with KRS Chapters 309, 314, 319 or 335.

(8) "Coalition" means an entity composed of public and private behavioral health care providers that meets the application criteria as established in Section 3(4) of this administrative regulation [~~and the MBHO requirements as established in Section 8 of this administrative regulation~~].

(9) "Department" means the Kentucky Department for Medicaid Services or its agent.

(10) "Department of Juvenile Justice (DJJ) population" means children who are Medicaid eligible and for whom the Kentucky Justice Cabinet has been appointed legal guardian pursuant to KRS Chapter 15A.

(11) "Department for Social Services (DSS) population" means children in foster care and children receiving adoption assistance as specified in 907 KAR 1:011, and adult wards for whom the Kentucky Cabinet for Families and Children has been appointed the legal guardian pursuant to KRS 387.500 to 387.770.

(12) [~~14~~] "Emergency care" means immediate care for a condition of mental illness or emotional disability which may result in serious jeopardy to the life or health of the individual, harm to another person by the individual, or inability of the individual to seek food and shelter.

(13) [~~14~~] "Encounter" means a behavioral health care contact or service provided or arranged by an MBHO in a behavioral health region to a member.

(14) "Evidence-based clinical care standard" means a clinical care standard which has been validated by a national health care organization or through authenticated clinical studies.

(15) [~~14~~] "Managed behavioral health care organization (MBHO)" means an entity that meets requirements as established in Section 8 of this administrative regulation and, under contract with the department in accordance with KRS Chapter 45A, agrees to provide, or arrange for the provision of, behavioral health services to members on the basis of prepaid capitation payments.

(16) [~~14~~] "Member" means a Medicaid recipient who is enrolled in an MBHO.

(17) [~~14~~] "Partnership" is defined in Section 1(10) of 907 KAR 1:705.

(18) [~~14~~] "Partnership region" is defined in Section 1(11) of 907 KAR 1:705.

(19) [~~14~~] "Primary care provider" is defined in Section 1(12) of 907 KAR 1:705.

(20) [~~14~~] "Recipient" is defined in Section 1(13) of 907 KAR 1:705.

(21) [~~14~~] "Regional interagency council" means the council established pursuant to KRS 200.509.

(22) [~~14~~] "Regional mental health-mental retardation board" means the board established pursuant to KRS 210.370.

(23) [~~14~~] "Rural area" is defined in Section 1(14) of 907 KAR 1:705.

(24) "Telemedicine technology" means the use of electronic signals to transfer medical information from one (1) site to another.

(25) [~~14~~] "Urgent care" means care for a condition of mental illness or emotional disability that is needed within a twenty-four (24)

hour period, but the condition poses no serious jeopardy to the life or health of the individual, threat of harm to another person by the individual, or immediate inability of the individual to seek food and shelter.

Section 2. General. (1) The department shall implement, within the Medicaid Program, a prepaid capitation managed behavioral health care system to be known as Kentucky Access. Kentucky Access shall be implemented and administered in accordance with the terms and conditions of the waiver granted by the Secretary, United States Department of Health and Human Services under the authority granted by 42 USC 1315.

(2) Kentucky Access shall be implemented ~~[incrementally]~~ statewide, by the establishment of MBHOs with or immediately following the implementation of a partnership. An MBHO shall be:

- (a) Organized by a coalition; or
- (b) Identified through a competitive request for proposal process in accordance with KRS Chapter 45A.

Section 3. Application Process. (1) ~~[As part of the implementation of Kentucky Access,]~~ The department shall publish a legal notice which requires an organizer ~~[specifying a time frame for a single coalition]~~ to register within thirty (30) days an intent to form a coalition. The registration shall ~~be~~ in the form of a letter addressed to the commissioner of the department and include the:

- (a) Proposed name of the organization;
- (b) Proposed geographical area to be served by the organization;
- (c) Names of the major health care providers and groups participating in planning efforts;
- (d) Proposed governance structure and information relating to governance;
- (e) Proposed target date for implementation of the MBHO; and
- (f) Name, address and telephone number of a person to contact regarding the letter of intent ~~[legally organize an MBHO]~~.

(2) At the end of the registration period as specified in subsection (1) of this section, if more than one (1) organizer ~~[coalition]~~ registers an intent to form a coalition ~~[provide behavioral health services]~~ in a behavioral health region, the department shall:

(a) Respond in writing to each registrant and identify ~~[all registrants:~~

- ~~(a) Identifying]~~ the names and addresses of all registrants; and
- (b) Suspend ~~[Suspend]~~ activity for the application process for thirty (30) days from the date of the letter of intent in order to permit each registrant to organize a single coalition for the behavioral health region ~~[be legally organized solely to meet requirements as specified in Section 8 of this administrative regulation]~~.

(3) ~~[Upon receipt of the letter of intent from a single coalition,]~~ The department shall request an application from the organizer of a ~~[the]~~ coalition if the department receives a single letter of intent ~~[to provide, or arrange] for [the provision of behavioral health services in] a behavioral health region.~~

(4) The application from a coalition ~~[which applies to be an MBHO]~~ shall be submitted within sixty (60) days to the commissioner in the department and be signed by ~~[include]:~~

(a) The chairman of the board of directors of each regional mental health-mental retardation board that serves a county in ~~[an area which contains]~~ the behavioral health region except when two (2) or fewer counties within the behavioral health region are served by the regional mental health-mental retardation board;

(b) The chairman of the department of psychiatry at the University of Kentucky School of Medicine ~~[medical school]~~, if Lexington is within the behavioral health region, or the department of psychiatry at the University of Louisville School of Medicine ~~[medical school]~~, if Louisville is within the behavioral health region; and

(c) At least one (1) representative of the behavioral health region

from each of the following classes of behavioral health providers in the region:

1. Psychiatric hospitals or psychiatric units of acute care hospitals except as follows:

a. If two (2) or more psychiatric hospitals are located within the behavioral health region, a representative of ~~[the]~~ psychiatric hospitals and a representative of ~~[the]~~ psychiatric units of ~~[an]~~ acute care hospitals shall be included; or

b. If one (1) or no psychiatric hospital is located in the behavioral health region, a representative of either the psychiatric hospital or ~~[a]~~ psychiatric units of ~~[an]~~ acute care hospitals shall be included.

2. Psychiatrists or other clinical practitioners not employed by an organization or facility as specified in this subsection; and

3. Agencies that provide community-based mental health services or psychiatric residential treatment facilities ~~[if two (2) or more of these psychiatric residential treatment facilities are located in a behavioral health region]~~.

(5) ~~[An]~~ The application submitted by ~~[request,]~~ the coalition as specified in subsection (4) of this section shall include a plan which specifies activities, persons responsible and time frames ~~[be required to specify the process]~~ for:

(a) Development of a provider network as specified in Section 8(5) of this administrative regulation; ~~[capable of providing the services as specified in Section 10 of this administrative regulation to members who reside in the behavioral health region;]~~

(b) Development of ~~[Submission of a plan for implementing]~~ a quality improvement program ~~[that meets the requirements]~~ as specified in Section 14(1) ~~[3]~~ of this administrative regulation ~~[when the MBHO becomes operational];~~

(c) Development of a management information system capable of producing the data and reports as specified in Sections 8, 10, 11, 13, 14, 15 and 22 of this administrative regulation; and

(d) ~~[Submission of an]~~ Implementation of ~~[timeline to become operational as]~~ an MBHO within three (3) ~~[six (6)]~~ months of the approval of the application.

(6) The department shall initiate a competitive request for proposal process in accordance with KRS Chapter 45A to contract for behavioral health services in a behavioral health region if ~~[a coalition]~~:

(a) No ~~[Fails to file a]~~ letter of intent is filed in accordance with subsection (3) ~~[4]~~ of this section; or

(b) An application as specified in subsections (4) and (5) of this section is not received by the department within sixty (60) days of the request for application; or

(c) The application ~~[it]~~ does not meet the requirements as specified in subsections (4) and (5) of this section ~~[8 of this administrative regulation]; or~~

(d) The coalition ~~[it]~~ is not ~~[unable to become]~~ operational as an MBHO within three (3) ~~[six (6)]~~ months of the department's approval of the application. The coalition ~~[, unless circumstances beyond the coalition's control arise in which case the department]~~ may request ~~[grant]~~ an extension of up to three (3) months of this provision by submitting to the department a reapplication which meets requirements as specified in subsection (3) of this section by the end of the third month following the department's approval of the original application ~~[in writing]~~.

Section 4. Recipient Participation. (1) Recipients shall be enrolled in an MBHO and include those recipients who receive Aid to Families with Dependent Children (AFDC) and Medicaid using AFDC methodologies in effect on July 16, 1996, as subsequently amended in accordance with 42 USC 1396u-1, and an individual who is eligible to receive Medicaid as follows:

- (a) Kentucky Transitional Assistance Program (K-TAP) and family related Medicaid;
- (b) Aged, blind, and disabled Medicaid;
- (c) Pass through in accordance with 907 KAR 1:011;
- (d) Poverty level pregnant women and children;

(e) State supplementation for aged, blind, and persons with a disability;

(f) Supplemental security income (SSI);

(g) Children under the age of twenty-one (21) years and in a psychiatric facility in accordance with 907 KAR 1:011; and

(h) DSS population. A foster child for whom the Cabinet for Families and Children has legal responsibility and whose DSS case is managed by a DSS office in the behavioral health region [Each person in this category] shall be enrolled, and remain enrolled in that region's [in an] MBHO when [as] an individual plan of care is jointly developed and implemented by DSS [the Kentucky Department for Social Services] and the MBHO. An adult ward shall be enrolled, or remain enrolled in the MBHO that serves the region of his residence when an individual plan of care is jointly developed and implemented by DSS and the MBHO. A child receiving adoption assistance shall be enrolled, or remain enrolled, in the MBHO that serves the region of his residence when an individual plan of care is jointly developed and implemented by his parent and the MBHO. A child receiving adoption assistance who is placed outside Kentucky shall remain enrolled in the MBHO in which he was enrolled prior to placement outside Kentucky.

(i) DJJ population. Each person in this category shall be enrolled in the MBHO where the case is managed by DJJ when an individual plan of care is jointly developed and implemented by DJJ and the MBHO.

(2) Except for evaluations for emergency care and urgent care as specified in Section 10(8)(b) and (c) of this administrative regulation when a member presents to the emergency department of an acute care hospital, [(2)] a member shall be allowed to voluntarily select from the lists [a list] of behavioral health care providers as specified in Section 8(20) of this administrative regulation as follows:

(a) Clinical practitioner who is authorized by the MBHO to conduct evaluations and who meets the criteria for timeliness of evaluations as specified in Section 10(8) of this administrative regulation when the need for an evaluation is determined; and

(b) Behavioral health care provider that is authorized by the MBHO to provide the recommended service [services] in accordance with Section 10(2) of this administrative regulation when the member's plan of care is implemented.

(3) If voluntary selection of a behavioral health care provider or clinical practitioner is not made by the member, the MBHO shall make the selection for the member based upon:

(a) Proximity of the member to the provider;

(b) Age-group specialty of the provider;

(c) Provider capacity; and

(d) Individual [Other] factors identified by the clinical practitioner during the evaluation of the member's behavioral health service needs.

(4) A member may change his behavioral health care provider upon his [the members] request to the MBHO. The MBHO shall have a policy and [in accordance with the MBHO's] procedure for a member to request [requesting] a change of provider [in providers]. The policy and procedure [member] shall:

(a) Be provided to each member [informed] by the MBHO at the time of enrollment and annually thereafter [of the procedure for changing providers]; and

(b) Specify that [Receive case] coordination of services [as specified] in accordance with Section 8(23) of this administrative regulation shall be provided if a [if the] member voluntarily changes behavioral health care providers more than two (2) [three (3)] times within a twelve (12) month period.

(5) Except for emergency services in accordance with 42 CFR 431.52 and evaluations for emergency care as specified in Section 10(8)(b) of this administrative regulation, a member shall [may] be required to obtain [prior] approval from the MBHO before

receiving [for the provision of] a covered behavioral health service [as specified in Section 10 of this administrative regulation]. A member shall be provided with the toll free telephone number as specified in Section 10(7) of this administrative regulation for requesting approval of MBHO services.

(6) A member who receives a behavioral health service [services] without the required prior approval of the MBHO shall be responsible for the payment of charges for those services except for:

(a) [Emergency] Services that do not require prior approval as specified in subsection (5) of this section [provided in accordance with 42 CFR 431.52]; and

(b) Services authorized as a result of and in accordance with the complaint procedure as specified in Section 11 of this administrative regulation and appeals procedures as established in 907 KAR 1:560.

(7) [(6)] For purposes of selecting a behavioral health care provider, filing complaints or appeals, and otherwise acting on behalf of the child in interactions with an MBHO, a parent, custodial parent, person exercising custodial control or supervision as defined in KRS 620.020(37), or an agency with legal responsibility for a child by virtue of voluntary commitment or emergency or temporary custody orders shall be allowed to act on behalf of a child member, prospective member, or former member.

(8) [(7)] A legal guardian who is authorized to make health care decisions and appointed pursuant to KRS 387.500 to 387.770 shall be allowed to act on behalf of a ward as defined in that statute, and a person authorized to make health care decisions pursuant to KRS 311.629 and 311.631 shall be allowed to act on behalf of a member, prospective member, or former member.

[(9) A member who meets criteria as established in Section 8(23) of this administrative regulation shall receive case coordination services from the MBHO in accordance with Section 8(23) and (24) of this administrative regulation.]

Section 5. Recipients Excluded from an MBHO. A recipient may be excluded from participation in an MBHO if he is required to spend down to meet eligibility income criteria or is an individual who is:

(1) Medicaid eligible and has been in a nursing facility as defined in 907 KAR 1:022 for more than thirty-one (31) days;

(2) Determined eligible for Medicaid due to a nursing facility admission;

(3) Served under the alternative intermediate services for individuals with mental retardation or developmental disabilities(AIS-MR-DD) as defined in 907 KAR 1:140, home and community based waiver in accordance with 907 KAR 1:160, or for a recipient who is continuously ventilator dependent, but not residing in a nursing facility or served through a home and community-based waiver;

(4) Receiving benefits only as a qualified medicare beneficiary (QMB), specified low income medicare beneficiary (SLMB) or qualified disabled working individual (QDWI);

(5) In an intermediate care facility for mentally retarded (ICF-MR); or

(6) Excluded from participation by the department for cause.

Section 6. Member Rights and Responsibilities. Each [An] MBHO shall have a written policy that is approved by the department to assure that [which specifies the following]:

(1) Each [A] member is [shall have the right]:

(a) [To be] Treated with respect and dignity;

(b) [To be] Guaranteed privacy and confidentiality in accordance with Section 21 of this administrative regulation;

(c) [To be] Provided with clear information relating to the MBHO's services and providers, and the member's rights and responsibilities in a form as specified in Section 19(3) of this administrative regulation;

(d) [To be] Permitted to select a behavioral health care provider of his choice [clinical practitioner as specified] in accordance with Section 4(2) of this administrative regulation;

(e) ~~[To be]~~ Informed of the complaint procedures as specified in Section 11 of this administrative regulation and appeals process in accordance with 907 KAR 1:560;

(f) **Provided** ~~[To]~~ access to:

1. Advocacy services as specified in 42 USC 10801;
2. Protection services as specified in KRS 209.010 and 620.030; and

3. Ombudsman services in accordance with Section 12 of this administrative regulation.

(g) **Served** ~~[To receive services]~~ in a safe, clean, and humane environment;

(h) **Permitted** to formulate advance directives in accordance with KRS 311.621 through 311.643;

(i) **Provided** ~~[To]~~ access to medical records in accordance with KRS 422.317;

(j) **Permitted** to refuse behavioral health services in accordance with KRS 202A.191 without reprisal by the MBHO ~~[except for circumstances in which refusal is not permitted under state law];~~

(k) **Provided** ~~[To have]~~ access to service sites that provide therapeutic rehabilitation if he is an adult with severe mental illness in accordance with Section 8(2) of this administrative regulation;

(l) **A participant** ~~[To participate]~~ in the development and revision of his treatment plan that uses language he can understand;

(m) ~~[To be]~~ Served by the behavioral health care provider without physical, verbal, sexual, or psychological abuse, exploitation, coercion, reprisal, intimidation or neglect;

(n) **Permitted** to choose services for a mutually agreeable treatment plan from an array of services provided by the MBHO; ~~[and]~~

(o) **Permitted** to exercise the rights as established in this subsection without reprisal from the MBHO; and

**(p) If he is a child, accompanied by a person as specified in Section 4(7) and (8) of this administrative regulation in the development or revision of his treatment plan.**

(2) **Each** ~~[A]~~ member **is** ~~[shall be]~~ responsible for:

(a) Providing information needed by behavioral health care providers; and

(b) Following instructions and guidelines as specified in his individual treatment plan.

Section 7. Member Disenrollment from an MBHO. (1) Only the department shall disenroll a member from an MBHO pursuant to this section and in accordance with 907 KAR 1:560 and 1:675. Disenrollment of a member from an MBHO shall:

(a) Become effective on the first day of the month following the disenrollment procedure; and

(b) Occur if the member:

1. Except as **specified** ~~[provided]~~ in **Section 4(1)(h) and (i) of this administrative regulation** ~~[subsection (3)(b) of this section]~~, no longer resides in the assigned behavioral health region;
2. Is incarcerated or deceased;
3. Resides in a nursing facility for more than thirty-one (31) days; or

4. No longer qualifies for behavioral health services under one (1) of the categories as specified in Section 4(1) of this administrative regulation;

(2) The MBHO shall recommend disenrollment if a member:

(a) Is found guilty of fraud, in a court of law or administratively determined to have committed fraud or abuse related to the Medicaid Program;

(b) Is deceased; or

(c) **Except as specified in Section 4(1)(h) and (i) of this administrative regulation**, no longer resides in the assigned behavioral health region or Kentucky.

(3) A member shall not be disenrolled, nor shall the MBHO recommend disenrollment of a member:

~~(a) due to adverse changes in the member's physical or behavioral health;~~ or

~~(b) If the member is included in the DSS population and resides outside the initially assigned MBHO region].~~

Section 8. Requirements ~~for~~ ~~[of]~~ an MBHO. Each MBHO shall:

(1) Have experience in the management of capitated risk-based contracts for comprehensive behavioral health services or subcontract with an entity that shall have experience in the management of capitated risk-based contracts for comprehensive behavioral health services;

(2) Make services, service locations, and service sites available and accessible in terms of timeliness, amount, duration, and personnel sufficient to provide, or arrange for the provision of, all covered services;

(3) Meet requirements of KRS 304.17A-110(3);

(4) Meet requirements of 42 CFR 417.479 and 434.44 through 434.70;

(5) Meet requirements relating to 42 USC 1396b, including the maintenance of sufficient behavioral health care providers to provide covered services in accordance with ~~[access standards as established in]~~ Section 10(8) and (9) of this administrative regulation;

(6) Establish a board of directors, that shall:

(a) Establish and direct implementation of policies and procedures regarding financing and delivery of behavioral health services to members;

(b) Include at least five (5) persons **selected by the MBHO** who have completed an orientation approved by the department and developed in collaboration with consumers and behavioral health care providers and who shall be:

1. Two (2) adults with severe mental illness, one (1) of whom shall be ~~[or has been]~~ a **current or former** recipient;

2. A parent, spouse or sibling of an adult with severe mental illness;

3. A parent of a child with a severe emotional disability; and

4. A foster parent **of a child** ~~[who represents foster children]~~ in the custody of the Cabinet for Families and Children. **The foster parent shall be selected by the MBHO based upon recommendations of the DSS;**

(7) Comply with all applicable requirements in accordance with KRS 304.17A-300 or 304.38 relating to licensure of entities that accept prepaid, at-risk capitation payments for comprehensive health services;

(8) Meet requirements of financial solvency for a provider-sponsored integrated health delivery network as established in KRS 304.17A-310;

(9) Demonstrate adequate protection against insolvency by establishing and maintaining an insolvency reserve equal to the amount of the MBHO's net worth determined in accordance with specifications for a provider sponsored integrated health delivery network established in KRS 304.17A-310 **(2)(b) and (c)**. An MBHO's reserve requirement shall be:

(a) Available to the department for paying behavioral health care providers if the MBHO becomes insolvent;

(b) Met by at least one (1) of the following methods:

1. Establishing an insolvency reserve as specified in this subsection to be held by a regulated financial institution **as specified in KRS Chapters 287, 289, 290, 291, 294, and 304;**

2. Maintaining insolvency insurance that shall:

**(a) Be obtained through a reinsurer as specified in KRS Chapter 304, and approved by the department;** and

**(b) [shall] Provide coverage for expenses incurred for members' behavioral health services from the date of insolvency until the end of the period for which Medicaid capitation payments were received by the MBHO;**

3. Providing the department with a bank letter of credit for an amount up to fifty (50) percent of the insolvency reserve amount; or

4. Providing a written guarantee to the department for the insolvency reserve amount from a regulated guarantor **as specified**



in KRS Chapter 371, or provider sponsor ~~[or sponsors]~~ if the sponsor restricts ~~[or sponsors restrict]~~ a portion of their assets equivalent to the value of the expenses or required reserve that the sponsor agrees to cover.

(c) Reduced by up to fifty (50) percent of an amount equal to the anticipated cost of behavioral health services to be provided by hospitals that execute contracts with the MBHO that contain requirements for continuation of services to members following MBHO insolvency until the end of the period for which Medicaid capitation payments were received by the MBHO;

(10) Submit monthly financial statements to the department within forty-five (45) days of the end of each month during the first year of operation and on a quarterly basis, or as requested by the department following the first year of operation. The financial statement shall include:

- (a) A balance sheet;
- (b) A statement of revenue and expenses;
- (c) Changes in the MBHO equity;
- (d) A certification statement; and
- (e) Other financial reports relating to financial conditions and status;

(11) File a financial disclosure report, as required by the Health Care Financing Administration and pursuant to 42 CFR Part 455, with the department within 120 days of the end of the contract year and within forty-five (45) days of entering into, renewing, or terminating a transaction with an entity, other than an individual practitioner or group of individual practitioners, with which the MBHO contracts for the provision of management functions, supplies, equipment or health-related services;

(12) Make available all books, medical records, and information relating to member services, quality of care, and financial transactions for review, inspection, investigation, auditing, and photocopying by authorized federal and state agency reviewers, investigators and auditors.

(a) The books, records, information, and MBHO's staff shall be available upon request of reviewers, investigators and auditors during routine business hours at the sites of operations; and

(b) Interviews, if required by reviewers~~[- investigators]~~ or auditors, of the MBHO's staff shall be conducted in-private at the sites of operations during routine business hours~~[- and~~

~~(c) The interviewee shall be entitled to have an attorney present, if he desires, to represent his personal interest; however, attorneys or others representing MBHO or subcontractor interests shall not be permitted during interviews];~~

(13) Maintain all books, records, and information relating to behavioral health care providers, members and member services and financial transactions for a minimum of five (5) years in accordance with 907 KAR 1:672, Section 4(3) and (4) and for an additional time period as required by federal and state laws; and

(14) Submit for the department's approval, a plan which shall address MBHO financial insolvency and specify the method for:

(a) Continuation of services to members through the end of the period for which capitation payments have been made;

(b) Continuation of inpatient facility services to a member until discharge from the facility occurs; and

(c) Immediate notification of the department of anticipated or projected failure to meet financial insolvency reserve requirements as established in subsection (9) of this section;

(15) Cooperate with the department, Office of the Inspector General within the Cabinet for Health Services, and the Office of the Attorney General in the control of fraud and abuse related to the medical assistance program as defined in KRS 205.8451 and in accordance with KRS 205.8453 and 194.030, Section 12, as required by Section 1128A-7(b)(11) of the Social Security Act, 42 CFR 455.21, and 42 CFR 1001.1301;

(16) Establish a consumer advisory committee that shall:

(a) Be composed of:

1. At least fifty-one (51) percent members who are consumers of mental health services, with equal representation of adult consumers and guardians for child consumers; and

2. Representatives from consumer advocacy groups, [and members who are representative of all MBHO members and]

(b) Make recommendations regarding the MBHO's policies affecting members;

(17) [If the MBHO is not a coalition as defined in Section 1 of this administrative regulation,] Establish mechanisms for involving MBHO providers, which may include:

(a) Provider membership on the MBHO board of directors; and

(b) Separate provider advisory committees[- and

(c) Ad hoc provider work groups];

(18) Establish a program integrity function which shall [to identify and refer to the department, or Office of Inspector General within the Cabinet for Health Services or Office of the Attorney General, suspected fraudulent activity concerning services provided by the MBHO. Program integrity activities shall include the following]:

(a) Develop [Developing] a program integrity plan;

(b) Identify [Identifying] MBHO vulnerabilities;

(c) Take [Taking] appropriate remedial action; [and]

(d) Report [Reporting] actions taken concerning identified situations involving possible fraud to the Cabinet for Health Services, Office of Inspector General; and

(e) Identify and refer to the department, or Office of Inspector General within the Cabinet for Health Services or Office of the Attorney General, suspected fraudulent activity concerning services provided by the MBHO;

(19) Refer public requests for financial information relating to the MBHO's operations to the department which shall respond to requests for information in accordance with KRS Chapter 61;

(20) At the time of enrollment and annually thereafter, provide each member with:

(a) The toll free telephone number as specified in Section 10(7) of this administrative regulation; and

(b) A list of participating clinical practitioners as specified in subsection (21) of this section [behavioral health care providers] that specifies each provider's name, license or certification, or other qualifications, and areas of expertise;

(21) Provide that a member's need for behavioral health services is evaluated by a clinical practitioner who shall:

(a) Possess admitting privileges to a psychiatric hospital, or a psychiatric unit of an acute care hospital, or have a formal referral agreement with a physician who possesses these privileges;

(b) For evaluations performed in accordance with KRS Chapters 202A and 645, meet requirements of a qualified mental health professional as specified in KRS Chapter 202A; and

(c) Be authorized by the MBHO to perform the evaluations;

(22) If a member requires continuing behavioral health services following an evaluation by the MBHO's clinical practitioner, ensure that the clinical practitioner:

(a) Informs [Assists] the member of the [in seeking authorization for a] recommended plan of care; and

(b) Provides information relating to the Health Care Partnership Program services as specified in 907 KAR 1:705;

(23) Identify [Designate] a person to coordinate the provision of behavioral health care services to a member who is:

(a) An adult with a severe mental illness;

(b) A child with a severe emotional disability; or

(c) Identified by the MBHO, DJJ or DSS [the Kentucky Department for Social Services] as having complex health care needs requiring [needing] coordination of services;

(24) Provide a member who meets criteria as specified in subsection (23) of this section with the name and telephone number of the coordinator who shall be:

(a) A person who provides behavioral health services and [clinical practitioner who] participates in the MBHO;



(b) A case manager as defined in 907 KAR 3:020 who participates in the MBHO; or

(c) An employee of the MBHO or its subcontractor who performs the ~~[prior authorization]~~ function as specified in Section 10(7) of this administrative regulation;

(25) ~~[Directly involve the Kentucky Department for Social Services] In the [development,] review and revision of the individual plan of care for a member as specified in Section 4(1)(h) and (i) of this administrative regulation, request in writing with sufficient time to allow participation of the:~~

(a) DSS, if the member is a foster child or adult ward;

(b) DJJ, if the member is in the DJJ population; or

(c) Parent of a child receiving adoption assistance;

(26) Develop ~~a [an expedited resolution] process for resolution with two (2) working days which is~~ approved by the department for use in instances where:

(a) Actions of the MBHO may result in a court order; or

(b) Expenditure of public funds may result from delay in action;

(27) Establish an array of clinical practitioners to serve the behavioral health region that shall include at least three (3) individuals from each licensed or certified category as specified in Section 1(7) of this administrative regulation. This requirement may be waived in writing by the department prior to implementation of the MBHO if the MBHO submits documentation to support that a category of clinical practitioner is not located in the behavioral health region that is served.

Section 9. MBHO Payments. (1) The department shall provide each MBHO a per month, per member capitation payment, except as established in subsection (5) of this section, whether or not the member receives services during the period covered by the payment.

(2) Capitation payments shall be based upon a standard rate setting methodology that complies with the Health Care Financing Administration's upper payment limit requirements.

(3) Negotiated by the department with the MBHO in accordance with KRS Chapter 45A, payment rates shall be based upon computations of a certified actuary using national actuarial standards, principles and appropriate actuarial factors which may include members':

(a) Category of aid;

(b) Geographic area;

(c) Category of service; and

(d) Other demographic and administrative factors, including age, gender, and service trends.

(4) Capitation payments shall be adjusted by the department if the scope of Medicaid services is increased or decreased as mandated by the Health Care Financing Administration. Written notification of an increase or decrease in coverage shall be provided to the MBHO by the department prior to implementation.

(5) The department may also contract with an MBHO for payment of Medicaid services provided to recipients prior to the actual enrollment of these individuals in the MBHO on a capitated or other basis as part of the MBHO's contract, or for other Medicaid services as designated by the department in accordance with KRS Chapter 45A.

(6) Payment provisions established in Medicaid administrative regulations 907 KAR Chapters 1 and 3 shall not be applicable for MBHO services. [Following the establishment of benchmarks relating to behavioral health care outcomes in accordance with Section 13(2) of this administrative regulation, the department shall annually provide a financial incentive payment up to one (1) percent of the capitation payment to an MBHO based upon achievement of benchmarks.]

~~(7) Payment provisions established in Medicaid payment regulations 907 KAR Chapters 1 and 3 shall not be applicable for MBHO services.]~~

Section 10. Provision of Services Under an MBHO. (1) An MBHO shall provide or arrange for the provision of medically necessary behavioral health services, including:

(a) Services as specified in Medicaid administrative regulations 907 KAR Chapters 1 and 3, and as required by federal and state laws;

(b) Services to members under twenty-one (21) years of age in accordance with 42 USC 1396d(r); and

(c) Transportation in accordance with 907 KAR 1:060.

(2) Medically necessary behavioral health services shall be recommended by a clinical practitioner and be:

(a) Reasonable and necessary to prevent, diagnose, correct, reduce, stabilize, or ameliorate conditions of a mental illness, emotional disability, or substance abuse disorder in accordance with subsection (4) of this section, and restore the member to his best possible functional level;

(b) Recognized as within the applicable standard of practice for the ~~[service]~~ modality and as appropriate to the mental illness, emotional disability, or substance abuse disorder of the member at the time the services are provided; and

(c) The ~~[most economical]~~ intensity, frequency, and duration of available service which is safe and effective for the member.

(3) Emergency services in psychiatric hospitals in accordance with 42 CFR 41.52, and evaluations for emergency care as specified in subsection (8)(b) of this section shall be provided within or outside the behavioral health region [in accordance with 42 CFR 431.52 and 907 KAR 1:705].

(4) Substance abuse services shall be provided in accordance with subsection (1) of this section to a member:

(a) Under the age of twenty-one (21) and authorized under 42 USC 1396d(r); or

(b) With a primary diagnosis of mental illness that requires substance abuse services to effectively treat the mental illness.

(5) The MBHO shall not be required to provide or arrange for the provision of services as follows:

(a) Substance abuse services except as specified in subsection (4) of this section;

(b) Inpatient hospital services for medical detoxification as defined in Section 1(8) of 907 KAR 1:705;

(c) Behavioral health services to a member who resides in a nursing facility after disenrollment from the MBHO;

(d) Partnership covered services as specified in 907 KAR 1:705, Section 7;

(e) School-based health services for members aged three (3) to twenty-one (21) years, as determined eligible under provisions of 20 USC Chapter 33, and in accordance with 707 KAR Chapter 1;

(f) Early intervention program services for members age birth to three (3) years as determined eligible under the provisions of 908 KAR 2:120, Section 2;

(g) Psychiatric services covered for currently enrolled, non-psychiatrist Medicaid physicians, including those physicians employed by public health departments, primary care centers and rural health centers, including federally qualified health centers;

(h) Behavioral health services provided by hospice agencies;

(i) Supporting psychiatric services provided by home health agencies as defined in 907 KAR 1:030;

(j) Targeted case management services as specified in 907 KAR 1:525, provided to a member served by a regional interagency council; and

(k) Services authorized under 907 KAR 3:020.

(6) The MBHO shall have a plan developed in accordance with evidence-based clinical care standards as specified in Section 14(1)(c) of this administrative regulation [establish a written policy and procedures that shall be approved by the department] for:

(a) Triage of member requests for or referrals to behavioral health services into the categories of emergency and urgent care, or routine care that does not meet the definitions of emergency and urgent care

services; and

(b) Review by a psychiatrist;

1. Within one (1) hour of the denial of a member's request for inpatient hospital behavioral health services; and

2. Within twenty-four (24) hours of the denial of a member's request for a behavioral health service other than inpatient hospital services.

(7) The MBHO shall maintain a toll free telephone number to receive referrals and requests for emergency, urgent, routine and continuing care that is staffed twenty-four (24) hours per day by persons with at least a master's degree in one (1) of the [a] mental health disciplines [field] who shall:

(a) Be authorized by the MBHO to receive the requests and referrals as specified in subsection (6)(a) of this section; and

(b) Prior authorize or deny a member's request for prior authorization of a behavioral health service within one (1) hour of the member's request for covered services.

(8) The following provision of service requirements shall be met by an MBHO for an [the] evaluation or consultation relating to [ef] a member's need for behavioral health services:

(a) The evaluation or consultation shall be performed face-to-face or by telemedicine technology when:

1. A plan for telemedicine has been approved by the medical director of the MBHO and the department;

2. The evaluation or consultation is performed by a physician;

3. A person with a master's degree in one (1) of the mental health disciplines is present with the member during the telemedicine evaluation or consultation; and

4. The physician and the person present with the member have been authorized by the MBHO for the telemedicine procedure.

(b) The evaluation for emergency care shall be initiated within three (3) hours of the:

1. MBHO's notification of the emergency from the referring party; or

2. Time of the member's presentation to a licensed mental health care facility [or the emergency department of a hospital].

(c) The evaluation for urgent care shall be initiated within twenty-four (24) hours of the [following events and based on which of the events occurs first]:

1. MBHO's notification of the member's urgent care need from the referring party; or

2. Time of the member's presentation to a licensed mental health care facility or the emergency department of a hospital.

(d) The evaluation for routine care shall be initiated within seven (7) days of the member's referral or request for services.

(e) The evaluation of a member for involuntary hospitalization pursuant to KRS Chapter 202A or 645.120, shall:

1. Meet the requirements of KRS Chapter 202A or 645.120; and

2. Be performed within the time frame for an evaluation for emergency care as established in paragraph (b) of this subsection.

(9) Transport time to services relating to behavioral health [including laboratory, radiology and pharmacy services,] shall not exceed one (1) hour, except in rural areas where transport time shall be equivalent to that amount of time taken to transport a person:

(a) [recipients] Residing in a behavioral health region, but not served by the MBHO; and

(b) Taken over the same route by a motor carrier with a certificate to transport persons in accordance with KRS Chapter 281.

(10) Behavioral health care providers authorized by the MBHO to provide rehabilitation and support services covered under the Kentucky Medicaid state plan, or which may be covered as early and periodic screening, diagnosis and treatment (EPSDT) services in accordance with 907 KAR 1:034, shall be community mental health centers licensed in accordance with 902 KAR 20:091, or organizations that shall be:

(a) Accredited by a national accrediting organization for agencies

that provide behavioral health services; or

(b) Assessed on site prior to providing MBHO services and at least every three (3) years thereafter by the MBHO using standards of participation [and quality] approved by the MBHO's board of directors.

(11) Organizations as specified in subsection (10) of this section shall define in a written document approved by the MBHO the:

(a) Plan for [Scope and method of] providing behavioral health services;

(b) Organization's structure, including responsibilities, functions, and interrelationships of all units and lines of administrative and clinical authority;

(c) Method by which persons who provide rehabilitation, support, case management, and other services shall be credentialed, re-credentialed, supervised, monitored, and sanctioned; and

(d) Method by which a member shall be assisted to access related vocational rehabilitation and employment services, housing services, educational services, medical and dental care, and other support services [available through state mental health programs], if needed by the member.

(12) If the organizations as specified in subsection (10) of this section are not licensed in accordance with 902 KAR Chapter 20 or 905 KAR 1:300, the organizations shall adhere to requirements of facilities where applicable and as adopted by the respective agency authority as follows:

(a) Federal and state law requirements for making buildings and facilities accessible to persons with disabilities; and

(b) Current approval by the Fire Marshal's Office in accordance with the life safety code.

(13) The MBHO staff who perform preauthorization, triage and continuing review functions shall:

(a) Report [Be accountable] to the MBHO's physician [board of directors through a psychiatrist] medical director who is:

1. Certified, or eligible for certification, in psychiatry by the American Board of Psychiatry and Neurology; and

2. Appointed [approved] by the MBHO's board of directors. [; and]

(b) Provide a report of the numbers and types of requests, referrals and denials for MBHO services [information relating to preauthorization, triage and continuing review functions] quarterly to the MBHO's quality improvement program.

[(14) The MBHO shall employ persons with at least a master's degree in a mental health field to authorize services as specified in this section.]

Section 11. Complaint and Appeals Procedures. (1) The MBHO shall establish a procedure that meets requirements of this section for receiving and resolving complaints, and answering inquiries of members. This procedure shall not replace the member's right to a fair hearing in accordance with 907 KAR 1:560.

(2) Each member shall receive written information about the MBHO's procedures for making inquiries and complaints, the toll free telephone number of the Kentucky Access Ombudsman and the department's procedure for a fair hearing in accordance with 907 KAR 1:560 when:

(a) The member is enrolled in the MBHO;

(b) An adverse action is taken by the MBHO; or

(c) At other times as required by federal or state law.

(3) The written information as specified in subsection (2) of this section shall include the:

(a) Name, address, telephone number and office hours of the person to whom [Method by which] a member may make an inquiry or file a complaint or appeal;

(b) Prohibition of reprisal by the MBHO [or the department] on the basis that the member made an inquiry or filed a complaint or appeal; and

(c) Right to authorize a representative to act on his behalf in

complaint or appeal procedures.

(4) The MBHO shall require in the public area of each facility where its behavioral health services are provided, the display of written information about:

(a) The MBHO's policy to assure ~~[in a public area of each facility where behavioral health services are provided, the display of a notice of]~~ the member's rights and responsibilities as specified in Section 6 of this administrative regulation; ~~[and]~~

(b) The procedure to access ~~[That]~~ forms approved by the MBHO's board of directors for filing a complaint; ~~and~~

(c) The toll free telephone number of the Kentucky Access Ombudsman ~~[be accessible to members].~~

(5) If a member files a complaint relating to an adverse action of the MBHO, the MBHO shall respond to the member in writing within ten (10) days and verbally within twenty-four (24) hours if the complaint relates to matters which could place the member at risk or which could seriously jeopardize the member's health or well-being. The response shall include the reason for the adverse action and a proposal for the resolution of the complaint.

(6) If the MBHO's response as specified in subsection (5) of this section ~~[of the MBHO to a member's complaint]~~ supports the adverse action specified in the complaint, the MBHO shall ~~[notify the member of its response and]~~ inform the member of the name, address, telephone number and office hours of the person to whom ~~[procedure by which]~~ the member may submit a written request for ~~[a]~~ review of the complaint and response by the MBHO's board of directors.

(7) If a member is dissatisfied with the MBHO's response ~~[as specified in subsection (6) of this section]~~, the member may submit a written request ~~[for a review of the complaint and MBHO's response]~~, including additional information, to the person as specified in subsection (6) of this section ~~[MBHO's board of directors].~~

(8) The MBHO's board of directors:

(a) May appoint a person or a committee of persons to review responses of the MBHO to member complaints; and

(b) Shall, after the next scheduled meeting, respond in writing to a member within ten (10) days of the meeting of the board.

(9) A member may appeal to the department following an adverse decision by the MBHO pursuant to 907 KAR 1:560 or during the complaint, response and review processes as specified in subsections (5), (6), (7) and (8) of this section.

(10) The MBHO shall:

(a) Establish a management information system for documenting:

1. Member inquiries and complaints;
2. The responses to each inquiry and complaint; and
3. Reviews by its board of directors.

(b) Submit to the department a quarterly report of information as specified in paragraph (a) of this subsection.

Section 12. Kentucky Access Ombudsman. The Cabinet for Health Services shall operate either directly or indirectly through a contract in accordance with KRS Chapter 45A, an ombudsman function independent of the department and MBHOs to assist members. The ombudsman shall perform the following functions on behalf of a member:

(1) Maintain a toll-free telephone number for a member who seeks responses to inquiries relating to Medicaid and behavioral health services;

(2) Provide assistance to a member, if requested, in filing complaints to the MBHO in accordance with Section 11 of this administrative regulation and appeals to the department pursuant to 907 KAR 1:560;

(3) Advocate for member interests and rights under Kentucky Access;

(4) Educate consumer organizations that inquire about managed care and Kentucky Access; and

(5) Provide information services to a member as necessary to

perform functions as established in this section and Section 11 of this administrative regulation.

Section 13. Monitoring for Quality and Access. The department shall:

(1) Establish a quality improvement program which monitors ~~[Monitor]~~ and evaluates ~~[evaluate]~~, on a continuing basis, access, continuity of care ~~[the quality, accessibility]~~ and behavioral health care outcomes relating to services provided or arranged by the MBHO. The monitoring and evaluation shall be ~~[-]~~

~~[-]~~ based upon:

(a) Demographic characteristic, risk factors, functional status, comorbidities and ~~[on recommendations of the quality and access advisory committee as specified in subsection (4) of this section, promulgate an administrative regulation that specifies]~~ behavioral health status ~~[care outcomes, benchmarks, assessment]~~ of members ~~[-]~~;

(b) ~~[achievement of benchmarks process and dissemination of information relating to:~~

(a)] Members' access to behavioral health services in accordance with Section 10(8) and (9) of this administrative regulation;

(c) Utilization ~~[-]~~

(b) ~~[Quality, effectiveness,]~~ and cost of current and innovative behavioral health services; ~~[and]~~

(d) ~~[-]~~ Prevention of mental or substance abuse disorders;

(e) Members' satisfaction with services;

(f) Adverse incidents and complications; and

(g) EPSDT services related to behavioral health as specified in 907 KAR 1:034.

(2) ~~[(3) Establish ongoing linkage with and]~~ Monitor and evaluate each MBHO's quality improvement program to ensure that requirements as specified in Section 14 of this administrative regulation are met;

(3) ~~[(4)]~~ Establish a department quality and access advisory committee that shall:

(a) Be composed of persons who represent:

1. Primary care providers;

2. Consumers. At least five (5) persons on the committee shall be consumers, including:

a. Two (2) adults with severe mental illness, one (1) of whom shall be or has been a recipient;

b. A parent, spouse or sibling of an adult with severe mental illness;

c. A parent of a child with a severe emotional disability; and

d. A foster parent of a child ~~[who represents foster children]~~ in the custody of the Cabinet for Families and Children.

3. Behavioral health care providers;

4. Behavioral health care researchers;

5. Psychiatric hospitals;

6. Regional mental health-mental retardation boards;

7. Quality assurance professionals; ~~[and]~~

8. DSS;

9. DJJ; and

10. Department of Public Advocacy. ~~[The Kentucky Department for Social Services.]~~

(b) Make recommendations to the department based upon the review of information as specified in subsection (1) of this section, ~~[data]~~ provided by the MBHOs and compiled by the department;

(c) Evaluate the effectiveness of the MBHO in ensuring access to needed services in accordance with Section 10(8) and (9) of this administrative regulation; and

(d) Make recommendations to the department relating to needed quality improvement studies designed to increase the effectiveness of the MBHO.

(4) ~~[(5)]~~ Annually conduct an external retrospective medical audit based upon information ~~[on reports and behavioral health services]~~

data received] from the MBHO which evaluates:

- (a) Acute care hospital, ambulatory and emergency care;
- (b) Access to care based upon requirements as established in Section 10(8) and (9) of this administrative regulation; and
- (c) EPSDT [Early and periodic screening, diagnosis and treatment] services as defined in 907 KAR 1:034.

Section 14. MBHO Quality Improvement. An MBHO shall:

(1) Submit annually to [for continuing evaluation by] the department, a written plan for a quality improvement program. The quality improvement program plan shall [reports and data which] include [at least the following]:

(a) The methods to evaluate:

- 1. [A quality improvement plan and quarterly reports on implementation of the quality improvement plan;
- (b)] Performance of the MBHO;
- 2. [and] Behavioral health care outcomes [data];
- 3. [(e)] Member and MBHO [plan] provider satisfaction [information], including number, type and resolution of complaints and appeals; and
- 4. [(d)] Utilization of services, including encounter data.

(b) The methods to monitor and evaluate behavioral health services established specifically [(2) Submit for approval by the department, a written plan for the continuing quality improvement of the MBHO. The quality improvement plan shall include activities] for the improvement of quality and [-] access [and performance on behalf] of members who are:

1. [(a)] Adults with severe mental illness. The monitoring and evaluation shall include:

- a. Services established to promote [-including:
  - 1. Promotion of recovery and use of peer support and self-help;
  - b. [2-] Coordination of medical, dental, social, housing, vocational and rehabilitative services to behavioral health services;
  - c. Coordination [3-Linkage] with the community support systems of regional mental health-mental retardation boards;
  - d. [4-] Continuity of care with state-operated psychiatric hospitals and personal care homes; and
  - e. [5-] Outreach to members who are homeless as defined in 42 USC 255(r).

2. [(b)] Children with severe emotional disabilities. The monitoring and evaluation shall include:

- a. [-including:
  - 1-] Coordination of educational, juvenile and family services to behavioral health services;
  - b. Coordination [2-Linkage] with the regional interagency council;
  - c. [3-] Transition to adult services systems, if indicated, at the approach of the age of majority; and
  - d. [4-] Access to therapeutic rehabilitation services.
- 3. [(e)] Diagnosed with coexisting mental illness and substance abuse disorder. The monitoring and evaluation shall include coordination with [-including linkage with the] substance abuse programs of regional mental health-mental retardation boards;

- 4. [(d)] Hearing impaired;
- 5. [(e)] Requesting a provider who shares a common cultural heritage or gender;

6. [(f)] Victims of the following:

- a. Domestic violence;
- b. Physical and [child abuse or] sexual abuse; and
- c. Rape and sexual assault;

7. [(g)] Separately identified as] Specified in Section 1(10) and (11) of this administrative regulation; and

8. [(h)] Identified by the MBHO as having special needs. The monitoring and evaluation shall include [-including] outreach and case management.

[(3) Establish a quality improvement program that shall:]

(c) The methods to [(a)] monitor and evaluate the quality and appropriateness of behavioral health care and services using evidence based clinical care standards [and practice guidelines] approved by the medical director of the MBHO and the department [benchmarks following the establishment of benchmarks in accordance with Section 13(2) of this administrative regulation];

(d) The methods to [(b)] identify, recommend and monitor the implementation of activities as specified in paragraph (d) of this subsection [(2) of this section] and the correction of problems relating to quality and performance that are identified by the MBHO or the department;

(2) Establish an internal quality [(e) Be directed, coordinated and monitored by a] committee that:

- (a) [1-] Is staffed by a full-time employee of the MBHO
- (b) [2-] Meets at least quarterly; and
- (c) [3-] Documents its findings.
- (3) [(d)] Have access to [all] records of behavioral health care providers relating to the provision of services covered by the MBHO, which shall be kept confidential, and to data generated by the MBHO relating to:

- (a) [1-] Behavioral health services utilization;
- (b) [2-] Behavioral health care outcomes;
- (c) [3-] Member satisfaction; and
- (d) [4-] The number, type and resolution of complaints, including data for members identified in subsection (1)(b) [(2)] of this section and other subpopulations identified in the quality improvement plan.

(4) Through its quality improvement program as specified in subsection (1) of this section:

- (a) [(e)] Submit to the MBHO's board of directors for approval:
  - 1. The written quality improvement plan as specified in subsection (1) [(2)] of this section;
  - 2. Quarterly reports of the quality improvement program; and
  - 3. An annual written report of the quality improvement program.
- (b) [(f)] Disseminate the annual report as specified in paragraph (a) [(e)] 3 of this subsection to participating behavioral health care providers and the department and provide the report free of charge to a member upon request.

(5) [(4)] Establish a regional quality and access advisory committee that shall:

- (a) Advise the MBHO regarding complaints and appeals, and activities undertaken by the MBHO in the resolution process;
- (b) Be staffed by persons in the MBHO's quality improvement program;
- (c) Meet at least quarterly;
- (d) Document findings for the MBHO's board of directors and the department; and

(e) Be composed of representatives of:

- 1. Primary care providers;
- 2. Consumers. At least five (5) of the persons serving on the committee shall be:
  - a. Two (2) adults with severe mental illness, one (1) of whom shall be or has been a recipient;
  - b. A parent, spouse or sibling of an adult with severe mental illness;
  - c. A parent of a child with a severe emotional disability; and
  - d. A foster parent of a child [who represents foster children] in the custody of the Cabinet for Families and Children.
- 3. Behavioral health care providers;
- 4. Behavioral health care researchers;
- 5. Psychiatric hospitals;
- 6. Regional mental health-mental retardation boards;
- 7. Quality improvement professionals; [and]

8. DSS;

9. DJJ; and

10. The Department of Public Advocacy. [The Kentucky Department for Social Services.]

(6) [(5)] Receive accreditation by a national accrediting agency

of managed care organizations [body] within three (3) years of implementation of the MBHO;

(7) [(6)] Develop and implement a plan to verify credentials of each behavioral health care provider who shall be a:

(a) Clinical practitioner; or

(b) Facility, agency, institution, organization or business that is:

1. Qualified in accordance with 907 KAR 1:671, to deliver Medicaid services; or

2. A state licensed entity which may contract for a service covered under the Kentucky Medicaid state plan or for a service which may be covered as an EPSDT service [authorized by the MBHO] in accordance with 907 KAR 1:034. [Section 10(6) of this administrative regulation.]

(8) Arrange for the verification of education and training of individuals other than those specified in subsection (7) of this section who may choose to be providers of behavioral health rehabilitation and support services in the MBHO.

(9) Annually [(7)] credential and recredential clinical practitioners who participate in the MBHO [at least every two (2) years]. The credentialing and recredentialing process shall include information from the MBHO's quality improvement program and verification of:

(a) License or certificate to practice, including restrictions and history of a loss of license or certificate in a state;

(b) Drug Enforcement Administration number and certificate, and a revoked or suspended number or certificate in a state;

(c) Graduate degree with completion of residency, nursing, supervisory, or other preparatory program required for licensure or certification;

(d) Professional board eligibility or certification;

(e) Employment history;

(f) Current professional liability insurance, current scope of coverage and claims history, including pending and successful claims;

(g) Hospital staff privileges, scope of privileges, and history of limited or suspended privileges;

(h) Record of continuing professional education credits earned;

(i) Valid Medicaid and Medicare provider numbers, federal tax identification number, and Social Security number;

(j) Physical accessibility for persons with disabilities, provisions for emergency care or back-up, and the location, telephone number, and hours of operation for each office;

(k) Areas of expertise and cultural or linguistic capabilities;

(l) Compliance with evidence-based clinical care standards; [Review of practice patterns;]

(m) Review of member satisfaction and complaints;

(n) Penalties imposed by the Medicare or Medicaid Program;

(o) Censure by the state or county professional association;

(p) Status in the national practitioner data bank and the state boards of examiners;

(q) Status among professional peers, including statements about physical or behavioral health conditions or illness;

(r) Loss of license, felony convictions, loss or limitation of privileges or disciplinary activity;

(s) Police and child abuse record searches; and

(t) Attestation to correctness or completeness of the application to become a behavioral health care provider.

Section 15. Fiscal Penalties. (1) Subsequent to the testing and demonstration of the performance of the department's management information systems, if an MBHO knowingly fails to submit health care data from processed claims as required and specified by the department, the department:

(a) May withhold up to ten (10) percent of the MBHO's capitation rate in the month following nonsubmission of data; and

(b) Shall return the amount withheld to the MBHO upon receipt and processing of the data within five (5) days of receipt by the department.

(2) If an MBHO fails to submit financial statements and reports as

specified in Section 8 of this administrative regulation, the department shall:

(a) Impose the financial penalty as established in subsection (1) of this section; and

(b) Return the amount withheld to the MBHO within five (5) days of receipt by the department of the financial statements and reports.

Section 16. Termination. (1) The department shall terminate an MBHO contract in accordance with KRS Chapter 45A.

(2) An MBHO provider or subcontractor of an MBHO who engages in activities that result in the suspension, termination, or exclusion from the Medicare or Medicaid Program shall be terminated from participation in Kentucky Access.

(3) If a behavioral health care provider is suspended, terminated, or excluded from participation in the Kentucky Medicaid Program, the MBHO shall be notified by the department.

Section 17. Liability for Actions Taken Against an MBHO. An individual MBHO and an MBHO provider, or subcontractor, shall be required to hold harmless the Commonwealth, its officers and employees, and members from incurring a liability for their Medicaid related services and debts.

Section 18. MBHO Insolvency. If an MBHO fails to meet the insolvency reserve requirement as established in Section 8 of this administrative regulation, is terminated from the Kentucky Medicaid Program contract negotiated in accordance with KRS Chapter 45A, or ceases to operate, the department shall:

(1) Immediately notify behavioral health care providers and members;

(2) Arrange for the provision of Medicaid behavioral health services to members in the behavioral health region, using the insolvency reserve amount as specified in Section 8 of this administrative regulation; and

(3) Assume responsibility for paying MBHO providers directly, after the end of the MBHO's obligation and at the MBHO's rates, for services to members until a new MBHO becomes established and operational.

Section 19. Health Education and Outreach. An MBHO shall:

(1) Conduct health education and outreach activities only with recipients residing in the behavioral health region;

(2) Submit an education and outreach plan on an annual basis to the department for approval; and

(3) Prepare and distribute health education and outreach materials which factually represent the MBHO and shall be:

(a) Available in appropriate foreign languages if more than ten (10) percent of the members speak a particular language;

(b) Prepared so that members who read at a sixth grade level may understand;

(c) Available to members in written form, Braille, audio tapes and telecommunications devices; and

(d) Updated annually.

Section 20. Marketing. An MBHO, or MBHO subcontractor, shall:

(1) Conduct member marketing only with members residing in a behavioral health region;

(2) Be prohibited from:

(a) Direct face-to-face or telephone marketing, or direct mail advertising to members, or to recipients who are not enrolled in an MBHO;

(b) Offering or granting a reward, favor or compensation as an inducement to select a particular provider; and

(c) Misleading or misrepresenting members regarding the MBHO, department or other government agencies.

(3) Submit a marketing plan on an annual basis to the department for approval;

(4) Submit a plan and develop procedures to log and resolve marketing complaints; and

(5) Prepare and distribute marketing materials which factually represent the MBHO and meet requirements as specified in Section 19(3) of this administrative regulation.

Section 21. Confidentiality. An MBHO shall be required to maintain confidentiality of member eligibility information and medical records, and prevent unauthorized disclosure of this information in accordance with KRS 194.060, 434.840 to 434.860 and 42 CFR 431, Subpart F.

Section 22. Performance of an MBHO. (1) An MBHO shall be required to:

(a) Provide, or arrange for the provision of, medically necessary behavioral health services to members as specified in Section 10 of this administrative regulation; and

(b) Report to the department the delivery of behavioral health services to members and maintain documentation as required by federal and state laws to substantiate Medicaid behavioral services' delivery, or support the nondelivery of members' behavioral health services when [in the unique cases where] services are neither authorized, nor provided.

(2) Upon failure of an MBHO to adhere to the requirements as established in this administrative regulation, the department:

(a) Shall take action necessary to preserve and maintain access to member services and program integrity; and

(b) May take one (1) or more of the following actions:

1. Recoup payments;

2. Assess liquidated damages; or

3. Terminate the MBHO's participation in Kentucky Access in accordance with KRS Chapter 45A.

(3) The department shall require a corrective action plan on the part of the MBHO if:

(a) A report, survey, investigation or audit indicates that the MBHO, subcontractor, or supplier, failed to adhere to MBHO requirements; or

(b) A [The department receives a substantiated] complaint regarding the quality of behavioral health care provided is received and substantiated by the department.

(4) An MBHO shall develop and submit to the department a corrective action plan as specified in subsection (3) of this section within fifteen (15) days of receipt of a written deficiency issued by the department, and specify the time frame for correction of the deficiency and manner in which the deficiency shall be corrected.

(5) If the MBHO fails to file a corrective action plan, or file a corrective action plan that is approved by the department, or implement the corrective action plan as specified in subsections (3) and (4) of this section and correct deficiencies, the department shall issue a written notice to the MBHO which:

(a) States the violations; and

(b) Notifies that failure to take the necessary action to correct the deficiencies within the time period specified by the department shall result in one (1) or more of the following:

1. Suspension of recipient enrollment;

2. Suspension or recoupment of the capitation payment; or

3. Termination of the MBHO's participation in Kentucky Access in accordance with KRS Chapter 45A.

LARRY A. MCCARTHY, Deputy Commissioner

JOHN H. MORSE, Secretary

APPROVED BY AGENCY: August 7, 1997

FILED WITH LRC: August 7, 1997 at 11 am.

## REGULATORY IMPACT ANALYSIS

Agency Contact Person: Trish Howard or Karen Doyle

(1) Type and number of entities affected: Approximately 1,700 behavioral health care providers are expected to participate and an unknown number of additional service providers who may seek to become subcontractors of a managed behavioral health care organization (MBHO). In addition, approximately 490,000 Medicaid recipients will be enrolled in MBHOs when the initiative is fully implemented statewide. Of the 490,000 recipients, approximately 90,000 recipients will be expected to actually seek behavioral health services through the MBHO on an annual basis.

(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: Based upon planning and development of the federal waiver, it is anticipated that additional providers will become Medicaid providers which should expand access to services and benefit employment in communities.

(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 development of an integrated service network should provide some administrative efficiency, other economies of scale (e.g., group purchasing) and savings which will decrease the cost of doing business for participating MBHO subcontractors.

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

1. First year following implementation: The MBHOs and subcontractors will be required to submit encounter data to the department to support monitoring and accountability processes. These requirements are similar to current requirements and are no more onerous than current Medicaid reporting requirements, nor filing necessary paperwork for commercial plans. Every state agency will be required to do outcome reporting to support the department's goals, develop baseline health status data for the department and develop strategies for improving the health status of the Medicaid population. Relating to competition, it is anticipated that more providers will participate in MBHOs than have formerly participated in Medicaid. This should enhance competition among providers.

2. Second and subsequent years: Same impact for second and subsequent years as additional geographic regions are affected in the second and third years.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: It is anticipated that there will be a net savings to the Medicaid Program during the first full year of statewide implementation. \$1,269,584 in savings should result from redirection of care from the higher cost institutional setting to more appropriate, lower cost community-based service settings.

2. Continuing costs or savings: Continuing savings will be \$1,371,249 per year.

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: The department will be required to provide the Health Care Financing Administration (HCFA) with status and evaluation reports pertaining to the approved Section 1915(b) waiver. Similar Medicaid status information is already being provided to HCFA for the regular Medicaid Program; the additional reporting requirements will have minimal impact upon the agency.

(4) Assessment of anticipated effect on state and local revenues: State revenues should be unaffected by this regulation. Aggregate local revenues in some areas, especially rural areas and underserved metropolitan areas may increase to the extent that the MBHOs stimulate the creation of community-based services. However, this plan could cause the redistribution of revenues within the provider



community as patients are referred to more appropriate levels of care.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Federal Title XIX funds and corresponding 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 on an incremental basis. Refer to item (4).

(b) Kentucky: Refer to item (3).

(7) Assessment of alternative methods; reasons why alternatives were rejected: No viable alternatives were identified. The program described in this regulation will permit the Medicaid agency to control cost, redirect available resources to more appropriate levels of care, provide recipients with improved continuity of care and preserve the current scope of benefits for the foreseeable future. No other alternatives can achieve all of these goals and most other alternatives would have at least some immediate adverse impact upon providers, recipients or state agencies.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental, welfare of the geographical area in which implemented and on Kentucky: Efficiency within the behavioral health care service delivery system will be improved. Access to care and continuity of care will be improved for enrolled recipients. The department will achieve some measure of budget stability and will be able to develop statewide strategies for achieving positive health status outcomes for the Medicaid recipient population.

(b) State whether a detrimental effect on environment and public health would result if not implemented: There are no anticipated detrimental effects to public health or the environment which will result from the implementation of this regulation. Behavioral health care for the medically indigent population of Kentucky should be improved under this regulation; therefore, failure to adopt this regulation could hinder the development of an integrated behavioral health care system. A few current Medicaid provider may choose to not participate with an MBHO; however, this factor should be outweighed by the potential for additional providers to participate in the system so that total access should be increased.

(c) If detrimental effect would result, explain detrimental effect: Refer to item (8)(b).

(9) Identify any statute, administrative regulation or government policy which may be conflicting, overlapping, or duplication: No conflicts or duplication within federal or state Medicaid laws or regulations exist. No conflicts with other federal or state laws, regulations or policy exist. KRS 210.370-210.480 designates the Regional Mental Health-Mental Retardation Boards as the local mental health planning authority. This regulation only addresses Medicaid reimbursement for behavioral health care providers and does not contravene the planning authority of the Regional Mental Health-Mental Retardation Boards.

(a) Necessity of proposed regulation if in conflict: Refer to item (9).

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: Refer to item (9).

(10) Any additional information or comments: None

(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.

## 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 pertains to the provision of behavioral health care for the Medicaid population. It should have minimal impact on local government except to the extent that fewer individuals with behavioral problems may enter the local judicial system. Therefore, the cost to local government law enforcement and jails could be diminished.

3. State the aspect or service of local government to which this administrative regulation relates. Local governments depend on local offices of community mental health centers (CMHCs) as a resource for persons with mental illness regardless of income or Medicaid eligibility. This initiative by its design should improve access for Medicaid eligible citizens; however, involvement of CMHCs in the plan is critical to preserve each community's access to needed behavioral health care.

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 dollars estimates cannot be determined, provided a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-): 0

Expenditures (+/-): 0

Other Explanation: 0

## FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. Pursuant to 42 USC 1396a et seq., the Commonwealth of Kentucky has exercised the option to establish a Medicaid Program for indigent Kentuckians. Having elected to offer Medicaid coverage, the state must comply with federal requirements contained in 42 USC 1396 et seq. A specific waiver of 42 USC 1396a(a)(1), (10)(B) and (23) under authority of Section 1915(b) of the Social Security Act has been obtained from the Health Care Financing Administration.

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 which are inconsistent with the federal mandate.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No. This administrative regulation does not set stricter requirements except to the extent that they are consistent with the federally approved Section 1915(b) waiver.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. No additional standard or responsibilities are imposed.



PROPOSED AMENDMENTS RECEIVED THROUGH NOON, AUGUST 15, 1997

GENERAL GOVERNMENT CABINET  
Kentucky Board of Veterinary Examiners  
(Amendment)

201 KAR 16:060. Complaint processing procedures.

RELATES TO: KRS 321.235(2), 321.351, 321.360

STATUTORY AUTHORITY: KRS 321.235(2), (3), 321.240(5), 321.351, 321.360

NECESSITY, FUNCTION, AND CONFORMITY: KRS 321.235(2) authorizes the board to investigate persons engaging in practices which violate the provisions of KRS Chapter 321 ~~[or the administrative regulations promulgated hereunder]~~. This administrative regulation establishes the ~~[detailed]~~ procedures for processing ~~[the investigation of]~~ complaints received by the board.

Section 1. ~~[Definitions. (1) "Chairman" means the chairman of the board.~~

~~(2) "Investigative assistant" means an appropriately licensed individual designated by the board to assist the board's attorney in the investigation of a complaint or an investigator employed by the Attorney General or the board.~~

~~(3) "Complaint" means any written allegation alleging misconduct which might constitute a violation of KRS Chapter 321 or the administrative regulations promulgated thereunder by a licensee or other person.~~

~~(4) "Charge" means a specific allegation contained in a formal complaint issued by the board alleging a violation of KRS Chapter 321 or the administrative regulations promulgated thereunder.~~

~~(5) "Formal complaint" means a formal administrative pleading authorized by the board which sets forth charges against a licensee or other person and commences a formal disciplinary proceeding.~~

~~(6) "Hearing officer" means the person designated and given authority by the board to preside over all proceedings pursuant to the issuance of any formal complaint.~~

~~(7) "Informal proceedings" means the proceedings instituted at any stage of the disciplinary process with the intent of reaching an informal disposition of any matter without further recourse to formal disciplinary procedures.~~

Section 2. Receipt of Complaints. (1) Complaints alleging misconduct which might constitute a violation of KRS Chapter 321 may be submitted by an individual, organization, or entity. Complaints shall be in writing and shall be signed by the person offering the complaint. The board may also file a complaint based on information in its possession.

(2) Upon receipt of a complaint, ~~a [copy of the complaint shall be sent to the board's attorney for an initial review and preliminary recommendation of subsequent action to the board. A] copy of the complaint shall also be sent to the licensed individual named in the complaint along with a request for that individual's response to the complaint. The response of the individual shall be required within [for the next regularly scheduled meeting of the board except that the individual shall be allowed a period of] twenty (20) days from the date of receipt [to make a response]. Failure to respond in a timely fashion may constitute a violation of the code of ethical conduct pursuant to 201 KAR 16:010, Section 18 [49].~~

Section 2. [3. Preliminary Recommendations and] Initial Board Review. (1) After the receipt of a complaint and the time period for the individual's response has expired, the board shall consider the complaint ~~[preliminary recommendation of the board's attorney]~~, the licensed individual's response, and any other relevant material

available to the board ~~[in the initial review of the complaint]~~. The determination that the board makes at this point shall be whether ~~[or not]~~ there is enough evidence to warrant an ~~[a formal]~~ investigation.

(2) When, in the opinion of the board, a complaint does not warrant an ~~[the formal]~~ investigation ~~[of a complaint against an individual]~~, the board shall notify both the complaining party and the licensed individual of the outcome of the complaint.

(3) When, in the opinion of the board, a complaint warrants an ~~[the formal]~~ investigation ~~[of a complaint against either a licensed individual or a person who may be practicing veterinary medicine without appropriate certification]~~, the board shall open an investigation into ~~[authorize its attorney and a designated investigative assistant to investigate]~~ the matter ~~[and report their findings and recommendations to the board at their earliest opportunity]~~.

Section 3. [4.] Results of [Formal] Investigation[; Board Decision on Hearing]. (1) Upon completion of the ~~[formal]~~ investigation, the board shall review the investigative report and shall determine

~~[board's attorney or the investigative assistant shall report to the board their findings and recommendations as to the proper disposition of the complaint. The determination that the board makes at this point shall be] whether [or not] there is enough evidence to believe that a violation of KRS Chapter 321 [the law or regulations] may have occurred [and that a hearing should be held].~~

(2) If the board dismisses the complaint, it ~~[When in the opinion of the board a complaint does not warrant the issuance of a formal complaint and the holding of a hearing the complaint shall be dismissed or other appropriate action taken. The board]~~ shall notify both the complaining party and the licensed individual of the outcome of the complaint.

~~[(3) When in the opinion of the board a complaint warrants the issuance of a formal complaint, the board shall cause a complaint to be prepared stating clearly the charge or charges to be considered at the hearing. The formal complaint shall be signed by the chairman and served upon the individual as required by Section 6 of this administrative regulation.~~

~~(4) When in the opinion of the board a complaint warrants the issuance of a formal complaint against a person who may be practicing veterinary medicine without proper licensure, the board shall cause a complaint to be prepared and signed by the chairman of the board, stating the board's belief the charges are based upon reliable information. Such complaint shall be forwarded to the county attorney of the county where the alleged violation may have occurred alleging the practice of veterinary medicine without appropriate certification with a request that appropriate action be taken under KRS 321.090. The board may also initiate action in Franklin Circuit Court for injunctive relief to stop the unauthorized practice of veterinary medicine.~~

Section 5. Settlement by Informal Proceedings; Letter of Reprimand. (1) The board, through counsel may, at any time during this process, enter into informal proceedings with the individual who is the subject of the complaint for the purpose of appropriately disposing of the matter. Any agreed order or settlement reached through this process shall be approved by the board and signed by the individual who is the subject of the complaint and the chairman of the board.

(2) When, in the judgment of the board, an alleged violation is not of a serious nature, and the evidence presented to the board after the investigation and appropriate opportunity for the licensee to respond, provides a clear indication that the alleged violation did in fact occur, the board may issue a letter of reprimand to the individual who is named in the complaint as a means of resolving the complaint. Such action may be taken if it is determined by the board that this is an

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appropriate method of dispensing with the complaint. Such letter of admonishment shall be sent to the individual with a copy placed in the individual's permanent file. Within thirty (30) days of the date of the letter, the individual shall have the right to file a written response to the letter and have it attached to the letter of reprimand and placed in the permanent file. The individual shall also, within thirty (30) days of the date of the letter, have the right to appeal the letter of reprimand and shall be granted a full hearing on the complaint. If this appeal is requested, the board shall file a formal complaint in regard to the matter and set a date for a hearing.

**Section 6. Notice and Service of Process.** (1) Any notice required by KRS Chapter 321 or this administrative regulation shall be in writing, dated and signed by the chairman of the board.

(2) Service of notice and other process shall be made by hand delivery or delivery by certified mail, return receipt requested, to the individual's last known address of which the board has record or if known, by such service on the named individual's attorney of record, if appropriate. Refusal of service or avoidance of service shall not prevent the board from pursuing proceedings as may be appropriate.

(3) When notice of the initial date for the administrative hearing is given by either the board or the hearing officer, such notice shall be sent to the appropriate person at least twenty (20) days prior to the hearing.]

JOHN R. McCLURE, Chairman

APPROVED BY AGENCY: July 31, 1997

FILED WITH LRC: August 1, 1997 at noon

**PUBLIC HEARING:** A public hearing on this administrative regulation shall be held on September 29, 1997, at 10 a.m., at the Division of Occupations and Professions, Berry Hill Annex, 700 Louisville Road, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by September 22, 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 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: David L. Nicholas, Director, Division of Occupations and Professions, P. O. Box 456, Frankfort, Kentucky 40502-0456, Telephone: (502) 564-3296.

### REGULATORY IMPACT ANALYSIS

Agency Contact: David L. Nicholas

(1) Type and number of entities affected: Approximately 1800 licensed veterinarians and 250 licensed veterinary technicians and technologists 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: No direct or indirect costs or savings on the cost of living and employment.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented: No direct or indirect costs or savings on the cost of doing business.

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

1. First year following implementation: No direct or indirect costs or savings on the compliance, reporting, and paperwork requirements for the first year following implementation.

2. Second and subsequent years: No direct or indirect costs or

savings on the compliance, reporting, and paperwork requirements for the second and subsequent years.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: No direct or indirect costs or savings for the first year.

2. Continuing costs or savings: No continuing costs or savings.

3. Additional factors increasing or decreasing costs: No additional factors increasing or decreasing costs.

(b) Reporting and paperwork requirements: No effects on reporting or paperwork requirements.

(4) Assessment of anticipated effect on state and local revenues: No anticipated effect on state and local revenues.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: The source of revenue to be used for implementation and enforcement of this administrative regulation will be licensing fees.

(6) Economic impact, including effects of economic activities arising from administrative regulation, on:

(a) Geographical area in which administrative regulation will be implemented: No economic impact is anticipated in the geographical area.

(b) Kentucky: No economic impact is anticipated in Kentucky.

(7) Assessment of alternative methods; reasons why alternatives were rejected: This regulation is amended to comply with state law. No other alternatives were deemed appropriate.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: No effects are anticipated on public health and environmental welfare.

(b) State whether a detrimental effect on environment and public health would result if not implemented: No detrimental effects on environment and public health would result if this administrative regulation were not implemented.

(c) If detrimental effect would result, explain detrimental effect: No detrimental effect would result.

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication:

(a) Necessity of proposed regulation if in conflict: No such statute, regulation, or policy exists.

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

(10) Any additional information or comments: There is no additional information or comments.

(11) TIERING: Is tiering applied? Tiering was not applied because all licensed social workers are treated uniformly under the law.

### GENERAL GOVERNMENT CABINET Kentucky Board of Certification of Marriage and Family Therapists (Amendment)

#### 201 KAR 32:030. Fees.

RELATES TO: KRS 335.330, 335.340(1)(a)

STATUTORY AUTHORITY: KRS 334.330, 335.320(7), 335.340(1)(a)

NECESSITY, FUNCTION, AND CONFORMITY: This administrative regulation establishes all fees [the initial fee] for certification that KRS 335.330 authorizes the board to establish by administrative regulation.

Section 1. Initial Certification Fee. (1) The initial certification fee for certification as a marriage and family therapist shall be \$200.

(2) If an application for certification is denied, the board shall

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refund \$150 of the initial certification fee.

Section 2. Examination Fee. The fee for taking the certification examination shall be \$195.

Section 3. Renewal Fee. The fee for renewal of certification shall be \$250 for a three (3) year period.

JOHN P. SOHAN, Chairman

APPROVED BY AGENCY: August 11, 1997

FILED WITH LRC: August 11, 1997 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on September 29, 1997 at 1 p.m. at the offices of the Division of Occupations and Professions located at Berry Hill Annex, 700 Louisville Road, Frankfort, Kentucky 40601. Individuals interested in attending this hearing shall notify this agency in writing by September 22, 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 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: Mr. David L. Nicholas, Director, Division of Occupations and Professions, P.O. Box 456, Frankfort, Kentucky 40602, (502) 564-3296.

### REGULATORY IMPACT ANALYSIS

Contact Person: David L. Nicholas

(1) Type and number of entities affected: All persons applying to become certified as a marriage and family therapist or holding certification as a marriage and family therapist.

(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: Persons taking the certification exam or renewing certification will be required to pay the appropriate fee.

(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 are received: Persons taking the certification exam or renewing certification will be required to pay the appropriate fee.

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

1. First year following implementation: Persons wishing to become certified must be approved to sit for the exam and persons holding certification will be required to renew every three years.

2. Second and subsequent years: Persons wishing to become certified must be approved to sit for the exam and persons holding certification will be required to renew every three years.

(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:

Exam fees will pay the cost of the exams incurred by the board. Renewal fees will provide operating income for normal board activities.

(5) Source of revenue to be used for implementation and

enforcement of administrative regulation: Trust and agency funds ordinarily used by the board.

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

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

(b) Kentucky: None

(7) Assessment of alternative methods; reasons why alternatives were rejected: The fees will allow the board to have the necessary funding to operate.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: The certification of marriage and family therapists provides protection to 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 government policy which may be in conflict, overlapping, or duplication: None

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

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: N/A

(10) Any additional information or comments: None

(11) TIERING: Was tiering applied: No. Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals desiring to obtain a or continue to hold certification. Provisions contained in these administrative regulations provide avenues by which the applicant may appeal actions of the board.

### TOURISM DEVELOPMENT CABINET Department of Fish and Wildlife Resources (Amendment)

#### 301 KAR 2:140. Requirements ~~[Seasons]~~ for wild turkey hunting.

RELATES TO: KRS 150.010, 150.025, 150.092, 150.170(3), 150.175(4), 150.305, 150.360, 150.365, 150.390, 150.990(11), 1996 Ky. Acts ch. 380, Part IX, 48.b., Commonwealth Budget Final Budget Memorandum, FB 94-96, page 537

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 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.

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.~~

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~~(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.]~~

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

~~(1) [(a)] Except on the dates and during the times specified in:~~

~~(a) 301 KAR 2:142;~~

~~(b) 301 KAR 2:144; or~~

~~(c) [1. In this section;~~

~~2. In Section 9 of this administrative regulation; or~~

~~3. In] 301 KAR 2:111.~~

~~(2) [(b)] By means other than those specified in this administrative regulation.~~

~~[(2) Spring gun and archery season. A person may take wild turkeys:~~

~~(a) For twenty one (21) consecutive days beginning on the Monday closest to April 15.~~

~~(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 third Saturday in September through December 31, except during the modern gun deer season.~~

~~(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.]~~

~~Section 3. [Permit Requirements.]~~ Unless exempted by KRS 150.170(3), a person hunting wild turkeys:

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

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

~~(3) During the fall gun season shall possess a fall turkey gun hunting permit.~~

~~Section 4. [Bag and Possession Limits. Except as specified in Section 9 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 of either sex during the fall archery season.~~

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

~~(2) After taking wild turkeys, and before moving the carcass, a person 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.~~

~~(b) Attach the tag to the carcass:~~

~~1. While transporting the turkey by vehicle; or~~

~~2. Whenever the hunter is not in physical possession of the carcass.~~

~~(c) Have the turkey checked:~~

~~1. At a check station; or~~

~~2. By an authorized employee of the department;~~

~~3. During the spring or fall gun season, on the same day it was taken;~~

~~4. During the fall archery season, by 9 a.m. on the day following the day it was taken.~~

~~(d) Fill out a game check card and return it to the person checking the turkey.~~

~~(e) Keep the hunter's portion of the game check card in posses-~~

~~sion until the turkey is processed.~~

~~(f) Attach to turkeys taken to a taxidermist:~~

~~1. The taxidermy portion of the game check card;~~

~~2. A Ft. Campbell game check card; or~~

~~3. A Land Between the Lakes game check card.~~

~~(g) Check turkeys before transporting them out of Kentucky.~~

~~(3) A person taking turkeys on wildlife management areas shall follow the tagging and checking requirements in 301 KAR 2:142 or [Section 8 of this administrative regulation or in] 301 KAR 2:111.~~

~~(4) A person exempt from turkey permit requirements by KRS 150.170(3) shall:~~

~~(a) Write his name, address, the date when, and the county where, the turkey was taken on a card; and [:~~

~~1. Immediately after taking a turkey; and~~

~~2. Before moving the carcass.]~~

~~(b) Attach the card to the carcass when he removes the turkey from the property where it was taken. [:~~

~~1. While transporting the carcass by vehicle; or~~

~~2. Whenever he is not in physical possession of the carcass.]~~

~~Section 5. [6.] Firearms and Archery Equipment.~~ A person hunting wild turkey shall not use or carry:

~~(1) Rifles or handguns.~~

~~(2) Shotguns larger than ten (10) gauge or smaller than twenty (20) gauge.~~

~~(3) Shot larger than Number Four (4).~~

~~(4) Shotgun slugs.~~

~~(5) Firearms during archery-only seasons.~~

~~(6) Crossbows, except on the Pioneer Weapons Area.~~

~~(7) Barbed broadheads.~~

~~(8) Broadheads smaller than seven-eighths (7/8) inch wide.~~

~~(9) Arrows with chemical treatments or attachments containing chemicals.~~

~~Section 6. [7.] Baiting.~~ (1) A person shall not hunt wild turkeys on a baited area or by the aid of baiting:

~~(a) While bait is present; or~~

~~(b) For thirty (30) days after the bait has been removed.~~

~~(2) A person may hunt wild turkeys on areas where grains, feed or other substances exist as the result of:~~

~~(a) Bona fide agricultural practices; or~~

~~(b) Manipulating a crop for wildlife management purposes, provided that grain, feed or other substances once removed from a field are not returned to or scattered on the field.~~

~~Section 7. [8.] Turkey Hunting Restrictions.~~ (1) A person hunting wild turkeys:

~~(a) Shall not use dogs.~~

~~(b) Shall not hunt from boats.~~

~~(c) Shall not use electronic calls.~~

~~(d) May use hand- or mouth-operated calls.~~

~~(e) Shall not use live decoys.~~

~~(f) Shall not take roosting turkeys.~~

~~(2) A person shall not mimic the sound of a turkey:~~

~~(a) From March 1 until the opening of the spring season;~~

~~(b) In areas open to hunting where turkeys are reasonably expected to occur.~~

~~[Section 9. Seasons and Exceptions on Wildlife Management Areas. (1) Statewide seasons apply to wildlife management areas unless otherwise specified in this section.~~

~~(2) A person shall not hunt wild turkeys on the areas listed in this section except on the dates specified in this administrative regulation or in 301 KAR 2:111.~~

~~(3) Turkeys listed as bonus birds shall not:~~

~~(a) Count against statewide limits.~~

~~(b) Require a carcass tag portion of the turkey permit be attached~~

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to the carcass.

(4) Ballard Wildlife Management Area.

(a) Season: Quota youth hunt, the Saturday and Sunday before the Monday closest to April 15.

(b) Applicants for the quota youth hunt shall participate in a drawing held at 1 p.m. on the Saturday closest to April 1 on the area.

(c) Shooting hours are one half (1/2) hour before sunrise until noon.

(d) A person hunting wild turkey shall:

1. Check in and out daily.

2. Not take more than one (1) turkey.

(5) Fort Campbell Wildlife Management Area.

(a) Season: the last Saturday in March through the second Sunday in May.

(b) Turkeys taken on Fort Campbell shall be bonus birds.

(c) A person shall:

1. Obtain a postcombination hunting fishing permit before hunting.

2. Not hunt except during daylight hours.

3. Not take more than two (2) turkeys per spring season.

4. Attach a Fort Campbell game check card to turkeys before leaving the post.

(6) Fort Knox Wildlife Management Area.

(a) Seasons: The last Saturday in March through the second Sunday in May.

(b) A person shall:

1. Hunt in assigned areas.

2. Check turkeys by 2 p.m. on the day harvested.

3. Not take more than one (1) turkey during the spring season.

(7) Grayson Lake Wildlife Management Area in Carter County and the portion in Elliott County east of Bruin Creek.

(a) Seasons: quota youth hunts.

1. The Saturday and Sunday before the Monday closest to April 15.

2. The Saturday and Sunday two (2) weeks after the first quota youth hunt.

(b) An applicant for the quota youth hunts shall participate in a drawing held at 1 p.m. on the Saturday closest to April 1 on the area.

(c) Shooting hours are one half (1/2) hour before sunrise until noon.

(d) A person hunting wild turkeys:

1. Shall check in and out daily.

2. Shall not take more than one (1) turkey.

(8) Green River Wildlife Management Area.

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

(b) Quota youth hunt, the Saturday and Sunday before the Monday closest to April 15.

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

(d) Shooting hours for the youth hunt shall be one half (1/2) hour before sunrise until noon.

(e) A person participating in the youth hunt shall:

1. Check in and out daily.

2. Not take more than one (1) turkey.

(9) Higginson Henry Wildlife Management Area. Statewide seasons apply except that a person:

(a) Shall not use firearms to hunt turkeys or possess firearms while turkey hunting.

(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.

(e) Shall check in and check out daily.

(10) Land Between the Lakes.

(a) Seasons:

1. Quota hunts of no more than six (6) days beginning on or after the first Saturday in April.

2. Up to sixteen (16) days between the first Saturday in April and

the second Saturday in May.

(b) A person shall:

1. Check in and out.

2. Hunt in assigned areas.

3. Check turkeys at a Land Between the Lakes check station before leaving Land Between the Lakes.

4. Affix a Land Between the Lakes game check card and the carcass tag portion of the turkey permit to the carcass.

5. 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. Statewide seasons apply except that a person:

(a) Shall not use breech loading shotguns.

(b) May use crossbows with working safety devices.

(12) Reelfoot National Wildlife Refuge.

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

(b) A person shall:

1. Not take more than one (1) turkey.

2. Obtain written permission from the area manager before hunting.

(13) Swan Lake Wildlife Management Area shall be closed to turkey hunting.

(14) West Kentucky Wildlife Management Area shall be closed to turkey hunting.]

C. THOMAS BENNETT, Commissioner

ANN R. LATTA, Secretary

MIKE BOATWRIGHT, Chairman

APPROVED BY AGENCY: June 13, 1997

FILED WITH LRC: August 15, 1997 at 9 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on September 29, 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 September 22, 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 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 15,000 persons hunt wild turkey 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. The amendment to this administrative regulation will have no impact on 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: No public comments received. The amendment to this administrative regulation will have no impact on cost of doing business.

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

1. First year following implementation: No additional paperwork requirements.

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

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: No additional costs or savings.

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

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: No additional reporting or paperwork requirements.

(4) Assessment of anticipated effect on state and local revenues: No effect.

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

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

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

(b) Kentucky: No economic impact.

(7) Assessment of alternative methods; reasons why alternatives were rejected: KRS 150.360 specifies that a person shall not take wildlife unless the department opens a season for a particular species; there is no alternate way of opening a season on wild turkey except by administrative regulation. Alternatives to the specifics contained within this administrative regulation were considered and rejected because they would not provide the desired combination of protection for Kentucky's wild turkey flock and optimal recreational opportunities for hunters.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: Requiring tags to be cut or marked so they cannot be reused is a conservation measure that will help keep the harvest of wild turkey within acceptable limits.

(b) State whether a detrimental effect on environmental and public health would result if not implemented: Possibly

(c) If detrimental effect would result, explain detrimental effect: Possible overharvest of wild turkey, leading to reduced seasons and lessened hunter opportunity.

(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: This amendment deletes season dates, which will be promulgated in separate administrative regulations for spring and fall turkey hunting, a move necessitated by the Fish and Wildlife Commission's approval of a fall turkey gun hunting season.

(11) TIERING: Is tiering applied? Tiering is not appropriate because the administrative regulation applies equally to all individuals or entities it regulates. Disparate treatment of any persons of entity subject to this administrative regulation could raise questions of arbitrary action on the part of the agency. The "equal protection" and "due process" clauses of the Fourteenth Amendment of the U. S. Constitution may be implicated as well as Sections 2 and 3 of the Kentucky Constitution.

### TOURISM DEVELOPMENT CABINET Department of Fish and Wildlife Resources (Amendment)

#### 301 KAR 3:022. License, tag and permit fees.

RELATES TO: KRS 150.175, 150.195, 150.225, 150.235, 150.240, 150.280, 150.290, 150.485, 150.525, 150.603, 150.520, 150.660 [~~1996 Ky. Acts ch. 268~~]

STATUTORY AUTHORITY: KRS 150.195(4)(f), 150.225

NECESSITY, FUNCTION, AND CONFORMITY: KRS 150.225 requires the department to prescribe reasonable license fees relating to hunting, fishing, and trapping. KRS 150.195(4)(f) requires the department to promulgate an administrative regulation establishing the license and permit terms and the expiration date of licenses and permits. This administrative regulation establishes fees and terms for licenses and the expiration dates for the licenses.

Section 1. Licenses, tags, and permits listed in this section shall be valid from March 1 through the last day of February the following year.

(1) Sport fishing licenses:

(a) Statewide fishing license (resident): twelve (12) dollars and fifty (50) cents.

(b) Statewide fishing license (nonresident): thirty (30) dollars.

(c) Joint statewide fishing license (resident): twenty-two (22) dollars and fifty (50) cents.

(d) Trout permit (resident or nonresident): five (5) dollars.

(2) Commercial fishing licenses:

(a) Commercial fishing license (resident) plus ten (10) resident commercial gear tags: \$100.

(b) Commercial fishing license (nonresident) plus ten (10) nonresident commercial gear tags: \$500.

(3) Commercial fishing gear tags (not to be sold singly):

(a) Commercial fishing gear tags (resident) block of 10 tags: ten (10) dollars.

(b) Commercial fishing gear tags (nonresident) block of ten (10) tags: seventy-five (75) dollars.

(4) Hunting licenses:

(a) Statewide hunting license (resident): twelve (12) dollars and fifty (50) cents.

(b) Statewide hunting license (nonresident): ninety-five (95) dollars.

(c) Statewide junior hunting license (resident or nonresident): six (6) dollars and twenty-five (25) cents.

(d) Statewide waterfowl permit (resident or nonresident): seven (7) dollars and fifty (50) cents.

(e) Migratory game bird permit (resident or nonresident): four (4) dollars.

(5) Combination hunting and fishing license (resident): twenty (20) dollars.

(6) Trapping licenses:

(a) Trapping license (resident): fifteen (15) dollars.

(b) Trapping license (resident landowner/tenant): seven (7) dollars and fifty (50) cents.

(c) Trapping license (nonresident): \$115.

(7) Big game permits:

(a) Big game permit, deer (resident or nonresident): twenty-one (21) dollars.

(b) Junior big game permit, deer (resident or nonresident): twelve (12) dollars and fifty (50) cents.

(c) Big game permit, turkey (resident or nonresident): seventeen (17) dollars and fifty (50) cents.

(d) Big game permit, fall firearm turkey (resident or nonresident): ten (10) dollars.

(e) Big game permit, fall archery turkey (resident or nonresident): ten (10) dollars.

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(8) Peabody or Cyprus AMA-Robinson Forest individual permit: ten (10) dollars.

(9) Commercial mussel licenses:

(a) Musseling license (resident): \$300.

(b) Musseling license (nonresident): \$1,500.

(c) Mussel buyer's license (resident): \$500.

(d) Mussel buyer's license (nonresident): \$1,500.

Section 2. Licenses, tags and permits, listed in this section shall be valid for the calendar year in which they are issued.

(1) Live fish and bait dealer's licenses:

(a) Live fish and bait dealer's license (resident): thirty (30) dollars.

(b) Live fish and bait dealer's license (nonresident): sixty (60) dollars.

(2) Commercial taxidermist license: \$100.

(3) Commercial guide licenses:

(a) Commercial guide license (resident): \$100.

(b) Commercial guide license (nonresident): \$250.

(4) Nonresident hunting preserve license: ten (10) dollars.

(5) Shooting preserve permit: \$100.

(6) Commercial fox hound training enclosure permit: \$250.

(7) Collecting permits:

(a) Educational wildlife collecting permit: ten (10) dollars.

(b) Scientific wildlife collecting permit: \$200.

(8) Food permits:

(a) Food permit for selling bobwhite quail from propagation farms only: \$150.

(b) Retail food permit for propagated quail: five (5) dollars.

(9) Pay lake license:

(a) First two (2) acres or less: \$100.

(b) Per additional acre or part of acre: twenty (20) dollars.

(10) Commercial wildlife pet and propagation permit: fifty (50) dollars.

(11) Commercial fish propagation permit: fifty (50) dollars.

Section 3. Licenses, tags and permits listed in this section shall be valid for three (3) years from the date of issue.

(1) Falconry permit: forty-five (45) dollars.

(2) Noncommercial wildlife pet and propagation permit: seventy-five (75) dollars.

Section 4. Licenses, tags and permits listed in this section shall be valid for the date or dates specified on each.

(1) Short-term nonresident licenses:

(a) Three (3) day fishing license: twelve (12) dollars and fifty (50) cents.

(b) Fifteen (15) day fishing license: twenty (20) dollars.

(c) Five (5) day hunting license (not valid for big game): twenty-seven (27) dollars and fifty (50) cents.

(d) Three (3) day fur bearer's license: forty (40) dollars.

(2) Wildlife transportation permit: twenty-five (25) dollars.

(3) Special commercial fishing permit: \$500.

(4) Commercial waterfowl shooting area permit: \$100.

(5) Shoot to retrieve field trial permits:

(a) Per trial (maximum four (4) days): fifty (50) dollars.

(b) Single day: fifteen (15) dollars.

(6) Boat dock permits (per year): five (5) dollars.

(7) Peabody or Cyprus AMAX-Robinson Forest event permit: twenty-five (25) dollars.

Section 5. Licenses, tags and permits listed in this section shall be valid on a per unit basis as specified.

(1) Bird bands (each): twenty-five (25) cents.

(2) Ballard waterfowl hunt (per person, per day): fifteen (15) dollars.

(3) Horse stall rental (per space, per day): two (2) dollars.

(4) Dog kennel rental (per dog, per day): fifty (50) cents.

(5) Pond stocking fee (per stocking): twenty-five (25) dollars.

Section 6. The following licenses shall be valid from April 1 through March 31 of the following year:

(1) Fur processor's license (resident): \$150.

(2) Fur buyer's license (resident): fifty (50) dollars.

(3) Fur buyer's license (nonresident): \$230.

Section 7. These fees shall apply to all licenses, tags and permits issued with an effective beginning date on or after January 1, 1998 [1997].

C. THOMAS BENNETT, Commissioner

ANN R. LATTA, Secretary

MIKE BOATWRIGHT, Chairman

APPROVED BY AGENCY: June 13, 1997

FILED WITH LRC: August 15, 1997 at 9 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on September 29, 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 September 22, 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 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 1 million sport and commercial license and permit buyers will be affected by this administrative regulation.

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

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: No public comment received. This administrative regulation as amended should have no impact on costs of living.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: No public comments received. This administrative regulation as amended should have no impact on costs of doing business.

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

1. First year following implementation: The amendment to this administrative regulation will add one permit (for fall firearm turkey hunting) which will be issued by license agents through the Kentucky Direct Sales System. Because this system is automated, there will be no additional paperwork or reporting.

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: The amendment to this administrative regulation will increase revenue to the department by the sale of fall firearm turkey permits. It is not known at this time how many hunters will purchase



these permits to participate in this newly established season.

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

3. Additional factors increasing or decreasing costs: No additional factors have been identified.

(b) Reporting and paperwork requirements: This administrative regulation imposes no reporting or paperwork requirements.

(4) Assessment of anticipated effect on state and local revenues: No effect.

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

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

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

(b) Kentucky: No public comments received. No economic impact anticipated.

(7) Assessment of alternative methods; reasons why alternatives were rejected: The alternative of requiring 1997 waterfowl permits to hunt during the March 1-10 snow goose season was rejected because these permits will not be available for sale through the department's electronic licensing system until April. The alternative of having 1997 waterfowl permits available only at selected department offices was rejected because of the hardship it would place on hunters trying to purchase these permits.

(8) Assessment of expected benefits: This amendment will allow hunters to use 1996 waterfowl permits during a period when 1997 permits will not be available.

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: No identified effects on public health or environmental welfare.

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

(c) If detrimental effect would result, explain detrimental effect: Not applicable.

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

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

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: Not applicable.

(10) Any additional information or comments: None

(11) TIERING: Is tiering applied? Tiering is not appropriate because the administrative regulation applies equally to all individuals or entities it regulates. Disparate treatment of any persons of entity subject to this administrative regulation could raise questions of arbitrary action on the part of the agency. The "equal protection" and "due process" clauses of the Fourteenth Amendment of the U. S. Constitution may be implicated as well as Sections 2 and 3 of the Kentucky Constitution.

**NATURAL RESOURCES AND  
ENVIRONMENTAL PROTECTION CABINET  
Department for Environmental Protection  
Division for Air Quality  
(Amendment)**

**401 KAR 50:012. General application.**

RELATES TO: KRS 224.10-100, [~~Chapter 224,~~] 224.20-120, 40 CFR 60.14, 42 USC 7401 et seq., 7408, 7410

STATUTORY AUTHORITY: KRS 224.10-100

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.10-100 requires the Natural Resources and Environmental Protection Cabinet to prescribe administrative regulations for the prevention, abatement, and control of air pollution. 42 USC 7410 likewise requires the state

to implement standards for national primary and secondary ambient air quality. This administrative regulation provides guidelines by which all administrative regulations of ~~the~~ 401 KAR Chapters 50 to 65, are to be understood.

Section 1. General Application of Administrative Regulations and Standards. Administrative Regulations of the cabinet shall be construed and applied according to subsections (1) through (6) [(4)] of this section, which shall guide the cabinet in the issuance, modification, and revocation of permits.

(1) All major sources of VOCs located in a county or portion of a county which is designated ozone nonattainment, for any nonattainment classification except marginal, under 401 KAR 51:010, shall install and use control technology which is reasonable and available.

(a) The determination of reasonably available control technology shall be approved by the cabinet and shall be based upon:

1. A Control Techniques Guidelines Document issued by the U.S. EPA and promulgated in regulatory form by the cabinet; or

2. If no Control Techniques Guidelines Document is appropriate, the lowest emission limit that a particular source is capable of meeting by the application of control technology that is reasonably available considering technological and economic feasibility. The cabinet may require technology that has been applied to similar, but not necessarily identical source categories.

(b) For those reasonably available control technology determinations not based on a control techniques guidelines document, the cabinet shall:

1. Hold a public hearing on the determination.

2. Submit the determination to the U.S. EPA for approval.

(c) For these determinations, that portion of a source with facilities uncontrolled by reasonably available control technology which emit VOCs that sum to 100 tpy or greater shall be considered a major source.

(2) In the absence of a standard specified in these administrative regulations, all major air contaminant sources shall as a minimum apply control procedures that are reasonable, available, and practical.

(3) [(2)] Nothing in these administrative regulations is intended to permit a practice which is in violation of a statute, ordinance, or administrative regulation.

(4) [(3)] These administrative regulations shall be complementary to each other, and to other administrative regulations adopted by the cabinet. If a provision of these administrative regulations or the application thereof to a person or circumstance is held to be invalid, the invalidity shall not affect other provisions or application of another part of these administrative regulations and to this end each provision of these administrative regulations and the various applications thereof are declared to be severable.

(5) [(4)] Except as provided by 401 KAR 50:055, nothing in these administrative regulations shall allow a source to remove control equipment or discontinue procedures previously required in a nonattainment area to achieve the national ambient air quality standards until a state implementation plan containing different requirements has been approved by the U.S. EPA.

(6) [(5)] For the purpose of applying the definition of modification, an increase in the amount of an air pollutant shall be determined as in 40 CFR 60.14.

JAMES E. BICKFORD, Secretary

APPROVED BY AGENCY: August 8, 1997

FILED WITH LRC: August 11, 1997 at 9 a.m.

PUBLIC HEARING: A public hearing on the proposed amendment to this administrative regulation will be held on September 22, 1997, at 10 a.m. (ET) in the Conference Room of the Division for Air Quality, 803 Schenkel Lane, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing, at least five workdays prior to the hearing, of their intent to attend. This hearing is open to the public. Any person who wishes to

be heard will be given an opportunity to comment on the administrative regulation. Send written notification of intent to be heard at the public hearing or written comments on the amendment to the contact person.

CONTACT PERSON: Millie Ellis, Supervisor, Division for Air Quality, 803 Schenkel Lane, Frankfort, Kentucky, 40601, (502) 573-3382, and fax number (502) 573-3787.

To request appropriate accommodations for the public hearing (such as an interpreter), or alternate formats of the printed material, please call (502) 573-3382, ext 362. The cabinet does not discriminate on the basis of race, color, national origin, sex, religion, age, or disability in employment or the provision of services and provides, upon request, reasonable accommodation including auxiliary aids and services necessary to afford individuals with disabilities an equal opportunity to participate in all programs and activities.

#### REGULATORY IMPACT ANALYSIS

Agency Contact: Millie Ellis, Supervisor

(1) Type and number of entities affected: The amendments to this regulation clarify the reasonably available control technology (RACT) requirements to assure compatibility with the Clean Air Act (CAA) requirements for major sources of volatile organic compounds (VOCs) in ozone nonattainment areas. Section 182(b)(2)(c) of the CAA requires states to revise their State implementation plans to implement RACT on all major non-control techniques guidelines (CTG) stationary sources of VOCs that are located in moderate and above ozone nonattainment areas. The provisions of 401 KAR 50:012 satisfy this requirement. The proposed amendments clarify for VOC sources in moderate and above ozone nonattainment areas the applicability, RACT determination, and procedures. The type and number of entities are not affected by the clarification of a continuing requirement. The clarification assures compatibility with the U.S. EPA 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. There are no costs or savings as a result of these clarifying amendments beyond those previously required by this administrative regulation.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented. The amendments to this administrative regulation do not affect the cost of doing business in geographical areas where affected sources are located beyond the costs previously required by this administrative regulation.

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

1. First year following implementation: There will be no compliance, reporting, or paperwork requirements due to the amendments beyond those previously required by this administrative regulation.

2. Second and subsequent years: There will be no additional compliance, reporting, or paperwork requirements during the second and succeeding years imposed by these clarifying amendments beyond those previously required by this administrative regulation.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: The division reviews and processes permits as part of the division's normal day-to-day operations. The costs of this activity are absorbed as a part of the operating budget. There are no additional costs or savings resulting from these amendments.

2. Continuing costs or savings: The division inspects all permitted sources and maintains an emissions inventory for each source. This activity is a part of the division's normal day-to-day operations and is budgeted accordingly. There are no additional costs or savings resulting from these amendments.

3. Additional factors increasing or decreasing costs: There are no additional factors increasing or decreasing costs.

(b) Reporting and paperwork requirements: The division will continue to issue reports of inspections and emissions data for each source as stated in (a)1 and (a)2 above.

(4) Assessment of anticipated effect on state and local revenues: This administrative regulation will have no known effect on state and local revenues.

(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 administrative regulation. There are no additional costs associated with these amendments.

(6) Economic impact, including effects of economic activities arising from administrative regulation, on:

(a) Geographical area in which administrative regulation will be implemented: These amendments will have no economic impact in the geographical locations in which this administrative regulation will be implemented.

(b) Kentucky: Promulgation of this administrative regulation will have no known economic impact in Kentucky.

(7) Assessment of alternative methods; reasons why alternatives were rejected: No alternative methods were considered because these amendments are proposed in order to clarify that the Kentucky requirements are compatible with those of the U.S. EPA.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: Since these amendments are for clarification and do not change the requirements, there are no effects on public health and environmental welfare beyond those of the current administrative regulation.

(b) State whether a detrimental effect on environment and public health would result if not implemented: No detrimental effect on environment or public health would result if these amendments are not implemented, however, the amendments do assure compatibility with the U.S. EPA requirements.

(c) If detrimental effect would result, explain detrimental effect: There is no detrimental effect from these amendments on environment and public health.

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: There are no statutes, regulations, or government policies which are in conflict, or which overlap or duplicate the amendments to this administrative regulation.

(a) Necessity of proposed regulation if in conflict: The amendments to this administrative regulation are not in conflict.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: The amendments to this administrative regulation are not in conflict.

(10) Any additional information or comments: The cabinet is promulgating these amendments in order to clarify that Kentucky's requirements are compatible with U.S. EPA's and satisfy the CAA requirements.

(11) TIERING: Is tiering applied? No. These amendments do not add requirements, but clarify compatibility with the U.S. EPA.

#### FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. Section 182(b)(2)(c) of the CAA requires that states revise their state implementation plans to implement reasonable available control technology on all major noncontrol techniques guidelines stationary sources of volatile organic compounds located in ozone nonattainment areas.

2. State compliance standards. KRS Chapter 13A.

3. Minimum or uniform standards contained in the federal mandate. The determination of noncontrol techniques guidelines RACT is a case-by-case determination considering technological and economic feasibility.

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4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No. These amendments are being made to assure compatibility with the federal mandate.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Stricter standards and requirements are not imposed.

### 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. This administrative regulation does not affect any unit, part or division of local government.

3. State the aspect or service of local government to which this administrative regulation relates. This administrative regulation does not relate to any aspect or service of local government.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a local government for the first full year the regulation is to be in effect. If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-): There is no known effect on current revenues.

Expenditures (+/-): There is no known effect on current expenditures.

Other Explanation: There is no further explanation.

### NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET Department for Environmental Protection Division for Air Quality (Amendment)

#### 401 KAR 51:010. Attainment status designations.

RELATES TO: KRS 224.20-100, 224.20-110, 224.20-120, 40 CFR 81, [November 6, 1991 Federal Register (56 FR 56694)] 42 USC 7401-7626, 7407, 7501-7515, 7601

STATUTORY AUTHORITY: KRS 224.10-100, 42 USC 7401-7626

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.10-100 requires the Natural Resources and Environmental Protection Cabinet to prescribe administrative regulations for the prevention, abatement and control of air pollution. This administrative regulation designates the status of all areas of the Commonwealth of Kentucky with regard to attainment of the ambient air quality standards.

Section 1. Definitions. (1) "Rest of state" as used in Sections 4 through 7 [~~3 through 8~~] of this administrative regulation means the remainder of the state has been designated and identified on a county by county basis.

(2) "Statewide" as used in Section [~~5-3 through~~] 8 of this administrative regulation means the entire state has been designated on a county by county basis.

(3) "Road" as used in Section 2(3) of this administrative regulation means a Kentucky route, a county road, a lane, a road, or a U.S. route, highway, or interstate.

Section 2. Attainment Status Designations. (1) The attainment status of areas of the Commonwealth of Kentucky with respect to the ambient air quality standards for sulfur dioxide, carbon monoxide, ozone and nitrogen oxides is listed in Sections 5 through 8 [~~4 through 7~~] of this administrative regulation. The attainment status of areas of the Commonwealth of Kentucky with respect to total suspended particulates is listed in Section 4 of this administrative regulation.

(2) Within sixty (60) days of revision by the U.S. Environmental Protection Agency of a national ambient air quality standard, the cabinet shall review applicable data and submit to the U.S. EPA a revision to the attainment - nonattainment list pursuant to 42 USC 7407(d)(1).

(3) A road, junction, or intersection of two (2) or more roads as used in Section 7 of this administrative regulation that defines a nonattainment boundary for an area which is a portion of a county designated as nonattainment for ozone for any classification except marginal shall include as nonattainment an area extending 750 feet from the center of the road, junction, or intersection.

Section 3. Attainment Timetable. Primary and secondary ambient air quality standards shall be attained as expeditiously as practicable.

Section 4. Attainment Status Designations for Total Suspended Particulates.

Designated Areas	Does Not Meet Primary Standard	Does Not Meet Secondary Standards	Better Than Standard	Cannot Be Classified
Bell Co.			X	
Boyd Co.				X
That portion of Bullitt County in Shepherdsville			X	
That portion of Campbell County in Newport			X	
That portion of Daviess County in Owensboro bordered by the Ohio River on the north, by Frederica Street projected to the river on the west, by Fourth Street and U.S. 60 on the south and by the Bellline (KY 212) projected to the river on the east				X
That portion of Henderson County in Henderson				X
Jefferson County			X	
That portion of Lawrence County in Louisa				X
McCracken County			X	
Marshall County			X	
That portion of Madison County in Richmond				X
Muhlenberg County			X	
That portion of Perry County in Hazard				X
That portion of Pike County in Pikeville				X

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That portion of Whitley County in Corbin  
Rest of State

X  
X

## Section 5. Attainment Status Designations for Sulfur Dioxide.

Designated Areas	Does Not Meet Primary Standards	Does Not Meet Secondary Standards	Better Than Standards
That portion of Boyd County south of the Northern UTM line 4251 Km	X	X	
Muhlenberg County		X	
Rest of State			X

## Section 6. Attainment Status Designations for Carbon Monoxide.

Designated Area	Does Not Meet Primary Standards	Cannot Be Classified Or Better Than Standards
Jefferson Co.		X
Rest of State		X

## Section 7. Attainment Status Designations for Ozone.

Designated Areas	Moderate	Marginal	Cannot be Classified or Better Than Standards
Boone County	X		
Boyd County	[X]		X
That portion of Bullitt County within the boundaries described as follows: Beginning at the intersection of KY 1020 and the Jefferson-Bullitt County line proceeding to the east along the county line to the intersection of county road 567 and the Jefferson-Bullitt County line; proceeding south on county road 567 to the junction with KY 1116 (also known as Zoneton Road); proceeding to the south on KY 1116 to the junction with Hebron Lane; proceeding to the south on Hebron Lane to Cedar Creek; proceeding south on Cedar Creek to the confluence of Floyds Fork turning southeast along a creek that meets KY 44 at Stallings Cemetery; proceeding west along KY 44 to the eastern most point in the Shepherdsville city limits; proceeding south along the Shepherdsville city limits to the Salt River and west to a point across the river from Mooney Lane; proceeding south along Mooney Lane to the junction of KY 480; proceeding west on KY 480 to the junction with KY 2237; proceeding south on KY 2237 to the junction with KY 61 and proceeding north on KY 61 to the junction with KY 1494; proceeding south on KY 1494 to the junction with the perimeter of the Fort Knox military reservation; proceeding north along the military reservation perimeter to Castleman Branch Road; proceeding north on Castleman Branch Road to KY 44; proceeding a very short distance west on KY 44 to a junction with KY 2723; proceeding north on KY 2723 to the junction of Chillicoop Road; proceeding northeast on Chillicoop Road to the junction of KY 2678; proceeding north on KY 2673 to the junction of KY 1020; proceeding north on KY 1020 to the beginning.			
Caldwell County			X
Calloway County			X
Campbell County	X		
Christian County			X
Fayette County			X

That portion of Greenup County within the boundaries described as follows:

Beginning at a point where the Ohio River meets the Greenup-Boyd County Line; proceeding southwest along the Greenup-Boyd County Line to the junction of the East Fork of the Little Sandy River and the Greenup-Boyd County Line; proceeding north and west along the East

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Fork of the Little Sandy River to the confluence of the Little Sandy River; proceeding north along the Little Sandy River to the confluence of the Ohio River; proceeding east along the Ohio River to the beginning.	(X)	X
Jefferson County	X	
Kenton County	X	
That portion of Oldham County within the boundaries described as follows: Beginning at the intersection of the Oldham-Jefferson County line with the southbound lane of Interstate 71; proceeding to the northeast along the southbound lane of Interstate 71 to the intersection of KY 329 and the southbound lane of Interstate 71; proceeding to the northwest on KY 329 to the intersection of Zaring Road and KY 329; proceeding to the east-northeast on Zaring Road to the junction of Cedar Point Road and Zaring Road; proceeding to the north-northeast on Cedar Point Road to the junction of KY 393 and Cedar Point Road; proceeding to the south-southeast on KY 393 to the junction of <del>County Road 746</del> (the access road on the north side of Reformatory Lake and the Reformatory); proceeding to the east-northeast on the access road <del>County Road 746</del> to the junction with Dawkins Lane (also known as Saddlers Mill Road) and the access road <del>County Road 746</del> ; proceeding to follow an electric power line east-northeast across from the junction of County Road 746 and Dawkins Lane to the east-northeast across KY 53 on to the LaGrange Water Filtration Plant; proceeding on to the east-southeast along the power line then south across Fort Pickens Road to a power substation on KY 146; proceeding along the power line south across KY 146 and the Seaboard System Railroad Track to adjoin the incorporated city limits of LaGrange; then proceeding east then south along the LaGrange city limits to a point abutting the north side of KY 712; proceeding east-southeast on KY 712 to the junction of Massie School Road and KY 712; proceeding to the south-southwest on Massie School Road to the intersection of Massie School Road and Zale Smith Road; proceeding northwest on Zale Smith Road to the junction of KY 53 and Zale Smith Road; <del>and then north-northwest on Massie School Road to the junction of KY 53 and Massie School Road;</del> proceeding on KY 53 to the north-northwest to the junction of new Moody Lane and KY 53; proceeding on new Moody Lane to the south-southwest until meeting the city limits of LaGrange; then briefly proceeding north following the LaGrange city limits to the intersection of the northbound lane of Interstate 71 and the LaGrange city limits; proceeding southwest on the northbound lane of Interstate 71 until intersecting with the North Fork of Currys Fork; proceeding south-southwest beyond the confluence of Currys Fork to the south-southwest beyond the confluence of Floyds Fork continuing on to the Oldham-Jefferson County Line; proceeding northwest along the Oldham-Jefferson County Line to the beginning.	X	
Trigg County		X
Rest of State		X

## Section 8. Attainment Status Designations for Nitrogen Oxides.

Designated Area	Does Not Meet Primary Standards Standards	Cannot Be Classified or Better Than Standards
Statewide		X

JAMES E. BICKFORD, Secretary

APPROVED BY AGENCY: August 8, 1997

FILED WITH LRC: August 11, 1997 at 9 a.m.

PUBLIC HEARING: A public hearing on the proposed amendment to this administrative regulation will be held on September 22, 1997, at 10 a.m. (ET) in the Conference Room of the Division for Air Quality, 803 Schenkel Lane, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing, at least five workdays prior to the hearing, of their intent to attend. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the administrative regulation. Send written notification of intent to be heard at the public hearing or written comments on the amendment to the contact

person.

CONTACT PERSON: Millie Ellis, Supervisor, Division for Air Quality, 803 Schenkel Lane, Frankfort, Kentucky, 40601, (502) 573-3382, and fax number (502) 573-3787.

To request appropriate accommodations for the public hearing (such as an interpreter), or alternate formats of the printed material, please call (502) 573-3382, ext 362. The cabinet does not discriminate on the basis of race, color, national origin, sex, religion, age, or disability in employment or the provision of services and provides, upon request, reasonable accommodation including auxiliary aids and services necessary to afford individuals with disabilities an equal opportunity to participate in all programs and activities.

## ADMINISTRATIVE REGISTER - 653

### REGULATORY IMPACT ANALYSIS

Agency Contact: Millie Ellis, Supervisor

(1) Type and number of entities affected: This administrative regulation is being amended to make the boundaries and classifications of nonattainment areas for ozone compatible with those promulgated and discussed by the U.S. EPA in the Federal Register on June 29, 1995 (60 FR 33748) and on September 20, 1995 (60 FR 48653). The June 29, 1995 Federal Register redesignates the Kentucky portion of the Ashland-Huntington nonattainment area from nonattainment to attainment for ozone based upon the meeting of five requirements of section 107(d)(3)(E) of the Clean Air Act. These requirements include quality assured ambient air quality monitoring data which demonstrate attainment and an approved maintenance plan. The Kentucky portion of the moderate ozone nonattainment area consists of Boyd County and a portion of Greenup County. The September 20, 1995 Federal Register corrects the boundary of the Kentucky portion of the Louisville moderate ozone nonattainment area. The Kentucky portion includes portions of Bullitt and Oldham Counties. National boundaries, roads, powerlines, etc., were used to detail the nonattainment area. When these boundaries were developed, sources on one side of the street or intersection were included in the nonattainment area while sources on the other side inadvertently were not. As a result, not all sources contributing to the violation of the ozone national ambient air quality standards in Louisville were included in the nonattainment area, and inequitable economic impacts have been placed upon small competing businesses. This has affected the well being of some small businesses and it has undermined the effectiveness of the plan to attain the standard in the Louisville nonattainment area. The impact of this regulation is indirect. This regulation designates the attainment status of a county. The applicability of other regulations refers to this attainment status. Although the impact of this regulation is indirect, an estimate of the number and types of sources is presented. For entities located in Boyd County and the previously nonattainment portion of Greenup County, this means that new control requirements specifically for moderate ozone nonattainment areas will not apply. For the Bullitt and Oldham boundary corrections, all applicable requirements and emission reductions that applied within the old boundaries now apply to entities within the corrected boundaries. The division estimates that 3 entities are affected. These entities are gasoline service stations.

(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. Please see (1) above. No costs or savings are directly generated by this regulation. However, an entity may be required to meet standards set in another regulation because of the status designation in this regulation.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented. Please see (2)(a) above. Some sources in nonattainment areas may be subject to regulation, while similar sources in attainment areas are not. This amendment implements no costs or savings beyond those described in the final federal rulemaking.

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

1. First year following implementation: There are no compliance, reporting, or paperwork requirements in this administrative regulation.

2. Second and subsequent years: Please see (2)(c)1 above.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: The division reviews and processes permits as part of the division's normal day-to-day operations. The costs of this activity are absorbed as a part of the operating budget.

2. Continuing costs or savings: The division inspects all permitted sources and maintains an emissions inventory for each source. This

activity is a part of the division's normal day-to-day operations and is budgeted accordingly.

3. Additional factors increasing or decreasing costs: There are no additional factors increasing or decreasing costs.

(b) Reporting and paperwork requirements: The division will continue to issue reports of inspections and emissions data for each source as stated in 1 and 2 above.

(4) Assessment of anticipated effect on state and local revenues: This amendment will have no effect on state and local revenues.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: The division's operating budget will be used to implement and enforce this amendment.

(6) Economic impact, including effects of economic activities arising from administrative regulation, on:

(a) Geographical area in which administrative regulation will be implemented: This amendment will have no economic impact in the geographical location of affected sources beyond those described in the final federal rulemaking. Some sources in nonattainment areas may be subject to regulation, while similar sources in attainment areas are not.

(b) Kentucky: Please see (6)(a) above.

(7) Assessment of alternative methods; reasons why alternatives were rejected: No alternative methods were considered because this amendment contains the same provisions as the federal rulemaking.

(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 amendment will have no additional effects on public health and the environment beyond those described in the federal rulemaking.

(b) State whether a detrimental effect on environment and public health would result if not implemented: No. A detrimental effect on environment and public health would not result if this amendment is not implemented by the state. The federal government could enforce the federal rulemaking.

(c) If detrimental effect would result, explain detrimental effect: Please see (8)(b) above.

(9) Identify any statute, rule, regulation or government policy which may be in conflict, overlapping, or duplication:

(a) Necessity of proposed regulation if in conflict: There are no statutes, rules, regulations, or government policies which are in conflict, or which overlap or duplicate this administrative regulation.

(b) If in conflict, was effort made to harmonize the proposed regulation with conflicting provisions: The administrative regulation is not in conflict.

(10) Any additional information or comments: The cabinet has no additional information or comments.

(11) TIERING: Is tiering applied? No. This amendment makes the state's nonattainment areas for ozone compatible with those promulgated by the U.S. EPA.

### FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. The federal requirements that the attainment status for ozone be revised appear in the Federal Register, 60 FR 33752, June 29, 1995, and in the Federal Register, 60 FR 48654, September 20, 1995.

2. State compliance standards. There are no compliance standards. This federal rule establishes attainment status.

3. Minimum or uniform standards contained in the federal mandate. Same as 2 above.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No. There will be no stricter requirements or additional or different responsibilities or requirements beyond those required by the federal mandate.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Stricter

standards and requirements are not imposed.

# FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? No

2. State what unit, part or division of local government this administrative regulation will affect. No unit, part, or division of local government will be affected by this amendment.

3. State the aspect or service of local government to which this administrative regulation relates. This amendment does not relate to any aspect or service of local government.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a local government for the first full year the regulation is to be in effect. If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-): There is no known effect on current revenues.

Expenditures (+/-): There is no known effect on current expenditures.

Other Explanation: There is no further explanation.

## NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET Department for Environmental Protection Division for Air Quality (Amendment)

### 401 KAR 63:005. Open burning.

RELATES TO: KRS 224.10-100, 224.20-100, 224. 20-110, 224.20-120, 42 USC 7401 through 7671q (Chapter 224)

STATUTORY AUTHORITY: KRS 224.10-100

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.10-100 requires the Natural Resources and Environmental Protection Cabinet to prescribe administrative regulations for the prevention, abatement, and control of air pollution. This administrative regulation provides for the control of open burning.

Section 1. ~~[Applicability. The provisions of this administrative regulation are applicable to all open burning as defined in Section 2 of this administrative regulation not elsewhere subject to administrative regulations of the Division for Air Quality.]~~

~~Section 2.] Definitions. Terms not defined in this section shall have the meaning given them in 401 KAR 63:001. [Terms used in this administrative regulation not defined herein shall have the meaning given to them in 401 KAR 50:010.]~~

(1) "Garbage" means putrescible animal and vegetable matter accumulated by a family in a residence in the course of ordinary day to day living.

(2) "Household rubbish" means waste material and trash, not to include garbage, normally accumulated by a family in a residence in the course of ordinary day to day living.

(3) "Open burning" means the burning of any matter in such a manner that the products of combustion resulting from the burning are emitted directly into the outdoor atmosphere without passing through a stack or chimney.

(4) "Priority I Region" means a region classified as Priority I in 401 KAR 50:020, Appendix A.

Section 2. Applicability. This administrative regulation shall apply to all open burning that is not subject to another administrative regulation in 401 KAR Chapters 50 through 65.

Section 3. Prohibition of Open Burning. Except as provided in this section ~~open burning is prohibited [no person shall cause, suffer, or allow any open burning]~~. Fires may be set for the ~~[following]~~ purposes specified in this section throughout the year in any area of the Commonwealth which is not designated, or was not previously designated, moderate nonattainment for ozone pursuant to 401 KAR 51:010, if the ~~[, provided that such]~~ fires do not violate ~~[any of the provisions of]~~ KRS Chapters 149, 150, 227, ~~[any]~~ other laws of the Commonwealth of Kentucky, or ~~[any]~~ local ordinances. Purposes for which open burning is allowed are:

(1) Fires set for the cooking of food for human consumption on other than commercial premises;

(2) Fires set for recreational or ceremonial purposes;

(3) Small fires set by construction and other workers for comfort heating purposes if [providing] excessive or unusual smoke is not created;

(4) Fires set for the purpose of weed abatement, disease, and pest prevention;

(5) Fires set for prevention of a fire hazard, including the disposal of dangerous materials if [where] no safe alternative is available;

(6) Fires set for the purpose of bona fide instruction and training of public and industrial employees in the methods of fighting fires;

(7) Fires set for recognized agricultural, silvicultural, range, and wildlife management practices;

(8) Fires set by individual home owners for burning of leaves except in cities greater than 8,000 population located in a Priority I Region;

(9) Fires for disposal of household rubbish, not to include garbage, originating at dwellings of five (5) family units or less, if the [which] fires are maintained by an occupant of the dwelling at the dwelling, except in cities greater than 8,000 population located in a Priority I Region;

(10) Fires set for the purpose of disposing of accidental spills or leaks of ~~[or]~~ crude oil, petroleum products or other organic materials, and the disposal of absorbent material used in their removal, if [where] no other economically feasible means of disposal is available and practical. Permission shall be [and provided permission is] obtained from the cabinet prior to burning;

(11) Fires set for disposal of natural growth for land clearing, and trees and tree limbs felled by storms, if [provided that] no extraneous materials such as tires or heavy oil [which tend to produce dense smoke] are used to cause ignition or aid combustion and the burning is done on sunny days with mild winds. In regions classified Priority I with respect to particulate matter pursuant to 401 KAR 50:020, Appendix A, the emissions from such fires shall not be equal to or greater than forty (40) percent opacity.

Section 4. Additional Restrictions for Ozone Nonattainment Areas and Areas Previously Designated Nonattainment for Ozone. For those areas which are, or were previously, designated moderate nonattainment for ozone pursuant to 401 KAR 51:010, fires may be set according to the provisions of Section 3 of this administrative regulation except during the months of May, June, July, August, and September. During these months, the only open burning activities allowed are:

(1) Fires set for the cooking of food for human consumption on other than commercial premises;

(2) Fires set for prevention of a fire hazard, including disposal of dangerous materials if no safe alternative is available;

(3) Fires set for the purpose of bona fide instruction and training of public and industrial employees in the methods of fighting fires;

(4) Fires set for recognized agricultural, silvicultural, range, and wildlife management practices;

(5) Fires set for the purpose of disposing of accidental spills or leaks of crude oil, petroleum products or other organic materials, and the disposal of absorbent material used in their removal, if no other economically feasible means of disposal is available and practical.



Permission shall be obtained from the cabinet prior to burning.

JAMES E. BICKFORD, Secretary

APPROVED BY AGENCY: August 13, 1997

FILED WITH LRC: August 13, 1997 at 4 p.m.

**PUBLIC HEARING:** A public hearing on the proposed amendment to this administrative regulation will be held on September 22, 1997, at 10 a.m. (ET) in the Conference Room of the Division for Air Quality, 803 Schenkel Lane, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing, at least five days prior to the hearing, of their intent to attend. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the administrative regulation. Send written notification of intent to be heard at the public hearing or written comments on the amendment to the contact person.

**CONTACT PERSON:** Millie Ellis, Supervisor, Division for Air Quality, 803 Schenkel Lane, Frankfort, Kentucky, 40601, (502) 573-3382, and fax number (502) 573-3787.

To request appropriate accommodations for the public hearing (such as an interpreter), or alternate formats of the printed material, please call (502) 573-3382, ext 362. The cabinet does not discriminate on the basis of race, color, national origin, sex, religion, age, or disability in employment or the provision of services and provides, upon request, reasonable accommodation including auxiliary aids and services necessary to afford individuals with disabilities an equal opportunity to participate in all programs and activities.

#### REGULATORY IMPACT ANALYSIS

Agency Contact: Carl Millanti

(1) Type and number of entities affected: The amendments to this existing regulation will restrict allowable open burning activities in those portions of the Commonwealth which are designated as nonattainment areas for ozone or which are maintenance areas for areas that were previously designated nonattainment for ozone. These restrictions will exceed those that currently apply to the remainder of the Commonwealth, and they will be in effect from May through September on an annual basis. Currently allowed activities which these amendments will prohibit during the specified time period are fires set for recreational or ceremonial purposes, small fires set by workers for comfort heating purposes, fires set for weed abatement, disease and pest prevention, and leaf burning, fires set for land clearing, and fires set for the disposal of rubbish and trees and tree limbs felled by storms.

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

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented. There are no costs or savings as a result of these amendments beyond those previously required by this administrative regulation.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented. The amendments to this administrative regulation do not affect the cost of doing business in geographical areas where affected sources are located beyond the costs previously required by this administrative regulation.

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

1. First year following implementation: There will be no compliance, reporting, or paperwork requirements due to the amendments beyond those previously required by this administrative regulation.

2. Second and subsequent years: There will be no additional compliance, reporting, or paperwork requirements during the second and succeeding years imposed by these amendments beyond those previously required by this administrative regulation.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: There will be no indirect costs or savings to the division as a result of these amendments. The agency already regulates open burning activities.

2. Continuing costs or savings: There are no continuing costs or savings resulting from these amendments.

3. Additional factors increasing or decreasing costs: There are no additional factors increasing or decreasing costs.

(b) Reporting and paperwork requirements: The division will continue to regulate open burning activities and respond to open burning complaints.

(4) Assessment of anticipated effect on state and local revenues: These amendments will have no known effect on state and local revenues.

(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 administrative regulation. There are no additional costs associated with these amendments.

(6) Economic impact, including effects of economic activities arising from administrative regulation, on:

(a) Geographical area in which administrative regulation will be implemented: These amendments will have no economic impact in the geographical location of affected sources beyond those previously required by this administrative regulation.

(b) Kentucky: These amendments will have no economic impact in any part of the Commonwealth beyond those previously required by this administrative regulation.

(7) Assessment of alternative methods; reasons why alternatives were rejected: In order to comply with the 1990 federal Clean Air Act Amendments, Kentucky must reduce emissions of volatile organic compounds in ozone nonattainment and maintenance areas by 15 percent. The restriction of allowable burning activities in these areas during the peak ozone period was deemed to be the least costly alternative for meeting this mandate.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: High ozone levels pose significant health risks to the elderly, young children, and individuals with preexisting lung ailments. These proposed amendments will reduce ozone levels in those portions of the Commonwealth where they are to be implemented and lessen its detrimental effects.

(b) State whether a detrimental effect on environment and public health would result if not implemented: A detrimental effect on public health would be allowed to continue if these amendments were not implemented.

(c) If detrimental effect would result, explain detrimental effect: Failure to implement these amendments would allow the negative impacts of high ozone levels to continue to adversely affect the individuals referenced in (8)(a).

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: There are no statutes, regulations, or government policies which are in conflict, or which overlap or duplicate the amendments to this administrative regulation.

(a) Necessity of proposed regulation if in conflict: The amendments to this administrative regulation are not in conflict.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: The amendments to this administrative regulation are not in conflict.

(10) Any additional information or comments: Failure to reduce concentrations of volatile organic compounds by 15 percent in ozone nonattainment and maintenance areas will result in federal sanctions for Kentucky.

(11) TIERING: Is tiering applied? Yes. The federal mandate to reduce concentrations of volatile organic compounds applies uniformly to ozone nonattainment and maintenance areas.

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### FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. Section 182 of the federal Clean Air Act requires states to achieve a 15 percent reduction in volatile organic compound emissions in any area which is classified as a moderate or above ozone nonattainment area.
2. State compliance standards. The state compliance standards are found in KRS Chapter 224.
3. Minimum or uniform standards contained in the federal mandate. The determination of how the reduction in volatile organic compound emission is achieved is left to the discretion of the states. The amendments to Kentucky's open burning administrative regulation will result in a reduction of volatile organic compound emissions. By restricting allowable burning activities in ozone nonattainment areas and ozone maintenance areas during the peak ozone season.
4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? These amendments will not impose any stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate.
5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Stricter standards and requirements are not being proposed.

### 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. This administrative regulation does not affect any unit, part or division of local government.
3. State the aspect or service of local government to which this administrative regulation relates. This administrative regulation does not relate to any aspect or service of local government.
4. Estimate the effect of this administrative regulation on the expenditures and revenues of a local government for the first full year the regulation is to be in effect. If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.  
Revenues (+/-): There is no known effect on current revenues.  
Expenditures (+/-): There is no known effect on current expenditures.  
Other Explanation: There is no further explanation.

### NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET Department for Environmental Protection Division for Air Quality (Amendment)

#### 401 KAR 65:010. Vehicle emission control programs.

RELATES TO: KRS 224.10-100, 224.20-100, 224.20-110, 224.20-120, 224.20-710 to 224.20-765, 40 CFR Part 51, Subpart S, Appendices A, B, C, D, [67 FR 52987-53014, November 5, 1992, 40 CFR Part 51, Part 86, Subparts B, D, and N, Appendix B to Subpart S, U.S. EPA Technical Guidance, High Tech I/M Test Procedures, Emission Standards, Quality Control Requirements, and Equipment Specifications, July 1993, 42 USC 7401 through 7671q

STATUTORY AUTHORITY: KRS 224.10-100, 224.20-710 to 224.20-765 [224.20-735]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.10-100 requires the Natural Resources and Environmental Protection Cabinet to prescribe administrative regulations for the prevention, abatement,

and control of air pollution. This administrative regulation provides the requirements for vehicle emission control programs in the Commonwealth.

Section 1. Definitions. As used in this administrative regulation, terms not defined in this section shall have the meaning given them in 401 KAR 65:001.

(1) "Antitampering [~~and antimisfueling~~] program" means an emission control program that provides for inspection of vehicles to detect removal or destruction of factory-installed emission control equipment or devices [~~and use of improper fuels~~] in vehicles.

(2) "Antitampering [~~and antimisfueling~~] inspection" means an inspection conducted pursuant to Section 6(2) of this administrative regulation to detect the presence of tampering [~~and the use of leaded gasoline~~].

(3) "Automobile or truck" means a vehicle with at least four (4) wheels registered in the Commonwealth having a gross vehicle weight (GVW) of 18,000 pounds or less and licensed to operate upon the public highways for the purpose of transporting persons or property.

(4) [~~"Basic vehicle inspection and maintenance program" or "basic program"~~] means an emission control program implemented in a program area that requires vehicles subject to this administrative regulation to receive the biennial testing required in Section 6(1) through (4) and (6) of this administrative regulation, as applicable, to demonstrate compliance with the standards of Section 5(1) and (3) of this administrative regulation.

(5) "Certificate of registration" [~~or "registration"~~] means the document issued by county clerks pursuant to KRS Chapter 186 indicating that the owner or operator has properly registered the vehicle, or a document issued for that purpose from another state, territory, or country.

(5) [(6)] "Certification period" means the period for which a compliance or exemption certificate (other than a permanent exemption certificate issued pursuant to Section 4(1) of this administrative regulation) is valid.

(6) [(7)] "Compliance certificate" is governed by the definition in KRS 224.20-710(1).

(7) [(8)] "Contractor" means an independent contractor as governed by the definition in KRS 224.20-710(2).

(8) [(9)] "Control system" is governed by the definition in KRS 224.20-710(3).

(9) [(10)] "Dynamometer" means a device for measuring the horsepower of a motor vehicle engine.

(10) "Emission standard" means exhaust emission standard.

[(11) "Enhanced vehicle inspection and maintenance (I/M) program" or "enhanced program" means an emission control program implemented in a program area that requires vehicles subject to this administrative regulation to receive the biennial testing required in Section 6(1) through (6) of this administrative regulation, as applicable, to demonstrate compliance with the standards of Section 5(2) and (3) of this administrative regulation.]

(11) [(12)] "Evaporative emission control system" means an unvented fuel cap, motor vehicle fuel tank, vapor vent hoses, and evaporative canister.

(12) [(13)] "Evaporative system integrity standard" means the minimum allowable level of pounds per square inch sustainable pressure for a given period of time, pursuant to Section 5(1)(b) [5(2)(b)] of this administrative regulation.

[(14) "Evaporative system purge standard" means the minimum allowable rate of gasoline vapor flow from the evaporative canister measured in liters per minute, pursuant to Section 5(2)(b) of this administrative regulation.]

(13) [(15)] "Exemption certificate" is governed by the definition in KRS 224.20-710(4).

(14) [(16)] "Exhaust emission standard" or "emission standard" means[=

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(a) ~~For all automobiles in a basic program area and for 1980 and older model year vehicles in an enhanced program area,~~ the maximum allowable levels during a test of carbon monoxide, hydrocarbons, and the sum of carbon monoxide and carbon dioxide percentages appropriate for the age and type of vehicle tested, pursuant to Section 5(1)(a) ~~and (2)(a)1~~ of this administrative regulation ~~and~~

(b) ~~For 1981 and newer model year vehicles in an enhanced program area, the maximum allowable grams per mile of carbon monoxide, hydrocarbons, and oxides of nitrogen, for the applicable vehicle type, model year, and pollutant, pursuant to Section 5(2)(a)2 of this administrative regulation.~~

(15) ~~(147)~~ "Fleet" means a group of vehicles owned, leased, or operated by a person who has the responsibility of obtaining registration for the vehicles.

(16) ~~(148)~~ "Fleet operator" means the person who has the responsibility of obtaining the certificates of registration for fleet vehicles.

(17) ~~(149)~~ "Functional standard" means the evaporative system integrity standard (pressure standard) ~~and the evaporative system purge standard~~.

(18) ~~(150)~~ "Gross vehicle weight" or "GVW" means the manufacturer's gross weight rating of a vehicle.

(19) ~~(151)~~ "Inspection station" is governed by the definition in KRS 224.20-710(5).

(20) ~~(152)~~ "Measurable improvement" means any improvement toward achieving the emission or functional standards when compared to the measured results obtained in the initial test.

(21) ~~(153)~~ "Opacity" means the degree to which a motor vehicle's tailpipe exhaust gas plume obstructs the transmission of visible light, as measured by a full-flow, direct reading, continuous reading light extinction opacity meter, pursuant to Section 6(5) ~~6(6)~~ of this administrative regulation.

(22) ~~(154)~~ "Opacity standard" means the maximum allowable opacity during an opacity test for the obstruction of visible light appropriate for a diesel vehicle, pursuant to Section 5(2) ~~5(3)~~ of this administrative regulation.

(23) ~~(155)~~ "Operator" means a person who owns, leases, or operates a vehicle.

(24) ~~(156)~~ "Owner" is governed by the definition in KRS 186.010 (7).

(25) ~~(157)~~ "Person" is governed by the definition in KRS 224.01-010(17).

(26) ~~(158)~~ "Program area" means the county or the contiguous counties which are designated nonattainment for ozone (except marginal) or carbon monoxide pursuant to 401 KAR 51:010, in which a vehicle inspection and maintenance program has been established, pursuant to Section 13 of this administrative regulation.

(27) ~~(159)~~ "Retest" means any test performed after repair.

(28) ~~(160)~~ "Tampering" means removing, disconnecting, or rendering inoperative or ineffective the catalytic converter, unvented fuel cap, air pump system, fuel inlet restrictor, exhaust gas recirculation (EGR) valve, positive crank case ventilation (PCV) system, or evaporative system, except to replace the device with a device which is equivalent in design and function to that which was originally installed on the vehicle and which has been approved by an independent, state, or federal laboratory recognized by the U.S. EPA.

(29) ~~(161)~~ "Test equipment" means the analyzers and diagnostic equipment used to test a vehicle's compliance with the emission and functional standards of Section 5 of this administrative regulation, which are approved by the U. S. EPA pursuant to 40 CFR 51.358 and 51.359, and Appendices A and D to Subpart S of 40 CFR 51, which are [the U.S. EPA Technical Guidance, "High Tech I/M Test Procedures, Emission Standards, Quality Control Requirements, and Equipment Specifications", July 1993, which is] incorporated by reference in Section 14 of this administrative regulation.

(30) ~~(162)~~ "Test" or "testing" means the use of test equipment and

the application of techniques and methods, approved by the cabinet pursuant to Section 6 of this administrative regulation, to determine compliance with the allowable exhaust emission standards, the functional standards, and the antitampering ~~and anti-idling~~ standards, pursuant to Section 5 of this administrative regulation.

(31) ~~(163)~~ "Testing period" means the period of time during which a vehicle is scheduled to be tested to receive a compliance certificate or exemption certificate and based on the vehicle identification number, as described in Section 3(1)(a) of this administrative regulation. This period consists of a three (3) month period that commences ninety (90) days prior to the expiration date of the vehicle's certificate of registration, this expiration date falling during the applicable odd or even numbered year identified in Section 3(1)(a) of this administrative regulation. The cabinet shall publish notices of the testing periods pursuant to Section 3(2) of this administrative regulation.

(34) ~~"Transient exhaust emissions test" means the analysis of vehicle exhaust emissions during a series of accelerations and decelerations while a vehicle's power axle is mounted on a dynamometer with the vehicle's engine and transmission engaged, pursuant to the test procedures in Section 6(5) of this administrative regulation.~~

(32) ~~(164)~~ "Vehicle" is governed by the definition in KRS 224.20-710(6).

(33) ~~(165)~~ "Vehicle emission control program" is governed by the definition in KRS 224.20-710(7).

(34) ~~(166)~~ "Vehicle identification number" or "VIN" means the number assigned to the vehicle by the vehicle's manufacturer.

(35) "Vehicle inspection and maintenance program" means an emission control program implemented in a program area that requires vehicles subject to this administrative regulation to receive the testing required in Section 6(1) through (5) of this administrative regulation, as applicable, to demonstrate compliance with the standards of Section 5(1) and (2) of this administrative regulation.

(36) ~~(167)~~ "Vehicle repair facility" means a repair facility which is open to the general public for the repair of automobiles or other vehicles, is legally licensed to be in business, has a published telephone number, and has a federal employer's identification number (FEID number) or Kentucky business tax number if there is no FEID number.

(37) ~~(168)~~ "Vehicle inspection and repair form" means the form issued to the owner or operator of a vehicle when the vehicle is presented for inspection, pursuant to Section 9(2) of this administrative regulation.

Section 2. Applicability. (1) The owner or operator of a 1968 or newer model year vehicle shall not renew a certificate of registration for that vehicle in a county located in a program area unless a current certificate of compliance, issued pursuant to Section 9(1) of this administrative regulation, or a current exemption certificate issued pursuant to Section 4 of this administrative regulation, is presented to the county clerk. This administrative regulation shall apply to:

(a) Owners or operators, including fleet operators, of vehicles that are registered in a county that has been designated nonattainment for ozone (except marginal) or carbon monoxide, pursuant to 401 KAR 51:010; and

(b) Owners or operators of vehicles owned exclusively by a county; city; urban-county; board of education; emergency and ambulance vehicles operated by nonprofit corporations organized by the local, state, or federal government; and vehicles owned exclusively by a nonprofit volunteer fire department, volunteer fire prevention unit, or volunteer fire protection unit, when the vehicles are assigned to a person or office located in a program area.

(2) ~~The provisions of this administrative regulation which relate to basic program requirements shall apply to the county or counties in which the cabinet has implemented a basic inspection and maintenance program.~~

~~(3) The provisions of this administrative regulation which relate to~~

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~~enhanced program requirements shall apply to the county or counties in which the cabinet has implemented an enhanced inspection and maintenance program.~~

(4) The provisions for tampering shall become applicable:

(a) On the date the vehicle emission control program commences testing vehicles in those program areas that had an antitampering ~~and antimisfueling~~ program in effect before January 31, 1991; and

(b) Beginning two (2) years after a vehicle emission control program commences testing vehicles in other program areas.

(3) ~~(4)~~ The contractor who enters an agreement with the cabinet to operate an emission inspection station shall be subject to the applicable requirements of this administrative regulation.

(4) ~~(5)~~ Personnel of a permitted inspection station shall be subject to the requirements of Section 12 of this administrative regulation.

(5) ~~(7)~~ Vehicles registered in a nonattainment county governed by a vehicle inspection and maintenance program implemented by a local air pollution control agency established pursuant to KRS Chapter 77 shall be exempt from this administrative regulation.

Section 3. Inspection Frequency and Notification. (1) Inspection frequency.

(a) Owners or operators of vehicles subject to this administrative regulation shall present their vehicles biennially for testing at a permitted inspection station located in the program area according to the following schedule based on the vehicle identification number:

1. A vehicle with an even model year ~~identification number (VIN) ending with an even number or any letter A-L~~ shall be tested in even-numbered years; and

2. A vehicle with an odd model year ~~VIN ending with an odd number or any letter M-Z~~ shall be tested in odd-numbered years.

(b) A vehicle shall not be tested to receive a compliance certificate pursuant to Section 9(1) of this administrative regulation, or shall not receive an exemption certificate pursuant to Section 4 of this administrative regulation, prior to the vehicle's testing period, except as provided in Section 4(2) and (3) of this administrative regulation.

(c) 1. If a vehicle is inspected after the vehicle's testing period to receive a compliance or exemption certificate, the owner or operator shall pay the additional fee provided in Section 8(5) of this administrative regulation in addition to any other applicable fee.

2. The owner or operator of the vehicle brought for inspection shall be exempt from the additional fee for testing after the testing period provided in Section 8(3) of this administrative regulation if he has acquired title to that vehicle less than twelve (12) months prior to the date of inspection, or if he has established residence in the program area less than twelve (12) months prior to the date of inspection. In order to have this fee waived, the owner or operator of the vehicle shall present appropriate documentation (such as the title to the vehicle or the vehicle's latest certificate of registration) to the cabinet or contractor representative collecting the fees.

(d) The owner or operator shall pay the applicable fees, pursuant to Section 8 of this administrative regulation, when each vehicle is presented for testing. A compliance certificate, exemption certificate, or vehicle inspection and repair form shall not be issued until all applicable fees are paid, except as provided in paragraph (f) of this subsection.

(e) An owner or operator of a vehicle that has been issued an exemption certificate by the cabinet or contractor, shall be exempt from paragraph (a) of this subsection for the period of time indicated on the exemption certificate, pursuant to Section 4 of this administrative regulation.

(f) Federal, state and local agencies and public or private corporations with vehicles bearing official license plates, assigned to an office or individual in the program area, shall identify a contact person and shall submit, in writing, to the cabinet an initial listing of all assigned vehicles as of January 1 of each year for an annual testing of vehicles.

1. The listing shall be submitted to the contractor by January 31 of each year and shall include for each vehicle, at a minimum, the vehicle make, model year, VIN, license plate number, and a requested testing period.

2. The contractor shall notify the contact person responsible for approval of changes to the requested testing period by February 15 of each year.

3. The vehicles shall be subject to applicable emission and functional standards and the antitampering ~~and antimisfueling~~ standard of Section 5 of this administrative regulation, to the applicable testing requirements of Section 6 of this administrative regulation, and to the fees provided in Section 8 of this administrative regulation. Fees shall be paid at the time of testing or in a schedule acceptable to the contractor and the cabinet.

(2) Notification.

(a) The cabinet shall notify owners of the testing period assigned to their vehicles by mailing a notice to each owner's address as listed with the Kentucky Transportation Cabinet and shall publish a legal notice or classified advertisement at least one (1) day each month in the newspaper with the largest circulation that is distributed in the program area.

(b) The mailed notice shall advise owners that, pursuant to KRS 224.20-720(2), the county clerk shall not renew a vehicle's certificate of registration without a compliance certificate or an exemption certificate issued by a permitted inspection station located in the program area, and shall notify owners that a vehicle shall be rejected from the inspection station if tampering has occurred.

(c) In addition to the information required in paragraph (b) of this subsection, the notice in the newspaper shall also advise the public of their obligation to have each vehicle tested prior to having the vehicle's certificate of registration renewed and shall specify the testing period for vehicles with certificates of registration due for renewal in the next three (3) months.

(d) Failure of the owner or operator to receive a notice shall not excuse the owner or operator from complying with this administrative regulation.

Section 4. Exemption Certificates. A person shall not issue or use an exemption certificate in violation of this administrative regulation. The following types of exemption certificates shall be issued by the contractor or the cabinet pursuant to the procedures in this section:

(1) Permanent exemption certificate.

(a) The owners or operators of vehicles equipped to operate exclusively on ~~fuels~~ other than gasoline or diesel fuel shall present the vehicle for inspection by the contractor during the initial testing period.

(b) If the cabinet confirms that the vehicle is not equipped to operate with gasoline or diesel fuel, a permanent exemption certificate shall be issued.

(c) The owner or operator of a vehicle, for which a permanent exemption certificate has been issued, shall not operate the vehicle if it is altered so that it may operate using gasoline or diesel fuel, without presenting the vehicle for testing at a permitted inspection station within thirty (30) days after the vehicle has been altered.

(2) Temporary exemption certificate.

(a) A temporary exemption certificate shall be issued by the cabinet if the owner or operator demonstrates and affirms to the cabinet, pursuant to subsection (4) of this section, that the vehicle will not be available for testing during the testing period. The owner or operator of a vehicle shall not seek a temporary exemption certificate to avoid testing which would otherwise be required.

(b) The owner or operator shall notify the cabinet when the vehicle will be available for testing and provide the VIN, proof of ownership, and the driver's license of the owner.

(c) The temporary exemption certificate shall expire thirty (30) days after the date the owner or operator indicates that the vehicle will be available for testing, except that the cabinet may extend the

temporary exemption certificate upon further demonstration and affirmation by the owner or operator that the vehicle remains unavailable for testing. A temporary exemption certificate shall not be valid beyond the last day of the certification year in which it was issued.

(d) Prior to the expiration of a temporary exemption certificate, the owner or operator shall present the vehicle and the current temporary exemption certificate to a permitted vehicle inspection station when the vehicle is available for testing, and shall pay the test fee specified in Section 8(1) of this administrative regulation and the additional fee specified in Section 8(5) of this administrative regulation.

(e) The owner or operator shall obtain a compliance certificate or a repair cost exemption certificate, as applicable, before the temporary certificate expires. Failure of the owner or operator to obtain a compliance certificate or exemption certificate prior to the expiration of the temporary exemption certificate shall result in the cabinet's denial of another temporary exemption certificate and shall subject the owner or operator to penalties for failure to comply with KRS 224.20-710 to 224.20-765.

(3) Certification period exemptions.

(a) An exemption certificate shall be issued by the cabinet if the owner or operator demonstrates and affirms to the satisfaction of the cabinet, pursuant to subsection (4) of this section, that the vehicle will not be operated in the program area for more than thirty (30) days during a certification period.

(b) The owner or operator shall present to the cabinet the documentation demonstrating that the vehicle will not be operated in the program area, the VIN, proof of ownership, the driver's license number or Social Security number of the owner, and the location of the vehicle during the certification period. The owner or operator shall pay the exemption certificate fee specified in Section 8(1) of this administrative regulation.

(c) An exemption certificate shall be issued by the cabinet for a given certification period if the owner or operator demonstrates to the satisfaction of the cabinet that the vehicle has a valid compliance or exemption certificate issued by an equivalent emission control program approved by the U.S. EPA as part of a state implementation plan. The certificate shall be valid for the period that the certificate would have been valid if it had been issued pursuant to this administrative regulation. The owner or operator shall pay the exemption certificate fee specified in Section 8 of this administrative regulation.

(4) Acceptable proof for temporary and certification period exemptions.

(a) Requests for a temporary or certification period exemption shall be in the form of an affidavit signed by the owner or operator, stating the reason and the length of time the vehicle will be located out of the program area, or otherwise unavailable for testing, and shall include the address where the vehicle will be located during the period.

(b) Military personnel who are on active duty and who will be stationed 150 miles or more from a program area during a certification period may be granted an exemption if the cabinet receives a copy of the military orders or letter from their commanding officer or executive officer verifying that the assignment is 150 miles or more from the program area and that the assignment will continue during the period for which the exemption is requested.

(c) Owners or operators of vehicles subject to this administrative regulation who are registered as full-time students at a college, university, or other school, which is 150 miles or more from a program area, may be granted an exemption if the school's registrar verifies in writing the student's registration ~~[school address]~~ and the period of enrollment.

(d) Owners or operators of vehicles subject to this administrative regulation may request temporary or certification period exemption certificates by mail provided the owner or operator and vehicle meet the applicable requirements of this subsection. The cabinet shall grant or deny a request within twenty (20) days of receipt of the request.

(5) Repair cost exemption certificates. ~~[The contractor may issue]~~ A repair cost exemption certificate, valid for the stated certification period, may be issued to the owner or operator of a vehicle subject to this administrative regulation if the following criteria have been met and the vehicle does not meet the applicable standards in Section 5 of this administrative regulation:

(a) The vehicle has achieved at least a measurable improvement in the amount of emissions for each pollutant or opacity standard for which the vehicle was failed, as measured from the first exhaust emission test. ~~[and]~~

(b) A visual inspection and, if available, an on-board diagnostics check identifies no further necessary repairs which may result in an improvement in the vehicle's emissions. Repairs that the cabinet may require include, but are not limited to:

1. Replace the air filter;
2. Replace the positive crankcase ventilation valve;
3. Replace the evaporative canister;
4. Replace the NO<sub>x</sub> sensor;
5. Adjust the air-to-fuel mixture;
6. Adjust the idle speed;
7. Adjust or repair the choke;
8. Repair float, power valves, needles, seats, and jets;
9. Repair vacuum hoses;
10. Replace spark plugs;
11. Replace plug wires;
12. Replace distributor, rotor cap, or points;
13. Adjust dwell or timing;
14. Replace oxygen sensor; and
15. Repair or replace the exhaust gas recirculation valve, carburetor, fuel injector, catalytic converter, electronic control module computer, or secondary air system, if the repair or replacement is covered under a manufacturer's or dealer warranty.

(c) The owner or operator of the vehicle which failed the retest has spent at least the following amounts for repairs on the applicable model year vehicle in attempting to have the vehicle pass a retest in the applicable program area:

1. For 1980 or older model years, the owner or operator has spent at least seventy-five (75) dollars;
2. For 1981 and newer model years, the owner or operator has spent at least \$200;
3. For vehicles covered by 42 USC 7541(b), the owner or operator has spent at least \$200.
4. ~~For a diesel vehicle, [in a basic or enhanced program area,] the owner or operator [of a diesel vehicle] has spent at least seventy-five (75) dollars.~~

(d) ~~[(e)]~~ The costs applied toward a cost exemption certificate shall be only for repairs based on appropriate diagnostics to correct problems related to an emission test failure, and shall not include costs to replace or repair components as a result of tampering. The cost of repairs to correct leaking, defective, or detached exhaust systems shall not be included in receiving a repair cost exemption certificate.

(e) Available warranty coverage shall be used to obtain needed repairs before expenditures can be counted towards the costs limits required by a cost exemption certificate. The owner or operator of a vehicle within the statutory age and mileage coverage under 42 USC 7541(b) shall present a written denial of warranty coverage from the manufacturer or authorized dealer for the repair costs to be included in the cost limits counted toward the cost exemption certificate.

(f) ~~[(f)]~~ Labor costs shall not be applied toward a cost exemption certificate for repairs performed on a vehicle by the owner or operator of that vehicle except as provided in Section 7(2)(f) of this administrative regulation.

(g) ~~[(g)]~~ An owner or operator may appeal the denial of a repair cost exemption certificate pursuant to the provisions of Section 11 of this administrative regulation.

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Section 5. Standards of Performance for Vehicles. (1) ~~[Basic program area.]~~ The owner or operator of a vehicle subject to this administrative regulation ~~[the requirements of a basic program area]~~ shall be issued a compliance certificate, pursuant to Section 9(1) of this administrative regulation, if the vehicle meets the applicable emission, functional, and antitampering ~~[and antimisfueling]~~ standards of this subsection and the applicable testing requirements of Section

6 of this administrative regulation.

(a) Exhaust emissions standard. The maximum allowable levels of carbon monoxide (CO) and hydrocarbons (HC), as measured by the idle exhaust emissions test, pursuant to Section 6(3) of this administrative regulation, for the applicable vehicle type, model year, pollutant, and gross vehicle weight (GVW) shall be as listed in the following table:

Vehicle Model Year	Vehicles Registered as Automobiles		* Vehicles having GVW of 6,000 lbs or less		Vehicles with GVW greater than 6,000 lbs but equal to 10,000 lbs or less		Vehicles with GVW greater than 10,000 lbs but equal to 18,000 lbs or less	
	HC (ppm)	CO (%)	HC (ppm)	CO (%)	HC (ppm)	CO (%)	HC (ppm)	CO (%)
1968	950	8.5	1300	8.0	1500	9.0	1500	9.0
1969	900	8.5	1200	8.0	1100	8.0	1300	8.5
1970	850	8.4	1100	8.0	1100	8.0	1300	8.5
1971	850	8.1	1000	8.0	1000	8.0	1200	8.5
1972	800	8.0	1000	7.8	950	7.5	1000	7.0
1973	800	7.8	1000	7.8	950	7.5	1000	7.0
1974	800	7.6	950	7.8	950	7.5	1000	7.0
1975	700	7.5	900	7.0	950	7.5	1000	7.0
1976	700	6.5	700	7.0	900	7.5	1000	7.0
1977	650	6.3	700	7.0	850	7.5	900	6.5
1978	600	5.5	700	6.3	700	6.0	900	6.5
1979	600	4.5	450	5.5	650	5.5	900	6.5
1980	250	2.5	450	4.0	550	5.0	900	6.5
1981	220	1.2	350	1.7	450	4.0	500	3.5
1982	220	1.2	220	1.2	400	2.5	400	3.0
1983	220	1.2	220	1.2	350	2.0	400	3.0
1984	220	1.2	220	1.2	220	1.5	250	1.5
1985 & newer	220	1.2	220	1.2	220	1.2	250	1.5

\* Other than vehicles registered as automobiles.

(b) Evaporative system integrity standard (pressure standard). For 1981 and newer model gasoline vehicles, the pressure standard for the evaporative emission control system shall be a minimum sustainable pressure of eight (8) inches of water for a maximum period of two (2) minutes, as measured by the evaporative system integrity test, pursuant to Section 6(4) of this administrative regulation.

(c) Antitampering ~~[and antimisfueling]~~ standard. Vehicles shall be inspected by inspection station or cabinet personnel for tampering ~~[and misfueling]~~, pursuant to Section 6(2) of this administrative regulation. A vehicle which shows evidence of tampering ~~[or misfueling]~~ shall be determined as not achieving this standard.

(2) ~~[Enhanced program area. The owner or operator of a vehicle subject to the requirements of an enhanced program area shall be issued a compliance certificate, pursuant to Section 9(1) of this administrative regulation, if the vehicle meets the emission, functional, and antitampering and antimisfueling standards of this subsection and the applicable testing requirements of Section 6 of this administrative regulation.]~~

(a) Exhaust emissions standard.

1. For 1980 and older model year vehicles, the maximum allowable levels of carbon monoxide (CO) and hydrocarbons (HC), as measured by the idle exhaust emissions test, pursuant to Section 6(3) of this administrative regulation, for the applicable vehicle type, model year, pollutant, and gross vehicle weight (GVW) shall be as listed in the table in subsection (1)(a) of this section.

2. For 1981 and newer model year vehicles, the maximum allowable grams per mile (gpm) of carbon monoxide, hydrocarbons, and oxides of nitrogen, as measured by the transient exhaust

emissions test, pursuant to Section 6(5) of this administrative regulation, for the applicable vehicle type, model year, and pollutant shall be as listed in Section 85.2205(a) of the U.S. EPA Technical Guidance, "High Tech I/M Test Procedures, Emission Standards, Quality Control Requirements, and Equipment Specifications", July 1993, which is incorporated by reference in Section 14 of this administrative regulation.

(b) Evaporative system purge standard. For 1981 and newer model year vehicles, the purge standard for the evaporation emission control system shall be a minimum flow of one (1.0) standard liter at the conclusion of the transient exhaust emissions test, as measured by the test equipment, pursuant to Section 6(5)(a) of this administrative regulation.

(c) Evaporative system integrity standard (pressure standard). For 1981 and newer model gasoline vehicles, the pressure standard for the evaporative emission control system shall be a minimum sustainable pressure of eight (8) inches of water for a maximum period of two (2) minutes, as measured by the evaporative system integrity test, pursuant to Section 6(4) of this administrative regulation.

(d) Antitampering and Antimisfueling standard. Vehicles shall be inspected by inspection station or cabinet personnel for tampering and misfueling, pursuant to Section 6(2) of this administrative regulation. A vehicle which shows evidence of tampering or misfueling shall be determined as not achieving the standard.

(3) Emission standard for diesel vehicles ~~[for basic and enhanced program areas]~~. A diesel vehicle shall not emit visible emissions in excess of ten (10) percent opacity for ten (10) or more consecutive seconds, as measured by the test equipment pursuant to Section 6(5)



[6(6)] of this administrative regulation, when tested at idle engine speed.

(3) ~~[(4) Cause for]~~ Rejection of vehicles. ~~[In a basic or an enhanced program area,]~~ A vehicle shall be rejected from the inspection station if:

(a) The inspection station or cabinet personnel are unable to determine readily that the vehicle presented at the inspection station is the vehicle identified in the VIN, certificate of registration, or license tag; or

(b) The vehicle, its contents, load, passengers, or operator causes, or has the appearance of causing, an unsafe condition at the inspection station. The test shall not be performed until the condition is corrected. The conditions for rejection shall include, but shall not be limited to, the following:

1. Leaking fuel;
2. The leaking of potentially toxic or hazardous materials, other than normal drive-train fluid;
3. Operator incapacity;
4. Operator or passenger misconduct;
5. For vehicles that are preconditioned on a dynamometer, the vehicle tire cords are visible;
6. The vehicle has a space-saver spare tire mounted on the drive axle;
7. The vehicle is pulling a detachable trailer or load;
8. The vehicle stalls repeatedly;
9. The vehicle has leaking, defective, or detached exhaust systems;
10. The vehicle has exhaust tailpipes altered from those of the original manufacturer of the vehicle so that proper access by the test equipment required in Section 6 of this administrative regulation is not possible; or
11. The inspection would cause inspection station personnel to be in an unsafe position, as determined by the contractor. Inspection station personnel shall document all rejections and the reasons for the rejection.

Section 6. Test Procedures for Vehicles. (1) Operator procedures for gasoline vehicles. The operator shall operate the vehicle for testing pursuant to the conditions specified in this section and at the direction of inspection station personnel as follows:

(a) Unless otherwise directed, the operator shall remain in the vehicle while the vehicle is in the test lane.

(b) During testing, the engine shall be at normal operating temperatures and shall not be overheating (as indicated by a gauge or warning light or boiling radiator), with all accessories turned off.

(c) Vehicles shall be approximately level during testing.

(d) If the engine stalls during testing, the test shall be restarted.

(2) Antitampering ~~[and antimisfueling]~~ inspection.

(a) The inspection station personnel shall perform an antitampering ~~[and antimisfueling]~~ inspection on all 1975 and newer model year vehicles presented to the inspection station for compliance with KRS 224.20-710 to 224.20-765. The procedure shall consist of a visual inspection for the presence of tampering ~~[and tail pipe lead deposits indicating the use of loaded fuel]~~.

(b) If tampering ~~[or misfueling]~~ is found, the owner or operator shall be so informed and shall be issued a vehicle emission repair form. Tampered ~~[or misfueled]~~ vehicles shall not complete the applicable exhaust emission and function test procedures until the vehicle has been repaired.

1. Missing or damaged components shall be repaired, regardless of expense. The cost of repair or replacement of these components is not subject to a repair cost exemption certificate provided in Section 4(5) of this administrative regulation.

2. Upon repair or replacement of tampered, inoperable, missing or malfunctioning components (except for an unvented fuel cap), the owner or operator shall present the vehicle for inspection and the completed vehicle inspection and repair form, signed by a mechanic

of a vehicle repair facility, demonstrating that the components have been repaired or replaced and are in proper operating condition.

(3) Idle exhaust emission test procedure for gasoline vehicles. The idle exhaust emissions test shall measure vehicle exhaust gas emissions for carbon monoxide (CO), carbon dioxide (CO<sub>2</sub>), and hydrocarbons (HC) and shall be performed pursuant to 40 CFR 51, Subpart S and Appendices B and C to Subpart S, as published ~~[promulgated]~~ in the July 1, 1996, edition of the Code of Federal Regulations, ~~[Federal Register, of November 5, 1992 (57 FR 52987)]~~ which is incorporated by reference in Section 14 of this administrative regulation, and the following:

(a) Analyzers shall be warmed up, in stabilized operating condition, and adjusted according to manufacturer's specifications.

(b) If the vehicle is capable of being operated with gasoline or other fuels, the test shall be conducted using gasoline.

(c) Multiple exhaust vehicles shall be tested by sampling all exhaust points simultaneously or by other methods approved by the cabinet.

(d) Inspection station personnel shall attach the tachometer. With the engine operating at idle speed, the emergency brake on, and the transmission in "neutral" for vehicles with manual transmissions or "park" for vehicles with automatic transmissions, the sampling probe of the gas analytical system shall be inserted at least ten (10) inches into the tail pipe. If the probe cannot be inserted at least ten (10) inches, exhaust pipe extension boots shall be used.

(e) First chance to pass. The initial idle mode shall have a maximum duration of ninety (90) seconds and a minimum duration of thirty (30) seconds.

1. The analysis shall begin after an initial time delay of ten (10) seconds. If, within thirty (30) seconds the hydrocarbon reading is equal to or less than 100 parts per million and the carbon monoxide reading is five-tenths (0.5) percent or less, the vehicle shall pass the test. If these readings are not obtained within the first thirty (30) seconds, the test shall be continued for up to an additional sixty (60) seconds. If at any time during the sixty (60) second period, the readings for both hydrocarbons and carbon monoxide meet the emission standards for the applicable vehicle model year and GVW, the vehicle shall pass the test.

2. If at any time during the test the carbon monoxide (CO) plus carbon dioxide (CO<sub>2</sub>) concentration falls below six (6) percent, the test shall be voided. If the low concentration is due to the engine size or operating temperature, the lane operator may override the CO plus CO<sub>2</sub> concentration and continue the test.

(f) Second chance to pass. If the vehicle does not pass the procedure in paragraph (e) of this subsection, the test probe shall be removed, and the owner or operator shall be given the option of accepting that the vehicle has failed the test and requires repairs, or accepting the offer of a second chance to pass a test, after being preconditioned on a dynamometer. If the owner or operator chooses to have the vehicle tested a second time, the test timer shall be reset to zero, and a second chance test shall be performed after using one (1) of the following preconditioning procedures:

1. The power axle of the vehicle shall be mounted on a dynamometer. For dynamometer preconditioning, vehicles with front wheel drive shall be driven by the lane operator or other contractor designee. The mode timer shall initiate when the dynamometer speed is within the limits specified for the vehicle engine size. The mode shall continue for a minimum of thirty (30) seconds. The dynamometer test schedule for engine preconditioning prior to a second-chance idle test shall be within the following limits:

Engine Size	Roll Speed	Normal Loading
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4 or fewer cylinders	22 - 25 mph	2.8 - 4.1 brake horsepower
5 - 6 cylinders	29 - 32 mph	6.8 - 8.4 brake horsepower
7 or more cylinders	32 - 35 mph	8.4 - 10.8 brake horsepower



2. Full-time four (4) wheel drive vehicles shall be preconditioned with the engine speed at 2500 revolutions per minute (2500 rpm) plus or minus 300 revolutions per minute ( $\pm 300$  rpm) for thirty (30) seconds with the transmission in either "park" or "neutral."

3. Immediately following the preconditioning mode and when the vehicle's wheels are no longer moving, the mode timer shall be started and run for a period not to exceed ninety (90) seconds. The test probe shall be reinserted and the procedures described in paragraph (f) of this subsection shall be repeated.

4. If any pair of readings shows passing scores for both hydrocarbons and carbon monoxide, the vehicle shall pass the test. If all readings exceed the hydrocarbon limit or the carbon monoxide limit, or both, the vehicle shall fail the test. The operator shall be informed of the results, and the repairs recommended to correct the system deficiencies shall be included on the vehicle emission repair form.

(4) Evaporative system integrity test (pressure test).

(a) An evaporative system integrity test shall be performed on all 1981 and newer model gasoline powered vehicles presented for the purpose of compliance with this administrative regulation as follows:

(b) Inspection station personnel shall direct the operator of the motor vehicle to shut off the vehicle's engine. The operator shall allow inspection station personnel access to the motor vehicle engine compartment by releasing the hood latch or other method.

(c) Inspection station personnel shall disconnect all components and lines leading from the fuel tank at the junction of the evaporative canister. All lines and components, other than the main vent line, shall be sealed and made air tight. Vehicles with evaporative canisters that are inaccessible to inspection station or cabinet personnel, due to factory design of the vehicle, shall have the pressure test portion of this administrative regulation waived by the cabinet. A missing or damaged evaporative canister shall result in failure of the pressure test.

(d) The main vent line shall be pressurized to fourteen (14) inches of water, not to exceed twenty-six (26) inches of water system pressure, with commercial grade nitrogen. After the pressure is stabilized, the main vent line shall be sealed and the system pressure monitored for a maximum of two (2) minutes. An evaporative system that maintains a constant internal pressure equal to or greater than eight (8) inches of water for a duration of two (2) minutes shall be deemed acceptable.

(e) At the end of the two (2) minute monitoring period the unvented fuel cap shall be removed and the monitoring equipment shall be observed for a decrease of internal pressure.

(f) Inspection station personnel shall:

1. Remove all monitoring equipment from the main vent line;
2. Remove all seals from all other components and lines disconnected from the evaporative canister; and
3. Reconnect the system in the configuration in which the vehicle was presented for inspection.

(g) Upon successful completion of paragraphs (d) and (e) of this subsection, the vehicle shall pass the test.

(h) If any of the following occurs, the vehicle shall fail the test. The operator shall be informed of the results, and the repairs recommended to correct the system deficiencies shall be included on the vehicle emission repair form.

1. An internal system pressure of fourteen (14) inches of water is not obtained;
2. The internal system pressure drops below eight (8) inches of water at any time during the two (2) minute monitoring period; or
3. Upon removal of the unvented fuel cap, a decrease in internal pressure is not observed.

(i) The cost of repairs performed on the evaporative emission control system, that are not a result of tampering, may be applied to a repair cost exemption certificate, pursuant to Section 4(5) of this administrative regulation.

~~[(5) Transient exhaust emissions test and evaporative emission purge test of gasoline vehicles. The transient exhaust emissions test~~

~~and evaporative emission purge test shall be performed pursuant to the procedures prescribed in Sections 85.2205 and 85.2221 of the U.S. EPA Technical Guidance, "High Tech I/M Test Procedures, Emission Standards, Quality Control Requirements, and Equipment Specifications", July 1993, and the following: (The U.S. EPA Technical Guidance is incorporated by reference in Section 14 of this administrative regulation.)~~

~~(a) Evaporative emission purge test. Inspection station personnel shall direct the operator of the motor vehicle to shut off the vehicle's engine. The operator shall allow inspection station personnel access to the motor vehicle engine compartment by releasing the hood latch or other method.~~

~~1. Inspection station personnel shall connect a flow measurement device where the purge line intersects with the canister. The flow measurement device shall measure the flow of gasoline vapor (in standard liters) during the transient exhaust emissions test procedure.~~

~~2. A vehicle shall fail the evaporative emission purge procedure if the flow of gasoline vapor is less than one (1) liter at the completion of the transient exhaust emissions test.~~

~~3. Vehicles with evaporative canisters that are inaccessible to inspection station or cabinet personnel, due to factory design of the vehicle, shall have the evaporative emission purge test portion of this administrative regulation waived by the cabinet. A missing or damaged evaporative canister shall result in failure of the purge test.~~

~~(b) Transient exhaust emissions test. The operator of the vehicle shall surrender control of the vehicle to inspection station or cabinet personnel to conduct the transient exhaust emissions test procedure.~~

~~1. The vehicle engine shall be restarted and the power axle of the vehicle shall be mounted on a dynamometer. The dynamometer rolls shall be rotated until the vehicle laterally stabilizes on the dynamometer.~~

~~2. Restraining devices shall be applied to the vehicle to minimize lateral and forward movement of the vehicle.~~

~~3. An external engine cooling fan shall be positioned to direct air to the vehicle cooling system.~~

~~4. The exhaust collection system shall be positioned to ensure capture of the entire exhaust stream from the tailpipe during the transient driving cycle.~~

~~5. The dynamometer power absorption and inertia weight settings shall be selected from the U.S. EPA supplied table based upon the vehicle type and number of cylinders or cubic inch displacement of the engine. Vehicles not listed in the table shall be tested using the default power absorption and inertia settings provided in the table in Section 85.2221(5) of the U.S. EPA Technical Guidance, "High Tech I/M Test Procedures, Emission Standards, Quality Control Requirements, and Equipment Specifications", July 1993, which has been incorporated by reference in Section 14 of this administrative regulation.~~

~~6. Transient driving cycle. The vehicle shall be driven over the cycle specified in the table in Section 85.2221(e)(1), of the U.S. EPA Technical Guidance, "High Tech I/M Test Procedures, Emission Standards, Quality Control Requirements, and Equipment Specifications", July 1993, which has been incorporated by reference in Section 14 of this administrative regulation.~~

~~7. Inspection station or cabinet personnel shall follow a trace (an electronic, visual depiction) of the time/speed relationship of the transient driving cycle. The trace shall be of sufficient magnification and detail to allow accurate tracking and anticipate upcoming speed changes. The trace shall also clearly indicate gear shifts as specified in subparagraph 8 of this paragraph.~~

~~8. Shift schedule for manual transmissions. Inspection station or cabinet personnel shall shift gears of vehicles according to the schedule in Section 85.2221(e)(3) of the U.S. EPA Technical Guidance, "High Tech I/M Test Procedures, Emission Standards, Quality Control Requirements, and Equipment Specifications", July 1993, which has been incorporated by reference in Section 14 of this administrative regulation. Gear shifts shall occur at the points in the~~

driving cycle where the specified speeds are obtained except for the shift at 110.0 seconds, which shall occur at the specified time.

9. Inspection station or cabinet personnel shall idle the vehicle for ten (10) seconds as the exhaust analysis equipment samples the ambient air.

10. The lane control computer shall signal the inspection station personnel to initiate the driving cycle. The drive cycle shall have a duration of approximately four (4) minutes.

11. The test equipment shall collect samples of the mass of each pollutant for each second of the following sampling mode and phase schedules:

a. Composite Analysis Schedule

MODE	CYCLE PORTION
1	0 to 60 seconds
2	61 to 110 seconds
3	120 to 174 seconds
4	175 to 230 seconds; and

b. Second by second mass analysis schedule

PHASE	CYCLE PORTION
1	0 to 93 seconds
2	94 to 230 seconds

12. If at the completion of the driving cycle, the composite emission analysis in subparagraph 1 of this paragraph exceeds the enhanced emission standards for a pollutant in Section 5(2) of this administrative regulation, the second by second emission analysis results of Phase 2 in subparagraph 11b of this paragraph shall be compared to those standards. If the composite emission level for a pollutant is below the enhanced emission standard in Section 5(2) of this administrative regulation, or if the Phase 2 emission level is below the enhanced emission standard, the vehicle shall pass the test for that pollutant.

(c) The owner or operator of a vehicle that fails to meet the emission standard, pursuant to Section 5(2)(a) of this administrative regulation, for any specified pollutant or the evaporate emission-purge standard, pursuant to Section 5(2)(c) of this administrative regulation, shall be so informed and the repairs recommended to correct the deficiency shall be included on the vehicle inspection and repair form.

(d) Equivalent methods which have been approved by the cabinet and the U.S. EPA for the Transient Exhaust Emissions Test and Evaporative Emission Purge Test of Gasoline Vehicles may be substituted for the procedures prescribed in this section.]

(5) [(6)] Test procedures for diesel vehicles. The operator of a diesel vehicle shall allow the vehicle to be operated for testing pursuant to the conditions specified Section 6(1) of this administrative regulation and the following:

(a) Diesel-powered vehicles shall be inspected with an opacity meter that is a full-flow, direct reading, continuous reading light extinction type using a collimated light source and photo-electric cell, accurate to within plus or minus five (5) percent.

(b) Separate measurements shall be made on each exhaust outlet on diesel vehicles equipped with multiple exhaust outlets. The reading taken from the outlet giving the highest reading shall be used for comparison with the standard for the vehicle being tested.

(c) A diesel vehicle shall meet the opacity standard specified in Section 5(2)[(3)] of this administrative regulation to pass the test. If the vehicle fails the test, the operator shall be so informed and the repairs required to correct the deficiency shall be included on the vehicle inspection and repair form.

(6) If trouble codes are identified by the on-board diagnostic (OBD) system, the owner or operator shall be so informed and the repairs required to correct the deficiency shall be included on the

vehicle inspection and repair form.

Section 7. Testing of Fleet Vehicles. (1) The owner or operator of a fleet operating a fleet inspection station to test vehicles that are in that fleet shall comply with this section.

(a) A fleet inspection station shall not be operated without a fleet inspection permit issued by the cabinet.

1. The fleet owner or operator shall submit a complete application for a permit to the cabinet, using Form DEP-V001, Permit Application to Operate a Fleet Vehicle Inspection Station, which has been incorporated by reference in Section 14 of this administrative regulation.

2. The permit shall be valid for one (1) year and may be renewed by the cabinet. For renewal of the permit, the fleet operator shall submit to the cabinet an updated fleet inspection station application form at least forty-five (45), but no more than sixty (60) days, prior to the permit's expiration.

3. The fee for a fleet inspection station permit or permit renewal shall be \$200, pursuant to Section 8(6)(d) of this administrative regulation.

(2) The fleet operator shall:

(a) Submit to the cabinet a schedule for the testing of the fleet vehicles and payment of the inspection fees, pursuant to Section 8(7)(a) through (c) of this administrative regulation;

(b) Test the vehicles in the fleet according to the schedule in the fleet inspection permit. The schedule shall contain the following information:

1. The number of vehicles to be tested;
2. The VINs of the vehicles to be tested;
3. The months the vehicles will be tested; and
4. The operating hours and location of the fleet inspection station;

(c) Use the forms and compliance certificates issued by the cabinet;

(d) Issue exemption certificates pursuant to Section 4 of this administrative regulation;

(e) Use test equipment and procedures approved by the cabinet pursuant to Sections 5 and 6 of this administrative regulation and assure that the test equipment provides a recordkeeping mechanism to record the results of all tests;

(f) Maintain records of all operations associated with the testing of the fleet vehicles, including but not limited to the repairs to fleet vehicles that failed the test;

(g) Make available to the cabinet and the contractor the results of the tests performed by the fleet inspection station;

(h) Provide a procedure for integrating the results of the tests performed by the fleet operator into the recordkeeping system of the contractor who operates the vehicle emission control program in the program area where the fleet is located;

(i) Perform the daily and hourly quality assurance procedures that are prescribed in the contract between the cabinet and the contractor, each day the analyzers are in operation, and allow the cabinet or the contractor to perform the other quality assurance activities as prescribed in the contract; and

(j) Maintain an in-house program for the maintenance of vehicles.

(3) A fleet operator may enter into an agreement with the contractor who holds the contract for testing vehicles within the program area where the fleet is located, for testing the fleet vehicles by the contractor outside public testing hours or at mobile inspection stations. The agreement shall not be implemented unless it has been approved by the cabinet.

Section 8. Fees. (1) The fee for testing a vehicle shall be based upon the contract that is awarded and the cabinet's costs of implementing the vehicle emission control program in the program area, unless other fees are also applicable. The fee shall be paid each year that an owner or operator is required to obtain a compliance or exemption certificate.

(2) Unless the vehicle is tested at a fleet inspection station or pursuant to an agreement with the contractor, the fee shall be collected before the testing commences or before an exemption certificate is issued. If the vehicle fails the first test, the first retest shall be provided at no cost if the appropriate vehicle inspection and repair form is satisfactorily completed and returned. Each test performed in addition to the first test and first retest shall be subject to the additional fee specified in subsection (5) of this section. The owner or operator shall submit the properly completed vehicle inspection and repair form for the last failed test at the time of the new test.

(3) The fee for having a vehicle tested before or after its testing period shall be five (5) dollars.

(4) The fee for the issuance of a duplicate compliance certificate or exemption certificate, pursuant to Section 10 of this administrative regulation, shall be five (5) dollars.

(5) The fee for issuing an exemption certificate shall be equal to the cost of the test. A fee shall not be charged for the issuance of a permanent exemption certificate.

(6) The additional fee for the issuance of a compliance certificate or exemption certificate, the year after a temporary exemption certificate was issued to an owner or operator, who did not present the vehicle for testing prior to the expiration of the temporary exemption certificate, shall be twenty-five (25) dollars.

(7) Fees for testing fleet vehicles.

(a) The fee for a compliance or exemption certificate for a fleet vehicle which is tested at a fleet inspection station shall be no less than the fee established by the contract between the cabinet and the contractor.

(b) The fee for a compliance or exemption certificate for a fleet vehicle which is tested by the contractor under an agreement implemented pursuant to subsection (3) of this section, shall be no less than the fee established by the contract between the cabinet and the contractor. The contractor may charge an additional fee which shall not exceed the contractor's additional cost of testing the fleet.

(c) The fees for compliance or exemption certificates issued to fleet vehicles may be paid on a weekly or monthly basis, or as otherwise approved by the cabinet or agreed to by the contractor and the fleet operator, as applicable.

(d) The fee for renewal of a fleet inspection station shall be \$200.

Section 9. Forms and Certificates. The contractor shall use only forms, compliance certificates, and other materials that are approved by the cabinet. The following documents may be issued to the owner or operator according to this administrative regulation.

(1) Compliance certificate. The operator of each vehicle which meets the applicable emission, functional, and antitampering ~~(and antimisfueling)~~ standards specified in Section 5 of this administrative regulation, complies with the testing requirements of Section 6 of this administrative regulation, and has paid the applicable fee specified in Section 8 of this administrative regulation shall be issued a compliance certificate. The compliance certificate shall contain at least the following information:

- (a) Inspection station identification;
- (b) Date and time of test;
- (c) Identification number of the inspector;
- (d) Vehicle license number;
- (e) VIN, vehicle model year, and vehicle make;
- (f) Applicable emission standards;
- (g) Emission test results (hydrocarbon, carbon monoxide, sum of carbon monoxide and carbon dioxide percentage, and if applicable, oxides of nitrogen);
- (h) Applicable pressure standards;
- (i) Evaporative integrity test results (minimum sustained pressure);
- (j) [Applicable evaporative system purge standards;
- ~~(k) Evaporative system purge test results (minimum flow);~~
- ~~(4) Whether the test results are from the first test, first retest, or~~

subsequent retest; and

~~(k) [(mm)]~~ A unique, encoded test identification number.

(2) Vehicle inspection and repair forms.

(a) A vehicle inspection and repair form shall be issued to the operator of each vehicle which fails a test. The contractor shall indicate the recommended repairs to be performed. The vehicle inspection and repair form is incorporated by reference in Section 14 of this administrative regulation. The form shall be completed and returned to the inspection station personnel at the time of the retest. The owner shall indicate the following items on the vehicle inspection and repair form with supporting documentation:

1. Proof that repairs were performed and repair costs were incurred which were reasonable. Repairs made earlier than thirty (30) days prior to the first test failure for the current testing period shall not be included; and

2. A list of the repairs in sufficient detail for the contractor to determine that the repairs are related to the type of failure shown on the vehicle inspection and repair form.

(b) The person performing repairs on a vehicle shall indicate on the repair form the repairs performed and the itemized costs. The person shall affirm that all the repairs, checks, and adjustments were properly performed in accordance with requirements on the form by signing and printing his name and the date of repairs on the vehicle inspection and repair form. If the repairs were performed by a mechanic at a vehicle repair facility, the repair facility's name, federal employer's identification number (FEID number), or Kentucky business tax number if there is no FEID number, repair date, and business telephone number shall be included on the vehicle inspection and repair form. In the appeals process, if the cabinet determines that the work claimed to have been completed was not done or was not in accordance with stipulations on the vehicle inspection and repair form, the cabinet may withhold issuance of a repair cost exemption certificate, and the owner or operator may be subject to penalties under KRS 224.20-765.

Section 10. Duplicate Certificates. The cabinet may issue a duplicate compliance, exemption, temporary exemption, or repair cost exemption certificate if the original certificate is lost. The owner shall notify the cabinet as soon as possible after the loss is noticed. The fee for a duplicate certificate shall be as prescribed in Section 8(4) of this administrative regulation.

Section 11. Request for Reconsideration ~~[Appeals]~~. (1) An owner or operator may request a reconsideration of ~~(appeal)~~ the denial of a repair cost exemption certificate if the following conditions have been met:

(a) The owner or operator has spent at least the amount specified in Section 4(5)(b) of this administrative regulation and no measurable improvement in emissions was achieved; or

(b) The owner or operator has spent less than the amount specified in Section 4(5)(b) of this administrative regulation and a mechanic employed at a repair facility affirms that no additional repairs can be performed that would improve the vehicle's emissions or that additional repairs would result in a total repair cost greater than the amount specified in Section 4(5)(b) of this administrative regulation for the vehicle age.

~~(2) [The owner or operator shall present the vehicle to the cabinet and the vehicle shall undergo a comprehensive diagnostics check by the cabinet. Vehicles shall also be subject to an inspection for tampering and misfueling, pursuant to Section 6(2) of this administrative regulation.~~

~~(3) The cabinet may require that other repairs in this subsection be performed, if the diagnostics check in subsection (2) of this section verifies that the repairs are necessary and may result in an improvement in the vehicle's emissions. Repairs that the cabinet may require include, but are not limited to: replace the air filter; replace the positive crankcase ventilation valve; replace the evaporative canister;~~

~~replace the NO<sub>x</sub> sensor; adjust the air to fuel mixture; adjust the idle speed; adjust or repair the choke; repair float, power valves, needles, seats, and jets; repair vacuum hoses; replace spark plugs; replace plug wires; replace distributor, rotor cap, or points; adjust dwell or timing; replace oxygen sensor; or repair or replace the exhaust gas recirculation valve, carburetor, fuel injector, catalytic converter, electronic control module computer, or secondary air system, if the repair or replacement is covered under a manufacturer's or dealer warranty. The cabinet may issue a repair cost exemption certificate to vehicles that comply with this section if all the required repairs have been performed and the vehicle does not meet the emission and functional standards in Section 5 of this administrative regulation.~~

~~(4)] Requests for reconsideration [an appeal] of a denial of a cost repair waiver shall be made in writing and delivered to the contractor's inspection station manager or other contractor designee who shall promptly forward the request to the cabinet and a cabinet test date shall be scheduled and performed. The results of the retest shall be a final determination of the cabinet.~~

Section 12. Inspection Station Personnel Requirements. (1) All inspection station personnel shall successfully complete a training course approved by the cabinet. The training course shall include at least the following components:

- (a) Causes and affects of air pollution;
- (b) The purposes, functions, and goals of the vehicle emission inspection program;
- (c) KRS 224.20-710 to 224.20-765 and this administrative regulation;
- (d) Technical details of the test procedures and the rationale for their design;
- (e) Emission control device function, configuration, and inspection;
- (f) Test equipment operation, calibration, and maintenance;
- (g) Quality control procedures and their purpose;
- (h) Methods of providing courteous, fair, and efficient service to the public; and

(i) Safety and health issues related to the inspection process.

(2) Successful completion of the training course shall be determined by a written examination with a score of eighty (80) percent or more and successful performance of a complete unassisted vehicle inspection demonstrating proper procedures. The written examination may be administered and the demonstration observed by the training course provider.

(3) The cabinet shall certify all contractor personnel that successfully complete the requirements of subsection (2) of this section. The certification shall expire two (2) years from the date of issuance. Contractor personnel whose certifications have expired are prohibited from inspecting vehicles until they complete the training requirements in this section and are recertified.

(4) Inspection station personnel shall wear identification tags visible to the public.

(5) Neither the contractor nor any employee of the contractor shall engage in the business of manufacturing, selling, maintaining, or repairing vehicles. The contractor may maintain or repair his own vehicles.

Section 13. Vehicle Emission Control Program Areas, Established. (1) The cabinet shall establish a ~~basic~~ vehicle emission control program in counties in which the entire county has been designated moderate ozone nonattainment in 401 KAR 51:010.

~~(2) [The cabinet shall establish an enhanced vehicle emission control program in counties in which the entire county has been designated a serious, severe, or an extreme ozone nonattainment area and in counties in which the entire county was designated an urban ozone nonattainment area prior to the Clean Air Act Amendments of 1990.~~

~~(3)] The vehicle emission control programs established pursuant~~

to this administrative regulation shall continue upon redesignation of the program areas to attainment for ozone in 401 KAR 51:010.

Section 14. Incorporation by Reference. (1) The following forms required for vehicle emission control programs are hereby incorporated by reference:

(a) Form-DEP V001, Permit Application to Operate a Fleet Vehicle Inspection Station, July 15, 1993; and

(b) Form DEP-V002, Vehicle Inspection and Repair Form.

(2) The following guidance documents which contain test methods and equipment specifications to be used by the contractor are hereby incorporated by reference:

~~[(a)] U.S. EPA Technical Guidance, "High Tech I/M Test Procedures, Emission Standards, Quality Control Requirements, and Equipment Specifications", July 1993;~~

~~[(b)] 40 CFR 51.350 to 51.373, and Appendices A, B, C, and D to Subpart S, as published [promulgated] in the Code of Federal Regulations, July 1, 1996 ["Federal Register" of November 5, 1992; (57 FR 52987)].~~

(3) The material incorporated by reference may be obtained, inspected, or copied at the following offices of the Division for Air Quality, Monday through Friday, 8 a.m. to 4:30 p.m. [Copies of the materials incorporated by reference in this administrative regulation shall be available for inspection and copying between the hours of 8 a.m. and 4:30 p.m. Monday through Friday at the following offices of the Division for Air Quality]:

(a) [The] Division for Air Quality, 803 Schenkel Lane [316 St. Clair Mall], Frankfort, Kentucky, 40601-1403, (502) 573-3382; [(502) 564-3382];

(b) Ashland Regional Office, 3700 Thirteenth Street, Ashland, Kentucky, 41105-1507, (606) 920-2067; [(606) 325-8569];

(c) Bowling Green Regional Office, 1508 Westen Avenue, Bowling Green, Kentucky, 42104, (502) 746-7475 [(843-5475)];

(d) Florence Regional Office, 7964 Kentucky Drive, Suite 8, Florence, Kentucky, 41042, (606) 292-6411;

(e) Hazard Regional Office, 233 Birch Street, Suite 2 [4], Hazard, Kentucky, 41701, (606) 435-6022 [(423-2394)];

(f) London Regional Office, 85 State Police Road, London Kentucky, 40741-9011, (606) 878-0157;

[(g)] Owensboro Regional Office, 3032 Alvey Park Drive W., Suite 700 [311 West Second Street], Owensboro, Kentucky, 42303, (502) 687-7304 [(423-01), (502) 686-3304]; and

[(h)] [(g)] Paducah Regional Office, 4500 Clarks River Road, Paducah, Kentucky, 42003, (502) 898-8468.

JAMES E. BICKFORD, Secretary

APPROVED BY AGENCY: August 13, 1997

FILED WITH LRC: August 13, 1997 at 4 p.m.

PUBLIC HEARING SCHEDULED: A public hearing on the proposed amendment to this administrative regulation will be held on September 22, 1997, at 10 a.m. (ET) in the Conference Room of the Division for Air Quality, 803 Schenkel Lane, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing, at least five workdays prior to the hearing, of their intent to attend. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the administrative regulation. Send written notification of intent to be heard at the public hearing or written comments on the amendment to the contact person.

CONTACT PERSON: Millie Ellis, Supervisor, Division for Air Quality, 803 Schenkel Lane, Frankfort, Kentucky, 40601, (502) 573-3382, and fax number (502) 573-3787.

To request appropriate accommodations for the public hearing (such as an interpreter), or alternate formats of the printed material, please call (502) 573-3382, ext 362. The cabinet does not discriminate on the basis of race, color, national origin, sex, religion, age, or disability in employment or the provision of services and provides,

upon request, reasonable accommodation including auxiliary aids and services necessary to afford individuals with disabilities an equal opportunity to participate in all programs and activities.

# REGULATORY IMPACT ANALYSIS

Agency Contact: Ken Hines, Manager

(1) Type and number of entities affected: The entities affected by this administrative regulation are automobiles and trucks licensed to operate on public highways, which receive their certificate of registration in Kentucky counties that are designated moderate nonattainment for ozone. Vehicles that are licensed in counties in which only portions of the county are designated ozone nonattainment are not affected by this administrative regulation. There are currently approximately 255,000 such vehicles 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. By eliminating the enhanced testing requirement, the testing fee will be reduced from the fee required in the original regulation. Owners or operators of motor vehicles living in Boone, Kenton, and Campbell counties will pay a testing fee (estimated at \$12 to \$15 for each vehicle) every second year and, if applicable, the costs of necessary repairs. Repair costs over a set amount (\$75 for diesel vehicles and for 1968-1980 model year vehicles, and \$200 for 1981 and newer model year vehicles) will exempt the vehicle from further retesting as long as the repairs have led to measurable emission reductions and no further necessary repairs are identified which may reduce the vehicle's emissions. It is expected that about 10% to 15% of the vehicles tested will require repairs.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented. Businesses owning vehicles registered in the nonattainment counties will pay the costs noted in paragraph (a), except that a single fee of \$200 is required for testing a fleet of vehicles. The fleet owner or operator contracts with a contractor separately for testing his fleet.

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

1. First year following implementation: Owners and operators that are required to be tested the first year are required to present to the county clerk a compliance certificate or exemption certificate in order to renew the vehicle's registration. The mechanics repairing a vehicle that failed a compliance test are required to fill a Vehicle Inspection and Repair Form, DEP-V002, detailing the repairs and their costs. Fleet owners or operators are required to operate the inspection station for their vehicles, submit to the cabinet the schedule for testing their vehicles, and maintain the records covering these tests.

2. Second and subsequent years: The requirements for vehicles that are tested during the second and subsequent years are identical to those identified in paragraph 1.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: The cabinet will work with the contractor and fleet owners to set up the testing programs at the inspection stations. The cabinet will also monitor the inspection stations and check the inspection schedules set by the fleet owners.

2. Continuing costs or savings: The cabinet will continue to monitor the inspection stations and check the inspection schedules set by the fleet owners.

3. Additional factors increasing or decreasing costs: There are no additional factors.

(b) Reporting and paperwork requirements: The cabinet will receive the statistics on vehicles tested and requiring repairs, and will monitor the fees paid.

(4) Assessment of anticipated effect on state and local revenues: State and local governments operating vehicles that require testing

will be required to pay the fees and the costs of repairs for those vehicles.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Partial program start-up funding is available through Congestion Mitigation Air Quality (CMAC) funding. The fees for testing, retesting, and late testing will cover the remaining costs of implementing and enforcing the administrative regulation.

(6) 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 help reduce ozone precursors and particulate matter pollution, and will become part of Kentucky's plan to reduce VOC emissions by 15% as required by the Clean Air Act for moderate ozone nonattainment areas. If this plan is not adopted the area will be reclassified to serious ozone nonattainment, as provided in 42 USC 7511(b)(2), leading to further restrictions on business openings. Owners and operators of automobiles and trucks will be required to pay the fees and costs for repairs noted in Section (2)(a).

(b) Kentucky: If at least a basic I/M program is not implemented in this area along with other programs sufficient to reduce VOC emissions, Kentucky will be subjected to penalties such as the loss of highway funds as provided in 42 USC 7509(b).

(7) Assessment of alternative methods; reason why alternatives were rejected: This program is required under the 1990 Clean Air Act Amendments for moderate ozone nonattainment areas. To not implement an I/M program could mean loss of federal highway funds and 105 grant funds, and a reclassification to serious nonattainment status which would mean further restrictions on industry.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which administrative regulation will be implemented and on Kentucky: This administrative regulation will help reduce the precursors of ozone and particulate matter pollution.

(b) State whether a detrimental effect on environment and public health would result if not implemented: If this administrative regulation is not implemented pollution in the ambient air will remain at unacceptable levels.

(c) If detrimental effect would result, explain detrimental effect: Unless this administrative regulation is implemented, emissions cannot be reduced sufficiently to attain the national ambient air quality standards (NAAQS) for ozone, which is a health based standard.

(9) Identify any statute, rule, regulation or government policy which may be in conflict, overlapping, or duplication: There is no overlapping or duplication.

(a) Necessity of proposed regulation if in conflict: There is no conflict with other regulations.

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

(10) Any additional information or comments: None

(11) TIERING: Is tiering applied? Yes. The exhaust emission standards become more stringent for newer models of motor vehicles. Older vehicles may receive exemption certificates for lower repair costs (\$75 instead of \$200) as noted in the federal regulation, 40 CFR 51.360(a)(6).

## FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 42 USC 7511a(a)(2)(B), (b)(4), and (c)(3) mandate the Commonwealth to submit a revision to the state implementation plan (SIP) implementing a vehicle emission control inspection and maintenance program in ozone nonattainment areas. 42 USC 7511a(b)(1) also mandates for moderate ozone nonattainment areas a 15% reduction of VOC emissions in order to attain by November 15, 1996, the

national ambient air quality standard (NAAQS) for ozone. 42 USC 7511a(a)(2)(B)(ii) allows the Commonwealth, under the guidance of the U.S. EPA Administrator, flexibility with this requirement if, using other means, the ozone NAAQS is attained. The ozone standard was violated in the Greater Cincinnati air quality region in the summers of 1995 and 1997. Therefore, all federally mandated programs for reducing VOC emissions are required, including implementing a vehicle emission inspection and maintenance program.

2. State compliance standards. KRS 224.10-100 requires the Natural Resources and Environmental Protection Cabinet to provide an air quality program for Kentucky.

3. Minimum or uniform standards contained in the federal mandate. Basic standards are mandated in 40 CFR 51, Subpart S. The provisions in this administrative regulation fulfill the requirements of the U.S. EPA Technical Guidance I/M Briefing Book: Everything You Ever Wanted to Know About Inspection and Maintenance (EPA-AA-EPSD-IM-94-1226) (February, 1995).

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities of requirements, than those required by the federal mandate? This administrative regulation does not impose requirements beyond those specified in federal guidance.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Stricter standards and requirements are not imposed.

#### FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? Yes

2. State what unit, part or division of local government this administrative regulation will affect. This administrative regulation requires motor vehicles operated by local government bodies in nonattainment areas to be inspected annually and to maintain emissions standards.

3. State the aspect or service of local government to which this administrative regulation relates. This administrative regulation relates only indirectly to local government, through the motor vehicles they own and operate.

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 import of the administrative regulation. Local governments that operate fleets of motor vehicles may pay a \$200 fee plus payment for contracting to test their vehicles. For other vehicles, every second year a testing fee (estimated at \$12 to \$15) will be paid and, if applicable, the costs of repairs.

Revenues (+/-): There is no known effect on current revenues.

Expenditures (+/-): Expenditures include testing fees and repairs noted in paragraph 4.

Other Explanation: There is no other explanation.

#### NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET Department for Surface Mining Reclamation and Enforcement (Amendment)

#### 405 KAR 8:001. Definitions for 405 KAR Chapter 8.

RELATES TO: KRS 146.410, Chapter 350, 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

STATUTORY AUTHORITY: KRS [Chapter 13A,] 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

NECESSITY, FUNCTION, AND CONFORMITY: KRS 350.028(1) requires the cabinet to promulgate administrative regulations pertaining to surface coal mining operations including strip mining and the surface effects of underground mining to accomplish the purposes of KRS Chapter 350. This administrative regulation defines terms used in 405 KAR Chapter 8. KRS 350.028(5), 350.151(1), and 350.465(2), (5) authorize and direct the cabinet to promulgate administrative regulations for surface and underground coal mining operations for the purpose of accepting and administering primary enforcement responsibilities under the permanent regulatory program pursuant to PL 95-87, the federal Surface Mining Control and Reclamation Act of 1977; and direct that the cabinet's administrative regulations be consistent with, and not more stringent than required by, that Act. PL 95-87 does not require Kentucky to comply with its provisions, but in order to retain primary enforcement responsibility under that Act the cabinet's administrative regulations must be consistent with federal regulations promulgated pursuant to that Act. The definitions affected in this amendment are the same as the corresponding federal definitions. [KRS Chapter 350 in pertinent part requires the cabinet to promulgate rules and administrative regulations pertaining to surface coal mining and reclamation operations under the permanent regulatory program. This administrative regulation provides for the defining of certain essential terms used in 405 KAR Chapter 8.]

Section 1. Definitions. (1) "Acid drainage" means water with a pH of less than six (6.0) and in which total acidity exceeds total alkalinity, discharged from an active, inactive, or abandoned surface coal mine and reclamation operation or from an area affected by surface coal mining and reclamation operations.

(2) "Acid-forming materials" means earth materials that contain sulfide minerals or other materials which, if exposed to air, water, or weathering processes, form acids that may create acid drainage.

(3) "Adjacent area" means land located outside the affected area or permit area, depending on the context in which "adjacent area" is used, where air, surface or groundwater, fish, wildlife, vegetation or other resources protected by KRS Chapter 350 may be adversely impacted by surface coal mining and reclamation operations.

(4) "Administratively complete application" means an application for permit approval, or approval for coal exploration if required, which the cabinet determines to contain information addressing each application requirement of the regulatory program and to contain all information necessary to initiate technical processing and public review.

(5) "Affected area" means any land or water area which is used to facilitate, or is physically altered by, surface coal mining and reclamation operations. The affected area includes the disturbed area; any area upon which surface coal mining and reclamation operations are conducted; any adjacent lands the use of which is incidental to surface coal mining and reclamation operations; all areas covered by new or existing roads used to gain access to, or for hauling coal to or from, surface coal mining and reclamation operations, except as provided in this definition; any area covered by surface excavations, workings, impoundments, dams, ventilation shafts, entryways, refuse banks, dumps, stockpiles, overburden piles, spoil banks, culm banks, tailings, holes or depressions, repair areas, storage areas, shipping areas; any areas upon which are sited structures, facilities, or other property or material on the surface resulting from, or incident to, surface coal mining and reclamation operations; and the area located above underground workings associated with underground mining activities, auger mining, or in situ mining. The affected area shall include every road used for the purposes of access to, or for hauling coal to or from, surface coal mining and reclamation operations, unless the road:

(a) Was designated as a public road pursuant to the laws of the



jurisdiction in which it is located;

(b) Is maintained with public funds, and constructed in a manner similar to other public roads of the same classification within the jurisdiction; and

(c) There is substantial (more than incidental) public use.

(6) "Applicant" means any person seeking a permit, permit revision, permit amendment, permit renewal, or transfer, assignment, or sale of permit rights from the cabinet to conduct surface coal mining and reclamation operations or approval to conduct coal exploration operations pursuant to KRS Chapter 350 and all applicable regulations.

(7) "Application" means the documents and other information filed with the cabinet seeking issuance of permits; revisions; amendments; renewals; and transfer, assignment or sale of permit rights for surface coal mining and reclamation operations or, if required, seeking approval for coal exploration.

(8) "Approximate original contour" is defined in KRS 350.010.

(9) "Aquifer" means a zone, stratum, or group of strata that can store and transmit water in sufficient quantities for domestic, agricultural, industrial, or other beneficial use.

(10) "Auger mining" means a method of mining coal at a cliff or highwall by drilling holes into an exposed coal seam from the highwall and transporting the coal along an auger bit to the surface and shall also include all other methods of mining in which coal is extracted from beneath the overburden by mechanical devices located at the face of the cliff or highwall and extending laterally into the coal seam, such as extended depth, secondary recovery systems.

(11) "Best technology currently available" means equipment, devices, systems, methods, or techniques which will prevent, to the extent possible, additional contributions of suspended solids to stream flow or runoff outside the permit area and minimize, to the extent possible, disturbances and adverse impacts on fish, wildlife, and related environmental values, and achieve enhancement of those resources where practicable. The term includes equipment, devices, systems, methods, or techniques which are currently available anywhere as determined by the cabinet, even if they are not in routine use. The term includes, but is not limited to, construction practices, siting requirements, vegetative selection and planting requirements, animal stocking requirements, scheduling of activities and design of sedimentation ponds in accordance with 405 KAR Chapters 16 and 18. The cabinet shall have the discretion to determine the best technology currently available on a case-by-case basis, as authorized by KRS Chapter 350 and 405 KAR Chapters 7 through 24.

(12) "Cabinet" is defined in KRS 350.010.

(13) "Cemetery" means any area where human bodies are interred.

(14) "Cessation order" means an order for cessation and immediate compliance and any similar order issued by OSM under SMCRA or issued by any state pursuant to its laws or regulations under SMCRA.

(15) "CFR" means Code of Federal Regulations.

(16) "Coal" means combustible carbonaceous rock, classified as anthracite, bituminous, subbituminous, or lignite by ASTM Standard D 388-77.

(17) "Coal exploration" means the field gathering of:

(a) Surface or subsurface geologic, physical, or chemical data by mapping, trenching, drilling, geophysical, or other techniques necessary to determine the quality and quantity of overburden and coal of an area; or

(b) Environmental data to establish the conditions of an area before beginning surface coal mining and reclamation operations under the requirements of 405 KAR Chapters 7 through 24 if the activity may cause any disturbance of the land surface or may cause any appreciable effect upon land, air, water, or other environmental resources.

(18) "Coal mine waste" means coal processing waste and underground development waste.

(19) "Coal processing plant" means a facility where coal is subjected to chemical or physical processing or cleaning, concentrating, crushing, sizing, screening, or other processing or preparation including all associated support facilities including but not limited to: loading facilities; storage and stockpile facilities; sheds, shops, and other buildings; water treatment and water storage facilities; settling basins and impoundments; and coal processing and other waste disposal areas.

(20) "Coal processing waste" means materials which are separated from the product coal during the cleaning, concentrating, or other processing or preparation of coal.

(21) "Collateral bond" means an indemnity agreement in a sum certain payable to the cabinet executed by the permittee and which is supported by the deposit with the cabinet of cash, negotiable certificates of deposit, or an irrevocable letter of credit of any bank organized and authorized to transact business in the United States.

(22) "Combustible material" means organic material that is capable of burning, either by fire or through oxidation, accompanied by the evolution of heat and a significant temperature rise.

(23) "Community or institutional building" means any structure, other than a public building or an occupied dwelling, which is used primarily for meetings, gatherings or functions of local civic organizations or other community groups; functions as an educational, cultural, historic, religious, scientific, correctional, mental health or physical health care facility; or is used for public services, including, but not limited to, water supply, power generation or sewage treatment.

(24) "Compaction" means increasing the density of a material by reducing the voids between the particles by mechanical effort.

(25) [(24)] "Complete and accurate application" means an application for permit approval, or approval for coal exploration if required, which the cabinet determines to contain all information required under, and necessary to comply with, KRS Chapter 350 and 405 KAR Chapters 7 through 24, in order to make decisions concerning its administrative and technical acceptability and whether a permit or exploration approval may be issued.

(26) [(25)] "Cropland" means land used for the production of adapted crops for harvest, alone or in a rotation with grasses and legumes, and includes row crops, small grain crops, hay crops, nursery crops, orchard crops, and other similar specialty crops.

(27) [(26)] "Cumulative impact area" means the area, including the permit area, within which impacts resulting from the proposed operation may interact with the impacts of all anticipated mining on surface and groundwater systems. Anticipated mining shall include, at a minimum, the entire projected lives through bond release of:

(a) The proposed operation;

(b) All existing operations;

(c) Any operation for which a permit application has been submitted to the cabinet; and

(d) All operations required to meet diligent development requirements for leased federal coal for which there is actual mine development information available.

(28) [(27)] "Day" means calendar day unless otherwise specified to be a working day.

(29) [(28)] "Department" means the Department for Surface Mining Reclamation and Enforcement.

(30) [(29)] "Developed water resources land" means land used for storing water for beneficial uses such as stockponds, irrigation, fire protection, flood control, and water supply.

(31) [(30)] "Disturbed area" means an area where vegetation, topsoil, or overburden is removed or upon which topsoil, spoil, coal processing waste, underground development waste, or noncoal waste is placed by surface coal mining operations. Those areas are classified as "disturbed" until reclamation is complete and the performance bond or other assurance of performance required by 405 KAR Chapter 10 is released.

(32) [(31)] "Diversion" means a channel, embankment, or other manmade structure constructed to divert water from one (1) area to



another.

(33) [(32)] "Embankment" means a manmade deposit of material that is raised above the natural surface of the land and used to contain, divert, or store water; to support roads or railways; or for other similar purposes.

(34) [(33)] "Ephemeral stream" means a stream which flows only in direct response to precipitation in the immediate watershed or in response to the melting of a cover of snow and ice, and which has a channel bottom that is always above the local water table.

(35) [(34)] "Excess spoil" means spoil disposed of in a location other than the coal extraction area, except that spoil material used to achieve the approximate original contour shall not be considered excess spoil.

(36) [(35)] "Existing structure" means a structure or facility used in connection with or to facilitate surface coal mining and reclamation operations, for which construction began prior to January 18, 1983.

(37) [(36)] "Federal lands" means any lands, including mineral interests, owned by the United States, without regard to how the United States acquired ownership of the lands or which agency manages the lands. It does not include Indian lands.

(38) [(37)] "Forest land" means land used or managed for the long-term production of wood, wood fiber, or wood derived products.

(39) [(38)] "Fugitive dust" means that particulate matter which becomes airborne due to wind erosion from exposed surfaces.

(40) [(39)] "General area" means, with respect to hydrology, the topographic and groundwater basin surrounding a permit area which is of sufficient size, including areal extent and depth, to include one (1) or more watersheds containing perennial streams and groundwater zones and to allow assessment of the probable cumulative impacts on the quality and quantity of surface and groundwater systems in the basins.

(41) [(40)] "Ground cover" means the area of ground covered by the combined aerial parts of vegetation and litter produced and distributed naturally and seasonally on site, expressed as a percentage of the total area of measurement.

(42) [(41)] "Groundwater" means subsurface water that fills available openings in rock or soil materials to the extent that they are considered water saturated.

(43) [(42)] "Growing season" means the period during a one (1) year cycle, from the last killing frost in the spring to the first killing frost in the fall, in which climatic conditions are favorable for plant growth. In Kentucky, this period normally extends from mid-April to mid-October.

(44) [(43)] "Highwall" means the face of exposed overburden and coal in an open cut of a surface mining activity or for entry to underground mining activities.

(45) [(44)] "Historically used for cropland."

(a) "Historically used for cropland" means that lands have been used for cropland for any five (5) years or more out of the ten (10) years immediately preceding:

1. The application; or
2. The acquisition of the land for the purpose of conducting surface coal mining and reclamation operations.

(b) Lands meeting either paragraph (a)1 or 2 of this subsection shall be considered "historically used for cropland."

(c) In addition to the lands covered by paragraph (a) of this subsection, other lands shall be considered "historically used for cropland" as described below:

1. Lands that would likely have been used as cropland for any five (5) out of the last ten (10) years immediately preceding the acquisition or the application but for some fact of ownership or control of the land unrelated to the productivity of the land; and

2. Lands that the cabinet determines, on the basis of additional cropland history of the surrounding lands and the lands under consideration, are clearly cropland but fall outside the specific five (5) years in ten (10) criterion.

(d) Acquisition includes purchase, lease, or option of the land for

the purpose of conducting or allowing through resale, lease or option, the conduct of surface coal mining and reclamation operations.

(46) [(45)] "Hydrologic balance" means the relationship between the quality and quantity of water inflow to, water outflow from, and water storage in a hydrologic unit such as a drainage basin, aquifer, soil zone, lake, or reservoir. It encompasses the dynamic relationship between precipitation, runoff, evaporation, and changes in ground and surface water storage.

(47) [(46)] "Hydrologic regime" means the entire state of water movement in a given area. It is a function of the climate and includes the phenomena by which water first occurs as atmospheric water vapor, passes into a liquid or solid form, falls as precipitation, moves along or into the ground surface, and returns to the atmosphere as vapor by means of evaporation and transpiration.

(48) [(47)] "Imminent danger to the health and safety of the public" means the existence of any condition or practice, or any violation of a permit or other requirements of KRS Chapter 350 in a surface coal mining and reclamation operation, which could reasonably be expected to cause substantial physical harm to persons outside the permit area before the condition, practice, or violation can be abated. A reasonable expectation of death or serious injury before abatement exists if a rational person, subjected to the same condition or practice giving rise to the peril, would avoid exposure to the danger during the time necessary for abatement.

(49) "Impounding structure" means a dam, embankment or other structure used to impound water, slurry, or other liquid or semiliquid material.

(50) [(48)] "Impoundment" means a water, sediment, slurry or other liquid or semiliquid holding structure or depression, either naturally formed or artificially built, [closed-basin, naturally-formed or artificially built, which is dammed or excavated for the retention of water, sediment, or waste.]

(51) [(49)] "Incidental boundary revision" means an extension to a permit area that is necessary for reasons unforeseen when the original permit application was prepared and that is small in relation to the original or amended permit area.

(52) [(50)] "Industrial/commercial lands" means lands used for:

(a) Extraction or transformation of materials for fabrication of products, wholesaling of products, or long-term storage of products, and heavy and light manufacturing facilities.

(b) Retail or trade of goods or services, including hotels, motels, stores, restaurants, and other commercial establishments.

(53) [(51)] "In situ processes" means activities conducted on the surface or underground in connection with in-place distillation, retorting, leaching, or other chemical or physical processing of coal. The term includes, but is not limited to, in situ gasification, in situ leaching, slurry mining, solution mining, borehole mining, and fluid recovery mining.

(54) [(52)] "Intermittent stream" means:

(a) A stream or reach of stream that drains a watershed of one (1) square mile or more but does not flow continuously during the calendar year; or

(b) A stream or reach of a stream that is below the local water table for at least some part of the year, and obtains its flow from both surface runoff and groundwater discharge.

(55) [(53)] "Irreparable damage to the environment" means any damage to the environment, in violation of SMCRA, KRS Chapter 350, or 405 KAR Chapters 7 through 24, that cannot be corrected by actions of the applicant.

(56) [(54)] "KAR" means Kentucky administrative regulations.

(57) [(55)] "KRS" means Kentucky Revised Statutes.

(58) [(56)] "Land use" means specific functions, uses, or management-related activities of an area, and may be identified in combination when joint or seasonal uses occur and may include land used for support facilities that are an integral part of the use. In some instances, a specific use can be identified without active management.

(59) "Material damage", as used in 405 KAR 8:040, Section 26, and 405 KAR 18:210 means:

(a) Any functional impairment of surface lands, features, structures or facilities;

(b) Any physical change that has a significant adverse impact on the affected land's capability to support any current or reasonably foreseeable uses or causes significant loss in production or income; or

(c) Any significant change in the condition, appearance or utility of any structure or facility from its presubsidence condition.

(60) [(57)] "Monitoring" means the collection of environmental data by either continuous or periodic sampling methods.

(61) [(58)] "MRP" means mining and reclamation plan.

(62) [(59)] "MSHA" means Mine Safety and Health Administration.

(63) [(60)] "Mulch" means vegetation residues or other suitable materials that aid in soil stabilization and soil moisture conservation, thus providing microclimatic conditions suitable for germination and growth.

(64) "Noncommercial building" means any building, other than an occupied residential dwelling, that, at the time the subsidence occurs, is used on a regular or temporary basis as a public building or community or institutional building. Any building used only for commercial agricultural, industrial, retail or other commercial enterprises is excluded.

(65) [(61)] "Notice of noncompliance and order for remedial measures" means a written document and order prepared by an authorized representative of the cabinet which sets forth with specificity the violations of KRS Chapter 350, 405 KAR Chapters 7 through 24, or permit conditions which the authorized representative of the cabinet determines to have occurred based upon his inspection, and the necessary remedial actions, if any, and the time schedule for completion thereof, which the authorized representative deems necessary and appropriate to correct the violations.

(66) [(62)] "Notice of violation" means any written notification from a governmental entity of a violation of law or regulation, whether by letter, memorandum, legal or administrative pleading, or other written communication. This shall include a notice of noncompliance and order for remedial measures.

(67) [(63)] "Occupied dwelling" means any building that is currently being used on a regular or temporary basis for human habitation.

(68) "Occupied residential dwelling and structures related thereto" means, for purposes of 405 KAR 8:040, Section 26, and 405 KAR 18:210, any building or other structure that, at the time the subsidence occurs, is used either temporarily, occasionally, seasonally, or permanently for human habitation. This term also includes any building, structure or facility installed on, above or below, or a combination thereof, the land surface if that building, structure or facility is adjunct to or used in connection with an occupied residential dwelling. Examples of these structures include, but are not limited to, garages; storage sheds and barns; greenhouses and related buildings; utilities and cables; fences and other enclosures; retaining walls; paved or improved patios, walks and driveways; septic sewage treatment facilities; and lot drainage and lawn and garden irrigation systems. Any structure used only for commercial agricultural, industrial, retail or other commercial purposes is excluded.

(69) [(64)] "Operations" is defined in KRS 350.010.

(70) [(65)] "Operator" is defined in KRS 350.010.

(71) [(66)] "Order for cessation and immediate compliance" means a written document and order issued by an authorized representative of the cabinet when:

(a) A person to whom a notice of noncompliance and order for remedial measures was issued has failed, as determined by a cabinet inspection, to comply with the terms of the notice of noncompliance and order for remedial measures within the time limits set therein, or as subsequently extended; or

(b) The authorized representative finds, on the basis of a cabinet

inspection, any condition or practice or any violation of KRS Chapter 350, 405 KAR Chapters 7 through 24, or any condition of a permit or exploration approval which:

1. Creates an imminent danger to the health or safety of the public; or

2. Is causing or can reasonably be expected to cause significant, imminent environmental harm to land, air or water resources.

(72) [(67)] "OSM" means Office of Surface Mining Reclamation and Enforcement, United States Department of the Interior.

(73) [(68)] "Other mineral" means any commercially valuable substance mined for its mineral value, excluding coal, topsoil, waste, and fill material.

(74) [(69)] "Overburden" is defined in KRS 350.010.

(75) [(70)] "Owned or controlled" and "owns or controls" mean any one (1) or a combination of the relationships specified in paragraphs (a) and (b) of this subsection:

(a)1. Being a permittee of a surface coal mining operation;

2. Based on instruments of ownership or voting securities, owning of record in excess of fifty (50) percent of an entity; or

3. Having any other relationship that gives one (1) person authority directly or indirectly to determine the manner in which an applicant, an operator, or other entity conducts surface coal mining operations.

(b) The following relationships are presumed to constitute ownership or control unless a person can demonstrate that the person subject to the presumption does not in fact have the authority directly or indirectly to determine the manner in which the relevant surface coal mining operation is conducted:

1. Being an officer or director of an entity;

2. Being the operator of a surface coal mining operation;

3. Having the ability to commit the financial or real property assets or working resources of an entity;

4. Being a general partner in a partnership;

5. Based on the instruments of ownership or the voting securities of a corporate entity, owning of record ten (10) through fifty (50) percent of the entity; or

6. Owning or controlling coal to be mined by another person under a lease, sublease, or other contract and having the right to receive the coal after mining or having authority to determine the manner in which that person or another person conducts a surface coal mining operation.

(76) [(71)] "Pastureland" means land used primarily for the long-term production of adapted, domesticated forage plants to be grazed by livestock or occasionally cut and cured for livestock feed.

(77) [(72)] "Perennial stream" means a stream or that part of a stream that flows continuously during all of the calendar year as a result of groundwater discharge or surface runoff. The term does not include "intermittent stream" or "ephemeral stream."

(78) [(73)] "Performance bond" means a surety bond, a collateral bond, or a combination thereof, or bonds filed pursuant to the provisions of the Kentucky Bond Pool Program (405 KAR 10:200, KRS 350.595, and KRS 350.700 through 350.755), by which a permittee assures faithful performance of all the requirements of KRS Chapter 350, 405 KAR Chapters 7 through 24, and the requirements of the permit and reclamation plan.

(79) [(74)] "Permanent diversion" means a diversion remaining after surface coal mining and reclamation operations are completed which has been approved for retention by the cabinet and other appropriate Kentucky and federal agencies.

(80) [(75)] "Permit" means written approval issued by the cabinet to conduct surface coal mining and reclamation operations.

(81) [(76)] "Permit area" means the area of land and water within boundaries designated in the approved permit application, which shall include, at a minimum, all areas which are or will be affected by surface coal mining and reclamation operations under that permit.

(82) [(77)] "Permittee" means an operator or a person holding or required by KRS Chapter 350 or 405 KAR Chapters 7 through 24 to

hold a permit to conduct surface coal mining and reclamation operations during the permit term and until all reclamation obligations imposed by KRS Chapter 350 and 405 KAR Chapters 7 through 24 are satisfied.

(83) [(78)] "Person" is defined in KRS 350.010.

(84) [(79)] "Person having an interest which is or may be adversely affected" or "person with a valid legal interest" shall include any person:

(a) Who uses any resource of economic, recreational, aesthetic, or environmental value that may be adversely affected by coal exploration or surface coal mining and reclamation operations, or by any related action of the cabinet; or

(b) Whose property is or may be adversely affected by coal exploration or surface coal mining and reclamation operations, or by any related action of the cabinet.

(85) [(80)] "Previously mined area" means land that was [~~disturbed or~~] affected by coal mining operations conducted prior to August 3, 1977, that has not been reclaimed to the standards of this title[, and for which there is no continuing responsibility to reclaim to the standards of this title].

(86) [(81)] "Prime farmland" means those lands which are defined by the Secretary of Agriculture in 7 CFR 657 and which have been "historically used for cropland" as that phrase is defined above.

(87) [(82)] "Principal shareholder" means any person who is the record or beneficial owner of ten (10) percent or more of any class of voting stock of the applicant.

(88) [(83)] "Probable cumulative impacts" means the expected total qualitative, and quantitative, direct and indirect effects of surface coal mining and reclamation operations on the hydrologic regime.

(89) [(84)] "Probable hydrologic consequences" means the projected results of proposed surface coal mining and reclamation operations which may reasonably be expected to change the quantity or quality of the surface and groundwater; the surface or groundwater flow, timing, and pattern; and the stream channel conditions on the permit area and adjacent areas.

(90) [(85)] "Property to be mined" means both the surface and mineral estates on and underneath lands which are within the permit area.

(91) [(86)] "Public building" means any structure that is owned or leased, and principally used by a governmental agency for public business or meetings.

(92) [(87)] "Publicly-owned park" means a public park that is owned by a federal, state, or local governmental entity.

(93) [(88)] "Public office" means a facility under the direction and control of a governmental entity which is open to public access on a regular basis during reasonable business hours.

(94) [(89)] "Public park" means an area dedicated or designated by any federal, state, or local agency primarily for public recreational use, despite whether the use is limited to certain times or days. It includes any land leased, reserved, or held open to the public because of that use.

(95) [(90)] "Public road" means any publicly owned thoroughfare for the passage of vehicles.

(96) [(91)] "Recharge capacity" means the ability of the soils and underlying materials to allow precipitation and runoff to infiltrate and reach the zone of saturation.

(97) [(92)] "Reclamation" is defined in KRS 350.010.

(98) [(93)] "Recreation land" means land used for public or private leisure-time use, including developed recreation facilities such as parks, camps, and amusement areas, as well as areas for less intensive uses such as hiking, canoeing, and other undeveloped recreational uses.

(99) [(94)] "Reference area" means a land unit maintained under appropriate management for the purpose of measuring vegetative ground cover, productivity, and plant species diversity that are produced naturally or by crop production methods approved by the cabinet.

(100) [(95)] "Refuse pile" means a surface deposit of coal mine waste that is not retained by an impounding structure and does not impound water, slurry, or other liquid or semiliquid material.

(101) [(96)] "Remining" means conducting surface coal mining and reclamation operations which affect previously mined areas.

(102) [(97)] "Renewable resource lands."

(a) As used in 405 KAR Chapter 24, "renewable resource lands" means geographic areas which contribute significantly to the long-range productivity of water supplies or of food or fiber products, these lands to include aquifers and aquifer recharge areas.

(b) As used in 405 KAR 8:040, Section 26, "renewable resource lands" means aquifers and areas for the recharge of aquifers and other underground waters, areas for agricultural or silvicultural production of food and fiber, and grazing lands.

(103) [(98)] "Residential land" means tracts employed for single and multiple-family housing, mobile home parks, and other residential lodgings.

(104) [(99)] "Road" means a surface right-of-way for purposes of travel by land vehicles used in coal exploration or surface coal mining and reclamation operations. A road consists of the entire area within the right-of-way, including the roadbed, shoulders, parking and side area, approaches, structures, ditches, surface, and contiguous appendages necessary for the total structure. The term includes access and haul roads constructed, used, reconstructed, improved, or maintained for use in coal exploration or surface coal mining and reclamation operations, including use by coal hauling vehicles leading to transfer, processing, or storage areas. The term does not include pioneer or construction roadways used for part of the road construction procedure and promptly replaced by a road pursuant to 405 KAR Chapters 16 and 18 located in the identical right-of-way as the pioneer or construction roadway. The term also excludes any roadway within the immediate mining pit area.

(105) [(100)] "SCS" means Soil Conservation Service.

(106) [(101)] "Secretary" is defined in KRS 350.010.

(107) [(102)] "Sedimentation pond" means a primary sediment control structure designed, constructed, and maintained in accordance with 405 KAR 16:090 or 405 KAR 18:090 and including but not limited to a barrier, dam, or excavated depression which slows down water runoff to allow suspended solids to settle out. A sedimentation pond shall not include secondary sedimentation control structures, such as straw dikes, riprap, check dams, mulches, dugouts, and other measures that reduce overland flow velocity, reduce runoff volume, or trap sediment, to the extent that the secondary sedimentation structures drain to a sedimentation pond.

(108) [(103)] "Significant, imminent environmental harm" means an adverse impact on land, air, or water resources which resources include, but are not limited to, plant and animal life as further defined in this subsection.

(a) An environmental harm is imminent, if a condition, practice, or violation exists which:

1. Is causing environmental harm; or

2. May reasonably be expected to cause environmental harm at any time before the end of the reasonable abatement time that would be set by the cabinet's authorized agents pursuant to the provisions of KRS Chapter 350.

(b) An environmental harm is significant if that harm is appreciable and not immediately reparable.

(109) [(104)] "Slope" means average inclination of a surface, measured from the horizontal, generally expressed as the ratio of a unit of vertical distance to a given number of units of horizontal distance (e.g., 1v:5h). It may also be expressed as a percent or in degrees.

(110) [(105)] "Slurry mining" means the hydraulic breakdown of subsurface coal with drill-hole equipment, and the eduction of the resulting slurry to the surface for processing.

(111) [(106)] "Small operator", as used in 405 KAR 8:030, Section 3(5) and 405 KAR 8:040, Section 3(5), is defined at KRS

350.450(4)(c).

(112) [(407)] "SMCRA" means Surface Mining Control and Reclamation Act of 1977 (PL 95-87), as amended.

(113) [(408)] "Soil horizons" means contrasting layers of soil parallel or nearly parallel to the land surface. Soil horizons are differentiated on the basis of field characteristics and laboratory data. The four (4) master soil horizons are:

(a) "A horizon." The uppermost mineral layer, often called the surface soil. It is the part of the soil in which organic matter is most abundant, and leaching of soluble or suspended particles is typically the greatest.

(b) "E horizon." The layer commonly near the surface below an A horizon and above a B horizon. An E horizon is most commonly differentiated from an overlying A horizon by lighter color and generally has measurably less organic matter than the A horizon. An E horizon is most commonly differentiated from an underlying B horizon in the same sequence by color of higher value or lower chroma, by coarser texture, or by a combination of these properties.

(c) "B horizon." The layer that typically is immediately beneath the E horizon and often called the subsoil. This middle layer commonly contains more clay, iron, or aluminum than the A, E, or C horizons.

(d) "C horizon." The deepest layer of soil profile. It consists of loose material or weathered rock that is relatively unaffected by biologic activity.

(114) [(409)] "Soil survey" means a field and other investigation, resulting in a map showing the geographic distribution of different kinds of soils and an accompanying report that describes, classifies, and interprets the soils for use. Soil surveys shall meet the standards of the National Cooperative Soil Survey.

(115) [(410)] "Spoil" means overburden and other materials, excluding topsoil, coal mine waste, and mined coal, that are excavated during surface coal mining and reclamation operations.

(116) [(411)] "Stabilize" means to control movement of soil, spoil piles, or areas of disturbed earth by modifying the geometry of the mass, or by otherwise modifying physical or chemical properties, such as by providing a protective surface coating.

(117) [(412)] "Steep slope" means any slope of more than twenty (20) degrees.

(118) [(413)](a) "Substantial legal and financial commitments" means significant investments, that have been made on the basis of a long-term coal contract, consisting of actual expenditures of substantial monies or execution of valid and binding contracts involving substantial monies for such things as power plants; railroads; coal handling, preparation, extraction, and storage facilities; and other capital-intensive activities such as:

1. Improvement or modification of coal lands within, for access to, or in support of surface coal mining and reclamation operations in the petitioned area;

2. Acquisition of capital equipment for use in, for access to, or for use in support of surface coal mining and reclamation operations in the petitioned area; and

3. Exploration, mapping, surveying, and geological work, as well as expenditures of engineering and legal fees, associated with the acquisition of the property or preparation of an application to conduct surface coal mining and reclamation operations in the petitioned area.

(b) The costs of acquiring the coal in place or the right to mine such coal are not sufficient to constitute a substantial legal and financial commitment in the absence of other investments as described in paragraph (a) of this subsection.

(119) [(414)] "Substantially disturb" means, for purposes of coal exploration, to significantly impact land or water resources by blasting; by removal of vegetation, topsoil, or overburden; by construction of roads or other access routes; by placement of excavated earth or waste material on the natural land surface; or by other activities, or to remove more than twenty-five (25) tons of coal.

(120) [(415)] "Successor in interest" means any person who succeeds to rights granted under a permit, by transfer, assignment,

or sale of those rights.

(121) [(416)] "Surety bond" means an indemnity agreement in a sum certain, payable to the cabinet and executed by the permittee, which is supported by the performance guarantee of a corporation licensed to do business as a surety in the Commonwealth of Kentucky.

(122) [(417)] "Surface coal mining and reclamation operations" is defined in KRS 350.010.

(123) [(418)] "Surface coal mining operations" is defined in KRS 350.010.

(124) [(419)] "Surface mining activities" means those surface coal mining and reclamation operations incident to the extraction of coal from the earth by removing the materials over a coal seam before recovering the coal, by auger coal mining, by extraction of coal from coal refuse piles, or by recovery of coal from slurry ponds.

(125) [(420)] "Suspended solids" or nonfilterable residue, expressed as milligrams per liter, means organic or inorganic materials carried or held in suspension in water which are retained by a standard glass fiber filter in the procedure outlined by the U.S. EPA's regulations for waste water and analyses (40 CFR 136).

(126) [(421)] "Temporary diversion" means a diversion of a stream or overland flow which is used during coal exploration or surface coal mining and reclamation operations and not approved by the cabinet to remain after reclamation as part of the approved postmining land use.

(127) [(422)] "Ton" means 2000 pounds avoirdupois (.90718 metric ton).

(128) [(423)] "Topsoil" means the A and E soil horizon layers of the four (4) master soil horizons.

(129) [(424)] "Toxic-forming materials" means earth materials or wastes which, if acted upon by air, water, weathering, or microbiological processes, are likely to produce chemical conditions in soils or water that are detrimental to biota or uses of water.

(130) [(425)] "Toxic mine drainage" means water that is discharged from active or abandoned mines or other areas affected by coal exploration or surface coal mining and reclamation operations, which contains a substance that through chemical action is likely to kill, injure, or impair biota commonly present in the area that might be exposed to it.

(131) [(426)] "Transfer, assignment, or sale of permit rights" means a change in ownership or other effective control over the right to conduct surface coal mining operations under a permit issued by the cabinet.

(132) [(427)] "TRM" means Technical Reclamation Memorandum.

(133) [(428)] "Underground development waste" means waste coal, shale, claystone, siltstone, sandstone, limestone, or similar materials that are extracted from underground workings in connection with underground mining activities.

(134) [(429)] "Underground mining activities" means a combination of:

(a) Surface operations incident to underground extraction of coal or in situ processing, including construction, use, maintenance, and reclamation of roads, above-ground repair areas, storage areas, processing areas, and shipping areas; areas upon which are sited support facilities including hoist and ventilating ducts; areas utilized for the disposal and storage of waste; and areas on which materials incident to underground mining operations are placed; and

(b) Underground operations such as underground construction, operation, and reclamation of shafts, adits, underground support facilities; in situ processing; and underground mining, hauling, storage, and blasting.

(135) [(430)] "USDA" means United States Department of Agriculture.

(136) [(431)] "U.S. EPA" means United States Environmental Protection Agency (133) "USGS" means United States Geological Survey.

(137) [(432)] "USGS" means United States Geological Survey.

(138) [(139)] "Valid existing rights" means:

(a) Except for haul roads, property rights in existence on August 3, 1977, that were created by a legally binding conveyance, lease, contract or other instrument which authorizes the applicant to produce coal and the person proposing to conduct a surface coal mining operation on the lands either:

1. Had been validly issued or had made a good faith effort to obtain, on or before August 3, 1977, all state and federal permits necessary to conduct surface coal mining operations on those lands, application for the permits being deemed to constitute good faith efforts to obtain the permits; or

2. Can demonstrate to the cabinet that the coal is both needed for, and immediately adjacent to, an ongoing surface coal mining operation for which all permits were obtained prior to August 3, 1977.

(b) For haul roads:

1. A recorded right-of-way, recorded easement, or a permit for coal haul road recorded as of August 3, 1977; or

2. Any other road in existence as of August 3, 1977.

(c) Valid existing rights does not mean the mere expectation of a right to conduct surface coal mining operations or the right to conduct underground coal mining.

(139) [(140)] "Water transmitting zone" means a body of consolidated or unconsolidated rocks which, due to their greater primary or secondary permeability relative to the surrounding rocks, can reasonably be considered to function as a single hydraulic medium for the flow of groundwater.

(140) [(141)] "Wetland" means land that has a predominance of hydric soils and that is inundated or saturated by surface or groundwater at a frequency and duration sufficient to support, and that under normal circumstances does support, a prevalence of hydrophytic vegetation typically adapted for life in saturated soil conditions.

(a) "Hydric soil" means soil that, in its undrained condition, is saturated, flooded, or ponded long enough during a growing season to develop an anaerobic condition that supports the growth and regeneration of hydrophytic vegetation.

(b) "Hydrophytic vegetation" means a plant growing in:

1. Water; or

2. A substrate that is at least periodically deficient in oxygen during a growing season as a result of excessive water content.

(141) [(142)] "Willfully" and "willful violation" mean that a person acted either intentionally, voluntarily, or consciously, and with intentional disregard or plain indifference to legal requirements, in authorizing, ordering, or carrying out an act or omission that constituted a violation of SMCRA, KRS Chapter 350, 405 KAR Chapters 7 through 24, or a permit condition, or that constituted a failure or refusal to comply with an order issued pursuant to SMCRA, KRS Chapter 350, or 405 KAR Chapters 7 through 24.

JAMES E. BICKFORD, Secretary

APPROVED BY AGENCY: July 28, 1997

FILED WITH LRC: July 28, 1997 at 4 p.m.

PUBLIC HEARING: A public hearing on this proposed amendment has been scheduled for 9:30 a.m. (EDT) on Tuesday, September 30, 1997, in the Training Room (D-16) of the Department for Surface Mining Reclamation and Enforcement at 2 Hudson Hollow, Frankfort, Kentucky. Persons who wish to testify at the hearing shall notify the contact person listed below, in writing, by September 23, 1997. The scheduled hearing will be canceled if the contact person has not received any written notice of intent to testify by September 23, 1997, five workdays before the scheduled hearing date. If the hearing is held, it will be open to the public. Any person in attendance who wishes to testify on the proposed amendment will be given a fair and reasonable opportunity to do so, regardless of whether the person has given the cabinet prior written notice of his intent to testify. To assure an accurate record, the cabinet requests each person testifying at the hearing to provide the cabinet with a written copy of his testimony. The cabinet is not required to make a recording

or transcript of the hearing unless someone makes a written request for it, in which case the person requesting the recording or transcript shall pay for it. WRITTEN COMMENTS: A person who wishes to comment on this proposed amendment but does not wish to testify at the hearing may submit written comments on the proposed amendment at any time before 4:30 p.m. (EDT) on Tuesday, September 30, 1997, the scheduled hearing date. Comments received after that time will not be considered. Written comments and written notices of intent to testify at the hearing shall be submitted to the contact person listed below.

CONTACT PERSON: Jim Villines, Kentucky Department for Surface Mining, 2 Hudson Hollow, Frankfort, Kentucky 40601-4321, Tel. (502) 564-6940, FAX (502) 564-5698.

## REGULATORY IMPACT ANALYSIS

Contact Person: Jim Villines

1. Type and number of entities affected: This amendment will affect applicants with permitting actions taken after the effective date of the amendment, if the application involves subsidence, water replacement, impoundments, or previously mined areas. In calendar year 1996 the cabinet's Division of Permits issued, for surface mining, 119 new permits and amendments, 73 major revisions, 243 minor revisions, 52 permit renewals and 46 transfers; and for underground mining, issued 134 new permits and amendments, 35 major revisions, 129 minor revisions, 78 permit renewals and 69 transfers.

2. Direct and indirect costs or savings on the affected entities:

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 comments were received on this subject. The amendment is not expected to have an effect on the cost of living and employment.

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 on this subject. The amendment is not expected to have an effect on the cost of doing business.

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: The definitions in this amendment are significant in that they define terms used in permitting actions that involve subsidence and water replacement. However, they do not impose requirements in and of themselves and therefore do not have direct effect.

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

3. Effects on the promulgating administrative body: The definitions in this amendment will not have a significant effect on the cabinet.

a. Direct and indirect costs or savings:

1. First year: No direct or indirect costs or savings.

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

3. Additional factors increasing or decreasing costs: None

b. Reporting and paperwork requirements: None

4. Assessment of anticipated effect on state and local revenues: No effect on revenues.

5. Source of revenue to be used for implementation and enforcement of administrative regulation: No additional revenue is expected to be needed.

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

a. Geographical area in which administrative regulation will be implemented: No comments on economic impact were received. No economic impact on the coal mining regions is expected.

b. Kentucky: No comments on economic impact were received. No statewide economic impact is expected.

7. Assessment of alternative methods; reasons why alternatives were rejected: There is no feasible alternative to adoption of this amendment. These definitions are necessary for consistency with the corresponding federal regulations.

8. Assessment of expected benefits of the administrative regulation: There are no benefits to be expected from the particular definitions in this amendment other than consistency with the corresponding federal regulations.

9.a. Identify effects on public health and environmental welfare of the geographical area in which implemented and Kentucky: No effect on public health and environmental welfare will result in the coal regions or statewide.

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

c. If detrimental effect would result, explain detrimental effect: None

10. Identify any statute, administrative regulation, or government policy which may be in conflict, overlapping, or duplication: There is no conflict, overlap, or duplication.

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

b. If in conflict, was the effort made to harmonize the proposed administrative regulation with conflicting provisions: No conflict.

11. Any additional information or comments: None

12. TIERING: Is tiering applied? No. Tiering is not applicable to this proposed amendment because, under the federal and Kentucky surface mining laws and regulations, these requirements must apply equally to all permittees under 405 KAR Chapters 7-24.

#### FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 30 CFR Parts 700.5, 701.5, 707.5, 730-733, 735, 761.5, 762.5, 773.5, 800.5, 843.5, 917 30 U.S.C. 1253, 1255, 1291. The federal regulations corresponding to this amendment are the federal definitions regulations at 30 CFR 701.5 and 761.5.

2. State compliance standards. This administrative regulation and this amendment contain only definitions, which do not impose compliance standards in and of themselves. The definitions affected by this amendment relate to permitting requirements in 405 KAR Chapter 8 being amended regarding subsidence, water replacement, and impoundments. One definition unrelated to these areas is being revised. The following terms related to subsidence and water replacement are being defined: "Community or institutional building" is defined to mean any structure, other than a public building or an occupied dwelling, which is used primarily for meetings, gatherings or functions of local civic organizations or other community groups; functions as an educational, cultural, historic, religious, scientific, correctional, mental health or physical health care facility; or is used for public services, including, but not limited to, water supply, power generation or sewage treatment. "Noncommercial building" is defined to mean any building, other than an occupied residential dwelling, that, at the time the subsidence occurs, is used on a regular or temporary basis as a public building or community or institutional building. Any building used only for commercial agricultural, industrial, retail or other commercial enterprises is excluded. "Occupied residential dwelling and structures related thereto" is defined to mean, for purposes of 405 KAR 8:040 Section 26 and 405 KAR 18:210, any building or other structure that, at the time the subsidence occurs, is used either temporarily, occasionally, seasonally, or permanently for human habitation. This term also includes any building, structure or facility installed on, above or below, or a combination thereof, the land surface if that building, structure or facility is adjunct to or used in connection with an occupied residential dwelling. Examples of these structures include, but are not limited to, garages; storage sheds and barns; greenhouses and related buildings; utilities and cables; fences and other enclosures; retaining walls; paved or improved patios,

walks and driveways; septic sewage treatment facilities; and lot drainage and lawn and garden irrigation systems. Any structure used only for commercial agricultural, industrial, retail or other commercial purposes is excluded. "Material damage," as used in 405 KAR 8:040 Section 26 and 405 KAR 18:210 is defined to mean:

(a) Any functional impairment of surface lands, features, structures or facilities;

(b) Any physical change that has a significant adverse impact on the affected land's capability to support any current or reasonably foreseeable uses or causes significant loss in production or income; or

(c) Any significant change in the condition, appearance or utility of any structure or facility from its presubsidence condition.

The following terms related to impoundments are being defined: "Impounding structure" means a dam, embankment or other structure used to impound water, slurry, or other liquid or semiliquid material. "Impoundment" is being revised to mean a water, sediment, slurry or other liquid or semiliquid holding structure or depression, either naturally formed or artificially built. The following definition relating to areas mined before August 3, 1977, is being revised: "Previously mined area" is being revised to mean land that was affected by coal mining operations conducted prior to August 3, 1977, that has not been reclaimed to the standards of this Title.

3. Minimum or uniform standards contained in the federal mandate. The corresponding federal definitions are the same as the state definitions, except as described in item 4 below. The federal regulations define "replacement of water supply" as follows: "Replacement of water supply" means, with respect to protected water supplies contaminated, diminished, or interrupted by coal mining operations, provision of water supply on both a temporary and permanent basis equivalent to premining quantity and quality. Replacement includes provision of an equivalent water delivery system and payment of operation and maintenance costs in excess of customary and reasonable delivery costs for premining water supplies.

(a) Upon agreement by the permittee and the water supply owner, the obligation to pay such operation and maintenance costs may be satisfied by a one-time payment in an amount which covers the present worth of the increased annual operation and maintenance costs for a period agreed to by the permittee and the water supply owner.

(b) If the affected water supply was not needed for the land use in existence at the time of loss, contamination, or diminution, and if the supply is not needed to achieve the postmining land use, replacement requirements may be satisfied by demonstrating that a suitable alternative water source is available and could feasibly be developed. If the latter approach is selected, written concurrence must be obtained from the water supply owner.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? Yes The federal definition of "replacement of water supply" is not included in this amendment.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Because the federal definition contains substantive requirements, the cabinet promulgated the provisions of the federal definition as substantive requirements in 405 KAR 16:060 Section 8 and 405 KAR 18:060 Section 12.



**NATURAL RESOURCES AND  
ENVIRONMENTAL PROTECTION CABINET**  
Department for Surface Mining  
Reclamation and Enforcement  
(Amendment)

**405 KAR 8:030. Surface coal mining permits.**

RELATES TO: KRS 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

STATUTORY AUTHORITY: KRS [Chapter 13A,] 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

NECESSITY, FUNCTION, AND CONFORMITY: KRS 350.028(1) requires the cabinet to promulgate administrative regulations pertaining to surface coal mining operations including strip mining and the surface effects of underground mining to accomplish the purposes of KRS Chapter 350. KRS 350.060(13) requires the cabinet to promulgate administrative regulations for the permitting of operations with surface effects of underground mining and other surface coal mining and reclamation operations. This administrative regulation applies to surface coal mining and reclamation operations except operations with surface effects of underground mining. It requires the applicant to provide information related to environmental resources, his legal and compliance status, and his mining and reclamation plan, and requires the applicant to make certain showings to obtain a permit. KRS 350.028(5), 350.151(1), and 350.465(2), (5) authorize and direct the cabinet to promulgate administrative regulations for surface and underground coal mining operations for the purpose of accepting and administering primary enforcement responsibilities under the permanent regulatory program pursuant to PL 95-87, the federal Surface Mining Control and Reclamation Act of 1977; and direct that the cabinet's administrative regulations be consistent with, and not more stringent than required by, that Act. PL 95-87 does not require Kentucky to comply with its provisions, but in order to retain primary enforcement responsibility under that Act the cabinet's administrative regulations must be consistent with federal regulations promulgated pursuant to that Act. This administrative regulation is being amended at Section 16 regarding alternative water supply information, at Section 32(1)(b) regarding the identification of protective measures needed to meet hydrologic requirements, at Section 32(3) regarding the determination of probable hydrologic consequences, and at Section 34 regarding impoundments and embankments. This amendment differs from the corresponding federal regulations as follows:

1. Section 34(3) and (5) of this administrative regulation, like the corresponding federal regulations, require that design plans for impounding structures that are required to be submitted to MSHA must also must be submitted to the cabinet as part of the permit application. However, this administrative regulation further requires that after these plans have been approved by MSHA, the applicant must submit to the cabinet a copy of the final approved plans, a copy of all correspondence from MSHA regarding the plans, a copy of any technical support documents requested by MSHA, and a notarized statement by the applicant that the copy submitted to the cabinet is a complete and correct copy of the final plan approved by MSHA. In order to minimize duplication of technical review of impounding structures by MSHA and the cabinet, and to minimize conflicts for the applicant that may arise from duplication of review, the cabinet intends to rely heavily upon the review conducted by MSHA engineers and upon the final plans approved by MSHA. It is important to ensure that the plans actually approved by MSHA are included in the permit application so there will be no discrepancy between the plans

approved by the two agencies. The additional requirements are intended to provide that assurance.

2. Section 34 of this administrative regulation refers to Class B and C criteria under 405 KAR 7:040 Section 5 and 401 KAR 4:030 whereas the federal regulation refers to Class B and C criteria in the USDA-SCS Technical Release No. 60 and incorporate TR-60 by reference. The Class B and C criteria of the cabinet and those of Technical Release No. 60 are virtually identical criteria, since the criteria adopted under 401 KAR 4:030 were originally developed based upon the SCS criteria. Thus there is no need for this administrative regulation to refer to TR-60 or to incorporate it by reference. [KRS Chapter 350 in pertinent part requires the cabinet to promulgate rules and administrative regulations pertaining to permits 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 his mining and reclamation plan. This administrative regulation further specifies certain showings to be made by the applicant to obtain a permit.]

Section 1. General. (1) This administrative regulation applies to any person who applies for a permit to conduct surface mining activities.

(2) The requirements set forth in this administrative regulation specifically for applications for permits to conduct surface mining activities are in addition to the requirements applicable to all applications for permits to conduct surface coal mining and reclamation operations as set forth in 405 KAR 8:010.

(3) This administrative regulation sets forth information required to be contained in applications for permits to conduct surface mining activities, including:

- (a) Legal, financial, compliance, and related information;
- (b) Environmental resources information; and
- (c) Mining and reclamation plan information.

Section 2. Identification of Interests. An application shall contain the following information, except that the submission of a Social Security number is voluntary:

(1) A statement as to whether the applicant is a corporation, partnership, single proprietorship, association, or other business entity;

(2) The name, address, telephone number and, as applicable, Social Security number and employer identification number of the:

- (a) Applicant;
- (b) Applicant's resident agent; and
- (c) Person who will pay the abandoned mine land reclamation fee.

(3) For each person who owns or controls the applicant:

(a) The person's name, address, Social Security number, and employer identification number;

(b) The person's ownership or control relationship to the applicant, including percentage of ownership and location in organizational structure;

(c) The title of the person's position, date position was assumed, and when submitted under 405 KAR 8:010, Section 18(5) date of departure from the position;

(d) Each additional name and identifying number, including employer identification number, federal or state permit number, and MSHA number with date of issuance, under which the person owns or controls, or previously owned or controlled, a surface coal mining and reclamation operation in the United States within the five (5) years preceding the date of the application; and

(e) The application number or other identifier of, and the regulatory authority for, any other pending surface coal mining operation permit application filed by the person in any state in the United States.

(4) For any surface coal mining operation owned or controlled by either the applicant or by any person who owns or controls the



applicant, the operation's:

(a) Name, address, identifying numbers, including employer identification number, federal or state permit number, and MSHA number, the date of issuance of the MSHA number, and the regulatory authority; and

(b) Ownership or control relationship to the applicant, including percentage of ownership and location in organizational structure.

(5) The names and addresses of:

(a) Every legal or equitable owner of record of the property to be mined;

(b) The holders of record of any leasehold interest in the property to be mined; and

(c) Any purchaser of record, under a real estate contract, of the property to be mined.

(6) The names and addresses of the owners of record of all surface and subsurface areas contiguous to any part of the proposed permit area.

(7) The name of the proposed mine and all MSHA identification numbers that have been assigned for the mine and all mine associated structures that require MSHA approval.

(8) Proof, such as a power of attorney or a resolution of the board of directors, that the individual signing the application has the power to represent the applicant in the permit matter.

(9) A statement of all lands, interests in lands, options, or pending bids on interests held or made by the applicant for lands which are contiguous to the area to be covered by the permit.

(10) After an applicant has been notified that his or her application has been approved, but before the permit is issued, the applicant shall, as applicable, update, correct, or indicate that no change has occurred in the information previously submitted under subsections (1) through (4) of this section.

(11) The permittee shall, in writing, inform the cabinet of any change of the permittee's address immediately if changed at any point prior to final bond release.

(12) The permittee shall submit updates of the following information in writing to the cabinet within thirty (30) days of the effective date of any change. Updates shall be submitted for any changes that occur at any point prior to final bond release. Failure to submit updated information shall constitute a violation of KRS Chapter 350 only upon the permittee's refusal or failure to timely submit, as determined by the cabinet, the information to the cabinet upon request. After the permittee's refusal or failure to timely submit the information to the cabinet upon request, the cabinet may suspend the permit after opportunity for hearing pending compliance with this subsection:

(a) The names and addresses of every officer, partner, director, or person performing a function similar to a director of the permittee;

(b) The names and addresses of principal shareholders; and

(c) Whether the permittee or other persons specified in this subsection are subject to any of the provisions of KRS 350.130(3).

Section 3. Violation Information. Each application shall contain the following information:

(1) A statement of whether the applicant or any subsidiary, affiliate, or persons controlled by or under common control with the applicant has:

(a) Had a coal mining permit of the United States or any state suspended or revoked in the five (5) years preceding the date of submission of the application; or

(b) Forfeited a coal mining performance bond or similar security deposited in lieu of bond.

(2) If any suspension, revocation, or forfeiture as described in subsection (1) of this section has occurred, the application shall contain a statement of the facts involved, including:

(a) Identification number and date of issuance of the permit, and date and amount of bond or similar security;

(b) Identification of the authority that suspended or revoked the

permit or forfeited the bond and the stated reasons for that action;

(c) The current status of the permit, bond, or similar security involved;

(d) The date, location, and type of any administrative or judicial proceedings initiated concerning the suspension, revocation, or forfeiture; and

(e) The current status of these proceedings.

(3) For any violation of a provision of SMCRA, federal regulations enacted pursuant to SMCRA, KRS Chapter 350 and administrative regulations adopted pursuant thereto, any other state's laws or regulations under SMCRA, any federal law, rule, or regulation pertaining to air or water environmental protection, or any Kentucky or other state's law, rule, or regulation enacted pursuant to federal law, rule, or regulation pertaining to air or water environmental protection incurred in connection with any surface coal mining operation, a list of all violation notices received by the applicant during the three (3) year period preceding the application date, and a list of all unabated cessation orders and unabated air and water quality violation notices received prior to the date of the application by any surface coal mining and reclamation operation owned or controlled by either the applicant or by any person who owns or controls the applicant. For each violation notice or cessation order reported, the lists shall include the following information, as applicable:

(a) Any identifying numbers for the operation, including the federal or state permit number and MSHA number, the dates of issuance of the violation notice and MSHA number, the name of the person to whom the violation notice was issued, and the name of the issuing regulatory authority, department, or agency;

(b) A brief description of the particular violation alleged in the notice;

(c) The final resolution of each violation notice, if any;

(d) For each violation notice that has not been finally resolved:

1. The date, location, and type of any administrative or judicial proceedings initiated concerning the violation, including, but not limited to, proceedings initiated by any person identified in this subsection to obtain administrative or judicial review of the violation; and

2. The current status of the proceedings and of the violation notice; and

3. The actions, if any, taken or being taken by any person identified in this subsection to abate the violation.

(4) After an applicant has been notified that his or her application has been approved, but before the permit is issued, the applicant shall, as applicable, update, correct, or indicate that no change has occurred in the information previously submitted under subsections (1) through (3) of this section.

(5) Upon request by a small operator the cabinet shall provide to the small operator, with regard to persons under subsection (1) of this section which are identified by the small operator, the compliance information required by this section regarding suspension and revocation of permits and forfeiture of bonds under KRS Chapter 350, and information pertaining to violations of KRS Chapter 350 and administrative regulations promulgated thereunder.

Section 4. Right of Entry and Right to Surface Mine. (1) Each application shall contain a description of the documents upon which the applicant bases his or her legal right to enter and begin surface mining activities in the permit area and whether that right is the subject of pending litigation. The description shall identify those documents by type and date of execution, identify the specific lands to which the document pertains, and explain the legal rights claimed by the applicant.

(2) If the private mineral estate to be mined has been severed from the private surface estate, the application shall contain:

(a) A copy of the written consent of the surface owner for the extraction of coal by surface mining methods; or

(b) A copy of the conveyance that expressly grants or reserves the right to extract coal by surface mining methods; or

(c) If the conveyance does not expressly grant the right to extract the coal by surface mining methods, a copy of the original instrument of severance upon which the applicant bases his right to extract coal by surface mining methods and documentation that under applicable state law, the applicant has the legal authority to extract the coal by those methods.

(3) Nothing in this section shall be construed to afford the cabinet the authority to adjudicate property title disputes.

Section 5. Relationship to Areas Designated Unsuitable for Mining. (1) Each application shall contain a statement of available information on whether the proposed permit area is within an area designated unsuitable for surface mining activities under 405 KAR Chapter 24 or under study for designation in an administrative proceeding under that chapter.

(2) If an applicant claims the exemption in 405 KAR 8:010, Section 14(4)(b), the application shall contain information supporting the applicant's assertion that it made substantial legal and financial commitments before January 4, 1977, concerning the proposed surface mining activities.

(3) If an applicant proposes to conduct surface mining activities within 300 feet of an occupied dwelling, the application shall contain the waiver of the owner of the dwelling as required in 405 KAR 24:040, Section 2(5).

(4) If the applicant proposes to conduct surface mining activities within 100 feet of a public road, the requirements of 405 KAR 24:040, Section 2(6) shall be met.

Section 6. Permit Term Information. (1) Each application shall state the anticipated or actual starting and termination date of each phase of the surface mining activities and the anticipated number of acres of land to be affected for each phase of mining and over the total life of the permit.

(2) If the applicant proposes to conduct the surface mining activities in excess of five (5) years, the application shall contain the information needed for the showing required under 405 KAR 8:010, Section 17(1).

Section 7. Personal Injury and Property Damage Insurance Information. Each permit application shall contain a certificate of liability insurance according to 405 KAR 10:030, Section 4.

Section 8. Identification of Other Licenses and Permits. Each application shall contain a list of all other licenses and permits needed by the applicant to conduct the proposed surface mining activities. This list shall identify each license and permit by:

(1) Type of permit or license;

(2) Name and address of issuing authority;

(3) Identification numbers of applications for those permits or licenses or, if issued, the identification numbers of the permits or licenses; and

(4) If a decision has been made, the date of approval or disapproval by each issuing authority.

Section 9. Identification of Location of Public Office for Filing of Application. Each application shall identify, by name and address, the appropriate regional office of the cabinet where the applicant will file a copy of the entire application for public inspection under 405 KAR 8:010, Section 8(8).

Section 10. Newspaper Advertisement and Proof of Publication. A copy of the newspaper advertisement of the application for a permit, major revision, amendment, transfer, or renewal of a permit and proof of publication of the advertisement, which is acceptable to the cabinet, shall be filed with the cabinet and made a part of the

application, not later than fifteen (15) days after the last date of publication required under 405 KAR 8:010, Section 8(2).

Section 11. Environmental Resources Information. (1) Each permit application shall include descriptions of the existing environmental resources within the proposed permit area and adjacent areas as required by Sections 11 through 23 of this administrative regulation. The descriptions required by this administrative regulation may, where appropriate, be based upon published texts or other public documents together with reasonable extrapolations from specific data available from existing permit areas or other appropriate areas.

(2)(a) Each application shall describe and identify the nature of cultural, historic, and archaeological resources listed or eligible for listing on the National Register of Historic Places and known archaeological sights within the proposed permit area and adjacent areas. The description shall be based on all available information, including, but not limited to, information from the state Historic Preservation Officer and from local archaeological, historical, and cultural preservation agencies.

(b) The cabinet may require the applicant to identify and evaluate important historic and archaeological resources that may be eligible for listing on the National Register of Historic Places, through collection of additional information, field investigations, or other appropriate analyses.

Section 12. General Requirements for Baseline Geologic and Hydrologic Information. (1) The application shall contain baseline geologic and hydrologic information which has been collected, analyzed, and submitted in the detail and manner acceptable to the cabinet, and which shall be sufficient to:

(a) Identify and describe protective measures pursuant to Section 32(1) of this administrative regulation which will be implemented during the mining and reclamation process to assure protection of the hydrologic balance, or to demonstrate that protection of the hydrologic balance can be assured without the design and installation of protective measures; and to design necessary protective measures pursuant to Section 32(2) of this administrative regulation;

(b) Determine the probable hydrologic consequences of the mining and reclamation operations upon the hydrologic balance in the permit area and adjacent area pursuant to Section 32(3) of this administrative regulation so that an assessment can be made by the cabinet pursuant to 405 KAR 8:010, Section 14(3) of the probable cumulative impacts of all anticipated mining on the hydrologic balance in the cumulative impact area;

(c) Determine pursuant to 405 KAR 8:010, Section 14(2) and (3) whether reclamation as required by 405 KAR can be accomplished and whether the proposed operation has been designed to prevent material damage to the hydrologic balance; and

(d) Design surface and groundwater monitoring systems pursuant to Section 32(4) of this administrative regulation for the during-mining and postmining time period which, together with the baseline data collected under Sections 14(1) and 15(1) of this administrative regulation, will demonstrate whether the mining operation is meeting applicable effluent limitations and stream standards and protecting the hydrologic balance.

(2)(a) Geologic and hydrologic information pertaining to the area outside the permit and adjacent area but within the cumulative impact assessment area shall be provided to the applicant by the cabinet:

1. If this information is needed in preparing the cumulative impact assessment; and

2. If this information is available from an appropriate federal or state agency.

(b) If this information is needed by the cabinet for conducting the cumulative impact assessment and is not available from a federal or state agency, the applicant may gather and submit this information to the cabinet as part of the permit application.

(3) Interpolation, modeling, correlation or other statistical methods,

and other data extrapolation techniques may be used if the applicant can demonstrate to the satisfaction of the cabinet that the data extrapolation techniques are valid and that information obtained through the techniques meets the requirements of subsection (1) of this section.

(4) All water quality analyses performed to meet the requirements of this chapter shall be conducted according to the methodology in the fourteenth edition of "Standard Methods for the Examination of Water and Wastewater," or the methodology in 40 CFR Parts 136 and 434. All water quality sampling shall be conducted according to either methodology listed above when feasible.

Section 13. Baseline Geologic Information. (1) The application shall contain baseline geologic information collected from the permit area which shall meet the requirements of Section 12(1) of this administrative regulation and shall include at a minimum:

(a) The results of samples obtained from continuous cores; drill cuttings; channel cuttings from fresh, unweathered, rock outcrops; or other rock or soil material which has been collected using acceptable sampling techniques.

1. The vertical extent of sampling shall include those strata from the surface down to and including the stratum immediately below the lowest coal seam to be mined; and

2. Where aquifers which are located within the permit area underlie the lowest coal seam to be mined and these aquifers may be adversely affected by the mining operation, the vertical extent of sampling shall also include those strata from the lowest coal seam to be mined down to and including the aquifers.

3. The area and vertical density of sampling shall, at a minimum, be sufficient to determine the distribution of strata which have a potential to produce acid drainage and to determine the area and vertical extent of aquifers which may be adversely affected.

4. If the vertical extent, and the area and vertical density of sampling specified in subparagraphs 1 through 3 of this paragraph are not sufficient to locate suitable strata for use as a topsoil substitute, or for other required design or analysis, additional sampling shall be conducted as necessary to furnish adequate geologic information.

(b) Chemical analyses including, but not limited to, maximum potential acidity and neutralization potential of each overburden stratum and the stratum immediately below the lowest coal seam to be mined, to identify those strata which have a potential to produce acid or toxic drainage.

(c) Chemical analyses of the coal seam to be mined to determine the potential to produce acid or toxic drainage, including the parameters of total sulfur and pyritic sulfur; except that the cabinet shall not require an analysis for pyritic sulfur if the applicant can demonstrate to the satisfaction of the cabinet that an analysis for total sulfur provides adequate information to assure protection of the hydrologic balance.

(d) Collection of geologic information from the permit area as required in this subsection may be waived in whole or in part if:

1. The applicant can demonstrate to the satisfaction of the cabinet through geologic correlation or other procedures that information collected from outside the permit area is representative of the permit area and is sufficient to meet the requirements of Section 12(1) of this administrative regulation; or

2. Other information equivalent to that required by this subsection is available to the cabinet in a satisfactory form and is made a part of the permit application; and

3. The cabinet provides a written statement granting a waiver.

(2) The application shall contain a description of the geology of the proposed permit area and adjacent area which shall meet the requirements of Section 12(1) of this administrative regulation and be based on the information required in subsection (1) of this section or other appropriate geologic information. The description shall include, at a minimum, geologic logs, cross-sections, fence diagrams, or other

appropriate illustrations and written descriptions depicting:

(a) Within the permit area:

1. The structural geology and lithology of overburden strata and the stratum immediately below the lowest coal seam to be mined;

2. The thickness and chemical characteristics of each overburden stratum and the stratum immediately below the lowest coal seam to be mined; and

3. Where aquifers may be adversely affected by the mining operation, the structural geology, lithology, thickness, and area extent of the aquifers; and structural geology and lithology of strata, and thickness of each stratum, from the surface down to the aquifers.

(b) Within the adjacent area, the approximate area extent and approximate thickness of aquifers which may be adversely affected by the mining operation.

(3) If determined by the cabinet to be necessary to assure adequate reclamation and protection of the hydrologic balance, the cabinet may require geologic information and description in addition to that required by subsections (1) and (2) of this section including, but not limited to, leaching tests of material from strata which may be disturbed by the operation to determine the potential for the operation to produce drainage with elevated levels of acidity, sulfate, and total dissolved solids, and the collection of information to greater depths within the proposed permit area or the collection of information for areas outside the proposed permit area.

Section 14. Baseline Groundwater Information. (1) The application shall contain baseline groundwater information for the permit area and adjacent area which shall be collected and submitted in a manner acceptable to the cabinet and shall be adequate to meet the requirements of Section 12(1) of this administrative regulation.

(2) Groundwater information shall include an inventory of wells, springs, underground mines, or other similar groundwater supply facilities which are currently being used, have been used in the past, or have a potential to be used for domestic, agricultural, industrial, or other beneficial purpose. The inventory shall include the location, ownership, type of usage, and where possible, other relevant information such as the depth and diameter of wells and approximate rate of usage, pumpage or discharge from wells, springs, and other groundwater supply facilities.

(3) Groundwater information shall include seasonal groundwater quantity and quality data collected from monitoring wells, springs, underground mines, or other appropriate groundwater monitoring facilities, at a sufficient number of monitoring locations with adequate area distribution to meet the requirements of Section 12(1) of this administrative regulation. Seasonal groundwater quantity and quality data shall be provided for each water transmitting zone above, and potentially impacted water transmitting zone below, the lowest coal seam to be mined including at a minimum:

(a) Groundwater levels; and

(b) Total dissolved solids, or specific conductance corrected to twenty-five (25) degrees C; pH; dissolved iron; dissolved manganese; acidity; alkalinity; and sulfate. For data collected prior to August 13, 1985, total iron and total manganese may be substituted for dissolved iron and dissolved manganese.

(4) The groundwater information described in subsection (3) of this section shall be required in whole or in part for coal seams if the coal seams to be mined are serving as water supply sources or are otherwise significant in protecting the hydrologic balance.

(5) If additional information is needed to assess the need for protective measures, to design protective measures, to determine the probable hydrologic consequences of mining, or to conduct the cumulative impact assessment, the cabinet may require groundwater information in addition to that described in subsections (2), (3), and (4) of this section including, but not limited to, information pertaining to aquifer storage, yield, discharge, recharge capacity, and additional water quality parameters.

Section 15. Baseline Surface Water Information. (1) The application shall contain baseline surface water information for the permit area and adjacent area which shall be collected and submitted in a manner acceptable to the cabinet and shall be adequate to meet the requirements of Section 12(1) of this administrative regulation.

(2) Surface water information shall include an inventory of all streams, lakes, impoundments or other surface water bodies in the permit and adjacent area which are currently being used for domestic, agricultural, industrial, or other beneficial purpose. The inventory shall include the name of the surface water body which is being used as a water supply source; the location, drainage area, ownership, and type of usage for the withdrawal; and where possible other relevant information such as the rate of withdrawal and seasonal variation.

(3) Surface water information shall include:

(a) The name, location, and ownership where appropriate, of all streams, lakes, impoundments, and other surface water bodies which receive run-off from watersheds which will be disturbed by the operation; and

(b) The location and description of any existing facilities located in watersheds which will be disturbed by the mining operation which may contribute to surface water pollution, such as existing or abandoned mining operations, oil wells, logging operations, or other similar facilities, including the location of any discharges which may be flowing from the facilities.

(4) Surface water information shall include seasonal quantity and quality data collected from a sufficient number of watersheds which will be disturbed by the operation with adequate area distribution to meet the requirements of Section 12(1) of this administrative regulation and include at a minimum:

(a) Flow rates; and

(b) Total dissolved solids, or specific conductance corrected to twenty-five (25) degrees C; total suspended solids; pH; total iron; total manganese; acidity; alkalinity; and sulfate.

(5) If additional information is needed to assess the need for protective measures, to design protective measures, to determine the probable hydrologic consequences of mining, or to conduct the cumulative impact assessment, the cabinet may require surface water information in addition to that described in subsections (2), (3), and (4) of this section including, but not limited to, information pertaining to flood flows and additional water quality parameters.

Section 16. Alternative Water Supply Information. If the determination of probable hydrologic consequences required under Section 32 of this administrative regulation indicates that (1) The application shall identify the extent to which the proposed surface mining activities may proximately result in contamination, diminution, or interruption of an underground or surface source of water within the proposed permit area or adjacent area which is used for domestic, agricultural, industrial, or other legitimate [beneficial] use;

~~(2) If contamination, diminution, or interruption of a surface or groundwater source may result,~~ then the application shall identify and describe the adequacy and suitability of the alternative sources of water supply that could be developed for existing premining uses and approved postmining land uses.

Section 17. Climatological Information. (1) When requested by the cabinet, the application shall contain a statement of the climatological factors that are representative of the proposed permit area, including:

(a) The average seasonal precipitation;

(b) The average direction and velocity of prevailing winds; and

(c) Seasonal temperature ranges.

(2) The cabinet may request additional data as deemed necessary to ensure compliance with the requirements of this chapter.

Section 18. Soil Resources Information. (1) If soil survey information for the proposed permit area is available from SCS, the application shall include this information as a part of the description

of premining land use capability and productivity required by Section 22(1)(b) of this administrative regulation.

(2) Where the applicant proposes to use selected overburden materials as a supplement or substitute for topsoil, the application shall provide results of analyses, trials, and tests as required under 405 KAR 16:050, Section 2(5).

Section 19. Vegetation Information. (1) The permit application shall, as required by the cabinet, contain a map that delineates existing vegetative types and a description of the plant communities within the proposed permit area and within any proposed reference area. This description shall include information adequate to predict the potential for reestablishing vegetation.

(2) When a map or aerial photograph is required, sufficient adjacent areas shall be included to allow evaluation of vegetation as important habitat for fish and wildlife.

Section 20. Fish and Wildlife Resources Information. (1) Each application shall include fish and wildlife resource information for the permit area and adjacent area. The scope and level of detail for this information shall be determined by the cabinet in consultation with the Kentucky Department of Fish and Wildlife Resources and the U.S. Department of the Interior, Fish and Wildlife Service, and shall be sufficient to design the protection and enhancement plan required under Section 36 of this administrative regulation.

(2) Site-specific resource information necessary to address the respective species or habitats shall be required when the permit area or adjacent area is likely to include:

(a) Listed or proposed endangered or threatened species of plants or animals or their critical habitats listed by the Secretary of the Interior under the Endangered Species Act of 1973, as amended (16 USC Sec. 1531 et seq.), or those species or habitats protected by similar state statutes;

(b) Habitats of unusually high value for fish and wildlife such as important streams, wetlands, riparian areas, cliffs supporting raptors, areas offering special shelter or protection, migration routes, or reproduction and wintering areas; or

(c) Other species or habitats identified through agency consultation as requiring special protection under state or federal law.

(3) Wetland delineations shall be conducted in accordance with the "Corps of Engineers Wetlands Delineation Manual", U.S. Army Corps of Engineers, (January, 1987), as modified by U.S. Army Corps of Engineers Regulatory Guidance Letter No. 90-7 (September 26, 1990). The modifications to this material include replacement of Sections 1 and 2 of Appendix C with the "National Lists of Plant Species that Occur in Wetlands and Biological Reports and Summary", Fish and Wildlife Service, U.S. Department of the Interior (May, 1988); and, in Appendix D, Section 2, use of the "List of Hydric Soils of the United States, All Kentucky Counties", Soil Conservation Service (SCS), U.S. Department of Agriculture (December, 1991). This document, and related material, is incorporated by reference. It may be obtained from the National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161. Telephone (703) 487-4650. It may also be reviewed, copied, or obtained at the Department for Surface Mining Reclamation and Enforcement, #2 Hudson Hollow, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

(4) Upon request, the cabinet shall provide the resource information required under this section to the U.S. Department of the Interior, Fish and Wildlife Service regional or field office for their review. This information shall be provided within ten (10) days of receipt of the request from the Service.

(5)(a) Fish and wildlife resource information shall be required for amendments and revisions that:

1. Propose extension into a wetland;

2. Propose significant disturbance in a new watershed in which the permit area or adjacent area includes an important stream;

3. Seek to obtain a stream buffer zone variance under 405 KAR 16:060, Section 11, or seek to modify an existing stream buffer zone variance;

4. Propose extension of the permit boundary that involves a new surface disturbance of five (5) acres or more; or

5. Involve new permit or adjacent areas likely to contain, or that could reasonably be expected to contain, a state or federal endangered or threatened species or its critical habitat.

(b) For other amendments and revisions, a determination of whether fish and wildlife information is necessary, and the scope of information needed, shall be made on a case-by-case basis.

(6) This section shall apply to applications for permits, amendments and revisions submitted to the cabinet on or after November 17, 1992.

Section 21. Prime Farmland Investigation. (1) The applicant shall before making application investigate the proposed permit area to determine whether lands within the area may be prime farmland.

(2) Land shall not be considered prime farmland where the applicant can demonstrate, to the satisfaction of the cabinet, one (1) of the following:

(a) The land has not been historically used as cropland;

(b) The slope of the land is ten (10) percent or greater;

(c) Other relevant factors exist, which would preclude the soils from being defined as prime farmland according to 7 CFR 657, such as a very rocky surface, or the land is flooded during the growing season more often than once in two (2) years, and the flooding has reduced crop yields; or

(d) On the basis of a soil survey of lands within the permit area, there are no soil map units that have been designated prime farmland by the U.S. SCS.

(3) If the investigation establishes that the lands are not prime farmland, the applicant shall submit with the permit application a request for a negative determination and results of the investigation which show that the land for which the negative determination is being sought meets one (1) of the criteria of subsection (2) of this section.

(4) If the investigation indicates that lands within the proposed permit area may be prime farmlands, the applicant shall contact the U.S. SCS to determine if a soil survey exists for those lands and whether the applicable soil map units have been designated as prime farmlands. If no soil survey has been made for the lands within the proposed permit area, the applicant shall request the SCS to conduct a soil survey.

(a) If a soil survey of lands within the proposed permit area contains soil map units which have been designated as prime farmlands, the applicant shall submit an application, in accordance with 405 KAR 8:050, Section 3 for the designated land.

(b) If a soil survey for lands within the proposed permit area contains no soil map units which have been designated as prime farmland after review by the U.S. SCS, the applicant shall submit with the permit application a request for negative determination under subsection (2)(d) of this section for the nondesignated land.

(5) The cabinet shall decide to grant or deny a negative determination based upon documentation provided by the applicant and any other pertinent information, such as cropping history, available to the cabinet from other sources.

(6) The cabinet shall consult with the SCS in deciding on a request for negative determination under subsection (2)(c) of this section.

(7) The cabinet shall examine any records on crop history available from the Agriculture Stabilization and Conservation Service when deciding on a request for negative determination under subsection (2)(a) of this section.

Section 22. Land-use Information. (1) The application shall contain a statement of the condition, capability, and productivity of the

land within the proposed permit area, including:

(a) A map and supporting narrative of the uses of the land existing when the application is filed. If the premining use of the land was changed within five (5) years before the date of application, the historic use of the land shall also be described.

(b) A narrative of land use capability and productivity, which analyzes the land-use description in conjunction with other environmental resources information required under this administrative regulation. The narrative shall provide analyses of:

1. The capability of the land before any mining to support a variety of uses, giving consideration to soil and foundation characteristics, topography, vegetative cover and the hydrology of the proposed permit area; and

2. The productivity of the proposed permit area before mining, expressed as average yield of food, fiber, forage, or wood products from the lands obtained under high levels of management. The productivity shall be determined by yield data or estimates for similar sites based on current data from the U.S. Department of Agriculture, state agricultural universities or appropriate state natural resource or agricultural agencies.

(2) The application shall state whether the proposed permit area has been previously mined, and, if so, the following information, if available:

(a) The type of mining method used;

(b) The coal seams or other mineral strata mined;

(c) The extent of coal or other minerals removed;

(d) The approximate dates of past mining; and

(e) The uses of the land preceding mining.

(3) The application shall contain a description of the existing land uses and local government land use classifications, if any, of the proposed permit area and adjacent areas.

(4) The application shall contain a description identifying the extent to which cities, towns, and municipalities, or parts thereof, are located within the proposed permit area.

Section 23. Maps and Drawings. (1) The permit application shall include a map or maps showing:

(a) The boundaries of all subareas which are proposed to be affected over the estimated total life of the proposed surface mining activities, with a description of the size, sequence, and timing of the surface mining operations for which it is anticipated that additional permits will be sought;

(b) Any land within the proposed permit area and adjacent area which is within the boundaries of any units of the National System of Trails or the Wild and Scenic Rivers System, including study rivers designated under Section 5(a) of the Wild and Scenic Rivers Act (16 USC 1276(a)), or which is within the boundaries of a wild river established pursuant to KRS Chapter 146;

(c) The boundaries of any public park and locations of any cultural or historical resources listed on or eligible for listing on the National Register of Historic Places and known archaeological sites within the permit area and adjacent areas;

(d) The locations of water supply intakes for current users of surface water within a hydrologic area defined by the cabinet, and those surface waters which will receive discharges from affected areas in the proposed permit area;

(e) All boundaries of lands and names of present owners of record of those lands, both surface and subsurface, included in or contiguous to the permit area;

(f) The boundaries of land within the proposed permit area upon which the applicant has the legal right to enter and begin surface mining activities;

(g) The location of surface and subsurface manmade features within, passing through, or passing over the proposed permit area, including, but not limited to, major electric transmission lines, pipelines, and agricultural drainage tile fields;

(h) The location and boundaries of any proposed reference areas

for determining the success of revegetation for the permit area;

(i) The location of all buildings on and within 1,000 feet of the proposed permit area, with identification of the current use of the buildings;

(j) Each public road located in or within 100 feet of the proposed permit area;

(k) Each cemetery that is located in or within 100 feet of the proposed permit area;

(l) Other relevant information required by the cabinet.

(2) The application shall include drawings, cross sections, and maps showing:

(a) Elevations and locations of test borings and core samplings;

(b) Elevations and locations of monitoring stations or other sampling points in the permit area and adjacent areas used to gather data on water quality and quantity, fish and wildlife, and air quality, if required, in preparation of the application, or which will be used for this data gathering during the term of the permit;

(c) Nature, depth, and thickness of the coal seams to be mined, any coal or rider seams above the seam to be mined, each stratum of the overburden, and the stratum immediately below the lowest coal seam to be mined, for the permit area;

(d) All coal crop lines and the strike and dip of the coal to be mined within the proposed permit area;

(e) Location and extent of known workings of active, inactive, or abandoned underground mines, including mine openings to the surface within the proposed permit area and adjacent areas;

(f) Location and extent of subsurface water, if encountered, within the proposed permit area or adjacent areas;

(g) Location of surface water bodies such as streams, lakes, ponds, springs, constructed or natural drainage patterns, and irrigation ditches within the proposed permit area and adjacent areas;

(h) Location and extent of existing or previously surface-mined areas within the proposed permit area;

(i) Location, and depth if available, of gas and oil wells within the proposed permit area and water wells in the permit area and adjacent areas;

(j) Location and dimensions of existing areas of spoil, waste, and noncoal waste disposal, dams, embankments, other impoundments, and water treatment and air pollution control facilities within the proposed permit area;

(k) Sufficient slope measurements to adequately represent the existing land surface configuration of the proposed permit area, measured and recorded according to the following:

1. Each measurement shall consist of an angle of inclination along the prevailing slope extending 100 linear feet above and below or beyond the coal outcrop or the area to be disturbed or, where this is impractical, at locations and in a manner as specified by the cabinet.

2. Where the area has been previously mined, the measurements shall extend at least 100 feet beyond the limits of mining disturbances, or any other distance determined by the cabinet to be representative of the premining configuration of the land.

3. Slope measurements shall take in account natural variations in slope, to provide accurate representation of the range of natural slopes and reflect geomorphic differences of the area to be disturbed.

(3) The permit application shall include the map information specified in Sections 22(1)(a), 24(3), 24(4)(c), 24(4)(h), 27(1), 28(1), 31, 32, 33, 34, and 38 of this administrative regulation, and 405 KAR 8:010, Section 5(6).

(4) Maps, drawings, and cross-sections included in a permit application which are required by this section shall be prepared by or under the direction of and certified by a qualified registered professional engineer, and shall be updated as required by the cabinet. The qualified registered professional engineer shall not be required to certify true ownership of property.

Section 24. Mining and Reclamation Plan; General Requirements.

(1) Each application shall contain a detailed mining and reclamation plan (MRP) for the proposed permit area as set forth in this section through Section 38 of this administrative regulation, showing how the applicant will comply with KRS Chapter 350 and 405 KAR Chapters 16 through 20.

(2) Each application shall contain a description of the mining operations proposed to be conducted within the proposed permit area, including, at a minimum, the following:

(a) A narrative description of the type and method of coal mining procedures and proposed engineering techniques, anticipated annual and total production of coal, by tonnage, and the major equipment to be used for all aspects of those operations; and

(b) A narrative explaining the construction, modification, use, maintenance, and removal of the following facilities (unless retention of the facilities is to be approved as necessary for postmining land use as specified in 405 KAR 16:210):

1. Dams, embankments, and other impoundments;

2. Overburden and topsoil handling and storage areas and structures;

3. Coal removal, handling, storage, cleaning, and transportation areas and structures;

4. Spoil, coal processing waste, and noncoal waste removal, handling, storage, transportation, and disposal areas and structures;

5. Mine facilities; and

6. Water and air pollution control facilities.

(3) Each application shall contain plans and maps of the proposed permit area and adjacent areas as follows:

(a) The plans and maps shall show the lands proposed to be affected throughout the operation and any change in a facility or feature to be caused by the proposed operations, if the facility or feature was shown under Section 23 of this administrative regulation.

(b) The following shall be shown for the proposed permit area:

1. Buildings, utility corridors and facilities to be used;

2. The area of land to be affected within the proposed permit area, according to the sequence of mining and reclamation;

3. Each area of land for which a performance bond or other equivalent guarantee will be posted under 405 KAR Chapter 10;

4. Each coal storage, cleaning and loading area;

5. Each topsoil, spoil, coal waste, and noncoal waste storage area;

6. Each water diversion, collection, conveyance, treatment, storage, and discharge facility to be used;

7. Each air pollution collection and control facility;

8. Each source of waste and each waste disposal facility relating to coal processing or pollution control;

9. Each facility to be used to protect and enhance fish and wildlife and related environmental values;

10. Each explosive storage and handling facility; and

11. Location of each sedimentation pond, permanent water impoundment, coal processing waste bank, and coal processing waste dam and embankment, in accordance with Section 34 of this administrative regulation, and fill area for the disposal of excess spoil in accordance with Section 27 of this administrative regulation.

(c) Plans, maps, and drawings required under this section shall be prepared by, or under the direction of, and certified by a qualified registered professional engineer.

(4) Each plan shall contain the following information for the proposed permit area:

(a) A projected timetable for the completion of each major step in the mining and reclamation plan;

(b) A detailed estimate of the cost of reclamation of the proposed operations required to be covered by a performance bond under 405 KAR Chapter 10, with supporting calculations for the estimates;

(c) A plan for backfilling, soil stabilization, compacting, and grading, with contour maps or cross-sections that show the anticipated final surface configuration of the proposed permit area, in accordance with 405 KAR 16:190;



(d) A plan for removal, storage, and redistribution of topsoil, subsoil, and other material to meet the requirements of 405 KAR 16:050 including a demonstration of suitability of any proposed topsoil substitutes or supplements;

(e) A plan for revegetation as required in 405 KAR 16:200, including, but not limited to, descriptions of the: schedule of revegetation; species and amounts per acre of seeds and seedlings to be used; methods to be used in planting and seeding; mulching techniques; irrigation, if appropriate; pest and disease control measures, if any; and measures proposed to be used to determine the success of revegetation as required in 405 KAR 16:200, Section 6; and a soil testing plan for evaluation of the results of topsoil handling and reclamation procedures related to revegetation;

(f) A description of the measures to be used to maximize the use and conservation of the coal resource as required in 405 KAR 16:010, Section 2;

(g) A description of measures to be employed to ensure that all debris, acid-forming and toxic-forming materials, and materials constituting a fire hazard are disposed of in accordance with 405 KAR 16:150, and 405 KAR 16:190, Section 3, and a description of the contingency plans which have been developed to preclude sustained combustion of the materials;

(h) A description, including appropriate maps and drawings, of the measures to be used to seal or manage mine openings, and to plug, case, or manage exploration holes, other bore holes, wells, and other openings within the proposed permit area, in accordance with 405 KAR 16:040; and

(i) A description of steps to be taken to comply with the requirements of the Clean Air Act (42 USC 7401 et seq.), the Clean Water Act (33 USC 1251 et seq.), and other applicable air and water quality laws and regulations and health and safety standards. This description shall, at a minimum, consist of identification of permits or approvals required by these laws and regulations which the applicant either has obtained, has applied for, or intends to apply for.

Section 25. MRP; Existing Structures. (1) Each application shall contain a description of each existing structure proposed to be used in connection with or to facilitate the surface coal mining and reclamation operation. The description shall include:

(a) Location;

(b) Plans of the structure which describe its current condition;

(c) Approximate dates on which construction of the existing structure was begun and completed; and

(d) A showing, including relevant monitoring data or other evidence, whether the structure meets the performance standards of 405 KAR Chapters 16 through 20 or, if the structure does not meet those performance standards, a showing whether the structure meets the performance standards of the interim performance standards of 405 KAR Chapter 1.

(2) Each application shall contain a compliance plan for each existing structure proposed to be modified or reconstructed for use in connection with or to facilitate the surface coal mining and reclamation operation. The compliance plan shall include:

(a) Design specifications for the modification or reconstruction of the structure to meet the performance standards of 405 KAR Chapters 16 through 20;

(b) A construction schedule which shows dates for beginning and completing interim steps and final reconstruction;

(c) Provisions for monitoring the structure as required by the cabinet to ensure that the performance standards of 405 KAR Chapters 16 through 20 are met; and

(d) A showing that the risk of harm to the environment or to public health or safety will not be significant during the period of modification or reconstruction.

Section 26. MRP; Blasting. (1) Each application shall contain a blasting plan for the proposed permit area explaining how the

applicant intends to comply with the requirements of 405 KAR 16:120. This plan shall include, at a minimum, information setting forth the limitations the permittee will meet with regard to ground vibration and airblast, the bases for the ground vibration and airblast limitations, and the methods to be applied in controlling the adverse effects of blasting operations.

(2) Each application shall contain a description of the systems to be used to monitor compliance with the standards for ground vibration and airblast including identification of the types, capabilities, and sensitivities of blast monitoring equipment and identification of the monitoring procedures and locations.

(3) Blasting operations within 500 feet of active underground mines require approval of the cabinet, MSHA, and the Kentucky Department of Mines and Minerals.

Section 27. MRP; Disposal of Excess Spoil. (1) Each application shall contain descriptions, including appropriate maps and cross-section drawings, of the proposed disposal site and design of the spoil disposal structures according to 405 KAR 16:130. These plans shall describe the geotechnical investigation, design, construction, operation, maintenance, and removal if appropriate, of the site and structures.

(2) Each application shall contain the results of a geotechnical investigation of the proposed disposal site, including the following:

(a) The character of bedrock and any adverse geologic conditions in the disposal area;

(b) A survey identifying all springs, seepage, and groundwater flow observed or anticipated during wet periods in the area of the disposal site;

(c) An assessment of the potential effects of subsidence of the subsurface strata due to past and future mining operations;

(d) A technical description of the rock materials to be utilized in the construction of those disposal structures containing rock chimney cores or underlain by a rock drainage blanket; and

(e) A stability analysis including, but not limited to, strength parameters, pore pressures and long-term seepage conditions. These data shall be accompanied by a description of all engineering design assumptions and calculations and the alternatives considered in selecting the specific design specifications and methods.

(3) If, under 405 KAR 16:130, Section 1(4), rock toe buttresses or key way cuts are required, the application shall include the following:

(a) The number, location, and depth of borings or test pits which shall be determined with respect to the size of the spoil disposal structure and subsurface conditions; and

(b) Engineering specifications utilized to design the rock toe buttresses or key way cuts which shall be determined in accordance with subsection (2)(e) of this section.

Section 28. MRP; Transportation Facilities. (1) Each application shall contain a transportation facilities plan including a description of each road, conveyor, or rail system to be constructed, used, or maintained within the proposed permit area. The description shall include a map, appropriate cross-sections, and the following:

(a) Specifications for each road width, road gradient, road surface, road cut, fill embankment, culvert, bridge, drainage ditch, and drainage structure.

(b) A report of appropriate geotechnical analysis, where approval of the cabinet is required for alternative specifications, or for steep cut slopes under 405 KAR 16:220.

(c) A description of measures to be taken to obtain approval of the cabinet for alteration or relocation of a natural drainageway under 405 KAR 16:220.

(d) A description of measures, other than use of a rock headwall, to be taken to protect the inlet end of a ditch relief culvert, for approval by the cabinet under 405 KAR 16:220.

(2) Each plan shall contain a general description of each road,



conveyor, or rail system to be constructed, used, or maintained within the proposed permit area.

Section 29. MRP; Surface Mining Near Underground Mining. For surface mining activities within the proposed permit area to be conducted within 500 feet of an underground mine, the application shall describe the measures to be used to comply with 405 KAR 16:010, Section 3.

Section 30. MRP; Protection of Public Parks and Historic Places. (1) For any publicly-owned parks or any places listed on the National Register of Historic Places that may be adversely affected by the proposed operations, each plan shall describe the measures to be used to prevent adverse impact; or, if valid existing rights exist or joint agency approval is to be obtained under 405 KAR 24:040, Section 2(4), to minimize adverse impacts.

(2) The cabinet may require the applicant to protect historic or archaeological properties listed or eligible for listing on the National Register of Historic Places through appropriate mitigation and treatment measures. These measures need not be completed prior to permit issuance, but shall be completed before the properties are affected by surface mining activities.

Section 31. MRP; Protection of Public Roads. Each application shall describe, with appropriate maps and drawings, the measures to be used to ensure that the interests of the public and landowners affected are protected if, under 405 KAR 24:040, Section 2(6), the applicant seeks to have the cabinet approve:

(1) Conducting the proposed surface mining activities within 100 feet of the right-of-way line of any public road, except where mine access or haul roads join that right-of-way; or

(2) Relocating a public road.

Section 32. MRP; Protection of the Hydrologic Balance. (1) Each application shall contain a description, as set forth in this subsection, of the measures to be taken to minimize disturbances to the hydrologic balance within the permit area and adjacent area and to prevent material damage to the hydrologic balance outside the permit area.

(a) The description shall be based upon the baseline geologic, hydrologic, and other information required by Sections 12 through 16 of this administrative regulation and other appropriate information, shall be specific to local hydrologic conditions, and shall be prepared in a manner and detail acceptable to the cabinet.

(b) The description shall identify the protective measures to be taken to enable the operation to meet, at a minimum, each of the hydrologic requirements referenced in this paragraph, or shall demonstrate to the satisfaction of the cabinet that protective measures are not necessary for the operation to meet the requirements:

1. Meet applicable water quality statutes, administrative regulations, standards, and effluent limitations as required by 405 KAR 16:060, Section 1(3);
2. Avoid acid or toxic drainage as required by 405 KAR 16:060, Sections 4, 5, and 6;
3. Control the discharge of sediment to streams located outside the permit area as required by 405 KAR 16:060, Section 2;
4. Control the drainage and discharge of water within the permit area as required by 405 KAR 16:060, Sections 1(4), 3, 9, and 12, and 405 KAR 16:080;
5. Restore the approximate premining recharge capacity of the permit area as required by 405 KAR 16:060, Section 5; and
6. Protect or replace the water supply of present users as required by 405 KAR 16:060, Section 8.

(c) The cabinet may require that the description include protective measures in addition to those identified under paragraph (b) of this subsection, if the cabinet determines that additional measures are needed to protect the hydrologic balance in accordance with 405 KAR 16:060.

(2) Each application shall include the design of any necessary protective measures identified under subsection (1) of this section. The design shall be prepared in a manner and detail acceptable to the cabinet including, as appropriate, calculations, maps, drawings, and written explanations as necessary to document the design.

(3) Each application shall include a determination of the probable hydrologic consequences of the mining and reclamation operations for the permit area and adjacent area.

(a) The determination shall be based upon the baseline geologic, hydrologic, and other information required by Sections 12 through 16 of this administrative regulation and other appropriate information, and may include information statistically representative of the site.

(b) The determination shall be completed according to the parameters and in the detail required by the cabinet to enable the cabinet to prepare a cumulative impact assessment, and shall take into account the anticipated effects of protective measures required by this chapter.

(c) For surface water systems, the determination shall, at a minimum, include probable impacts on:

1. Peak discharge rates, emphasizing the potential for flooding;
2. Settleable solids at peak discharge;
3. Low-flow discharge rates, emphasizing the potential for water supply diminution;
4. Suspended solids at low flow;
5. pH, at low flow, emphasizing the potential for acid drainage conditions, including depressed levels of alkalinity and elevated levels of iron, manganese, acidity, sulfate, and total dissolved solids or specific conductance, which are generally associated with acid drainage conditions.

(d) For groundwater systems, the determination shall, at a minimum, include probable impacts on:

1. Water quantity, emphasizing water levels and the potential for water supply diminution for existing users, and dewatering of aquifers which are not currently being used for water supply but have the potential to be developed as a water supply source.
2. pH, emphasizing the potential for acid drainage conditions, including depressed levels of alkalinity and elevated levels of iron, manganese, acidity, sulfate, and total dissolved solids or specific conductance, which are generally associated with acid drainage conditions.

(e) The determination shall include a finding on whether the proposed surface mining activities may proximately result in contamination, diminution or interruption of an underground or surface source of water that is used for domestic, agricultural, industrial or other legitimate use within the permit area or adjacent areas at the time the application is submitted.

(f) An application for a major revision to a permit shall be reviewed by the cabinet to determine whether a new or updated determination of the probable hydrologic consequences shall be required.

(4)(a) The application shall include a plan for the collection, recording, and reporting of groundwater and surface water quantity and quality data to monitor the effects of the mining and reclamation operations on the hydrologic balance, according to 405 KAR 16:110.

(b) The monitoring plan shall be based on the geologic and hydrologic baseline information, the mining and reclamation plan, and the determination of probable hydrologic consequences; and shall:

1. Identify the quantity and quality parameters to be monitored, sampling frequency, and monitoring site locations; and
2. Describe how the data may be used to determine the impacts of the operation on the hydrologic balance.

(5) An application for a major revision to a permit shall be reviewed by the cabinet to determine whether a new or updated cumulative hydrologic impact assessment shall be made.

Section 33. MRP; Diversions. Each application shall contain descriptions, including maps and cross-sections, of stream channel

diversions and other diversions to be constructed within the proposed permit area to achieve compliance with 405 KAR 16:080.

Section 34. MRP; Impoundments and Embankments. (1) General. Each application shall include detailed design plans for each proposed sedimentation pond, water impoundment, and coal mine ~~[preprocessing]~~ waste bank, dam, or embankment within the proposed permit area. Each plan shall:

- (a) Be prepared by, or under the direction of, and certified by a qualified registered professional engineer;
- (b) Contain a description, map, and appropriate cross-sections and drawings of the structure and its location;
- (c) Contain all hydrologic and geologic information and computations necessary to demonstrate compliance with the design and performance standards of 405 KAR Chapter 16; and all information utilized by the applicant to determine the probable hydrologic consequences of the mining operations under Section 32(3) of this administrative regulation;
- (d) Contain an assessment of the potential effect on the structure from subsidence of the subsurface strata resulting from past underground mining operations if underground mining has occurred;
- (e) Include any geotechnical investigation, design, and construction requirements for the structure;
- (f) Describe the operation and maintenance requirements for each structure; and
- (g) Describe the timetable and plans to remove each structure, if appropriate.

(2) Sedimentation ponds.

~~[(a)] Sedimentation ponds, whether temporary or permanent, shall be designed in compliance with the requirements of 405 KAR 16:090 and 16:100. [Any sedimentation pond or earthen structure which will remain on the proposed permit area as a permanent water impoundment shall also be designed to comply with the requirements of 405 KAR 16:100.~~

~~[(b) Each plan shall, at a minimum, comply with the requirements of the MSHA, 30 CFR 77.216-1 and 77.216-2.]~~

(3) Permanent and temporary impoundments. Permanent and temporary impoundments shall be designed to comply with the requirements of 405 KAR 16:100. Each plan for an impoundment meeting the size or other criteria of MSHA, 30 CFR 77.216(a), shall comply with the requirements of [the MSHA,] 30 CFR 77.216-1 and 77.216-2. The plan required to be submitted to the district manager of MSHA under 30 CFR 77.216 shall be submitted to the cabinet as part of the permit application. After the plan has been approved by MSHA, the applicant shall submit to the cabinet a copy of the final approved plan, a copy of all correspondence from MSHA regarding the plan, a copy of any technical support documents requested by MSHA during its review, and a notarized statement by the applicant that the copy submitted to the cabinet is a complete and correct copy of the final plan approved by MSHA.

(4) Coal mine ~~[preprocessing]~~ waste banks. Coal mine ~~[preprocessing]~~ waste banks shall be designed to comply with the requirements of 405 KAR 16:140.

(5) Coal mine ~~[preprocessing]~~ waste dams and embankments. Coal mine ~~[preprocessing]~~ waste dams and embankments shall be designed to comply with the requirements of 405 KAR 16:100 and 16:160. The plan for an impounding structure that is required to be submitted to the district manager of MSHA under 30 CFR 77.216 shall be submitted to the cabinet as part of the permit application. After the plan has been approved by MSHA, the applicant shall submit to the cabinet a copy of the final approved plan, a copy of all correspondence from MSHA regarding the plan, a copy of any technical support documents requested by MSHA during its review, and a notarized statement by the applicant that the copy submitted to the cabinet is a complete and correct copy of the final plan approved by MSHA. Each plan shall comply with the requirements of MSHA, 30 CFR 77.216-1 and 77.216-2, and shall contain the results of a geotechnical

investigation of the proposed dam or embankment foundation area, to determine the structural competence of the foundation which will support the proposed dam or embankment structure and the impounded material. The geotechnical investigation shall be planned and supervised by an engineer or engineering geologist, according to the following:

(a) The number, location, and depth of borings and test pits shall be determined using current prudent engineering practice for the size of the dam or embankment, quantity or material to be impounded, and subsurface conditions.

(b) The character of the overburden and bedrock, the proposed abutment sites, and any adverse geotechnical conditions which may affect the particular dam, embankment, or reservoir site shall be considered.

(c) All springs, seepage, and groundwater flow observed or anticipated during wet periods in the area of the proposed dam or embankment shall be identified on each plan.

(d) Consideration shall be given to the possibility of mud flows, rock-debris falls, or other landslides into the dam, embankment, or impounded material.

(6) If the structure is Class B-moderate hazard or Class C-high hazard under 405 KAR 7:040, Section 5, and 401 KAR 4:030, or if the structure meets the size or other criteria of MSHA, 30 CFR 77.216(a), [to be twenty (20) feet or higher or is to impound more than twenty (20) acre-feet,] each plan under subsections (2), (3), and (5) of this section shall include a stability analysis of the [each] structure. The stability analysis shall include, but not be limited to, strength parameters, pore pressures, and long-term seepage conditions. The plan shall also contain a description of each engineering design assumption and calculation with a discussion of each alternative considered in selecting the specific design parameters and construction methods.

Section 35. MRP; Air Pollution Control. For all surface mining activities the application shall contain an air pollution control plan which includes the following:

(1) An air quality monitoring program, if required by the cabinet, to provide sufficient data to evaluate the effectiveness of the fugitive dust control practices under subsection (2) of this section to comply with applicable federal and state air quality standards; and

(2) A plan for fugitive dust control practices, as required under 405 KAR 16:170.

Section 36. MRP; Fish and Wildlife Protection and Enhancement.

(1) Each application shall include a description of how, to the extent possible using the best technology currently available, the permittee will minimize disturbances and adverse impacts on fish and wildlife and related environmental values, including compliance with the Endangered Species Act, during the surface coal mining and reclamation operations, and how enhancement of these resources will be achieved where practicable.

(2) This description shall:

(a) Apply, at a minimum, to species and habitats identified under Section 20 of this administrative regulation;

(b) Include protective measures that will be used during the active mining phase of operation. Protective measures may include the establishment of buffer zones, the selective location and special design of haul roads and powerlines, and the monitoring of surface water quality and quantity; and

(c) Include enhancement measures that will be used during the reclamation and postmining phase of operation to develop aquatic and terrestrial habitat. Enhancement measures may include restoration of streams and other wetlands, retention of ponds and impoundments, establishment of vegetation for wildlife food and cover, and the replacement of perches and nest boxes. If the plan does not include enhancement measures, a statement shall be given explaining why enhancement is not practicable.

(3) Upon request, the cabinet shall provide the protection and

enhancement plan required under this section to the U.S. Department of the Interior, Fish and Wildlife Service regional or field office for their review. This information shall be provided within ten (10) days of receipt of the request from the Service.

(4)(a) A fish and wildlife protection and enhancement plan shall be required for amendments and revisions that:

1. Propose extension into a wetland;
2. Propose significant disturbance in a new watershed in which the permit area or adjacent area includes an important stream;
3. Seek to obtain a stream buffer zone variance under 405 KAR 16:060, Section 11, or seek to modify an existing stream buffer zone variance;
4. Propose extension of the permit boundary that involves a new surface disturbance of five (5) acres or more; or
5. Involve new permit or adjacent areas likely to contain, or that could reasonably be expected to contain, a state or federal endangered or threatened species or its critical habitat.

(b) For other amendments and revisions, a determination of whether a protection and enhancement plan is necessary shall be made on a case-by-case basis.

(5) This section shall apply to applications for permits, amendments and revisions submitted to the cabinet on or after November 17, 1992.

Section 37. MRP; Postmining Land Use. (1) Each plan shall contain a description of the proposed land use or uses following reclamation of the land within the proposed permit area, including:

- (a) A discussion of the utility and capacity of the reclaimed land to support a variety of alternative uses, and the relationship of the proposed use to existing land use policies and plans;
- (b) A discussion of how the proposed postmining land use is to be achieved and the necessary support activities which may be needed to achieve the proposed land use, including but not necessarily limited to management practices to be conducted during the liability period for the commercial forest land, cropland (including hayland), and pastureland land uses;
- (c) If a land use different from the premining land use is proposed, all supporting documentation required for approval of the proposed alternative use under 405 KAR 16:210;
- (d) A discussion of the consideration which has been given to making all of the proposed surface mining activities consistent with surface owner plans and applicable state and local land use plans and programs; and
- (e) A copy of the comments concerning the proposed use from the legal or equitable owner of record of the surface of the proposed permit area and the state and local government agencies, if any, which would have to initiate, implement, approve, or authorize the proposed use of the land following reclamation.

(2) Approval of the initial postmining land use plan pursuant to this section, shall not preclude subsequent consideration and approval of a revised postmining land use plan in accordance with the applicable requirements of 405 KAR Chapters 7 through 24.

JAMES E. BICKFORD, Secretary

APPROVED BY AGENCY: July 28, 1997

FILED WITH LRC: July 28, 1997 at 4 p.m.

PUBLIC HEARING: A public hearing on this proposed amendment has been scheduled for 9:30 a.m. (EDT) on Tuesday, September 30, 1997, in the Training Room (D-16) of the Department for Surface Mining Reclamation and Enforcement at 2 Hudson Hollow, Frankfort, Kentucky. Persons who wish to testify at the hearing shall notify the contact person listed below, in writing, by September 23, 1997. The scheduled hearing will be canceled if the contact person has not received any written notice of intent to testify by September 23, 1997, five workdays before the scheduled hearing date. If the hearing is held, it will be open to the public. Any person in attendance who wishes to testify on the proposed amendment will be given a fair

and reasonable opportunity to do so, regardless of whether the person has given the cabinet prior written notice of his intent to testify. To assure an accurate record, the cabinet requests each person testifying at the hearing to provide the cabinet with a written copy of his testimony. The cabinet is not required to make a recording or transcript of the hearing unless someone makes a written request for it, in which case the person requesting the recording or transcript shall pay for it. WRITTEN COMMENTS: A person who wishes to comment on this proposed amendment but does not wish to testify at the hearing may submit written comments on the proposed amendment at any time before 4:30 p.m. (EDT) on Tuesday, September 30, 1997, the scheduled hearing date. Comments received after that time will not be considered. Written comments and written notices of intent to testify at the hearing shall be submitted to the contact person listed below.

CONTACT PERSON: Jim Villines, Kentucky Department for Surface Mining, 2 Hudson Hollow, Frankfort, Kentucky 40601-4321, Tel. (502) 564-6940, FAX (502) 564-5698.

## REGULATORY IMPACT ANALYSIS

Contact Person: Jim Villines

1. Type and number of entities affected: This amendment will affect applicants with permitting actions taken after the effective date of the amendment. In calendar year 1996 the cabinet's Division of Permits issued, for surface mining, 119 new permits and amendments, 73 major revisions, 243 minor revisions, 52 permit renewals and 46 transfers.

2. Direct and indirect costs or savings on the affected entities:

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 comments were received on this subject. The amendment is not expected to have an effect on the cost of living and employment.

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 on this subject. The amendment is not expected to have an effect on the cost of doing business.

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: In general, this amendment does not impose markedly different permitting requirements than those that currently exist. There is an opportunity for applicants to reduce their overall cost of designing and obtaining approval of impounding structures, since the cabinet intends to rely heavily upon MSHA review and approval of impounding structures.

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: The cabinet will experience some reduction in review workload by decreasing the extent of engineering review of impounding structures through reliance on MSHA review and approval of those structures.

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

3. Additional factors increasing or decreasing costs: None

b. Reporting and paperwork requirements: No significant change in overall reporting and paperwork requirements is expected.

4. Assessment of anticipated effect on state and local revenues: No effect is expected.

5. Source of revenue to be used for implementation and enforcement of administrative regulation: No additional revenue is expected to be needed.

6. To the extent available from the public comments received, the economic impact, including effects of economic activities arising from

the administrative regulation, on:

a. Geographical area in which administrative regulation will be implemented: No comments on economic impact were received. No economic impact on the coal mining regions is expected.

b. Kentucky: No comments on economic impact were received. No statewide economic impact is expected.

7. Assessment of alternative methods; reasons why alternatives were rejected: There is no feasible alternative to adoption of most of this amendment, since the cabinet's administrative regulations must be consistent with federal regulations.

8. Assessment of expected benefits of the administrative regulation: Applicants for approval of impounding structures will benefit from the cabinet's reliance on MSHA review and approval to minimize duplication of review.

9.a. Identify effects on public health and environmental welfare of the geographical area in which implemented and Kentucky: No effect on public health and environmental welfare will result in the coal regions or statewide.

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

c. If detrimental effect would result, explain detrimental effect: None

10. Identify any statute, administrative regulation, or government policy which may be in conflict, overlapping, or duplication: There is no conflict, overlap, or duplication.

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

b. If in conflict, was the effort made to harmonize the proposed administrative regulation with conflicting provisions: No conflict.

11. Any additional information or comments: None

12. TIERING: Is tiering applied? No. Tiering is not applicable to this proposed amendment because, under the federal and Kentucky surface mining laws and regulations, these requirements must apply equally to all permittees under 405 KAR Chapters 7-24.

#### FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 16 USC 1276(a), 1531 et seq., 30 USC 1253, 1255, 1257, 1258, 1267, 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. The federal regulations corresponding to this amendment are 30 CFR 780.21(e), 780.21(f)(3)(iii) and 780.25.

2. State compliance standards. Section 16 contains permitting requirements regarding alternative water supply information. Section 16 presently requires the application to identify the extent to which the proposed mining activities may proximately result in contamination, diminution, or interruption of an underground or surface source of water for domestic, agricultural, industrial, or other legitimate use within the permit area or adjacent area. If contamination, diminution, or interruption of a surface or ground water source may result, the application must identify and describe the adequacy and suitability of the alternative sources of water supply that could be developed for existing premining uses and approved postmining land uses. This section will be amended to require the permit application to identify and describe the adequacy of the alternative sources of water supply that could be developed for existing premining uses and approved postmining land uses, if the applicant's determination of probable hydrologic consequences under 405 KAR 8:030 Section 32 indicates that the proposed underground mining activities may proximately result in contamination, diminution, or interruption of an underground or surface source of water for domestic, agricultural, industrial, or other legitimate use. This is merely part of a structural change that shifts the determination as to whether water supplies may be affected from Section 16 to Section 32. The requirement to provide information on alternative water supplies remains in Section 16. Section 32 contains permitting requirements regarding protection of the hydrolog-

ic balance. Section 32(3) is amended by inserting a new paragraph (e) so that the applicant's determination of probable hydrologic consequences shall include a finding on whether the proposed surface mining activities may proximately result in contamination, diminution, or interruption of an underground or surface source of water that is used for domestic, agricultural, industrial, or other legitimate use within the permit area or adjacent areas at the time the application is submitted. This is merely part of a structural change that shifts this determination from Section 16 to Section 32. Section 34 sets forth permitting requirements for detailed design plans for sedimentation ponds, water impoundments, and coal mine waste banks, dams, and embankments. Plans must be prepared by, or under the direction of a registered professional engineer, and must contain appropriate maps and drawings, hydrologic and geologic information and computations necessary to demonstrate compliance with the performance standards of 405 KAR Chapter 16, all information used to determine the probable hydrologic consequences of the mining operations, an assessment of subsidence effects on the structure if appropriate, any geotechnical investigations, operation and maintenance requirements for the structure, and a schedule for removal if appropriate. Sedimentation ponds must be designed to comply with 405 KAR 16:090 and 16:100, the performance standards applicable to sedimentation ponds and other impoundments. Permanent and temporary impoundments must be designed to comply with 405 KAR 16:100. Plans for impoundments meeting the size criteria of the U.S. Department of Labor's Mine Safety and Health Administration (MSHA) must comply with the applicable MSHA regulations. The design plan required to be submitted to MSHA under 30 CFR 77.216 must be submitted to the cabinet as part of the permit application. After the plan has been approved by MSHA the applicant must submit to the cabinet a copy of the plan approved by MSHA including copies of correspondence from MSHA, any technical reports requested by MSHA, and a notarized statement by the applicant that the copy submitted to the cabinet is a complete and correct copy of the plan approved by MSHA. Impounding structures to be constructed of coal mine waste or to impound coal mine waste must be designed to meet MSHA requirements, the plans submitted to MSHA must be submitted to the cabinet as with other impoundments, and additional requirements for geotechnical and other investigations of site conditions must be met. The plan for any impounding structure that is Class B - moderate hazard or Class C - high hazard under 405 KAR 7:040 Section 5 and 401 KAR 4:030, or that meets the size or other criteria of MSHA at 30 CFR 77.216(a), must include a stability analysis of the structure and include additional engineering information used in making the stability analysis.

3. Minimum or uniform standards contained in the federal mandate. The federal regulations corresponding to this amendment are 30 CFR 780.21(e), 780.21(f)(3)(iii) and 780.25. 30 CFR 780.21(e) requires that if the PHC determination required by 780.21(f) indicates that the proposed mining operation may proximately result in contamination, diminution, or interruption of an underground or surface source of water within the proposed permit or adjacent areas which is used for domestic, agricultural, industrial or other legitimate purpose, then the application shall contain information on water availability and alternative water sources, including the suitability of alternative water sources for existing premining uses and approved postmining land uses. 30 CFR 780.21(f)(3)(iii) requires that the applicant's determination of probable hydrologic consequences include a finding on whether the proposed operation may proximately result in contamination, diminution or interruption of an underground or surface source of water within the proposed permit or adjacent areas which is used for domestic, agricultural, industrial or other legitimate purpose. 30 CFR 780.25 contains permitting requirements for siltation structures, impoundments, banks, dams, and embankments. Both a general plan and a detailed plan are required for each structure. The general plan must be prepared by, or under the direction of, a qualified registered professional engineer, a profession-

al geologist, or in a state which authorizes land surveyors to prepare and certify such plans, a qualified registered professional land surveyor with assistance from experts in related fields such as landscape architecture. The general plan must contain a description, map, and cross-section of the structure and its location, preliminary hydrologic and geologic information required to assess the hydrologic impact of the structure, a survey describing the potential effects of subsidence on the structure if past underground mining has occurred, and a certification statement that includes a schedule for submitting any detailed design plans that are not submitted with the general plan. The regulatory authority must have approved in writing the detailed design plan before construction of the structure begins. Impoundments that meet the Class B or C criteria for dams in the USDA Soil Conservation Service's (now Natural Resources Conservation Service) publication Technical Release No. 60, "Earth Dams and Reservoirs", must meet the requirements of this section for structures that meet or exceed the size or other criteria of MSHA. TR-60 is incorporated by reference. Detailed design plans that meet or exceed the size or other criteria of MSHA at 30 CFR 77.216(a) must be prepared by a qualified registered professional engineer with assistance from experts in related fields such as geology, land surveying and landscape architecture. The detailed plan must include any geotechnical investigation, design, and construction requirements, and describe the timetable and plans for removal if appropriate. Designs for smaller structures not meeting the Class B or C or MSHA size criteria may be prepared by or under and certified by a qualified registered professional engineer, but may be prepared etc. by a qualified registered professional land surveyor in states that authorize it, except that all coal processing waste dams and embankments covered by 30 CFR 816.81 - 816.84 must be certified by a qualified registered professional engineer. Design plans for these smaller structures must also include any design and construction requirements and geotechnical information, describe operation and maintenance requirements, and describe the timetable and plans for removal if appropriate. Permanent and temporary impoundments must be designed to meet 30 CFR 816.49, the technical performance standards for impoundments. Plans for impoundments meeting the MSHA size criteria must comply with the MSHA criteria at 30 CFR 77.216-1 and 77.216-2. The plan required to be submitted to MSHA must be submitted to the regulatory authority as part of the permit application. For the smaller impoundments not meeting MSHA size criteria the regulatory authority may establish, through the state program approval process, engineering design standards that ensure stability comparable to a 1.3 static safety factor in lieu of engineering tests to establish compliance with the minimum 1.3 static safety factor specified in 30 CFR 816.49(a)(4)(ii). Coal processing waste banks must be designed to meet 30 CFR 816.81 - 816.84. Coal processing waste dams and embankments must also be designed to meet 30 CFR 816.81 - 816.84 and to comply with MSHA 30 CFR 77.216-1 and 77.216-2, and the plan must include a geotechnical investigation of the foundation by an engineer or engineering geologist and include certain types of information about site specific conditions. If a structure meets the TR-60 Class B or C criteria or the MSHA size criteria of 30 CFR 77.216(a) the design plan must include a stability analysis of the structure that must include strength parameters, pore pressures, and long term seepage conditions, and the plan must also describe each engineering design assumption and calculation with a discussion of each alternative considered in selecting the specific design parameters and construction methods.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? Yes

a. Section 34(3) and (5) require that design plans for impounding structures that are required to be submitted to MSHA, also must be submitted to the cabinet as part of the permit application. This requirement is in the corresponding federal regulations. However, this amendment further requires that after these plans have been

approved by MSHA, the applicant must submit to the cabinet a copy of the final approved plans, a copy of all correspondence from MSHA regarding the plans, a copy of any technical support documents requested by MSHA, and a notarized statement by the applicant that the copy submitted to the cabinet is a complete and correct copy of the final plan approved by MSHA. Justification: In order to minimize duplication of technical review of impounding structures by MSHA and the cabinet, and to minimize conflicts for the applicant that may arise from duplication of review, the cabinet intends to rely heavily upon the review conducted by MSHA engineers and upon the final plans approved by MSHA. The cabinet and MSHA have been working closely to coordinate review. The applicant will submit to the cabinet, as part of the permit application, the same plan for the impounding structure that he initially submits to MSHA. The cabinet will review aspects of the plan that are within the cabinet's responsibilities but are not within MSHA's responsibilities. The applicant will work directly with MSHA regarding aspects of the plan being reviewed by MSHA. After MSHA has given its final approval to the plan, the applicant will submit a copy of the approved plan, correspondence, supporting documents, and a notarized statement that the copy is complete and correct, to the cabinet. The cabinet expects to rely heavily upon the MSHA review to minimize the extent of final cabinet review necessary to ensure compliance with the cabinet's requirements. It is important to ensure that the plan actually approved by MSHA is included in the permit application so there will be no discrepancy between the plan approved by MSHA and the plan approved by the cabinet. The additional requirements are intended to provide that assurance.

b. Section 34 refers to Class B and C criteria under 405 KAR 7:040 Section 5 and 401 KAR 4:030 (administrative regulation of the cabinet's Division of Water regarding criteria for dams), whereas the federal regulation refers to Class B and C criteria in the USDA-SCS Technical Release No. 60 and incorporate TR-60 by reference. Justification: The Class B and C criteria of the cabinet and those of TR No. 60 are virtually identical criteria, since the Division of Water's criteria were originally developed based upon the SCS criteria. Thus there is no need for the cabinet's regulations to refer to, or to incorporate by reference, TR-60.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Because several differences are described under question no. 4 above, the justification for each difference is shown immediately following its description, for ease of reading.

**NATURAL RESOURCES AND  
ENVIRONMENTAL PROTECTION CABINET  
Department for Surface Mining  
Reclamation and Enforcement  
(Amendment)**

**405 KAR 8:040. Underground coal mining permits.**

RELATES TO: KRS 350.060, 350.151, 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

STATUTORY AUTHORITY: KRS [Chapter 13A] 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

NECESSITY, FUNCTION, AND CONFORMITY: KRS 350.028(1) requires the cabinet to promulgate administrative regulations pertaining to surface coal mining operations including strip mining and the surface effects of underground mining to accomplish the purposes of KRS Chapter 350. KRS 350.060(13) requires the cabinet to promulgate administrative regulations for the permitting of operations



with surface effects of underground mining and other surface coal mining and reclamation operations. This administrative regulation applies to surface coal mining and reclamation operations with surface effects of underground mining. It requires the applicant to provide information related to environmental resources, his legal and compliance status, and his mining and reclamation plan, and requires the applicant to make certain showings to obtain a permit. KRS 350.028(5), 350.151(1), and 350.465(2), (5) authorize and direct the cabinet to promulgate administrative regulations for surface and underground coal mining operations for the purpose of accepting and administering primary enforcement responsibilities under the permanent regulatory program pursuant to PL 95-87, the federal Surface Mining Control and Reclamation Act of 1977; and direct that the cabinet's administrative regulations be consistent with, and not more stringent than required by, that Act. PL 95-87 does not require Kentucky to comply with its provisions, but in order to retain primary enforcement responsibility under that Act the cabinet's administrative regulations must be consistent with federal regulations promulgated pursuant to that Act. This administrative regulation is being amended at Section 16 regarding alternative water supply information, at Section 26 regarding subsidence control, at Section 32(1)(b) regarding the identification of protective measures needed to meet hydrologic requirements, at Section 32(3) regarding the determination of probable hydrologic consequences, and at Section 34 regarding impoundments and embankments. This amendment differs from the corresponding federal regulations as follows:

1. Section 16 of this administrative regulation requires information on alternative sources of water supply if the applicant's determination of probable hydrologic consequences under Section 32 of this administrative regulation finds that water supplies may be adversely affected. There is no exact federal counterpart to this requirement for alternative water supply information for underground mines, although a close parallel is found in the subsidence control plan requirements at 30 CFR 784.20(b)(8), which require a description of measures to be taken to replace adversely affected protected water supplies. This requirement makes 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(1) of this administrative regulation requires that the application contain an example of the letter by which the applicant proposes to notify the owners of all structures and water supplies identified under this subsection for which a presubsidence condition survey is required under 405 KAR 18:210 Section 1(4). The corresponding federal regulation does not require the sample letter. The federal regulations are structured such that the presubsidence condition surveys of structures and water supplies must be included in the permit application prior to permit issuance. The cabinet's administrative regulations allow those surveys to be submitted after permit issuance. The example letter is needed in the permit application to ensure that the applicant is prepared to provide proper notice to owners of structures and water supplies after permit issuance.

3. Section 26 of this administrative regulation does not include the requirement at 30 CFR 784.20(a)(3) for presubsidence surveys of the condition of structures and the quantity and quality of water supplies that may be damaged by subsidence. The federal regulation is structured such that the map and narrative information to identify structures and water supplies vulnerable to subsidence damage, and all necessary presubsidence condition surveys on those structures and water supplies, must be conducted prior to issuance of the permit. The map and narrative information required under Section 26(1)(a) and (b) of this administrative regulation is necessary to determine if a subsidence control plan is needed, and if so to design it, and therefore must be included in the permit application and subject to review by the public and the cabinet prior to issuance of the permit. However, it is appropriate to allow presubsidence condition surveys to be conducted after permit issuance. Because the purpose of a presubsidence condition survey is to provide a baseline against which

subsidence damage to a particular structure or water supply, if it occurs, can be measured, it is essential that the survey be conducted prior to mining near that structure or water supply, but it is not essential to the purpose of the survey that it be conducted prior to permit issuance. Requiring presubsidence surveys under 405 KAR 18:210 rather than under this administrative regulation will achieve the purpose intended under 30 CFR 784.20.

4. Section 26 of this administrative regulation, in three (3) locations refers to water supplies for "domestic, agricultural, industrial, or other legitimate use", whereas the corresponding federal regulation refers to "drinking, domestic, or residential" water supplies. This administrative regulation addresses water supplies protected under KRS 350.421, whereas the federal regulation addresses water supplies protected under 30 USC 1309a.

5. Section 32(3) of this administrative regulation includes a new paragraph (e) so that the applicant's determination of probable hydrologic consequences shall include a finding on whether the proposed underground mining activities conducted after July 16, 1994 may proximately result in contamination, diminution, or interruption of an underground or surface source of water for domestic, agricultural, industrial, or other legitimate use within the permit area or adjacent areas at the time the application is submitted. The corresponding federal requirement at 30 CFR 784.14(e)(3)(iv) applies to underground mining activities conducted after October 24, 1992 and wells or springs used for domestic, drinking, or residential use. This administrative regulation addresses water supplies protected under KRS 350.421, as amended by 1994 HB 338, which took effect July 16, 1994. The federal regulation addresses water supplies protected under 30 USC 1309a, which was created October 24, 1992.

6. Section 34(3) and (5) of this administrative regulation, like the corresponding federal regulations, require that design plans for impounding structures that are required to be submitted to MSHA must also must be submitted to the cabinet as part of the permit application. However, this administrative regulation further requires that after these plans have been approved by MSHA, the applicant must submit to the cabinet a copy of the final approved plans, a copy of all correspondence from MSHA regarding the plans, a copy of any technical support documents requested by MSHA, and a notarized statement by the applicant that the copy submitted to the cabinet is a complete and correct copy of the final plan approved by MSHA. In order to minimize duplication of technical review of impounding structures by MSHA and the cabinet, and to minimize conflicts for the applicant that may arise from duplication of review, the cabinet intends to rely heavily upon the review conducted by MSHA engineers and upon the final plans approved by MSHA. It is important to ensure that the plans actually approved by MSHA are included in the permit application so there will be no discrepancy between the plans approved by the two agencies. The additional requirements are intended to provide that assurance.

7. Section 34 of this administrative regulation refers to Class B and C criteria under 405 KAR 7:040 Section 5 and 401 KAR 4:030 whereas the federal regulation refers to Class B and C criteria in the USDA-SCS Technical Release No. 60 and incorporate TR-60 by reference. The Class B and C criteria of the cabinet and those of Technical Release No. 60 are virtually identical criteria, since the criteria adopted under 401 KAR 4:030 were originally developed based upon the SCS criteria. Thus there is no need for this administrative regulation to refer to TR-60 or to incorporate it by reference. [KRS Chapter 350 in pertinent part requires the cabinet to promulgate rules and administrative regulations pertaining to permits for underground mining activities. This administrative regulation recognizes the distinct differences between surface mining activities and underground mining activities. This administrative regulation specifies certain information to be shown by the applicant related to legal and compliance status, environmental resources, and his mining and reclamation plan. This administrative regulation further specifies certain showings to be made by the applicant to obtain a permit.]

Section 1. General. (1) Applicability.

(a) This administrative regulation applies to any person who applies for a permit to conduct underground mining activities.

(b) The requirements set forth in this administrative regulation specifically for applications for permits to conduct underground mining activities, are in addition to the requirements applicable to all applications for permits to conduct surface coal mining and reclamation operations as set forth in 405 KAR 8:010.

(c) This administrative regulation sets forth information required to be contained in applications for permits to conduct underground mining activities, including:

1. Legal, financial, compliance, and related information;
2. Environmental resources information; and
3. Mining and reclamation plan information.

(2) The permit applicant shall provide to the cabinet in the application all the information required by this administrative regulation.

Section 2. Identification of Interests. An application shall contain the following information, except that the submission of a Social Security number is voluntary:

(1) A statement as to whether the applicant is a corporation, partnership, single proprietorship, association, or other business entity;

(2) The name, address, telephone number and, as applicable, Social Security number and employer identification number of the:

- (a) Applicant;
- (b) Applicant's resident agent; and
- (c) Person who will pay the abandoned mine land reclamation fee.

(3) For each person who owns or controls the applicant:

(a) The person's name, address, Social Security number, and employer identification number;

(b) The person's ownership or control relationship to the applicant, including percentage of ownership and location in organizational structure;

(c) The title of the person's position, date position was assumed, and when submitted under 405 KAR 8:010, Section 18(5) date of departure from the position;

(d) Each additional name and identifying number, including employer identification number, federal or state permit number, and MSHA number with date of issuance, under which the person owns or controls, or previously owned or controlled, a surface coal mining and reclamation operation in the United States within the five (5) years preceding the date of the application; and

(e) The application number or other identifier of, and the regulatory authority for, any other pending surface coal mining operation permit application filed by the person in any state in the United States.

(4) For any surface coal mining operation owned or controlled by either the applicant or by any person who owns or controls the applicant, the operation's:

(a) Name, address, identifying numbers, including employer identification number, federal or state permit number, and MSHA number, the date of issuance of the MSHA number, and the regulatory authority; and

(b) Ownership or control relationship to the applicant, including percentage of ownership and location in organizational structure.

(5) The names and addresses of:

(a) Every legal or equitable owner of record of the areas to be affected by surface operations and facilities and every legal or equitable owner of record of the coal to be mined;

(b) The holders of record of any leasehold interest in areas to be affected by surface operations or facilities and the holders of record of any leasehold interest in the coal to be mined; and

(c) Any purchaser of record under a real estate contract of areas to be affected by surface operations and facilities and any purchaser

of record under a real estate contract of the coal to be mined.

(6) The names and addresses of the owners of record of all surface and subsurface areas contiguous to any part of the proposed permit area.

(7) The name of the proposed mine and all MSHA identification numbers that have been assigned for the mine and all mine associated structures that require MSHA approval.

(8) Proof, such as a power of attorney or resolution of the board of directors, that the individual signing the application has the power to represent the applicant in the permit matter.

(9) A statement of all lands, interests in lands, options, or pending bids on interests held or made by the applicant for lands which are contiguous to the area to be covered by the permit.

(10) After an applicant has been notified that his or her application has been approved, but before the permit is issued, the applicant shall, as applicable, update, correct, or indicate that no change has occurred in the information previously submitted under subsections (1) through (4) of this section.

(11) The permittee shall, in writing, inform the cabinet of any change of the permittee's address immediately if changed at any point prior to final bond release.

(12) The permittee shall submit updates of the following information in writing to the cabinet within thirty (30) days of the effective date of any change. Updates shall be submitted for any changes that occur at any point prior to final bond release. Failure to submit updated information shall constitute a violation of KRS Chapter 350 only upon the permittee's refusal or failure to timely submit, as determined by the cabinet, the information to the cabinet upon request. After the permittee's refusal or failure to timely submit the information to the cabinet upon request, the cabinet may suspend the permit after opportunity for hearing pending compliance with this subsection:

(a) The names and addresses of every officer, partner, director, or person performing a function similar to a director of the permittee;

(b) The names and addresses of principal shareholders; and

(c) Whether the permittee or other persons specified in this subsection are subject to any of the provisions of KRS 350.130(3).

Section 3. Violation Information. Each application shall contain the following information:

(1) A statement of whether the applicant or any subsidiary, affiliate, or persons controlled by or under common control with the applicant has:

(a) Had a coal mining permit of the United States or any state suspended or revoked in the five (5) years preceding the date of submission of the application; or

(b) Forfeited a coal mining performance bond or similar security deposited in lieu of bond.

(2) If any suspension, revocation, or forfeiture, as described in subsection (1) of this section, has occurred, the application shall contain a statement of the facts involved, including:

(a) Identification number and date of issuance of the permit, and date and amount of bond or similar security;

(b) Identification of the authority that suspended or revoked the permit or forfeited the bond and the stated reasons for that action;

(c) The current status of the permit, bond, or similar security involved;

(d) The date, location, and type of any administrative or judicial proceedings initiated concerning the suspension, revocation, or forfeiture; and

(e) The current status of these proceedings.

(3) For any violation of a provision of SMCRA, federal regulations enacted pursuant to SMCRA, KRS Chapter 350 and administrative regulations adopted pursuant thereto, any other state's laws or regulations under SMCRA, any federal law, rule, or regulation pertaining to air or water environmental protection, or any Kentucky or other state's law, rule, or regulation enacted pursuant to federal



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law, rule, or regulation pertaining to air or water environmental protection incurred in connection with any surface coal mining operation, a list of all violation notices received by the applicant during the three (3) year period preceding the application date, and a list of all unabated cessation orders and unabated air and water quality violation notices received prior to the date of the application by any surface coal mining and reclamation operation owned or controlled by either the applicant or by any person who owns or controls the applicant. For each violation notice or cessation order reported, the lists shall include the following information, as applicable:

(a) Any identifying numbers for the operation, including the federal or state permit number and MSHA number, the dates of issuance of the violation notice and MSHA number, the name of the person to whom the violation notice was issued, and the name of the issuing regulatory authority, department, or agency;

(b) A brief description of the particular violation alleged in the notice;

(c) The final resolution of each violation notice, if any;

(d) For each violation notice that has not been finally resolved:

1. The date, location, and type of any administrative or judicial proceedings initiated concerning the violation, including, but not limited to, proceedings initiated by any person identified in this subsection to obtain administrative or judicial review of the violation; and

2. The current status of the proceedings and of the violation notice; and

3. The actions, if any, taken or being taken by any person identified in this subsection to abate the violation.

(4) After an applicant has been notified that his or her application has been approved, but before the permit is issued, the applicant shall, as applicable, update, correct, or indicate that no change has occurred in the information previously submitted under subsections (1) through (3) of this section.

(5) Upon request by a small operator the cabinet shall provide to the small operator, with regard to persons under subsection (1) of this section which are identified by the small operator, the compliance information required by this section regarding suspension and revocation of permits and forfeiture of bonds under KRS Chapter 350, and information pertaining to violations of KRS Chapter 350 and administrative regulations promulgated thereunder.

**Section 4. Right of Entry and Right to Mine.** (1) Each application shall contain a description of the documents upon which the applicant bases his or her legal right to enter and begin underground mining activities in the permit area and whether that right is the subject of pending litigation. The description shall identify those documents by type and date of execution, identify the specific lands to which the document pertains, and explain the legal rights claimed by the applicant.

(2) For underground mining activities where the associated surface operations involve the surface mining of coal and the private mineral estate to be mined has been severed from the private surface estate, the application shall contain, for lands to be affected by those operations within the permit area:

(a) A copy of the written consent of the surface owner for the extraction of coal by surface mining methods; or

(b) A copy of the conveyance that expressly grants or reserves the right to extract coal by surface mining methods; or

(c) If the conveyance does not expressly grant the right to extract the coal by surface mining methods, a copy of the original instrument of severance upon which the applicant bases his right to extract coal by surface mining methods and documentation that under applicable state law, the applicant has the legal authority to extract the coal by those methods.

(3) Nothing in this section shall be construed to afford the cabinet the authority to adjudicate property title disputes.

**Section 5. Relationship to Areas Designated Unsuitable for Mining.** (1) Each application shall contain a statement of available information on whether the proposed permit area is within an area designated unsuitable for underground mining activities under 405 KAR Chapter 24, or designated unsuitable for surface mining activities if the proposed underground mining activities also involve surface mining of coal, or under study for designation in an administrative proceeding initiated under that chapter.

(2) If an applicant claims the exemption in 405 KAR 8:010, Section 14(4)(b), the application shall contain information supporting the applicant's assertion that it made substantial legal and financial commitments before January 4, 1977, concerning the proposed underground mining activities.

(3) If an applicant proposes to conduct or locate surface operations or facilities within 300 feet of an occupied dwelling, the application shall include the waiver of the owner of the dwelling as required in 405 KAR 24:040, Section 2(5).

(4) If the applicant proposes to conduct or locate surface operations or facilities within 100 feet of a public road, the requirements of 405 KAR 24:040, Section 2(6) shall be met.

**Section 6. Permit Term Information.** (1) Each application shall state the anticipated or actual starting and termination date of each phase of the underground mining activities and the anticipated number of acres of surface lands to be affected, and the horizontal and vertical extent of proposed underground mine workings including the surface acreage overlying the underground workings, for each phase of mining and over the total life of the permit.

(2) If the applicant proposes to conduct the underground mining activities in excess of five (5) years, the application shall contain the information needed for the showing required under 405 KAR 8:010, Section 17(1).

**Section 7. Personal Injury and Property Damage Insurance Information.** Each application shall contain a certificate of liability insurance according to 405 KAR 10:030, Section 4.

**Section 8. Identification of Other Licenses and Permits.** Each application shall contain a list of all other licenses and permits needed by the applicant to conduct the proposed underground mining activities. This list shall identify each license and permit by:

(1) Type of permit or license;

(2) Name and address of issuing authority;

(3) Identification numbers of applications for those permits or licenses or, if issued, the identification numbers of the permits or licenses; and

(4) If a decision has been made, the date of approval or disapproval by each issuing authority.

**Section 9. Identification of Location of Public Office for Filing of Application.** Each application shall identify, by name and address, the appropriate regional office of the cabinet where the applicant will file a copy of the entire application for public inspection under 405 KAR 8:010, Section 8(8).

**Section 10. Newspaper Advertisement and Proof of Publication.** A copy of the newspaper advertisement of the application for a permit, major revision, amendment, transfer, or renewal of a permit and proof of publication of the advertisement, which is acceptable to the cabinet, shall be filed with the cabinet and made a part of the application not later than fifteen (15) days after the last date of publication required under 405 KAR 8:010, Section 8(2).

**Section 11. Environmental Resource Information.** (1) Each permit application shall include a description of the existing environmental resources either within the areas affected by proposed surface operations and facilities, or within the proposed permit area and

adjacent areas, as required by Sections 11 through 23 of this administrative regulation. The descriptions required by this administrative regulation may, where appropriate, be based upon published texts or other public documents together with reasonable extrapolations from specific data available from existing permit areas or other appropriate areas.

(2)(a) Each application shall describe and identify the nature of cultural, historic, and archaeological resources listed or eligible for listing on the National Register of Historic Places and known archaeological sites within the proposed permit area and adjacent areas. The description shall be based on all available information, including, but not limited to, information from the state Historic Preservation Officer and from local archaeological, historical, and cultural preservation agencies.

(b) The cabinet may require the applicant to identify and evaluate important historic and archaeological resources that may be eligible for listing on the National Register of Historic Places, through collection of additional information, field investigations, or other appropriate analyses.

Section 12. General Requirements for Baseline Geologic and Hydrologic Information. (1) The application shall contain baseline geologic and hydrologic information which has been collected, analyzed, and submitted in the detail and manner acceptable to the cabinet, and which shall be sufficient to:

(a) Identify and describe protective measures pursuant to Section 32(1) of this administrative regulation which will be implemented during the mining and reclamation process to assure protection of the hydrologic balance, or to demonstrate that protection of the hydrologic balance can be assured without the design and installation of protective measures; and to design necessary protective measures pursuant to Section 32(2) of this administrative regulation.

(b) Determine the probable hydrologic consequences of the mining and reclamation operations upon the hydrologic balance in the permit area and adjacent area pursuant to Section 32(3) of this administrative regulation so that an assessment can be made by the cabinet pursuant to 405 KAR 8:010, Section 14(3) of the probable cumulative impacts of all anticipated mining on the hydrologic balance in the cumulative impact area;

(c) Determine pursuant to 405 KAR 8:010, Section 14(2) and (3) whether reclamation as required by 405 KAR can be accomplished and whether the proposed operation has been designed to prevent material damage to the hydrologic balance; and

(d) Design surface and groundwater monitoring systems pursuant to Section 32(4) of this administrative regulation for the during-mining and postmining time period which, together with the baseline data collected under Sections 14(1) and 15(1) of this administrative regulation, will demonstrate whether the mining operation is meeting applicable effluent limitations and stream standards and protecting the hydrologic balance.

(2)(a) Geologic and hydrologic information pertaining to the area outside the permit and adjacent area but within the cumulative impact assessment area shall be provided to the applicant by the cabinet:

1. If this information is needed in preparing the cumulative impact assessment; and

2. If this information is available from an appropriate federal or state agency.

(b) If this information is needed by the cabinet for conducting the cumulative impact assessment and is not available from a federal or state agency, the applicant may gather and submit this information to the cabinet as part of the permit application.

(3) Interpolation, modeling, correlation or other statistical methods, and other data extrapolation techniques may be used if the applicant can demonstrate to the satisfaction of the cabinet that the data extrapolation techniques are valid and that information obtained through the techniques meets the requirements of subsection (1) of this section.

(4) All water quality analyses performed to meet the requirements of this chapter shall be conducted according to the methodology in the fourteenth edition of "Standard Methods for the Examination of Water and Wastewater," or the methodology in 40 CFR Parts 136 and 434. All water quality sampling shall be conducted according to either methodology listed above when feasible.

Section 13. Baseline Geologic Information. (1) The application shall contain baseline geologic information collected from the permit area which shall meet the requirements of Section 12(1) of this administrative regulation and shall include at a minimum:

(a) The results of samples obtained from continuous cores; drill cuttings; channel cuttings from fresh, unweathered, rock outcrops; or other rock or soil material which has been collected using acceptable sampling techniques.

1. For those areas where overburden will be removed, the vertical extent of sampling shall include those strata from the surface down to and including the stratum immediately below the lowest coal seam to be mined; and

2. For those areas overlying underground workings where overburden will not be removed, the vertical extent of sampling shall include those strata above and below the coal seam to be mined which may be impacted by the mining operation.

3. Where aquifers within the permit area are located above or below the coal seam to be mined and these aquifers may be adversely affected by the mining operation, the vertical extent of sampling shall also include the aquifer and those strata which lie between the coal seam and the aquifer.

4. The areal and vertical density of sampling shall, at a minimum, be sufficient to determine the distribution of strata which have a potential to produce acid drainage and to determine the areal and vertical extent of aquifers which may be adversely affected.

5. If the vertical extent, and the areal and vertical density of sampling specified in subparagraphs 1 through 4 of this paragraph are not sufficient to locate suitable strata for use as a topsoil substitute, to determine the potential for subsidence, or for other required design or analysis, additional sampling shall be conducted as necessary to furnish adequate geologic information.

(b)1. To identify strata which have a potential to produce acid or toxic drainage for areas where overburden will be removed, chemical analyses including, but not limited to, maximum potential acidity and neutralization potential of each overburden stratum and the stratum immediately below the lowest coal seam to be mined; and

2. To identify strata which have a potential to produce acid or toxic drainage for areas overlying underground workings where overburden will not be removed, chemical analyses including, but not limited to, maximum potential acidity and neutralization potential of the strata immediately above and below the coal seam to be mined.

(c) Chemical analyses of the coal seam to be mined to determine the potential to produce acid or toxic drainage, including the parameters of total sulfur and pyritic sulfur; except that the cabinet shall not require an analysis for pyritic sulfur if the applicant can demonstrate to the satisfaction of the cabinet that an analysis for total sulfur provides adequate information to assure protection of the hydrologic balance.

(d) For standard room and pillar mining operations, the engineering properties of clays or soft rock such as clay shale, if any, located immediately above and below each coal seam to be mined.

(e) Collection of geologic information from the permit area as required in this subsection may be waived in whole or in part if:

1. The applicant can demonstrate to the satisfaction of the cabinet through geologic correlation or other procedures that information collected from outside the permit area is representative of the permit area and is sufficient to meet the requirements of Section 12(1) of this administrative regulation; or

2. Other information equivalent to that required by this subsection is available to the cabinet in a satisfactory form and is made a part of

the permit application; and

3. The cabinet provides a written statement granting a waiver.

(2) The application shall contain a description of the geology of the proposed permit area and adjacent area which shall meet the requirements of Section 12(1) of this administrative regulation and be based on the information required in subsection (1) of this section or other appropriate geologic information. The description shall include, at a minimum, geologic logs, cross-sections, fence diagrams, or other appropriate illustrations and written descriptions depicting:

(a) Within the permit area:

1. The structural geology and lithology of overburden strata and the stratum immediately below the lowest coal seam to be mined for those areas where overburden will be removed; and the structural geology and lithology of strata which may be impacted by the mining operation for those areas overlying underground workings where overburden will not be removed.

2. The thickness and chemical characteristics of each overburden stratum and the stratum immediately below the lowest coal seam to be mined for those areas where overburden will be removed; or the thickness and chemical characteristics of each stratum which may be impacted by the mining operation for those areas overlying underground workings where overburden will not be removed.

3. Where aquifers may be adversely affected by the mining operation, the structural geology, lithology, thickness, and areal extent of the aquifers; and structural geology and lithology of strata, and thickness of each stratum, whether located above or below the coal seam to be mined, which lie between the coal seam and the aquifers.

4. For standard room and pillar mining operations, the thickness and engineering properties of clays or soft rock such as clay shale, if any, located immediately above and below each coal seam to be mined.

(b) Within the adjacent area, the approximate areal extent and approximate thickness of aquifers which may be adversely affected by the mining operation.

(3) If determined by the cabinet to be necessary to assure adequate reclamation and protection of the hydrologic balance, the cabinet may require geologic information and description in addition to that required by subsections (1) and (2) of this section including, but not limited to, leaching tests of material from strata which may be disturbed by the operation to determine the potential for the operation to produce drainage with elevated levels of acidity, sulfate, and total dissolved solids, and the collection of information to greater depths within the proposed permit area or the collection of information for areas outside the proposed permit area.

Section 14. Baseline Groundwater Information. (1) The application shall contain baseline groundwater information for the permit area and adjacent area which shall be collected and submitted in a manner acceptable to the cabinet and shall be adequate to meet the requirements of Section 12(1) of this administrative regulation.

(2) Groundwater information shall include an inventory of wells, springs, underground mines, or other similar groundwater supply facilities which are currently being used, have been used in the past, or have a potential to be used for domestic, agricultural, industrial, or other beneficial purpose. The inventory shall include the location, ownership, type of usage, and where possible, other relevant information such as the depth and diameter of wells and approximate rate of usage, pumpage or discharge from wells, springs, and other groundwater supply facilities.

(3) Groundwater information shall include seasonal groundwater quantity and quality data collected from monitoring wells, springs, underground mines, or other appropriate groundwater monitoring facilities, at a sufficient number of monitoring locations with adequate areal distribution to meet the requirements of Section 12(1) of this administrative regulation. Seasonal groundwater quantity and quality data shall be provided for each water transmitting zone above, and potentially impacted water transmitting zone below, the lowest coal

seam to be mined including at a minimum:

(a) Groundwater levels; and

(b) Total dissolved solids, or specific conductance corrected to twenty-five (25) degrees C; pH; dissolved iron; dissolved manganese; acidity; alkalinity; and sulfate. For data collected prior to August 13, 1985, total iron and total manganese may be substituted for dissolved iron and dissolved manganese.

(4) The groundwater information described in subsection (3) of this section shall be required in whole or in part for coal seams if the coal seams to be mined are serving as water supply sources or are otherwise significant in protecting the hydrologic balance.

(5) If additional information is needed to assess the need for protective measures, to design protective measures, to determine the probable hydrologic consequences of mining, or to conduct the cumulative impact assessment, the cabinet may require groundwater information in addition to that described in subsections (2), (3), and (4) of this section including, but not limited to, information pertaining to aquifer storage, yield, discharge, recharge capacity, and additional water quality parameters.

Section 15. Baseline Surface Water Information. (1) The application shall contain baseline surface water information for the permit area and adjacent area which shall be collected and submitted in a manner acceptable to the cabinet and shall be adequate to meet the requirements of Section 12(1) of this administrative regulation.

(2) Surface water information shall include an inventory of all streams, lakes, impoundments or other surface water bodies in the permit and adjacent area which are currently being used for domestic, agricultural, industrial, or other beneficial purpose. The inventory shall include the name of the surface water body which is being used as a water supply source; the location, drainage area, ownership, and type of usage for the withdrawal; and where possible other relevant information such as the rate of withdrawal and seasonal variation.

(3) Surface water information shall include:

(a) The name, location, and ownership where appropriate, of all streams, lakes, impoundments, and other surface water bodies which receive run-off from watersheds which will be disturbed by the operation; and

(b) The location and description of any existing facilities located in watersheds which will be disturbed by the mining operation which may contribute to surface water pollution, such as existing or abandoned mining operations, oil wells, logging operations, or other similar facilities, including the location of any discharges which may be flowing from the facilities.

(4) Surface water information shall include seasonal quantity and quality data collected from a sufficient number of watersheds which will be disturbed by the operation with adequate areal distribution to meet the requirements of Section 12(1) of this administrative regulation and include at a minimum:

(a) Flow rates; and

(b) Total dissolved solids, or specific conductance corrected to twenty-five (25) degrees C; total suspended solids; pH; total iron; total manganese; acidity; alkalinity; and sulfate.

(5) If additional information is needed to assess the need for protective measures, to design protective measures, to determine the probable hydrologic consequences of mining, or to conduct the cumulative impact assessment, the cabinet may require surface water information in addition to that described in subsections (2), (3), and (4) of this section including, but not limited to, information pertaining to flood flows and additional water quality parameters.

Section 16. Alternative Water Supply Information. If the determination of probable hydrologic consequences required under Section 32 of this administrative regulation indicates that the proposed underground mining activities may proximately result in contamination, diminution, or interruption of an underground or surface source of water within the proposed permit area or adjacent area which is used

for domestic, agricultural, industrial, or other legitimate use, then the application shall identify and describe the adequacy and suitability of the alternative sources of water supply that could be developed for existing premining uses and approved postmining land uses. [If contamination, diminution, or interruption of an underground or surface source of water (for domestic, agricultural, industrial, or other legitimate use) within the proposed permit area or adjacent area may result from underground mining activities, then the applicant may identify, in the permit application, the alternative sources of water supply that could be developed to replace the existing sources.]

Section 17. Climatological Information. (1) When requested by the cabinet, the application shall contain a statement of the climatological factors that are representative of the proposed permit area, including:

- (a) The average seasonal precipitation;
- (b) The average direction and velocity of prevailing winds; and
- (c) Seasonal temperature ranges.

(2) The cabinet may request additional data as deemed necessary to ensure compliance with the requirements of this chapter.

Section 18. Soil Resources Information. (1) If soil survey information for the proposed permit area is available from SCS, the application shall include this information as a part of the description of premining land use capability and productivity required by Section 22(1)(b) of this administrative regulation.

(2) Where the applicant proposes to use selected overburden materials as a supplement or substitute for topsoil, the application shall provide results of the analyses, trials and tests required under 405 KAR 18:050, Section 2(5).

Section 19. Vegetation Information. (1) The permit application shall, as required by the cabinet, contain a map that delineates existing vegetative types and a description of the plant communities within the area affected by surface operations and facilities and within any proposed reference area. This description shall include information adequate to predict the potential for reestablishing vegetation.

(2) When a map or aerial photograph is required, sufficient adjacent areas shall be included to allow evaluation of vegetation as important habitat for fish and wildlife.

Section 20. Fish and Wildlife Resources Information. (1) Each application shall include fish and wildlife resource information for the area of surface operations and facilities and adjacent area, and areas subject to probable impacts from underground workings, including areas of probable subsidence. The scope and level of detail for this information shall be determined by the cabinet in consultation with the Kentucky Department of Fish and Wildlife Resources and the U.S. Department of the Interior, Fish and Wildlife Service, and shall be sufficient to design the protection and enhancement plan required under Section 36 of this administrative regulation.

(2) Site-specific resource information necessary to address the respective species or habitats shall be required when the area of surface operations and facilities or adjacent area, or areas subject to probable impacts from underground workings, including areas of probable subsidence, are likely to include:

(a) Listed or proposed endangered or threatened species of plants or animals or their critical habitats listed by the Secretary of the Interior under the Endangered Species Act of 1973, as amended (16 USC Sec. 1531 et seq.), or those species or habitats protected by similar state statutes;

(b) Habitats of unusually high value for fish and wildlife such as important streams, wetlands, riparian areas, cliffs supporting raptors, areas offering special shelter or protection, migration routes, or reproduction and wintering areas; or

(c) Other species or habitats identified through agency consultation as requiring special protection under state or federal law.

(3) Wetland delineations shall be conducted in accordance with

the "Corps of Engineers Wetlands Delineation Manual", U.S. Army Corps of Engineers, (January, 1987), as modified by U.S. Army Corps of Engineers Regulatory Guidance Letter No. 90-7 (September 26, 1990). The modifications to this material include replacement of Sections 1 and 2 of Appendix C with the "National Lists of Plant Species that Occur in Wetlands and Biological Reports and Summary", Fish and Wildlife Service, U.S. Department of the Interior (May, 1988); and, in Appendix D, Section 2, use of the "List of Hydric Soils of the United States, All Kentucky Counties", Soil Conservation Service (SCS), U.S. Department of Agriculture (December, 1991). This document, and related material, is incorporated by reference. It may be obtained from the National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161. Telephone (703) 487-4650. It may also be reviewed, copied, or obtained at the Department for Surface Mining Reclamation and Enforcement, #2 Hudson Hollow, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

(4) Upon request, the cabinet shall provide the resource information required under this section to the U.S. Department of the Interior, Fish and Wildlife Service regional or field office for their review. This information shall be provided within ten (10) days of receipt of the request from the Service.

(5)(a) Fish and wildlife resource information shall be required for amendments and revisions that:

1. Propose extension into a wetland;

2. Propose significant disturbance in a new watershed in which the area of surface operations and facilities or adjacent area, or areas subject to probable impacts from underground workings, including areas of probable subsidence, include an important stream;

3. Seek to obtain a stream buffer zone variance under 405 KAR 18:060, Section 11, or seek to modify an existing stream buffer zone variance;

4. Propose extension of the permit boundary that involves a new surface disturbance of five (5) acres or more;

5. Involve new areas of surface operations and facilities or adjacent areas, or areas subject to probable impacts from underground workings, including areas of probable subsidence, likely to contain, or that could reasonably be expected to contain, a state or federal endangered or threatened species or its critical habitat; or

6. Propose extension of the coal extraction area associated with an underground mine that may by subsidence or other means impact a wetland, important stream, or stream that contains; or could reasonably be expected to contain, a state or federal endangered or threatened species or its critical habitat.

(b) For other amendments and revisions, a determination of whether fish and wildlife information is necessary, and the scope of information needed, shall be made on a case-by-case basis.

(6) This section shall apply to applications for permits, amendments and revisions submitted to the cabinet on or after November 17, 1992.

Section 21. Prime Farmland Investigation. (1) The applicant shall conduct a preapplication investigation of the area proposed to be affected by surface operations or facilities to determine whether lands within the area may be prime farmland.

(2) Land shall not be considered prime farmland where the applicant can demonstrate, to the satisfaction of the cabinet, one (1) or more of the following:

(a) The land has not been historically used as cropland;

(b) The slope of the land is ten (10) percent or greater;

(c) Other relevant factors exist which would preclude the soils from being defined as prime farmland according to 7 CFR 657, such as a very rocky surface, or the land is frequently flooded during the growing season more often than once in two (2) years and the flooding has reduced crop yields; or

(d) On the basis of a soil survey of the lands within the permit area there are no soil map units that have been designated prime

farmland by the U.S. SCS.

(3) If the investigation establishes that the lands are not prime farmland, the applicant shall submit with the permit application a request for a negative determination and results of the investigation which show that the land for which the negative determination is being sought meets one (1) or more of the criteria in subsection (2) of this section.

(4) If the investigation indicates that lands within the proposed area to be affected by surface operations and facilities may be prime farmlands, the applicant shall contact the U.S. SCS to determine if these lands have a soil survey and whether the applicable soil map units have been designated prime farmlands. If no soil survey has been made for these lands, the applicant shall request the SCS to conduct a soil survey.

(a) If a soil survey as required by this section contains soil map units which have been designated as prime farmlands, the applicant shall submit an application, in accordance with 405 KAR 8:050, Section 3 for the designated land.

(b) If a soil survey as required by this section contains no soil map units which have been designated as prime farmland, after review by the U.S. SCS, the applicant shall submit with the permit application a request for negative determination under subsection (2)(d) of this section for the nondesignated land.

(5) The cabinet shall decide to grant or deny a negative determination based upon documentation provided by the applicant and any other pertinent information, such as cropping history, available to the cabinet from other sources.

(6) The cabinet shall consult with the SCS in deciding on a request for negative determination under subsection (2)(c) of this section.

(7) The cabinet shall examine any records on crop history available from the Agriculture Stabilization and Conservation Service when deciding on a request for negative determination under subsection (2)(a) of this section.

Section 22. Land-use Information. (1) The application shall contain a statement of the condition, capability and productivity of the land which will be affected by surface operations and facilities within the proposed permit area, including:

(a) A map and supporting narrative of the uses of the land existing when the application is filed. If the premining use of the land was changed within five (5) years before the date of application, the historic use of the land shall also be described.

(b) A narrative of land capability and productivity, which analyzes the land-use description in conjunction with other environmental resources information required under this administrative regulation. The narrative shall provide analyses of:

1. The capability of the land before any mining to support a variety of uses, giving consideration to soil and foundation characteristics, topography, vegetative cover, and the hydrology of the area proposed to be affected by surface operations or facilities; and

2. The productivity of the area proposed to be affected by surface operations and facilities before mining, expressed as average yield of food, fiber, forage, or wood products from the lands obtained under high levels of management. The productivity shall be determined by yield data or estimates for similar sites based on current data from the U.S. Department of Agriculture, state agricultural universities or appropriate state natural resources or agricultural agencies.

(2) The application shall state whether the proposed permit area has been previously mined, and, if so, the following information, if available:

- (a) The type of mining method used;
  - (b) The coal seams or other mineral strata mined;
  - (c) The extent of coal or other minerals removed;
  - (d) The approximate dates of past mining; and
  - (e) The uses of the land preceding mining.
- (3) The application shall contain a description of the existing land

uses and local government land use classifications, if any, of the proposed permit area and adjacent areas.

(4) The application shall contain a description identifying the extent to which cities, towns, and municipalities, or parts thereof, are located within the proposed permit area.

Section 23. Maps and Drawings. (1) The permit application shall include maps showing:

(a) The boundaries of all subareas which are proposed to be affected over the estimated total life of the underground mining activities, with a description of size, sequence and timing of the underground mining activities for which it is anticipated that additional permits will be sought;

(b) Any land within the proposed permit area and adjacent area which is within the boundaries of any units of the National System of Trails or the Wild and Scenic Rivers System, including study rivers designated under Section 5(a) of the Wild and Scenic Rivers Act (16 USC 1276(a)), or which is within the boundaries of a wild river established pursuant to KRS Chapter 146;

(c) The boundaries of any public park and locations of any cultural or historical resources listed on or eligible for listing on the National Register of Historic Places and known archaeological sites within the permit area and adjacent areas;

(d) The locations of water supply intakes for current users of surface waters within a hydrologic area defined by the cabinet, and those surface waters which will receive discharges from affected areas in the proposed permit area;

(e) All boundaries of lands and names of present owners of record of those lands, both surface and subsurface, included in or contiguous to the permit area;

(f) The boundaries of land within the proposed permit area upon which, or under which, the applicant has the legal right to conduct underground mining activities. In addition, the map shall indicate the boundaries of that portion of the permit area which the applicant has the legal right to enter upon the surface to conduct surface operations.

(g) The location of surface and subsurface manmade features within, passing through, or passing over the proposed permit area, including, but not limited to, major electric transmission lines, pipelines, and agricultural drainage tile fields;

(h) The location and boundaries of any proposed reference areas for determining the success of revegetation for the permit area;

(i) The location of all buildings in and within 1000 feet of the proposed permit area, with identification of the current use of the buildings;

(j) Each public road located in or within 100 feet of the proposed permit area;

(k) Each cemetery that is located in or within 100 feet of the proposed permit area;

(l) Other relevant information required by the cabinet.

(2) The application shall include drawings, cross-sections, and maps showing:

(a) Elevations and locations of test borings and core samplings;

(b) Elevations and locations of monitoring stations or other sampling points in the permit area and adjacent areas used to gather data on water quality and quantity, fish and wildlife, and air quality, if required, in preparation of the application or which will be used for this data gathering during the term of the permit;

(c) All coal crop lines and the strike and dip of the coal to be mined within the proposed permit area;

(d) Location and extent of known workings of active, inactive, or abandoned underground mines, including mine openings to the surface within the proposed permit area and adjacent areas;

(e) Location and extent of subsurface water, if encountered, within the proposed permit area or adjacent areas;

(f) Location of surface water bodies such as streams, lakes, ponds, springs, constructed or natural drainage patterns, and

irrigation ditches within the proposed permit area and adjacent areas;

(g) Location, and depth if available, of gas and oil wells within the proposed permit area and water wells in the permit area and adjacent areas;

(h) Location and dimensions of existing coal refuse disposal areas and dams, or other impoundments within the proposed permit area;

(i) Sufficient slope measurements to adequately represent the existing land surface configuration of the area to be affected by surface operations and facilities, measured and recorded according to the following:

1. Each measurement shall consist of an angle of inclination along the prevailing slope extending 100 linear feet above and below or beyond the coal outcrop or the area to be disturbed or, where this is impractical, at locations and in a manner as specified by the cabinet.

2. Where the area has been previously mined, the measurements shall extend at least 100 feet beyond the limits of mining disturbances, or any other distance determined by the cabinet to be representative of the premining configuration of the land.

3. Slope measurements shall take into account natural variations in slope, to provide accurate representation of the range of natural slopes and reflect geomorphic differences of the area to be disturbed.

(3) The permit application shall include the map information specified in Sections 22(1)(a), 24(3), 24(4)(c), 24(4)(h), 26, 27(1), 28, 31, 32, 33, 34, and 38 of this administrative regulation and 405 KAR 8:010, Section 5(6).

(4) Maps, drawings and cross-sections included in a permit application and required by this section shall be prepared by, or under the direction of and certified by a qualified registered professional engineer, and shall be updated as required by the cabinet. The qualified registered professional engineer shall not be required to certify the true ownership of property.

#### Section 24. Mining and Reclamation Plan; General Requirements.

(1) Each application shall contain a detailed mining and reclamation plan (MRP) for the proposed permit area as set forth in this section through Section 39 of this administrative regulation, showing how the applicant will comply with KRS Chapter 350 and 405 KAR Chapters 16 through 20.

(2) Each application shall contain a description of the mining operations proposed to be conducted within the proposed permit area, including, at a minimum, the following:

(a) A narrative description of the type and method of coal mining procedures and proposed engineering techniques, anticipated annual and total production of coal, by tonnage, and the major equipment to be used for all aspects of those operations; and

(b) A narrative explaining the construction, modification, use, maintenance, and removal of the following facilities (unless retention of the facility is to be approved as necessary for postmining land use as specified in 405 KAR 18:220):

1. Dams, embankments, and other impoundments;

2. Overburden and topsoil handling and storage areas and structures;

3. Coal removal, handling, storage, cleaning, and transportation areas and structures;

4. Spoil, coal processing waste, mine development waste, and noncoal waste removal, handling, storage, transportation, and disposal areas and structures;

5. Mine facilities; and

6. Water pollution control facilities.

(3) Each application shall contain plans and maps of the proposed permit area and adjacent areas as follows:

(a) The plans, maps and drawings shall show the underground mining activities to be conducted, the lands to be affected throughout the operation, and any change in a facility or feature to be caused by the proposed operations, if the facility or feature was shown under Section 23 of this administrative regulation.

(b) The following shall be shown for the proposed permit area:

1. Buildings, utility corridors, and facilities to be used;

2. The area of land to be affected within the proposed permit area, according to the sequence of mining and reclamation;

3. Each area of land for which a performance bond or other equivalent guarantee will be posted under 405 KAR Chapter 10;

4. Each coal storage, cleaning and loading area;

5. Each topsoil, spoil, coal preparation waste, underground development waste, and noncoal waste storage area;

6. Each water diversion, collection, conveyance, treatment, storage and discharge facility to be used;

7. Each source of waste and each waste disposal facility relating to coal processing or pollution control;

8. Each facility to be used to protect and enhance fish and wildlife related environmental values;

9. Each explosive storage and handling facility;

10. Location of each sedimentation pond, permanent water impoundment, coal processing waste bank, and coal processing waste dam and embankment, in accordance with Section 34 of this administrative regulation, and each disposal area for underground development waste and excess spoil, in accordance with Section 28 of this administrative regulation;

11. Cross-sections, at locations as required by the cabinet, of the anticipated final surface configuration to be achieved for the affected areas;

12. Location of each water and any subsidence monitoring point;

13. Location of each facility that will remain on the proposed permit area as a permanent feature, after the completion of underground mining activities.

(c) Plans, maps and drawings required under this section shall be prepared by, or under the direction of, and certified by a qualified registered professional engineer.

(4) Each plan shall contain the following information for the proposed permit area:

(a) A projected timetable for the completion of each major step in the mining and reclamation plan;

(b) A detailed estimate of the cost of the reclamation of the proposed operations required to be covered by a performance bond under 405 KAR Chapter 10, with supporting calculations for the estimates;

(c) A plan for backfilling, soil stabilization, compacting and grading, with contour maps or cross-sections that show the anticipated final surface configuration of the proposed permit area, in accordance with 405 KAR 18:190;

(d) A plan for removal, storage, and redistribution of topsoil, subsoil, and other material to meet the requirements of 405 KAR 18:050 including a demonstration of suitability of any proposed topsoil substitutes or supplements;

(e) A plan for revegetation as required in 405 KAR 18:200, including, but not limited to, descriptions of the: schedule of revegetation; species and amounts per acre of seeds and seedlings to be used; methods to be used in planting and seeding; mulching techniques; irrigation, if appropriate, and pest and disease control measures, if any; measures proposed to be used to determine the success of revegetation as required in 405 KAR 18:200, Section 6; and a soil testing plan for evaluation of the results of topsoil handling and reclamation procedures related to revegetation;

(f) A description of the measures to be used to maximize the use and conservation of the coal resource as required in 405 KAR 18:010, Section 2;

(g) A description of measures to be employed to ensure that all debris, acid-forming and toxic-forming materials, and materials constituting a fire hazard are disposed of in accordance with 405 KAR 18:150 and 405 KAR 18:190, Section 3 and a description of the contingency plans which have been developed to preclude sustained combustion of the materials;

(h) A description, including appropriate drawings and maps, of the



measures to be used to seal or manage mine openings, and to plug, case or manage exploration holes, other bore holes, wells and other openings within the proposed permit area, in accordance with 405 KAR 18:040; and

(i) A description of steps to be taken to comply with the requirements of the Clean Air Act (42 USC 7401 et seq.), the Clean Water Act (33 USC 1251 et seq.), and other applicable air and water quality laws and regulations and health and safety standards. This description shall, at a minimum, consist of identification of the permits or approvals required by these laws and regulations which the applicant has obtained, has applied for, or intends to apply for.

Section 25. MRP; Existing Structures. (1) Each application shall contain a description of each existing structure proposed to be used in connection with or to facilitate the surface coal mining and reclamation operation. The description shall include:

- (a) Location;
- (b) Plans of the structure which describe its current condition;
- (c) Approximate dates on which construction of the existing structure was begun and completed; and
- (d) A showing, including relevant monitoring data or other evidence, whether the structure meets the performance standards of 405 KAR Chapters 16 through 20, or if the structure does not meet those performance standards, a showing whether the structure meets the interim performance standards of 405 KAR Chapter 3.

(2) Each application shall contain a compliance plan for each existing structure proposed to be modified or reconstructed for use in connection with or to facilitate the surface coal mining and reclamation operation. The compliance plan shall include:

- (a) Design specifications for the modification or reconstruction of the structure to meet the performance standards of 405 KAR Chapters 16 through 20;
- (b) A construction schedule which shows dates for beginning and completing interim steps and final reconstruction;
- (c) Provisions for monitoring the structure as required by the cabinet to ensure that the performance standards of 405 KAR Chapters 16 through 20 are met; and
- (d) A showing that the risk of harm to the environment or to public health or safety will not be significant during the period of modification or reconstruction.

Section 26. MRP; Subsidence Control. (1)(a) The application shall include a map of the permit and adjacent areas at a scale of 1:12,000, or larger if determined necessary by the cabinet, showing the location and type of structures and renewable resource lands that subsidence may materially damage or for which the value or reasonably foreseeable use may be diminished by subsidence, and showing the location and type of water supplies for domestic, agricultural, industrial or other legitimate use that could be contaminated, diminished, or interrupted by subsidence.

(b) The application shall include a narrative indicating whether subsidence, if it occurred, could cause material damage to or diminish the value or reasonably foreseeable use of structures identified in paragraph (a) of this subsection or renewable resource lands or could contaminate, diminish, or interrupt water supplies for domestic, agricultural, industrial or other legitimate use.

(c) The application shall include an example of the letter by which the applicant proposes to notify the owners of all structures and water supplies identified under this subsection for which a presubsidence survey is required under 405 KAR 18:210 Section 1(4). [The application shall include a survey which shall show whether structures or renewable resource lands exist within the proposed permit area and adjacent areas and whether subsidence, if it occurred could cause material damage or diminution of reasonably foreseeable use of the structures or renewable resource lands.]

(2) If the information submitted under subsection (1) of this section [survey] shows that no structures, or water supplies for

domestic, agricultural, industrial or other legitimate use, or renewable resource lands exist, or that no material damage or diminution in value or reasonably foreseeable use of the structures or lands, and no contamination, diminution, or interruption of the water supplies would occur as a result [could be caused in the event] of mine subsidence, and if the cabinet agrees with this conclusion, no further information need be provided [in the application] under this section.

(3) If the information submitted under subsection (1) of this section [survey] shows that structures, [or] renewable resource lands, or water supplies exist and [or] that subsidence could cause material damage or diminution in [or] value or reasonably foreseeable use, or contamination, diminution, or interruption of protected water supplies [of the land], or if the cabinet determines that damage, [or] diminution in value or foreseeable use, or contamination, diminution, or interruption could occur, the application shall include a subsidence control plan which shall contain the following information:

(a) A [detailed] description of the [mining] method of coal removal, such as longwall mining, room and pillar removal or hydraulic mining, including the size, sequence and timing of the development of underground workings. [and other measures to be taken which may affect subsidence, including:

- 1. The technique of coal removal, such as longwall mining, room and pillar with pillar removal, hydraulic mining or other methods; and
- 2. The extent, if any, to which planned and controlled subsidence is intended.]

(b) A map of the underground workings at a scale of 1:12,000, or larger if determined necessary by the cabinet, that describes the location and extent of the areas in which planned subsidence mining methods will be used and that identifies all areas where the measures described in paragraphs (d), (e), and (g) of this subsection will be taken to prevent or minimize subsidence and subsidence related damage; and, when applicable, to correct subsidence related material damage.

(c) A description of the physical conditions, such as depth of cover, seam thickness and lithology of overlying strata, that affect the likelihood or extent of subsidence and subsidence related damage.

(d) A description of the monitoring, if any, needed to determine the commencement and degree of subsidence so that, when appropriate, other measures can be taken to prevent, reduce or correct material damage in accordance with 405 KAR 18:210, Section 3.

(e) Except for those areas where planned subsidence is projected to be used, a detailed description of the subsidence control measures that will be taken to prevent or minimize subsidence and subsidence related damage, such as, but not limited to:

- 1. Backstowing or backfilling of voids;
- 2. Leaving support pillars of coal;
- 3. Leaving areas in which no coal is removed, including a description of the overlying area to be protected by leaving the coal in place; and

4. Taking measures on the surface to prevent or minimize material damage or diminution in value of the surface.

(f) A description of the anticipated effects of planned subsidence, if any.

(g) For those areas where planned subsidence is projected to be used, a description of methods to be employed to minimize damage from planned subsidence to noncommercial buildings and occupied residential dwellings and structures related thereto; or the written consent of the owner of the structure or facility that minimization measures not be taken; or, unless the anticipated damage would constitute a threat to health or safety, a demonstration that the costs of minimizing damage exceed the anticipated costs of repair;

(h) A description of the measures to be taken in accordance with 405 KAR 18:060, Section 12, and 405 KAR 18:210, Section 3, to replace adversely affected protected water supplies or to mitigate or remedy any subsidence related material damage to the land and protected structures; and



(i) Other information specified by the cabinet as necessary to demonstrate that the operation will be conducted in accordance with 405 KAR 18:210. ~~[A detailed description of the measures to be taken to prevent subsidence from causing material damage or lessening the value of reasonably foreseeable use of the surface, including:~~

- ~~1. The anticipated effects of planned subsidence, if any;~~
- ~~2. Measures, if any, to be taken in the mine to reduce the likelihood of subsidence, including measures such as backstowing or backfilling of voids; leaving support pillars of coal; and areas in which no coal removal is planned, including a description of the overlying area to be protected by leaving coal in place.~~

~~3. Measures to be taken on the surface to prevent material damage or lessening of the value or reasonably foreseeable use of the surface, including measures such as reinforcement of sensitive structures or features; installation of footers designed to reduce damage caused by movement; change of location of pipelines, utility lines or other features; relocation of movable improvements to sites outside the angle of draw; and monitoring, if any, to determine the commencement and degree of subsidence so that other appropriate measures can be taken to prevent or reduce material damage.~~

~~(c) A detailed description of the measures to be taken to mitigate the effects of any material damage or diminution of value or foreseeable use of lands which may occur, including one (1) or more of the following as required by 405 KAR 18:210, Section 3:~~

- ~~1. Restoration or rehabilitation of structures and features, including approximate land surface contours, to premining condition;~~
- ~~2. Replacement of structures destroyed by subsidence;~~
- ~~3. Purchase of structures prior to mining and restoration of the land after subsidence to condition capable of supporting and suitable for the structures and foreseeable land uses;~~

~~4. Purchase of noncancellable insurance policies payable to the surface owner in the full amount of the possible material damage or other comparable measures.~~

~~(d) A detailed description of measures to be taken to determine the degree of material damage or diminution of value or foreseeable use of the surface, including measures such as:~~

- ~~1. The results of presubsidence surveys of all structures and surface features which might be materially damaged by subsidence;~~
- ~~2. Monitoring, if any, proposed to measure deformations near specified structures or features or otherwise as appropriate for the operation.]~~

Section 27. MRP; Return of Coal Processing Waste to Abandoned Underground Workings. (1) Each plan shall describe the design, operation and maintenance of any proposed use of abandoned underground workings for coal processing waste disposal, including flow diagrams and any other necessary drawings and maps, for the approval of the cabinet and MSHA under 405 KAR 18:140, Section 7.

(2) Each plan shall describe the source and quality of waste to be stowed, area to be backfilled, percent of the mine void to be filled, method of constructing underground retaining walls, influence of the backfilling operation on active underground mine operations, surface area to be supported by the backfill, and the anticipated occurrence of surface effects following backfilling.

(3) The applicant shall describe the source of the hydraulic transport mediums, method of dewatering the placed backfill, retainment of water underground, treatment of water if released to surface streams, and the effect on the hydrologic regime.

(4) The plan shall describe each permanent monitoring well to be located in the backfilled area, the stratum underlying the mined coal, and gradient from the backfilled area.

(5) The requirements of this section shall also apply to pneumatic backfilling operations, except where the operations are exempted by the cabinet from requirements specifying hydrologic monitoring.

Section 28. MRP; Underground Development Waste and Excess

Spoil. Each plan shall contain descriptions, including appropriate maps and cross-section drawings, of the proposed disposal methods and sites for placing underground development waste and excess spoil according to 405 KAR 18:130, 405 KAR 18:140, and 405 KAR 18:160 as applicable. Each plan shall describe the geotechnical investigation, design, construction, operation, maintenance, and removal, if appropriate, of the structures and be prepared according to 405 KAR 8:030, Section 27 and the applicable requirements of this administrative regulation.

Section 29. MRP; Transportation Facilities. (1) Each application shall contain a description of each road, conveyor, and rail system to be constructed, used, or maintained within the proposed permit area. The description shall include a map, appropriate cross-sections, and the following:

(a) Specifications for each road width, road gradient, road surface, road cut, fill embankment, culvert, bridge, drainage ditch, and drainage structure.

(b) A report of appropriate geotechnical analysis, where approval of the cabinet is required for alternative specifications or for steep cut slopes under 405 KAR 18:230.

(c) A description of each measure to be taken to obtain approval of the cabinet for alteration or relocation of a natural drainageway under 405 KAR 18:230.

(d) A description of measures, other than use of a rock headwall, to be taken to protect the inlet end of a ditch relief culvert, for approval by the cabinet under 405 KAR 18:230.

(2) Each plan shall contain a general description of each road, conveyor, or rail system to be constructed, used, or maintained within the proposed permit area.

Section 30. MRP; Protection of Public Parks and Historic Places. (1) For any publicly-owned parks or any places listed on the National Register of Historic Places that may be adversely affected by the proposed operations, each plan shall describe the measures to be used to prevent adverse impact; or, if valid existing rights exist or joint agency approval is to be obtained under 405 KAR 24:040, Section 2(4), to minimize adverse impacts.

(2) The cabinet may require the applicant to protect historic or archaeological properties listed or eligible for listing on the National Register of Historic Places through appropriate mitigation and treatment measures. These measures need not be completed prior to permit issuance, but shall be completed before the properties are affected by underground mining activities.

Section 31. MRP; Relocation or Use of Public Roads. Each application shall describe, with appropriate maps and drawings the measures to be used to ensure that the interests of the public and landowners affected are protected if, under 405 KAR 24:040, Section 2(6), the applicant seeks to have the cabinet approve:

(1) Conducting the proposed underground mining activities within 100 feet of the right-of-way line of any public road, except where mine access or haul roads join that right-of-way; or

(2) Relocating a public road.

Section 32. MRP; Protection of Hydrologic Balance. (1) Each application shall contain a description, as set forth in this subsection, of the measures to be taken to minimize disturbances to the hydrologic balance within the permit area and adjacent area and to prevent material damage to the hydrologic balance outside the permit area.

(a) The description shall be based upon the baseline geologic, hydrologic, and other information required by Sections 12 through 16 of this administrative regulation and other appropriate information, shall be specific to local hydrologic conditions, and shall be prepared in a manner and detail acceptable to the cabinet.

(b) The description shall identify the protective measures to be taken to enable the operation to meet, at a minimum, each of the

hydrologic requirements referenced in this paragraph, or shall demonstrate to the satisfaction of the cabinet that protective measures are not necessary for the operation to meet the requirements:

1. Meet applicable water quality statutes, administrative regulations, standards, and effluent limitations as required by 405 KAR 18:060, Section 1(3);
2. Avoid acid or toxic drainage as required by 405 KAR 18:060, Sections 4, 5, and 6;
3. Control the discharge of sediment to streams located outside the permit area as required by 405 KAR 18:060, Section 2; ~~and~~
4. Control the drainage and discharge of water within the permit area as required by 405 KAR 18:060, Sections 1(4), 3, 8 and 9, and 405 KAR 18:080; ~~and~~
5. Protect or replace the water supply of present users as required by 405 KAR 18:060, Section 12.

(c) The cabinet may require that the description include protective measures in addition to those identified under paragraph (b) of this subsection, if the cabinet determines that additional measures are needed to protect the hydrologic balance in accordance with 405 KAR 18:060.

(2) Each application shall include the design of any necessary protective measures identified under subsection (1) of this section. The design shall be prepared in a manner and detail acceptable to the cabinet including, as appropriate, calculations, maps, drawings, and written explanations as necessary to document the design.

(3) Each application shall include a determination of the probable hydrologic consequences of the mining and reclamation operations for the permit area and adjacent area.

(a) The determination shall be based upon the baseline geologic, hydrologic, and other information required by Sections 12 through 16 of this administrative regulation and other appropriate information, and may include information statistically representative of the site.

(b) The determination shall be completed according to the parameters and in the detail required by the cabinet to enable the cabinet to prepare a cumulative impact assessment, and shall take into account the anticipated effects of protective measures required by this chapter.

(c) For surface water systems, the determination shall, at a minimum, include probable impacts on:

1. Peak discharge rates, emphasizing the potential for flooding;
2. Settleable solids at peak discharge;
3. Low-flow discharge rates, emphasizing the potential for water supply diminution;
4. Suspended solids at low flow;
5. pH, at low flow, emphasizing the potential for acid drainage conditions, including depressed levels of alkalinity and elevated levels of iron, manganese, acidity, sulfate, and total dissolved solids or specific conductance, which are generally associated with acid drainage conditions.

(d) For groundwater systems, the determination shall, at a minimum, include probable impacts on:

1. Water quantity, emphasizing water levels and the potential for water supply diminution for existing users, and dewatering of aquifers which are not currently being used for water supply but have the potential to be developed as a water supply source.
2. pH, emphasizing the potential for acid drainage conditions, including depressed levels of alkalinity and elevated levels of iron, manganese, acidity, sulfate, and total dissolved solids or specific conductance, which are generally associated with acid drainage conditions.

(e) The determination shall include a finding on whether the proposed underground mining activities conducted after July 16, 1994 may proximately result in contamination, diminution or interruption of an underground or surface source of water that is used for domestic, agricultural, industrial or other legitimate use within the permit area or adjacent areas at the time the application is submitted.

(f) An application for a major revision to a permit shall be

reviewed by the cabinet to determine whether a new or updated determination of the probable hydrologic consequences shall be required.

(4)(a) The application shall include a plan for the collection, recording, and reporting of groundwater and surface water quantity and quality data to monitor the effects of the mining and reclamation operations on the hydrologic balance, according to 405 KAR 18:110.

(b) The monitoring plan shall be based on the geologic and hydrologic baseline information, the mining and reclamation plan, and the determination of probable hydrologic consequences; and shall:

1. Identify the quantity and quality parameters to be monitored, sampling frequency, and monitoring site locations; and
2. Describe how the data may be used to determine the impacts of the operation on the hydrologic balance.

(5) An application for a major revision to a permit shall be reviewed by the cabinet to determine whether a new or updated cumulative hydrologic impact assessment shall be made.

Section 33. MRP; Diversions. Each application shall contain descriptions, including maps and cross-sections, of stream channel diversions and other diversions to be constructed within the proposed permit area to achieve compliance with 405 KAR 18:080.

Section 34. MRP; Impoundments and Embankments. (1) General. Each application shall include detailed design plans for each proposed sedimentation pond, water impoundment, and coal mine ~~processing~~ waste bank, dam, or embankment within the proposed permit area. Each design plan shall:

- (a) Be prepared by, or under the direction of, and certified by, a qualified registered professional engineer;
- (b) Contain a description, map, and appropriate cross-sections and drawings of the structure and its location;
- (c) Contain all hydrologic and geologic information and computations necessary to demonstrate compliance with the design and performance standards of 405 KAR Chapter 18; and all information utilized by the applicant to determine the probable hydrologic consequences of the mining operation under Section 32(3) of this administrative regulation;
- (d) Contain an assessment of the potential effect on the structure from subsidence of the subsurface strata resulting from past underground mining operations if underground mining has occurred;
- (e) Include any geotechnical investigation, design, and construction requirements for the structure;
- (f) Describe the operation and maintenance requirements for each structure; and
- (g) Describe the timetable and plans to remove each structure, if appropriate.

(2) Sedimentation ponds.

~~[(a)]~~ Sedimentation ponds, whether temporary or permanent, shall be designed in compliance with the requirements of 405 KAR 18:090 and 18:100. ~~[Any sedimentation pond or earthen structure which will remain on the proposed permit area as a permanent water impoundment shall also be designed to comply with the requirements of 405 KAR 18:100.]~~

~~(b) Each plan shall, at a minimum, comply with the requirements of MSHA, 30 CFR 77.216-1 and 77.216-2.]~~

(3) Permanent and temporary impoundments. Permanent and temporary impoundments shall be designed to comply with the requirements of 405 KAR 18:100. Each plan for an impoundment meeting the size or other criteria of MSHA, 30 CFR 77.216(a), shall comply with the requirements of [MSHA,] 30 CFR 77.216-1 and 77.216-2. The plan required to be submitted to the District Manager of MSHA under 30 CFR 77.216 shall be submitted to the cabinet as part of the permit application. After the plan has been approved by MSHA, the applicant shall submit to the cabinet a copy of the final approved plan, a copy of all correspondence from MSHA regarding the plan, a copy of any technical support documents requested by

MSHA during its review, and a notarized statement by the applicant that the copy submitted to the cabinet is a complete and correct copy of the final plan approved by MSHA.

(4) Coal mine [processing] waste banks. Coal mine [processing] waste banks shall be designed to comply with the requirements of 405 KAR 18:140.

(5) Coal mine [processing] waste dams and embankments. Coal mine [processing] waste dams and embankments shall be designed to comply with the requirements of 405 KAR 18:100 and 18:160. The plan for an impounding structure that is required to be submitted to the District Manager of MSHA under 30 CFR 77.216 shall be submitted to the cabinet as part of the permit application. After the plan has been approved by MSHA, the applicant shall submit to the cabinet a copy of the final approved plan, a copy of all correspondence from MSHA regarding the plan, a copy of any technical support documents requested by MSHA during its review, and a notarized statement by the applicant that the copy submitted to the cabinet is a complete and correct copy of the final plan approved by MSHA. Each plan shall comply with the requirements of MSHA, 30 CFR 77.216-1 and 77.216-2, and shall contain the results of a geotechnical investigation of the proposed dam or embankment foundation area, to determine the structural competence of the foundation which will support the proposed dam or embankment structure and the impounded material. The geotechnical investigation shall be planned and supervised by an engineer or engineering geologist, according to the following:

(a) The number, location, and depth of borings and test pits shall be determined using current prudent engineering practice for the size of the dam or embankment, quantity of material to be impounded, and subsurface conditions.

(b) The character of the overburden and bedrock, the proposed abutment sites, and any adverse geotechnical conditions which may affect the particular dam, embankment, or reservoir site shall be considered.

(c) All springs, seepage, and groundwater flow observed or anticipated during wet periods in the area of the proposed dam or embankment shall be identified on each plan.

(d) Consideration shall be given to the possibility of mud flows, rock-debris falls, or other landslides into the dam, embankment, or impounded material.

(6) If the structure is Class B-moderate hazard or Class C-high hazard under 405 KAR 7:040, Section 5, and 401 KAR 4:030, or if the structure meets the size or other criteria of MSHA, 30 CFR 77.216(a), [to be twenty (20) feet or higher or is to impound more than twenty (20) acre feet] each plan under subsections (2), (3), and (5) of this section shall include a stability analysis of the [each] structure. The stability analysis shall include, but not be limited to, strength parameters, pore pressures, and long-term seepage conditions. The plan shall also contain a description of each engineering design assumption and calculation with a discussion of each alternative considered in selecting the specific design parameters and construction methods.

Section 35. MRP; Air Pollution Control. For all surface operations associated with underground mining activities, the application shall contain an air pollution control plan which includes the following:

(1) An air quality monitoring program, if required by the cabinet, to provide sufficient data to evaluate the effectiveness of the fugitive dust control practices, under subsection (2) of this section to comply with applicable federal and state air quality standards; and

(2) A plan for fugitive dust control practices, as required under 405 KAR 18:170.

Section 36. MRP; Fish and Wildlife Protection and Enhancement. (1) Each application shall include a description of how, to the extent possible using the best technology currently available, the permittee will minimize disturbances and adverse impacts on fish and wildlife and related environmental values, including compliance with the

Endangered Species Act, during the surface coal mining and reclamation operations, and how enhancement of these resources will be achieved where practicable.

(2) This description shall:

(a) Apply, at a minimum, to species and habitats identified under Section 20 of this administrative regulation;

(b) Include protective measures that will be used during the active mining phase of operation. Protective measures may include the establishment of buffer zones, the selective location and special design of haul roads and powerlines, and the monitoring of surface water quality and quantity; and

(c) Include enhancement measures that will be used during the reclamation and postmining phase of operation to develop aquatic and terrestrial habitat. Enhancement measures may include restoration of streams and other wetlands, retention of ponds and impoundments, establishment of vegetation for wildlife food and cover, and the replacement of perches and nest boxes. If the plan does not include enhancement measures, a statement shall be given explaining why enhancement is not practicable.

(3) Upon request, the cabinet shall provide the protection and enhancement plan required under this section to the U.S. Department of the Interior, Fish and Wildlife Service regional or field office for their review. This information shall be provided within ten (10) days of receipt of the request from the Service.

(4)(a) A fish and wildlife protection and enhancement plan shall be required for amendments and revisions that:

1. Propose extension into a wetland;

2. Propose significant disturbance in a new watershed in which the area of surface operations and facilities or adjacent area, or areas subject to probable impacts from underground workings, including areas of probable subsidence, include an important stream;

3. Seek to obtain a stream buffer zone variance under 405 KAR 18:060, Section 11, or seek to modify an existing stream buffer zone variance;

4. Propose extension of the permit boundary that involves a new surface disturbance of five (5) acres or more;

5. Involve new areas of surface operations and facilities or adjacent areas, or areas subject to probable impacts from underground workings, including areas of probable subsidence, likely to contain, or that could reasonably be expected to contain, a state or federal endangered or threatened species or its critical habitat; or

6. Propose extension of the coal extraction area associated with an underground mine that may by subsidence or other means impact a wetland, important stream, or stream that contains, or could reasonably be expected to contain, a state or federal endangered or threatened species or its critical habitat.

(b) For other amendments and revisions, a determination of whether a protection and enhancement plan is necessary shall be made on a case-by-case basis.

(5) This section shall apply to applications for permits, amendments and revisions submitted to the cabinet on or after November 17, 1992.

Section 37. MRP; Postmining Land Use. (1) Each plan shall contain a description of the proposed land use or uses following reclamation of the land to be affected within the proposed permit area by surface operations and facilities, including:

(a) A discussion of the utility and capacity of the reclaimed land to support a variety of alternative uses, and the relationship of the proposed use to existing land use policies and plans;

(b) A discussion of how the proposed postmining land use is to be achieved and the necessary support activities which may be needed to achieve the proposed land use, including but not necessarily limited to management practices to be conducted during the liability period for the commercial forest land, cropland (including hayland), and pastureland land uses;

(c) If a land use different from the premining land use is pro-

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posed, all supporting documentation required for approval of the proposed alternative use under 405 KAR 18:220;

(d) A discussion of The consideration which has been given to making all of the proposed underground mining activities consistent with surface owner plans and applicable state and local land use plans and programs;

(e) A copy of the comments concerning the proposed use from the legal or equitable owner of record of the area to be affected by surface operations and facilities and the state and local government agencies, if any, which would have to initiate, implement, approve, or authorize the proposed use of the land following reclamation.

(2) Approval of the initial postmining land use plan pursuant to this section shall not preclude subsequent consideration and approval of a revised postmining land use plan in accordance with the applicable requirements of 405 KAR Chapters 7 through 24.

Section 38. MRP; Blasting. (1) Each application shall contain a blasting plan for the proposed permit area explaining how the applicant intends to comply with the requirements of 405 KAR 18:120. This plan shall include, at a minimum, information setting forth the limitations the permittee will meet with regard to ground vibration and airblast, the bases for the ground vibration and airblast limitations, and the methods to be applied in controlling the adverse effects of blasting operations.

(2) Each application shall contain a description of the systems to be used to monitor compliance with the standards for ground vibration and airblast including the types, capabilities, and sensitivities of blast monitoring equipment and identification of the monitoring procedures and locations.

(3) Blasting operations within 500 feet of active underground mines require approval of the cabinet, MSHA, and the Kentucky Department of Mines and Minerals.

JAMES E. BICKFORD, Secretary

APPROVED BY AGENCY: July 28, 1997

FILED WITH LRC: July 28, 1997 at 4 p.m.

PUBLIC HEARING: A public hearing on this proposed amendment has been scheduled for 9:30 a.m. (EDT) on Tuesday, September 30, 1997, in the Training Room (D-16) of the Department for Surface Mining Reclamation and Enforcement at 2 Hudson Hollow, Frankfort, Kentucky. Persons who wish to testify at the hearing shall notify the contact person listed below, in writing, by September 23, 1997. The scheduled hearing will be canceled if the contact person has not received any written notice of intent to testify by September 23, 1997, five workdays before the scheduled hearing date. If the hearing is held, it will be open to the public. Any person in attendance who wishes to testify on the proposed amendment will be given a fair and reasonable opportunity to do so, regardless of whether the person has given the cabinet prior written notice of his intent to testify. To assure an accurate record, the cabinet requests each person testifying at the hearing to provide the cabinet with a written copy of his testimony. The cabinet is not required to make a recording or transcript of the hearing unless someone makes a written request for it, in which case the person requesting the recording or transcript shall pay for it. WRITTEN COMMENTS: A person who wishes to comment on this proposed amendment but does not wish to testify at the hearing may submit written comments on the proposed amendment at any time before 4:30 p.m. (EDT) on Tuesday, September 30, 1997, the scheduled hearing date. Comments received after that time will not be considered. Written comments and written notices of intent to testify at the hearing shall be submitted to the contact person listed below.

CONTACT PERSON: Jim Villines, Kentucky Department for Surface Mining, 2 Hudson Hollow, Frankfort, Kentucky 40601-4321, Tel. (502) 564-6940, FAX (502) 564-5698.

## REGULATORY IMPACT ANALYSIS

Contact Person: Jim Villines

1. Type and number of entities affected: This amendment will affect applicants with permitting actions taken after the effective date of the amendment. In calendar year 1996 the cabinet's Division of Permits issued, for underground mining, 134 new permits and amendments, 35 major revisions, 129 minor revisions, 78 permit renewals and 69 transfers.

2. Direct and indirect costs or savings on the affected entities:

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 comments were received on this subject. The amendment is not expected to have an effect on the cost of living and employment.

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 on this subject. The amendment is not expected to have an effect on the cost of doing business.

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: In general, this amendment does not impose markedly different permitting requirements than those that currently exist. There is increased emphasis on identifying potential mining impacts on water supplies and structures, and planning for mitigation of those impacts if they occur. The map of underground workings required by this amendment may require more detail than many applications currently provide. There is an opportunity for applicants to reduce their overall cost of designing and obtaining approval of impounding structures, since the cabinet intends to rely heavily upon MSHA review and approval of impounding structures.

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: The cabinet will experience some reduction in review workload by decreasing the extent of engineering review of impounding structures through reliance on MSHA review and approval of those structures.

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

3. Additional factors increasing or decreasing costs: None

b. Reporting and paperwork requirements: No significant change in overall reporting and paperwork requirements is expected.

4. Assessment of anticipated effect on state and local revenues: No effect is expected.

5. Source of revenue to be used for implementation and enforcement of administrative regulation: No additional revenue is expected to be needed.

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

a. Geographical area in which administrative regulation will be implemented: No comments on economic impact were received. No economic impact on the coal mining regions is expected.

b. Kentucky: No comments on economic impact were received. No statewide economic impact is expected.

7. Assessment of alternative methods; reasons why alternatives were rejected: There is no feasible alternative to adoption of most of this amendment, since the cabinet's administrative regulations must be consistent with federal regulations.

8. Assessment of expected benefits of the administrative regulation: Surface owners whose water supplies are potentially affected by underground mining activities may benefit from the applicant's identification of alternative sources of water supply that

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could be developed if needed, and from the consideration of the potential effects of mine subsidence on water supplies. Applicants for approval of impounding structures will benefit from the cabinet's reliance on MSHA review and approval to minimize duplication of review.

9.a. Identify effects on public health and environmental welfare of the geographical area in which implemented and Kentucky: No effect on public health and environmental welfare will result in the coal regions or statewide.

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

c. If detrimental effect would result, explain detrimental effect: None

10. Identify any statute, administrative regulation, or government policy which may be in conflict, overlapping, or duplication: There is no conflict, overlap, or duplication.

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

b. If in conflict, was the effort made to harmonize the proposed administrative regulation with conflicting provisions: No conflict.

11. Any additional information or comments: No additional comments.

12. TIERING: Is tiering applied? No. Tiering is not applicable to this proposed amendment because, under the federal and Kentucky surface mining laws and regulations, these requirements must apply equally to all permittees under 405 KAR Chapters 7-24.

### FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 16 USC 1276(a), 1531 et seq., 30 USC 1253, 1255, 1257, 1258, 1266, 1267. 7 CFR 657, 30 CFR 77.216-1, 77.216-2, 730-733, 735, 773.13(a), 778, 783, 784, 785.17(b),(d), 917, 40 CFR 136, 434. The federal regulations corresponding to this amendment are 30 CFR 784.14(e)(3)(iv), 784.16, and 784.20.

2. State compliance standards. Section 16 contains permitting requirements regarding alternative water supply information. Section 16 presently provides that if contamination, diminution, or interruption of an underground or surface source of water for domestic, agricultural, industrial, or other legitimate use may result from the underground mining activities, the applicant may identify in the permit application the alternative sources of water supply that could be developed to replace the existing sources. This section will be amended to require the permit application to identify and describe the adequacy of the alternative sources of water supply that could be developed for existing premining uses and approved postmining land uses, if the applicant's determination of probable hydrologic consequences under 405 KAR 8:040 Section 32 indicates that the proposed underground mining activities may proximately result in contamination, diminution, or interruption of an underground or surface source of water for domestic, agricultural, industrial, or other legitimate use. Section 26 contains permitting requirements for subsidence control information. Section 26(1) requires a map of the permit area and adjacent areas, showing the location and type of structures and renewable resource lands that may be materially damaged by subsidence or for which the value or reasonably foreseeable use may be diminished by subsidence, and the location and type of water supplies for domestic, agricultural, industrial or other legitimate use that could be contaminated, diminished, or interrupted by subsidence. It requires a narrative indicating whether subsidence, if it occurred, could cause the adverse effects previously described. It requires an example of the letter by which the applicant proposes to notify the owners of all structures and water supplies for which presubsidence surveys are required under 405 KAR 18:210 Section 1(4). Section 26(2) provides that if the information submitted under Section 26(1) shows that no structures, or water supplies for domestic, agricultural, industrial or other legitimate use, or renewable resource lands exist, or that no material

damage or diminution in value or reasonably foreseeable use of the structures or lands, and no contamination, diminution, or interruption of the water supplies, would occur as a result of subsidence, and if the cabinet agrees with this conclusion, no further information need be provided under Section 26. Section 26(3) provides that if the information submitted under Section 26(1) shows that structures, renewable resource lands, or water supplies exist, and that subsidence could cause material damage or diminution in value or reasonably foreseeable use, or contamination, diminution, or interruption of protected water supplies, or if the cabinet determines that these adverse effects could occur, the application shall include a subsidence control plan. The subsidence control plan must: describe the mining methods to be used; provide a map of the underground workings; describe the physical conditions that affect the likelihood or extent of subsidence and damage; describe monitoring methods if needed; describe the underground and surface measures to be taken to prevent or minimize subsidence and damage in areas where planned subsidence mining methods will not be used; if planned subsidence is proposed, describe its anticipated effects, and either describe the methods to be used to minimize damage to structures, or provide the owner's written consent that minimization measures not be taken, or demonstrate that the costs of minimization would exceed the cost of repair and the anticipated damage would not threaten health or safety; describe measures to be taken to replace damaged water supplies and to remedy material damage to land and structures; and provide other information required by the cabinet as necessary to demonstrate that the operation will comply with 405 KAR 18:210. Section 32 contains permitting requirements regarding protection of the hydrologic balance. Section 32(1)(b) is amended by adding a subparagraph 5 so that the applicant's description of measures to be taken to protect the hydrologic balance, or demonstration that protective measures are not necessary, would address the requirement to protect or replace the water supply of present users as required by proposed 405 KAR 18:060 Section 12. Section 32(3) is amended by inserting a new paragraph (e) so that the applicant's determination of probable hydrologic consequences shall include a finding on whether the proposed underground mining activities conducted after July 16, 1994 may proximately result in contamination, diminution, or interruption of an underground or surface source of water for domestic, agricultural, industrial, or other legitimate use within the permit area or adjacent areas at the time the application is submitted. Section 34 sets forth permitting requirements for detailed design plans for sedimentation ponds, water impoundments, and coal mine waste banks, dams, and embankments. Plans must be prepared by, or under the direction of a registered professional engineer, and must contain appropriate maps and drawings, hydrologic and geologic information and computations necessary to demonstrate compliance with the performance standards of 405 KAR Chapter 18, all information used to determine the probable hydrologic consequences of the mining operations, an assessment of subsidence effects on the structure if appropriate, any geotechnical investigations, operation and maintenance requirements for the structure, and a schedule for removal if appropriate. Sedimentation ponds must be designed to comply with 405 KAR 18:090 and 18:100, the performance standards applicable to sedimentation ponds and other impoundments. Permanent and temporary impoundments must be designed to comply with 405 KAR 18:100. Plans for impoundments meeting the size criteria of the U.S. Department of Labor's Mine Safety and Health Administration (MSHA) must comply with the applicable MSHA regulations. The design plan required to be submitted to MSHA under 30 CFR 77.216 must be submitted to the cabinet as part of the permit application. After the plan has been approved by MSHA the applicant must submit to the cabinet a copy of the plan approved by MSHA including copies of correspondence from MSHA, any technical reports requested by MSHA, and a notarized statement by the applicant that the copy submitted to the cabinet is a complete and correct copy of the plan approved by

MSHA. Impounding structures to be constructed of coal mine waste or to impound coal mine waste must be designed to meet MSHA requirements, the plans submitted to MSHA must be submitted to the cabinet as with other impoundments, and additional requirements for geotechnical and other investigations of site conditions must be met. The plan for any impounding structure that is Class B - moderate hazard or Class C - high hazard under 405 KAR 7:040 Section 5 and 401 KAR 4:030, or that meets the size or other criteria of MSHA at 30 CFR 77.216(a), must include a stability analysis of the structure and include additional engineering information used in making the stability analysis.

3. Minimum or uniform standards contained in the federal mandate. The federal regulations corresponding to this amendment are 30 CFR 784.14(e)(3)(iv), 784.16, and 784.20. 30 CFR 784.14(e)(3)(iv) requires that the applicant's determination of probable hydrologic consequences include a finding on whether the underground mining operations conducted after October 24, 1992 may result in contamination, diminution or interruption of a well or spring in existence at the time the permit application is submitted and used for domestic, drinking, or residential purposes within the permit or adjacent areas. 30 CFR 784.16 contains permitting requirements for siltation structures, impoundments, banks, dams, and embankments. Both a general plan and a detailed plan are required for each structure. The general plan must be prepared by, or under the direction of, a qualified registered professional engineer, a professional geologist, or in a state which authorizes land surveyors to prepare and certify such plans, a qualified registered professional land surveyor with assistance from experts in related fields such as landscape architecture. The general plan must contain a description, map, and cross-section of the structure and its location, preliminary hydrologic and geologic information required to assess the hydrologic impact of the structure, a survey describing the potential effects of subsidence on the structure if past underground mining has occurred, and a certification statement that includes a schedule for submitting any detailed design plans that are not submitted with the general plan. The regulatory authority must have approved in writing the detailed design plan before construction of the structure begins. Impoundments that meet the Class B or C criteria for dams in the USDA Soil Conservation Service's (now Natural Resources Conservation Service) publication Technical Release No. 60, "Earth Dams and Reservoirs", must meet the requirements of this section for structures that meet or exceed the size or other criteria of MSHA. TR-60 is incorporated by reference. Detailed design plans that meet or exceed the size or other criteria of MSHA at 30 CFR 77.216(a) must be prepared by a qualified registered professional engineer with assistance from experts in related fields such as geology, land surveying and landscape architecture. The detailed plan must include any geotechnical investigation, design, and construction requirements, and describe the timetable and plans for removal if appropriate. Designs for smaller structures not meeting the Class B or C or MSHA size criteria may be prepared by or under and certified by a qualified registered professional engineer, but may be prepared etc. by a qualified registered professional land surveyor in states that authorize it, except that all coal processing waste dams and embankments covered by 30 CFR 817.81 - 817.84 must be certified by a qualified registered professional engineer. Design plans for these smaller structures must also include any design and construction requirements and geotechnical information, describe operation and maintenance requirements, and describe the timetable and plans for removal if appropriate. Permanent and temporary impoundments must be designed to meet 30 CFR 817.49, the technical performance standards for impoundments. Plans for impoundments meeting the MSHA size criteria must comply with the MSHA criteria at 30 CFR 77.216-1 and 77.216-2. The plan required to be submitted to MSHA must be submitted to the regulatory authority as part of the permit application. For the smaller impoundments not meeting MSHA size criteria the regulatory authority may establish, through the state program

approval process, engineering design standards that ensure stability comparable to a 1.3 static safety factor in lieu of engineering tests to establish compliance with the minimum 1.3 static safety factor specified in 30 CFR 817.49(a)(4)(ii). Coal processing waste banks must be designed to meet 30 CFR 817.81 - 817.84. Coal processing waste dams and embankments must also be designed to meet 30 CFR 817.81 - 817.84 and to comply with MSHA 30 CFR 77.216-1 and 77.216-2, and the plan must include a geotechnical investigation of the foundation by an engineer or engineering geologist and include certain types of information about site specific conditions. If a structure meets the TR-60 Class B or C criteria or the MSHA size criteria of 30 CFR 77.216(a) the design plan must include a stability analysis of the structure that must include strength parameters, pore pressures, and long term seepage conditions, and the plan must also describe each engineering design assumption and calculation with a discussion of each alternative considered in selecting the specific design parameters and construction methods. 30 CFR 784.20 contains permitting requirements for subsidence control. The application must contain a presubsidence survey consisting of three parts: a map, a narrative, and a survey of the condition of protected structures and water supplies that may be damaged by subsidence. The map must show the location and type of structures and renewable resource lands that subsidence may materially damage or diminish their value or reasonably foreseeable use, and the location and type of drinking, domestic, and residential water supplies that could be contaminated, diminished, or interrupted by subsidence. The narrative must indicate whether subsidence, if it occurred, could cause the adverse effects just described. The survey must show the condition of all noncommercial buildings or occupied residential dwellings and structures related thereto within the area encompassed by the applicable angle of draw that may be materially damaged by subsidence or have their reasonably foreseeable use diminished by subsidence. The survey must also show the quantity and quality of all drinking, domestic, and residential water supplies within the permit area and adjacent area that could be contaminated, diminished, or interrupted by subsidence. If the applicant cannot make this survey because the owner will not allow access to the site, the applicant must notify the owner in writing of the effect the denial of access will have under 30 CFR 817.121(c)(4) [loss of presumption that subsidence damage was caused by permittee]. The applicant must pay for any technical assessment or engineering evaluation used to determine the premining condition or value of structures and the quantity and quality of water supplies. The applicant must provide a copy of the survey and any technical assessment or engineering evaluation to the property owner and the regulatory authority. The applicant may or may not need a subsidence control plan. If the presubsidence survey shows that no structures, or drinking, domestic, or residential water supplies, or renewable resource lands exist, or that such features exist but mine subsidence, if it occurred, would not cause material damage or diminution in value or reasonable foreseeable use of the structures or lands or cause contamination, diminution, or interruption of the water supplies, and if the regulatory authority agrees with this conclusion, no further information need be provided under this section. However, if the survey shows that structures, renewable resource lands, or water supplies exist and that subsidence could cause the adverse effects just described, or if the regulatory determines that these adverse effects could occur, the application must include a subsidence control plan that contains the required information. The subsidence control plan must contain a description of the method of coal removal including the size, sequence and timing of the development of underground workings; a map of the underground workings that shows where planned-subsidence mining methods will be used and shows where measures will be taken to prevent or minimize subsidence and subsidence-related damage, and when applicable, to correct subsidence-related material damage; a description of the physical conditions that affect the likelihood or extent of subsidence and subsidence-related



damage; a description of the monitoring, if any, needed to determine the commencement and degree of subsidence so that appropriate measures can be taken to prevent, reduce or correct material damage; except where planned subsidence mining methods will be used, a detailed description of the subsidence control measures that will be taken to minimize subsidence and damage, such as back-stowing, leaving support pillars of coal, leaving areas in which no coal is removed, and taking measures on the surface to minimize damage; a description of the anticipated effects of any planned subsidence; for areas where planned subsidence will be used, a description of methods to be used to minimize damage to noncommercial buildings and occupied residential dwellings and related structures, or the owner's written consent that minimization measures not be taken, or, unless the anticipated damage would threaten health or safety, a demonstration that the costs of minimizing damage exceed the anticipated costs of repair; a description of measures to be taken to replace adversely affected protected water supplies or to mitigate or remedy any material damage to the land and protected structures; and other information required by the regulatory authority a necessary to demonstrate that the operation will be conducted in accordance with the subsidence control performance standards at 30 CFR 817.121.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? Yes

a. 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 exact federal counterpart to this requirement for alternative water supply information for underground mines, although a close parallel is found in the subsidence control plan requirements at 30 CFR 784.20(b)(8), which requires a description of measures to be taken to replace adversely affected protected water supplies. Justification: 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.

b. Section 26(1) is amended to require that the application contain an example of the letter by which the applicant proposes to notify the owners of all structures and water supplies identified under this subsection for which a presubsidence condition survey is required under 405 KAR 18:210 Section 1(4). The corresponding federal regulation does not require the sample letter. Justification: The federal regulations are structured such that the presubsidence condition surveys of structures and water supplies are included in the permit application prior to permit issuance. The cabinet's regulations would allow those surveys to be submitted after permit issuance. The example letter is needed in the permit application to ensure that the applicant is prepared to provide proper notice to owners of structures and water supplies after permit issuance.

c. Section 26 includes the map and narrative required in the corresponding federal regulation, but does not include the corresponding requirement at 30 CFR 784.20(a)(3) for presubsidence surveys of the condition of structures and the quantity and quality of water supplies that may be damaged by subsidence. Justification: The federal regulation is structured such that the map and narrative information to identify structures and water supplies vulnerable to subsidence damage, and all necessary presubsidence condition surveys on those structures and water supplies, would be conducted prior to issuance of the permit. The map and narrative information required under Section 26(1)(a) and (b) are necessary to determine if a subsidence control plan is needed, and if so to design it, and therefore must be included in the permit application and subject to review by the public and the cabinet prior to issuance of the permit. However, it is appropriate to allow presubsidence condition surveys to be conducted after permit issuance. Because the purpose of a

presubsidence condition survey is to provide a baseline against which subsidence damage to a particular structure or water supply, if it occurs, can be measured, it is essential that the survey be conducted prior to mining near that structure or water supply. It is not essential to the purpose of the survey that it be conducted prior to permit issuance, and in some cases it could be wasteful to do so. If a condition survey is conducted prior to permit issuance and mining near the structure or water supply does not take place for a year or more, as may be the case with large underground mining operations, it may be necessary to repeat the presubsidence condition survey to insure its accuracy. The cabinet's proposed regulation is structured differently from the federal regulation regarding presubsidence surveys. However, since presubsidence surveys under the cabinet's regulation will achieve the purpose they are intended to achieve under the federal regulation, the cabinet's regulation is as effective as the federal regulation and therefore is not inconsistent with the federal regulation.

d. Section 26 in three locations refers to water supplies for "domestic, agricultural, industrial, or other legitimate use", whereas the corresponding federal regulation refers to "drinking, domestic, or residential" water supplies. Justification: This administrative regulation addresses water supplies protected under KRS 350.421, whereas the federal regulation addresses water supplies protected under 30 USC 1309a.

e. Section 32(3) is amended by inserting a new paragraph (e) so that the applicant's determination of probable hydrologic consequences shall include a finding on whether the proposed underground mining activities conducted after July 16, 1994 may proximately result in contamination, diminution, or interruption of an underground or surface source of water for domestic, agricultural, industrial, or other legitimate use within the permit area or adjacent areas at the time the application is submitted. The corresponding federal requirement at 30 CFR 784.14(e)(3)(iv) refers to underground mining activities conducted after October 24, 1992 and wells or springs used for domestic, drinking, or residential use. Justification: This administrative regulation addresses water supplies protected under KRS 350.421, as amended by 1994 HB 338, which took effect July 16, 1994. The federal regulation addresses water supplies protected under 30 USC 1309a, which was created October 24, 1992.

f. Section 34(3) and 34(5) require that design plans for impounding structures that are required to be submitted to MSHA, also must be submitted to the cabinet as part of the permit application. This requirement is in the corresponding federal regulations. However, this amendment further requires that after these plans have been approved by MSHA, the applicant must submit to the cabinet a copy of the final approved plans, a copy of all correspondence from MSHA regarding the plans, a copy of any technical support documents requested by MSHA, and a notarized statement by the applicant that the copy submitted to the cabinet is a complete and correct copy of the final plan approved by MSHA. Justification: In order to minimize duplication of technical review of impounding structures by MSHA and the cabinet, and to minimize conflicts for the applicant that may arise from duplication of review, the cabinet intends to rely heavily upon the review conducted by MSHA engineers and upon the final plans approved by MSHA. The cabinet and MSHA have been working closely to coordinate review. The applicant will submit to the cabinet, as part of the permit application, the same plan for the impounding structure that he initially submits to MSHA. The cabinet will review aspects of the plan that are within the cabinet's responsibilities but are not within MSHA's responsibilities. The applicant will work directly with MSHA regarding aspects of the plan being reviewed by MSHA. After MSHA has given its final approval to the plan, the applicant will submit a copy of the approved plan, correspondence, supporting documents, and a notarized statement that the copy is complete and correct, to the cabinet. The cabinet expects to rely heavily upon the MSHA review to minimize the extent of final cabinet review necessary to ensure compliance with the cabinet's requirements. It is important



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to ensure that the plan actually approved by MSHA is included in the permit application so there will be no discrepancy between the plan approved by MSHA and the plan approved by the cabinet. The additional requirements are intended to provide that assurance.

g. Section 34 refers to Class B and C criteria under 405 KAR 7:040 Section 5 and 401 KAR 4:030 (administrative regulation of the cabinet's Division of Water regarding criteria for dams), whereas the federal regulation refers to Class B and C criteria in the USDA-SCS Technical Release No. 60 and incorporate TR-60 by reference. Justification: The Class B and C criteria of the cabinet and those of TR No. 60 are virtually identical criteria, since the Division of Water's criteria were originally developed based upon the SCS criteria. Thus there is no need for the cabinet's regulations to refer to, or to incorporate by reference, TR-60.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Because several differences are described under question no. 4 above, the justification for each difference is shown immediately following its description, for ease of reading.

### NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET Department for Surface Mining Reclamation and Enforcement (Amendment)

#### 405 KAR 16:001. Definitions for 405 KAR Chapter 16.

RELATES TO: KRS Chapter 350, 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, 917c 30 USC 1253, 1255, 1291

STATUTORY AUTHORITY: KRS [~~Chapter 13A,~~] 350.028, 350.465c 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

NECESSITY, FUNCTION, AND CONFORMITY: KRS 350.028(1) requires the cabinet to promulgate administrative regulations pertaining to surface coal mining operations including strip mining and the surface effects of underground mining to accomplish the purposes of KRS Chapter 350. This administrative regulation defines terms used in 405 KAR Chapter 16. KRS 350.028(5), 350.151(1), and 350.465(2),(5) authorize and direct the cabinet to promulgate administrative regulations for surface and underground coal mining operations for the purpose of accepting and administering primary enforcement responsibilities under the permanent regulatory program pursuant to PL 95-87, the federal Surface Mining Control and Reclamation Act of 1977; and direct that the cabinet's administrative regulations be consistent with, and not more stringent than required by, that Act. PL 95-87 does not require Kentucky to comply with its provisions, but in order to retain primary enforcement responsibility under that Act the cabinet's administrative regulations must be consistent with federal regulations promulgated pursuant to that Act. This definitions affected in this amendment are the same as the corresponding federal definitions, except as follows:

1. The federal definition of "other treatment facilities" refers to compliance with "applicable state and federal water quality standards," whereas that definition in this amendment refers to compliance with 405 KAR 16:070. 405 KAR 16:070 is the administrative regulation relating to water quality standards and effluent limitations, and it contains the appropriate reference to "all applicable federal and state water quality standards".

2. The federal definition of "replacement of water supply" is not included in this amendment. Because the federal definition contains substantive requirements, the cabinet promulgated the provisions of the federal definition as substantive requirements in 405 KAR 16:060, Section 8, and 405 KAR 18:060, Section 12. ~~[KRS Chapter 350 in pertinent part requires the cabinet to promulgate rules and administra-~~

~~tive regulations pertaining to surface coal mining and reclamation operations under the permanent regulatory program. This administrative regulation provides for the defining of certain essential terms used in 405 KAR Chapter 16.]~~

Section 1. Definitions. (1) "Acid drainage" means water with a pH of less than six (6.0) and in which total acidity exceeds total alkalinity, discharged from an active, inactive, or abandoned surface coal mine and reclamation operation or from an area affected by surface coal mining and reclamation operations.

(2) "Acid-forming materials" means earth materials that contain sulfide minerals or other materials which, if exposed to air, water, or weathering processes, form acids that may create acid drainage.

(3) "Adjacent area" means land located outside the affected area or permit area, depending on the context in which "adjacent area" is used, where air, surface or groundwater, fish, wildlife, vegetation or other resources protected by KRS Chapter 350 may be adversely impacted by surface coal mining and reclamation operations.

(4) "Affected area" means any land or water area which is used to facilitate, or is physically altered by, surface coal mining and reclamation operations. The affected area includes the disturbed area; any area upon which surface coal mining and reclamation operations are conducted; any adjacent lands the use of which is incidental to surface coal mining and reclamation operations; all areas covered by new or existing roads used to gain access to, or for hauling coal to or from, surface coal mining and reclamation operations, except as provided in this definition; any area covered by surface excavations, workings, impoundments, dams, ventilation shafts, entryways, refuse banks, dumps, stockpiles, overburden piles, spoil banks, culm banks, tailings, holes or depressions, repair areas, storage areas, shipping areas; any areas upon which are sited structures, facilities, or other property or material on the surface resulting from, or incident to, surface coal mining and reclamation operations; and the area located above underground workings associated with underground mining activities, auger mining, or in situ mining. The affected area shall include every road used for the purposes of access to, or for hauling coal to or from, surface coal mining and reclamation operations, unless the road:

(a) Was designated as a public road pursuant to the laws of the jurisdiction in which it is located;

(b) Is maintained with public funds, and constructed in a manner similar to other public roads of the same classification within the jurisdiction; and

(c) There is substantial (more than incidental) public use.

(5) "Applicant" means any person(s) seeking a permit, permit revision, permit amendment, permit renewal, or transfer, assignment, or sale of permit rights from the cabinet to conduct surface coal mining and reclamation operations or approval to conduct coal exploration operations pursuant to KRS Chapter 350 and all applicable administrative regulations.

(6) "Application" means the documents and other information filed with the cabinet seeking issuance of permits; revisions; amendments; renewals; and transfer, assignment or sale of permit rights for surface coal mining and reclamation operations or, if required, seeking approval for coal exploration.

(7) "Approximate original contour" is defined in KRS 350.010.

(8) "Aquifer" means a zone, stratum, or group of strata that can store and transmit water in sufficient quantities for domestic, agricultural, industrial, or other beneficial use.

(9) "Auger mining" means a method of mining coal at a cliff or highwall by drilling holes into an exposed coal seam from the highwall and transporting the coal along an auger bit to the surface and shall also include all other methods of mining in which coal is extracted from beneath the overburden by mechanical devices located at the face of the cliff or highwall and extending laterally into the coal seam, such as extended depth, secondary recovery systems.

(10) "Best technology currently available" means equipment,

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devices, systems, methods, or techniques which will prevent, to the extent possible, additional contributions of suspended solids to stream flow or runoff outside the permit area and minimize, to the extent possible, disturbances and adverse impacts on fish, wildlife, and related environmental values, and achieve enhancement of those resources where practicable. The term includes equipment, devices, systems, methods, or techniques which are currently available anywhere as determined by the cabinet, even if they are not in routine use. The term includes, but is not limited to, construction practices, siting requirements, vegetative selection and planting requirements, animal stocking requirements, scheduling of activities and design of sedimentation ponds in accordance with 405 KAR Chapters 16 and 18. The cabinet shall have the discretion to determine the best technology currently available on a case-by-case basis, as authorized by KRS Chapter 350 and 405 KAR Chapters 7 through 24.

(11) "Blaster" means a person who is directly responsible for surface blasting operations in surface coal mining and reclamation operations or coal exploration operations.

(12) "Bond pool" or "Kentucky Bond Pool" means the voluntary alternative bonding program established at KRS 350.700 through 350.755.

(13) "Cabinet" is defined in KRS 350.010.

(14) "CFR" means Code of Federal Regulations.

(15) "Coal" means combustible carbonaceous rock, classified as anthracite, bituminous, subbituminous, or lignite by ASTM Standard D 388-77.

(16) "Coal exploration" means the field gathering of:

(a) Surface or subsurface geologic, physical, or chemical data by mapping, trenching, drilling, geophysical, or other techniques necessary to determine the quality and quantity of overburden and coal of an area; or

(b) Environmental data to establish the conditions of an area before beginning surface coal mining and reclamation operations under the requirements of 405 KAR Chapters 7 through 24 if the activity may cause any disturbance of the land surface or may cause any appreciable effect upon land, air, water, or other environmental resources.

(17) "Coal mine waste" means coal processing waste and underground development waste.

(18) "Coal processing waste" means materials which are separated from the product coal during the cleaning, concentrating, or other processing or preparation of coal.

(19) "Collateral bond" means an indemnity agreement in a sum certain payable to the cabinet executed by the permittee and which is supported by the deposit with the cabinet of cash, negotiable certificates of deposit, or an irrevocable letter of credit of any bank organized and authorized to transact business in the United States.

(20) "Combustible material" means organic material that is capable of burning, either by fire or through oxidation, accompanied by the evolution of heat and a significant temperature rise.

(21) "Compaction" means increasing the density of a material by reducing the voids between the particles by mechanical effort.

(22) "Cropland" means land used for the production of adapted crops for harvest, alone or in a rotation with grasses and legumes, and includes row crops, small grain crops, hay crops, nursery crops, orchard crops, and other similar specialty crops.

(23) "Cumulative impact area" means the area, including the permit area, within which impacts resulting from the proposed operation may interact with the impacts of all anticipated mining on surface and groundwater systems. Anticipated mining shall include, at a minimum, the entire projected lives through bond release of:

(a) The proposed operation;

(b) All existing operations;

(c) Any operation for which a permit application has been submitted to the cabinet; and

(d) All operations required to meet diligent development requirements for leased federal coal for which there is actual mine develop-

ment information available.

(24) "Day" means calendar day unless otherwise specified to be a working day.

(25) "dB" means decibels.

(26) "Department" means the Department for Surface Mining Reclamation and Enforcement.

(27) "Developed water resources land" means land used for storing water for beneficial uses such as stockponds, irrigation, fire protection, flood control, and water supply.

(28) "Disturbed area" means an area where vegetation, topsoil, or overburden is removed or upon which topsoil, spoil, coal processing waste, underground development waste, or noncoal waste is placed by surface coal mining operations. Those areas are classified as "disturbed" until reclamation is complete and the performance bond or other assurance of performance required by 405 KAR Chapter 10 is released.

(29) "Diversion" means a channel, embankment, or other manmade structure constructed to divert water from one (1) area to another.

(30) "Downslope" means the land surface below the projected outcrop of the lowest coalbed being mined along each highwall.

(31) "Durable rock" means rock that does not slake in water and that is not reasonably expected to degrade to such a size or condition as to block, cause failure of, or otherwise impair or restrict the effectiveness of the internal drainage system. The cabinet shall consider rock to be durable if it is demonstrated, to the satisfaction of the cabinet in the application, that the rock has an SDI value of ninety (90) or greater as determined by the Kentucky Department of Transportation "Method for Determination of Slake Durability Index" (Kentucky Method 64-513-79), incorporated herein by reference. This document may be obtained from the Kentucky Transportation Cabinet, Division of Materials, Wilkinson Blvd., Frankfort, Kentucky 40601; or the Kentucky Transportation Cabinet, Division of Management Services, State Office Building, Frankfort, Kentucky 40601. It may be reviewed, copied, or obtained at the Department for Surface Mining Reclamation and Enforcement, #2 Hudson Hollow, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m. The cabinet may accept other test methods of demonstrating that rock is durable if it is demonstrated to the satisfaction of the cabinet that the alternative test methods yield equivalent measure of durability based upon correlation of results with Kentucky Method 64-513-79.

(32) "Embankment" means a manmade deposit of material that is raised above the natural surface of the land and used to contain, divert, or store water; to support roads or railways; or for other similar purposes.

(33) "Ephemeral stream" means a stream which flows only in direct response to precipitation in the immediate watershed or in response to the melting of a cover of snow and ice, and which has a channel bottom that is always above the local water table.

(34) "Excess spoil" means spoil disposed of in a location other than the coal extraction area, except that spoil material used to achieve the approximate original contour shall not be considered excess spoil.

(35) "Fish and wildlife land use", as used in 405 KAR 16:210 and in similar situations when referring to a premining or postmining land use, means land dedicated wholly or partially to the production, protection, or management of fish or wildlife. Areas considered as having the fish and wildlife land use are typically characterized by a diversity of habitats in which use by wildlife is the dominant characteristic, whether actively managed or not.

(36) "Forest land" means land used or managed for the long term production of wood, wood fiber, or wood derived products.

(37) "Fugitive dust" means that particulate matter which becomes airborne due to wind erosion from exposed surfaces.

(38) "Ground cover" means the area of ground covered by the combined aerial parts of vegetation and litter produced and distributed naturally and seasonally on site, expressed as a percentage of the

total area of measurement.

(39) "Groundwater" means subsurface water that fills available openings in rock or soil materials to the extent that they are considered water saturated.

(40) "Growing season" means the period during a one (1) year cycle, from the last killing frost in the spring to the first killing frost in the fall, in which climatic conditions are favorable for plant growth. In Kentucky, this period normally extends from mid-April to mid-October.

(41) "Head-of-hollow fill" means a fill structure consisting of any material, other than coal processing waste and organic material, placed in the uppermost reaches of a hollow near the approximate elevation of the ridgeline, where there is no significant natural drainage area above the fill, and where the side slopes of the existing hollow measured at the steepest point are greater than twenty (20) degrees or the average slope of the profile of the hollow from the toe of the fill to the top of the fill is greater than ten (10) degrees.

(42) "Higher or better uses" means postmining land uses that have a higher economic value or nonmonetary benefit to the landowner or the community than the premining land uses.

(43) "Highwall" means the face of exposed overburden and coal in an open cut of a surface mining activity or for entry to underground mining activities.

(44) "Highwall remnant" means that portion of highwall that remains after backfilling and grading of a remining permit area.

(45) "Historically used for cropland."

(a) "Historically used for cropland" means that lands have been used for cropland for any five (5) years or more out of the ten (10) years immediately preceding:

1. The application; or

2. The acquisition of the land for the purpose of conducting surface coal mining and reclamation operations.

(b) Lands meeting either paragraph (a)1 or 2 of this subsection shall be considered "historically used for cropland."

(c) In addition to the lands covered by paragraph (a) of this subsection, other lands shall be considered "historically used for cropland" as described below:

1. Lands that would likely have been used as cropland for any five (5) out of the last ten (10) years immediately preceding the acquisition or the application but for some fact of ownership or control of the land unrelated to the productivity of the land; and

2. Lands that the cabinet determines, on the basis of additional cropland history of the surrounding lands and the lands under consideration, are clearly cropland but fall outside the specific five (5) years in ten (10) criterion.

(d) Acquisition includes purchase, lease, or option of the land for the purpose of conducting or allowing through resale, lease or option, the conduct of surface coal mining and reclamation operations.

(46) "Hydrologic balance" means the relationship between the quality and quantity of water inflow to, water outflow from, and water storage in a hydrologic unit such as a drainage basin, aquifer, soil zone, lake, or reservoir. It encompasses the dynamic relationship between precipitation, runoff, evaporation, and changes in ground and surface water storage.

(47) "Hz" means hertz.

(48) "Imminent danger to the health and safety of the public" means the existence of any condition or practice, or any violation of a permit or other requirements of KRS Chapter 350 in a surface coal mining and reclamation operation, which could reasonably be expected to cause substantial physical harm to persons outside the permit area before the condition, practice, or violation can be abated. A reasonable expectation of death or serious injury before abatement exists if a rational person, subjected to the same condition or practice giving rise to the peril, would avoid exposure to the danger during the time necessary for abatement.

(49) "Impounding structure" means a dam, embankment or other structure used to impound water, slurry, or other liquid or semiliquid material.

(50) "Impoundment" means a water, sediment, slurry or other liquid or semiliquid holding structure or depression, either naturally formed or artificially built, ~~closed basin, naturally formed or artificially built, which is dammed or excavated for the retention of water, sediment, or waste.~~

(51) ~~[(50)]~~ "Industrial/commercial lands" means lands used for:

(a) Extraction or transformation of materials for fabrication of products, wholesaling of products, or long-term storage of products, and heavy and light manufacturing facilities.

(b) Retail or trade of goods or services, including hotels, motels, stores, restaurants, and other commercial establishments.

(52) ~~[(51)]~~ "In situ processes" means activities conducted on the surface or underground in connection with in-place distillation, retorting, leaching, or other chemical or physical processing of coal. The term includes, but is not limited to, in situ gasification, in situ leaching, slurry mining, solution mining, borehole mining, and fluid recovery mining.

(53) ~~[(52)]~~ "Intermittent stream" means:

(a) A stream or reach of stream that drains a watershed of one (1) square mile or more but does not flow continuously during the calendar year; or

(b) A stream or reach of a stream that is below the local water table for at least some part of the year, and obtains its flow from both surface runoff and groundwater discharge.

(54) ~~[(53)]~~ "KAR" means Kentucky administrative regulations.

(55) ~~[(54)]~~ "KPDES" means Kentucky Pollutant Discharge Elimination System.

(56) ~~[(55)]~~ "KRS" means Kentucky Revised Statutes.

(57) ~~[(56)]~~ "Land use" means specific functions, uses, or management-related activities of an area, and may be identified in combination when joint or seasonal uses occur and may include land used for support facilities that are an integral part of the use. In some instances, a specific use can be identified without active management.

(58) ~~[(57)]~~ "Modified highwall" means either:

(a) The highwall resulting from remining where the preexisting highwall face is removed; or

(b) The highwall resulting from remining where the preexisting highwall is vertically enlarged.

(59) ~~[(58)]~~ "Monitoring" means the collection of environmental data by either continuous or periodic sampling methods.

(60) ~~[(59)]~~ "MRP" means mining and reclamation plan.

(61) ~~[(60)]~~ "MSHA" means Mine Safety and Health Administration.

(62) ~~[(61)]~~ "Mulch" means vegetation residues or other suitable materials that aid in soil stabilization and soil moisture conservation, thus providing microclimatic conditions suitable for germination and growth.

(63) ~~[(62)]~~ "Notice of noncompliance and order for remedial measures" means a written document and order prepared by an authorized representative of the cabinet which sets forth with specificity the violations of KRS Chapter 350, 405 KAR Chapters 7 through 24, or permit conditions which the authorized representative of the cabinet determines to have occurred based upon his inspection, and the necessary remedial actions, if any, and the time schedule for completion thereof, which the authorized representative deems necessary and appropriate to correct the violations.

(64) ~~[(63)]~~ "Noxious plants" means species classified under Kentucky law as noxious plants.

(65) ~~[(64)]~~ "Operations" is defined in KRS 350.010.

(66) ~~[(65)]~~ "Operator" is defined in KRS 350.010.

(67) ~~[(66)]~~ "Order for cessation and immediate compliance" means a written document and order issued by an authorized representative of the cabinet when:

(a) A person to whom a notice of noncompliance and order for remedial measures was issued has failed, as determined by a cabinet inspection, to comply with the terms of the notice of noncompliance and order for remedial measures within the time limits set therein, or

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as subsequently extended; or

(b) The authorized representative finds, on the basis of a cabinet inspection, any condition or practice or any violation of KRS Chapter 350, 405 KAR Chapters 7 through 24, or any condition of a permit or exploration approval which:

1. Creates an imminent danger to the health or safety of the public; or

2. Is causing or can reasonably be expected to cause significant, imminent environmental harm to land, air or water resources.

(68) [(67)] "OSM" means Office of Surface Mining Reclamation and Enforcement, United States Department of the Interior.

(69) "Other treatment facilities" means any chemical treatments, such as flocculation or neutralization, or mechanical structures, such as clarifiers or precipitators, that have a point source discharge and are utilized:

(a) To prevent additional contributions of dissolved or suspended solids to streamflow or runoff outside the permit area; or

(b) To comply with 405 KAR 16:070.

(70) [(68)] "Outslope" means the face of the spoil or embankment sloping downward from the highest elevation to the toe.

(71) [(69)] "Overburden" is defined in KRS 350.010.

(72) [(70)] "Pastureland" means land used primarily for the long-term production of adapted, domesticated forage plants to be grazed by livestock or occasionally cut and cured for livestock feed.

(73) [(71)] "Perennial stream" means a stream or that part of a stream that flows continuously during all of the calendar year as a result of groundwater discharge or surface runoff. The term does not include "intermittent stream" or "ephemeral stream."

(74) [(72)] "Performance bond" means a surety bond, a collateral bond, or a combination thereof, or bonds filed pursuant to the provisions of the Kentucky Bond Pool Program (405 KAR 10:200, KRS 350.595, and KRS 350.700 through 350.755), by which a permittee assures faithful performance of all the requirements of KRS Chapter 350, 405 KAR Chapters 7 through 24, and the requirements of the permit and reclamation plan.

(75) [(73)] "Permanent diversion" means a diversion remaining after surface coal mining and reclamation operations are completed which has been approved for retention by the cabinet and other appropriate Kentucky and federal agencies.

(76) [(74)] "Permit" means written approval issued by the cabinet to conduct surface coal mining and reclamation operations.

(77) [(75)] "Permit area" means the area of land and water within boundaries designated in the approved permit application, which shall include, at a minimum, all areas which are or will be affected by surface coal mining and reclamation operations under that permit.

(78) [(76)] "Permittee" means an operator or a person holding or required by KRS Chapter 350 or 405 KAR Chapters 7 through 24 to hold a permit to conduct surface coal mining and reclamation operations during the permit term and until all reclamation obligations imposed by KRS Chapter 350 and 405 KAR Chapters 7 through 24 are satisfied.

(79) [(77)] "Person" is defined in KRS 350.010.

(80) [(78)] "Precipitation event" means a quantity of water resulting from drizzle, rain, snowmelt, sleet, or hail in a specified period of time.

(81) [(79)] "Previously mined area" means land that was ~~dis-~~  
~~turbed or~~ affected by coal mining operations conducted prior to August 3, 1977, that has not been reclaimed to the standards of this title, ~~and for which there is no continuing responsibility to reclaim to the standards of this title.~~

(82) [(80)] "Prime farmland" means those lands which are defined by the Secretary of Agriculture in 7 CFR 657 and which have been "historically used for cropland" as that phrase is defined above.

(83) [(81)] "Probable hydrologic consequences" means the projected results of proposed surface coal mining and reclamation operations which may reasonably be expected to change the quantity

or quality of the surface and groundwater; the surface or groundwater flow, timing, and pattern; and the stream channel conditions on the permit area and adjacent areas.

(84) [(82)] "Public building" means any structure that is owned or leased, and principally used by a governmental agency for public business or meetings.

(85) [(83)] "Public road" means any publicly owned thoroughfare for the passage of vehicles.

(86) [(84)] "RAM" means Reclamation Advisory Memorandum.

(87) [(85)] "Reasonably available spoil" means spoil and suitable coal mine waste material generated by the remining operation and other spoil or suitable coal mine waste material located in the permit area that is accessible and available for use and that when rehandled will not cause a hazard to public safety or significant damage to the environment. For this purpose, the permit area shall include all spoil of this nature located in the immediate vicinity of the mining operation.

(88) [(86)] "Recharge capacity" means the ability of the soils and underlying materials to allow precipitation and runoff to infiltrate and reach the zone of saturation.

(89) [(87)] "Reclamation" is defined in KRS 350.010.

(90) [(88)] "Recreation land" means land used for public or private leisure-time use, including developed recreation facilities such as parks, camps, and amusement areas, as well as areas for less intensive uses such as hiking, canoeing, and other undeveloped recreational uses.

(91) [(89)] "Reference area" means a land unit maintained under appropriate management for the purpose of measuring vegetative ground cover, productivity, and plant species diversity that are produced naturally or by crop production methods approved by the cabinet.

(92) [(90)] "Refuse pile" means a surface deposit of coal mine waste that is not retained by an impounding structure and does not impound water, slurry, or other liquid or semiliquid material.

(93) [(91)] "Remining" means conducting surface coal mining and reclamation operations which affect previously mined areas.

(94) [(92)] "Residential land" means tracts employed for single and multiple-family housing, mobile home parks, and other residential lodgings.

(95) [(93)] "Road" means a surface right-of-way for purposes of travel by land vehicles used in coal exploration or surface coal mining and reclamation operations. A road consists of the entire area within the right-of-way, including the roadbed, shoulders, parking and side area, approaches, structures, ditches, surface, and contiguous appendages necessary for the total structure. The term includes access and haul roads constructed, used, reconstructed, improved, or maintained for use in coal exploration or surface coal mining and reclamation operations, including use by coal hauling vehicles leading to transfer, processing, or storage areas. The term does not include pioneer or construction roadways used for part of the road construction procedure and promptly replaced by a road pursuant to 405 KAR Chapters 16 and 18 located in the identical right-of-way as the pioneer or construction roadway. The term also excludes any roadway within the immediate mining pit area.

(96) [(94)] "Safety factor" means the ratio of the available shear strength to the developed shear stress, or the ratio of the sum of the resisting forces to the sum of the loading or driving forces, as determined by accepted engineering practices.

(97) [(95)] "SCS" means Soil Conservation Service.

(98) [(96)] "Sedimentation pond" means a primary sediment control structure designed, constructed, and maintained in accordance with 405 KAR 16:090 or 405 KAR 18:090 and including but not limited to a barrier, dam, or excavated depression which slows down water runoff to allow suspended solids to settle out. A sedimentation pond shall not include secondary sedimentation control structures, such as straw dikes, riprap, check dams, mulches, dugouts, and other measures that reduce overland flow velocity, reduce runoff volume, or trap sediment, to the extent that the secondary sedimentation

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structures drain to a sedimentation pond.

(99) [(97)] "Significant, imminent environmental harm" means an adverse impact on land, air, or water resources which resources include, but are not limited to, plant and animal life as further defined in this subsection.

(a) An environmental harm is imminent, if a condition, practice, or violation exists which:

1. Is causing environmental harm; or

2. May reasonably be expected to cause environmental harm at any time before the end of the reasonable abatement time that would be set by the cabinet's authorized agents pursuant to the provisions of KRS Chapter 350.

(b) An environmental harm is significant if that harm is appreciable and not immediately reparable.

(100) [(98)] "Slope" means average inclination of a surface, measured from the horizontal, generally expressed as the ratio of a unit of vertical distance to a given number of units of horizontal distance (e.g., 1v:5h). It may also be expressed as a percent or in degrees.

(101) [(99)] "Slurry mining" means the hydraulic breakdown of subsurface coal with drill-hole equipment, and the eduction of the resulting slurry to the surface for processing.

(102) [(100)] "SMCRA" means Surface Mining Control and Reclamation Act of 1977 (PL 95-87), as amended.

(103) [(101)] "Soil horizons" means contrasting layers of soil parallel or nearly parallel to the land surface. Soil horizons are differentiated on the basis of field characteristics and laboratory data. The four (4) master soil horizons are:

(a) "A horizon." The uppermost mineral layer, often called the surface soil. It is the part of the soil in which organic matter is most abundant, and leaching of soluble or suspended particles is typically the greatest.

(b) "E horizon." The layer commonly near the surface below an A horizon and above a B horizon. An E horizon is most commonly differentiated from an overlying A horizon by lighter color and generally has measurably less organic matter than the A horizon. An E horizon is most commonly differentiated from an underlying B horizon in the same sequum by color of higher value or lower chroma, by coarser texture, or by a combination of these properties.

(c) "B horizon." The layer that typically is immediately beneath the E horizon and often called the subsoil. This middle layer commonly contains more clay, iron, or aluminum than the A, E, or C horizons.

(d) "C horizon." The deepest layer of soil profile. It consists of loose material or weathered rock that is relatively unaffected by biologic activity.

(104) [(102)] "Spoil" means overburden and other materials, excluding topsoil, coal mine waste, and mined coal, that are excavated during surface coal mining and reclamation operations.

(105) [(103)] "Stabilize" means to control movement of soil, spoil piles, or areas of disturbed earth by modifying the geometry of the mass, or by otherwise modifying physical or chemical properties, such as by providing a protective surface coating.

(106) [(104)] "Steep slope" means any slope of more than twenty (20) degrees.

(107) [(105)] "Surety bond" means an indemnity agreement in a sum certain, payable to the cabinet and executed by the permittee, which is supported by the performance guarantee of a corporation licensed to do business as a surety in the Commonwealth of Kentucky.

(108) [(106)] "Surface blasting operations" means the on-site storage, transportation, and use of explosives in association with coal exploration operations, surface mining activities, and surface disturbances of underground mining activities. The term shall be interpreted broadly and shall encompass activities including, but not limited to, the design of individual blasts, the implementation of blast designs, the initiation of blasts, the monitoring of airblast and ground vibration, and the use of protective measures such as access control

and warning and all-clear signals.

(109) [(107)] "Surface coal mining and reclamation operations" is defined in KRS 350.010.

(110) [(108)] "Surface coal mining operations" is defined in KRS 350.010.

(111) [(109)] "Surface mining activities" means those surface coal mining and reclamation operations incident to the extraction of coal from the earth by removing the materials over a coal seam before recovering the coal, by auger coal mining, by extraction of coal from coal refuse piles, or by recovery of coal from slurry ponds.

(112) [(110)] "Suspended solids" or nonfilterable residue, expressed as milligrams per liter, means organic or inorganic materials carried or held in suspension in water which are retained by a standard glass fiber filter in the procedure outlined by the U.S. EPA's regulations for waste water and analyses (40 CFR 136).

(113) [(111)] "Temporary diversion" means a diversion of a stream or overland flow which is used during coal exploration or surface coal mining and reclamation operations and not approved by the cabinet to remain after reclamation as part of the approved postmining land use.

(114) [(112)] "Ton" means 2000 pounds avoirdupois (.90718 metric ton).

(115) [(113)] "Topsoil" means the A and E soil horizon layers of the four (4) master soil horizons.

(116) [(114)] "Toxic-forming materials" means earth materials or wastes which, if acted upon by air, water, weathering, or microbiological processes, are likely to produce chemical conditions in soils or water that are detrimental to biota or uses of water.

(117) [(115)] "Toxic mine drainage" means water that is discharged from active or abandoned mines or other areas affected by coal exploration or surface coal mining and reclamation operations, which contains a substance that through chemical action is likely to kill, injure, or impair biota commonly present in the area that might be exposed to it.

(118) [(116)] "Transfer, assignment, or sale of permit rights" means a change in ownership or other effective control over the right to conduct surface coal mining operations under a permit issued by the cabinet.

(119) [(117)] "TRM" means Technical Reclamation Memorandum.

(120) [(118)] "Underground development waste" means waste coal, shale, claystone, siltstone, sandstone, limestone, or similar materials that are extracted from underground workings in connection with underground mining activities.

(121) [(119)] "Underground mining activities" means a combination of:

(a) Surface operations incident to underground extraction of coal or in situ processing, including construction, use, maintenance, and reclamation of roads, aboveground repair areas, storage areas, processing areas, and shipping areas; areas upon which are sited support facilities including hoist and ventilating ducts; areas utilized for the disposal and storage of waste; and areas on which materials incident to underground mining operations are placed; and

(b) Underground operations such as underground construction, operation, and reclamation of shafts, adits, underground support facilities; in situ processing; and underground mining, hauling, storage, and blasting.

(122) [(120)] "Undeveloped land or no current use or land management" means land that is undeveloped or, if previously developed, land that has been allowed to return naturally to an undeveloped state or has been allowed to return to forest through natural succession.

(123) [(121)] "U.S. EPA" means United States Environmental Protection Agency.

(124) [(122)] "Valley fill" means a fill structure consisting of any material other than coal waste and organic material that is placed in a valley where side slopes of the existing valley measured at the steepest point are greater than twenty (20) degrees or the average

slope of the profile of the valley from the toe of the fill to the top of the fill is greater than ten (10) degrees.

(125) [(123)] "Valuable environmental resources" means:

(a) Listed or proposed endangered or threatened species of plants or animals or their critical habitats listed by the Secretary of the Interior under the Endangered Species Act of 1973, as amended (16 USC Sec. 1531 et seq.), or those species or habitats protected by similar state statutes; and

(b) Habitats of unusually high value for fish and wildlife, as determined by the cabinet in consultation with state and federal agencies with responsibilities for fish and wildlife.

(126) [(124)] "Water table" means the upper surface of a zone of saturation, where the body of groundwater is not confined by an overlying impermeable zone.

(127) [(125)] "Water transmitting zone" means a body of consolidated or unconsolidated rocks which, due to their greater primary or secondary permeability relative to the surrounding rocks, can reasonably be considered to function as a single hydraulic medium for the flow of groundwater.

(128) [(126)] "Wetland" means land that has a predominance of hydric soils and that is inundated or saturated by surface or groundwater at a frequency and duration sufficient to support, and that under normal circumstances does support, a prevalence of hydrophytic vegetation typically adapted for life in saturated soil conditions.

(a) "Hydric soil" means soil that, in its undrained condition, is saturated, flooded, or ponded long enough during a growing season to develop an anaerobic condition that supports the growth and regeneration of hydrophytic vegetation.

(b) "Hydrophytic vegetation" means a plant growing in:

1. Water; or

2. A substrate that is at least periodically deficient in oxygen during a growing season as a result of excessive water content.

JAMES E. BICKFORD, Secretary

APPROVED BY AGENCY: July 28, 1997

FILED WITH LRC: July 28, 1997 at 4 p.m.

PUBLIC HEARING: A public hearing on this proposed amendment has been scheduled for 9:30 a.m. (EDT) on Tuesday, September 30, 1997, in the Training Room (D-16) of the Department for Surface Mining Reclamation and Enforcement at 2 Hudson Hollow, Frankfort, Kentucky. Persons who wish to testify at the hearing shall notify the contact person listed below, in writing, by September 23, 1997. The scheduled hearing will be canceled if the contact person has not received any written notice of intent to testify by September 23, 1997, five workdays before the scheduled hearing date. If the hearing is held, it will be open to the public. Any person in attendance who wishes to testify on the proposed amendment will be given a fair and reasonable opportunity to do so, regardless of whether the person has given the cabinet prior written notice of his intent to testify. To assure an accurate record, the cabinet requests each person testifying at the hearing to provide the cabinet with a written copy of his testimony. The cabinet is not required to make a recording or transcript of the hearing unless someone makes a written request for it, in which case the person requesting the recording or transcript shall pay for it. WRITTEN COMMENTS: A person who wishes to comment on this proposed amendment but does not wish to testify at the hearing may submit written comments on the proposed amendment at any time before 4:30 p.m. (EDT) on Tuesday, September 30, 1997, the scheduled hearing date. Comments received after that time will not be considered. Written comments and written notices of intent to testify at the hearing shall be submitted to the contact person listed below.

CONTACT PERSON: Jim Villines, Kentucky Department for Surface Mining, 2 Hudson Hollow, Frankfort, Kentucky 40601-4321, Tel. (502) 564-6940, FAX (502) 564-5698.

Contact Person: Jim Villines

1. Type and number of entities affected: This amendment will affect operations with previously mined areas that are permitted after the effective date of this amendment, and operations with impoundments that are designed, permitted, constructed or reconstructed after the effective date of this amendment.

2. Direct and indirect costs or savings on the affected entities:

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 comments were received on this subject. The amendment is not expected to have an effect on the cost of living and employment.

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 on this subject. The amendment is not expected to have an effect on the cost of doing business.

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: The definitions in this amendment are significant in that they define terms used in permitting actions that involve subsidence and water replacement. However, they do not impose requirements in and of themselves and therefore do not have direct effect. Additionally, the nature of these definitions is such that they do not significantly affect requirements, even indirectly.

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

3. Effects on the promulgating administrative body: The definitions in this amendment will not have a significant effect on the cabinet.

a. Direct and indirect costs or savings:

1. First year: No direct or indirect costs or savings.

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

3. Additional factors increasing or decreasing costs: None

b. Reporting and paperwork requirements: None

4. Assessment of anticipated effect on state and local revenues: No effect on revenues.

5. Source of revenue to be used for implementation and enforcement of administrative regulation: No additional revenue is expected to be needed.

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

a. Geographical area in which administrative regulation will be implemented: No comments on economic impact were received. No economic impact on the coal mining regions is expected.

b. Kentucky: No comments on economic impact were received. No statewide economic impact is expected.

7. Assessment of alternative methods; reasons why alternatives were rejected: There is no feasible alternative to adoption of this amendment. These definitions are necessary for consistency with the corresponding federal regulations.

8. Assessment of expected benefits of the administrative regulation: There are no benefits to be expected from the particular definitions in this amendment other than consistency with the corresponding federal regulations.

9.a. Identify effects on public health and environmental welfare of the geographical area in which implemented and Kentucky: No effect on public health and environmental welfare will result in the coal regions or statewide.

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

c. If detrimental effect would result, explain detrimental effect:



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None

10. Identify any statute, administrative regulation, or government policy which may be in conflict, overlapping, or duplication: There is no conflict, overlap, or duplication.

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

b. If in conflict, was the effort made to harmonize the proposed administrative regulation with conflicting provisions: No conflict.

11. Any additional information or comments: None

12. TIERING: Is tiering applied? No. Tiering is not applicable to this proposed amendment because, under the federal and Kentucky surface mining laws and regulations, these requirements must apply equally to all permittees under 405 KAR Chapters 7-24.

### FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 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. The federal regulations corresponding to this amendment are the federal definitions regulations at 30 CFR 701.5 and 761.5.

2. State compliance standards. This administrative regulation and this amendment contain only definitions, which do not impose compliance standards in and of themselves. The definitions affected by this amendment relate to performance standard requirements in 405 KAR Chapter 16 being amended regarding impoundments and replacement of water supply. One definition unrelated to impoundments and water supply is being revised. The following terms related to impoundments are being defined: "Impounding structure" means a dam, embankment or other structure used to impound water, slurry, or other liquid or semiliquid material. "Impoundment" is being revised to mean a water, sediment, slurry or other liquid or semiliquid holding structure or depression, either naturally formed or artificially built. "Other treatment facilities" means any chemical treatments, such as flocculation or neutralization, or mechanical structures, such as clarifiers or precipitators, that have a point source discharge and are utilized:

(a) To prevent additional contributions of dissolved or suspended solids to streamflow or runoff outside the permit area, or

(b) To comply with 405 KAR 16:070.

The following definition relating to areas mined before August 3, 1977, is being revised: "Previously mined area" is being revised to mean land that was affected by coal mining operations conducted prior to August 3, 1977, that has not been reclaimed to the standards of this Title.

3. Minimum or uniform standards contained in the federal mandate. The corresponding federal definitions are the same as the state definitions, except as described in item 4 below. The federal regulations define "replacement of water supply" as follows: "Replacement of water supply" means, with respect to protected water supplies contaminated, diminished, or interrupted by coal mining operations, provision of water supply on both a temporary and permanent basis equivalent to premining quantity and quality. Replacement includes provision of an equivalent water delivery system and payment of operation and maintenance costs in excess of customary and reasonable delivery costs for premining water supplies.

(a) Upon agreement by the permittee and the water supply owner, the obligation to pay such operation and maintenance costs may be satisfied by a one-time payment in an amount which covers the present worth of the increased annual operation and maintenance costs for a period agreed to by the permittee and the water supply owner.

(b) If the affected water supply was not needed for the land use in existence at the time of loss, contamination, or diminution, and if the supply is not needed to achieve the postmining land use, replacement requirements may be satisfied by demonstrating that a suitable alternative water source is available and could feasibly be developed. If the latter approach is selected, written concurrence

must be obtained from the water supply owner.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? Yes

a. The federal definition of "other treatment facilities" refers to compliance with "applicable state and federal water quality standards," whereas that definition in this amendment refers to compliance with 405 KAR 16:070. Justification: 405 KAR 16:070 is the administrative regulation relating to water quality standards and effluent limitations, and it contains the appropriate reference to "all applicable federal and state water quality standards".

b. The federal definition of "replacement of water supply" is not included in this amendment. Justification: Because the federal definition contains substantive requirements, the cabinet promulgated the provisions of the federal definition as substantive requirements in 405 KAR 16:060, Section 8 and 405 KAR 18:060, Section 12.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. The justification for each difference is shown immediately following its description, for ease of reading.

### NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET (Amendment)

#### 405 KAR 16:060. General hydrologic requirements.

RELATES TO: KRS 350.100, 350.410, 350.420, 350.421, 350.440, 350.465, 30 CFR Parts 701.5, 730-733, 735, 816.41, 816.45, 816.47, 816.56, 816.57, 917, 30 USC 1253, 1255, 1265, 1307  
STATUTORY AUTHORITY: KRS ~~[Chapter 13A]~~ 350.028, 350.100, 350.420, 350.465, 30 CFR Parts 701.5, 730-733, 735, 816.41, 816.45, 816.47, 816.56, 816.57, 917, 30 USC 1253, 1255, 1265, 1307

NECESSITY, FUNCTION, AND CONFORMITY: KRS 350.028(1) requires the cabinet to promulgate administrative regulations pertaining to surface coal mining operations including strip mining and the surface effects of underground mining to accomplish the purposes of KRS Chapter 350. This administrative regulation applies to surface coal mining and reclamation operations except operations with surface effects of underground mining. This administrative regulation sets forth general requirements to protect the hydrologic balance, including general requirements for protection of surface and ground-water quantity and quality, control of erosion and sediment, control of acid-forming and toxic-forming materials, protection of streams, and replacement of water supplies. KRS 350.028(5), 350.151(1), and 350.465(2), (5) authorize and direct the cabinet to promulgate administrative regulations for surface and underground coal mining operations for the purpose of accepting and administering primary enforcement responsibilities under the permanent regulatory program pursuant to PL 95-87, the federal Surface Mining Control and Reclamation Act of 1977; and direct that the cabinet's administrative regulations be consistent with, and not more stringent than required by, that Act. PL 95-87 does not require Kentucky to comply with its provisions, but in order to retain primary enforcement responsibility under that Act the cabinet's administrative regulations must be consistent with federal regulations promulgated pursuant to that Act. Section 8 of this administrative regulation is being amended. This amendment differs from the federal regulations as follows:

1. Section 8(1) of this administrative regulation, which requires replacement of water supplies, further requires that the replacement be done promptly. "Promptly" does not appear in the federal counterpart for surface mines at 30 CFR 816.41(h), although it appears in the corresponding requirement for underground mines at 30 CFR 817.41(j). It is included in this administrative regulation in order to have the same water replacement requirements for surface mining



operations as for underground mining operations, since KRS 350.421(2) makes no distinction between them.

2. Section 8(2)(a) of this administrative regulation, regarding replacement of domestic water supplies, includes requirements for emergency, temporary, and permanent replacement that are not included in the federal counterpart at 30 CFR 816.41(h) but are included in the definition of "replacement of water supply" at 30 CFR 701.5. It includes specific time frames for replacement that are not included in the federal regulations but are suggested in the preamble (60 FR 16727, March 31, 1995) to the federal regulations and are needed for fair and consistent enforcement of the requirement to promptly replace domestic water supplies.

3. Section 8(2)(e) of this administrative regulation, regarding payment of excess delivery costs, includes a base time period of twenty (20) years that is not included in the federal regulations, and also includes more flexible payment options than the federal regulations. This time period is discussed as an example in the preamble at 60 FR 16726, March 31, 1995 and is needed for fair and consistent enforcement of the requirement to pay excess delivery costs.

4. Section 8(4)(a) of this administrative regulation, regarding additional bond coverage when water supplies are damaged, does not appear in the federal counterpart at 30 CFR 816.41(h), but appears in the federal regulations on subsidence and water replacement at 30 CFR 817.121(c)(5) and in the cabinet's administrative regulation on water replacement by underground mines, 405 KAR 18:060, Section 12. The federal bonding regulations at 30 CFR 800.15 and the cabinet's bonding regulations at 405 KAR 10:020, Section 4, applicable to both surface mines and underground mines, require adjustment of the bond amount when the cost of future reclamation changes. This requirement is included in this administrative regulation in order to clearly set forth the bond adjustment requirements for water replacement by surface mines, and to place upon surface mines the same bond adjustment requirements for water replacement that 405 KAR 18:060, Section 12 places upon underground mines.

5. Section 8(4)(b) of this administrative regulation, regarding coverage of water replacement by liability insurance rather than additional performance bond, is not included in the federal counterpart at 30 CFR 816.41(h). The federal bonding regulation at 30 CFR 800.14(c) provides that the permittee's financial responsibility for repairing material damage resulting from subsidence under 30 CFR 817.121(c), which includes damage to water supplies, may be satisfied by the liability insurance policy required under 30 CFR 800.60. This provision is included in this administrative regulation in order to provide the same option to surface mining permittees that 405 KAR 18:060, Section 12 provides to underground mining permittees.

6. Section 8(4)(c) of this administrative regulation, regarding prompt release or return of additional bond posted for water replacement, is not included in the federal regulations. This regulation is consistent with the purpose of the federal regulations because the bond cannot be not released or returned until after the permittee has completed the water supply replacement that the bond is intended to guarantee. [KRS Chapter 350 in pertinent part requires the cabinet to promulgate rules and administrative regulations establishing performance standards for protection of people and property, land, water and other natural resources, and aesthetic values, during surface mining activities and for restoration and reclamation of surface areas affected by mining activities. This administrative regulation sets forth general requirements for protection of the hydrologic balance, including general requirements for protection of surface and groundwater quantity and quality, control of erosion and sediment, protection of groundwater recharge capacity, protection of streams, and protection of water rights.]

Section 1. General Requirements. (1) All surface mining activities shall be planned and conducted to minimize disturbance of the

hydrologic balance in both the permit area and adjacent areas, in order to:

(a) Prevent material damage to the hydrologic balance outside the permit area;

(b) Assure the protection or replacement of water rights; and

(c) Support the approved postmining land uses in accordance with the terms and conditions of the approved permit and the performance standards of this administrative regulation.

(2) Changes in water quality and quantity, in the depth to groundwater, and in the location of surface water drainage channels shall be minimized so that the approved postmining land use of the permit area is not adversely affected.

(3) In no case shall federal and state water quality statutes, regulations, standards, or effluent limitations be violated.

(4) Operations shall be conducted to minimize water pollution and, where necessary, treatment methods shall be used to control water pollution.

(a) Each permittee shall emphasize mining and reclamation practices that prevent or minimize water pollution. Changes in flow of drainage shall be used in preference to the use of water treatment facilities.

(b) Acceptable practices to control and minimize water pollution include, but are not limited to:

1. Stabilizing disturbed areas through land shaping;

2. Diverting run-off;

3. Achieving quickly germinating and growing stands of temporary vegetation;

4. Regulating channel velocity of water;

5. Lining drainage channels with rock or vegetation;

6. Mulching;

7. Selectively placing and sealing acid-forming and toxic-forming materials;

8. Selectively placing waste materials in backfill areas; and

9. Implementing sediment control measures in Section 2 of this administrative regulation.

Section 2. Sediment Control Measures. (1) Appropriate sediment control measures shall be designed, constructed, and maintained using the best technology currently available to:

(a) Prevent, to the extent possible, additional contributions of sediment to stream flow or to run off outside the permit area;

(b) Meet the requirements of 405 KAR 16:070, Section 1(1)(g); and

(c) Minimize erosion to the extent possible.

(2) Sediment control measures include practices carried out within and adjacent to the disturbed area. The sediment storage capacity of measures in and downstream from the disturbed areas shall reflect the degree to which successful mining and reclamation techniques are applied to reduce erosion and control sediment. Sediment control measures consist of the utilization of proper mining and reclamation methods and sediment control practices, singly or in combination. Sediment control methods include but are not limited to:

(a) Disturbing the smallest practicable area at any one (1) time during the mining operation through progressive backfilling, grading and prompt revegetation as required in 405 KAR 16:200, Section 1(2);

(b) Stabilizing the backfilled material to promote a reduction in the rate and volume of run-off, in accordance with the requirements of 405 KAR 16:190;

(c) Retaining sediment within disturbed areas;

(d) Diverting run-off away from disturbed areas;

(e) Diverting run-off using protected channels or pipes through disturbed areas so as not to cause additional erosion;

(f) Using straw dikes, riprap, check dams, mulches, vegetative sediment filters, dugout ponds, and other measures that reduce overland flow velocity, reduce run-off volume, or trap sediment; and

(g) Treating with chemicals; and

(h) Using sedimentation ponds as required in 405 KAR 16:070.

Section 3. Discharge Structures. Discharge from sedimentation ponds, permanent and temporary impoundments, coal processing waste dams and embankments, and diversions shall be controlled, by energy dissipators, riprap channels, and other devices, where necessary, to reduce erosion, to prevent deepening or enlargement of stream channels, and to minimize disturbance of the hydrologic balance. Discharge structures shall be designed according to standard engineering design procedures.

Section 4. Acid-forming and Toxic-forming Materials. Acid drainage and toxic drainage shall be avoided by:

(1) Identifying and burying and/or treating, in accordance with 405 KAR 16:190, Section 3, materials which may adversely affect water quality, or be detrimental to vegetation or to public health and safety if not buried and/or treated;

(2) Storage, burial or treatment practices consistent with other material handling and disposal provisions of this chapter; and

(3) Burying or otherwise treating all acid-forming or toxic-forming spoil within thirty (30) days after it is first exposed on the mine site, or within a lesser period required by the cabinet. Temporary storage of the spoil may be approved by the cabinet upon a finding that burial or treatment within thirty (30) days is not feasible and will not result in any material risk of water pollution or other environmental damage. Storage shall be limited to the period until burial or treatment first becomes feasible. Acid-forming or toxic-forming spoil to be stored shall be placed on impermeable material and protected from erosion and contact with surface water.

Section 5. Groundwater Protection and Recharge Capacity. In order to protect the hydrologic balance, surface mining activities shall be conducted according to 405 KAR 8:030, Section 32(1) and (2) and the following:

(1) Groundwater quality shall be protected by handling earth materials and run-off in a manner that minimizes acidic, toxic, or other harmful infiltration to groundwater systems and by managing excavations and other disturbances to prevent or control the discharge of pollutants into the groundwater; and

(2) Groundwater quantity shall be protected by handling earth materials and run-off in a manner that will restore the approximate premining recharge capacity of the reclaimed area as a whole, excluding coal mine waste disposal areas and excess spoil fills, so as to allow the movement of water to the groundwater system.

Section 6. Surface Water Protection. In order to protect the hydrologic balance, surface mining activities shall be conducted according to 405 KAR 8:030, Section 32(1) and (2) and the following:

(1) Surface water quality shall be protected by handling earth materials, groundwater discharges, and run-off in a manner that:

(a) Minimizes the formation of acidic or toxic drainage;

(b) Prevents, to the extent possible using the best technology currently available, additional contribution of suspended solids to stream flow outside the permit area; and

(c) Will not cause or contribute to a violation of any federal or state effluent limitations or water quality standards.

(2) If drainage control, restabilization and revegetation of disturbed areas, diversion of run-off, mulching, or other reclamation and remedial practices are not adequate to meet the requirements of this section and 405 KAR 16:070, the operator shall use and maintain the necessary water-treatment facilities or water quality controls for as long as treatment is required under this chapter; and

(3) Surface water quantity and flow rates shall be protected by handling earth materials and run-off in accordance with the steps outlined in the plan approved under 405 KAR 8:030, Section 32(1) and (2).

Section 7. Transfer of Wells. Before final release of bond, exploratory or monitoring wells shall be sealed in a safe and environ-

mentally sound manner in accordance with 405 KAR 16:040. With the prior approval of the regulatory authority, wells may be transferred to another party for further use. At a minimum, the conditions of such transfer shall comply with state and local law and the permittee shall remain responsible for the proper management of the well until bond release in accordance with 405 KAR 16:040.

Section 8. Replacement of Water Supply. ~~(1) The [Water Rights and Replacement] permittee or operator shall promptly replace the water supply of an owner of interest in real property who obtains all or part of his [or her] supply of water for domestic, agricultural, industrial, or other legitimate use from an underground or surface source, if [where] the water supply has been adversely impacted by contamination, diminution, or interruption proximately resulting from the surface mining activities. Baseline geologic and hydrologic information required in 405 KAR 8:030, Sections 12 through 16, and other relevant information available to the cabinet, shall be used to determine [the extent of] the impact of mining activities upon the water supply [groundwater and surface water].~~

(2) If replacement of a water supply is required under subsection (1) of this section the permittee shall:

(a) If the water supply to be replaced is a domestic supply, provide water supply on both a temporary and permanent basis in accordance with this paragraph:

1. Within forty-eight (48) hours after receiving notice that the water supply was adversely impacted by mining, provide drinking water on an emergency basis;

2. Within two (2) weeks after receiving notice that the water supply was adversely impacted by mining, provide a temporary water supply connected to the existing plumbing, if any, that provides water for all ordinary household purposes such as drinking, cooking, bathing, sanitation, and laundry, and drinking water for poultry, livestock, and domestic animals, and water for noncommercial domestic agricultural and horticultural activities;

3. Within two (2) years after receiving notice that the water supply was adversely impacted by mining, provide a satisfactory permanent water supply;

(b) If the water supply to be replaced is other than a domestic supply, provide water supply on both a temporary and permanent basis on a schedule established by the cabinet on a case-by-case basis;

(c) Provide water supply equivalent to premining quantity and quality;

(d) Provide an equivalent water delivery system; and

(e) Pay operation and maintenance costs in excess of customary and reasonable delivery costs for the premining water supply for a period of twenty (20) years, or other period agreed to by the permittee and the owner of interest. Upon agreement by the permittee and the owner of interest, the obligation to pay the excess operation and maintenance costs may be satisfied by:

1. A one (1) time payment in an amount which covers the present worth of the increased annual operation and maintenance costs for a period of twenty (20) years, or other period agreed to by the permittee and the owner of interest;

2. A uniform series of payments whose present worth equals or exceeds the present worth of the increased annual operation and maintenance costs for a period of twenty (20) years, or other period agreed to by the permittee and the owner of interest; or

3. Other reasonable compensation arrangements which fairly compensate the owner for the future operation and maintenance costs for a period of twenty (20) years, or other period agreed to by the permittee and the owner of interest.

(3) If the affected water supply was not needed for the land use in existence at the time of loss, contamination, or diminution, and if the supply is not needed to achieve the postmining land use, replacement requirements may be satisfied by demonstrating that a suitable alternative water source is available and could feasibly be

developed. If this approach is selected, written concurrence shall be obtained from the owner of interest.

(4)(a) If contamination, diminution, or interruption to a water supply protected under subsection (1) of this section occurs, the cabinet shall require the permittee to obtain additional performance bond in the amount of the estimated cost to replace the protected water supply, until the replacement is completed. If replacement is completed within ninety (90) days of the occurrence, additional bond shall not be required. The cabinet may extend the ninety (90) day time frame, but not to exceed one (1) year, if the permittee demonstrates and the cabinet finds in writing that not all reasonably anticipated changes affecting the protected water supply have occurred, and that therefore it would be unreasonable to complete the replacement within ninety (90) days.

(b) If the permittee demonstrates that his liability insurance policy under 405 KAR 10:030, Section 4 covers the replacement, the additional bond amount required under paragraph (a) of this subsection may be reduced by the amount of the insurance coverage applicable to the replacement. The existence of applicable insurance coverage shall not prevent forfeiture of a performance bond under 405 KAR 10:050.

(c) The cabinet may promptly release or return the additional bond amount provided under paragraph (a) of this subsection if the cabinet determines, based upon an application and information submitted by the permittee, the cabinet's own investigation as appropriate, and other information available to the cabinet, that the permittee has satisfactorily completed the required replacement.

Section 9. Discharges Into an Underground Mine. (1) Discharges into an underground mine are prohibited, unless specifically approved by the cabinet after a demonstration that the discharge will:

(a) Minimize disturbance to the hydrologic balance on the permit area, prevent material damage outside the permit area and otherwise eliminate public hazards resulting from surface mining activities;

(b) Not result in a violation of applicable water quality standards or effluent limitations;

(c) Be at a known rate and quality which shall meet the effluent limitations of 405 KAR 16:070 for pH and total suspended solids, except that the pH and total suspended-solids limitations may be exceeded, if approved by the cabinet; and

(d) Meet with the approval of the Mine Safety and Health Administration.

(2) Discharges shall be limited to the following:

(a) Coal processing waste;

(b) Fly ash from a coal-fired facility;

(c) Sludge from an acid mine drainage treatment facility;

(d) Flue gas desulfurization sludge;

(e) Inert materials used for stabilizing underground mines;

(f) Underground mine development wastes; and

(g) Water.

Section 10. Postmining Rehabilitation of Sedimentation Ponds, Diversions, Impoundments, and Treatment Facilities. Before abandoning the permit area, the permittee shall renovate all permanent sedimentation ponds, diversions, impoundments, and treatment facilities as necessary to meet criteria specified in the detailed design plan for the permanent structures and impoundments.

Section 11. Stream Buffer Zones. (1) No land within 100 feet of an intermittent or perennial stream shall be disturbed by surface mining activities unless the cabinet specifically authorizes surface mining activities closer to, or through, such a stream. The cabinet may authorize such activities only upon finding, as a result of evaluating a permit application, that:

(a) Surface mining activities will not cause or contribute to the violation of applicable state or federal water quality standards;

(b) Surface mining activities will not cause significant detrimental

effects on the water quantity or quality of the intermittent or perennial stream; provided however, this paragraph shall not apply to any reach of that stream that is upstream of an impounding structure located within the permit area and within the stream channel;

(c) Surface mining activities will not cause significant detrimental effects on other valuable environmental resources, as determined by the cabinet, of the stream; and

(d) If there will be a temporary or permanent stream-channel diversion, it will comply with 405 KAR 16:080.

(2) The area that is not to be disturbed shall be designated a buffer zone, shall be adequately shown in the permit application, and shall be marked by the permittee as specified in 405 KAR 16:030.

(3) Descriptions, drawings, data, and all other information required by the cabinet to make the findings of subsection (1) of this section shall be submitted in a permit application in a manner prescribed by the cabinet.

(4)(a) The provisions of the amendments to this section shall apply to all surface mining activities, except as provided in paragraph (b) of this subsection.

(b)1. Surface mining activities included in a permit issued on or before August 17, 1987 shall be subject to the provisions that preceded the amendments to this section in lieu of the provisions of subsections (1) through (3) of this section.

2. Surface mining activities included in a permit application determined to be complete pursuant to 405 KAR 8:010, Section 13(1) on or before August 17, 1987 shall be subject to the provisions that preceded the amendments to this section in lieu of the provisions of subsections (1) through (3) of this section.

Section 12. Discharges of Accumulated Water. (1) Any accumulated water to be removed from a pit, bench, or other disturbed area shall be pumped, siphoned, or otherwise conveyed in a controlled manner to a natural or constructed drainway as approved by the cabinet.

(2) Such accumulated water may be discharged from the permit area without treatment only if the untreated discharge meets the requirements of 405 KAR 16:070, Section 1(1)(g).

(3) The moving of spoil or overburden or the disturbance of the natural barrier required by 405 KAR 16:010, Section 4, in order to release such accumulated water is prohibited, except when specifically authorized by the cabinet.

JAMES E. BICKFORD, Secretary

APPROVED BY AGENCY: July 28, 1997

FILED WITH LRC: July 28, 1997 at 4 p.m.

PUBLIC HEARING: A public hearing on this proposed amendment has been scheduled for 9:30 a.m. (EDT) on Tuesday, September 30, 1997, in the Training Room (D-16) of the Department for Surface Mining Reclamation and Enforcement at 2 Hudson Hollow, Frankfort, Kentucky. Persons who wish to testify at the hearing shall notify the contact person listed below, in writing, by September 23, 1997. The scheduled hearing will be canceled if the contact person has not received any written notice of intent to testify by September 23, 1997, five workdays before the scheduled hearing date. If the hearing is held, it will be open to the public. Any person in attendance who wishes to testify on the proposed amendment will be given a fair and reasonable opportunity to do so, regardless of whether the person has given the cabinet prior written notice of his intent to testify. To assure an accurate record, the cabinet requests each person testifying at the hearing to provide the cabinet with a written copy of his testimony. The cabinet is not required to make a recording or transcript of the hearing unless someone makes a written request for it, in which case the person requesting the recording or transcript shall pay for it. WRITTEN COMMENTS: A person who wishes to comment on this proposed amendment but does not wish to testify at the hearing may submit written comments on the proposed amendment at any time before 4:30 p.m. (EDT) on Tuesday, September 30,

## ADMINISTRATIVE REGISTER - 714

1997, the scheduled hearing date. Comments received after that time will not be considered. Written comments and written notices of intent to testify at the hearing shall be submitted to the contact person listed below.

CONTACT PERSON: Jim Villines, Kentucky Department for Surface Mining, 2 Hudson Hollow, Frankfort, Kentucky 40601-4321, Tel. (502) 564-6940, FAX (502) 564-5698.

### REGULATORY IMPACT ANALYSIS

Contact Person: Jim Villines

1. Type and number of entities affected: This amendment will affect only those surface mining operations that damage water supplies. As of June 1997 there were approximately 330 active surface mining operations and approximately 80 more where future production is likely. This amendment will also affect surface owners whose water supplies are damaged by surface mining operations.

2. Direct and indirect costs or savings on the affected entities:

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 comments were received on this subject. The amendment is not expected to have an effect on the cost of living and employment.

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 on this subject. The amendment is not expected to have an effect on the cost of doing business.

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: This amendment will increase some costs for some permittees whose operations cause damage to water supplies. Since 1982, KRS 350.421 and this administrative regulation have required surface mining operations to replace damaged water supplies. This amendment requires that the replacement be done promptly; establishes time frames for prompt replacement for domestic water supplies; requires that replacement water supplies be equivalent in quantity and quality to the premining supplies and that an equivalent water delivery system be provided; requires the permittee to pay any operation and maintenance costs for the replacement water supply that are in excess of customary and reasonable delivery costs for the premining water supply for a period of 20 years, and allows the permittee and surface owner to agree upon an alternate payment period and method of payment; requires the permittee to provide additional performance bond to cover the cost of replacement if he does not complete the replacement within the prescribed time, and allows the permittee's liability insurance coverage to be taken into account in determining the amount of additional performance bond needed; allows prompt release or return of the additional performance bond when the water replacement has been satisfactorily completed; and allows replacement not to be done if the water supply was not needed for the premining land use, will not be needed for the postmining land use, and the surface owner agrees in writing. Since surface mining operations currently replace damaged water supplies and generally compensate surface owners for any increased delivery costs, additional compliance costs due to this amendment in most cases are expected to be related to the cost of additional performance bond, which will be necessary only when the permittee fails to replace the water supply in a timely manner and the permittee's liability insurance policy does not fully cover the replacement.

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: The cabinet will have an increase in workload in

determining the additional performance bond amounts needed when required for water replacement, but this activity is not expected to significantly increase costs.

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

3. Additional factors increasing or decreasing costs: None

b. Reporting and paperwork requirements: There will be some increase in reporting and paperwork in connection with the above described activities.

4. Assessment of anticipated effect on state and local revenues: No effect is expected.

5. Source of revenue to be used for implementation and enforcement of administrative regulation: No additional revenue is expected to be needed.

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

a. Geographical area in which administrative regulation will be implemented: No comments on economic impact were received. No economic impact on the coal mining regions is expected.

b. Kentucky: No comments on economic impact were received. No statewide economic impact is expected.

7. Assessment of alternative methods; reasons why alternatives were rejected: There is no feasible alternative to adoption of parts of this amendment, since the cabinet's administrative regulations must be consistent with federal regulations. The requirement that replacement be prompt, the time frames for prompt replacement for domestic water supplies, and the 20-year time frame for payment of excess delivery costs and additional options for payment, were included because they are necessary for fair and consistent enforcement and in order to have the same requirements as for underground mines. The provisions regarding prompt release of performance bond and consideration of liability insurance were included because of comments submitted in response to the Notice of Intent to Promulgate Administrative Regulations. Several of the requirements in this amendment are included in the federal definition of "replacement of water supply". The cabinet considered promulgating a similar definition, but instead chose to structure the provisions of the federal definition as requirements in this amendment to avoid adopting a definition containing specific requirements.

8. Assessment of expected benefits of the administrative regulation: Surface owners whose water supplies are damaged by surface mining operations will benefit from greater assurance that water replacement will be done promptly and more completely, and that they will be compensated fairly for any future excess delivery costs. The bonding requirement will ensure that money is available for the cabinet to perform water replacement if the permittee fails to do so. Permittees will benefit from greater certainty about water replacement requirements and from fair and consistent enforcement of those requirements, from the greater flexibility regarding payment of future excess costs, from consideration of liability insurance coverage in determining the increased performance bond amounts, and from prompt return or release of the additional performance bond amounts.

9.a. Identify effects on public health and environmental welfare of the geographical area in which implemented and Kentucky: No effect on public health and environmental welfare will result in the coal regions or statewide.

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

c. If detrimental effect would result, explain detrimental effect: None

10. Identify any statute, administrative regulation, or government policy which may be in conflict, overlapping, or duplication: There is no conflict, overlap, or duplication.

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

b. If in conflict, was the effort made to harmonize the proposed administrative regulation with conflicting provisions: No conflict.

11. Any additional information or comments: No additional comments.

12. TIERING: Is tiering applied? No. Tiering is not applicable to this proposed amendment because, under the federal and Kentucky surface mining laws and regulations, these requirements must apply equally to all permittees under 405 KAR Chapters 7-24.

#### FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 30 USC 1253, 1255, 1265, 1307, 30 CFR Parts 701.5, 730-733, 735, 816.41, 816.45, 816.47, 816.56, 816.57, 917. The federal regulations corresponding to this amendment are at 30 CFR 701.5 (definition of "replacement of water supply") and 816.41(h).

2. State compliance standards. The only changes to this administrative regulation made by this amendment are in Section 8 regarding replacement of affected water supplies. Section 8 presently requires that any person who conducts surface mining activities shall replace the water supply of an owner of interest in real property who obtains all or part of his or her supply of water for domestic, agricultural, industrial, or other legitimate use from an underground or surface source, where the water supply has been adversely impacted by contamination, diminution, or interruption proximately resulting from the surface mining activities. It further requires that baseline geologic and hydrologic information (required in the permitting regulations) be used to determine the extent of the impact of mining on ground water and surface water. Section 8(1) is revised by inserting "or operator" after "permittee", inserting "promptly" into the requirement for replacement, inserting language to allow use of other relevant information available to the cabinet in determining the impact of mining, and other minor changes. Section 8(2) sets specific timetables for replacement of affected domestic water supplies on an emergency, temporary and permanent basis. For other than domestic supplies, it requires the cabinet to establish a timetable for temporary and permanent replacement on a case by case basis. It requires that replacement water supplies be equivalent to the premining supplies in quantity and quality, and that an equivalent water delivery system be provided. It requires the permittee to pay any operation and maintenance costs for delivery of the replacement water supply that are in excess of customary and reasonable delivery costs for the premining water supply, and to pay those excess costs for a period of 20 years unless another payment period is agreed to by the permittee and owner. It allows various arrangements for making the required payments. Section 8(3) allows an impacted water supply to not be replaced, if it was not needed for the existing land use and will not be needed for the postmining land use and the owner agrees in writing. Section 8(4) requires the permittee to provide additional performance bond if a water supply is adversely affected, unless the permittee replaces the water supply within 90 days or the cabinet extends the time for replacement. It allows the additional bond amount to be reduced by the amount of the permittee's liability insurance coverage that is applicable to the water replacement. It provides for prompt release or return of the additional bond amount after the permittee has satisfactorily completed the water replacement.

3. Minimum or uniform standards contained in the federal mandate. The federal regulations corresponding to this amendment are at 30 CFR 701.5 (definition of "replacement of water supply") and 816.41(h). 30 CFR 816.41(h) requires that any person who conducts surface mining activities shall replace the water supply of an owner of interest in real property who obtains all or part of his or her supply of water for domestic, agricultural, industrial, or other legitimate use from an underground or surface source, where the water supply has been adversely impacted by contamination, diminution, or interruption proximately resulting from the surface mining activities. It further requires that baseline hydrologic information (required in the permitting regulations) be used to determine the extent of the impact of

mining on ground water and surface water. 30 CFR 701.5 defines "replacement of water supply" (applicable to both surface and underground mining) as provision of water supply on both a temporary and permanent basis equivalent to premining quantity and quality. It requires that replacement include provision of an equivalent water delivery system and payment of operation and maintenance costs in excess of customary and reasonable delivery costs for premining water supplies. It provides that upon agreement by the water supply owner and the permittee the obligation to pay such costs may be satisfied by a one-time payment in an amount which equals the present worth of the increased annual operation maintenance costs for a period agreed to by the permittee and the water supply owner. If the water supply was not needed for the land use in existence at the time of loss, contamination or diminution, and is not needed to achieve the postmining land use, it allows the permittee to fulfill the water replacement obligation by demonstrating that a suitable alternative water source is available and could feasibly be developed, if the water supply owner concurs in writing.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? Yes

a. Section 8(1), regarding replacement of water supplies, requires that the replacement be done promptly. "Promptly" does not appear in the federal counterpart for surface mines at 30 CFR 816.41(h), although it appears in the corresponding requirement for underground mines at 30 CFR 817.41(j). Justification: "Promptly" is included in this administrative regulation in order to have the same water replacement requirements for surface mining operations as for underground mining operations, since KRS 350.421(2) makes no distinction between them.

b. Section 8(2)(a), regarding replacement of domestic water supplies, includes requirements for emergency, temporary, and permanent replacement that are not included in the federal counterpart at 30 CFR 816.41(h) but are included in the definition of "replacement of water supply" at 30 CFR 701.5. It includes specific time frames for replacement that are not included in the federal regulations but are suggested in the preamble (60 FR 16727, March 31, 1995) to the federal regulations. Justification: The federal definition of "replacement of water supply" contains not only a definition, but substantive requirements. In order to avoid having substantive requirements in a definition, requirements for replacing water supplies are placed in this administrative regulation rather than having a definition of "replacement of water supply." The specific time frames for replacement are needed to ensure fair and consistent enforcement of requirements to promptly replace domestic water supplies.

c. Section 8(2)(e), regarding payment of excess delivery costs, includes a base time period of twenty (20) years that is not included in the federal regulations, and also includes more flexible payment options than the federal regulations. Justification: This time period is discussed as an example in the preamble at 60 FR 16726, March 31, 1995, and is needed for fair and consistent enforcement of the requirement to pay excess delivery costs.

d. Section 8(4)(a), regarding additional bond coverage when water supplies are damaged, does not appear in the federal counterpart at 30 CFR 816.41(h), but appears in the federal regulations on subsidence and water replacement at 30 CFR 817.121(c)(5) and in the cabinet's administrative regulation on water replacement by underground mines, 405 KAR 18:060, Section 12. Justification: The federal bonding regulations at 30 CFR 800.15 and the cabinet's bonding regulations at 405 KAR 10:020, Section 4, applicable to both surface mines and underground mines, require adjustment of the bond amount when the cost of future reclamation changes. This requirement is included in this administrative regulation in order to clearly set forth the bond adjustment requirements for water replacement by surface mines, and to place upon surface mines the same bond adjustment requirements for water replacement that 405 KAR

18:060, Section 12 places upon underground mines.

e. Section 8(4)(b), regarding coverage of water replacement by liability insurance rather than additional performance bond, is not included in the federal counterpart at 30 CFR 816.41(h). Justification: The federal bonding regulation at 30 CFR 800.14(c) provides that the permittee's financial responsibility for repairing material damage resulting from subsidence under 30 CFR 817.121(c), which includes damage to water supplies, may be satisfied by the liability insurance policy required under 30 CFR 800.60. This provision is included in this administrative regulation in order to provide the same option to surface mining permittees that 405 KAR 18:060, Section 12 provides to underground mining permittees.

f. Section 8(4)(c), regarding prompt release or return of additional bond posted for water replacement, is not included in the federal regulations. Justification: This regulation is consistent with the purpose of the federal regulations because the bond cannot be not released or returned until after the permittee has completed the water supply replacement that the bond is intended to guarantee.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Because several differences are described under question no. 4 above, the justification for each difference is shown immediately following its description, for ease of reading.

**NATURAL RESOURCES AND  
ENVIRONMENTAL PROTECTION CABINET  
Department for Surface Mining  
Reclamation and Enforcement  
(Amendment)**

**405 KAR 16:090. Sedimentation ponds.**

RELATES TO: KRS 151.100, 151.250(3), 350.020, 350.100, 350.420, 350.465, 30 CFR Parts 730-733, 735, 816.46, 917, 30 USC 1253, 1255, 1265

STATUTORY AUTHORITY: KRS 350.028, 350.100, 350.420, 350.465, 30 CFR Parts 730-733, 735, 816.46, 917, 30 USC 1253, 1255, 1265

NECESSITY, FUNCTION, AND CONFORMITY: KRS 350.028(1) requires the cabinet to promulgate administrative regulations pertaining to surface coal mining operations including strip mining and the surface effects of underground mining to accomplish the purposes of KRS Chapter 350. This administrative regulation applies to surface coal mining and reclamation operations except operations with surface effects of underground mining. This administrative regulation sets forth requirements for the location, design, construction, certification, maintenance, and removal or retention of sedimentation ponds. KRS 350.028(5), 350.151(1), and 350.465(2), (5) authorize and direct the cabinet to promulgate administrative regulations for surface and underground coal mining operations for the purpose of accepting and administering primary enforcement responsibilities under the permanent regulatory program pursuant to PL 95-87, the federal Surface Mining Control and Reclamation Act of 1977; and direct that the cabinet's administrative regulations be consistent with, and not more stringent than required by, that Act. PL 95-87 does not require Kentucky to comply with its provisions, but in order to retain primary enforcement responsibility under that Act the cabinet's administrative regulations must be consistent with federal regulations promulgated pursuant to that Act. This amendment differs from the federal regulations as follows:

1. Some requirements in 30 CFR 816.46 are contained in 405 KAR 16:070 rather than this administrative regulation.

2. This administrative regulation does not use the term "siltation structure", as does the federal regulation. 30 CFR 701.5 defines "siltation structure" to mean "a sedimentation pond, a series of sedimentation ponds, or other treatment facility." This administrative

regulation uses "sedimentation pond", "in series", and "other treatment facility" as needed, so "siltation structure" is unnecessary.

3. Section 2 of this administrative regulation, regarding sediment storage volume, contains provisions for a time schedule or clean-out elevations that are not found in the federal regulation. Section 2 of this administrative regulation, corresponds to two (2) federal requirements at 30 CFR 816.46(c)(1)(iii)(A) and (F), and contains additional clarifying language that corresponds to explanatory language in the preamble to the federal regulations at 48 FR 44041, September 26, 1983.

4. Section 3 of this administrative regulation, regarding detention time and pond sizing, contains provisions that are not found in the federal regulation. Section 3(2) of this administrative regulation, corresponds to the requirement in 30 CFR 816.46(c)(1)(iii)(C) to "contain or treat the ten (10) year, twenty-four (24) hour precipitation event". Section 3(2) of this administrative regulation, clarifies the meaning of the federal requirement, consistent with the explanation in the preamble to the federal regulations at 48 FR 44042, September 26, 1983. [~~KRS Chapter 350 in pertinent part requires the cabinet to promulgate rules and administrative regulations establishing performance standards for protection of people and property, land, water and other natural resources, and aesthetic values, during surface mining activities and for restoration and reclamation of surface areas affected by mining activities. This administrative regulation sets forth specific requirements for the location, design, construction, and removal or retention of sedimentation ponds.]~~

Section 1. General Requirements. Sedimentation ponds shall be used individually or in series and shall:

(1) Comply with this administrative regulation and 405 KAR 16:100;

(2)(a) In accordance with 405 KAR 16:100, Section 1(2), be designed and certified by a qualified registered professional engineer as meeting the requirements of this administrative regulation and 405 KAR 16:100; and

(b) In accordance with 405 KAR 16:100, Section 1(9), be inspected during construction by or under the direct supervision of the responsible registered professional engineer, and after construction be certified by the responsible registered professional engineer as having been constructed in accordance with the approved design plans;

(3) Be constructed and certified under subsection (2) of this section [Section 5(14) of this administrative regulation] before any disturbance in the watershed that drains [of the undisturbed area to be drained] into the sedimentation pond; and

(4) (2) Be located as near as possible to the disturbed area, and out of perennial streams unless approved by the cabinet[;

~~(3) Meet all the criteria of this administrative regulation;~~

~~(4) Be removed pursuant to Section 5(18) of this administrative regulation unless approved for retention under Section 5(19) of this administrative regulation].~~

Section 2. Sediment Storage Volume. Sedimentation ponds shall provide adequate [a] sediment storage volume as approved on a case-by-case basis by the cabinet based upon the anticipated volume of sediment to be collected and a feasible plan [time schedule] for clean-out operations. The plan shall include a time schedule or clean-out elevations, or an appropriate combination thereof, that shall provide periodic sediment removal sufficient to maintain adequate volume for the sediment to be collected during the design precipitation event under Section 3 of this administrative regulation. [The sediment storage volume shall be the anticipated volume of sediment that will be collected by the pond between scheduled clean-out operations.] The proposed clean-out plan [schedule] shall be included in the design and shall [will] be approved if the cabinet determines that the proposed plan [schedule] is feasible.



Section 3. Detention Time. Sedimentation ponds shall be designed, constructed, and maintained to:

(1) Provide detention time such that discharges from the sedimentation pond shall meet the requirements of 405 KAR 16:070, Section 1(1)(g); and

(2)(a) Contain the runoff from the ten (10) year, twenty-four (24) hour precipitation event by providing a runoff storage volume, between the top elevation of the design sediment storage volume and the principal spillway elevation, equal to or greater than the runoff from that precipitation event. The cabinet may approve a smaller runoff storage volume based on terrain, the amount of disturbance, other site specific conditions, and a demonstration by the permittee that the effluent limitations of 405 KAR 16:070, Section 1(1)(g) will be met; or

(b) Treat the runoff from the ten (10) year, twenty-four (24) hour precipitation event by using other treatment facilities in conjunction with adequate runoff storage volume, such that the effluent limitations of 405 KAR 16:070, Section 1(1)(g) will be met.

Section 4. Dewatering. The water storage resulting from inflow shall be removed by a nonclogging dewatering device or a conduit spillway approved by the cabinet. The dewatering device or spillway shall not be located at a lower elevation than the top [maximum] elevation of the design sediment storage volume.

Section 5. Other Requirements. (1) Each permittee shall design, construct, and maintain sedimentation ponds to prevent short-circuiting to the extent possible.

(2) The design, construction, and maintenance of a sedimentation pond or other sediment control measures in accordance with this administrative regulation shall not relieve the permittee from compliance with 405 KAR 16:070, Section 1(1)(g).

(3) ~~There shall be no outflow through an emergency spillway during the passage through the sedimentation pond of the run off resulting from the ten (10) year, twenty four (24) hour precipitation event or lesser events.~~

(4) ~~Sediment shall be removed from sedimentation ponds in accordance with the approved clean-out plan [when the designed sediment storage volume has filled with sediment].~~

(4) ~~(5) An appropriate combination of principal and emergency~~ Spillways shall be provided in accordance with 405 KAR 16:100. [to safely discharge the run off from a twenty five (25) year, twenty four (24) hour precipitation event, or larger event specified by the cabinet. The elevation of the crest of the emergency spillway shall be a minimum of one and five tenths (1.5) feet above the crest of the principal spillway.] Emergency spillway grades and allowable velocities shall be approved by the cabinet. ~~[Sedimentation ponds not meeting the size or other qualifying criteria of 30 CFR 77.216(a) may use a single spillway if the spillway:~~

(a) ~~is an open channel of nonerodible construction and capable of maintaining sustained flows; and~~

(b) ~~is not earth or grass lined.~~

(6) ~~The minimum elevation at the top of the settled embankment shall be one (1.0) foot above the water surface in the pond with the emergency spillway flowing at design depth. For embankments subject to settlement, this one (1.0) foot minimum elevation requirement shall apply at all times, including the period after settlement.~~

(7) ~~The constructed height of the dam shall be increased a minimum of five (5) percent over the design height to allow for settlement, unless it has been demonstrated to the cabinet that the material used and the design will ensure against all settlement.~~

(8) ~~The minimum top width of the embankment shall not be less than the quotient of  $(H + 35)/5$ , where H is the height, in feet, of the embankment as measured from the upstream toe of the embankment.~~

(9) ~~The combined upstream and downstream side slopes of the settled embankment shall not be less than 1v:5h, with neither slope steeper than 1v:2h. Slopes shall be designed to be stable in all~~

~~cases, even if flatter side slopes are required.~~

(10) ~~The embankment foundation area shall be cleared of all organic matter, all surfaces sloped to no steeper than 1v:1h, and the entire foundation surface scarified.~~

(11) ~~The fill material shall be free of sod, large roots, other large vegetative matter, and frozen soil, and in no case shall coal processing waste be used.~~

(12) ~~The placing and spreading of fill material shall be started at the lowest point of the foundation. The fill shall be brought up in horizontal layers of such thickness as is required to facilitate compaction and meet the design requirement of this administrative regulation. Compaction shall be conducted as specified in the design approved by the cabinet.~~

(13) ~~If a sedimentation pond has an embankment that is more than twenty (20) feet in height, as measured from the upstream toe of the embankment to the crest of the emergency spillway, or has a storage volume of twenty (20) acre feet or more, the following additional requirements shall be met:~~

(a) ~~An appropriate combination of principal and emergency spillways shall be provided to discharge safely the run off resulting from a 100 year, twenty four (24) hour precipitation event, or a larger event specified by the cabinet.~~

(b) ~~The embankment shall be designed and constructed with a static safety factor of at least one and five tenths (1.5), or a higher safety factor as designated by the cabinet to ensure stability.~~

(c) ~~Appropriate barriers shall be provided to control seepage along conduits that extend through the embankment.~~

(d) ~~The criteria of the MSHA as published in 30 CFR 77.216 shall be met.~~

(14) ~~Each pond shall be designed and certified by a registered professional engineer; shall be inspected during construction by or under the direct supervision of the responsible registered professional engineer; and after construction shall be certified by the responsible registered professional engineer as having been constructed in accordance with the approved design plans.~~

(15) ~~The entire embankment including the surrounding areas disturbed by construction shall be stabilized with respect to erosion by a vegetative cover or other means immediately after the embankment is completed. The active upstream face of the embankment where water will be impounded may be riprapped or otherwise stabilized. Areas in which the vegetation is not successful or where rills and gullies develop shall be repaired and revegetated in accordance with 405 KAR 16:190, Section 6.~~

(16) ~~All ponds, meeting or exceeding the size or other criteria of 30 CFR 77.216(a), shall be examined for structural weakness, erosion, and other hazardous conditions and reports shall be made to the cabinet, in accordance with 30 CFR 77.216-3. Such inspections shall be made by a qualified registered professional engineer, by someone under the supervision of a qualified registered professional engineer, or by a person approved by MSHA for such inspections. Ponds not meeting these criteria (30 CFR 77.216(a)) shall be examined four (4) times per year for structural weakness, erosion and other hazardous conditions and reports of the inspection shall be submitted to the cabinet.]~~

(5) ~~(17) Sedimentation ponds shall be properly maintained and shall not be removed until the requirements of 405 KAR 16:070, Section 1(1)(b), have been met.~~

(6) ~~(18) Sedimentation ponds shall be removed prior to final release of bond liability for the permit area unless retention of the pond is approved by the cabinet under subsection (7) [(19)] of this section. When a sedimentation pond is removed, the affected land shall be regraded and revegetated in accordance with 405 KAR 16:190 and 405 KAR 16:200.~~

(7) ~~(19) If the cabinet approves retention of a sedimentation pond as a permanent impoundment, the sedimentation pond shall meet all the requirements for permanent impoundments under 405 KAR 16:060, Section 10, and 405 KAR 16:100[Section 10].~~

~~[(20) Notwithstanding other provisions of this administrative regulation, all dams as defined by KRS 151.100(13) and other impoundments classified as Class B moderate hazard or Class C high hazard, shall comply with 405 KAR 7:040, Section 5 and with 401 KAR 4:030.]~~

JAMES E. BICKFORD, Secretary

APPROVED BY AGENCY: July 28, 1997

FILED WITH LRC: July 28, 1997 at 4 p.m.

PUBLIC HEARING: A public hearing on this proposed amendment has been scheduled for 9:30 a.m. (EDT) on Tuesday, September 30, 1997, in the Training Room (D-16) of the Department for Surface Mining Reclamation and Enforcement at 2 Hudson Hollow, Frankfort, Kentucky. Persons who wish to testify at the hearing shall notify the contact person listed below, in writing, by September 23, 1997. The scheduled hearing will be canceled if the contact person has not received any written notice of intent to testify by September 23, 1997, five workdays before the scheduled hearing date. If the hearing is held, it will be open to the public. Any person in attendance who wishes to testify on the proposed amendment will be given a fair and reasonable opportunity to do so, regardless of whether the person has given the cabinet prior written notice of his intent to testify. To assure an accurate record, the cabinet requests each person testifying at the hearing to provide the cabinet with a written copy of his testimony. The cabinet is not required to make a recording or transcript of the hearing unless someone makes a written request for it, in which case the person requesting the recording or transcript shall pay for it. WRITTEN COMMENTS: A person who wishes to comment on this proposed amendment but does not wish to testify at the hearing may submit written comments on the proposed amendment at any time before 4:30 p.m. (EDT) on Tuesday, September 30, 1997, the scheduled hearing date. Comments received after that time will not be considered. Written comments and written notices of intent to testify at the hearing shall be submitted to the contact person listed below.

CONTACT PERSON: Jim Villines, Kentucky Department for Surface Mining, 2 Hudson Hollow, Frankfort, Kentucky 40601-4321, Tel. (502) 564-6940, FAX (502) 564-5698.

#### REGULATORY IMPACT ANALYSIS

Contact Person: Jim Villines

1. Type and number of entities affected: This amendment will affect operations with sedimentation ponds that are designed, permitted, constructed or reconstructed after the effective date of this amendment.

2. Direct and indirect costs or savings on the affected entities:

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 comments were received on this subject. The amendment is not expected to have an effect on the cost of living and employment.

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 on this subject. The amendment is not expected to have an effect on the cost of doing business.

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: This amendment primarily serves to clean up the administrative regulation by deleting provisions that are redundant because they are included in 405 KAR 16:100 and are applicable to all impoundments, not just sedimentation ponds. Some of the changes are clarifications of existing requirements. The amendment is not expected to have a significant effect on compli-

ance, reporting or paperwork requirements or on costs.

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 direct or indirect costs or savings.

2. Continuing costs or savings: No continuing costs or savings.

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 on revenues.

5. Source of revenue to be used for implementation and enforcement of administrative regulation: No additional revenue will be needed.

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

a. Geographical area in which administrative regulation will be implemented: No comments on economic impact were received. No economic impact on the coal mining regions is expected.

b. Kentucky: No comments on economic impact were received. No statewide economic impact is expected.

7. Assessment of alternative methods; reasons why alternatives were rejected: There are no feasible alternatives to adoption of this amendment. The changes are primarily cleanup and removal of redundant provisions and structural changes to better match the federal regulations.

8. Assessment of expected benefits of the administrative regulation: The benefits are primarily cleanup and removal of redundant provisions.

9.a. Identify effects on public health and environmental welfare of the geographical area in which implemented and Kentucky: No effect on public health and environmental welfare will result in the coal regions or statewide.

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

c. If detrimental effect would result, explain detrimental effect: None

10. Identify any statute, administrative regulation, or government policy which may be in conflict, overlapping, or duplication: There is no conflict, overlap, or duplication.

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

b. If in conflict, was the effort made to harmonize the proposed administrative regulation with conflicting provisions: No conflict.

11. Any additional information or comments: No additional comments.

12. TIERING: Is tiering applied? No. Tiering is not applicable to this proposed amendment because, under the federal and Kentucky surface mining laws and regulations, these requirements must apply equally to all permittees under 405 KAR Chapters 7-24.

#### FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 30 USC 1253, 1255, 1265, 30 CFR Parts 730-733, 735, 816.46, 917, The federal regulation corresponding to this amendment is 30 CFR 816.46.

2. State compliance standards. Section 1 requires sedimentation ponds to be used individually or in series, to be designed and certified by a qualified registered professional engineer, to be inspected during construction by or under the direct supervision of the responsible registered professional engineer and to be certified by the engineer after construction as having been constructed in accordance with the approved design plans, to be constructed and certified before any disturbance in the watershed, and to be located as near as possible to the disturbed area and our of perennial streams unless approved by the cabinet. Section 2 requires that ponds have adequate

sediment storage volume and a feasible plan for clean-out operations that will provide periodic sediment removal sufficient to maintain adequate volume for the sediment to be collected during the design precipitation event. Section 3 requires ponds to provide detention time such that discharges from the ponds will meet applicable effluent limits: requires that ponds either contain the runoff from a 10-year, 24-hour precipitation event by providing runoff storage volume equal to or greater than the runoff from that event between the top elevation of the design sediment storage volume and the principal spillway elevation, but allows the cabinet to approve a smaller runoff storage volume under certain conditions, or treat the runoff from that event by using other treatment facilities in conjunction with adequate runoff storage volume so the applicable effluent limits will be met. Section 4 requires that water storage resulting from inflow be removed by an approved nonclogging dewatering device or spillway that is not located at a lower elevation than the top elevation of the design sediment storage volume. Section 5 requires that ponds be designed, constructed and maintained to prevent short-circuiting to the extent possible; requires that sediment be removed in accordance with the clean-out plan; requires spillways in accordance with 405 KAR 16:100; requires ponds to be properly maintained and not be removed until requirements in 405 KAR 16:070, Section 1(1)(b) have been met; requires ponds to be removed before final bond release unless retention is approved by the cabinet, and when removed the affected land must be regraded and revegetated to standards; and requires that if ponds are retained as permanent impoundments they must meet all requirements for permanent impoundments. Many redundant provisions have been deleted from this section.

3. Minimum or uniform standards contained in the federal mandate. The federal regulation corresponding to this amendment is 30 CFR 816.46. The federal requirements are generally the same as the state requirements, except as explained in item 4 below.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? Yes

a. Some requirements in 30 CFR 816.46 are contained in 405 KAR 16:070 rather than this administrative regulation.

b. This administrative regulation does not use the term "siltation structure," as does the federal regulation. Justification: 30 CFR 701.5 defines "siltation structure" to mean "a sedimentation pond, a series of sedimentation ponds, or other treatment facility." This administrative regulation uses "sedimentation pond," "in series," and "other treatment facility" as needed, so use of "siltation structure" is unnecessary.

c. Section 2, regarding sediment storage volume, contains provisions for a time schedule or clean-out elevations that are not found in the federal regulation. Justification: Section 2 corresponds to two federal requirements at 30 CFR 816.46(c)(1)(iii)(A) and (F), and contains additional clarifying language that corresponds to explanatory language in the preamble to the federal regulations at 48 FR 44041, September 26, 1983.

d. Section 3, regarding detention time and pond sizing, contains provisions in subsection (2) that are not found in the federal regulation. Justification: Section 3(2) corresponds to the requirement in 30 CFR 816.46(c)(1)(iii)(C) to "contain or treat the 10-year, 24-hour precipitation event." Section 3(2) clarifies the meaning of the federal requirement, consistent with the explanation in the preamble to the federal regulations at 48 FR 44042, September 26, 1983.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. The justifications are provided in item 4 along with the description of the differences, for ease of reading.

**NATURAL RESOURCES AND  
ENVIRONMENTAL PROTECTION CABINET**  
Department for Surface Mining  
Reclamation and Enforcement  
(Amendment)

**405 KAR 16:100. Permanent and temporary impoundments.**

RELATES TO: KRS 151.100, 151.250(3), 350.100, 350.420, 350.455, 350.465, 30 CFR Parts 730-733, 735, 816.49, 917, 30 USC 1253, 1255, 1265

STATUTORY AUTHORITY: KRS [Chapter 13A,] 350.028, 350.465, 30 CFR Parts 730-733, 735, 816.49, 917, 30 USC 1253, 1255, 1265

NECESSITY, FUNCTION, AND CONFORMITY: KRS 350.028(1) requires the cabinet to promulgate administrative regulations pertaining to surface coal mining operations including strip mining and the surface effects of underground mining to accomplish the purposes of KRS Chapter 350. This administrative regulation applies to surface coal mining and reclamation operations except operations with surface effects of underground mining. This administrative regulation sets forth requirements for the design, construction, certification, inspection and maintenance of temporary and permanent impoundments, and specific criteria for impoundments which are to be retained as permanent facilities after mining and reclamation. KRS 350.028(5), 350.151(1), and 350.465(2), (5) authorize and direct the cabinet to promulgate administrative regulations for surface and underground coal mining operations for the purpose of accepting and administering primary enforcement responsibilities under the permanent regulatory program pursuant to PL 95-87, the federal Surface Mining Control and Reclamation Act of 1977; and direct that the cabinet's administrative regulations be consistent with, and not more stringent than required by, that Act. PL 95-87 does not require Kentucky to comply with its provisions, but in order to retain primary enforcement responsibility under that Act the cabinet's administrative regulations must be consistent with federal regulations promulgated pursuant to that Act. This amendment differs from the federal regulations as follows:

1. The corresponding federal regulation at 30 CFR 816.49 incorporates by reference the USDA Soil Conservation Service Technical Release No. 60, "Earth Dams and Reservoirs". The federal regulation refers to the Class B and C structure hazard criteria in this publication, and for certain structures requires compliance with the freeboard hydrograph criteria and the emergency spillway hydrograph criteria in the "Minimum Emergency Spillway Hydrologic Criteria" table of this publication. In corresponding requirements, this administrative regulation refers to the Class B and C criteria under 405 KAR 7:040, Section 5 and 401 KAR 4:030. Although they appear in different publications, the state Class Band C criteria and spillway hydrologic criteria are essentially the same as the federal criteria, since the state criteria were originally developed based upon the federal criteria. Thus there is no need for SCS TR-60 to be incorporated by reference in this administrative regulation.

2. The exemption from engineering inspections for certain impoundments without embankments at Section 1(9)(c) of this administrative regulation does not appear in the federal regulation. These impoundments do not present safety hazards or other environmental concerns that warrant routine, detailed inspections by experienced registered professional engineers or other specialists. Additionally, the exemption includes provisions that allow the cabinet to require the inspections on a case-by-case basis if needed.

3. The exemption at Section 1(10)(b) of this administrative regulation from quarterly inspections by qualified personnel of the operator for certain small nonhazardous impoundments without embankment structures does not appear in the federal regulation. The required inspections are for appearance of structural weakness and other hazardous conditions. The exempted structures cannot develop

the hazardous conditions the inspections are intended to protect against, so the inspections are unnecessary for this limited class of structures.

4. Section 1 of this administrative regulation retains specific criteria related to stability, including criteria on settlement, embankment width to height ratio, and side slopes, and minimum criteria related to freeboard, that do not appear in the federal regulation. These criteria have been retained because they have long been effective guidelines for embankment stability. ~~(KRS Chapter 350 in pertinent part requires the cabinet to promulgate rules and administrative regulations establishing performance standards for protection of people and property, land, water and other natural resources, and aesthetic values, during surface mining activities and for restoration and reclamation of surface areas affected by mining activities. This administrative regulation sets forth requirements for inspection and maintenance of temporary and permanent impoundments, and specific criteria for impoundments which are to be retained as permanent facilities after mining and reclamation.)~~

Section 1. General Requirements. The requirements of this section apply to both temporary and permanent impoundments.

(1)(a) Impoundments meeting the criteria of MSHA, 30 CFR 77.216(a), shall comply with the requirements of 30 CFR 77.216 and this administrative regulation. The plan required to be submitted to the district manager of MSHA under 30 CFR 77.216 shall ~~also~~ be submitted to the cabinet as part of the permit application in accordance with 405 KAR 8:030, Section 34(3).

(b) All impoundments classified as Class B-moderate hazard or Class C-high hazard, and all permanent "dams," as defined in KRS 151.100, shall comply with 405 KAR 7:040, Section 5 and with 401 KAR 4:030.

(2) Design certification. The design of impoundments shall be certified by a qualified registered professional engineer as designed to meet the requirements of this administrative regulation using current, prudent engineering practices, and any design criteria established by the cabinet. The qualified registered professional engineer shall be experienced in the design and construction of impoundments.

(3) Stability.

(a)1. Permanent and temporary impoundments meeting the criteria of MSHA, 30 CFR 77.216(a), all Class B and C impoundments, and all permanent impoundments, shall have a minimum static safety factor of 1.5 for the normal pool with steady seepage saturation conditions, and a seismic safety factor of at least 1.2.

2. Impoundments not included in subparagraph 1 of this paragraph, except coal mine waste impoundments, shall have a minimum static safety factor of 1.3 for the normal pool with steady state seepage saturation conditions.

(b) The constructed height of the dam shall be increased a minimum of five (5) percent over the design height to allow for settlement, unless it has been demonstrated to the cabinet that the material used and the design will ensure against all settlement.

(c) The minimum top width of the embankment shall not be less than the quotient of  $(H+35)/5$ , where H is the height, in feet, of the embankment as measured from the upstream toe of the embankment.

(d) Unless the cabinet approves steeper slopes, based upon a satisfactory demonstration of stability by the applicant acceptable to the cabinet, the sum of the upstream and downstream side slopes (h/v) of the settled embankment shall not be less than 5h:1v, with neither slope steeper than 2h:1v. Slopes shall be designed to be stable in all cases, even if flatter side slopes are required.

(e) The fill material shall be free of sod, large roots, other large vegetative matter, and frozen soil and shall not contain coal mine waste except for coal mine waste impounding structures pursuant to 405 KAR 16:160.

(f) The placing and spreading of fill material shall be started at the lowest point of the foundation. The fill shall be brought up in horizon-

tal layers of such thickness as is required to facilitate compaction and meet the design requirement of this administrative regulation. Compaction shall be conducted as specified in the design approved by the cabinet.

(g) The entire embankment including the surrounding areas disturbed by construction shall be stabilized with respect to erosion by a vegetative cover or other means immediately after the embankment is completed. The active upstream face of the embankment where water will be impounded may be riprapped or otherwise stabilized. Areas in which the vegetation is not successful or where rills and gullies develop shall be repaired and revegetated in accordance with 405 KAR 16:190, Section 6.

(h) Slope protection shall be provided to protect against surface erosion at the site and protect against sudden drawdown.

(4) Freeboard. Impoundments shall have adequate freeboard to resist overtopping by waves and by sudden increases in storage volume. The minimum elevation at the top of the settled embankment shall be one (1.0) foot above the water surface in the pond with the emergency spillway flowing at design depth. For embankments subject to settlement, this one (1.0) foot minimum elevation requirement shall apply at all times, including the period after settlement. Freeboard requirements shall not apply to incised impoundments which have no embankment or levee.

(5) Foundation.

(a)1. Foundation and abutments for the impounding structure shall be designed to be stable under all conditions of construction and operation of the impoundment and shall be designed based on adequate and accurate information on the foundation conditions.

2. For permanent and temporary impoundments meeting the criteria of MSHA, 30 CFR 77.216(a), for all Class B and C impoundments, and for all permanent impoundments, foundation investigations as well as any necessary laboratory testing of materials shall be performed in order to determine the design requirements for foundation and embankment stability.

3. Where an approved temporary impoundment has been constructed and the permittee subsequently seeks a permit revision to upgrade the structure to a permanent impoundment, the cabinet may waive the foundation investigations and laboratory testing required by subparagraph 2 of this paragraph under the following circumstances:

a. The structure has been recently verified as being a Class A-low hazard structure;

b. The structure does not meet the definition of the term "dam," as defined at KRS 151.100; and

c. The cabinet approves conservative, assumed values for the strength parameters used in the stability analyses to ensure compliance with subsection (3)(a) of this section.

(b) All vegetative and organic materials shall be removed and foundations excavated and prepared to resist failure. Cutoff trenches shall be installed if necessary to ensure stability.

(6) Impoundments shall include a combination of principal and emergency spillways which shall be designed and constructed to safely pass the design precipitation event specified in this subsection ~~below~~, unless the cabinet requires a larger event. Twenty-four (24) hours may be used in lieu of six (6) hours for the duration of a design precipitation event specified in this subsection.

(a) Except as provided in paragraph (c) of this subsection, Class A structures that do not meet the criteria of MSHA, 30 CFR 77.216(a), shall pass the:

1. Twenty-five (25) year, six (6) [twenty-four (24)] hour precipitation event if it is a temporary structure; or

2. The fifty (50) year, six (6) [twenty-four (24)] hour precipitation event if it is a permanent structure.

(b) Class A structures that ~~do~~ meet the criteria of MSHA, 30 CFR 77.216(a), shall pass the 100 year, six (6) [twenty-four (24)] hours precipitation event.

(c) Class B and C structures and all permanent dams as defined

in KRS 151.100 shall comply with the criteria established in 401 KAR 4:030.

(7) Class A impoundments not meeting the criteria of MSHA, 30 CFR 77.216(a), may use a single spillway (if allowed pursuant to subsection (1)(b) of this section) if the spillway:

(a) Is an open channel of nonerodible construction and capable of maintaining sustained flows; and

(b) Is not earth or grass lined.

(8) The vertical portion of any remaining highwall shall be located far enough below the low-water line along the full extent of the highwall to provide adequate safety and access for the proposed water users.

(9) Engineer inspections. A qualified registered professional engineer or other qualified professional specialist, under the direction of the professional engineer, shall inspect the impoundment. The professional engineer or specialist shall be experienced in the construction of impoundments.

(a) Inspections shall be made regularly during construction, upon completion of construction, and at least yearly until removal of the structure or release of the performance bond.

(b) The qualified registered professional engineer shall promptly, after each inspection, provide to the cabinet a certified report that the impoundment has been constructed and maintained as designed and in accordance with the plan approved in the permit and 405 KAR Chapters 7 through 24. The report shall include discussion of any appearances of instability, structural weakness or other hazardous conditions, depth and elevation of any impounded waters, existing storage capacity, any existing or required monitoring procedures and instrumentation and any other aspects of the structure affecting stability. The report shall also confirm the hazard classification of the impoundment, or if the hazard classification has changed, the report shall contain a detailed explanation of the change and the conditions causing the change.

(c) A copy of the report shall be retained at or near the mine site.

(c) An impoundment with no embankment structure, that is completely incised or is created by a depression left by backfilling and grading, that is not a sedimentation pond or coal mine waste impoundment and is not otherwise intended to facilitate active mining, shall be exempt from this subsection unless the cabinet determines on a case-by-case basis that engineering inspection and certification are necessary to insure public health and safety or environmental conditions, in which case the cabinet shall establish appropriate inspection and certification requirements for the impoundment that shall apply in lieu of the requirements of this subsection and shall notify the permittee in writing.

(10) Operator examinations.

(a) Impoundments subject to 30 CFR 77.216, and Class B and C impoundments, shall ~~must~~ be examined in accordance with 30 CFR 77.216-3.

(b) ~~Other~~ Impoundments not included in paragraph (a) of this subsection shall be examined at least quarterly by a qualified person designated by the operator for appearance of structural weakness and other hazardous conditions. Quarterly examinations shall ~~are to~~ be conducted each calendar quarter (i.e., January-March, April-June, July-September, and October-December) and no two (2) examinations shall be within thirty (30) days of each other unless additional examination within a quarter are required. Reports of the examinations shall ~~are to~~ be retained at or near the mine site. An impoundment with no embankment structure, that is completely incised or is created by a depression left by backfilling and grading, shall be exempt from this paragraph.

(11) Emergency procedures. If any examination or inspection discloses that a potential hazard exists, the person who examined the impoundment shall immediately notify the department and the Kentucky Division of Water, or if these agencies cannot be reached, Disaster and Emergency Services. The permittee shall immediately

implement emergency procedures formulated for public protection and remedial action. If adequate emergency procedures cannot be formulated or implemented by the permittee, the cabinet shall be notified, and the cabinet shall notify the appropriate agencies that other emergency procedures are required to protect the public.

Section 2. Permanent Impoundments. A permanent impoundment of water may be created, if authorized by the cabinet in the approved permit based upon the following demonstration:

(1) The size and configuration of ~~the~~ ~~such~~ impoundment will be adequate for its intended purposes.

(2) The quality of impounded water will be suitable on a permanent basis for its intended use and, after reclamation, will meet applicable state and federal water quality standards, and discharges from the impoundment will meet applicable effluent limitations and will not degrade the quality of receiving water below applicable state and federal water quality standards.

(3) The water level will be sufficiently stable and be capable of supporting the intended use.

(4) Final grading will provided for adequate safety and access for proposed water users. Perimeter slopes shall be stable and shall be protected against erosion.

(5) The impoundment will not result in the diminution of the quality and quantity of water utilized by adjacent or surrounding landowners for agricultural, industrial, recreational, or domestic uses.

(6) The impoundment will be suitable for the approved postmining land use.

JAMES E. BICKFORD, Secretary

APPROVED BY AGENCY: July 28, 1997

FILED WITH LRC: July 28, 1997 at 4 p.m.

PUBLIC HEARING: A public hearing on this proposed amendment has been scheduled for 9:30 a.m. (EDT) on Tuesday, September 30, 1997, in the Training Room (D-16) of the Department for Surface Mining Reclamation and Enforcement at 2 Hudson Hollow, Frankfort, Kentucky. Persons who wish to testify at the hearing shall notify the contact person listed below, in writing, by September 23, 1997. The scheduled hearing will be canceled if the contact person has not received any written notice of intent to testify by September 23, 1997, five workdays before the scheduled hearing date. If the hearing is held, it will be open to the public. Any person in attendance who wishes to testify on the proposed amendment will be given a fair and reasonable opportunity to do so, regardless of whether the person has given the cabinet prior written notice of his intent to testify. To assure an accurate record, the cabinet requests each person testifying at the hearing to provide the cabinet with a written copy of his testimony. The cabinet is not required to make a recording or transcript of the hearing unless someone makes a written request for it, in which case the person requesting the recording or transcript shall pay for it. WRITTEN COMMENTS: A person who wishes to comment on this proposed amendment but does not wish to testify at the hearing may submit written comments on the proposed amendment at any time before 4:30 p.m. (EDT) on Tuesday, September 30, 1997, the scheduled hearing date. Comments received after that time will not be considered. Written comments and written notices of intent to testify at the hearing shall be submitted to the contact person listed below.

CONTACT PERSON: Jim Villines, Kentucky Department for Surface Mining, 2 Hudson Hollow, Frankfort, Kentucky 40601-4321, Tel. (502) 564-6940, FAX (502) 564-5698.

#### REGULATORY IMPACT ANALYSIS

Contact Person: Jim Villines

1. Type and number of entities affected: This amendment will affect operations with permanent or temporary impoundments that are designed, permitted, constructed or reconstructed after the effective

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date of this amendment.

2. Direct and indirect costs or savings on the affected entities:

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 comments were received on this subject. The amendment is not expected to have an effect on the cost of living and employment.

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 on this subject. The amendment is not expected to have an effect on the cost of doing business.

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: There will be some reduction in compliance, reporting and paperwork requirements associated with the exemption from inspection requirements on certain nonhazardous impoundments without embankment structures.

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: There will be no direct or indirect costs or savings.

2. Continuing costs or savings: None, same as first year.

3. Additional factors increasing or decreasing costs: None

b. Reporting and paperwork requirements: None

4. Assessment of anticipated effect on state and local revenues: No effect on revenues.

5. Source of revenue to be used for implementation and enforcement of administrative regulation: No additional revenue will be needed.

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

a. Geographical area in which administrative regulation will be implemented: No comments on economic impact were received. No economic impact on the coal mining regions is expected.

b. Kentucky: No comments on economic impact were received. No statewide economic impact is expected.

7. Assessment of alternative methods; reasons why alternatives were rejected: There is no feasible alternative to adoption of this amendment. Although this amendment does not make major changes to the requirements for impoundments, the amendment is necessary to comply with corresponding federal regulations.

8. Assessment of expected benefits of the administrative regulation: Permittees will benefit from the reduced number of required inspections by engineering and company personnel for certain nonhazardous structures without embankments.

9.a. Identify effects on public health and environmental welfare of the geographical area in which implemented and Kentucky: No significant effect on public health and environmental welfare will result in the coal regions or statewide.

b. State whether a detrimental effect on the environment and public health would result if not implemented: No significant detrimental effect on the environment and public health would result.

c. If detrimental effect would result, explain detrimental effect: None

10. Identify any statute, administrative regulation, or government policy which may be in conflict, overlapping, or duplication: There is no conflict, overlap, or duplication.

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

b. If in conflict, was the effort made to harmonize the proposed administrative regulation with conflicting provisions: No conflict.

11. Any additional information or comments: None

12. TIERING: Is tiering applied? No. Tiering is not applicable to this proposed amendment because, under the federal and Kentucky

surface mining laws and regulations, these requirements must apply equally to all permittees under 405 KAR Chapters 7-24.

### FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 30 USC 1253, 1255, 1265, 30 CFR Parts 730-733, 735, 816.49, 917. The federal regulation that corresponds to this amendment is 30 CFR 816.49.

2. State compliance standards. Section 1 includes requirements applicable to both temporary and impoundments. Impoundments that meet the MSHA size criteria of 30 CFR 77.216(a) must comply with 30 CFR 77.216 and this administrative regulation. Impoundments classified as Class B or C, and all permanent dams as defined in KRS 151.100 must comply with 405 KAR 7:040, Section 5 and 401 KAR 4:030. The design of impoundments must be certified by a qualified registered professional engineer experienced in the design and construction of impoundments. Stability criteria are provided as static and seismic safety factors, embankment settlement, width to height ratio, side slopes, characteristics of fill material, placement of fill material, slope stabilization by vegetation or other means, and slope protection against rapid drawdown. Freeboard criteria against overtopping are provided. Foundation investigations are required for impoundments that meet the MSHA size criteria of 30 CFR 77.216(a), Class B and C impoundments, and permanent impoundments, except that foundation investigations may be waived for certain permanent impoundments. Criteria for preparation of foundations are provided. Hydrologic criteria for spillways are provided. This amendment changes the standard duration of design precipitation events from 24 hours to 6 hours, but allows 24 hours to be used. Criteria for engineering inspections during and after construction are provided, and an exemption is provided for certain impoundments that have no embankment structures and thus present minimal hazards. Criteria are provided for quarterly inspections by qualified personnel of the operator, and an exemption is provided for small, nonhazardous impoundments without embankment structures. Criteria for emergency procedures are specified. Section 2 establishes additional requirements that must be met if impoundments are to be left as permanent facilities after mining. These relate to the size and configuration of the impoundment, the quality of impounded water, stability of the water level, adequacy of safety and access for water users, potential impact on water utilization by adjacent and surrounding landowners, and suitability for the approved postmining land use.

3. Minimum or uniform standards contained in the federal mandate. The federal regulation that corresponds to this amendment is 30 CFR 816.49. The federal requirements are essentially the same as the state requirements, except as explained in item 4 below.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? Yes

a. 30 CFR 816.49(a)(1) incorporates by reference the USDA Soil Conservation Service (now Natural Resources Conservation Service) publication Technical Release No. 60, "Earth Dams and Reservoirs". The federal regulation refers to the Class B and C structure hazard criteria in this publication, and for certain structures requires compliance with the freeboard hydrograph criteria and the emergency spillway hydrograph criteria in the "Minimum Emergency Spillway Hydrologic Criteria" table of this publication. In corresponding requirements, this administrative regulation refers to the Class B and C criteria under 405 KAR 7:040, Section 5 and 401 KAR 4:030. Justification: Although they appear in different publications, the state Class B and C criteria and spillway hydrologic criteria are essentially the same as the federal criteria, since the state criteria were originally developed based upon the federal criteria. Thus there is no need for SCS TR-60 to be mentioned or incorporated by reference in this administrative regulation.

b. The exemption from engineering inspections for certain



impoundments without embankments at Section 1(9)(c) does not appear in the federal regulation. Justification: These impoundments do not present safety hazards or other environmental concerns that warrant the routine, detailed inspections by experienced registered professional engineers or other specialists. Additionally, the exemption includes provisions that allow the cabinet to require the inspections on a case by case basis if needed.

c. The exemption at Section 1(10)(b) from quarterly inspections by qualified personnel of the operator for certain small nonhazardous impoundments without embankment structures does not appear in the federal regulation. Justification: The required inspections are for appearance of structural weakness and other hazardous conditions. The exempted structures cannot develop the hazardous conditions the inspections are intended to protect against, so the inspections are unnecessary for this limited class of structures.

d. Section 1 retains specific criteria related to stability, including criteria on settlement, embankment width to height ratio, and side slopes, and minimum criteria related to freeboard, that do not appear in the federal regulation. Justification: These criteria have been retained because they have long been effective guidelines for embankment stability.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. The justifications are provided in item 4 along with the description of the differences, for ease of reading.

**NATURAL RESOURCES AND  
ENVIRONMENTAL PROTECTION CABINET  
Department for Surface Mining  
Reclamation and Enforcement  
(Amendment)**

**405 KAR 16:160. Coal mine [~~processing~~] waste dams and impoundments.**

RELATES TO: KRS 151.100, 151.250(3), 350.425, 30 CFR Parts 730-733, 735, 816.84, 917, 30 USC 1253, 1255, 1265

STATUTORY AUTHORITY: KRS 350.028, 350.465, 30 CFR Parts 730-733, 735, 816.84, 917, 30 USC 1253, 1255, 1265

NECESSITY, FUNCTION, AND CONFORMITY: KRS 350.028(1) requires the cabinet to promulgate administrative regulations pertaining to surface coal mining operations including strip mining and the surface effects of underground mining to accomplish the purposes of KRS Chapter 350. This administrative regulation applies to surface coal mining and reclamation operations except operations with surface effects of underground mining. This administrative regulation sets forth requirements for the design and construction of impounding structures that are constructed of coal mine waste or will impound coal mine waste. KRS 350.028(5), 350.151(1), and 350.465(2),(5) authorize and direct the cabinet to promulgate administrative regulations for surface and underground coal mining operations for the purpose of accepting and administering primary enforcement responsibilities under the permanent regulatory program pursuant to PL 95-87, the federal Surface Mining Control and Reclamation Act of 1977; and direct that the cabinet's administrative regulations be consistent with, and not more stringent than required by, that Act. PL 95-87 does not require Kentucky to comply with its provisions, but in order to retain primary enforcement responsibility under that Act the cabinet's administrative regulations must be consistent with federal regulations promulgated pursuant to that Act. This amendment differs from the federal regulations as follows:

1. Section 2(1) of this administrative regulation includes requirements for removal of vegetative matter during site preparation. This requirement is not found in the corresponding federal regulation at 30 CFR 816.84. However, 30 CFR 816.84 refers to 816.49, which includes much the same requirement as Section 2(1) of this adminis-

trative regulation.

2. The federal regulation does not include the detailed requirements in Section 3(1)(b) of this administrative regulation regarding principal spillways in impoundments without open channel emergency spillways. The cabinet believes these are appropriate criteria that are necessary to ensure the safety of large impoundments that do not have open channel emergency spillways. It is significant that these criteria are consistent with criteria in the USDA SCS publication Technical Release No. 60.

3. The federal regulation does not include the minimum freeboard of three (3) feet that is specified in Section 3(1)(c) of this administrative regulation. The cabinet believes this is an important safety provision for the types of impounding structures under this administrative regulation, which are sometimes highly susceptible to erosion if overtopping occurs. [KRS Chapter 350 in pertinent part requires the cabinet to promulgate rules and administrative regulations establishing performance standards for protection of people and property, land, water and other natural resources, and aesthetic values, during surface mining activities and for restoration and reclamation of surface areas affected by mining activities. This administrative regulation sets forth specific design and construction requirements for existing and new dams or embankments which are constructed of coal processing waste or will impound coal processing waste.]

Section 1. General Requirements. (1) This administrative regulation applies to dams and impoundments, constructed of coal mine [~~processing~~] waste or intended to impound coal mine [~~processing~~] waste, that were completed or are to be completed after August 3, 1977.

(2) Coal mine waste shall not be used in the construction of dams and impoundments unless it has been demonstrated to the cabinet that the stability of the [~~such a~~] structure conforms with the requirements of Section 3(1) of this administrative regulation. It shall also be demonstrated that the use of coal mine waste will [~~material shall~~] not have a detrimental effect on downstream water quality or the environment due to acid seepage through the dam or impoundment. All demonstrations shall be submitted to and approved by the cabinet.

(3) An impounding structure constructed of coal mine waste or intended to impound coal mine waste shall not be retained permanently as part of the approved postmining land use.

Section 2. Site Preparation. Before coal mine [~~processing~~] waste is placed at a dam or impoundment site:

(1) All trees, shrubs, grasses, and other organic material shall be cleared and grubbed from the site, and all combustible materials shall be removed and disposed of or stockpiled in accordance with the requirements of this chapter; and

(2) Surface drainage that may cause erosion to the dam or the impoundment features, whether during construction or after completion, shall be diverted away from the dam or impoundment by diversion ditches that comply with the requirements of 405 KAR 16:080, Section 1. Adequate outlets for discharge from these diversions shall be in accordance with 405 KAR 16:060, Section 3. Diversions that are designed to divert drainage from the upstream area away from the impoundment area shall be designed to carry the peak run-off from a 100-year, six (6) (twenty-four (24)) hour precipitation event. Twenty-four (24) hours may be used in lieu of six (6) hours for the duration of the 100-year design precipitation event in this subsection. The diversion shall be maintained to prevent blockage, and the discharge shall be in accordance with 405 KAR 16:060, Section 3.

Section 3. Design and Construction. (1) The design of each dam and impoundment constructed of coal mine [~~processing~~] waste or intended to impound coal mine [~~such~~] waste shall comply with the requirements of 405 KAR 16:100, [~~Sections 1(1)(e) and 2,~~] including the certification requirements thereof, modified as follows:

(a) An impounding structure constructed of coal mine waste or intended to impound coal mine waste that meets the criteria of 30 CFR 77.216(a) shall have sufficient spillway capacity to safely pass, adequate storage capacity to safely contain, or a combination of storage capacity and spillway capacity to safely control, the probable maximum precipitation of a six (6) hour precipitation event. The cabinet may require a duration longer than six (6) hours on a case-by-case basis.

(b) An impounding structure with a drainage area of ten (10) square miles or less that does not have an open channel emergency spillway shall have a closed conduit principal spillway that shall meet the requirements of this paragraph. The impounding structure shall have sufficient storage capacity available to store the entire runoff from the probable maximum precipitation event while maintaining the required freeboard against overtopping, disregarding flow through the principal spillway.

1. The spillway shall have a trash rack designed to provide positive protection against clogging of the spillway at all operating levels, and an elbow designed to facilitate the passage of trash;

2. The conduit shall be large enough to pass the routed freeboard hydrograph peak discharge while maintaining the required freeboard against overtopping the structure. For structures included in paragraph (a) of this subsection, the probable maximum precipitation event shall be used to determine the freeboard hydrograph;

3. The conduit shall be large enough to meet the requirements under 401 KAR 4:030 for minimum emergency spillway discharge capacity; and

4. The spillway shall meet all other applicable requirements under 401 KAR 4:030, 405 KAR 16:100, and this administrative regulation, except the requirement under 401 KAR 4:030 that the conduit have a minimum cross-sectional area of thirty-six (36) square feet. The cross-sectional area of the barrel of the conduit shall be not less than twelve (12) square feet for a Class A structure with a product of storage in acre-feet times effective height in feet of less than 10,000 and shall be not less than twenty (20) square feet for other structures.

(c) The design freeboard between the lowest point on the dam or impoundment crest and the maximum water elevation shall be at least three (3) feet. For structures not included in paragraph (a) of this subsection, the maximum water elevation shall be that determined by the freeboard hydrograph criteria for the appropriate structure hazard classification under 405 KAR 7:040, Section 5, and 401 KAR 4:030. [contained in the U.S. Soil Conservation Service criteria referenced in 405 KAR 16:100.]

(d) ~~[(b)]~~ The dam or impoundment shall have a minimum safety factor of one and five-tenths (1.5) for the normal pool with steady seepage saturation conditions, and the seismic safety factor shall be at least one and two-tenths (1.2).

(e) ~~[(c)]~~ The dam or impoundment foundation and abutments shall be designed to be stable under all conditions of construction and operation of the impoundment. Sufficient foundation investigations and laboratory testing shall be performed to determine the safety factors of the dam or impoundment for all loading conditions required [appearing] in paragraph (d) [(b)] of this subsection or [the publications referred to in] 405 KAR 16:100 and for all increments of construction.

(2) Spillways and outlet works shall be designed to provide adequate protection against erosion and corrosion. Inlets shall be protected against blockage.

(3) Dams or impoundments constructed of or impounding coal mine waste [materials] shall be designed so that at least ninety (90) percent of the water stored during the design precipitation event can [shall] be removed within a ten (10) day period.

Section 4. Operation. For a dam or impoundment constructed of or impounding coal mine waste, at least ninety (90) percent of the water stored during the design precipitation event shall be removed within the ten (10) day period following the design precipitation event.

JAMES E. BICKFORD, Secretary

APPROVED BY AGENCY: July 28, 1997

FILED WITH LRC: July 28, 1997 at 4 p.m.

PUBLIC HEARING: A public hearing on this proposed amendment has been scheduled for 9:30 a.m. (EDT) on Tuesday, September 30, 1997, in the Training Room (D-16) of the Department for Surface Mining Reclamation and Enforcement at 2 Hudson Hollow, Frankfort, Kentucky. Persons who wish to testify at the hearing shall notify the contact person listed below, in writing, by September 23, 1997. The scheduled hearing will be canceled if the contact person has not received any written notice of intent to testify by September 23, 1997, five workdays before the scheduled hearing date. If the hearing is held, it will be open to the public. Any person in attendance who wishes to testify on the proposed amendment will be given a fair and reasonable opportunity to do so, regardless of whether the person has given the cabinet prior written notice of his intent to testify. To assure an accurate record, the cabinet requests each person testifying at the hearing to provide the cabinet with a written copy of his testimony. The cabinet is not required to make a recording or transcript of the hearing unless someone makes a written request for it, in which case the person requesting the recording or transcript shall pay for it. WRITTEN COMMENTS: A person who wishes to comment on this proposed amendment but does not wish to testify at the hearing may submit written comments on the proposed amendment at any time before 4:30 p.m. (EDT) on Tuesday, September 30, 1997, the scheduled hearing date. Comments received after that time will not be considered. Written comments and written notices of intent to testify at the hearing shall be submitted to the contact person listed below.

CONTACT PERSON: Jim Villines, Kentucky Department for Surface Mining, 2 Hudson Hollow, Frankfort, Kentucky 40601-4321, Tel. (502) 564-6940, FAX (502) 564-5698.

#### REGULATORY IMPACT ANALYSIS

Contact Person: Jim Villines

1. Type and number of entities affected: This amendment will affect all operations with impounding structures that are designed, permitted, constructed or reconstructed after the effective date of this amendment, that are constructed of coal mine waste or will impound coal mine waste.

2. Direct and indirect costs or savings on the affected entities:

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 comments were received on this subject. The amendment is not expected to have an effect on the cost of living and employment.

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 on this subject. The amendment is not expected to have an effect on the cost of doing business.

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: The amendment will not increase reporting and paperwork requirements and is not expected to have a significant impact on costs. The requirement that coal mine waste impounding structures not be retained permanently as impounding structures is consistent with current practice in the industry. The requirements regarding storage capacity and spillways are generally consistent with current industry practices.

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

3. Effects on the promulgating administrative body: No effect.

a. Direct and indirect costs or savings:

1. First year: No direct or indirect costs or savings.

2. Continuing costs or savings: None, same as first year.
3. Additional factors increasing or decreasing costs: None
- b. Reporting and paperwork requirements: None
4. Assessment of anticipated effect on state and local revenues: No effect on revenues.

5. Source of revenue to be used for implementation and enforcement of administrative regulation: No additional revenue will be needed.

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

a. Geographical area in which administrative regulation will be implemented: No comments on economic impact were received. No economic impact on the coal mining regions is expected.

b. Kentucky: No comments on economic impact were received. No statewide economic impact is expected.

7. Assessment of alternative methods; reasons why alternatives were rejected: There is no feasible alternative to adoption of this amendment. It is necessary to adopt parts of this amendment to conform to federal requirements.

8. Assessment of expected benefits of the administrative regulation: In general, this amendment provides for improved design and construction of coal mine waste impounding structures.

9.a. Identify effects on public health and environmental welfare of the geographical area in which implemented and Kentucky: No significant effect on public health and environmental welfare will result in the coal regions or statewide.

b. State whether a detrimental effect on the environment and public health would result if not implemented: No significant detrimental effect on the environment and public health would result.

c. If detrimental effect would result, explain detrimental effect: None

10. Identify any statute, administrative regulation, or government policy which may be in conflict, overlapping, or duplication: There is no conflict, overlap, or duplication.

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

b. If in conflict, was the effort made to harmonize the proposed administrative regulation with conflicting provisions: No conflict.

11. Any additional information or comments: None

12. TIERING: Is tiering applied? No. Tiering is not applicable to this proposed amendment because, under the federal and Kentucky surface mining laws and regulations, these requirements must apply equally to all permittees under 405 KAR Chapters 7-24.

#### FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 30 USC 1253, 1255, 1265, 30 CFR Parts 730-733, 735, 816.84, 917. The federal regulation that corresponds to this amendment is 30 CFR 816.84.

2. State compliance standards. "Coal processing waste" is changed to "coal mine waste" throughout the amendment. Section 1(3) is added, requiring that an impounding structure constructed of coal mine waste or intended to impound coal mine waste shall not be retained permanently as part of the approved postmining land use. Section 2(2) is amended so that the standard duration of the design 100-year precipitation event for certain diversion ditches is reduced from 24 hours to 6 hours, but 24 hours may be used. New Section 3(1)(a) is added, requiring that an impounding structure constructed of coal mine waste or intended to impound coal mine waste that meets the MSHA size criteria of 30 CFR 77.216(a) shall have sufficient spillway capacity to safely pass, adequate storage capacity to safely contain, or a combination of storage capacity and spillway capacity to safely control, the probable maximum precipitation of a 6 hour precipitation event. The cabinet may require a longer duration on a case by case basis. New Section 3(1)(b) is added, establishing criteria for impounding structures that do not have an

open channel emergency spillway. The structure must have a drainage area less than 10 square miles, must have a closed conduit principal spillway that meets specified criteria, and must have sufficient storage capacity available to store the entire runoff from the probable maximum precipitation event while maintaining the required freeboard against overtopping, disregarding flow through the principal spillway. Section 3(1)(c) as amended requires a minimum freeboard of 3 feet against overtopping, and requires that for structures smaller than the MSHA size criteria at 30 CFR 77.216(a) the maximum water elevation shall be determined by the freeboard hydrograph criteria for the appropriate structure hazard classification under 405 KAR 7:040, Section 5 and 401 KAR 4:030. New Section 4 is added, requiring that for a dam or impoundment constructed of or impounding coal mine waste, at least 90 percent of the water stored during the design precipitation event shall be removed within the 10 day period following the design precipitation event.

3. Minimum or uniform standards contained in the federal mandate. The federal regulation corresponding to this amendment is 30 CFR 816.84. The federal requirements are the same as the state requirements except as discussed in item 4 below.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? Yes

a. Section 2(1) includes requirements for removal of vegetative matter during site preparation. This requirement is not found in 30 CFR 816.84. Justification: 30 CFR 816.84 refers to 816.49, which includes much the same requirement as Section 2(1).

b. The federal regulation does not include the detailed requirements in Section 3(1)(b) regarding principal spillways in impoundments without open channel emergency spillways. Justification: The cabinet believes these are appropriate criteria that are necessary to ensure the safety of large impoundments that do not have open channel emergency spillways. It is significant that these criteria are consistent with criteria in the USDA SCS publication Technical Release No. 60.

c. The federal regulation does not include the minimum freeboard of 3 feet that is specified in Section 3(1)(c). Justification: The cabinet believes this is an important safety provision for the types of impounding structures under this administrative regulation, which are sometimes highly susceptible to erosion if overtopping occurs.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. The justifications are provided in item 4 along with the description of the differences, for ease of reading.

#### NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET Department for Surface Mining Reclamation and Enforcement (Amendment)

#### 405 KAR 18:001. Definitions for 405 KAR Chapter 18.

RELATES TO: KRS Chapter 350, 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

STATUTORY AUTHORITY: KRS ~~[Chapter 13A]~~ 350.028, 350.465, 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

NECESSITY, FUNCTION, AND CONFORMITY: KRS 350.028(1) requires the cabinet to promulgate administrative regulations pertaining to surface coal mining operations including strip mining and the surface effects of underground mining to accomplish the purposes of KRS Chapter 350. This administrative regulation defines terms used in 405 KAR Chapter 18. KRS 350.028(5), 350.151(1), and 350.465(2), (5) authorize and direct the cabinet to promulgate

administrative regulations for surface and underground coal mining operations for the purpose of accepting and administering primary enforcement responsibilities under the permanent regulatory program pursuant to PL 95-87, the federal Surface Mining Control and Reclamation Act of 1977; and direct that the cabinet's administrative regulations be consistent with, and not more stringent than required by, that Act. PL 95-87 does not require Kentucky to comply with its provisions, but in order to retain primary enforcement responsibility under that Act the cabinet's administrative regulations must be consistent with federal regulations promulgated pursuant to that Act. This definitions affected in this amendment are the same as the corresponding federal definitions, except as follows:

1. The definition of "angle of draw" in this amendment is not included in the federal regulations. It is taken from the preamble to the federal regulations at 60 FR 16738, March 31, 1995. It is included in this amendment because it determines the areas subject to certain requirements related to subsidence and the cabinet must apply this term uniformly and in a manner consistent with the intent of the federal regulations.

2. The federal definition of "other treatment facilities" refers to compliance with "applicable state and federal water quality standards", whereas that definition in this amendment refers to compliance with 405 KAR 18:070. 405 KAR 18:070 is the administrative regulation relating to water quality standards and effluent limitations, and it contains the appropriate reference to "all applicable federal and state water quality standards".

3. The federal definition of "replacement of water supply" is not included in this amendment. Because the federal definition contains substantive requirements, the cabinet promulgated the provisions of the federal definition as substantive requirements in 405 KAR 16:060, Section 8 and 405 KAR 18:060, Section 12. ~~[KRS Chapter 350 in pertinent part requires the cabinet to promulgate rules and administrative regulations pertaining to surface coal mining and reclamation operations under the permanent regulatory program. This administrative regulation provides for the defining of certain essential terms used in 405 KAR Chapter 18.]~~

Section 1. Definitions. (1) "Acid drainage" means water with a pH of less than six (6.0) and in which total acidity exceeds total alkalinity, discharged from an active, inactive, or abandoned surface coal mine and reclamation operation or from an area affected by surface coal mining and reclamation operations.

(2) "Acid-forming materials" means earth materials that contain sulfide minerals or other materials which, if exposed to air, water, or weathering processes, form acids that may create acid drainage.

(3) "Adjacent area" means land located outside the affected area or permit area, depending on the context in which "adjacent area" is used, where air, surface or groundwater, fish, wildlife, vegetation or other resources protected by KRS Chapter 350 may be adversely impacted by surface coal mining and reclamation operations.

(4) "Affected area" means any land or water area which is used to facilitate, or is physically altered by, surface coal mining and reclamation operations. The affected area includes the disturbed area; any area upon which surface coal mining and reclamation operations are conducted; any adjacent lands the use of which is incidental to surface coal mining and reclamation operations; all areas covered by new or existing roads used to gain access to, or for hauling coal to or from, surface coal mining and reclamation operations, except as provided in this definition; any area covered by surface excavations, workings, impoundments, dams, ventilation shafts, entryways, refuse banks, dumps, stockpiles, overburden piles, spoil banks, culm banks, tailings, holes or depressions, repair areas, storage areas, shipping areas; any areas upon which are sited structures, facilities, or other property or material on the surface resulting from, or incident to, surface coal mining and reclamation operations; and the area located above underground workings associated with underground mining activities, auger mining, or in situ mining. The affected area shall

include every road used for the purposes of access to, or for hauling coal to or from, surface coal mining and reclamation operations, unless the road:

(a) Was designated as a public road pursuant to the laws of the jurisdiction in which it is located;

(b) Is maintained with public funds, and constructed in a manner similar to other public roads of the same classification within the jurisdiction; and

(c) There is substantial (more than incidental) public use.

(5) "Angle of draw" means the angle of inclination between the vertical at the edge of the underground mine workings and the point of zero vertical displacement at the edge of a subsidence trough.

(6) "Applicant" means any person(s) seeking a permit, permit revision, permit amendment, permit renewal, or transfer, assignment, or sale of permit rights from the cabinet to conduct surface coal mining and reclamation operations or approval to conduct coal exploration operations pursuant to KRS Chapter 350 and all applicable administrative regulations.

(7) ~~[(6)]~~ "Application" means the documents and other information filed with the cabinet seeking issuance of permits; revisions; amendments; renewals; and transfer, assignment or sale of permit rights for surface coal mining and reclamation operations or, if required, seeking approval for coal exploration.

(8) ~~[(7)]~~ "Approximate original contour" is defined in KRS 350.010.

(9) ~~[(8)]~~ "Aquifer" means a zone, stratum, or group of strata that can store and transmit water in sufficient quantities for domestic, agricultural, industrial, or other beneficial use.

(10) ~~[(9)]~~ "Auger mining" means a method of mining coal at a cliff or highwall by drilling holes into an exposed coal seam from the highwall and transporting the coal along an auger bit to the surface and shall also include all other methods of mining in which coal is extracted from beneath the overburden by mechanical devices located at the face of the cliff or highwall and extending laterally into the coal seam, such as extended depth, secondary recovery systems.

(11) ~~[(10)]~~ "Best technology currently available" means equipment, devices, systems, methods, or techniques which will prevent, to the extent possible, additional contributions of suspended solids to stream flow or runoff outside the permit area and minimize, to the extent possible, disturbances and adverse impacts on fish, wildlife, and related environmental values, and achieve enhancement of those resources where practicable. The term includes equipment, devices, systems, methods, or techniques which are currently available anywhere as determined by the cabinet, even if they are not in routine use. The term includes, but is not limited to, construction practices, siting requirements, vegetative selection and planting requirements, animal stocking requirements, scheduling of activities and design of sedimentation ponds in accordance with 405 KAR Chapters 16 and 18. The cabinet shall have the discretion to determine the best technology currently available on a case-by-case basis, as authorized by KRS Chapter 350 and 405 KAR Chapters 7 through 24.

(12) ~~[(11)]~~ "Blaster" means a person who is directly responsible for surface blasting operations in surface coal mining and reclamation operations or coal exploration operations.

(13) ~~[(12)]~~ "Bond pool" or "Kentucky Bond Pool" means the voluntary alternative bonding program established at KRS 350.700 through 350.755.

(14) ~~[(13)]~~ "Cabinet" is defined in KRS 350.010.

(15) ~~[(14)]~~ "CFR" means Code of Federal Regulations.

(16) ~~[(15)]~~ "Coal" means combustible carbonaceous rock, classified as anthracite, bituminous, subbituminous, or lignite by ASTM Standard D 388-77.

(17) ~~[(16)]~~ "Coal exploration" means the field gathering of:

(a) Surface or subsurface geologic, physical, or chemical data by mapping, trenching, drilling, geophysical, or other techniques necessary to determine the quality and quantity of overburden and coal of an area; or

(b) Environmental data to establish the conditions of an area

before beginning surface coal mining and reclamation operations under the requirements of 405 KAR Chapters 7 through 24 if the activity may cause any disturbance of the land surface or may cause any appreciable effect upon land, air, water, or other environmental resources.

(13) [(47)] "Coal mine waste" means coal processing waste and underground development waste.

(19) [(48)] "Coal processing plant" means a facility where coal is subjected to chemical or physical processing or cleaning, concentrating, crushing, sizing, screening, or other processing or preparation including all associated support facilities including but not limited to: loading facilities; storage and stockpile facilities; sheds, shops, and other buildings; water treatment and water storage facilities; settling basins and impoundments; and coal processing and other waste disposal areas.

(20) [(49)] "Coal processing waste" means materials which are separated from the product coal during the cleaning, concentrating, or other processing or preparation of coal.

(21) [(29)] "Collateral bond" means an indemnity agreement in a sum certain payable to the cabinet executed by the permittee and which is supported by the deposit with the cabinet of cash, negotiable certificates of deposit, or an irrevocable letter of credit of any bank organized and authorized to transact business in the United States.

(22) [(24)] "Combustible material" means organic material that is capable of burning, either by fire or through oxidation, accompanied by the evolution of heat and a significant temperature rise.

(23) "Community or institutional building" means any structure, other than a public building or an occupied dwelling, which is used primarily for meetings, gatherings or functions of local civic organizations or other community groups; functions as an educational, cultural, historic, religious, scientific, correctional, mental health or physical health care facility; or is used for public services, including, but not limited to, water supply, power generation or sewage treatment.

(24) [(22)] "Compaction" means increasing the density of a material by reducing the voids between the particles by mechanical effort.

(25) [(23)] "Cropland" means land used for the production of adapted crops for harvest, alone or in a rotation with grasses and legumes, and includes row crops, small grain crops, hay crops, nursery crops, orchard crops, and other similar specialty crops.

(26) [(24)] "Cumulative impact area" means the area, including the permit area, within which impacts resulting from the proposed operation may interact with the impacts of all anticipated mining on surface and groundwater systems. Anticipated mining shall include, at a minimum, the entire projected lives through bond release of:

- (a) The proposed operation;
- (b) All existing operations;
- (c) Any operation for which a permit application has been submitted to the cabinet; and
- (d) All operations required to meet diligent development requirements for leased federal coal for which there is actual mine development information available.

(27) [(25)] "Day" means calendar day unless otherwise specified to be a working day.

(28) [(26)] "dB" means decibels.

(29) [(27)] "Department" means the Department for Surface Mining Reclamation and Enforcement.

(30) [(28)] "Developed water resources land" means land used for storing water for beneficial uses such as stockponds, irrigation, fire protection, flood control, and water supply.

(31) [(29)] "Disturbed area" means an area where vegetation, topsoil, or overburden is removed or upon which topsoil, spoil, coal processing waste, underground development waste, or noncoal waste is placed by surface coal mining operations. Those areas are classified as "disturbed" until reclamation is complete and the performance bond or other assurance of performance required by 405 KAR Chapter 10 is released.

(32) [(30)] "Diversion" means a channel, embankment, or other manmade structure constructed to divert water from one (1) area to another.

(33) [(31)] "Downslope" means the land surface below the projected outcrop of the lowest coalbed being mined along each highwall.

(34) [(32)] "Durable rock" means rock that does not slake in water and that is not reasonably expected to degrade to such a size or condition as to block, cause failure of, or otherwise impair or restrict the effectiveness of the internal drainage system. The cabinet shall consider rock to be durable if it is demonstrated, to the satisfaction of the cabinet in the application, that the rock has an SDI value of ninety (90) or greater as determined by the Kentucky Department of Transportation "Method for Determination of Slake Durability Index" (Kentucky Method 64-513-79), incorporated herein by reference. This document may be obtained from the Kentucky Transportation Cabinet, Division of Materials, Wilkinson Blvd., Frankfort, KY 40601; or the Kentucky Transportation Cabinet, Division of Management Services, State Office Building, Frankfort, KY 40601. It may be reviewed, copied, or obtained at the Department for Surface Mining Reclamation and Enforcement, #2 Hudson Hollow, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m. The cabinet may accept other test methods of demonstrating that rock is durable if it is demonstrated to the satisfaction of the cabinet that the alternative test methods yield equivalent measure of durability based upon correlation of results with Kentucky Method 64-513-79.

(35) [(33)] "Embankment" means a manmade deposit of material that is raised above the natural surface of the land and used to contain, divert, or store water; to support roads or railways; or for other similar purposes.

(36) [(34)] "Ephemeral stream" means a stream which flows only in direct response to precipitation in the immediate watershed or in response to the melting of a cover of snow and ice, and which has a channel bottom that is always above the local water table.

(37) [(35)] "Excess spoil" means spoil disposed of in a location other than the coal extraction area, except that spoil material used to achieve the approximate original contour shall not be considered excess spoil.

(38) [(36)] "Fish and wildlife land use", as used in 405 KAR 16:210 and in similar situations when referring to a premining or postmining land use, means land dedicated wholly or partially to the production, protection, or management of fish or wildlife. Areas considered as having the fish and wildlife land use are typically characterized by a diversity of habitats in which use by wildlife is the dominant characteristic, whether actively managed or not.

(39) [(37)] "Forest land" means land used or managed for the long term production of wood, wood fiber, or wood derived products.

(40) [(38)] "Fugitive dust" means that particulate matter which becomes airborne due to wind erosion from exposed surfaces.

(41) [(39)] "Ground cover" means the area of ground covered by the combined aerial parts of vegetation and litter produced and distributed naturally and seasonally on site, expressed as a percentage of the total area of measurement.

(42) [(40)] "Groundwater" means subsurface water that fills available openings in rock or soil materials to the extent that they are considered water saturated.

(43) [(41)] "Growing season" means the period during a one (1) year cycle, from the last killing frost in the spring to the first killing frost in the fall, in which climatic conditions are favorable for plant growth. In Kentucky, this period normally extends from mid-April to mid-October.

(44) [(42)] "Head-of-hollow fill" means a fill structure consisting of any material, other than coal processing waste and organic material, placed in the uppermost reaches of a hollow near the approximate elevation of the ridgeline, where there is no significant natural drainage area above the fill, and where the side slopes of the existing hollow measured at the steepest point are greater than twenty (20)

degrees or the average slope of the profile of the hollow from the toe of the fill to the top of the fill is greater than ten (10) degrees.

(45) [(43)] "Higher or better uses" means postmining land uses that have a higher economic value or nonmonetary benefit to the landowner or the community than the premining land uses.

(46) [(44)] "Highwall" means the face of exposed overburden and coal in an open cut of a surface mining activity or for entry to underground mining activities.

(47) [(45)] "Highwall remnant" means that portion of highwall that remains after backfilling and grading of a remining permit area.

(48) [(46)] "Historically used for cropland."

(a) "Historically used for cropland" means that lands have been used for cropland for any five (5) years or more out of the ten (10) years immediately preceding:

1. The application; or

2. The acquisition of the land for the purpose of conducting surface coal mining and reclamation operations.

(b) Lands meeting either paragraph (a)1 or 2 of this subsection shall be considered "historically used for cropland."

(c) In addition to the lands covered by paragraph (a) of this subsection, other lands shall be considered "historically used for cropland" as described below:

1. Lands that would likely have been used as cropland for any five (5) out of the last ten (10) years immediately preceding the acquisition or the application but for some fact of ownership or control of the land unrelated to the productivity of the land; and

2. Lands that the cabinet determines, on the basis of additional cropland history of the surrounding lands and the lands under consideration, are clearly cropland but fall outside the specific five (5) years in ten (10) criterion.

(d) Acquisition includes purchase, lease, or option of the land for the purpose of conducting or allowing through resale, lease or option, the conduct of surface coal mining and reclamation operations.

(49) [(47)] "Hydrologic balance" means the relationship between the quality and quantity of water inflow to, water outflow from, and water storage in a hydrologic unit such as a drainage basin, aquifer, soil zone, lake, or reservoir. It encompasses the dynamic relationship between precipitation, runoff, evaporation, and changes in ground and surface water storage.

(50) [(48)] "Hz" means hertz.

(51) [(49)] "Impounding structure" means a dam, embankment or other structure used to impound water, slurry, or other liquid or semiliquid material.

(52) [(49)] "Impoundment" means a water, sediment, slurry or other liquid or semiliquid holding structure or depression, either naturally formed or artificially built ~~(closed basin, naturally formed or artificially built, which is dammed or excavated for the retention of water, sediment, or waste).~~

(53) [(50)] "Industrial/commercial lands" means lands used for:

(a) Extraction or transformation of materials for fabrication of products, wholesaling of products, or long-term storage of products, and heavy and light manufacturing facilities.

(b) Retail or trade of goods or services, including hotels, motels, stores, restaurants, and other commercial establishments.

(54) [(51)] "In situ processes" means activities conducted on the surface or underground in connection with in-place distillation, retorting, leaching, or other chemical or physical processing of coal. The term includes, but is not limited to, in situ gasification, in situ leaching, slurry mining, solution mining, borehole mining, and fluid recovery mining.

(55) [(52)] "Intermittent stream" means:

(a) A stream or reach of stream that drains a watershed of one (1) square mile or more but does not flow continuously during the calendar year; or

(b) A stream or reach of a stream that is below the local water table for at least some part of the year, and obtains its flow from both surface runoff and groundwater discharge.

(56) [(53)] "KAR" means Kentucky administrative regulations.

(57) [(54)] "KPDES" means Kentucky Pollutant Discharge Elimination System.

(58) [(55)] "KRS" means Kentucky Revised Statutes.

(59) [(56)] "Land use" means specific functions, uses, or management-related activities of an area, and may be identified in combination when joint or seasonal uses occur and may include land used for support facilities that are an integral part of the use. In some instances, a specific use can be identified without active management.

(60) "Material damage", as used in 405 KAR 8:040, Section 26 and 405 KAR 18:210 means:

(a) Any functional impairment of surface lands, features, structures or facilities;

(b) Any physical change that has a significant adverse impact on the affected land's capability to support any current or reasonably foreseeable uses or causes significant loss in production or income; or

(c) Any significant change in the condition, appearance or utility of any structure or facility from its presubsidence condition.

(61) [(57)] "Modified highwall" means either:

(a) The highwall resulting from remining where the preexisting highwall face is removed; or

(b) The highwall resulting from remining where the preexisting highwall is vertically enlarged.

(62) [(58)] "Monitoring" means the collection of environmental data by either continuous or periodic sampling methods.

(63) [(59)] "MRP" means mining and reclamation plan.

(64) [(60)] "MSHA" means Mine Safety and Health Administration.

(65) [(61)] "Mulch" means vegetation residues or other suitable materials that aid in soil stabilization and soil moisture conservation, thus providing micro-climatic conditions suitable for germination and growth.

(66) "Noncommercial building" means any building, other than an occupied residential dwelling, that, at the time the subsidence occurs, is used on a regular or temporary basis as a public building or community or institutional building. Any building used only for commercial agricultural, industrial, retail or other commercial enterprises is excluded.

(67) [(62)] "Noxious plants" means species classified under Kentucky law as noxious plants.

(68) "Occupied residential dwelling and structures related thereto" means, for purposes of 405 KAR 8:040, Section 26 and 405 KAR 18:210, any building or other structure that, at the time the subsidence occurs, is used either temporarily, occasionally, seasonally, or permanently for human habitation. This term also includes any building, structure or facility installed on, above or below, or a combination thereof, the land surface if that building, structure or facility is adjunct to or used in connection with an occupied residential dwelling. Examples of these structures include, but are not limited to, garages; storage sheds and barns; greenhouses and related buildings; utilities and cables; fences and other enclosures; retaining walls; paved or improved patios, walks and driveways; septic sewage treatment facilities; and lot drainage and lawn and garden irrigation systems. Any structure used only for commercial agricultural, industrial, retail or other commercial purposes is excluded.

(69) [(63)] "Operations" is defined in KRS 350.010.

(70) [(64)] "Operator" is defined in KRS 350.010.

(71) [(65)] "OSM" means Office of Surface Mining Reclamation and Enforcement, United States Department of the Interior.

(72) "Other treatment facilities" means any chemical treatments, such as flocculation or neutralization, or mechanical structures, such as clarifiers or precipitators, that have a point source discharge and are utilized:

(a) To prevent additional contributions of dissolved or suspended solids to streamflow or runoff outside the permit area; or

(b) To comply with 405 KAR 18:070.



(73) [(66)] "Outslope" means the face of the spoil or embankment sloping downward from the highest elevation to the toe.

(74) [(67)] "Overburden" is defined in KRS 350.010.

(75) [(68)] "Pastureland" means land used primarily for the long-term production of adapted, domesticated forage plants to be grazed by livestock or occasionally cut and cured for livestock feed.

(76) [(69)] "Perennial stream" means a stream or that part of a stream that flows continuously during all of the calendar year as a result of groundwater discharge or surface runoff. The term does not include "intermittent stream" or "ephemeral stream."

(77) [(70)] "Performance bond" means a surety bond, a collateral bond, or a combination thereof, or bonds filed pursuant to the provisions of the Kentucky Bond Pool Program (405 KAR 10:200, KRS 350.595, and 350.700 through 350.755), by which a permittee assures faithful performance of all the requirements of KRS Chapter 350, 405 KAR Chapters 7 through 24, and the requirements of the permit and reclamation plan.

(78) [(71)] "Permanent diversion" means a diversion remaining after surface coal mining and reclamation operations are completed which has been approved for retention by the cabinet and other appropriate Kentucky and federal agencies.

(79) [(72)] "Permit" means written approval issued by the cabinet to conduct surface coal mining and reclamation operations.

(80) [(73)] "Permit area" means the area of land and water within boundaries designated in the approved permit application, which shall include, at a minimum, all areas which are or will be affected by surface coal mining and reclamation operations under that permit.

(81) [(74)] "Permittee" means an operator or a person holding or required by KRS Chapter 350 or 405 KAR Chapters 7 through 24 to hold a permit to conduct surface coal mining and reclamation operations during the permit term and until all reclamation obligations imposed by KRS Chapter 350 and 405 KAR Chapters 7 through 24 are satisfied.

(82) [(75)] "Person" is defined in KRS 350.010.

(83) [(76)] "Precipitation event" means a quantity of water resulting from drizzle, rain, snowmelt, sleet, or hail in a specified period of time.

(84) [(77)] "Previously mined area" means land that was ~~disturbed or~~ affected by coal mining operations conducted prior to August 3, 1977, that has not been reclaimed to the standards of this title, ~~and for which there is no continuing responsibility to reclaim to the standards of this title.~~

(85) [(78)] "Prime farmland" means those lands which are defined by the Secretary of Agriculture in 7 CFR 657 and which have been "historically used for cropland" as that phrase is defined above.

(86) [(79)] "Probable hydrologic consequences" means the projected results of proposed surface coal mining and reclamation operations which may reasonably be expected to change the quantity or quality of the surface and groundwater; the surface or groundwater flow, timing, and pattern; and the stream channel conditions on the permit area and adjacent areas.

(87) [(80)] "Public building" means any structure that is owned or leased, and principally used by a governmental agency for public business or meetings.

(88) [(81)] "Public road" means any publicly owned thoroughfare for the passage of vehicles.

(89) [(82)] "RAM" means Reclamation Advisory Memorandum.

(90) [(83)] "Reasonably available spoil" means spoil and suitable coal mine waste material generated by the remining operation and other spoil or suitable coal mine waste material located in the permit area that is accessible and available for use and that when rehandled will not cause a hazard to public safety or significant damage to the environment. For this purpose, the permit area shall include all spoil of this nature located in the immediate vicinity of the mining operation.

(91) [(84)] "Reclamation" is defined in KRS 350.010.

(92) [(85)] "Recreation land" means land used for public or private leisure-time use, including developed recreation facilities such as

parks, camps, and amusement areas, as well as areas for less intensive uses such as hiking, canoeing, and other undeveloped recreational uses.

(93) [(86)] "Reference area" means a land unit maintained under appropriate management for the purpose of measuring vegetative ground cover, productivity, and plant species diversity that are produced naturally or by crop production methods approved by the cabinet.

(94) [(87)] "Refuse pile" means a surface deposit of coal mine waste that is not retained by an impounding structure and does not impound water, slurry, or other liquid or semiliquid material.

(95) [(88)] "Remining" means conducting surface coal mining and reclamation operations which affect previously mined areas.

(96) [(89)] "Residential land" means tracts employed for single and multiple-family housing, mobile home parks, and other residential lodgings.

(97) [(90)] "Road" means a surface right-of-way for purposes of travel by land vehicles used in coal exploration or surface coal mining and reclamation operations. A road consists of the entire area within the right-of-way, including the roadbed, shoulders, parking and side area, approaches, structures, ditches, surface, and contiguous appendages necessary for the total structure. The term includes access and haul roads constructed, used, reconstructed, improved, or maintained for use in coal exploration or surface coal mining and reclamation operations, including use by coal hauling vehicles leading to transfer, processing, or storage areas. The term does not include pioneer or construction roadways used for part of the road construction procedure and promptly replaced by a road pursuant to 405 KAR Chapters 16 and 18 located in the identical right-of-way as the pioneer or construction roadway. The term also excludes any roadway within the immediate mining pit area.

(98) [(91)] "Safety factor" means the ratio of the available shear strength to the developed shear stress, or the ratio of the sum of the resisting forces to the sum of the loading or driving forces, as determined by accepted engineering practices.

(99) [(92)] "SCS" means Soil Conservation Service.

(100) [(93)] "Sedimentation pond" means a primary sediment control structure designed, constructed, and maintained in accordance with 405 KAR 16:090 or 405 KAR 18:090 and including but not limited to a barrier, dam, or excavated depression which slows down water runoff to allow suspended solids to settle out. A sedimentation pond shall not include secondary sedimentation control structures, such as straw dikes, riprap, check dams, mulches, dugouts, and other measures that reduce overland flow velocity, reduce runoff volume, or trap sediment, to the extent that the secondary sedimentation structures drain to a sedimentation pond.

(101) [(94)] "Slope" means average inclination of a surface, measured from the horizontal, generally expressed as the ratio of a unit of vertical distance to a given number of units of horizontal distance (e.g., 1v:5h). It may also be expressed as a percent or in degrees.

(102) [(95)] "Slurry mining" means the hydraulic breakdown of subsurface coal with drill-hole equipment, and the eduction of the resulting slurry to the surface for processing.

(103) [(96)] "SMCRA" means Surface Mining Control and Reclamation Act of 1977 (PL 95-87), as amended.

(104) [(97)] "Soil horizons" means contrasting layers of soil parallel or nearly parallel to the land surface. Soil horizons are differentiated on the basis of field characteristics and laboratory data. The four (4) master soil horizons are:

(a) "A horizon." The uppermost mineral layer, often called the surface soil. It is the part of the soil in which organic matter is most abundant, and leaching of soluble or suspended particles is typically the greatest.

(b) "E horizon." The layer commonly near the surface below an A horizon and above a B horizon. An E horizon is most commonly differentiated from an overlying A horizon by lighter color and

generally has measurably less organic matter than the A horizon. An E horizon is most commonly differentiated from an underlying B horizon in the same sequum by color of higher value or lower chroma, by coarser texture, or by a combination of these properties.

(c) "B horizon." The layer that typically is immediately beneath the E horizon and often called the subsoil. This middle layer commonly contains more clay, iron, or aluminum than the A, E, or C horizons.

(d) "C horizon." The deepest layer of soil profile. It consists of loose material or weathered rock that is relatively unaffected by biologic activity.

(105) [(98)] "Spoil" means overburden and other materials, excluding topsoil, coal mine waste, and mined coal, that are excavated during surface coal mining and reclamation operations.

(106) [(99)] "Stabilize" means to control movement of soil, spoil piles, or areas of disturbed earth by modifying the geometry of the mass, or by otherwise modifying physical or chemical properties, such as by providing a protective surface coating.

(107) [(100)] "Steep slope" means any slope of more than twenty (20) degrees.

(108) [(101)] "Surety bond" means an indemnity agreement in a sum certain, payable to the cabinet and executed by the permittee, which is supported by the performance guarantee of a corporation licensed to do business as a surety in the Commonwealth of Kentucky.

(109) [(102)] "Surface blasting operations" means the on-site storage, transportation, and use of explosives in association with coal exploration operations, surface mining activities, and surface disturbances of underground mining activities. The term shall be interpreted broadly and shall encompass activities including, but not limited to, the design of individual blasts, the implementation of blast designs, the initiation of blasts, the monitoring of airblast and ground vibration, and the use of protective measures such as access control and warning and all-clear signals.

(110) [(103)] "Surface coal mining and reclamation operations" is defined in KRS 350.010.

(111) [(104)] "Surface coal mining operations" is defined in KRS 350.010.

(112) [(105)] "Surface mining activities" means those surface coal mining and reclamation operations incident to the extraction of coal from the earth by removing the materials over a coal seam before recovering the coal, by auger coal mining, by extraction of coal from coal refuse piles, or by recovery of coal from slurry ponds.

(113) [(106)] "Suspended solids" or nonfilterable residue, expressed as milligrams per liter, means organic or inorganic materials carried or held in suspension in water which are retained by a standard glass fiber filter in the procedure outlined by the U.S. EPA's regulations for waste water and analyses (40 CFR 136).

(114) [(107)] "Temporary diversion" means a diversion of a stream or overland flow which is used during coal exploration or surface coal mining and reclamation operations and not approved by the cabinet to remain after reclamation as part of the approved postmining land use.

(115) [(108)] "Ton" means 2000 pounds avoirdupois (.90718 metric ton).

(116) [(109)] "Topsoil" means the A and E soil horizon layers of the four (4) master soil horizons.

(117) [(110)] "Toxic-forming materials" means earth materials or wastes which, if acted upon by air, water, weathering, or microbiological processes, are likely to produce chemical conditions in soils or water that are detrimental to biota or uses of water.

(118) [(111)] "Toxic mine drainage" means water that is discharged from active or abandoned mines or other areas affected by coal exploration or surface coal mining and reclamation operations, which contains a substance that through chemical action is likely to kill, injure, or impair biota commonly present in the area that might be exposed to it.

(119) [(112)] "Transfer, assignment, or sale of permit rights"

means a change in ownership or other effective control over the right to conduct surface coal mining operations under a permit issued by the cabinet.

(120) [(113)] "TRM" means Technical Reclamation Memorandum.

(121) [(114)] "Underground development waste" means waste coal, shale, claystone, siltstone, sandstone, limestone, or similar materials that are extracted from underground workings in connection with underground mining activities.

(122) [(115)] "Underground mining activities" means a combination of:

(a) Surface operations incident to underground extraction of coal or in situ processing, including construction, use, maintenance, and reclamation of roads, aboveground repair areas, storage areas, processing areas, and shipping areas; areas upon which are sited support facilities including hoist and ventilating ducts; areas utilized for the disposal and storage of waste; and areas on which materials incident to underground mining operations are placed; and

(b) Underground operations such as underground construction, operation, and reclamation of shafts, adits, underground support facilities; in situ processing; and underground mining, hauling, storage, and blasting.

(123) [(116)] "Undeveloped land or no current use or land management" means land that is undeveloped or, if previously developed, land that has been allowed to return naturally to an undeveloped state or has been allowed to return to forest through natural succession.

(124) [(117)] "U.S. EPA" means United States Environmental Protection Agency.

(125) [(118)] "Valley fill" means a fill structure consisting of any material other than coal waste and organic material that is placed in a valley where side slopes of the existing valley measured at the steepest point are greater than twenty (20) degrees or the average slope of the profile of the valley from the toe of the fill to the top of the fill is greater than ten (10) degrees.

(126) [(119)] "Valuable environmental resources" means:

(a) Listed or proposed endangered or threatened species of plants or animals or their critical habitats listed by the Secretary of the Interior under the Endangered Species Act of 1973, as amended (16 USC Sec. 1531 et seq.), or those species or habitats protected by similar state statutes; and

(b) Habitats of unusually high value for fish and wildlife, as determined by the cabinet in consultation with state and federal agencies with responsibilities for fish and wildlife.

(127) [(120)] "Water table" means the upper surface of a zone of saturation, where the body of groundwater is not confined by an overlying impermeable zone.

(128) [(121)] "Water transmitting zone" means a body of consolidated or unconsolidated rocks which, due to their greater primary or secondary permeability relative to the surrounding rocks, can reasonably be considered to function as a single hydraulic medium for the flow of groundwater.

(129) [(122)] "Wetland" means land that has a predominance of hydric soils and that is inundated or saturated by surface or groundwater at a frequency and duration sufficient to support, and that under normal circumstances does support, a prevalence of hydrophytic vegetation typically adapted for life in saturated soil conditions.

(a) "Hydric soil" means soil that, in its undrained condition, is saturated, flooded, or ponded long enough during a growing season to develop an anaerobic condition that supports the growth and regeneration of hydrophytic vegetation.

(b) "Hydrophytic vegetation" means a plant growing in:

1. Water; or

2. A substrate that is at least periodically deficient in oxygen during a growing season as a result of excessive water content.

JAMES E. BICKFORD, Secretary

APPROVED BY AGENCY: July 28, 1997

## ADMINISTRATIVE REGISTER - 731

FILED WITH LRC: July 28, 1997 at 4 p.m.

**PUBLIC HEARING:** A public hearing on this proposed amendment has been scheduled for 9:30 a.m. (EDT) on Tuesday, September 30, 1997, in the Training Room (D-16) of the Department for Surface Mining Reclamation and Enforcement at 2 Hudson Hollow, Frankfort, Kentucky. Persons who wish to testify at the hearing shall notify the contact person listed below, in writing, by September 23, 1997. The scheduled hearing will be canceled if the contact person has not received any written notice of intent to testify by September 23, 1997, five workdays before the scheduled hearing date. If the hearing is held, it will be open to the public. Any person in attendance who wishes to testify on the proposed amendment will be given a fair and reasonable opportunity to do so, regardless of whether the person has given the cabinet prior written notice of his intent to testify. To assure an accurate record, the cabinet requests each person testifying at the hearing to provide the cabinet with a written copy of his testimony. The cabinet is not required to make a recording or transcript of the hearing unless someone makes a written request for it, in which case the person requesting the recording or transcript shall pay for it. **WRITTEN COMMENTS:** A person who wishes to comment on this proposed amendment but does not wish to testify at the hearing may submit written comments on the proposed amendment at any time before 4:30 p.m. (EDT) on Tuesday, September 30, 1997, the scheduled hearing date. Comments received after that time will not be considered. Written comments and written notices of intent to testify at the hearing shall be submitted to the contact person listed below.

**CONTACT PERSON:** Jim Villines, Kentucky Department for Surface Mining, 2 Hudson Hollow, Frankfort, Kentucky 40601-4321, Tel. (502) 564-6940, FAX (502) 564-5698.

### REGULATORY IMPACT ANALYSIS

Contact Person: Jim Villines

1. Type and number of entities affected: This amendment will affect operations after the effective date of the amendment, if the operation involves subsidence, water replacement, impoundments, or previously mined areas.

2. Direct and indirect costs or savings on the affected entities:

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 comments were received on this subject. The amendment is not expected to have an effect on the cost of living and employment.

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 on this subject. The amendment is not expected to have an effect on the cost of doing business.

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: The definitions in this amendment are significant in that they define terms applicable to operations involving subsidence or water replacement. However, they do not impose requirements in and of themselves and therefore do not have direct effect.

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

3. Effects on the promulgating administrative body: The definitions in this amendment will not have a significant effect on the cabinet.

a. Direct and indirect costs or savings:

1. First year: No direct or indirect costs or savings.

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

3. Additional factors increasing or decreasing costs: None

b. Reporting and paperwork requirements: None

4. Assessment of anticipated effect on state and local revenues:

No effect on revenues.

5. Source of revenue to be used for implementation and enforcement of administrative regulation: No additional revenue is expected to be needed.

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

a. Geographical area in which administrative regulation will be implemented: No comments on economic impact were received. No economic impact on the coal mining regions is expected.

b. Kentucky: No comments on economic impact were received. No statewide economic impact is expected.

7. Assessment of alternative methods; reasons why alternatives were rejected: There is no feasible alternative to adoption of this amendment. These definitions are necessary for consistency with the corresponding federal regulations.

8. Assessment of expected benefits of the administrative regulation: There are no benefits to be expected from the particular definitions in this amendment other than consistency with the corresponding federal regulations.

9.a. Identify effects on public health and environmental welfare of the geographical area in which implemented and Kentucky: No effect on public health and environmental welfare will result in the coal regions or statewide.

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

c. If detrimental effect would result, explain detrimental effect: None

10. Identify any statute, administrative regulation, or government policy which may be in conflict, overlapping, or duplication: There is no conflict, overlap, or duplication.

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

b. If in conflict, was the effort made to harmonize the proposed administrative regulation with conflicting provisions: No conflict.

11. Any additional information or comments: None

12. TIERING: Is tiering applied? No. Tiering is not applicable to this proposed amendment because, under the federal and Kentucky surface mining laws and regulations, these requirements must apply equally to all permittees under 405 KAR Chapters 7-24.

### FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 30 CFR Parts 700.5, 701.5, 707.5, 730-733, 735, 761.5, 762.5, 773.5, 800.5, 843.5, 917 30 U.S.C. 1253, 1255, 1291. The federal regulations corresponding to this amendment are the federal definitions regulations at 30 CFR 701.5 and 761.5.

2. State compliance standards. This administrative regulation and this amendment contain only definitions, which do not impose compliance standards in and of themselves. The definitions affected by this amendment relate to permitting requirements in 405 KAR Chapter 8 being amended regarding subsidence, water replacement, and impoundments. One definition unrelated to these areas is being revised. The following terms related to subsidence and water replacement are being defined: "Angle of draw" is defined to mean the angle of inclination between the vertical at the edge of the underground mine workings and the point of zero vertical displacement at the edge of a subsidence trough. "Community or institutional building" is defined to mean any structure, other than a public building or an occupied dwelling, which is used primarily for meetings, gatherings or functions of local civic organizations or other community groups; functions as an educational, cultural, historic, religious, scientific, correctional, mental health or physical health care facility; or is used for public services, including, but not limited to, water supply, power generation or sewage treatment. "Noncommercial building" is defined to mean any building, other than an occupied residential dwelling,

that, at the time the subsidence occurs, is used on a regular or temporary basis as a public building or community or institutional building. Any building used only for commercial agricultural, industrial, retail or other commercial enterprises is excluded. "Occupied residential dwelling and structures related thereto" is defined to mean, for purposes of 405 KAR 8:040, Section 26 and 405 KAR 18:210, any building or other structure that, at the time the subsidence occurs, is used either temporarily, occasionally, seasonally, or permanently for human habitation. This term also includes any building, structure or facility installed on, above or below, or a combination thereof, the land surface if that building, structure or facility is adjunct to or used in connection with an occupied residential dwelling. Examples of these structures include, but are not limited to, garages; storage sheds and barns; greenhouses and related buildings; utilities and cables; fences and other enclosures; retaining walls; paved or improved patios, walks and driveways; septic sewage treatment facilities; and lot drainage and lawn and garden irrigation systems. Any structure used only for commercial agricultural, industrial, retail or other commercial purposes is excluded. "Material damage," as used in 405 KAR 8:040, Section 26 and 405 KAR 18:210 is defined to mean:

(a) Any functional impairment of surface lands, features, structures or facilities;

(b) Any physical change that has a significant adverse impact on the affected land's capability to support any current or reasonably foreseeable uses or causes significant loss in production or income; or

(c) Any significant change in the condition, appearance or utility of any structure or facility from its presubsidence condition.

The following terms related to impoundments are being defined: "Impounding structure" means a dam, embankment or other structure used to impound water, slurry, or other liquid or semi-liquid material. "Impoundment" is being revised to mean a water, sediment, slurry or other liquid or semi-liquid holding structure or depression, either naturally formed or artificially built. "Other treatment facilities" means any chemical treatments, such as flocculation or neutralization, or mechanical structures, such as clarifiers or precipitators, that have a point source discharge and are utilized:

(a) To prevent additional contributions of dissolved or suspended solids to streamflow or runoff outside the permit area, or

(b) To comply with 405 KAR 18:070.

The following definition relating to areas mined before August 3, 1977, is being revised: "Previously mined area" is being revised to mean land that was affected by coal mining operations conducted prior to August 3, 1977, that has not been reclaimed to the standards of this title.

3. Minimum or uniform standards contained in the federal mandate. The corresponding federal definitions are the same as the state definitions, except as described in item 4 below. The federal regulations define "replacement of water supply" as follows: "Replacement of water supply" means, with respect to protected water supplies contaminated, diminished, or interrupted by coal mining operations, provision of water supply on both a temporary and permanent basis equivalent to premining quantity and quality. Replacement includes provision of an equivalent water delivery system and payment of operation and maintenance costs in excess of customary and reasonable delivery costs for premining water supplies.

(a) Upon agreement by the permittee and the water supply owner, the obligation to pay such operation and maintenance costs may be satisfied by a one-time payment in an amount which covers the present worth of the increased annual operation and maintenance costs for a period agreed to by the permittee and the water supply owner.

(b) If the affected water supply was not needed for the land use in existence at the time of loss, contamination, or diminution, and if the supply is not needed to achieve the postmining land use, replacement requirements may be satisfied by demonstrating that a suitable alternative water source is available and could feasibly be

developed. If the latter approach is selected, written concurrence must be obtained from the water supply owner.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? Yes

a. "Angle of draw" is not defined in the federal regulations. The definition is taken from the preamble to the federal regulations at 60 FR 16738, March 31, 1995. Justification: The definition is included in this amendment because it determines the areas subject to certain requirements related to subsidence and the cabinet must apply this term uniformly and in a manner consistent with the intent of the federal regulations.

b. The federal definition of "other treatment facilities" refers to compliance with "applicable state and federal water quality standards," whereas this that definition in this amendment refers to compliance with 405 KAR 18:070. Justification: 405 KAR 18:070 is the administrative regulation relating to water quality standards and effluent limitations, and it contains the appropriate reference to "all applicable federal and state water quality standards."

c. The federal definition of "replacement of water supply" is not included in this amendment. Justification: Because the federal definition contains substantive requirements, the cabinet promulgated the provisions of the federal definition as substantive requirements in 405 KAR 16:060, Section 8 and 405 KAR 18:060, Section 12.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Because several differences are described under item no. 4 above, the justification for each difference is shown immediately following its description, for ease of reading.

**NATURAL RESOURCES AND  
ENVIRONMENTAL PROTECTION CABINET  
Department for Surface Mining  
Reclamation and Enforcement  
(Amendment)**

**405 KAR 18:060. General hydrologic requirements.**

RELATES TO: KRS 350.100, 350.151, 350.420, 350.421, 350.440, 350.465, 30 CFR Parts 701.5, 730-733, 735, 817.41, 817.45, 817.47, 817.56, 817.57, 917, 30 USC 1253, 1255, 1266, 1309a

STATUTORY AUTHORITY: KRS [~~Chapter 13A,~~] 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, 817.57, 917, 30 USC 1253, 1255, 1266, 1309a

NECESSITY, FUNCTION, AND CONFORMITY: KRS 350.028(1) requires the cabinet to promulgate administrative regulations pertaining to surface coal mining operations including strip mining and the surface effects of underground mining to accomplish the purposes of KRS Chapter 350. This administrative regulation applies to surface coal mining and reclamation operations with surface effects of underground mining. This administrative regulation sets forth general requirements to protect the hydrologic balance, including general requirements for protection of surface and groundwater quantity and quality, control of erosion and sediment, control of acid-forming and toxic-forming materials, protection of streams, and replacement of water supplies. KRS 350.028(5), 350.151(1), and 350.465(2), (5) authorize and direct the cabinet to promulgate administrative regulations for surface and underground coal mining operations for the purpose of accepting and administering primary enforcement responsibilities under the permanent regulatory program pursuant to PL 95-87, the federal Surface Mining Control and Reclamation Act of 1977; and direct that the cabinet's administrative regulations be consistent with, and not more stringent than required by, that Act. PL 95-87 does not require Kentucky to comply with its provisions, but in

order to retain primary enforcement responsibility under that Act the cabinet's administrative regulations must be consistent with federal regulations promulgated pursuant to that Act. This administrative regulation is amended by inserting new Section 12 relating to replacement of water supplies. This amendment differs from the federal regulations as follows:

1. Section 12(1) of this administrative regulation, regarding replacement of water supplies, requires replacement of supplies for domestic, agricultural, industrial, or other legitimate use, from underground or surface sources affected by underground mining activities conducted after July 16, 1994, whereas the federal counterpart at 30 CFR 817.41(j) requires replacement of drinking, domestic or residential supplies from wells or springs affected by mining conducted after October 24, 1992, if the well or spring was in existence before the date the regulatory authority received the permit application. This administrative regulation is based on KRS 350.421(2), whereas the federal regulation is based on 30 USC 1309a.

2. Section 12(2)(a) of this administrative regulation, regarding replacement of domestic water supplies, includes requirements for emergency, temporary, and permanent replacement that are not included in the federal counterpart at 30 CFR 817.41(j) but are included in the definition of "replacement of water supply" at 30 CFR 701.5. It includes specific time frames for replacement that are not included in the federal regulations but are suggested in the preamble (60 FR 16727, March 31, 1995) to the federal regulations and are needed for fair and consistent enforcement of the requirement to promptly replace domestic water supplies.

3. Section 12(2)(e) of this administrative regulation, regarding payment of excess delivery costs, includes a base time period of twenty (20) years that is not included in the federal regulations, and also includes more flexible payment options than the federal regulations. This time period is discussed as an example in the preamble at 60 FR 16726, March 31, 1995 and is needed for fair and consistent enforcement of the requirement to pay excess delivery costs.

4. Section 12(4)(a) of this administrative regulation, regarding additional bond coverage when water supplies are damaged, does not appear in the federal counterpart at 30 CFR 817.41(j) but appears in the federal subsidence regulation at 30 CFR 817.121(c)(5). This requirement is included in Section 12 of this administrative regulation, which requires water replacement, rather than the cabinet's subsidence requirements at 405 KAR 18:210, because the additional bond coverage is needed regardless of whether the water supply replacement was necessitated by subsidence or by some other factor of the underground mining.

5. Section 12(4)(b) of this administrative regulation, regarding coverage of water replacement by liability insurance rather than additional performance bond, is not included in the federal counterpart at 30 CFR 817.41(j) or the federal subsidence regulation at 30 CFR 817.121(c)(5), but the federal bonding regulation at 30 CFR 800.14(c) provides that the permittee's financial responsibility for repairing material damage resulting from subsidence under 30 CFR 817.121(c) may be satisfied by the liability insurance policy required under 30 CFR 800.60.

6. Section 12(4)(c) of this administrative regulation, regarding prompt release or return of additional bond posted for water replacement, is not included in the federal regulations. This administrative regulation is consistent with the purpose of the federal regulations because the bond cannot be not released or returned until after the permittee has completed the water supply replacement that the bond is intended to guarantee. [KRS Chapter 350 in pertinent part requires the cabinet to promulgate rules and administrative regulations establishing performance standards for protection of people and property, land, water and other natural resources, and aesthetic values, during underground mining activities and for restoration and reclamation of surface areas affected by underground mining activities. This administrative regulation sets forth general require-

ments 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.]

Section 1. General Requirements. (1) All underground mining activities shall be planned and conducted to minimize disturbance of the hydrologic balance in both the permit area and adjacent areas, in order to:

(a) Prevent material damage to the hydrologic balance outside the permit area;

(b) Support the approved postmining land uses in accordance with the terms and conditions of the approved permit and the performance standards of this administrative regulation.

(2) Changes in water quality and quantity, in the depth to groundwater, and in the location of surface water drainage channels shall be minimized so that the approved postmining land use of the permit area is not adversely affected.

(3) In no case shall federal and state water quality statutes, regulations, standards, or effluent limitations be violated.

(4) Operations shall be conducted to minimize water pollution and, where necessary, treatment methods shall be used to control water pollution.

(a) Each permittee shall emphasize mining and reclamation practices that prevent or minimize water pollution. Changes in flow of drainage shall be used in preference to the use of water treatment facilities.

(b) Acceptable practices to control and minimize water pollution include, but are not limited to:

1. Stabilizing disturbed areas through land shaping;

2. Diverting run-off;

3. Achieving quickly germinating and growing stands of temporary vegetation;

4. Regulating channel velocity of water;

5. Lining drainage channels with rock or vegetation;

6. Mulching;

7. Selectively placing and sealing acid-forming and toxic-forming materials;

8. Designing mines to prevent or control gravity drainage of acid waters;

9. Sealing;

10. Controlling subsidence;

11. Preventing acid mine drainage; and

12. Implementing sediment control measures in Section 2 of this administrative regulation.

Section 2. Sediment Control Measures. (1) Appropriate sediment control measures shall be designed, constructed, and maintained using the best technology currently available to:

(a) Prevent, to the extent possible, additional contributions of sediment to stream flow or to run off outside the permit area;

(b) Meet the requirements of 405 KAR 18:070, Section 1(1)(g); and

(c) Minimize erosion to the extent possible.

(2) Sediment control measures include practices carried out within and adjacent to the disturbed area. The sediment storage capacity of measures in and downstream from the disturbed areas shall reflect the degree to which successful mining and reclamation techniques are applied to reduce erosion and control sediment. Sediment control measures consist of the utilization of proper mining and reclamation methods and sediment control practices, singly or in combination. Sediment control methods include but are not limited to:

(a) Disturbing the smallest practicable area at any one (1) time during the mining operation through progressive backfilling, grading and prompt revegetation as required in 405 KAR 18:200, Section 1(2);

(b) Stabilizing the backfilled material to promote a reduction in the

rate and volume of run-off, in accordance with the requirements of 405 KAR 18:190;

- (c) Retaining sediment within disturbed areas;
- (d) Diverting run-off away from disturbed areas;
- (e) Diverting run-off using protected channels or pipes through disturbed areas so as not to cause additional erosion;
- (f) Using straw dikes, riprap, check dams, mulches, vegetative sediment filters, dugout ponds, and other measures that reduce overland flow velocity, reduce run-off volume, or trap sediment;
- (g) Treating with chemicals;
- (h) Treating mine drainage in underground sumps; and
- (i) Using sedimentation ponds as required in 405 KAR 18:070.

Section 3. Discharge Structures. Discharge from sedimentation ponds, permanent and temporary impoundments, coal processing waste dams and embankments, and diversions shall be controlled, by energy dissipators, riprap channels, and other devices, where necessary, to reduce erosion, to prevent deepening or enlargement of stream channels, and to minimize disturbance of the hydrologic balance. Discharge structures shall be designed according to standard engineering design procedures.

Section 4. Acid-forming and Toxic-forming Materials. Acid drainage and toxic drainage shall be avoided by:

- (1) Identifying and burying and/or treating, in accordance with 405 KAR 18:190, Section 3, materials which may adversely affect water quality, or be detrimental to vegetation or to public health and safety if not buried and/or treated;
- (2) Storage, burial or treatment practices consistent with other material handling and disposal provisions of this chapter; and
- (3) Burying or otherwise treating all acid-forming or toxic-forming underground development waste and spoil within thirty (30) days after they are first exposed on the mine site, or within a lesser period required by the cabinet. Temporary storage of such materials may be approved by the cabinet upon a finding that burial or treatment within thirty (30) days is not feasible and will not result in any material risk of water pollution or other environmental damage. Storage shall be limited to the period until burial or treatment first becomes feasible. Acid-forming or toxic-forming underground waste and spoil to be stored shall be placed on impermeable material and protected from erosion and contact with surface water.

Section 5. Groundwater Protection. In order to protect the hydrologic balance, surface mining activities shall be conducted according to 405 KAR 8:040, Section 32(1) and (2) and groundwater quality shall be protected by handling earth materials and run-off in a manner that minimizes acidic, toxic, or other harmful infiltration to groundwater systems and by managing excavations and other disturbances to prevent or control the discharge of pollutants into the groundwater.

Section 6. Surface Water Protection. In order to protect the hydrologic balance, surface mining activities shall be conducted according to 405 KAR 8:040, Section 32(1) and (2) and the following:

- (1) Surface water quality shall be protected by handling earth materials, groundwater discharges, and run-off in a manner that:
  - (a) Minimizes the formation of acidic or toxic drainage;
  - (b) Prevents, to the extent possible using the best technology currently available, additional contribution of suspended solids to stream flow outside the permit area; and
  - (c) Will not cause or contribute to a violation of any federal or state effluent limitations or water quality standards.
- (2) If drainage control, restabilization and revegetation of disturbed areas, diversion of run-off, mulching, or other reclamation and remedial practices are not adequate to meet the requirements of this section and 405 KAR 18:070, the operator shall use and maintain the necessary water-treatment facilities or water quality controls for

as long as treatment is required under this chapter; and

- (3) Surface water quantity and flow rates shall be protected by handling earth materials and run-off in accordance with the steps outlined in the plan approved under 405 KAR 8:040, Section 32(1) and (2).

Section 7. Transfer of Wells. Before final release of bond, exploratory or monitoring wells shall be sealed in a safe and environmentally sound manner in accordance with 405 KAR 18:040. With the prior approval of the regulatory authority, wells may be transferred to another party for further use. At a minimum, the conditions of such transfer shall comply with state and local law and the permittee shall remain responsible for the proper management of the well until bond release in accordance with 405 KAR 18:040.

Section 8. Gravity Discharges from Underground Mines. Surface entries and accesses to underground workings shall be located and managed to prevent or control gravity discharge of water from the mine.

(1) Gravity discharges of water from an underground mine, other than a drift mine subject to subsection (2) of this section, may be allowed by the cabinet if it is demonstrated that the untreated or treated discharge complies with the performance standards of this chapter and any additional KPDES permit requirements.

(2) Notwithstanding anything to the contrary in subsection (1) of this section, the surface entries and accesses of drift mines first used after May 18, 1982 and located in acid-producing or iron-producing coal seams shall be located in such a manner as to prevent any gravity discharge from the mine.

Section 9. Discharges Into an Underground Mine. (1) Discharges into an underground mine are prohibited, unless specifically approved by the cabinet after a demonstration that the discharge will:

- (a) Minimize disturbance to the hydrologic balance on the permit area, prevent material damage outside the permit area and otherwise eliminate public hazards resulting from surface mining activities;
- (b) Not result in a violation of applicable water quality standards or effluent limitations;
- (c) Be at a known rate and quality which shall meet the effluent limitations of 405 KAR 18:070 for pH and total suspended solids, except that the pH and total suspended-solids limitations may be exceeded, if approved by the cabinet; and
- (d) Meet with the approval of the Mine Safety and Health Administration.

(2) Discharges shall be limited to the following:

- (a) Coal processing waste;
- (b) Underground mine development waste;
- (c) Fly ash from a coal-fired facility;
- (d) Sludge from an acid mine drainage treatment facility;
- (e) Flue gas desulfurization sludge;
- (f) Inert materials used for stabilizing underground mines; and
- (g) Water.

(3) Water from one (1) underground mine may be diverted into other underground workings according to the requirements of this section and as approved in the permit.

Section 10. Postmining Rehabilitation of Sedimentation Ponds, Diversions, Impoundments, and Treatment Facilities. Before abandoning the permit area, the permittee shall renovate all permanent sedimentation ponds, diversions, impoundments and treatment facilities as necessary to meet criteria specified in the detailed design plan for the permanent structures and impoundments.

Section 11. Stream Buffer Zones. (1) No land within 100 feet of an intermittent or perennial stream shall be disturbed by underground mining activities unless the cabinet specifically authorizes underground mining activities closer to, or through, such a stream. The



cabinet may authorize such activities only upon finding, as a result of evaluating a permit application, that:

(a) Underground mining activities will not cause or contribute to the violation of applicable state or federal water quality standards;

(b) Underground mining activities will not cause significant detrimental effects on the water quantity or quality of the intermittent or perennial stream; provided however, this paragraph shall not apply to any reach of that stream that is upstream of an impounding structure located within the permit area and within the stream channel;

(c) Underground mining activities will not cause significant detrimental effects on other valuable environmental resources, as determined by the cabinet, of the stream; and

(d) If there will be a temporary or permanent stream-channel diversion, it will comply with 405 KAR 18:080.

(2) The area that is not to be disturbed shall be designated a buffer zone, shall be adequately shown in the permit application, and shall be marked by the permittee as specified in 405 KAR 18:030.

(3) Descriptions, drawings, data, and all other information required by the cabinet to make the findings of subsection (1) of this section shall be submitted in a permit application in a manner prescribed by the cabinet.

(4)(a) The provisions of the amendments to this section shall apply to all underground mining activities, except as provided in paragraph (b) of this subsection.

(b)1. Underground mining activities included in a permit issued on or before August 17, 1987 shall be subject to the provisions that preceded the amendments to this section in lieu of the provisions of subsections (1) through (3) of this section.

2. Underground mining activities included in a permit application determined to be complete pursuant to 405 KAR 8:010, Section 13(1) on or before August 17, 1987 shall be subject to the provisions that preceded the amendments to this section in lieu of the provisions of subsections (1) through (3) of this section.

Section 12. Replacement of Water Supply. (1) The permittee or operator shall promptly replace the water supply of an owner of interest in real property who obtains all or part of his 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. Baseline geologic and hydrologic information required in 405 KAR 8:040, Sections 12 through 16, and other relevant information available to the cabinet, shall be used to determine the impact of mining activities upon the water supply.

(2) If replacement of a water supply is required under subsection (1) of this section the permittee shall:

(a) If the water supply to be replaced is a domestic supply, provide water supply on both a temporary and permanent basis in accordance with this paragraph;

1. Within forty-eight (48) hours after receiving notice that the water supply was adversely impacted by mining, provide drinking water on an emergency basis;

2. Within two (2) weeks after receiving notice that the water supply was adversely impacted by mining, provide a temporary water supply connected to the existing plumbing, if any, that provides water for all ordinary household purposes such as drinking, cooking, bathing, sanitation, and laundry, and drinking water for poultry, livestock, and domestic animals, and water for noncommercial domestic agricultural and horticultural activities;

3. Within two (2) years after receiving notice that the water supply was adversely impacted by mining, provide a satisfactory permanent water supply;

(b) If the water supply to be replaced is other than a domestic supply, provide water supply on both a temporary and permanent basis on a schedule established by the cabinet on a case-by-case

basis;

(c) Provide water supply equivalent to premining quantity and quality;

(d) Provide an equivalent water delivery system; and

(e) Pay operation and maintenance costs in excess of customary and reasonable delivery costs for the premining water supply for a period of twenty (20) years, or other period agreed to by the permittee and the owner of interest. Upon agreement by the permittee and the owner of interest, the obligation to pay the excess operation and maintenance costs may be satisfied by:

1. A one (1) time payment in an amount which covers the present worth of the increased annual operation and maintenance costs for a period of twenty (20) years, or other period agreed to by the permittee and the owner of interest;

2. A uniform series of payments whose present worth equals or exceeds the present worth of the increased annual operation and maintenance costs for a period of twenty (20) years, or other period agreed to by the permittee and the owner of interest; or

3. Other reasonable compensation arrangements which fairly compensate the owner for the future operation and maintenance costs for a period of twenty (20) years, or other period agreed to by the permittee and the owner of interest.

(3) If the affected water supply was not needed for the land use in existence at the time of loss, contamination, or diminution, and if the supply is not needed to achieve the postmining land use, replacement requirements may be satisfied by demonstrating that a suitable alternative water source is available and could feasibly be developed. If this approach is selected, written concurrence shall be obtained from the owner of interest.

(4)(a) If contamination, diminution, or interruption to a water supply protected under subsection (1) of this section occurs, the cabinet shall require the permittee to obtain additional performance bond in the amount of the estimated cost to replace the protected water supply, until the replacement is completed. If replacement is completed within ninety (90) days of the occurrence, additional bond shall not be required. The cabinet may extend the ninety (90) day time frame, but not to exceed one (1) year, if the permittee demonstrates and the cabinet finds in writing that not all reasonably anticipated changes affecting the protected water supply have occurred, and that therefore it would be unreasonable to complete the replacement within ninety (90) days.

(b) If the permittee demonstrates that his liability insurance policy under 405 KAR 10:030, Section 4 covers the replacement, the additional bond amount required under paragraph (a) of this subsection may be reduced by the amount of the insurance coverage applicable to the replacement. The existence of applicable insurance coverage shall not prevent forfeiture of a performance bond under 405 KAR 10:050.

(c) The cabinet may promptly release or return the additional bond amount provided under paragraph (a) of this subsection if the cabinet determines, based upon an application and information submitted by the permittee, the cabinet's own investigation as appropriate, and other information available to the cabinet, that the permittee has satisfactorily completed the required replacement.

JAMES E. BICKFORD, Secretary

APPROVED BY AGENCY: July 28, 1997

FILED WITH LRC: July 28, 1997 at 4 p.m.

PUBLIC HEARING: A public hearing on this proposed amendment has been scheduled for 9:30 a.m. (EDT) on Tuesday, September 30, 1997, in the Training Room (D-16) of the Department for Surface Mining Reclamation and Enforcement at 2 Hudson Hollow, Frankfort, Kentucky. Persons who wish to testify at the hearing shall notify the contact person listed below, in writing, by September 23, 1997. The scheduled hearing will be canceled if the contact person has not received any written notice of intent to testify by September 23, 1997, five workdays before the scheduled hearing date. If the

hearing is held, it will be open to the public. Any person in attendance who wishes to testify on the proposed amendment will be given a fair and reasonable opportunity to do so, regardless of whether the person has given the cabinet prior written notice of his intent to testify. To assure an accurate record, the cabinet requests each person testifying at the hearing to provide the cabinet with a written copy of his testimony. The cabinet is not required to make a recording or transcript of the hearing unless someone makes a written request for it, in which case the person requesting the recording or transcript shall pay for it. WRITTEN COMMENTS: A person who wishes to comment on this proposed amendment but does not wish to testify at the hearing may submit written comments on the proposed amendment at any time before 4:30 p.m. (EDT) on Tuesday, September 30, 1997, the scheduled hearing date. Comments received after that time will not be considered. Written comments and written notices of intent to testify at the hearing shall be submitted to the contact person listed below.

CONTACT PERSON: Jim Villines, Kentucky Department for Surface Mining, 2 Hudson Hollow, Frankfort, Kentucky 40601-4321, Tel. (502) 564-6940, FAX (502) 564-5698.

#### REGULATORY IMPACT ANALYSIS

Contact Person: Jim Villines

1. Type and number of entities affected: This amendment will affect only those underground mining operations that damage water supplies. As of June 1997 there were approximately 300 active underground mining operations and approximately 280 more where future production is likely. This amendment will also affect surface owners whose water supplies are damaged by underground mining operations.

2. Direct and indirect costs or savings on the affected entities:

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 comments were received on this subject. The amendment is not expected to have an effect on the cost of living and employment.

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 on this subject. The amendment is not expected to have an effect on the cost of doing business.

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: This amendment will increase some costs for some permittees whose operations cause damage to water supplies. Since July 16, 1994, KRS 350.421 has required underground mining operations to replace damaged water supplies. This amendment requires that the replacement be done promptly; establishes time frames for prompt replacement for domestic water supplies; requires that replacement water supplies be equivalent in quantity and quality to the premining supplies and that an equivalent water delivery system be provided; requires the permittee to pay any operation and maintenance costs for the replacement water supply that are in excess of customary and reasonable delivery costs for the premining water supply for a period of 20 years, and allows the permittee and surface owner to agree upon an alternate payment period and method of payment; requires the permittee to provide additional performance bond to cover the cost of replacement if he does not complete the replacement within the prescribed time, and allows the permittee's liability insurance coverage to be taken into account in determining the amount of additional performance bond needed; allows prompt release or return of the additional performance bond when the water replacement has been satisfactorily completed; and allows replacement not to be done

if the water supply was not needed for the premining land use, will not be needed for the postmining land use, and the surface owner agrees in writing. Since underground mining operations currently replace damaged water supplies and generally compensate surface owners for any increased delivery costs, additional compliance costs due to this amendment in most cases are expected to be related to the cost of additional performance bond, which will be necessary only when the permittee fails to replace the water supply in a timely manner and the permittee's liability insurance policy does not fully cover the replacement.

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: The cabinet will have an increase in workload in determining the additional performance bond amounts needed when required for water replacement, but this activity is not expected to significantly increase costs.

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

3. Additional factors increasing or decreasing costs: None

b. Reporting and paperwork requirements: There will be some increase in reporting and paperwork in connection with the above described activities.

4. Assessment of anticipated effect on state and local revenues: No effect is expected.

5. Source of revenue to be used for implementation and enforcement of administrative regulation: No additional revenue is expected to be needed.

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

a. Geographical area in which administrative regulation will be implemented: No comments on economic impact were received. No economic impact on the coal mining regions is expected.

b. Kentucky: No comments on economic impact were received. No statewide economic impact is expected.

7. Assessment of alternative methods; reasons why alternatives were rejected: There is no feasible alternative to adoption of parts of this amendment, since the cabinet's administrative regulations must be consistent with federal regulations. The requirement that replacement be prompt, the time frames for prompt replacement for domestic water supplies, and the 20-year time frame for payment of excess delivery costs and additional options for payment, were included because they are necessary for fair and consistent enforcement. The provisions regarding prompt release of performance bond and consideration of liability insurance were included because of comments submitted in response to the Notice of Intent to Promulgate Administrative Regulations. Several of the requirements in this amendment are included in the federal definition of "replacement of water supply". The cabinet considered promulgating a similar definition, but instead chose to structure the provisions of the federal definition as requirements in this amendment to avoid adopting a definition containing specific requirements.

8. Assessment of expected benefits of the administrative regulation: Surface owners whose water supplies are damaged by underground mining operations will benefit from greater assurance that water replacement will be done promptly and more completely, and that they will be compensated fairly for any future excess delivery costs. The bonding requirement will ensure that money is available for the cabinet to perform water replacement if the permittee fails to do so. Permittees will benefit from greater certainty about water replacement requirements and from fair and consistent enforcement of those requirements, from the greater flexibility regarding payment of future excess costs, from consideration of liability insurance coverage in determining the increased performance bond amounts, and from prompt return or release of the additional performance bond amounts.

9.a. Identify effects on public health and environmental welfare of the geographical area in which implemented and Kentucky: No effect

on public health and environmental welfare will result in the coal regions or statewide.

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

c. If detrimental effect would result, explain detrimental effect: No detrimental effect.

10. Identify any statute, administrative regulation, or government policy which may be in conflict, overlapping, or duplication: There is no conflict, overlap, or duplication.

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

b. If in conflict, was the effort made to harmonize the proposed administrative regulation with conflicting provisions: No conflict.

11. Any additional information or comments: No additional comments.

12. TIERING: Is tiering applied? No. Tiering is not applicable to this proposed amendment because, under the federal and Kentucky surface mining laws and regulations, these requirements must apply equally to all permittees under 405 KAR Chapters 7-24.

#### FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 30 USC 1253, 1255, 1266, 1309a, 30 CFR 701.5, 730-733, 735, 817.41, 817.45, 817.47, 817.56, 817.57, 917. The federal regulations corresponding to this amendment are at 30 CFR 701.5 (definition of "replacement of water supply") and 817.41(j).

2. State compliance standards. The only change to this administrative regulation made by this amendment is the addition of new Section 12, pertaining to replacement of water supply. Section 12(1) requires the permittee to promptly replace a water supply that has been adversely impacted as a result of underground mining activities conducted after July 16, 1994. Section 12(2) sets specific timetables for replacement of affected domestic water supplies on an emergency, temporary and permanent basis. For other than domestic supplies, it requires the cabinet to establish a timetable for temporary and permanent replacement on a case by case basis. It requires that replacement water supplies be equivalent to the premining supplies in quantity and quality, and that an equivalent water delivery system be provided. It requires the permittee to pay any operation and maintenance costs for delivery of the replacement water supply that are in excess of customary and reasonable delivery costs for the premining water supply, and to pay those excess costs for a period of 20 years unless another payment period is agreed to by the permittee and owner. It allows various arrangements for making the required payments. Section 12(3) allows an impacted water supply to not be replaced, if it was not needed for the existing land use and will not be needed for the postmining land use and the owner agrees in writing. Section 12(4) requires the permittee to provide additional performance bond if a water supply is adversely affected, unless the permittee replaces the water supply within 90 days or the cabinet extends the time for replacement. It allows the additional bond amount to be reduced by the amount of the permittee's liability insurance coverage that is applicable to the water replacement. It provides for prompt release or return of the additional bond amount after the permittee has satisfactorily completed the water replacement.

3. Minimum or uniform standards contained in the federal mandate. The federal regulations corresponding to this amendment are at 30 CFR 701.5 (definition of "replacement of water supply") and 817.41(j). 30 CFR 817.41(j) requires that the permittee must promptly replace any drinking, domestic or residential water supply that is contaminated, diminished, or interrupted by underground mining activities conducted after October 24, 1992, if the affected well or spring was in existence before the date the regulatory authority received the permit application for the activities causing the loss, contamination or interruption. It further requires that baseline

hydrologic and geologic information (required in the permitting regulations) be used to determine the extent of the impact of mining activities on the water supply. 30 CFR 701.5 defines "replacement of water supply" (applicable to both surface and underground mining) as provision of water supply on both a temporary and permanent basis equivalent to premining quantity and quality. It requires that replacement include provision of an equivalent water delivery system and payment of operation and maintenance costs in excess of customary and reasonable delivery costs for premining water supplies. It provides that upon agreement by the water supply owner and the permittee the obligation to pay such costs may be satisfied by a one-time payment in an amount which equals the present worth of the increased annual operation maintenance costs for a period agreed to by the permittee and the water supply owner. If the water supply was not needed for the land use in existence at the time of loss, contamination or diminution, and is not needed to achieve the postmining land use, it allows the permittee to fulfill the water replacement obligation by demonstrating that a suitable alternative water source is available and could feasibly be developed, if the water supply owner concurs in writing.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? Yes

a. Section 12(1), regarding replacement of water supplies, requires replacement of supplies for domestic, agricultural, industrial, or other legitimate use, from underground or surface sources affected by underground mining activities conducted after July 16, 1994, whereas the federal counterpart at 30 CFR 817.41(j) requires replacement of drinking, domestic or residential supplies from wells or springs affected by mining conducted after October 24, 1992, if the well or spring was in existence before the date the regulatory authority received the permit application. Justification: This administrative regulation is based on KRS 350.421(2), which on July 16, 1994 began requiring replacement by underground mines for water supplies used for domestic, agricultural, industrial or other legitimate use, and is not limited to wells or springs in existence at the time the cabinet received the permit application, whereas the federal regulation is based on 30 USC 1309a which took effect October 24, 1992, and contains the limitations reflected in the federal regulation.

b. Section 12(2)(a), regarding replacement of domestic water supplies, includes requirements for emergency, temporary, and permanent replacement that are not included in the federal counterpart at 30 CFR 817.41(j) but are included in the definition of "replacement of water supply" at 30 CFR 701.5. It includes specific time frames for replacement that are not included in the federal regulations but are suggested in the preamble (60 FR 16727, March 31, 1995) to the federal regulations. Justification: The federal definition of "replacement of water supply" contains not only a definition, but substantive requirements. In order to avoid having substantive requirements in a definition, requirements for replacing water supplies are placed in this administrative regulation rather than having a definition of "replacement of water supply". The specific time frames for replacement are needed to ensure fair and consistent enforcement of requirements to promptly replace domestic water supplies.

c. Section 12(2)(e), regarding payment of excess delivery costs, includes a base time period of twenty (20) years that is not included in the federal regulations, and also includes more flexible payment options than the federal regulations. Justification: This time period is discussed as an example in the preamble at 60 FR 16726, March 31, 1995, and is needed for fair and consistent enforcement of the requirement to pay excess delivery costs.

d. Section 12(4)(a), regarding additional bond coverage when water supplies are damaged, does not appear in the federal counterpart at 30 CFR 817.41(j) but appears in the federal subsidence regulation at 30 CFR 817.121(c)(5). Justification: This requirement is included in Section 12 of this administrative regulation, which requires water replacement, rather than the cabinet's subsidence requirements

at 405 KAR 18:210, because the additional bond coverage is needed regardless of whether the water supply replacement was necessitated by subsidence or by some other factor of the underground mining.

e. Section 12(4)(b), regarding coverage of water replacement by liability insurance rather than additional performance bond, is not included in the federal counterpart at 30 CFR 817.41(j) or the federal subsidence regulation at 30 CFR 817.121(c)(5). Justification: The federal bonding regulation at 30 CFR 800.14(c) provides that the permittee's financial responsibility for repairing material damage resulting from subsidence under 30 CFR 817.121(c) may be satisfied by the liability insurance policy required under 30 CFR 800.60.

f. Section 12(4)(c), regarding prompt release or return of additional bond posted for water replacement, is not included in the federal regulations. Justification: This regulation is consistent with the purpose of the federal regulations because the bond cannot be not released or returned until after the permittee has completed the water supply replacement that the bond is intended to guarantee.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Because several differences are described under question no. 4 above, the justification for each difference is shown immediately following its description, for ease of reading.

**NATURAL RESOURCES AND  
ENVIRONMENTAL PROTECTION CABINET  
Department for Surface Mining  
Reclamation and Enforcement  
(Amendment)**

**405 KAR 18:090. Sedimentation ponds.**

RELATES TO: KRS 151.100, 151.250(3), 350.020, 350.100, 350.151, 350.420, 350.465, 30 CFR Parts 730-733, 735, 817.46, 917, 30 USC 1253, 1255, 1266

STATUTORY AUTHORITY: KRS 350.028, 350.100, 350.151, 350.420, 350.465, 30 CFR Parts 730-733, 735, 817.46, 917, 30 USC 1253, 1255, 1266

NECESSITY, FUNCTION, AND CONFORMITY: KRS 350.028(1) requires the cabinet to promulgate administrative regulations pertaining to surface coal mining operations including strip mining and the surface effects of underground mining to accomplish the purposes of KRS Chapter 350. This administrative regulation applies to surface coal mining and reclamation operations with surface effects of underground mining. This administrative regulation sets forth requirements for the location, design, construction, certification, maintenance, and removal or retention of sedimentation ponds. KRS 350.028(5), 350.151(1), and 350.465(2), (5) authorize and direct the cabinet to promulgate administrative regulations for surface and underground coal mining operations for the purpose of accepting and administering primary enforcement responsibilities under the permanent regulatory program pursuant to PL 95-87, the federal Surface Mining Control and Reclamation Act of 1977; and direct that the cabinet's administrative regulations be consistent with, and not more stringent than required by, that Act. PL 95-87 does not require Kentucky to comply with its provisions, but in order to retain primary enforcement responsibility under that Act the cabinet's administrative regulations must be consistent with federal regulations promulgated pursuant to that Act. This amendment differs from the federal regulations as follows:

1. Some requirements in 30 CFR 817.46 are contained in 405 KAR 18:070 rather than this administrative regulation.

2. This administrative regulation does not use the term "siltation structure", as does the federal regulation. 30 CFR 701.5 defines "siltation structure" to mean "a sedimentation pond, a series of sedimentation ponds, or other treatment facility". This administrative regulation uses "sedimentation pond", "in series", and "other treatment

facility" as needed, so "siltation structure" is unnecessary.

3. Section 2 of this administrative regulation, regarding sediment storage volume, contains provisions for a time schedule or clean-out elevations that are not found in the federal regulation. Section 2 of this administrative regulation corresponds to two (2) federal requirements at 30 CFR 817.46(c)(1)(iii)(A) and (F), and contains additional clarifying language that corresponds to explanatory language in the preamble to the federal regulations at 48 FR 44041, September 26, 1983.

4. Section 3 of this administrative regulation, regarding detention time and pond sizing, contains provisions that are not found in the federal regulation. Section 3(2) of this administrative regulation corresponds to the requirement in 30 CFR 817.46(c)(1)(iii)(C) to "contain or treat the 10-year, 24-hour precipitation event". Section 3(2) of this administrative regulation clarifies the meaning of the federal requirement, consistent with the explanation in the preamble to the federal regulations at 48 FR 44042, September 26, 1983. [KRS Chapter 350 in pertinent part requires the cabinet to promulgate rules and administrative regulations establishing performance standards for protection of people and property, land, water and other natural resources, and aesthetic values, during underground mining activities and for restoration and reclamation of surface areas affected by underground mining activities. This administrative regulation sets forth specific requirements for the location, design, construction, and removal or retention of sedimentation ponds used for treatment of discharges from areas affected by surface operations and discharges from underground workings.]

Section 1. General Requirements. Sedimentation ponds shall be used individually or in series and shall:

(1) Comply with this administrative regulation and 405 KAR 18:100;

(2)(a) In accordance with 405 KAR 18:100, Section 1(2), be designed and certified by a qualified registered professional engineer as meeting the requirements of this administrative regulation and 405 KAR 18:100; and

(b) In accordance with 405 KAR 18:100, Section 1(9), be inspected during construction by or under the direct supervision of the responsible registered professional engineer, and after construction be certified by the responsible registered professional engineer as having been constructed in accordance with the approved design plans;

(3) Be constructed and certified under subsection (2) of this section [Section 5(14) of this administrative regulation] before any disturbance in the watershed that drains [of the area to be drained] into the sedimentation pond and prior to any discharge of water to surface waters from underground mine workings; and

(4) [(2)] Be located as near as possible to the disturbed area, and out of perennial streams unless approved by the cabinet[;]

[(3)] Meet all the criteria of this administrative regulation;

[(4)] Be removed pursuant to Section 5(18) of this administrative regulation unless approved for retention under Section 5(19) of this administrative regulation].

Section 2. Sediment Storage Volume. Sedimentation ponds shall provide adequate [a] sediment storage volume as approved on a case-by-case basis by the cabinet based upon the anticipated volume of sediment to be collected and a feasible plan [time schedule] for clean-out operations. The plan shall include a time schedule or clean-out elevations, or an appropriate combination thereof, that shall provide periodic sediment removal sufficient to maintain adequate volume for the sediment to be collected during the design precipitation event under Section 3 of this administrative regulation. [The sediment storage volume shall be the anticipated volume of sediment that will be collected by the pond between scheduled clean-out operations.] The proposed clean-out plan [schedule] shall be included in the design and shall [will] be approved if the cabinet determines

that the proposed plan [schedule] is feasible.

Section 3. Detention Time. Sedimentation ponds shall be designed, constructed, and maintained to:

(1) Provide detention time such that discharges from the sedimentation pond shall meet the requirements of 405 KAR 18:070, Section 1(1)(g); and

(2)(a) Contain the runoff from the ten (10) year, twenty-four (24) hour precipitation event by providing a runoff storage volume, between the top elevation of the design sediment storage volume and the principal spillway elevation, equal to or greater than the runoff from that precipitation event. The cabinet may approve a smaller runoff storage volume based on terrain, the amount of disturbance, other site specific conditions, and a demonstration by the permittee that the effluent limitations of 405 KAR 18:070, Section 1(1)(g) will be met; or

(b) Treat the runoff from the ten (10) year, twenty-four (24) hour precipitation event by using other treatment facilities in conjunction with adequate runoff storage volume, such that the effluent limitations of 405 KAR 18:070, Section 1(1)(g), will be met.

Section 4. Dewatering. The water storage resulting from inflow shall be removed by a nonclogging dewatering device or [a conduit] spillway approved by the cabinet. The dewatering device or spillway shall not be located at a lower elevation than the top [maximum] elevation of the design sediment storage volume.

Section 5. Other Requirements. (1) Each permittee shall design, construct, and maintain sedimentation ponds to prevent short-circuiting to the extent possible.

(2) The design, construction, and maintenance of a sedimentation pond or other sediment control measures in accordance with this administrative regulation shall not relieve the permittee from compliance with 405 KAR 18:070, Section 1(1)(g).

(3) ~~There shall be no outflow through an emergency spillway during the passage through the sedimentation pond of the run-off resulting from the ten (10) year, twenty four (24) hour precipitation events and lesser events.~~ The design shall take into account the volume of water and sediment contributed by the underground mine discharge.

(4) Sediment shall be removed from sedimentation ponds in accordance with the approved clean-out plan. ~~[when the designed sediment storage volume has filled with sediment]~~

(5) ~~[An appropriate combination of principal and emergency] Spillways shall be provided in accordance with 405 KAR 18:100. [to discharge safely the run-off from a twenty five (25) year, twenty four (24) hour precipitation event, or larger event specified by the cabinet plus any inflow from the underground mine. The elevation of the crest of the emergency spillway shall be a minimum of one and five tenths (1.5) feet above the crest of the principal spillway.]~~ Emergency spillway grades and allowable velocities shall be approved by the cabinet. ~~[Sedimentation ponds not meeting the size or other qualifying criteria of 30 CFR 77.216(a) may use a single spillway if the spillway:~~

(a) Is an open channel on nonerodible construction and capable of maintaining sustained flows; and

(b) Is not earth or grass lined.

(6) The minimum elevation of the top of the settled embankment shall be one (1.0) foot above the water surface in the reservoir with the emergency spillway flowing at design depth. For embankments subject to settlement, this one (1.0) foot minimum elevation requirement shall apply at all times, including the period after settlement.

(7) The constructed height of the dam shall be increased a minimum of five (5) percent over the design height to allow for settlement, unless it has been demonstrated to the cabinet that the material used and the design will ensure against all settlement.

(8) The minimum top width of the embankment shall not be less than the quotient of  $(H + 35)/5$ , where H, in feet, is the height of the

embankment as measured from the upstream toe of the embankment.

(9) The combined upstream and downstream side slopes of the settled embankment shall not be less than 1v:5h, with neither slope steeper than 1v:2h. Slopes shall be designed to be stable in all cases, even if flatter side slopes are required.

(10) The embankment foundation area shall be cleared of all organic matter, all surfaces sloped to no steeper than 1v:1h, and the entire foundation surface scarified.

(11) The fill material shall be free of sod, large roots, other large vegetative matter, and frozen soil, and in no case shall coal processing waste be used.

(12) The placing and spreading of fill material shall be started at the lowest point of the foundation. The fill shall be brought up in horizontal layers of such thickness as is required to facilitate compaction and meet the design requirements of this administrative regulation. Compaction shall be conducted as specified in the design approved by the cabinet.

(13) If a sedimentation pond has an embankment that is more than twenty (20) feet in height, as measured from the upstream toe of the embankment to the crest of the emergency spillway, or has a storage volume of twenty (20) acre feet or more, the following additional requirements shall be met:

(a) An appropriate combination of principal and emergency spillways shall be provided to safely discharge the run-off resulting from a 100 year, twenty four (24) hour precipitation event, or a larger event specified by the cabinet, plus any inflow from the underground mine.

(b) The embankment shall be designed and constructed with a static safety factor of at least one and five tenths (1.5), or a higher safety factor as designated by the cabinet to ensure stability.

(c) Appropriate barriers shall be provided to control seepage along conduits that extend through the embankment.

(d) The criteria of the MSHA as published in 30 CFR 77.216 shall be met.

(14) Each pond shall be designed and certified by a registered professional engineer; shall be inspected during construction by or under the direct supervision of the responsible registered professional engineer; and after construction shall be certified by the responsible registered professional engineer as having been constructed in accordance with the approved design plans.

(15) The entire embankment including the surrounding areas disturbed by construction shall be stabilized with respect to erosion by a vegetative cover or other means immediately after the embankment is completed. The active upstream face of the embankment where water is being impounded may be riprapped or otherwise stabilized. Areas in which the vegetation is not successful or where rills and gullies develop shall be repaired and revegetated, in accordance with 405 KAR 18:190, Section 4.

(16) All ponds meeting or exceeding the size or other criteria of 30 CFR 77.216(a) shall be examined for structural weakness, erosion, and other hazardous conditions and reports shall be made to the cabinet, in accordance with 30 CFR 77.216-3. Such inspections shall be made by a qualified registered professional engineer, by someone under the supervision of a qualified registered professional engineer, or by a person approved by MSHA for such inspections. Ponds not meeting these criteria (30 CFR 77.216(a)) shall be examined four (4) times per year for structural weakness, erosion, and other hazardous conditions and reports of the inspection shall be submitted to the cabinet.]

(6) ~~[(17)]~~ Sedimentation ponds shall be properly maintained and shall not be removed until the requirements of 405 KAR 18:070, Section 1(1)(b) have been met.

(7) ~~[(18)]~~ Sedimentation ponds shall be removed prior to final release of bond liability for the permit area unless retention of the pond is approved by the cabinet under subsection (8) ~~[(19)]~~ of this section. When a sedimentation pond is removed, the affected land shall be regraded and revegetated in accordance with 405 KAR



18:190 and 405 KAR 18:200.

(8) [(19)] If the cabinet approves retention of a sedimentation pond as a permanent impoundment, the sedimentation pond shall meet all the requirements for permanent impoundments under 405 KAR 18:060, Section 10 [8], and 405 KAR 18:100.

~~[(20) Notwithstanding other provisions of this administrative regulation, all dams as defined by KRS 151.100(13) and other impoundments classified as Class B moderate hazard or Class C high hazard, shall comply with 405 KAR 7:040, Section 5 and with 401 KAR 4:030.]~~

JAMES E. BICKFORD, Secretary

APPROVED BY AGENCY: July 28, 1997

FILED WITH LRC: July 28, 1997 at 4 p.m.

PUBLIC HEARING: A public hearing on this proposed amendment has been scheduled for 9:30 a.m. (EDT) on Tuesday, September 30, 1997, in the Training Room (D-16) of the Department for Surface Mining Reclamation and Enforcement at 2 Hudson Hollow, Frankfort, Kentucky. Persons who wish to testify at the hearing shall notify the contact person listed below, in writing, by September 23, 1997. The scheduled hearing will be canceled if the contact person has not received any written notice of intent to testify by September 23, 1997, five workdays before the scheduled hearing date. If the hearing is held, it will be open to the public. Any person in attendance who wishes to testify on the proposed amendment will be given a fair and reasonable opportunity to do so, regardless of whether the person has given the cabinet prior written notice of his intent to testify. To assure an accurate record, the cabinet requests each person testifying at the hearing to provide the cabinet with a written copy of his testimony. The cabinet is not required to make a recording or transcript of the hearing unless someone makes a written request for it, in which case the person requesting the recording or transcript shall pay for it. WRITTEN COMMENTS: A person who wishes to comment on this proposed amendment but does not wish to testify at the hearing may submit written comments on the proposed amendment at any time before 4:30 p.m. (EDT) on Tuesday, September 30, 1997, the scheduled hearing date. Comments received after that time will not be considered. Written comments and written notices of intent to testify at the hearing shall be submitted to the contact person listed below.

CONTACT PERSON: Jim Villines, Kentucky Department for Surface Mining, 2 Hudson Hollow, Frankfort, Kentucky 40601-4321, Tel. (502) 564-6940, FAX (502) 564-5698.

#### REGULATORY IMPACT ANALYSIS

Contact Person: Jim Villines

1. Type and number of entities affected: This amendment will affect operations with sedimentation ponds that are designed, permitted, constructed or reconstructed after the effective date of this amendment.

2. Direct and indirect costs or savings on the affected entities:

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 comments were received on this subject. The amendment is not expected to have an effect on the cost of living and employment.

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 on this subject. The amendment is not expected to have an effect on the cost of doing business.

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: This amendment primarily

serves to clean up the administrative regulation by deleting provisions that are redundant because they are included in 405 KAR 18:100 and are applicable to all impoundments, not just sedimentation ponds. Some of the changes are clarifications of existing requirements. The amendment is not expected to have a significant effect on compliance, reporting or paperwork requirements or on costs.

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 direct or indirect costs or savings.

2. Continuing costs or savings: No continuing costs or savings.

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 on revenues.

5. Source of revenue to be used for implementation and enforcement of administrative regulation: No additional revenue will be needed.

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

a. Geographical area in which administrative regulation will be implemented: No comments on economic impact were received. No economic impact on the coal mining regions is expected.

b. Kentucky: No comments on economic impact were received. No statewide economic impact is expected.

7. Assessment of alternative methods; reasons why alternatives were rejected: There are no feasible alternatives to adoption of this amendment. The changes are primarily cleanup and removal of redundant provisions and structural changes to better match the federal regulations.

8. Assessment of expected benefits of the administrative regulation: The benefits are primarily cleanup and removal of redundant provisions.

9.a. Identify effects on public health and environmental welfare of the geographical area in which implemented and Kentucky: No effect on public health and environmental welfare will result in the coal regions or statewide.

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

c. If detrimental effect would result, explain detrimental effect: None

10. Identify any statute, administrative regulation, or government policy which may be in conflict, overlapping, or duplication: There is no conflict, overlap, or duplication.

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

b. If in conflict, was the effort made to harmonize the proposed administrative regulation with conflicting provisions: No conflict.

11. Any additional information or comments: No additional comments.

12. TIERING: Is tiering applied? No. Tiering is not applicable to this proposed amendment because, under the federal and Kentucky surface mining laws and regulations, these requirements must apply equally to all permittees under 405 KAR Chapters 7-24.

#### FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 30 USC 1253, 1255, 1266, 30 CFR Parts 730-733, 735, 817.46, 917. The federal regulation corresponding to this amendment is 30 CFR 817.46.

2. State compliance standards. Section 1 requires sedimentation ponds to be used individually or in series, to be designed and certified by a qualified registered professional engineer, to be inspected during construction by or under the direct supervision of the responsible registered professional engineer and to be certified by the engineer



after construction as having been constructed in accordance with the approved design plans, to be constructed and certified before any disturbance in the watershed, and to be located as near as possible to the disturbed area and our of perennial streams unless approved by the cabinet. Section 2 requires that ponds have adequate sediment storage volume and a feasible plan for clean-out operations that will provide periodic sediment removal sufficient to maintain adequate volume for the sediment to be collected during the design precipitation event. Section 3 requires ponds to provide detention time such that discharges from the ponds will meet applicable effluent limits; requires that ponds either contain the runoff from a 10-year, 24-hour precipitation event by providing runoff storage volume equal to or greater than the runoff from that event between the top elevation of the design sediment storage volume and the principal spillway elevation, but allows the cabinet to approve a smaller runoff storage volume under certain conditions, or treat the runoff from that event by using other treatment facilities in conjunction with adequate runoff storage volume so the applicable effluent limits will be met. Section 4 requires that water storage resulting from inflow be removed by an approved nonlogging dewatering device or spillway that is not located at a lower elevation than the top elevation of the design sediment storage volume. Section 5 requires that ponds be designed, constructed and maintained to prevent short-circuiting to the extent possible; requires that sediment be removed in accordance with the clean-out plan; requires spillways in accordance with 405 KAR 18:100; requires ponds to be properly maintained and not be removed until requirements in 405 KAR 18:070, Section 1(1)(b) have been met; requires ponds to be removed before final bond release unless retention is approved by the cabinet, and when removed the affected land must be regraded and revegetated to standards; and requires that if ponds are retained as permanent impoundments they must meet all requirements for permanent impoundments. Many redundant provisions have been deleted from this section.

3. Minimum or uniform standards contained in the federal mandate. The federal regulation corresponding to this amendment is 30 CFR 817.46. The federal requirements are generally the same as the state requirements, except as explained in item 4 below.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? Yes

a. Some requirements in 30 CFR 817.46 are contained in 405 KAR 18:070 rather than this administrative regulation.

b. This administrative regulation does not use the term "siltation structure", as does the federal regulation. Justification: 30 CFR 701.5 defines "siltation structure" to mean "a sedimentation pond, a series of sedimentation ponds, or other treatment facility". This administrative regulation uses "sedimentation pond", "in series", and "other treatment facility" as needed, so use of "siltation structure" is unnecessary.

c. Section 2, regarding sediment storage volume, contains provisions for a time schedule or clean-out elevations that are not found in the federal regulation. Justification: Section 2 corresponds to two federal requirements at 30 CFR 817.46(c)(1)(iii)(A) and (F), and contains additional clarifying language that corresponds to explanatory language in the preamble to the federal regulations at 48 FR 44041, September 26, 1983.

d. Section 3, regarding detention time and pond sizing, contains provisions in subsection (2) that are not found in the federal regulation. Justification: Section 3(2) corresponds to the requirement in 30 CFR 817.46(c)(1)(iii)(C) to "contain or treat the 10-year, 24-hour precipitation event". Section 3(2) clarifies the meaning of the federal requirement, consistent with the explanation in the preamble to the federal regulations at 48 FR 44042, September 26, 1983.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. The justifications are provided in item 4 along with the description of the differences, for ease of reading.

**NATURAL RESOURCES AND  
ENVIRONMENTAL PROTECTION CABINET**  
Department for Surface Mining  
Reclamation and Enforcement  
(Amendment)

**405 KAR 18:100. Permanent and temporary impoundments.**

RELATES TO: KRS 151.100, 151.250(3), 350.100, 350.151, 350.420, 350.455, 350.465, 30 CFR Parts 730-733, 735, 817.49, 917, 30 USC 1253, 1255, 1266

STATUTORY AUTHORITY: KRS [~~Chapter 13A,~~] 350.028, 350.151, 350.465, 30 CFR Parts 730-733, 735, 817.49, 917, 30 USC 1253, 1255, 1266

NECESSITY, FUNCTION, AND CONFORMITY: KRS 350.028(1) requires the cabinet to promulgate administrative regulations pertaining to surface coal mining operations including strip mining and the surface effects of underground mining to accomplish the purposes of KRS Chapter 350. This administrative regulation applies to surface coal mining and reclamation operations with surface effects of underground mining. This administrative regulation sets forth requirements for the design, construction, certification, inspection and maintenance of temporary and permanent impoundments, and specific criteria for impoundments which are to be retained as permanent facilities after mining and reclamation. KRS 350.028(5), 350.151(1), and 350.465(2), (5) authorize and direct the cabinet to promulgate administrative regulations for surface and underground coal mining operations for the purpose of accepting and administering primary enforcement responsibilities under the permanent regulatory program pursuant to PL 95-87, the federal Surface Mining Control and Reclamation Act of 1977; and direct that the cabinet's administrative regulations be consistent with, and not more stringent than required by, that Act. PL 95-87 does not require Kentucky to comply with its provisions, but in order to retain primary enforcement responsibility under that Act the cabinet's administrative regulations must be consistent with federal regulations promulgated pursuant to that Act. This amendment differs from the federal regulations as follows:

1. The corresponding federal regulation at 30 CFR 817.49 incorporates by reference the USDA Soil Conservation Service Technical Release No. 60, "Earth Dams and Reservoirs". The federal regulation refers to the Class B and C structure hazard criteria in this publication, and for certain structures requires compliance with the freeboard hydrograph criteria and the emergency spillway hydrograph criteria in the "Minimum Emergency Spillway Hydrologic Criteria" table of this publication. In corresponding requirements, this administrative regulation refers to the Class B and C criteria under 405 KAR 7:040, Section 5, and 401 KAR 4:030. Although they appear in different publications, the state Class B and C criteria and spillway hydrologic criteria are essentially the same as the federal criteria, since the state criteria were originally developed based upon the federal criteria. Thus there is no need for SCS TR-60 to be incorporated by reference in this administrative regulation.

2. The exemption from engineering inspections for certain impoundments without embankments at Section 1(9)(c) of this administrative regulation does not appear in the federal regulation. These impoundments do not present safety hazards or other environmental concerns that warrant routine, detailed inspections by experienced registered professional engineers or other specialists. Additionally, the exemption includes provisions that allow the cabinet to require the inspections on a case-by-case basis if needed.

3. The exemption at Section 1(10)(b) of this administrative regulation from quarterly inspections by qualified personnel of the operator for certain small nonhazardous impoundments without embankment structures does not appear in the federal regulation. The required inspections are for appearance of structural weakness and other hazardous conditions. The exempted structures cannot develop the hazardous conditions the inspections are intended to protect

against, so the inspections are unnecessary for this limited class of structures.

4. Section 1 of this administrative regulation retains specific criteria related to stability, including criteria on settlement, embankment width to height ratio, and side slopes, and minimum criteria related to freeboard, that do not appear in the federal regulation. These criteria have been retained because they have long been effective guidelines for embankment stability. ~~[KRS Chapter 350 in pertinent part requires the cabinet to promulgate rules and administrative regulations establishing performance standards for protection of people and property, land, water and other natural resources, and aesthetic values, during underground mining activities and for restoration and reclamation of surface areas affected by mining activities. This administrative regulation sets forth requirements for inspection and maintenance of temporary and permanent impoundments, and specific criteria for impoundments which are to be retained as permanent facilities after completion of underground mining activities.]~~

Section 1. General Requirements. The requirements of this section apply to both temporary and permanent impoundments.

(1)(a) Impoundments meeting the criteria of MSHA, 30 CFR 77.216(a), shall comply with the requirements of 30 CFR 77.216 and this administrative regulation. The plan required to be submitted to the district manager of MSHA under 30 CFR 77.216 shall ~~[also]~~ be submitted to the cabinet as part of the permit application after the plan has been approved by MSHA.

(b) All impoundments classified as Class B-moderate hazard or Class C-high hazard, and all permanent "dams," as defined in KRS 151.100, shall comply with 405 KAR 7:040, Section 5 and with 401 KAR 4:030.

(2) Design certification. The design of impoundments shall be certified by a qualified registered professional engineer as designed to meet the requirements of this administrative regulation using current, prudent engineering practices, and any design criteria established by the cabinet. The qualified registered professional engineer shall be experienced in the design and construction of impoundments.

(3) Stability.

(a)1. Permanent and temporary impoundments meeting the criteria of MSHA, 30 CFR 77.216(a), all Class B and C impoundments, and all permanent impoundments, shall have a minimum static safety factor of 1.5 for the normal pool with steady seepage saturation conditions, and a seismic safety factor of at least 1.2.

2. Impoundments not included in subparagraph 1 of this paragraph, except coal mine waste impoundments, shall have a minimum static safety factor of 1.3 for the normal pool with steady state seepage saturation conditions.

(b) The constructed height of the dam shall be increased a minimum of five (5) percent over the design height to allow for settlement, unless it has been demonstrated to the cabinet that the material used and the design will ensure against all settlement.

(c) The minimum top width of the embankment shall not be less than the quotient of  $(H+35)/5$ , where H is the height, in feet, of the embankment as measured from the upstream toe of the embankment.

(d) Unless the cabinet approves steeper slopes, based upon a satisfactory demonstration of stability by the applicant acceptable to the cabinet, the sum of the upstream and downstream side slopes (h/v) of the settled embankment shall not be less than 5h:1v, with neither slope steeper than 2h:1v. Slopes shall be designed to be stable in all cases, even if flatter side slopes are required.

(e) The fill material shall be free of sod, large roots, other large vegetative matter, and frozen soil and shall not contain coal mine waste except for coal mine waste impounding structures pursuant to 405 KAR 18:160.

(f) The placing and spreading of fill material shall be started at the lowest point of the foundation. The fill shall be brought up in horizon-

tal layers of such thickness as is required to facilitate compaction and meet the design requirement of this administrative regulation. Compaction shall be conducted as specified in the design approved by the cabinet.

(g) The entire embankment including the surrounding areas disturbed by construction shall be stabilized with respect to erosion by a vegetative cover or other means immediately after the embankment is completed. The active upstream face of the embankment where water will be impounded may be riprapped or otherwise stabilized. Areas in which the vegetation is not successful or where rills and gullies develop shall be repaired and revegetated in accordance with 405 KAR 18:190, Section 4.

(h) Slope protection shall be provided to protect against surface erosion at the site and protect against sudden drawdown.

(4) Freeboard. Impoundments shall have adequate freeboard to resist overtopping by waves and by sudden increases in storage volume. The minimum elevation at the top of the settled embankment shall be one (1.0) foot above the water surface in the pond with the emergency spillway flowing at design depth. For embankments subject to settlement, this one (1.0) foot minimum elevation requirement shall apply at all times, including the period after settlement. Freeboard requirements shall not apply to incised impoundments which have no embankment or levee.

(5) Foundation.

(a)1. Foundation and abutments for the impounding structure shall be designed to be stable under all conditions of construction and operation of the impoundment and shall be designed based on adequate and accurate information on the foundation conditions.

2. For permanent and temporary impoundments meeting the criteria of MSHA, 30 CFR 77.216(a), for all Class B and C impoundments, and for all permanent impoundments, foundation investigations as well as any necessary laboratory testing of materials shall be performed in order to determine the design requirements for foundation and embankment stability.

3. Where an approved temporary impoundment has been constructed and the permittee subsequently seeks a permit revision to upgrade the structure to a permanent impoundment, the cabinet may waive the foundation investigations and laboratory testing required by subparagraph 2 of this paragraph under the following circumstances:

a. The structure has been recently verified as being a Class A-low hazard structure;

b. The structure does not meet the definition of the term "dam," as defined at KRS 151.100; and

c. The cabinet approves conservative, assumed values for the strength parameters used in the stability analyses to ensure compliance with subsection (3)(a) of this section.

(b) All vegetative and organic materials shall be removed and foundations excavated and prepared to resist failure. Cutoff trenches shall be installed if necessary to ensure stability.

(6) Impoundments shall include a combination of principal and emergency spillways which shall be designed and constructed to safely pass the design precipitation event specified in this subsection ~~[below]~~, unless the cabinet requires a larger event. Twenty-four (24) hours may be used in lieu of six (6) hours for the duration of a design precipitation event specified in this subsection.

(a) Except as provided in paragraph (c) of this subsection, Class A structures that do not meet the criteria of MSHA, 30 CFR 77.216(a), shall pass the:

1. Twenty-five (25) year, six (6) [twenty-four (24)] hour precipitation event if it is a temporary structure; or

2. The fifty (50) year, six (6) [twenty-four (24)] hour precipitation event if it is a permanent structure.

(b) Class A structures that do meet the criteria of MSHA, 30 CFR 77.216(a), shall pass the 100 year, six (6) [twenty-four (24)] hour precipitation event.

(c) Class B and C structures and all permanent dams as defined

in KRS 151.100 shall comply with the criteria established in 401 KAR 4:030.

(7) Class A impoundments not meeting the criteria of MSHA, 30 CFR 77.216(a), may use a single spillway (if allowed pursuant to subsection (1)(b) of this section) if the spillway:

(a) Is an open channel of nonerodible construction and capable of maintaining sustained flows; and

(b) Is not earth or grass lined.

(8) The vertical portion of any remaining highwall shall be located far enough below the low-water line along the full extent of the highwall to provide adequate safety and access for the proposed water users.

(9) Engineer inspections. A qualified registered professional engineer or other qualified professional specialist, under the direction of the professional engineer, shall inspect the impoundment. The professional engineer or specialist shall be experienced in the design and construction of impoundments.

(a) Inspections shall be made regularly during construction, upon completion of construction, and at least yearly until removal of the structure or release of the performance bond.

(b) The qualified registered professional engineer shall promptly, after each inspection, provide to the cabinet a certified report that the impoundment has been constructed and maintained as designed and in accordance with the plan approved in the permit and 405 KAR Chapters 7 through 24. The report shall include discussion of any appearances of instability, structural weakness or other hazardous conditions, depth and elevation of any impounded waters, existing storage capacity, any existing or required monitoring procedures and instrumentation and any other aspects of the structure affecting stability. The report shall also confirm the hazard classification of the impoundment, or if the hazard classification has changed, the report shall contain a detailed explanation of the change and the conditions causing the change.

~~(c)~~ A copy of the report shall be retained at or near the mine site.

(c) An impoundment with no embankment structure, that is completely incised or is created by a depression left by backfilling and grading, that is not a sedimentation pond or coal mine waste impoundment and is not otherwise intended to facilitate active mining, shall be exempt from this subsection unless the cabinet determines on a case-by-case basis that engineering inspection and certification are necessary to insure public health and safety or environmental conditions, in which case the cabinet shall establish appropriate inspection and certification requirements for the impoundment that shall apply in lieu of the requirements of this subsection and shall notify the permittee in writing.

(10) Operator examinations.

(a) Impoundments subject to 30 CFR 77.216, and Class B and C impoundments, shall ~~must~~ be examined in accordance with 30 CFR 77.216-3.

(b) ~~Other~~ Impoundments not included in paragraph (a) of this subsection shall be examined at least quarterly by a qualified person designated by the operator for appearance of structural weakness and other hazardous conditions. Quarterly examinations shall ~~are to~~ be conducted each calendar quarter (i.e., January-March, April-June, July-September, and October-December) and no two (2) examinations shall be within thirty (30) days of each other unless additional examinations within a quarter are required. Reports of the examinations shall ~~are to~~ be retained at or near the mine site. An impoundment with no embankment structure, that is completely incised or is created by a depression left by backfilling and grading, shall be exempt from this paragraph.

(11) Emergency procedures. If any examination or inspection discloses that a potential hazard exists, the person who examined the impoundment shall immediately notify the department and the Kentucky Division of Water, or if these agencies cannot be reached, Disaster and Emergency Services. The permittee shall immediately

implement emergency procedures formulated for public protection and remedial action. If adequate emergency procedures cannot be formulated or implemented by the permittee, the cabinet shall be notified, and the cabinet shall notify the appropriate agencies that other emergency procedures are required to protect the public.

Section 2. Permanent Impoundments. A permanent impoundment of water may be created, if authorized by the cabinet in the approved permit based upon the following demonstration:

(1) The size and configuration of the ~~such~~ impoundment will be adequate for its intended purposes.

(2) The quality of impounded water will be suitable on a permanent basis for its intended use and, after reclamation, will meet applicable state and federal water quality standards, and discharges from the impoundment will meet applicable effluent limitations and will not degrade the quality of receiving water below applicable state and federal water quality standards.

(3) The water level will be sufficiently stable and be capable of supporting the intended use.

(4) Final grading will provide for adequate safety and access for proposed water users. Perimeter slopes shall be stable and shall be protected against erosion.

(5) The impoundment will not result in the diminution of the quality and quantity of water utilized by adjacent or surrounding landowners for agricultural, industrial, recreational, or domestic uses.

(6) The impoundment will be suitable for the approved postmining land use.

JAMES E. BICKFORD, Secretary

APPROVED BY AGENCY: July 28, 1997

FILED WITH LRC: July 28, 1997 at 4 p.m.

PUBLIC HEARING: A public hearing on this proposed amendment has been scheduled for 9:30 a.m. (EDT) on Tuesday, September 30, 1997, in the Training Room (D-16) of the Department for Surface Mining Reclamation and Enforcement at 2 Hudson Hollow, Frankfort, Kentucky. Persons who wish to testify at the hearing shall notify the contact person listed below, in writing, by September 23, 1997. The scheduled hearing will be canceled if the contact person has not received any written notice of intent to testify by September 23, 1997, five workdays before the scheduled hearing date. If the hearing is held, it will be open to the public. Any person in attendance who wishes to testify on the proposed amendment will be given a fair and reasonable opportunity to do so, regardless of whether the person has given the cabinet prior written notice of his intent to testify. To assure an accurate record, the cabinet requests each person testifying at the hearing to provide the cabinet with a written copy of his testimony. The cabinet is not required to make a recording or transcript of the hearing unless someone makes a written request for it, in which case the person requesting the recording or transcript shall pay for it. WRITTEN COMMENTS: A person who wishes to comment on this proposed amendment but does not wish to testify at the hearing may submit written comments on the proposed amendment at any time before 4:30 p.m. (EDT) on Tuesday, September 30, 1997, the scheduled hearing date. Comments received after that time will not be considered. Written comments and written notices of intent to testify at the hearing shall be submitted to the contact person listed below.

CONTACT PERSON: Jim Villines, Kentucky Department for Surface Mining, 2 Hudson Hollow, Frankfort, Kentucky 40601-4321, Tel. (502) 564-6940, FAX (502) 564-5698.

#### REGULATORY IMPACT ANALYSIS

Contact Person: Jim Villines

1. Type and number of entities affected: This amendment will affect operations with permanent or temporary impoundments that are designed, permitted, constructed or reconstructed after the effective

date of this amendment.

2. Direct and indirect costs or savings on the affected entities:

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 comments were received on this subject. The amendment is not expected to have an effect on the cost of living and employment.

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 on this subject. The amendment is not expected to have an effect on the cost of doing business.

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: There will be some reduction in compliance, reporting and paperwork requirements associated with the exemption from inspection requirements on certain nonhazardous impoundments without embankment structures.

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: There will be no direct or indirect costs or savings.

2. Continuing costs or savings: None, same as first year.

3. Additional factors increasing or decreasing costs: None

b. Reporting and paperwork requirements: None

4. Assessment of anticipated effect on state and local revenues: No effect on revenues.

5. Source of revenue to be used for implementation and enforcement of administrative regulation: No additional revenue will be needed.

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

a. Geographical area in which administrative regulation will be implemented: No comments on economic impact were received. No economic impact on the coal mining regions is expected.

b. Kentucky: No comments on economic impact were received. No statewide economic impact is expected.

7. Assessment of alternative methods; reasons why alternatives were rejected: There is no feasible alternative to adoption of this amendment. Although this amendment does not make major changes to the requirements for impoundments, the amendment is necessary to comply with corresponding federal regulations.

8. Assessment of expected benefits of the administrative regulation: Permittees will benefit from the reduced number of required inspections by engineering and company personnel for certain nonhazardous structures without embankments.

9.a. Identify effects on public health and environmental welfare of the geographical area in which implemented and Kentucky: No significant effect on public health and environmental welfare will result in the coal regions or statewide.

b. State whether a detrimental effect on the environment and public health would result if not implemented: No significant detrimental effect on the environment and public health would result.

c. If detrimental effect would result, explain detrimental effect: None

10. Identify any statute, administrative regulation, or government policy which may be in conflict, overlapping, or duplication: There is no conflict, overlap, or duplication.

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

b. If in conflict, was the effort made to harmonize the proposed administrative regulation with conflicting provisions: No conflict.

11. Any additional information or comments: None

12. TIERING: Is tiering applied? No. Tiering is not applicable to this proposed amendment because, under the federal and Kentucky

surface mining laws and regulations, these requirements must apply equally to all permittees under 405 KAR Chapters 7-24.

#### FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 30 USC 1253, 1255, 1266, 30 CFR Parts 730-733, 735, 817.49, 917. The federal regulation that corresponds to this amendment is 30 CFR 817.49.

2. State compliance standards. Section 1 includes requirements applicable to both temporary and impoundments. Impoundments that meet the MSHA size criteria of 30 CFR 77.216(a) must comply with 30 CFR 77.216 and this administrative regulation. Impoundments classified as Class B or C, and all permanent dams as defined in KRS 151.100 must comply with 405 KAR 7:040, Section 5 and 401 KAR 4:030. The design of impoundments must be certified by a qualified registered professional engineer experienced in the design and construction of impoundments. Stability criteria are provided as static and seismic safety factors, embankment settlement, width to height ratio, side slopes, characteristics of fill material, placement of fill material, slope stabilization by vegetation or other means, and slope protection against rapid drawdown. Freeboard criteria against overtopping are provided. Foundation investigations are required for impoundments that meet the MSHA size criteria of 30 CFR 77.216(a), Class B and C impoundments, and permanent impoundments, except that foundation investigations may be waived for certain permanent impoundments. Criteria for preparation of foundations are provided. Hydrologic criteria for spillways are provided. This amendment changes the standard duration of design precipitation events from 24 hours to 6 hours, but allows 24 hours to be used. Criteria for engineering inspections during and after construction are provided, and an exemption is provided for certain impoundments that have no embankment structures and thus present minimal hazards. Criteria are provided for quarterly inspections by qualified personnel of the operator, and an exemption is provided for small, nonhazardous impoundments without embankment structures. Criteria for emergency procedures are specified. Section 2 establishes additional requirements that must be met if impoundments are to be left as permanent facilities after mining. These relate to the size and configuration of the impoundment, the quality of impounded water, stability of the water level, adequacy of safety and access for water users, potential impact on water utilization by adjacent and surrounding landowners, and suitability for the approved postmining land use.

3. Minimum or uniform standards contained in the federal mandate. The federal regulation that corresponds to this amendment is 30 CFR 817.49. The federal requirements are essentially the same as the state requirements, except as explained in item 4 below.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? Yes

a. 30 CFR 817.49(a)(1) incorporates by reference the USDA Soil Conservation Service (now Natural Resources Conservation Service) publication Technical Release No. 60, "Earth Dams and Reservoirs". The federal regulation refers to the Class B and C structure hazard criteria in this publication, and for certain structures requires compliance with the freeboard hydrograph criteria and the emergency spillway hydrograph criteria in the "Minimum Emergency Spillway Hydrologic Criteria" table of this publication. In corresponding requirements, this administrative regulation refers to the Class B and C criteria under 405 KAR 7:040, Section 5 and 401 KAR 4:030. Justification: Although they appear in different publications, the state Class B and C criteria and spillway hydrologic criteria are essentially the same as the federal criteria, since the state criteria were originally developed based upon the federal criteria. Thus there is no need for SCS TR-60 to be mentioned or incorporated by reference in this administrative regulation.

b. The exemption from engineering inspections for certain

impoundments without embankments at Section 1(9)(c) does not appear in the federal regulation. Justification: These impoundments do not present safety hazards or other environmental concerns that warrant the routine, detailed inspections by experienced registered professional engineers or other specialists. Additionally, the exemption includes provisions that allow the cabinet to require the inspections on a case by case basis if needed.

c. The exemption at Section 1(10)(b) from quarterly inspections by qualified personnel of the operator for certain small nonhazardous impoundments without embankment structures does not appear in the federal regulation. Justification: The required inspections are for appearance of structural weakness and other hazardous conditions. The exempted structures cannot develop the hazardous conditions the inspections are intended to protect against, so the inspections are unnecessary for this limited class of structures.

d. Section 1 retains specific criteria related to stability, including criteria on settlement, embankment width to height ratio, and side slopes, and minimum criteria related to freeboard, that do not appear in the federal regulation. Justification: These criteria have been retained because they have long been effective guidelines for embankment stability.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. The justifications are provided in item 4 along with the description of the differences, for ease of reading.

**NATURAL RESOURCES AND  
ENVIRONMENTAL PROTECTION CABINET  
Department for Surface Mining  
Reclamation and Enforcement  
(Amendment)**

**405 KAR 18:160. Coal mine [~~processing~~] waste dams and impoundments.**

RELATES TO: KRS 151.100, 151.250(3), 350.151, 350.425, 30 CFR Parts 730-733, 735, 817.84, 917, 30 USC 1253, 1255, 1266

STATUTORY AUTHORITY: KRS 350.028, 350.151, 350.465, 30 CFR Parts 730-733, 735, 817.84, 917, 30 USC 1253, 1255, 1266

NECESSITY, FUNCTION, AND CONFORMITY: KRS 350.028(1) requires the cabinet to promulgate administrative regulations pertaining to surface coal mining operations including strip mining and the surface effects of underground mining to accomplish the purposes of KRS Chapter 350. This administrative regulation applies to surface coal mining and reclamation operations with surface effects of underground mining. This administrative regulation sets forth requirements for the design and construction of impounding structures that are constructed of coal mine waste or will impound coal mine waste. KRS 350.028(5), 350.151(1), and 350.465(2), (5) authorize and direct the cabinet to promulgate administrative regulations for surface and underground coal mining operations for the purpose of accepting and administering primary enforcement responsibilities under the permanent regulatory program pursuant to PL 95-87, the federal Surface Mining Control and Reclamation Act of 1977; and direct that the cabinet's administrative regulations be consistent with, and not more stringent than required by, that Act. PL 95-87 does not require Kentucky to comply with its provisions, but in order to retain primary enforcement responsibility under that Act the cabinet's administrative regulations must be consistent with federal regulations promulgated pursuant to that Act. This amendment differs from the federal regulations as follows:

1. Section 2(1) of this administrative regulation includes requirements for removal of vegetative matter during site preparation. This requirement is not found in the corresponding federal regulation at 30 CFR 817.84. However, 30 CFR 817.84 refers to 817.49, which includes much the same requirement as Section 2(1) of this adminis-

trative regulation.

2. The federal regulation does not include the detailed requirements in Section 3(1)(b) of this administrative regulation regarding principal spillways in impoundments without open channel emergency spillways. The cabinet believes these are appropriate criteria that are necessary to ensure the safety of large impoundments that do not have open channel emergency spillways. It is significant that these criteria are consistent with criteria in the USDA SCS publication Technical Release No. 60.

3. The federal regulation does not include the minimum freeboard of three (3) feet that is specified in Section 3(1)(c) of this administrative regulation. The cabinet believes this is an important safety provision for the types of impounding structures under this administrative regulation, which are sometimes highly susceptible to erosion if overtopping occurs. ~~[KRS Chapter 350 in pertinent part requires the cabinet to promulgate rules and administrative regulations establishing performance standards for protection of people and property, land, water and other natural resources, and aesthetic values, during underground mining activities and for restoration and reclamation of surface areas affected by underground mining activities. This administrative regulation sets forth specific design and construction requirements for existing and new dams or embankments which are constructed of coal processing waste or will impound coal processing waste.]~~

Section 1. General Requirements. (1) This administrative regulation applies to dams and impoundments, constructed of coal mine [~~processing~~] waste or intended to impound coal mine [~~processing~~] waste, that were completed or are to be completed after August 3, 1977.

(2) Coal mine waste shall not be used in the construction of dams and impoundments unless it has been demonstrated to the cabinet that the stability of the [such a] structure conforms with the requirements of Section 3(1) of this administrative regulation. It shall also be demonstrated that the use of coal mine waste will [material shall] not have a detrimental effect on downstream water quality or the environment due to acid seepage through the dam or impoundment. All demonstrations shall be submitted to and approved by the cabinet.

(3) An impounding structure constructed of coal mine waste or intended to impound coal mine waste shall not be retained permanently as part of the approved postmining land use.

Section 2. Site Preparation. Before coal mine [~~processing~~] waste is placed at a dam or impoundment site:

(1) All trees, shrubs, grasses, and other organic material shall be cleared and grubbed from the site, and all combustible materials shall be removed and disposed of or stockpiled in accordance with the requirements of this chapter; and

(2) Surface drainage that may cause erosion to the dam or the impoundment features, whether during construction or after completion, shall be diverted away from the dam or impoundment by diversion ditches that comply with the requirements of 405 KAR 18:080, Section 1. Adequate outlets for discharge from these diversions shall be in accordance with 405 KAR 18:060, Section 3. Diversions that are designed to divert drainage from the upstream area away from the impoundment area shall be designed to carry the peak run-off from a 100-year, ~~six (6)~~ twenty-four (24) hour precipitation event. Twenty-four (24) hours may be used in lieu of six (6) hours for the duration of the 100-year design precipitation event in this subsection. The diversion shall be maintained to prevent blockage, and the discharges shall be in accordance with 405 KAR 18:060, Section 3.

Section 3. Design and Construction. (1) The design of each dam and impoundment constructed of coal mine [~~processing~~] waste or intended to impound coal mine [~~processing~~] waste shall comply with the requirements of 405 KAR 18:100, ~~Sections 1(1)(e) and 2], including~~



the certification requirements thereof, modified as follows:

(a) An impounding structure constructed of coal mine waste or intended to impound coal mine waste that meets the criteria of 30 CFR 77.216(a) shall have sufficient spillway capacity to safely pass, adequate storage capacity to safely contain, or a combination of storage capacity and spillway capacity to safely control, the probable maximum precipitation of a six (6) hour precipitation event. The cabinet may require a duration longer than six (6) hours on a case-by-case basis.

(b) An impounding structure with a drainage area of ten (10) square miles or less that does not have an open channel emergency spillway shall have a closed conduit principal spillway that shall meet the requirements of this paragraph. The impounding structure shall have sufficient storage capacity available to store the entire runoff from the probable maximum precipitation event while maintaining the required freeboard against overtopping, disregarding flow through the principal spillway.

1. The spillway shall have a trash rack designed to provide positive protection against clogging of the spillway at all operating levels, and an elbow designed to facilitate the passage of trash;

2. The conduit shall be large enough to pass the routed freeboard hydrograph peak discharge while maintaining the required freeboard against overtopping the structure. For structures included in paragraph (a) of this subsection, the probable maximum precipitation event shall be used to determine the freeboard hydrograph;

3. The conduit shall be large enough to meet the requirements under 401 KAR 4:030 for minimum emergency spillway discharge capacity; and

4. The spillway shall meet all other applicable requirements under 401 KAR 4:030, 405 KAR 18:100, and this administrative regulation, except the requirement under 401 KAR 4:030 that the conduit have a minimum cross-sectional area of thirty-six (36) square feet. The cross-sectional area of the barrel of the conduit shall be not less than twelve (12) square feet for a Class A structure with a product of storage in acre-feet times effective height in feet of less than 10,000 and shall be not less than twenty (20) square feet for other structures.

(c) The design freeboard between the lowest point on the dam or impoundment crest and the maximum water elevation shall be at least three (3) feet. For structures not included in paragraph (a) of this subsection, the maximum water elevation shall be that determined by the freeboard hydrograph criteria for the appropriate structure hazard classification under 405 KAR 7:040, Section 5, and 401 KAR 4:030 [contained in the U.S. Soil Conservation Service criteria referenced in 405 KAR 18:100].

(d) ~~((b))~~ The dam or impoundment shall have a minimum safety factor of one and five-tenths (1.5) for the partial pool with steady seepage saturation conditions, and the seismic safety factor shall be at least one and two-tenths (1.2).

(e) ~~((c))~~ The dam or impoundment foundation and abutments shall be designed to be stable under all conditions of construction and operation of the impoundment. Sufficient foundation investigations and laboratory testing shall be performed to determine the safety factors of the dam or impoundment for all loading conditions required [appearing] in paragraph (d) ~~((b))~~ of this subsection or [the publications referred to in] 405 KAR 18:100, and for all increments of construction.

(2) Spillways and outlet works shall be designed to provide adequate protection against erosion and corrosion. Inlets shall be protected against blockage.

(3) Dams or impoundments constructed of or impounding coal mine waste [materials] shall be designed so that at least ninety (90) percent of the water stored during the design precipitation event can [shall] be removed within a ten (10) day period.

Section 4. Operation. For a dam or impoundment constructed of or impounding coal mine waste, at least ninety (90) percent of the water stored during the design precipitation event shall be removed

within the ten (10) day period following the design precipitation event.

JAMES E. BICKFORD, Secretary

APPROVED BY AGENCY: July 28, 1997

FILED WITH LRC: July 28, 1997 at 4 p.m.

PUBLIC HEARING: A public hearing on this proposed amendment has been scheduled for 9:30 a.m. (EDT) on Tuesday, September 30, 1997, in the Training Room (D-16) of the Department for Surface Mining Reclamation and Enforcement at 2 Hudson Hollow, Frankfort, Kentucky. Persons who wish to testify at the hearing shall notify the contact person listed below, in writing, by September 23, 1997. The scheduled hearing will be canceled if the contact person has not received any written notice of intent to testify by September 23, 1997, five workdays before the scheduled hearing date. If the hearing is held, it will be open to the public. Any person in attendance who wishes to testify on the proposed amendment will be given a fair and reasonable opportunity to do so, regardless of whether the person has given the cabinet prior written notice of his intent to testify. To assure an accurate record, the cabinet requests each person testifying at the hearing to provide the cabinet with a written copy of his testimony. The cabinet is not required to make a recording or transcript of the hearing unless someone makes a written request for it, in which case the person requesting the recording or transcript shall pay for it. WRITTEN COMMENTS: A person who wishes to comment on this proposed amendment but does not wish to testify at the hearing may submit written comments on the proposed amendment at any time before 4:30 p.m. (EDT) on Tuesday, September 30, 1997, the scheduled hearing date. Comments received after that time will not be considered. Written comments and written notices of intent to testify at the hearing shall be submitted to the contact person listed below.

CONTACT PERSON: Jim Villines, Kentucky Department for Surface Mining, 2 Hudson Hollow, Frankfort, Kentucky 40601-4321, Tel. (502) 564-6940, FAX (502) 564-5698.

#### REGULATORY IMPACT ANALYSIS

Contact Person: Jim Villines

1. Type and number of entities affected: This amendment will affect all operations with impounding structures that are designed, permitted, constructed or reconstructed after the effective date of this amendment, that are constructed of coal mine waste or will impound coal mine waste.

2. Direct and indirect costs or savings on the affected entities:

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 comments were received on this subject. The amendment is not expected to have an effect on the cost of living and employment.

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 on this subject. The amendment is not expected to have an effect on the cost of doing business.

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: The amendment will not increase reporting and paperwork requirements and is not expected to have a significant impact on costs. The requirement that coal mine waste impounding structures not be retained permanently as impounding structures is consistent with current practice in the industry. The requirements regarding storage capacity and spillways are generally consistent with current industry practices.

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

3. Effects on the promulgating administrative body: No effect.



a. Direct and indirect costs or savings:

1. First year: No direct or indirect costs or savings.
2. Continuing costs or savings: None, same as first year.
3. Additional factors increasing or decreasing costs: None
4. Reporting and paperwork requirements: None
4. Assessment of anticipated effect on state and local revenues:

No effect on revenues.

5. Source of revenue to be used for implementation and enforcement of administrative regulation: No additional revenue will be needed.

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

a. Geographical area in which administrative regulation will be implemented: No comments on economic impact were received. No economic impact on the coal mining regions is expected.

b. Kentucky: No comments on economic impact were received. No statewide economic impact is expected.

7. Assessment of alternative methods; reasons why alternatives were rejected: There is no feasible alternative to adoption of this amendment. It is necessary to adopt parts of this amendment to conform to federal requirements.

8. Assessment of expected benefits of the administrative regulation: In general, this amendment provides for improved design and construction of coal mine waste impounding structures.

9.a. Identify effects on public health and environmental welfare of the geographical area in which implemented and Kentucky: No significant effect on public health and environmental welfare will result in the coal regions or statewide.

b. State whether a detrimental effect on the environment and public health would result if not implemented: No significant detrimental effect on the environment and public health would result.

c. If detrimental effect would result, explain detrimental effect: None

10. Identify any statute, administrative regulation, or government policy which may be in conflict, overlapping, or duplication: There is no conflict, overlap, or duplication.

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

b. If in conflict, was the effort made to harmonize the proposed administrative regulation with conflicting provisions: No conflict.

11. Any additional information or comments: None

12. TIERING: Is tiering applied? No. Tiering is not applicable to this proposed amendment because, under the federal and Kentucky surface mining laws and regulations, these requirements must apply equally to all permittees under 405 KAR Chapters 7-24.

# FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 30 USC 1253, 1255, 1266, 30 CFR Parts 730-733, 735, 817.84, 917. The federal regulation that corresponds to this amendment is 30 CFR 817.84.

2. State compliance standards. "Coal processing waste" is changed to "coal mine waste" throughout the amendment. Section 1(3) is added, requiring that an impounding structure constructed of coal mine waste or intended to impound coal mine waste shall not be retained permanently as part of the approved postmining land use. Section 2(2) is amended so that the standard duration of the design 100-year precipitation event for certain diversion ditches is reduced from 24 hours to 6 hours, but 24 hours may be used. New Section 3(1)(a) is added, requiring that an impounding structure constructed of coal mine waste or intended to impound coal mine waste that meets the MSHA size criteria of 30 CFR 77.216(a) shall have sufficient spillway capacity to safely pass, adequate storage capacity to safely contain, or a combination of storage capacity and spillway capacity to safely control, the probable maximum precipitation of a 6 hour precipitation event. The cabinet may require a longer duration on

a case by case basis. New Section 3(1)(b) is added, establishing criteria for impounding structures that do not have an open channel emergency spillway. The structure must have a drainage area less than 10 square miles, must have a closed conduit principal spillway that meets specified criteria, and must have sufficient storage capacity available to store the entire runoff from the probable maximum precipitation event while maintaining the required freeboard against overtopping, disregarding flow through the principal spillway. Section 3(1)(c) as amended requires a minimum freeboard of 3 feet against overtopping, and requires that for structures smaller than the MSHA size criteria at 30 CFR 77.216(a) the maximum water elevation shall be determined by the freeboard hydrograph criteria for the appropriate structure hazard classification under 405 KAR 7:040, Section 5 and 401 KAR 4:030. New Section 4 is added, requiring that for a dam or impoundment constructed of or impounding coal mine waste, at least 90 percent of the water stored during the design precipitation event shall be removed within the 10 day period following the design precipitation event.

3. Minimum or uniform standards contained in the federal mandate. The federal regulation corresponding to this amendment is 30 CFR 817.84. The federal requirements are the same as the state requirements except as discussed in item 4 below.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? Yes

a. Section 2(1) includes requirements for removal of vegetative matter during site preparation. This requirement is not found in 30 CFR 817.84. Justification: 30 CFR 817.84 refers to 817.49, which includes much the same requirement as Section 2(1).

b. The federal regulation does not include the detailed requirements in Section 3(1)(b) regarding principal spillways in impoundments without open channel emergency spillways. Justification: The cabinet believes these are appropriate criteria that are necessary to ensure the safety of large impoundments that do not have open channel emergency spillways. It is significant that these criteria are consistent with criteria in the USDA SCS publication Technical Release No. 60.

c. The federal regulation does not include the minimum freeboard of 3 feet that is specified in Section 3(1)(c). Justification: The cabinet believes this is an important safety provision for the types of impounding structures under this administrative regulation, which are sometimes highly susceptible to erosion if overtopping occurs.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. The justifications are provided in item 4 along with the description of the differences, for ease of reading.

## NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET (Amendment)

### 405 KAR 18:210. Subsidence control.

RELATES TO: KRS 350.020, 350.028, 350.151, 350.465, 30 CFR Parts 730-733, 735, 784.20(a)(3), 817.121-122, 917, 30 USC 1253, 1255, 1266, 1309a

STATUTORY AUTHORITY: KRS 350.028, 350.151, 350.465, 30 CFR Parts 730-733, 735, 784.20(a)(3), 817.121-122, 917, 30 USC 1253, 1255, 1266, 1309a

NECESSITY, FUNCTION, AND CONFORMITY: KRS 350.028(1) requires the cabinet to promulgate administrative regulations pertaining to surface coal mining operations including strip mining and the surface effects of underground mining to accomplish the purposes of KRS Chapter 350. KRS 350.151(1) requires the cabinet to promulgate administrative regulations for the mining and reclamation of land disturbed or removed by operations resulting from or incident

to underground coal mining. This administrative regulation sets forth requirements for prevention or control of subsidence and for correction of subsidence damage to surface lands and structures. KRS 350.028(5), 350.151(1), and 350.465(2), (5) authorize and direct the cabinet to promulgate administrative regulations for surface and underground coal mining operations for the purpose of accepting and administering primary enforcement responsibilities under the permanent regulatory program pursuant to PL 95-87, the federal Surface Mining Control and Reclamation Act of 1977; and direct that the cabinet's administrative regulations be consistent with, and not more stringent than required by, that Act. PL 95-87 does not require Kentucky to comply with its provisions, but in order to retain primary enforcement responsibility under that Act the cabinet's administrative regulations must be consistent with federal regulations promulgated pursuant to that Act. This administrative regulation differs from the federal regulations as follows:

1. Section 1(4)(a) of this administrative regulation requires surveys of the presubsidence condition of certain structures and water supplies. The corresponding federal requirement is located in the permitting requirements at 30 CFR 784.20(a)(3), not in the performance standards at 30 CFR 817.121. The cabinet's requirement fulfills the same purpose as the federal requirement, but provides greater flexibility to the permittee by allowing the presubsidence surveys to be conducted after permit issuance.

2. Section 1(4)(a) of this administrative regulation, regarding presubsidence surveys, addresses all types of structures and water supplies for "domestic, agricultural, industrial or other legitimate use", whereas the corresponding federal requirement at 30 CFR 784.20(a)(3) is limited to "noncommercial structures or occupied residential dwellings and structures related thereto" and "drinking, domestic, or residential" water supplies. The federal regulation defers to applicable provisions of state law regarding structures other than noncommercial structures or occupied residential dwellings and structures related thereto. This administrative regulation reflects Kentucky common law and the current requirements of this regulation since 1982 that owners of all types of structures are entitled to repair or compensation for subsidence damage, and requires presubsidence surveys for all types of structures vulnerable to subsidence damage because the surveys are necessary to establish a baseline against which to measure the extent of damage. This administrative regulation addresses the types of water supplies included in KRS 350.421(2), whereas the federal requirement addresses the fewer types of water supplies included in 30 USC 1309a.

3. The provisions in Section 1(4)(b) of this administrative regulation regarding identification of the owner or his representative if present during the presubsidence survey, the owner's ability to submit a written description of any areas of disagreement with the survey, and the cabinet's ability to require additional measures to assure accurate information is included in the survey, are not included in the corresponding federal regulations. The cabinet believes these provisions, which are similar to those used for preblasting surveys for many years, are reasonable and necessary to the effective conduct and use of presubsidence surveys and are not burdensome to permittees.

4. Section 1(4)(c) of the administrative regulation establishes a temporary buffer zone of 1500 feet horizontal distance around structures and water supplies for which a presubsidence survey is required, until ninety (90) days after the permittee has submitted either the presubsidence survey or documentation that the owner has denied access to conduct the survey. These provisions are not included in the corresponding federal regulations, which require that all necessary presubsidence surveys, or documentation of denial of access, be submitted prior to issuance of the permit. Because this administrative regulation allows the surveys to be submitted after permit issuance, these requirements are necessary to insure that a survey for a particular structure or water supply will be conducted before mining approaches close enough to have a potential subsi-

dence impact on the structure or water supply, and that there is time for consideration of the survey after it is submitted.

5. Section 2 of this administrative regulation requires the permittee to mail a notice to surface owners at least three (3) months prior to mining beneath their property, but allows mining within as little as thirty (30) days after the notice if necessitated by emergency or other unforeseen conditions. The federal counterpart at 30 CFR 817.122 requires that the notice be mailed at least six (6) months prior to undermining, but allows mining sooner than six (6) months after the notice if approved by the regulatory authority. The time frame in Section 2 of this administrative regulation provides additional flexibility to the permittee and is consistent with the federal regulation, which allows the regulatory authority to approve a time frame shorter than six (6) months.

6. Section 3(2) of this administrative regulation, regarding repair or compensation for subsidence damage to noncommercial buildings and occupied residential dwellings and related structures existing at the time of mining, is not limited to damage resulting from underground mining activities conducted after October 24, 1992, the effective date of 30 USC 1309a as created by PL 102-486, the Energy Policy Act of 1992, whereas the federal counterpart regulation at 30 CFR 817.121(c)(2) is so limited. Section 3(2) of this administrative regulation is not limited to subsidence damage resulting from underground mining activities conducted after October 24, 1992 because that would retroactively remove protection currently existing under this administrative regulation and applicable state law.

7. Section 3(5)(a) of this administrative regulation, regarding adjustment of bond amount for subsidence damage, does not include subsidence damage to water supplies. The federal counterpart at 30 CFR 817.121(c)(5) includes adjustment of bond amount for subsidence damage to water supplies. Adjustment of bond amount for damage to water supplies is addressed in 405 KAR 18:060, the same administrative regulation that requires replacement of damaged water supplies.

8. Section 3(5)(b) of this administrative regulation allows the additional performance bond amount for subsidence damage to be reduced by the amount of the permittee's liability insurance coverage that is applicable to the subsidence damage. The federal counterpart at 30 CFR 817.121(c)(5) does not include consideration of liability insurance coverage. However, the federal bonding and insurance regulations at 30 CFR 800.14(c) allow the permittee's financial responsibility under 30 CFR 817.121(c) for repairing material damage from subsidence to be satisfied by the liability insurance policy required under 30 CFR 800.60.

9. Section 3(5)(c) of this administrative regulation allows the additional performance bond amount for subsidence damage to be released or returned promptly after the cabinet determines the permittee has satisfactorily completed the required repair or compensation for subsidence damage. The federal counterpart at 30 CFR 817.121(c)(5) does not include any provision for prompt release of the additional performance bond amount after the subsidence damage is corrected. The purpose of the additional bond is to guarantee that the cabinet will have the money to repair or compensate if the permittee fails to do so. Since the repair or compensation guaranteed by the additional bond amount must be satisfactorily completed before any release or return of the bond can take place, the purpose of the bond will have been fulfilled and thus the cabinet believes the prompt release or return is not inconsistent with the federal regulations.

10. Section 5(1) of this administrative regulation, regarding permittee submission of an annual plan of underground workings, includes a specific time frame to submit the plan. The federal counterpart at 30 CFR 817.121(g) does not set a specific time for the submission, but provides that the regulatory authority must establish the time schedule. The time schedule established by the administrative regulation is the same as the schedule required by law for submission of underground mining maps to the Kentucky Department of Mines and Minerals. The time schedule fulfills the requirement of

the federal regulation.

11. Section 5(1) of this administrative regulation, regarding permittee submission of an annual plan of underground workings, does not provide for confidentiality of the annual plan. The federal counterpart at 30 CFR 817.121(g) provides that information submitted with the plan may be held as confidential in accordance with 30 CFR 773.13(d) if requested by the permittee. The cabinet's counterpart to 30 CFR 773.13(d) is 405 KAR 8:010, Section 12. The cabinet believes it is unlikely that any information submitted in the annual plan of underground workings will qualify for confidentiality under 405 KAR 8:010, Section 12, and that it would be misleading to mention confidentiality in connection with the plan, thereby creating the false impression that the plan generally would be held confidential on request. [KRS Chapter 350 in pertinent part requires the cabinet to promulgate rules and administrative regulations establishing performance standards for protection of people and property, land, water and other natural resources, and aesthetic values, during underground mining activities and for restoration and reclamation of surface areas affected by underground mining activities. 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.]

Section 1. General Requirements. (1) The permittee shall either adopt measures consistent with known technology that prevent subsidence from causing material damage to the extent technologically and economically feasible, maximize mine stability, and maintain the value and reasonably foreseeable use of surface lands or adopt mining technology that provides for planned subsidence in a predictable and controlled manner. [Underground mining activities shall be planned and conducted so as to prevent subsidence from causing material damage to the surface, to the extent technologically and economically feasible, and so as to maintain the value and reasonably foreseeable use of surface lands. This may be accomplished by leaving adequate coal in place, backfilling, or other measures to support the surface, or by conducting underground mining in a manner that provides for planned and controlled subsidence.] Nothing in 405 KAR Chapters 7 through 24 shall be construed to prohibit the standard method of room and pillar mining.

(2) If a permittee employs mining technology that provides for planned subsidence in a predictable and controlled manner, the permittee shall take necessary and prudent measures, consistent with the mining method employed, to minimize material damage to the extent technologically and economically feasible to noncommercial buildings and occupied residential dwellings and structures related thereto except that measures required to minimize material damage to these structures are not required if:

(a) The permittee has the written consent of their owners; or

(b) Unless the anticipated damage would constitute a threat to health or safety, the costs of the measures exceed the anticipated costs of repair.

(3) The permittee shall comply with all provisions of the approved subsidence control plan prepared pursuant to 405 KAR 8:040, Section 26 [and approved by the cabinet].

(4) Presubsidence surveys of structures and water supplies.

(a) The permittee shall conduct and submit to the cabinet a survey of the condition of each structure that may be materially damaged or for which the reasonably foreseeable use may be diminished by subsidence, within the area encompassed by the applicable angle of draw; and a survey of the quantity and quality of each water supply for domestic, agricultural, industrial or other

legitimate use within the permit area and adjacent area that could be contaminated, diminished, or interrupted by subsidence. If the permittee cannot make this survey because the owner will not allow access to the site, the permittee shall notify the owner, in writing, of the effect that denial of access will have under Section 3(4)(c) of this administrative regulation. The permittee shall pay for any technical assessment or engineering evaluation used to determine the premining condition or value of a structure or to determine the quantity and quality of a water supply for domestic, agricultural, industrial or other legitimate use. The permittee shall provide copies of the survey and any technical assessment or engineering evaluation to the property owner and the cabinet.

(b) If the owner or his representative is present at the time a survey, technical assessment, or engineering evaluation is conducted under this subsection, the report shall include the name of the person. If the owner disagrees with the results of the survey, technical assessment or engineering evaluation, he may submit in writing to the cabinet and to the permittee, a detailed description of the specific areas of disagreement. The cabinet may require additional measures to ensure that adequate and accurate information is included in the survey, technical assessment or engineering evaluation and to ensure compliance with this administrative regulation.

(c) Underground operations shall not be conducted within 1,500 feet horizontally of a structure or water supply for which a survey is required under this subsection unless the permittee has submitted to the cabinet the required survey for that structure or water supply, or has submitted documentation that he cannot perform the survey because the owner will not allow access to the site. Underground operations shall not be conducted within the 1,500 feet horizontal distance until at least ninety (90) days after the survey or documentation of denial of access has been submitted to the cabinet.

Section 2. Public Notice. The permittee shall mail a notification [mining schedule shall be distributed by mail] to all owners and occupants of surface property and structures [residents] within the area above the underground workings [and adjacent areas]. Each owner or occupant [such person] shall be notified by mail at least three (3) months prior to mining beneath his [or her] property or structure. If the [residence. When such] notice has been properly given, and subsequent emergencies or other unforeseen conditions in underground mining necessitate mining beneath the [such] property or structure [residence] sooner than three (3) months after the [such] notice, the permittee shall immediately provide additional written notice to the owner or occupant [resident] that the [such] mining will be conducted, but in no case shall mining be conducted beneath the property or structure [residence] sooner than thirty (30) days after the [such] additional notice is given. The notification shall include, at [contain, as] a minimum:

(1) Identification of specific areas in which mining will take place;

(2) Dates that specific areas will be undermined; and [Approximate dates of mining activities that could cause subsidence and affect specific structures; and]

(3) The location or locations where the permittee's subsidence control plan may be examined. [Measures to be taken to prevent or control adverse surface effects.]

Section 3. Repair of Damage. (1) Repair of damage to surface lands. The permittee shall correct any material damage resulting from subsidence caused to surface lands, to the extent technologically and economically feasible, by restoring the land to a condition capable of maintaining the value and reasonably foreseeable uses that it was capable of supporting before subsidence damage.

(2) Repair or compensation for damage to noncommercial buildings and dwellings and related structures existing at the time of mining. The permittee shall promptly repair, or compensate the owner for, material damage resulting from subsidence caused to any noncommercial building or occupied residential dwelling or structure

related thereto that existed at the time of mining. If repair is selected, the permittee shall fully rehabilitate, restore or replace the damaged structure. If compensation is selected, the permittee shall compensate the owner of the damaged structure for the full amount of the decrease in value resulting from the subsidence related damage. The permittee may provide compensation by the purchase before mining of a noncancellable, premium prepaid insurance policy.

(3) Repair or compensation for damage to other structures. The permittee shall, to the extent required under applicable provisions of state law, either correct material damage resulting from subsidence caused to any structures or facilities not protected by subsection (2) of this section by repairing the damage or compensate the owner of the structures or facilities for the full amount of the decrease in value resulting from the subsidence. Repair of damage shall include rehabilitation, restoration, or replacement of damaged structures or facilities. Compensation may be accomplished by the purchase before mining of a noncancellable, premium prepaid insurance policy.

(4) Rebuttable presumption of causation by subsidence.

(a) Rebuttable presumption of causation for damage within angle of draw. If damage to any noncommercial building or occupied residential dwelling or structure related thereto occurs as a result of earth movement within an area determined by projecting a specified angle of draw from the outermost boundary of any underground mine workings to the surface of the land, a rebuttable presumption shall exist that the permittee caused the damage. The presumption shall normally apply to an angle of draw of thirty (30) degrees.

(b) Approval of site specific angle of draw. A permittee or applicant may request that the presumption apply to an angle of draw different from that established in paragraph (a) of this subsection. The cabinet may approve application of the presumption to a site specific angle of draw based upon a site specific analysis submitted by the applicant. To establish a site specific angle of draw, the applicant shall demonstrate and the cabinet shall determine in writing that the proposed angle of draw has a more reasonable basis than the angle of draw established in paragraph (a) of this subsection, based upon a site specific geotechnical analysis of the potential surface impacts of the mining operation.

(c) No presumption where access for presubsidence survey is denied. If the permittee was denied access to the land or property for the purpose of conducting the presubsidence survey in accordance with Section 1(4) of this administrative regulation, a rebuttable presumption under this subsection shall not exist.

(d) Rebuttal of presumption. The presumption shall be rebutted if, for example, the evidence establishes that: The damage predated the mining in question; the damage was proximately caused by some other factor or factors and was not proximately caused by subsidence; or the damage occurred outside the surface area within which subsidence was actually caused by the mining in question.

(e) Information to be considered in determination of causation. In any determination whether damage to protected structures was caused by subsidence from underground mining, all relevant and reasonably available information shall be considered by the cabinet.

(5) Adjustment of bond amount for subsidence damage.

(a) If subsidence related material damage to land, structures or facilities protected under subsections (1) through (3) of this section occurs, the cabinet shall require the permittee to obtain additional performance bond in the amount of the estimated cost of the repairs if the permittee will be repairing, or in the amount of the decrease in value if the permittee will be compensating the owner, until the repair or compensation is completed. If repair or compensation is completed within ninety (90) days of the occurrence of damage, additional bond shall not be required. The cabinet may extend the ninety (90) day time frame, but not to exceed one (1) year, if the permittee demonstrates and the cabinet finds in writing that subsidence is not complete, or that not all probable subsidence related material damage has occurred to lands or protected structures, and that therefore it would be unreasonable to complete within ninety (90) days the repair

of the subsidence related material damage to lands or protected structures.

(b) If the permittee demonstrates that his liability insurance policy under 405 KAR 10:030, Section 4, covers the subsidence damage, the additional bond amount required under paragraph (a) of this subsection may be reduced by the amount of the insurance coverage applicable to the subsidence damage. The existence of applicable insurance coverage shall not prevent forfeiture of a performance bond under 405 KAR 10:050.

(c) The cabinet may promptly release or return the additional bond amount provided under paragraph (a) of this subsection if the cabinet determines, based upon an application and information submitted by the permittee, the cabinet's own investigation as appropriate, and other information available to the cabinet, that the permittee has satisfactorily completed the required repair or compensation. [Surface Owner Protection. (1) Each permittee shall adopt all measures approved by the cabinet under 405 KAR 8:040 to reduce the likelihood of subsidence, to prevent subsidence causing material damage or reducing the value or reasonably foreseeable use of surface lands, and to mitigate the effects of any such damage or reduction which may occur.

(2) Each permittee who conducts underground mining which results in subsidence that causes material damage or reduces the value or reasonably foreseeable use of the surface lands shall, with respect to each surface area affected by subsidence:

(a) Restore, rehabilitate, or remove and replace each damaged structure, feature or value, promptly after the damage is suffered, to the condition it would be in if no subsidence had occurred and restore the land to a condition capable of supporting reasonably foreseeable uses it was capable of supporting before subsidence;

(b) Purchase the damaged structure or feature for its fair market, presubsidence value and shall promptly after subsidence occurs, to the extent technologically and economically feasible, restore the land surface to a condition capable and appropriate of supporting the purchased structure, and other foreseeable uses it was capable of supporting before mining. Nothing in this paragraph shall be deemed to grant or authorize an exercise of the power of condemnation or the right of eminent domain by any person engaged in underground mining activities; or

(c) Compensate the owner of any surface structure in the full amount of the diminution in value resulting from subsidence, by purchase prior to mining of a noncancellable, premium prepaid insurance policy or other means approved by the cabinet as assuring before mining begins that payment will occur; indemnify every person with a direct financial interest in the surface for all damages suffered as a result of the subsidence; and, to the extent technologically and economically feasible, fully restore the land to a condition capable of maintaining reasonably foreseeable uses which it could support before subsidence.]

Section 4. Buffer Zones. (1) Underground mining activities shall not be conducted beneath or adjacent to public buildings and facilities; churches, schools, and hospitals; or impoundments with a storage capacity of twenty (20) acre-feet or more or bodies of water with a volume of twenty (20) acre-feet or more, unless the subsidence control plan demonstrates that subsidence will not cause material damage to, or reduce the reasonably foreseeable use of, the features or facilities. If the cabinet determines that it is necessary in order to minimize the potential for material damage to the features or facilities previously described in this subsection or to any aquifer or body of water that serves as a significant water source for any public water supply system, it may limit the percentage of coal extracted under or adjacent thereto.

(2) If subsidence causes material damage to any of the features or facilities covered by subsection (1) of this section, the cabinet may suspend mining under or adjacent to the features or facilities until the subsidence control plan is modified to ensure prevention of further

~~material damage to the features or facilities. [Underground mining activities shall not be conducted beneath or adjacent to any perennial stream, or impoundment having a storage volume of twenty (20) acre-feet or more, unless the cabinet determines, on the basis of detailed subsurface information and consultation with the Kentucky Department of Mines and Minerals and MSHA as the cabinet deems appropriate, that subsidence will not cause material damage to streams, water bodies and associated structures. If subsidence causes material damage, then measures will be taken to the extent technologically and economically feasible to correct the damage and to prevent additional subsidence from occurring.]~~

~~(2) Underground mining activities beneath any aquifer that serves as a significant source of water supply to any public water system shall be conducted so as to avoid disruption of the aquifer and consequent exchange of ground water between the aquifer and other strata. The cabinet may prohibit mining in the vicinity of the aquifer or may limit the percentage of coal extraction to protect the aquifer and water supply.~~

~~(3) Underground mining activities shall not be conducted beneath or adjacent to any public buildings, including but not limited to churches, schools, hospitals, courthouses and government offices, unless the cabinet determines, on the basis of detailed subsurface information and consultation with the Kentucky Department of Mines and Minerals and MSHA as the cabinet deems appropriate, that subsidence for these activities will not cause material damage to these structures and specifically authorizes the mining activities.]~~

~~(3) [(4)] The cabinet shall suspend underground [coal] mining activities under urbanized areas, cities, towns, and communities, and adjacent to industrial or commercial buildings, major impoundments, or perennial [permanent] streams, if imminent danger is found to inhabitants of the urbanized areas, cities, towns, or communities.~~

Section 5. Annual Plan of Underground Workings. (1) Within forty-five (45) days after the first day of January following each year in which underground mining activities are conducted, and at any other time upon written request by the cabinet, the permittee shall submit two (2) copies of a detailed plan of the existing and proposed underground workings. The detailed plan shall include maps and descriptions, as appropriate, of significant features of the underground mine, including the size, configuration, and approximate location of pillars and entries, extraction ratios, measures taken to prevent or minimize subsidence and related damage, areas of full extraction, the boundaries of the permit area, and other information required by the cabinet.

(2) Copies of the maps required to be filed with the Kentucky Department of Mines and Minerals under KRS 352.450 and 352.480 may be submitted to the cabinet to fulfill the requirements of this section, if the maps include all the information required under subsection (1) of this section.

JAMES E. BICKFORD, Secretary

APPROVED BY AGENCY: July 28, 1997

FILED WITH LRC: July 28, 1997 at 4 p.m.

PUBLIC HEARING: A public hearing on this proposed amendment has been scheduled for 9:30 a.m. (EDT) on Tuesday, September 30, 1997, in the Training Room (D-16) of the Department for Surface Mining Reclamation and Enforcement at 2 Hudson Hollow, Frankfort, Kentucky. Persons who wish to testify at the hearing shall notify the contact person listed below, in writing, by September 23, 1997. The scheduled hearing will be canceled if the contact person has not received any written notice of intent to testify by September 23, 1997, five workdays before the scheduled hearing date. If the hearing is held, it will be open to the public. Any person in attendance who wishes to testify on the proposed amendment will be given a fair and reasonable opportunity to do so, regardless of whether the person has given the cabinet prior written notice of his intent to testify. To assure an accurate record, the cabinet requests each

person testifying at the hearing to provide the cabinet with a written copy of his testimony. The cabinet is not required to make a recording or transcript of the hearing unless someone makes a written request for it, in which case the person requesting the recording or transcript shall pay for it. WRITTEN COMMENTS: A person who wishes to comment on this proposed amendment but does not wish to testify at the hearing may submit written comments on the proposed amendment at any time before 4:30 p.m. (EDT) on Tuesday, September 30, 1997, the scheduled hearing date. Comments received after that time will not be considered. Written comments and written notices of intent to testify at the hearing shall be submitted to the contact person listed below.

CONTACT PERSON: Jim Villines, Kentucky Department for Surface Mining, 2 Hudson Hollow, Frankfort, Kentucky 40601-4321, Tel. (502) 564-6940, FAX (502) 564-5698.

## REGULATORY IMPACT ANALYSIS

Contact Person: Jim Villines

1. Type and number of entities affected: This amendment will affect all underground mining operations conducted after the effective date of this amendment. As of June 1997 there were approximately 300 active underground mining operations and approximately 280 more where future production is likely. This amendment will also affect owners of lands or structures potentially affected by subsidence.

2. Direct and indirect costs or savings on the affected entities:

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 comments were received related to this subject. The amendment is not expected to have a significant effect on the cost of living and employment.

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 related to this subject. The amendment is not expected to have a significant effect on the cost of doing business.

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: The amendment may increase some costs for permittees, and may reduce certain other costs for some permittees. A presubsidence condition survey of a structure, when required, is expected to cost roughly the same as a preblasting survey. Costs for a permittee will depend upon the consultant used and the number and type of structures surveyed. As a point of reference, the cabinet's Small Operator Assistance Program pays for preblasting surveys at \$199 per residential structure, and \$199 plus \$35/hour for more complex structures. For noncommercial buildings and occupied residential dwellings and related structures that existed at the time of mining, the amendment imposes an obligation to repair or compensate for subsidence damage, regardless of any pre-damage agreements or waivers. For structures other than those just described, if subsidence damage occurs a valid waiver of the right to subjacent support would be taken into account under this amendment, whereas it would not under the current regulation. Some permittees using planned subsidence mining methods may incur costs of surface measures to minimize subsidence damage. If a permittee causes subsidence damage and does not timely repair or compensate for that damage, he will incur costs for additional bonding unless his liability insurance policy covers the costs of the repair or compensation. If subsidence damage occurs, the permittee will likely incur costs for appraisals to determine the amount of the damage. Permittees will incur costs in submitting underground mine maps to the cabinet annually. Costs may be minimized to the extent the permittee makes use of the maps already required to be submitted to



the Kentucky Department of Mines and Minerals.

2. Second and subsequent years: The permittee may find it necessary to update or repeat some presubsidence surveys if too long a period of time elapses between the initial survey and the mining near the structure or water supply. Submission of annual maps of underground mine workings will be a recurring cost.

3. Effects on the promulgating administrative body:

a. Direct and indirect costs or savings:

1. First year: The cabinet will have an increase in workload in reviewing presubsidence surveys, but this activity is not expected to increase costs. The cabinet will have an increase in workload in determining the additional performance bond amounts needed when subsidence damage occurs, but this activity is not expected to significantly increase costs.

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

3. Additional factors increasing or decreasing costs: None

b. Reporting and paperwork requirements: There will be some increase in reporting and paperwork in connection with the above described activities.

4. Assessment of anticipated effect on state and local revenues: No effect is expected.

5. Source of revenue to be used for implementation and enforcement of administrative regulation: No additional revenue is expected to be needed.

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

a. Geographical area in which administrative regulation will be implemented: No comments on economic impact were received. No economic impact on the coal mining regions is expected.

b. Kentucky: No comments on economic impact were received. No statewide economic impact is expected.

7. Assessment of alternative methods; reasons why alternatives were rejected: There is no feasible alternative to adoption of the amendment, since the cabinet's administrative regulations must be consistent with federal regulations.

8. Assessment of expected benefits of the administrative regulation: Owners of surface structures within the angle of draw will benefit from permittees conducting presubsidence surveys to determine the condition of their structures prior to mining. Owners of noncommercial buildings and occupied residential dwellings and related structures within the angle of draw will benefit from the rebuttable presumption that any subsidence damage was caused by the permittee, and from the permittee's obligation to use reasonable surface measures to minimize subsidence damage when using planned-subsidence mining methods. The bonding requirement will ensure that money is available for the cabinet to perform repair or compensation for subsidence damage if the permittee fails to do so. Permittees will benefit from consideration of liability insurance coverage in determining increased performance bond amounts, and from prompt return or release of the additional performance bond amounts. Annual submission of maps of underground mining workings will allow the cabinet to monitor the permittee's compliance with his mining plan and particularly his subsidence control plan.

9.a. Identify effects on public health and environmental welfare of the geographical area in which implemented and Kentucky: No effect on public health and environmental welfare will result in the coal regions or statewide.

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

c. If detrimental effect would result, explain detrimental effect: No detrimental effect.

10. Identify any statute, administrative regulation, or government policy which may be in conflict, overlapping, or duplication: There is no conflict, overlap, or duplication.

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

b. If in conflict, was the effort made to harmonize the proposed administrative regulation with conflicting provisions: No conflict.

11. Any additional information or comments: No additional comments.

12. TIERING: Is tiering applied? No. Tiering is not applicable to this proposed amendment because, under the federal and Kentucky surface mining laws and regulations, these requirements must apply equally to all permittees under 405 KAR Chapters 7-24.

#### FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 30 USC 1253, 1255, 1266, 1309a, 30 CFR 730-733, 735, 784.20(a)(3), 817.121-.122, 917. The federal regulations corresponding to this amendment are at 30 CFR 784.20(a)(3), 817.121-.122.

2. State compliance standards. This administrative regulation, as proposed to be amended, sets forth requirements to prevent or control the effects of subsidence on surface areas which overlie underground workings. These requirements include: underground mining measures to prevent or control subsidence; underground mining buffer zones to protect important aquifers, public buildings, communities, industrial and commercial facilities, perennial streams and major impoundments; surface measures to minimize subsidence damage to structures when planned-subsidence mining methods are used; presubsidence surveys to determine the condition of structures that may be damaged by subsidence and to determine the quantity and quality water supplies that may be damaged; temporary underground buffer zones around structures and water supplies until required presubsidence surveys are submitted; notification of surface owners by mail prior to mining under their property; additional performance bond if material subsidence damage occurs; a rebuttable presumption that subsidence damage within the angle of draw was caused by the permittee; repair or compensation for subsidence damage to surface properties; restoration of surface lands affected by subsidence; and annual submission of maps of completed and proposed underground workings. The more significant changes made by the proposed amendments are described below:

Section 1(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.

Section 1(4). A presubsidence survey of the condition of structures and water supplies is required, if the map and narrative information submitted under 405 KAR 8:040, Section 26(1) shows the existence of structures or water supplies that may be damaged by subsidence. (Procedural requirements for presubsidence surveys are somewhat similar to those for preblasting surveys under 405 KAR 16:120.) The permittee must notify the property owner of the permittee's intent to conduct the survey, and must advise the owner of the effect of denying the permittee access to conduct the survey. A property owner who denies the permittee 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. Underground operations must not be conducted within 1500 feet horizontal distance from the structure or water supply until 90 days after the presubsidence survey, or documentation of the denial of access to conduct the survey, has been submitted to the cabinet.

Section 3. Currently, this administrative regulation treats all types of structures the same with regard to the permittee's obligation to repair or compensate for subsidence damage. This proposed



amendment, like the corresponding federal regulations at 30 CFR 817.121(c), creates a distinction between noncommercial buildings and occupied residential dwellings and structures related thereto that existed at the time of mining, and all other structures. Under proposed Section 3(3), for all structures not covered by Section 3(2), a permittee whose operations cause subsidence damage will, as at present, 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 waiver of the right to subjacent support.

Section 3(4). 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 18:210, Section 1(4). 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) degrees, and the amendment allows the cabinet to approve a different angle of draw on a site specific basis.

Section 3(5). The amendment requires the cabinet to adjust the performance bond amount when subsidence causes material damage to protected land, structures or facilities, and establishes time frames for the permittee to obtain the additional bond. Under certain conditions, obtaining the additional bond will be deferred, or will not be required. If the permittee demonstrates that his liability insurance policy under 405 KAR 10:030, Section 4 covers the subsidence damage, the amount of the additional performance bond may be reduced by the amount of the applicable liability insurance coverage. The additional performance bond posted by the permittee may be returned or released promptly after the permittee demonstrates that he has satisfactorily completed the required repair or compensation.

Section 5. The amendment requires the permittee to annually submit a detailed plan of the existing and proposed underground workings and specifies the information that the plan must contain. The permittee may fulfill this requirement by submitting copies of the same maps that are required to be filed with the Kentucky Department of Mines and Minerals under KRS 352.450 and 352.480, or appropriate modifications of these maps, if all the required information is provided thereon.

3. Minimum or uniform standards contained in the federal mandate. The federal regulations corresponding to this amendment are at 30 CFR 784.20(a)(3), 817.121-122. The federal regulations require: Presubsidence surveys to determine the condition of structures that may be damaged by subsidence and to determine the quantity and quality water supplies that may be damaged; underground mining measures to prevent or control subsidence; underground mining buffer zones to protect important aquifers, public buildings, communities, industrial and commercial facilities, perennial streams and major impoundments; surface measures to minimize subsidence damage to structures when planned-subsidence mining methods are used; notification of surface owners by mail prior to mining under their property; additional performance bond if material subsidence damage occurs; a rebuttable presumption that subsidence damage within the angle of draw was caused by the permittee; repair or compensation for subsidence damage to surface properties; restoration of surface lands affected by subsidence; and annual submission of maps of completed and proposed underground workings. The federal requirements are generally the same as the proposed requirements, except as explained in response to question no. 4 below.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? Yes

a. The requirement for presubsidence surveys at proposed 405 KAR 18:210, Section 1(4)(a), is located in the federal permitting requirements at 30 CFR 784.20(a)(3) rather than in the federal performance standards at 30 CFR 817.121. Justification: The federal regulation is structured such that the map and narrative information to identify structures and water supplies vulnerable to subsidence damage, and all necessary presubsidence condition surveys on those structures and water supplies, would be conducted prior to issuance of the permit. The map and narrative information required under 405 KAR 8:040, Section 26(1)(a) and (b), are necessary to determine if a subsidence control plan is necessary and if so to design it, and therefore must be included in the permit application and subject to review by the public and the cabinet prior to issuance of the permit. However, it is appropriate to allow presubsidence condition surveys to be conducted after permit issuance. Because the purpose of a presubsidence condition survey is to provide a baseline against which subsidence damage to a particular structure or water supply, if it occurs, can be measured, it is essential that the survey be conducted prior to mining near that structure or water supply. It is not essential to the purpose of the survey that it be conducted prior to permit issuance, and in some cases it could be wasteful to do so. If a presubsidence condition survey is conducted prior to permit issuance and mining near the structure or water supply does not take place for a year or more, as may be the case with large underground mining operations, it may be necessary to repeat the presubsidence condition survey to insure its accuracy. The cabinet's proposed regulation is structured differently from the federal regulation regarding presubsidence surveys. However, since presubsidence surveys under the cabinet's regulation will achieve the purpose they are intended to achieve under the federal regulation, the cabinet's regulation is as effective as the federal regulation and therefore is not inconsistent with the federal regulation.

b. Section 1(4)(a) of the proposed regulation, regarding presubsidence surveys, applies to all types of structures and water supplies for "domestic, agricultural, industrial or other legitimate use", whereas the federal presubsidence survey requirement at 30 CFR 784.20(a)(3) is limited to "noncommercial buildings or occupied residential dwellings and structures related thereto" and "drinking, domestic, or residential" water supplies. Justification: With regard to structures, the proposed amendment is responsive to Kentucky common law and to the current requirements of this regulation since 1982, under which owners of all structures are entitled to repair or compensation for subsidence damage. The federal regulations defer to state law regarding repair or compensation for damage to structures other than "noncommercial buildings or occupied residential dwellings and structures related thereto" that existed at the time of mining. Since under Kentucky all structures are subject to repair or compensation, it is very important to establish the premining conditions of all structures that are vulnerable to subsidence damage in order to have a baseline against which to measure the damage. With regard to water supplies, the proposed amendment is responsive to Kentucky law, which is the same as the federal law regarding the types of water supplies that are protected from surface mining, but is broader than the federal law regarding the types of water supplies that are protected from underground mining. For underground mines, 30 USC 1309a, created by the federal 1992 Energy Policy Act, protects "drinking, domestic, or residential" water supplies, so the presubsidence condition survey requirement at 30 CFR 784.20(a)(3) is properly limited to these types of water supplies. However, KRS 350.421(2) as modified by 1994 HB 338 protects water supplies for "domestic, agricultural, industrial or other legitimate use", for both underground and surface mines. Therefore, the cabinet's presubsidence condition survey requirement at 405 KAR 18:210, Section 1(4)(a), properly addresses the same types of water supplies protected by KRS 350.421(2). Because the cabinet's regulation is more inclusive than the corresponding federal regulation, it is at least as effective as the federal regulation and therefore is not inconsistent with the federal

regulation.

c. The provisions in proposed 405 KAR 18:210, Section 1(4)(b) regarding identification of the owner or his representative if present during the presubsidence survey, the owner's ability to submit a written description of any areas of disagreement with the survey, and the cabinet's ability to require additional measures to assure accurate information is included in the survey, are not included in the corresponding federal regulations. Justification: The cabinet believes these requirements are reasonable and necessary to the effective conduct and use of presubsidence condition surveys, and are not burdensome to permittees. These requirements are similar to those used for preblasting surveys for many years. It is important that surface owners have an established procedure to express any disagreement with the results of presubsidence condition surveys so the areas of disagreement can be addressed in a timely manner.

d. The provisions in proposed 405 KAR 18:210, Section 1(4)(c), establishing a temporary 1500 feet horizontal distance buffer zone around structures and water supplies for which a presubsidence survey is required until 90 days after the presubsidence survey has been submitted, are not included in the corresponding federal regulations. Justification: If the cabinet's proposed amendments were structured like the federal regulations, so that all necessary presubsidence condition surveys would be completed prior to issuance of the permit, there would be no need for these requirements. However, since the cabinet's approach allows the presubsidence condition surveys to be conducted after permit issuance, these requirements are necessary to insure that a presubsidence survey for a particular structure or water supply will be conducted before mining approaches close enough to have a potential subsidence impact on the structure or water supply, and that there is time for consideration of the presubsidence survey after it is conducted.

e. 405 KAR 18:210, Section 2, requires the permittee to mail a notice to surface owners at least three months prior to mining beneath their property, but allows mining within as little as 30 days after the notice if necessitated by emergency or other unforeseen conditions. The federal counterpart at 30 CFR 817.122 requires that the notice be mailed at least six months prior to undermining, but allows mining sooner than six months after the notice if approved by the regulatory authority. Justification: The time frame for the notice in the cabinet's regulation provides additional flexibility to the permittee and is consistent with the language of the federal regulation, which allows the regulatory authority to approve a time frame shorter than six months.

f. Proposed 405 KAR 18:210, Section 3(2), regarding repair or compensation for subsidence damage to noncommercial buildings and occupied residential dwellings and related structures that existed at the time of mining, is not limited to subsidence damage resulting from underground mining activities conducted after October 24, 1992, whereas the federal counterpart at 30 CFR 817.121(c)(2) is so limited. Justification: The October 24, 1992 date has no relevance to this administrative regulation. 405 KAR 18:210 as it has existed from May 1982 to the present has required repair or compensation for subsidence damage to structures of all types. 30 USC 1309a, created by the federal Energy Policy Act of October 24, 1992, expressly limits its applicability to subsidence damage resulting from underground coal mining operations conducted after the date of enactment to noncommercial buildings and occupied residential dwellings and related structures, and therefore the March 31, 1995, federal regulation at 30 CFR 817.121(c)(2) appropriately limits its applicability to subsidence related damage to these structures caused by underground mining activities conducted after October 24, 1992. Including that date in this amendment would retroactively remove protection from structures affected by subsidence from operations conducted before October 24, 1992.

g. Proposed 405 KAR 18:210, Section 3(5)(a), regarding adjustment of bond amount for subsidence damage, does not include subsidence damage to water supplies. The federal counterpart at 30

CFR 817.121(c)(5) includes adjustment of bond amount for subsidence damage to water supplies. Justification: The cabinet chose to address adjustment of bond amount for damage to water supplies in the same regulation which requires replacement of damaged water supplies, 405 KAR 18:060.

h. Proposed 405 KAR 18:210, Section 3(5)(b), allows the additional performance bond amount for subsidence damage to be reduced by the amount of the permittee's liability insurance coverage that is applicable to the subsidence damage. The federal counterpart at 30 CFR 817.121(c)(5) does not include consideration of liability insurance coverage. Justification: The federal bonding and insurance regulations at 30 CFR 800.14(c) allow the permittee's financial responsibility under 30 CFR 817.121(c) for repairing material damage from subsidence to be satisfied by the liability insurance policy required under 30 CFR 800.60.

i. Proposed 405 KAR 18:210, Section 3(5)(c), allows the additional performance bond amount for subsidence damage to be released or returned promptly after the cabinet determines the permittee has satisfactorily completed the required repair or compensation for subsidence damage. The federal counterpart at 30 CFR 817.121(c)(5) does not include any provision for prompt release of the additional performance bond amount after the subsidence damage is corrected. Justification: The purpose of the additional bond is to insure that the cabinet will have the money to repair or compensate if the permittee fails to do so. Under both the federal regulation and the cabinet's proposed amendment, if the permittee repairs or compensates for the subsidence damage within 90 days (which can be extended up to one year under appropriate circumstances), the additional performance bond is not required. Thus the regulations implicitly recognize that there is no reason to require the additional bond unless there develops some reasonable likelihood that the cabinet will have to complete the repair or compensation. When the permittee has satisfactorily completed the required repair or compensation there is no reasonable likelihood that the cabinet will have to perform the repair or compensation, and thus there is no need for the cabinet to retain the additional bond amount. Since the repair or compensation insured by the additional bond amount will have been completed before any release or return of bond, the cabinet believes the regulation is not inconsistent with the federal regulations.

j. Proposed 405 KAR 18:210, Section 5(1), regarding permittee submission of an annual plan of underground workings, includes a specific time frame to submit the plan. The federal counterpart at 30 CFR 817.121(g) does not set a specific time for the submission, but provides that the regulatory authority must establish the time schedule. Justification: The time schedule established by the regulation is the same as the schedule required by law for submission of underground mining maps to the Kentucky Department of Mines and Minerals. The cabinet's time schedule fulfills the requirement of the federal regulation.

k. Proposed 405 KAR 18:210, Section 5(1), regarding permittee submission of an annual plan of underground workings, does not provide for confidentiality of the annual plan. The federal counterpart at 30 CFR 817.121(g) provides that information submitted with the plan may be held as confidential in accordance with 30 CFR 773.13(d) if requested by the permittee. Justification: The cabinet's counterpart to 30 CFR 773.13(d) is 405 KAR 8:010, Section 12. This section sets forth requirements for handling qualified confidential information, but limits confidential information to a) information that pertains only to the chemical and physical properties of the coal (except information on components of the coal which are potentially toxic in the environment), and b) information on the nature and location of archaeological resources on public land and Indian land. The cabinet believes it is unlikely that any information submitted in the annual plan of underground workings will qualify for confidentiality, and that it would be misleading to mention confidentiality in connection with the plan, thereby creating the false impression that the plan generally would be held confidential on request.

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5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Because several differences are described under question no. 4 above, the justification for each difference is shown immediately following its description, for ease of reading.

### JUSTICE CABINET Kentucky Department of Corrections (Amendment)

#### 501 KAR 6:020. Corrections policies and procedures.

RELATES TO: KRS Chapters 196, 197, 439

STATUTORY AUTHORITY: KRS 196.035, 197.020, 439.470, 439.590, 439.640

NECESSITY, FUNCTION, AND CONFORMITY: KRS 196.035, 197.020, 439.470, 439.590, and 439.640 authorize the Justice Cabinet and Department of Corrections to promulgate administrative regulations necessary and suitable for the proper administration of the department or any division therein. These policies and procedures are incorporated by reference in order to comply with the accreditation standards of the American Correctional Association. This administrative regulation establishes the policies and procedures for the Department of Corrections.

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

(a) "Department of Corrections Policies and Procedures, Volume I, August 14, 1997 [~~April 14, 1997~~]:"

- 1.1 Legal Assistance for Corrections Staff
- 1.2 News Media
- 01-04-01 The operation of Contracted Adult Correctional Facilities
- 1.6 Extraordinary Occurrence Reports
- 1.9 Institutional Duty Officer
- 1.11 Population Counts and Reporting Procedures
- 1.12 Operation of Motor Vehicles by Department of Corrections Employees
- 2.1 Inmate Canteen
- 2.2 Warden's Fund
- 2.10 Surplus Property
- 3.12 Institutional Staff Housing
- 4.2 Staff Training and Development [~~(Amended 4/14/97)~~]
- 4.3 Firearms and Chemical Agents Training [~~(Amended 4/14/97)~~]
- 4.7 Uniformed Employee Dress Code
- 6.1 Open Records Law
- 7.2 Asbestos Abatement
- 8.1 Occupational Exposure to Bloodborne Pathogens
- 9.4 Transportation of Inmates to Funerals or Bedside Visits
- 9.5 Execution
- 9.6 Contraband
- 9.8 Search Policy
- 9.18 Informants [~~(Amended 4/14/97)~~]
- 9.19 Found Lost or Abandoned Property [~~(Amended 4/14/97)~~]
- 10.2 Special Management Inmates
- 10.3 Safekeepers
- 10.4 Special Needs Inmates
- 11.2 Nutritional Adequacy of the Diet for Inmates
- 11.3 Special Diet Procedures
- 11.4 Alternative Diet
- 13.1 Pharmacy Policy and Formulary
- 13.2 Health Maintenance Services
- 13.3 Medical Alert System
- 13.4 Health Program Audits
- 13.5 Acquired Immune Deficiency Syndrome

- 13.6 Sex Offender Treatment Program
- 13.7 Involuntary Psychotropic Medication Policy
- 13.8 Substance Abuse Treatment Program
- 13.9 Dental Services
- 14.1 Investigation of Missing Inmate Property [~~(Added 4/14/97)~~]
- 14.2 Personal Hygiene Items [~~(Amended 4/14/97)~~]
- 14.3 Marriage of Inmates [~~(Amended 4/14/97)~~]
- 14.4 Legal Services Program
- 14.6 Inmate Grievance Procedures (Amended 8/14/97)
- 15.1 Hair and Grooming Standards
- 15.2 Offenses and Penalties
- 15.3 Meritorious Good Time
- 15-05-01 Restoration of Forfeited Good Time
- 15.6 Adjustment Procedures and Programs
- 15.7 Inmate Account Restriction
- 15.8 Unauthorized Substance Abuse Testing
- 16.1 Inmate Visits
- 16.2 Inmate Correspondence
- 16.3 Telephone Calls
- 16.4 Inmate Packages
- 17-01-01 Inmate Personal Property
- 17.2 Assessment Center Operations
- 17.3 Controlled Intake of Inmates

(b) "Department of Corrections Policies and Procedures, Volume II, April 14, 1997":

- 18.1 Classification of the Inmate
- 18.5 Custody and Security Guidelines
- 18.7 Transfers
- 18.9 Out-of-state Transfers
- 18-10-01 Parole Progress Reports
- 18.11 Kentucky Correctional Psychiatric Center Transfer Procedures
- 18.12 Referral Procedure for Inmates Adjudicated Guilty But Mentally Ill
- 18.13 Population Categories
- 18.15 Protective Custody
- 18.17 Interstate Agreement on Transfers
- 18.18 International Transfer of Inmates
- 19.1 Government Services Projects
- 19.2 Community Services Projects
- 19.3 Inmate Wage Program
- 20.1 Educational Programs and Educational Good Time
- 21.1 Staffing Pattern for the First Incarceration Shock Treatment Program (FIST)
- 21.2 Phase I: Program Selection Assessment Criteria
- 21.3 Program Schedule - Phase II and Phase III
- 21.4 Platoon Size and Composition
- 21.5 Physical Conditions Program Component
- 21.6 Group and Individual Counseling
- 21.7 Drug and Alcohol Abuse Counseling and Treatment
- 21.8 Work Programs Component
- 21.9 Education and Life Management
- 21.10 Auxiliary Services
- 21.11 Offenses and Penalties
- 22.1 Privilege Trips
- 23.1 Religion
- 25.1 Gratuities
- 25.2 Public Official Notification of Release of an Inmate
- 25.3 Prerelease Program
- 25.4 Inmate Furloughs
- 25.6 Community Center Program
- 25.7 Expedient Release
- 25.8 Extended Furloughs
- 25.10 Administrative Release of Inmates

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## 25.11 Victim Notification

(c) "Department of Corrections Policies and Procedures, Volume III, August 14, 1997 [~~April 14, 1997~~]:

- 27-01-01 Probation and Parole Procedures
- 27-02-01 Duties of Probation and Parole Officers
- 27-03-01 Workload Formula Supervisor/Staff Ratio
- 27-05-01 Testimony, Court Demeanor and Availability of Legal Services
- 27-06-01 Availability of Supervision Services
- 27-06-02 Equal Access to Services
- 27-07-01 Cooperation with Law Enforcement Agencies
- 27-08-01 Use of Force
- 27-09-01 Kentucky Community Resources Directory
- 27-11-01 Intensive Supervision (Amended 8/14/97)
- 27-12-01 Supervision: Case Classification
- 27-12-02 Risk Assessment
- 27-12-03 Initial Interview
- 27-12-04 Conditions of Regular Supervision/Request for Modification
- 27-12-05 Releasee's Report
- 27-12-06 Grievance Procedures for Offenders
- 27-12-07 Employment, Education/Vocational Referral
- 27-12-08 Supervision Plan
- 27-12-09 Casebook
- 27-12-10 Guidelines for Monitoring Supervision Fee
- 27-12-11 Guidelines for Monitoring Financial Obligations Ordered by the Releasing Authority
- 27-12-12 Other Financial Obligations (Not Ordered by Releasing Authority)
- 27-12-13 Community Service Work
- 27-12-14 Client Travel Restrictions
- 27-13-01 Drug and Alcohol Testing of Offenders
- 27-13-02 Alcohol Detection
- 27-14-01 Interstate Compact Transfers
- 27-14-02 Interstate Compact Out-of-state Probation and Parole Violation
- 27-15-01 Supervision Report; Violations, Unusual Incidents
- 27-16-01 Search; Seizure; Chain of Custody; Disposal of Evidence
- 27-17-01 Absconder Procedures
- 27-18-01 Probation and Parole Issuance of Detainer/Warrant
- 27-19-01 Preliminary Revocation Hearing
- 27-20-01 Division of Probation and Parole Controlled Intake Program
- 27-20-02 Prisoner Intake Notification
- 27-20-03 Prisoner Status Change
- 27-21-01 Apprehension and Transportation of Probation and Parole Violators
- 27-22-01 Fugitive Unit - Apprehensions
- 27-22-02 Fugitive Unit - Transportation of Fugitives
- 27-23-01 In-state Transfer
- 27-24-01 Closing Supervision Report
- 27-24-02 Reinstatement of Clients to Active Supervision
- 27-25-01 Application for Final Discharge from Parole
- 27-26-01 Assistance to Former Clients and Dischargees
- 27-27-01 Restoration of Civil Rights
- 27-28-01 Firearms/Explosives: Application for Relief from Disability
- 27-29-01 Parole Review Dates Modification
- 28-01-01 Probation and Parole Investigation Reports (Introduction, Definitions, Confidentiality, Timing, and General Comments)
- 28-01-02 Probation and Parole Investigation Reports (Administrative Responsibilities)
- 28-01-03 Probation and Parole Investigation Reports (Presentence/Postsentence Investigation Interview Procedure)
- 28-01-04 Probation and Parole Investigation Reports (Presentence/Postsentence Verification, Composition, Case Material and Submission Schedules)

- 28-01-05 Probation and Parole Investigation Reports (Computation of Jail Custody Credit)
- 28-01-06 Probation and Parole Investigation Reports (Misdemeanant Presentence Investigation Reports for the Circuit and District Courts)
- 28-01-07 Probation and Parole Investigation Reports (Supplemental Postsentence Investigation Report, Case Material, and Submission Schedule)
- 28-01-08 Probation Parole Investigation Reports (Partial Investigation Reports and Submission Schedule)
- 28-01-09 Release of Information of Factual Content on Presentence/Postsentence Investigation Reports
- 28-02-01 Expedient Release Program
- 28-03-01 Parole Plans/Halfway Houses/Extended Furlough/Sponsorship/Gradual Release
- 28-04-01 Furlough Verifications
- 28-05-01 Out-of-state Investigations

(d) "Department of Corrections Policies and Procedures, Volume IV, April 14, 1997" (text confidential pursuant to KRS 197.025):

- 8.4 Emergency Preparedness
- 9.1 Use of Force
- 9.7 Storage, Issue and Use of Weapons Including Chemical Agents
- 9.9 Transportation of Inmates
- 9.10 Security Inspections
- 9.11 Tool Control

(2) This material, except for the policies listed in subsection (1)(d) of this section, may be inspected, copied, or obtained at the Office of General Counsel, Department of Corrections, State Office Building, Frankfort, Kentucky 40601, (502) 564-2024, facsimile (502) 564-6494, Monday through Friday, 8 a.m. to 4:30 p.m.

DOUG SAPP, Commissioner

APPROVED BY AGENCY: August 4, 1997

FILED WITH LRC: August 15, 1997 at noon

PUBLIC HEARING: A public hearing on this regulation shall be held on September 22, 1997 at 9 a.m. in the Fifth Floor Conference Room of the State Office Building. Individuals interested in being heard at this hearing shall notify this agency in writing by September 15, 1997, five working days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Jack Damron or Tamela Biggs, Staff Attorneys, Department of Corrections, 2nd Floor, State Office Building, Frankfort, Kentucky 40601, telephone number (502) 564-2024, facsimile number (502) 564-6494.

## REGULATORY IMPACT ANALYSIS

Agency Contact Person: Tamela Biggs

(1) Type and number of entities affected: 2,948 employees of the correctional institutions, 8,729 inmates, 14,211 parolees and probationers, and all visitors to state correctional institutions.

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

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(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented: None

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented: None

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

1. First year following implementation: None

2. Second and subsequent years: None

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: None

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: Policy revisions.

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

None

(5) Source of revenue to be used for implementation and enforcement of administrative regulation is the funds budgeted for this 1996-1998 biennium.

(6) Economic impact, including effects of economic activities arising from administrative regulation, on:

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

(b) Kentucky: None

(7) Assessment of alternative methods; reasons why alternatives were rejected: None

(8) Assessment of expected benefits:

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

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

(c) If detrimental effect would result, explain detrimental effect: N/A

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

(a) Necessity of proposed administrative regulation if in conflict: N/A

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: N/A

(10) Any additional information or comments: None

(11) TIERING: Is tiering applied? No. Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it. Disparate treatment of any person or entity subject to this administrative regulation could raise questions of arbitrary action on the part of the agency. The "equal protection" and "due process" clauses of the 14th Amendment of the U.S. Constitution may be implicated as well as Sections 2 and 3 of the Kentucky Constitution.

### JUSTICE CABINET Department of Corrections Division of Adult Institutions (Amendment)

#### 501 KAR 6:090. Frankfort Career Development Center.

RELATES TO: KRS Chapters 196, 197, 439

STATUTORY AUTHORITY: KRS 196.035, 197.020, 439.470, 439.590, 439.640

NECESSITY, FUNCTION, AND CONFORMITY: KRS 196.035, 197.020, 439.470, 439.590, and 439.640 authorize the Justice Cabinet and Department of Corrections [commissioner] to promulgate administrative regulations necessary and suitable for the proper administration of the department or any division therein. These policies and procedures are incorporated by reference in order to

comply with the accreditation standards of the American Correctional Association.

Section 1. Incorporation by Reference. (1)(a) Frankfort Career Development Center policies and procedures, August 14, 1997 [~~November 14, 1995~~], are incorporated by reference.

(b) They may be inspected, copied, or obtained at the Office of the General Counsel, Department of Corrections, State Office Building, 501 High Street, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

(2) Frankfort Career Development Center policies and procedures include:

- FCDC 01-04-01 Roles of Consultants, Contract Personnel, Volunteers, Employees, and Employees of Other Agencies [~~(Amended 11/14/95)~~]
- FCDC 01-09-01 Organization and Assignment of Responsibilities
- FCDC 02-02-01 Inventory Control [~~(Amended 11/14/95)~~]
- FCDC 02-09-01 Inmate Account [~~(Amended 11/14/95)~~]
- FCDC 02-10-01 Fiscal Management and Control [~~(Amended 11/14/95)~~]
- FCDC 02-11-01 Fiscal Management: Accounting Procedures [~~(Amended 11/14/95)~~]
- FCDC 02-12-01 Fiscal Management: Checking Accounts [~~(Amended 11/14/95)~~]
- FCDC 02-13-01 Purchasing and Receiving (Amended 8/14/97) [~~(Amended 11/14/95)~~]
- FCDC 06-02-01 Offender Records [~~(Amended 11/14/95)~~]
- FCDC 08-01-01 Fire Safety Practices
- FCDC 09-01-02 Institutional Entry and Exit Surveillance and Perimeter Security Procedures
- FCDC 09-03-01 Control and Accountability of Flammable Toxic, Caustic and Other Hazardous Materials [~~(Amended 11/14/95)~~]
- FCDC 09-06-08 Searches and Contraband Procedures: Disposition of Contraband [~~(Amended 11/14/95)~~]
- FCDC 11-03-01 Food Service; General Guidelines (Amended 8/14/97)
- FCDC 11-04-02 Menu, Nutrition and Special Diets
- FCDC 11-06-01 Inspection and Sanitation
- FCDC 11-07-01 Purchasing and Storage of Food Products
- FCDC 12-03-01 Laundry, Clothing, Hygiene and Grooming Services (Amended 8/14/97) [~~(Amended 11/14/95)~~]
- FCDC 12-04-01 Safety and Sanitation Practices and Inspections (Amended 8/14/97) [~~(Amended 11/14/95)~~]
- FCDC 13-01-01 Use of Pharmaceutical Products (Amended 8/14/97) [~~(Amended 11/14/95)~~]
- FCDC 13-01-02 Medical Emergencies and Medical Psychiatric Transfers [~~(Amended 11/14/95)~~]
- FCDC 13-01-03 Informed Consent [~~(Amended 11/14/95)~~]
- FCDC 13-02-01 Inmate Medical Screenings and Health Evaluations [~~(Amended 11/14/95)~~]
- FCDC 13-03-01 Psychiatric and Psychological Services [~~(Amended 11/14/95)~~]
- FCDC 13-03-02 Parental Administration of Medications and Use of Psychotropic Drugs (Amended 8/14/97) [~~(Amended 11/14/95)~~]
- FCDC 13-05-01 Family Notification: Serious Illness, Injury, Major Surgery or Death [~~(Amended 11/14/95)~~]
- FCDC 13-06-01 Chronic and Convalescent Care [~~(Amended 11/14/95)~~]
- FCDC 13-08-01 Sick Call and Physician's Weekly Clinic [~~(Amended 11/14/95)~~]
- FCDC 13-09-01 Management of Serious Clinic and Infectious Diseases [~~(Amended 11/14/95)~~]
- FCDC 13-10-01 Treatment Protocol Regarding First-Aid Procedures, Routine Health Care

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FCDC 13-11-01 Health Education: Provision of Special Health Care Needs [~~Amended 11/14/95~~]  
 FCDC 13-13-01 Physicians Referrals [~~Amended 11/14/95~~]  
 FCDC 13-14-01 Health Records [~~Amended 11/14/95~~]  
 FCDC 13-15-01 Routine and Emergency Dental Appointments [~~Amended 11/14/95~~]  
 FCDC 13-16-01 Routine and Emergency Eye Examinations [~~Amended 11/14/95~~]  
~~FCDC 13-17-01 Inmate Death (Deleted 8/14/97)~~  
 FCDC 14-01-01 Prohibiting Inmate Authority Over Other Inmates [~~Amended 11/14/95~~]  
 FCDC 14-02-01 Inmate Grievance System [~~Amended 11/14/95~~]  
 FCDC 14-03-01 Inmate Rights and Responsibilities  
 FCDC 14-04-01 Legal Services Program [~~Amended 11/14/95~~]  
 FCDC 15-01-01 Good Time Credits [~~Amended 11/14/95~~]  
 FCDC 15-01-02 Restoration of Forfeited Good Time [~~Added 11/14/95~~]  
 FCDC 15-03-01 Due Process and Disciplinary Procedure (Amended 8/14/97) [Conduct of Adjustment Hearings (Chair person)]  
 FCDC 15-04-01 Detention Orders and Protective Custody Requests (Amended 8/14/97) [~~Amended 11/14/95~~]  
 FCDC 16-01-01 Visiting (Amended 8/14/97)  
 FCDC 16-02-01 Inmate Correspondence [~~Amended 11/14/95~~]  
 FCDC 16-03-01 Inmate Access to Telephones [~~Amended 11/14/95~~]  
 FCDC 16-04-01 Inmate Packages [~~Amended 11/14/95~~]  
 FCDC 17-01-01 Inmate Property Control  
 FCDC 17-01-02 Authorized Inmate Personal Property  
 FCDC 17-02-01 Assessment and Orientation (Amended 8/14/97) [Inmate Reception, Orientation, and Discharge]  
 FCDC 18-01-01 Inmate Classification and Review (Amended 8/14/97) [~~Amended 11/14/95~~]  
 FCDC 19-01-01 Security and Operation of the Governmental Services Program [~~Amended 11/14/95~~]  
 FCDC 19-02-01 Inmate Work Programs [~~Amended 11/14/95~~]  
 FCDC 20-01-01 Academic and Vocational Education [~~Amended 11/14/95~~]  
 FCDC 22-01-01 Privilege Trips [~~Amended 11/14/95~~]  
 FCDC 22-01-03 Shopping Trips [~~Amended 11/14/95~~]  
 FCDC 22-02-01 Recreation and Inmate Activities [~~Amended 11/14/95~~]  
 FCDC 23-01-01 Religious Services [~~Amended 11/14/95~~]  
 FCDC 24-01-01 Social Services Program (Amended 8/14/97)  
 FCDC 24-02-01 Substance Abuse Programs [~~Amended 11/14/95~~]  
 FCDC 25-01-01 Escorted Leaves [~~Amended 11/14/95~~]  
 FCDC 25-03-01 Release Preparation Program [~~Amended 11/14/95~~]

DOUG SAPP, Commissioner

APPROVED BY AGENCY: August 4, 1997

FILED WITH LRC: August 15, 1997 at 8 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation has been scheduled for September 22, 1997 at 9 a.m., in the State Office Building Auditorium. Individuals interested in being heard shall notify this agency in writing by September 15, 1997, five working days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Jack Damron or Tamela Biggs, Staff Attorneys, Department of Corrections, 2nd Floor, State Office Building, Frankfort, Kentucky 40601, telephone number (502) 564-2024, facsimile number (502) 564-6494.

### REGULATORY IMPACT ANALYSIS

Agency Contact Person: Tamela Biggs

(1) Type and number of entities affected: 42 employees of the correctional institutions, 180 inmates, and all visitors to state correctional institutions.

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

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented: None

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented: None

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

1. First year following implementation: None

2. Second and subsequent years: None

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: None

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: Policy revisions.

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

(5) Source of revenue to be used for implementation and enforcement of administrative regulation is the funds budgeted for this 1996-1998 biennium.

(6) Economic impact, including effects of economic activities arising from administrative regulation, on:

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

(b) Kentucky: None

(7) Assessment of alternative methods; reasons why alternatives were rejected: None

(8) Assessment of expected benefits:

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

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

(c) If detrimental effect would result, explain detrimental effect: N/A

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

(a) Necessity of proposed administrative regulation if in conflict: N/A

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: N/A

(10) Any additional information or comments: None

(11) TIERING: Is tiering applied? No. Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it. Disparate treatment of any person or entity subject to this administrative regulation could raise questions of arbitrary action on the part of the agency. The "equal protection" and "due process" clauses of the 14th Amendment of the U.S. Constitution may be implicated as well as Sections 2 and 3 of the Kentucky Constitution: Jack Damron, Department of Corrections, 2nd Floor, State Office Building, Frankfort, Kentucky 40601.



# ADMINISTRATIVE REGISTER - 759

## DEPARTMENT OF STATE POLICE (Amendment)

### 502 KAR 45:145. Merit Pay Program.

RELATES TO: KRS 16.040, 16.050, 16.080

STATUTORY AUTHORITY: KRS 16.040(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 16.050 sets forth the compensation provisions for officers of the Department of State Police. KRS 16.040 and 16.080 vests in the commissioner the authority to adopt administrative regulations relating to the compensation of officers. This administrative regulation establishes the procedure to be used to provide a Merit Pay Program for officers of the Department of State Police.

Section 1. The Commissioner of the Department of State Police may utilize up to fifty (50) percent of funds saved through a combination of high performance levels and staff reduction to grant merit pay awards to officers. Merit pay awards shall be contingent upon the availability of surplus funds within the commissioner's budget and shall be within the sole discretion of the commissioner. A merit pay award shall equal two (2) percent of the officer's annual salary and shall be paid in a lump sum. In the alternative the commissioner may award officers forty (40) additional hours of annual leave.

Section 2. The officer shall meet ~~meets~~ the following standards:

- (1) Attainment of physical fitness standards.
- (2) No more than one (1) accident during the twelve (12) month period involving a state police vehicle in which the officer was at fault.
- (3) No disciplinary action resulting in an official written reprimand, reduction in pay or grade, or involuntary suspension from duty with or without pay.
- (4) No more than forty (40) sick hours taken during the twelve (12) month period, excluding absences due to duty related injuries.
- (5) An officer shall have received an overall average rating of "above standard" (ninety (90) percent or more) on the officer inspection reports completed during each twelve (12) month evaluation period.

Section 3. An officer shall be eligible for only one (1) merit pay award or award of forty (40) hours annual leave in a twelve (12) month period.

Section 4. In order to grant a merit pay award, the commissioner shall submit the personnel action form and written justification.

GARY W. ROSE, Commissioner

APPROVED BY AGENCY: July 28, 1997

FILED WITH LRC: July 28, 1997 at 2 p.m.

PUBLIC HEARING: A public hearing on this proposed administrative regulation shall be held on September 23, 1997, at 10 a.m., at Kentucky 12 State Police Headquarters, Commissioner's Conference Room, 919 Versailles Road, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by September 16, 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 this proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to: Jean Ann Gabbard, Personnel Manager, 919 Versailles Road, Frankfort, Kentucky 40601, (502) 695-6300, Fax: (502) 573-6615.

## REGULATORY IMPACT ANALYSIS

Agency Contact Person: Jean Ann Gabbard

(1) Type and number of entities affected: All sworn officers of the Department of State Police.

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

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

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

(c) Compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition): No significant compliance, reporting or paperwork changes are anticipated.

1. First year following implementation: Not applicable.

2. Second and subsequent years: Not applicable.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings: No significant savings or costs anticipated.

1. First year: Not applicable.

2. Continuing costs or savings: Not applicable.

3. Additional factors increasing or decreasing costs: Not applicable.

(b) Reporting and paperwork requirements:

(4) Assessment of anticipated effect on state and local revenues: No significant impact is seen.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Current, budgeted funds are to be used for implementation. There are no enforcement costs.

(6) To the extent available from the public comments received, the economic impact, including effects of economic activities arising from administrative regulation, on: There is no economic impact anticipated at this time.

(a) Geographical area in which administrative regulation will be implemented: Not applicable.

(b) Kentucky: Not applicable.

(7) Assessment of alternative methods; reasons why alternatives were rejected: No viable alternatives were proposed.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: No public health or environmental impact seen.

(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 in conflict, overlapping, or duplication:

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

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

(10) Any additional information or comments: This amendment is designed to permit appointing authorities greater flexibility in regarding employees for performance and to enable them to be more competitive in recruiting and retaining highly qualified employees.

(11) Tiering: Is tiering applied? No. This regulation applies only to sworn officers of the department of state police.

## ADMINISTRATIVE REGISTER - 760

### EDUCATION, ARTS, AND HUMANITIES CABINET Kentucky Board of Education Department of Education Bureau for Learning Support Services (Amendment)

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

RELATES TO: KRS 156.400 to 156.476, 157.100 to 157.190, 160.345

STATUTORY AUTHORITY: KRS 156.410, 156.433, 156.437, 156.439, 156.474, 156.476, 157.110, 157.130, 157.140, 157.150, 157.160

NECESSITY, FUNCTION, AND CONFORMITY: KRS 156.400 to 156.476 set up the Kentucky Textbook Commission and the statutory policies and procedures for the adoption, purchase, use and distribution of textbooks to be utilized in the schools of the Commonwealth; KRS 157.100 to 157.190 require that the Department of Education set up management procedures for the textbook program. KRS 156.433 and 156.439 require that administrative regulations be written to: define instructional materials; identify instructional materials eligible for purchase with state textbook funds; identify instructional materials which are subject to review before being approved for use; establish a procedure for the review of instructional material and a process for adding an instructional material to the approved list; establish a method for calculating and distributing a school district's textbook and instructional material allocation; and design a planning instrument for each school to use in documenting its textbook and instructional material needs during each adoption period. This administrative regulation establishes the standards and procedures which are necessary to carry out the statutory requirements dealing with textbooks and instructional materials.

Section 1. Definition. "Instructional material" means any print, nonprint or electronic medium of instruction designed to assist students.

Section 2. The content areas included in each year of the textbook and instructional material adoption cycle shall be grouped based on the content areas in the academic expectations (703 KAR 4:060) and the Kentucky Instructional Results Information System (KIRIS) testing groups and (The subjects included in the "Program of Studies for Kentucky Schools", 704 KAR 3:303,) shall be arranged into six (6) groups as follows: Group I - Language Arts and Reading P-12; [Social Studies P-12;] Group II - Social Studies P-12; [Language Arts P-12;] Group III - Science P-12; Group IV - Mathematics P-12; [Music P-12 and Vocational Education 4-12;] Group V - Vocational Studies and Practical Living P-12; and [Mathematics P-12 and Computer Education 6-12;] Group VI - Arts and Humanities P-12, [Reading P-12, Literature, Art, Foreign Language, Health P-12, and Driver Education 10-12.]

Section 3. (1) Vendors submitting bids shall ship adequate textbook and instructional material samples to the Department of Education, individual State Textbook Commission members, and to the state review site before the beginning of the review process. All other pertinent bid information shall be provided by the bid opening.

(2) When the review process has been completed and the individual commission members have no further need for samples in their possession, the samples shall be disposed of in the following manner:

- (a) Reclaimed by publishers; or
- (b) Transferred to local school districts, institutions of higher education, or other appropriate agencies.

Section 4. (1) Each adoption year before establishing the state

list, the State Textbook Commission shall conduct a hearing for the following purposes:

(a) Interviewing publisher agents, representatives and vendors of textbooks and instructional materials; and

(b) Hearing any person or organization that may have complaints or concerns about a textbook or instructional material being considered for listing.

(2) Parties desiring to be heard shall file with the Secretary of the State Textbook Commission a written request two (2) weeks prior to the hearing. The request shall clearly state:

(a) Name and address of the person or organization requesting the hearing;

(b) Title, author, International Standard Book Number, and copyright date of the textbook or instructional material in question;

(c) Sections of the textbook or instructional material being questioned and nature of concern;

(d) Anticipated problems that would be created if the textbook or instructional material is adopted; and

(e) Suggested alternatives.

(3) One (1) spokesperson shall represent a group or organization.

(4) The commission's position and action shall be forwarded to the concerned parties after the state list has been established.

Section 5. (1) The Kentucky State Textbook Commission may inquire into and ascertain if any vendor has violated this administrative regulation or the Kentucky Revised Statutes, or if the vendor has used undue influence or unethical tactics to secure bids or to assure local adoption. Undue influence or unethical tactics shall include actions such as unsolicited contact by vendors or their representatives with members of the State Textbook Commission and the buying for or giving to State Textbook Commission members, local district personnel and review committee members meals, gifts, trips, or entertainment to assure the listing, adoption, and purchase of their textbooks or instructional materials. If there is sufficient evidence that a vendor is guilty, the vendor shall be called before the State Textbook Commission to determine if violations did occur and what course of action shall be taken.

(2) Vendors proposing to give local districts free-of-charge items such as blackline masters, teachers editions, workbooks, and extra textbooks, if the districts adopt and purchase their items, shall file a list of gratis items as an official part of their bid.

(3) In addition to textbook sampling required under KRS 156.440, vendors may sample gratis items to local districts or schools for use in the adoption process. Gratis sampling shall be minimal and not be done in a manner to assure the adoption and purchase of a vendor's textbooks or instructional materials.

(4) The State Textbook Commission may refuse to execute or may cancel a vendor contract upon discovery that the vendor has violated any part of this administrative regulation or does not have the ability to perform all the terms and conditions of the contract.

(5) All bidders for textbook or instructional material contracts shall file with the Department of Education the name and address of a Kentucky person, firm, or corporation upon whom process may be served.

Section 6. Vendors and local school districts or school councils may agree to pilot new textbook and instructional material programs for one (1) school year on a selective and controlled basis to determine the effectiveness of a particular textbook or instructional material program. Piloting shall not be conducted during the fiscal [adoption] year (July 1-June 30 [April]) when purchasing plans are being developed for a subject under consideration [being considered] for adoption by the local districts. The chief state school officer shall approve all piloting programs. The local school district superintendent shall file the request for approval with the chief state school officer. The request shall clearly state:

- (1) The vendor that will conduct the pilot;

- (2) The purpose of the pilot;
- (3) The subject and grade levels in which the pilot shall be conducted;
- (4) The schools where the pilot shall be conducted;
- (5) The name of the school district staff member supervising the pilot;
- (6) Beginning and ending date of pilot; and
- (7) Brief summary of evaluation procedures.

Section 7. Any school administrator, school council chair, or teacher shall not receive directly or indirectly any gift, reward, or promise of a reward for his influence in reviewing and selecting textbooks and instructional materials.

Section 8. (1) Each textbook submitted for adoption in Kentucky shall meet the "Manufacturing Standards and Specifications for Textbooks," developed and approved by the National Association of State Textbook Administrators, in consultation with the Association of American Publishers and the Book Manufacturer's Institute, ~~as revised August 1, 1988. This edition is incorporated by reference and is on file in and can be inspected, copied, and obtained from the Division of Curriculum Development, Department of Education, 18th Floor, Capital Plaza Tower, Frankfort, Monday-Friday, 8 a.m. - 4:30 p.m.~~

(2) Publishers may submit an old copyright with the official bid; however, a revised edition shall be submitted before the commission hearing. Publishers may submit a galley proof, incomplete book, or statement of intent with the official bid; however, the book shall be complete and on file with the State Textbook Commission before the date of the commission hearing. Ancillary materials, including workbooks and teacher editions, shall be completed on or before the July 1 contract date.

Section 9. Inaccurate information, defective binding, workmanship or material shall be reported by school personnel to the vendor as soon as detected. Vendors shall be held responsible for all inaccurate or defective textbooks and instructional materials. Textbooks and instructional materials that show manufacturing defects in the first or second year of use shall be replaced by the vendor on a one-for-one basis. After the first two (2) years of use, a replacement agreement shall be negotiated between the local district and the vendors. School districts shall start the replacement process as soon as it has been determined that textbooks or instructional materials are inaccurate or defective.

Section 10. (1) Request to substitute revised editions of textbooks or instructional materials under contract shall be considered at the first regular meeting of the calendar year of the State Textbook Commission to be held on or before May 1.

(2) Substitutions shall not be permitted for textbooks or instructional material to be used the last year of a contract.

(3) The vendor shall agree to supply either the listed or the substituted item in accordance with local school district's request.

(4) The revised edition shall be at the same price at which the textbook or instructional material was bid and the content shall be compatible for use with the old edition.

(5) The physical materials and workmanship of the revised edition shall be of equal or better quality than the older edition.

(6) Ancillary materials for a substituted textbook or program shall be available at the time the publisher submits substitution request.

(7) Thirty (30) days prior to date of the commission meeting publishers shall provide a sample of the substituted textbook or instructional material and a list of the changes with page numbers of the revised edition or other reference data that compares it with the textbook or program presently listed.

Section 11. The retail price for textbooks or instructional materials

to be used in Kentucky shall not be more than twenty (20) percent in excess of the publisher wholesale price.

Section 12. (1) The State Textbook Commission shall direct the process for including instructional materials used in lieu of basal programs on the state list. The commission shall receive assistance in the review and selection of instructional materials from professional educators and lay citizens who may serve on a contractual basis.

(2) The Commissioner of Education shall recommend to the State Textbook Commission names of instructional material reviewers with knowledge about the area or areas being considered for adoption.

(3) The State Textbook Commission shall:

(a) Appoint, from a list of qualified applicants prepared by the Commissioner of Education, twelve (12) instructional material reviewers;

(b) Approve the evaluative criteria and instruments of evaluation developed by the instructional material reviewers; and

(c) Select, approve, and publish a list of high quality instructional materials using the information submitted by the reviewers.

(4) The instructional material reviewers shall:

(a) Be comprised of twelve (12) individuals. Four (4) shall be classroom teachers with expertise in the content area considered for adoption and shall be actively employed in a public school; two (2) shall be other educators; two (2) shall have expertise and experience working with instructional technology; one (1) shall be a library/instructional media specialist; one (1) shall have expertise in alternative ways of learning; and, two (2) shall be parents with children currently enrolled in the public schools;

(b) Represent gender, grade level, geographic, and ethnic diversity;

(c) Attend meetings and training sessions as requested by the Department of Education;

(d) Develop and submit to the State Textbook Commission an instrument of evaluation to be used in reviewing instructional materials;

(e) Review instructional material except those that are ancillary to basal textbook programs to determine those of high quality using the instrument of evaluation approved by the State Textbook Commission; and

(f) Submit to the State Textbook Commission their recommendations for instructional material to be placed on the state's approved list and shall submit the instruments used in the evaluation process.

(5) Electronic instructional materials shall be reviewed and approved by the Kentucky Education Technology System and shall not be subject to approval by the State Textbook Commission.

Section 13. (1) Schools may use state textbook funds for the purchase of adopted textbooks, instructional materials, or programs in any combination based on identified pupil needs. Purchases may include the following:

(a) Textbooks on the commission's approved list;

(b) Instructional materials on the commission's approved list;

(c) Electronic instructional materials on the Kentucky Education Technology System approved list; and

(d) Items not on the above named approved lists but that meet selection criteria.

(2) Instructional material not subject to state review but eligible for purchase shall include the following:

(a) Reference books, trade books, pamphlets, periodicals, and other supplemental print material for student use;

(b) Supplementary video tapes, cassette tapes, slides, and recordings;

(c) Graphic materials, transparencies, globes, maps, music material, math and science manipulatives, calculators, and similar material; and

(d) Supplementary electronic instructional materials.

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(3) The following materials and services shall not be eligible to be purchased with state textbook funds:

(a) Furniture, personnel services, testing programs, supplies and materials consumed in initial use such as workbooks, raw and blank materials.

(b) Audio visual equipment, major audio-visual installations such as public address systems, sound laboratories ~~[for language]~~, computers, televisions (including receiving sets and related equipment) and other equipment; and

(c) Teacher resources including teachers' guides, manuals, and backline master books.

Section 14. (1) Every school in the Commonwealth with grades primary through eight (8) shall complete an annual plan identifying purchases to be made with textbook funds according to the adoption cycle including necessary replacements. These plans may be revised.

(2) Each school's plan shall be kept on file in the district's central office, and the superintendent shall certify by a letter to the Kentucky Department of Education that all approved plans have been received and meet Kentucky Department of Education standards.

Section 15. (1) Pupils in grades primary through twelve (12) with impaired vision shall be considered eligible for the use of textbooks and materials in clear type of eighteen (18) to twenty-four (24) points upon certification by an eye specialist as follows:

(a) Pupils who cannot read more than 20/70 on a Standard Snellen Chart with the better eye after correction; and

(b) Pupils with progressive eye difficulties, including those with progressive myopia, even though glasses may bring the vision nearly to normal, and pupils who suffer from noncommunicable diseases of the eye or diseases of the body that seriously affect the vision.

(2) Certification of pupils' visual impairment shall be made by local school districts to the Department of Education.

(3) Request for large print textbooks and material shall be directed to the Kentucky School for the Blind.

(4) The local board of education shall assume responsibility for the care of large print textbooks and return them to the Kentucky School for the Blind when no longer needed.

(5) Large print textbooks and materials provided by the Kentucky School for the Blind shall not be charged to the textbook account of the local school.

Section 16. (1) The Department of Education shall prepare textbook and instructional material budgets annually and allocate funds to local school districts, based upon the Kentucky General Assembly biennial appropriation, for the purpose of purchasing basal textbook and instructional material programs during each adoption or funding cycle. The funds shall be used for students in primary through grade eight (8), exclusively.

(2) When allocating funds for the purchase of textbooks and instructional materials, the Department of Education shall use the pupil membership at the close of the second ~~[first]~~ month of the current school year.

(3) After receiving a statement of funds allocated, the superintendent shall notify within thirty (30) days the school council, or if none exists, the principal, of the per-pupil allotment to be expended by each school.

(4) Money appropriated in the current fiscal year shall be spent on textbooks and instructional materials in that year's adoption cycle. Money carried over to the next fiscal year may be spent by each school on textbooks and instructional materials in accordance with its plan.

(5) After July 1, checks shall be issued to districts having on file in the Kentucky Department of Education a statement from the superintendent certifying the receipt of all approved plans.

(6) Local school districts shall establish and maintain accounts that reflect the receipt and expenditures of state textbook and

instructional material funds. These accounts shall be subject to audit.

Section 17. (1) Local school districts shall establish and maintain a textbook rental program for grades nine (9) through twelve (12). This shall not prohibit local districts from using local funds to provide a free textbook program.

(2) Local school districts not providing a free textbook program for grades nine (9) through twelve (12) shall establish annually a textbook rental fee. The maximum rental fee shall be based on eight ~~(8) [six (6)]~~ dollars per one ~~(1)~~ Carnegie credit [two (2) semester] course that requires the use of basal textbooks. Local school districts, at their option, may charge a deposit fee not to exceed four ~~(4) [three (3)]~~ dollars per one ~~(1)~~ Carnegie credit [two (2) semester] course to be refunded if textbooks are returned in satisfactory condition. Textbook rental fees for pupils enrolled for less than a full school year shall be prorated based on the number of days of membership.

(3) Local school districts shall establish and maintain accounts for the textbook rental program subject to audit. The school council, or if none exists, the principal, shall be notified regarding the school's balance.

Section 18. (1) All textbooks shall be labeled as property of the Commonwealth of Kentucky. For economy in administration, the uniform label shall be affixed by the publishers in accordance with the "Manufacturing Standards and Specifications for Textbooks." The purchase date and the issue date shall be recorded on the uniform label.

(2) Textbook uniform labels shall not be completed until an examination of the shipment shows that it agrees in detail with the purchase order. A textbook with label completed shall be classified as a used textbook.

(3) A complete record shall be kept by the school for all state-provided textbooks and instructional materials for grades primary through eight (8) and all textbooks purchased with pupil rental fees for grades nine (9) through twelve (12).

Section 19. Pupils or parents shall compensate schools for textbooks and instructional materials lost, damaged, or destroyed while in their possession and the compensation shall be as follows: 100 percent of retail cost for one (1) and two (2) year old textbooks and instructional materials; seventy-five (75) percent of retail cost for three (3) and four (4) year old textbooks and instructional materials; and twenty-five (25) percent of retail cost for five (5) and six (6) year old textbooks and instructional materials. Funds collected shall be credited to the school's textbook account.

Section 20. (1) The local superintendent shall assume responsibility for the disposal of textbooks no longer suitable for classroom instruction and may dispose of them in the following manner:

(a) Make the textbooks available to teachers for use in grouping, reference, supplementary and other classroom activities;

(b) Make the textbooks available to pupils within the school district;

(c) Publicize in the local newspaper that textbooks are available to individual residents of the local district. Textbooks disposed of in this manner shall not be made available to used textbook dealers;

(d) Make the textbooks available to civic organizations or others for the purpose of distribution to underdeveloped countries or disadvantaged students;

(e) Make the textbooks available to recycling operations;

(f) Sell textbooks to used textbook dealers; or

(g) Destroy textbooks in any manner that is practical and in the best interest of the state and local school district.

(2) Any funds from the sale of the textbooks shall be credited to the school's textbook account.

Section 21. (1) No child shall be denied full participation in any

## ADMINISTRATIVE REGISTER - 763

educational program due to an inability to purchase any necessary textbooks. Local school districts shall make available free textbooks to all children in grades nine (9) through twelve (12) who are unable to rent or purchase textbooks, using the eligibility guidelines for the free and reduced price lunch program. The parents of these children may be asked to contribute financially toward the rental and deposit cost of their children's textbooks the same percentage that they contribute financially toward the cost of their children's lunches.

(2) Local school districts shall adopt policies and procedures so that, at the beginning of the school year, pupils or their parents are given written notice of how to obtain free and reduced rental textbooks. The policies and procedures shall also insure that any written communication regarding payment of fees for textbooks shall include a form that parents can use to request waiver or partial waiver of textbook fees.

(3) Local districts shall keep records that include:

(a) The numbers of pupils in grades nine (9) through twelve (12) receiving free lunches and reduced price lunches;

(b) The number of pupils in grades nine (9) through twelve (12) who request or apply for, or whose parents request or apply for, free or reduced rental textbooks and the number of pupils receiving free or reduced rental textbooks; and

(c) Copies of any forms, notices or instructions used by schools in the collection of textbook fees or the provision of free or reduced rental textbooks.

(4) In the provision of textbooks to indigent children, no child shall be discriminated against because of race, sex, color, national origin, age, or disability and there shall be no overt identification of any indigent children.

Section 22. (1) Every public school student shall have access to necessary textbook(s) or instructional material(s) which shall be furnished free of charge in grades primary through eight (8), and, except for students otherwise partially or wholly exempted from the rental fee, shall have the textbook(s) available for the reasonable rental fee set forth in Section 17 of this administrative regulation for each subject studied in grades nine (9) through twelve (12).

(2) Quantities of textbooks and instructional materials needed for each student and each classroom shall be determined at the school level.

Section 23. The "Manufacturing Standards and Specifications for Textbooks", dated September 1, 1996, is incorporated herein by reference and may be obtained, copied, and inspected at the Division of Curriculum and Assessment Development, Department of Education, 18th Floor, Capital Plaza Tower, Frankfort, Kentucky, 40601, Monday-Friday, 8 a.m. through 4:30 p.m.

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

Wilmer S. Cody, Commissioner

JOSEPH W. KELLY, Chairman

APPROVED BY AGENCY: August 11, 1997

FILED WITH LRC: August 11, 1997 at 11 am.

PUBLIC HEARING: A public hearing on this proposed administrative regulation shall be held on September 26, 1997, at 10 a.m., in the State Board Room, First Floor, Capital Plaza Tower, 500 Mero Street, Frankfort, Kentucky. Individuals interested in being heard at this meeting shall notify this agency in writing by September 19, 1997, five working days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to

comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to Mr. Kevin M. Noland, Associate Commissioner, Office of Legal Services, Department of Education, 500 Mero Street, First Floor, Capital Plaza Tower, Frankfort, Kentucky 40601, phone (502) 564-4474, fax (502) 564-9321.

### REGULATORY IMPACT ANALYSIS

Contact Person: Carol Tuning

(1) Type and number of entities affected: 176 school districts.

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

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

(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: None

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

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication:

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

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

(10) Any additional information or comments: None

(11) TIERING: Is tiering applied? (Explain why tiering was or was not used) No. Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all entities regulated by it.

## ADMINISTRATIVE REGISTER - 764

### PUBLIC PROTECTION AND REGULATION CABINET Department of Insurance (Amendment)

#### 806 KAR 39:070. Proof of motor vehicle insurance.

RELATES TO: KRS 186.021, 186A.040, 186A.095, 304.12-020, 304.39-080, 304.39-085, 304.39-090 ~~[(HB 317)]~~

STATUTORY AUTHORITY: KRS 186.021, 304.2-110, 304.39-300  
NECESSITY, FUNCTION, AND CONFORMITY: KRS 304.2-110 provides that the Commissioner of Insurance may make reasonable administrative regulations necessary for or as an aid to the effectuation of any provision of the Kentucky Insurance Code. KRS 304.39-300 provides that the Commissioner of Insurance may make administrative regulations to provide for the effective administration of the Kentucky Motor Vehicle Reparations Act. KRS 186.021 requires the Commissioner of Insurance to adopt administrative regulations prescribing the manner in which proof of compliance with KRS 304.39-080 is presented to county clerks when motor vehicles are renewed, transferred, issued a plate or decal replacement or issued a first-time registration. ~~[renewing the registrations of motor vehicles.]~~

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

(1) "Commissioner" means the Commissioner of the Kentucky Department of Insurance.

(2) "Insurer" means all insurers providing security covering a motor vehicle pursuant to KRS 304.39 and self-insurers pursuant to KRS 304.39-080 and 806 KAR 39:050.

(3) "Motor vehicle insurance policy" means an insurance contract purporting to provide security covering a motor vehicle pursuant to KRS 304.39.

(4) "Person" has the meaning set forth in KRS 304.1-020.

(5) "Written proof of motor vehicle insurance" means the document prescribed by Section 2 of this administrative regulation.

Section 2. Written Proof of Motor Vehicle Insurance to be Provided by Insurers. (1) Each insurer issuing an insurance contract which provides security covering a motor vehicle shall provide to the named insured ~~[on or before January 1, 1985,]~~ written proof that the insurer has in effect an insurance contract providing security in conformity with KRS 304.39. ~~[Generally, the written proof of motor vehicle insurance should be mailed to the named insured at the latest address of record with the insurer. However, the written proof of motor vehicle insurance may be distributed to the named insured in any manner reasonably calculated to put the written proof of motor vehicle insurance in the possession of the named insured on or before January 1, 1985.]~~

(2) Provision of written proof of motor vehicle insurance for new and renewal motor vehicle insurance policies.

(a) Written proof of motor vehicle insurance shall be provided ~~[annually]~~ upon renewal of motor vehicle insurance policies.

(b) Each new policy of motor vehicle insurance issued after the effective date of this administrative regulation shall be accompanied by written proof of motor vehicle insurance. ~~[Insurers should be aware that new policies of motor vehicle insurance issued shortly before January 1, 1985, should be accompanied by written proof of motor vehicle insurance because of the need to have proof of motor vehicle insurance available for registration renewal following January 1, 1985.]~~

(c) All motor vehicle insurance policies issued after insurers make the initial delivery of written proof of motor vehicle insurance shall be accompanied by written proof of motor vehicle insurance.

(3) Copies of the written proof of motor vehicle insurance.

(a) If the motor vehicle insurance policy covers four (4) or less vehicles, a single written proof of motor vehicle insurance shall be provided for each motor vehicle. Two (2) copies of the written proof of motor vehicle insurance shall be provided for each motor vehicle

insured under a motor vehicle insurance policy.

(b) If the motor vehicle insurance policy covers five (5) or more vehicles, a copy of the written proof of motor vehicle insurance shall be provided for each vehicle covered by the policy. Sufficient copies of the written proof of motor vehicle insurance shall be provided to the policyholder so that the policyholder will have a single written proof of motor vehicle insurance for the county clerk of each county in which the policyholder has motor vehicles registered.

(4) Guidelines for size and format of the written proof of motor vehicle insurance. The written proof of motor vehicle insurance shall be of a size that allows it to be carried in a billfold or with the motor vehicle registration.

(a) The written proof of motor vehicle insurance shall take one of the following forms:

1. A two and one-fourth (2 1/4) inch by three and one-half (3 1/2) inch card;

2. A two and one-fourth (2 1/4) inch by seven (7) inch card with a vertical fold resulting in a two and one-fourth (2 1/4) inch by three and one-half (3 1/2) inch card; or

3. A four and one-half (4 1/2) inch by three and one-half (3 1/2) inch card with a horizontal fold resulting in a two and one-fourth (2 1/4) inch by three and one-half (3 1/2) inch card.

(b) Slight variations from the sizes listed in paragraph (a) of this subsection shall be permitted.

(c) The written proof of motor vehicle insurance shall be on white paper with black or blue ink.

(5) Mandatory contents of the written proof of motor vehicle insurance. The written proof of motor vehicle insurance shall prominently display on its face the following information, to appear in approximately the order listed:

(a) Title of the document: "COMMONWEALTH OF KENTUCKY PROOF OF INSURANCE."

(b) The name of the insurance company and its three (3) digit code number assigned by the Department of Insurance.

(c) The name of the named insured.

(d) The effective date and expiration date of coverage.

(e) The policy number.

(f) The motor vehicle identification: year, make or model, and vehicle identification number of the motor vehicle. If the insurance contract covers five (5) or more motor vehicles, it will state "Fleet."

(6) Optional contents of the written proof of motor vehicle insurance.

(a) At the option of the insurer, the written proof of motor vehicle insurance may include the following information:

1. The insurer's logo.

2. A statement as to how to contact the insurer concerning claims.

3. The insurer's address.

4. The named insured's address.

(b) At the option of the insurer, the information listed in paragraph (a) of this subsection may also be contained on material separate from the written proof of motor vehicle insurance and mailed along with it.

(c) The optional information listed in paragraph (a) of this subsection shall not obscure the mandatory information listed in subsection (5) of this section.

(7) Instructions for use of the written proof of motor vehicle insurance. Insurers shall furnish with the written proof of motor vehicle insurance instructions to the effect that one (1) copy of the written proof of motor vehicle insurance must be given to the county clerk to obtain a [for] registration [renewal] and that the other copy shall be kept in the vehicle it relates to and shown to peace officers on request. If the policy covers five (5) or more motor vehicles, the instructions shall state that written proof of motor vehicle insurance shall be kept in the motor vehicle covered by the policy and shown to peace officers on request and that an additional copy or copies of the written proof of the motor vehicle insurance must be retained and



given to the county clerk of each county where the insured has motor vehicles currently registered or the county where the insured desires to obtain a registration [for registration renewal]. Motorcycle insurers shall advise policyholders that they must carry written proof of motor vehicle insurance on their persons or in an appropriate place on the motorcycle. The instructions shall state that if the VIN on the motor vehicle registration and the VIN on the motor vehicle do not match, the policyholder must contact the county clerk to have the VIN on the motor vehicle registration corrected. The instructions shall state that if the VIN on the written proof of motor vehicle insurance and the motor vehicle do not match, the policyholder must contact the insurance company to have the VIN on the written proof of motor vehicle insurance corrected. The insurer shall provide the name, address, and telephone number (preferably a toll-free number) of an insurer representative to contact concerning the discrepancy in numbers. The latter requirement is met if the insurer directs the insured to contact a local agent of the insurer.

(8) Optional filing and approval of the written proof of motor vehicle insurance with the commissioner; disapproval of the written proof of motor vehicle insurance by the commissioner.

(a) At the option of the insurer, the written proof of motor vehicle insurance may be filed with the commissioner for approval. An [No] insurer shall not be subject to disciplinary action by the commissioner as long as the approval provided for by this paragraph remains in effect.

(b) The commissioner may disapprove an insurer's written proof of motor vehicle insurance or its use if he finds that it violates this administrative regulation, any provision of the Kentucky insurance code or administrative regulations, or that the insurer's written proof of motor vehicle insurance or its use is unfair or deceptive.

(9) In light of the provisions of KRS 186A.040 and 304.39-085 requiring information on motor vehicle insurance cancellations and nonrenewals to be reported to the Transportation Cabinet and placed on the automated vehicle information system and further requiring the Transportation Cabinet to notify the named insured to obtain replacement motor vehicle insurance following cancellation or nonrenewal of a motor vehicle insurance contract, the fact that a person has in his or her possession a written proof of motor vehicle insurance for an insurance contract which has been terminated shall not be construed as meaning that the insurance contract is in effect.

Section 3. Alternative Methods of Proving Motor Vehicle Insurance. A person may use the following alternative methods to prove that motor vehicle insurance is in effect when registering a motor vehicle:

(1) A certificate of insurance issued by a general lines insurance agent licensed by Kentucky. [The certificate shall be on a form prescribed by the commissioner.]

(2) [The county clerk's review of the records contained in the automated vehicle information system.]

~~(3)~~ An insurance contract with a declaration page attached showing that the policy is in effect at the time the motor vehicle is being registered or transferred.

(3) ~~(4)~~ A letter from the Kentucky Automobile Insurance Plan serving as prima facie evidence of insurance in force.

(4) ~~(5)~~ When the owner of the motor vehicle is serving in the armed forces outside Kentucky, an affidavit by the provost marshal of the base where such person is stationed stating that the motor vehicle in question is covered by an automobile liability insurance policy.

Section 4. Information to be Submitted by Insurers on Cancellation and Nonrenewal of Motor Vehicle Insurance Policies. (1) Insurers shall submit information on motor vehicle insurance policy cancellations and nonrenewals on computer cartridges, three and one-half (3 1/2) inch diskettes, or magnetic tape unless:

(a) The insurer submits notices on less than fifty (50) policies per

accounting month;

(b) The use of computer cartridges, three and one-half (3 1/2) inch diskettes, or magnetic tape will be an unreasonable burden on the insurer; or

(c) Other good cause not to use computer cartridges, three and one-half (3 1/2) inch diskettes, or magnetic tape is shown.

(2) [Any such] Information on computer cartridges, three and one-half (3 1/2) inch diskettes, or magnetic tape shall be [on computer tape] compatible with the cancellation tape data entry format [standards] prescribed by the Department of Vehicle Regulation and the Department of Information Systems, which is incorporated by reference.

(3) Cartridges, three and one-half (3 1/2) inch diskettes, or magnetic tapes that are not in the format specified by the Department of Vehicle Regulation and the Department of Information Systems shall be returned to the insurer for correction.

(4) Any report submitted [such information] in writing for less than fifty (50) policies shall be on [in] the form No. TC96-31, Manual Report of Insurance Cancellation (fifty (50) or less) prescribed by the Department of Vehicle Regulation, which is incorporated by reference.

(5) ~~[(4)]~~ Information required upon cancellation and nonrenewal.

(a) If the motor vehicle insurance policy covers four (4) or less motor vehicles, insurers shall provide the following information:

1. Vehicle identification number(s).
2. Year(s) and make(s) or model(s) of the motor vehicle(s).
3. Name of the named insured.
4. Policy number.
5. Company code.
6. Effective date of the termination of the motor vehicle insurance policy.

7. Street, city, state, and zip code of the named insured.

8. Format number denoting the type of media used for the insurance data.

9. Effective date of the original policy.

10. The Social Security number or driver's license number of the named insured.

11. The code denoting whether the policy was a cancellation or a nonrenewal.

(b) If the motor vehicle insurance policy covers five (5) or more motor vehicles, insurers shall provide the information required by paragraph (a) of this subsection, except that the vehicle identification numbers, years, and makes or models of the covered motor vehicles need not be given. In place of this information, the notice will state "Fleet."

(6) ~~[(5)]~~ Insurers shall attempt to edit their lists of cancellations and nonrenewals prior to submitting them to the Department of Vehicle Regulation in order to eliminate policyholders whose policies were terminated and then reinstated or terminated and replaced by a policy issued by the same insurer. Both the Department of Insurance and the Department of Vehicle Regulation understand that the technology to accomplish this may not be available to all insurers, but an attempt should be made in order to determine the feasibility of such editing.

Section 5. Information to be Submitted by Insurance Agents on Cancellation of Binders or Contracts of Temporary Insurance. (1) Insurance agents shall submit information on motor vehicle cancellations of binders or temporary insurance contracts on form TC96-30.

(2) Insurance agents shall only submit form TC96-30 to the Department of Vehicle Regulation whenever the purchaser of the binder or temporary insurance contract cancels before the agent has submitted the application to the insurance company.

Section 6. Incorporation by Reference. (1) The following material is incorporated by reference:

- (a) Cancellation Tape Data Entry Format "1996 edition"; and
- (b) Form No. TC96-31, Manual Report of Insurance Cancellation

(50 or less) "Nov. 1996 edition"; and

(c) Form No. TC96-30, Motor Vehicle Insurance Agent Insurance Binder Cancellation Form "Sept. 1996 edition".

(2) This material may be inspected, copied, or obtained at Kentucky Department of Vehicle Regulation, Division of Motor Vehicle Licensing, P.O. Box 2014, State Office Building, Room 205, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m. ~~[Severability. If any provision of this administrative regulation or the application thereof to any person or circumstance is for any reason held to be invalid, the remainder of this administrative regulation and the application of such provision to other persons or circumstances shall not be affected thereby.]~~

~~Section 6. Effective Date. (1) This administrative regulation shall become effective January 1, 1985.~~

~~(2) However, insurers should be aware that the requirements of this administrative regulation contemplate considerable preparatory activities on their part prior to January 1, 1985, in order to comply by that date.]~~

GEORGE NICHOLS III, Commissioner  
LAURA M. DOUGLAS, Secretary

APPROVED BY AGENCY: August 4, 1997

FILED WITH LRC: August 8, 1997 at 4 p.m.

PUBLIC HEARING: A public hearing on the administrative regulation shall be held on September 22, 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 September 15, 1997, five (5) working days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on 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 4:30 p.m. (ET), on September 22, 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: Sharron S. Burton, Counsel, Kentucky Department of Insurance, 215 West Main Street, P.O. Box 517, Frankfort, Kentucky 40602, Telephone Number: (502) 564-6032, Ext. 249, Fax Number: (502) 564-1456.

#### REGULATORY IMPACT ANALYSIS

Contact Person: Sharron S. Burton.

(1) Type and number of entities affected: This administrative regulation affects all persons who produce motor vehicle insurance policies in Kentucky. There are approximately 275 insurers which produce motor vehicle insurance policies in Kentucky. There are approximately 12,500 general lines agents licensed in Kentucky who have the authority to produce motor vehicle insurance policies. There are 250 agents licensed in Kentucky who are authorized to produce motor vehicle liability insurance policies only.

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

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: The department has received no public comments regarding 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 received no public comments regarding this issue.

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

1. First year following implementation: Each insurer issuing an insurance contract which provides security covering a motor vehicle is required to include the expiration date of the coverage on the written proof of motor vehicle insurance. This administrative regulation prescribes the format in which insurers issuing insurance contracts covering motor vehicles must report cancellations and nonrenewals to the Department of Vehicle Regulation. Lastly, this administrative regulation requires agents to report information regarding the cancellation of binders or temporary insurance contracts on motor vehicles to the Department of Vehicle Regulation.

2. Second and subsequent years: The reporting requirements for the first year following implementation of this administrative regulation will remain in effect for the second and subsequent years.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: There will be no direct or indirect costs or savings on the Department of Insurance. The Department of Vehicle Regulation will incur a minimal cost of collecting data from agents regarding cancellations of binders or contracts of temporary insurance. Otherwise, this administrative regulation prescribes an electronic reporting format for insurers which will reduce costs of the Department of Vehicle Regulation which are generally associated with collecting the required data from insurers.

2. Continuing costs or savings: The Department of Vehicle Regulation will continually incur the costs of collecting data from agents. The savings associated with collecting required data from the insurers in an electronic format will also continue.

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: This administrative regulation requires agents to report cancellations of binders or contracts of temporary insurance to the Department of Vehicle Regulation. This report will be submitted on a form prescribed by the Department of Vehicle Regulation. This administrative regulation also prescribes an electronic format to be used by insurers who must report data to the Department of Vehicle Regulation. The electronic format will decrease the amount of paperwork currently being produced by the reporting requirements of this administrative regulation.

(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 ordinary budget for the Department of Insurance will be used for the enforcement of this administrative regulation. The ordinary budget for the Department of Vehicle Regulation will be used for the implementation of this administrative regulation.

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

(a) Geographical area in which administrative regulation will be implemented: The department has received no public comments regarding this issue.

(b) Kentucky: The department has received no public comments regarding this issue.

(7) Assessment of alternative methods; reasons why alternatives were rejected: The alternative to this administrative regulation would be to continue accepting the required filings in hard copy format. The amendment, by requiring the filings in an electronic format, allows the Department of Vehicle Regulation to collect and organize the required data more easily. This administrative regulation also prescribes forms on which the data must be submitted which will make collection of the data more uniform.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of

the geographical area in which implemented and on Kentucky: The data required by this administrative regulation gives notice to the Department of Vehicle Regulation of motor vehicle insurance policies which have been canceled or nonrenewed. The ultimate effect will be to give notice to the Department of Vehicle Regulation of those individuals who are driving on Kentucky roadways without the proper security covering their motor vehicles.

(b) State whether a detrimental effect on environment and public health would result if not implemented: Yes. A detrimental effect on public health would result if this administrative regulation was not implemented.

(c) If detrimental effect would result, explain detrimental effect: This administrative regulation aids the Department of Vehicle Regulation and the Department of Insurance in the enforcement of the provisions of the Kentucky Motor Vehicle Repairs Act. Compliance with the Motor Vehicle Repairs Act assures that individuals have procured insurance covering basic repair benefits and legal liability arising out of the ownership, operation, or use of motor vehicles. Without the requirements established by this administrative regulation, the Department of Vehicle Regulation and the Department of Insurance would have no notice of noncompliance with the Motor Vehicle Repairs Act. Absence such notice, the departments would not have the means to determine whether or not persons are properly securing insurance on their motor vehicles.

(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: No conflict exists.

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

(10) Any additional information or comments: Pursuant to KRS 186.021, the Commissioner of Insurance is charged with the duty of promulgating administrative regulations which prescribe the manner in which proof of compliance or noncompliance with KRS 304.39-080 must be reported. Pursuant to KRS 186.021, the reporting requirements for cancellations or nonrenewals of motor vehicle insurance policies is effectuated through the promulgation of the amendment to 806 KAR 39:070 by the Department of Insurance. This administrative regulation has been promulgated with input and comment from the Department of Vehicle Regulation.

(11) TIERING: Is tiering applied? Tiering is not applied as this administrative regulation applies to all insurers which provide security covering a motor vehicle pursuant to KRS 304.39 and self-insurers pursuant to KRS 304.39-080 and 806 KAR 39:050. With respect to agents, tiering is not applied as this administrative regulation applies to all agents licensed to sell motor vehicle insurance contracts.

**PUBLIC PROTECTION AND REGULATION CABINET**  
**Department of Housing, Buildings and Construction**  
**Office of State Fire Marshal**  
**(Amendment)**

**815 KAR 35:015. Certification of electrical inspectors.**

RELATES TO: KRS Chapter 227

STATUTORY AUTHORITY: KRS 13A.100, 227.489

NECESSITY, FUNCTION, AND CONFORMITY: The Commissioner of the Department of Housing, Buildings and Construction is required by KRS 227.489 to certify electrical inspectors based on standards of the National Electrical Code. This administrative regulation is needed to establish the procedures for achieving and maintaining the certification. This amendment is necessary to establish a minimum number of continuing education hours each inspector shall attend each year and clarify that the use of a temporary sticker is at the discretion of the inspector.

Section 1. Definitions. (1) "Applicant" means the person seeking to be certified as an electrical inspector.

(2) "Authority having jurisdiction" as used in the National Electrical Code means the Department of Housing, Buildings and Construction.

(3) "Certified electrical inspector" means a ~~any~~ person who has:

(a) Met the criteria established by the commissioner;

(b) Satisfactorily passed the examination as required by this administrative regulation; and

(c) Received a certificate of compliance ~~attesting thereto~~.

(d) The categories of certified electrical inspector are:

1. ~~(a)~~ One (1) and two (2) family - a person who has ~~persons who have~~ passed the applicable NCPCCI examination and a person ~~persons~~ classified as a residential inspector ~~inspectors~~ on the effective date of this administrative regulation ~~These inspectors~~ shall be deemed qualified to perform electrical inspections and approve electrical installations related to one (1) and two (2) family dwellings and mobile homes.

2. ~~only-~~

~~(b)~~ General - a person who has ~~persons who have~~ passed the applicable NCPCCI examination ~~of the same name~~ and a person ~~persons~~ classified as a commercial inspector ~~inspectors~~ on the effective date of this administrative regulation ~~These inspectors~~ shall be deemed qualified to inspect and approve all types of residential, commercial, industrial and other properties which require electrical inspection.

(4) "Code" means the National Electrical Code (NEC) and any amendments adopted by the department.

(5) "Commissioner" means the Commissioner of the Department of Housing, Buildings and Construction.

(6) "Department" means the Department of Housing, Buildings and Construction.

(7) "Electrical" means the installation of wires and conduits for the purpose of transmitting electricity and the installation of related fixtures and equipment.

(8) "Electrical industry" means those engaged in the generation, transmission and distribution of electricity and the design, manufacture, construction, installation, alteration or repair of electrical wiring facilities and apparatus for the utilization of electricity.

(9) "Employee" means one who is employed on a full-time, part-time, or contractual basis.

(10) "Temporary certification" means a certificate issued by the department which is valid for a limited period of time. The department shall issue temporary certification to qualified persons under the conditions of Section 4 of this administrative regulation.

(11) "NCPCCI" means National Certification Program for Construction Code Inspectors which administers examinations developed by national code enforcement organizations in collaboration with the Educational Testing Service for the purpose of providing nationally recognized evidence of competence in construction code enforcement.

Section 2. Applicability. This administrative regulation shall apply to all electrical inspectors in the Commonwealth of Kentucky and to applicants for certification as electrical inspectors.

Section 3. Responsibilities of the Commissioner of the Department of Housing, Buildings and Construction. (1) The Commissioner of the Department of Housing shall require inspectors to be certified. Examinations shall be based on the edition of the National Electrical Code adopted in the Kentucky Building Code.

(2) The commissioner shall administer this administrative regulation, provide for continuing education of certified electrical inspectors and schedule examinations at regular intervals.

(3) ~~It shall be the duty of~~ The commissioner shall ~~to~~ investigate all complaints of alleged misconduct of any electrical inspector as certified under this administrative regulation if ~~in the opinion of the commissioner,~~ there is sufficient evidence to suggest that misconduct

exists.

Section 4. Applications Requirements for Temporary Certification. Prior to being examined by the department for "temporary certification" as an electrical inspector, an applicant[s] shall comply with the following:

(1) An applicant [Applicants] under "one (1) and two (2) family dwelling" category shall meet the following requirements:

(a) An applicant shall have not less than five (5) years of experience immediately preceding the application in the installation and design of all types of residential wiring systems installed in accordance with the National Electrical Code or shall be a registered professional electrical engineer engaged in his profession for not less than three (3) years; and

EXCEPTION: In circumstances where an applicant cannot show the precise experience required above, the applicant may request to appear before the electrical advisory committee to establish his background in electrical construction familiarity through other means. The electrical advisory committee shall review the documentation and approve the applicant under this section if it is satisfied that the level of exposure to construction practices is substantially equivalent.

(b) The applicant shall possess the ability to read and write the English language and possess a general educational level satisfactory to perform his duties; and

(c) The applicant shall submit a duly notarized application, which shall be supplied by the department on request, containing all pertinent personal information and experience. The application [Applications] shall be received by the department at least thirty (30) days prior to the next scheduled electrical advisory committee meeting; and

(d) An application [Applications] for temporary certification shall be accompanied by a written statement of need for certification from the local official responsible for the electrical or building inspection program; and

(e) A fee of twenty-five (25) dollars shall accompany the application, consisting of a check or money order payable to the State Treasurer, Commonwealth of Kentucky.

(2) An applicant [Applicants] under the "general" category shall meet the following requirements:

(a) An applicant shall have not less than five (5) years of experience immediately preceding the application in the installation and/or design of all types residential, commercial and industrial wiring systems installed in accordance with the National Electrical Code or shall be a registered professional electrical engineer engaged in his profession for not less than three (3) years.

EXCEPTION: In circumstances where an applicant cannot show the precise experience required above, the applicant may request to appear before the electrical advisory committee to establish his background in electrical construction familiarity through other means. The electrical advisory committee shall review the documentation and approve the applicant under this section if it is satisfied that the level of exposure to construction practices is substantially equivalent.

(b) An [The] applicant shall possess the ability to read and write the English language and possess a general educational level satisfactory to perform his duties; and

(c) An [The] applicant shall submit a duly notarized application, which shall be supplied by the department on request, containing all pertinent personal information and experience. The application [Applications] shall be received by the department at least thirty (30) days prior to the next scheduled electrical advisory committee meeting; and

(d) An application [Applications] for temporary certification shall be accompanied by a written statement of need for certification from the local official responsible for the electrical or building inspection program; and

(e) A fee of twenty-five (25) dollars shall accompany the application, consisting of a check or money order payable to the State

Treasurer, Commonwealth of Kentucky.

(3) An applicant [Applicants] shall receive credit earned for any electrical courses satisfactorily completed from an [any] accredited vocational school or college on a year-for-year basis. Credit for education to replace an applicant's experience requirements shall be limited to a total of two (2) years.

(4) The electrical advisory committee shall review all applicants for temporary certification to determine their eligibility to sit for the examination.

(5) Temporary certification shall expire at the end of nine (9) months from the time of initial certification and shall not be reissued.

Section 5. Examinations for Temporary Certification. (1) Following the review and acceptance of the applicant's qualifications by the electrical advisory committee, the applicant shall pass the department's written examination for the class of temporary certification.

(2) Examinations for qualified applicants shall be administered within thirty (30) days after acceptance by the electrical advisory committee. Examinations required under this section shall be administered at the department's office in Frankfort, Kentucky, unless another location is specifically designated.

(3) Examinations shall be based on the edition of the National Electrical Code adopted in the Kentucky Building Code and the examination shall be open book.

(4) A grade of seventy (70) percent shall be considered passing. An applicant, otherwise qualified, who fails to make a passing score may reapply to be scheduled for the next examination date upon payment of an additional fee of ten (10) dollars.

(5) An applicant shall not be permitted to retake the examination more than three (3) times.

Section 6. Requirements for Full Certification as an Electrical Inspector: General and One (1) and Two (2) Family. (1) An [The] applicant shall possess the ability to read and write the English language and possess a general educational level satisfactory to perform his duties.

(2) An [The] applicant shall have had not less than five (5) years of experience immediately preceding the application in the installation and/or design, of all types of residential, commercial and industrial wiring systems installed in accordance with the National Electrical Code or shall be a registered professional electrical engineer engaged in his profession for not less than three (3) years.

EXCEPTION: In circumstances where an applicant cannot show the precise experience required by this subsection, the applicant may request to appear before the electrical advisory committee to establish his background in electrical construction familiarity through other means. The electrical advisory committee shall review the documentation and approve the applicant under this section if it is satisfied that the level of exposure to electrical construction practices is substantially equivalent.

(3) An [Each] applicant for electrical inspector certification shall submit the Application for Electrical Inspector on Form SFM-EL-1, April, 1996[, ~~hereby incorporated by reference, to the Department of Housing. Copies of the application form are available at the Department of Housing, Buildings and Construction, Electrical Section, 4047 U.S. 127 South, Suite 1, Frankfort, Kentucky 40601, between 8 a.m. and 4:30 p.m., Monday through Friday.~~]. Applications shall be received by the department at least thirty (30) days prior to the next scheduled electrical advisory committee meeting.

(4) A fee of twenty-five (25) dollars shall accompany the application, consisting of a check or money order payable to the State Treasurer, Commonwealth of Kentucky.

(5) An [The] applicant shall provide proof of successful completion of the NCPCCI examination for electrical inspector general or the NCPCCI examination for electrical inspector one (1) and two (2) family.

(6) Following the review and approval of an [the] applicant's

qualifications and examination results by the electrical advisory committee, the department shall issue certification for the appropriate electrical inspector classification and the inspector shall be authorized to conduct inspections as specified in Section 1(3) of this administrative regulation.

(7) Certificates issued pursuant to this section shall be valid from July 1 to June 30.

(8) Fully certified inspectors shall, upon request, be placed on "inactive" status upon payment of fees and otherwise complying with this administrative regulation, including keeping current with continuing education hours. The "inactive" certificate shall be converted to "active" in order to be authorized to make electrical inspections.

(9) Each [All] certified electrical inspector [inspectors] holding a valid certification under a previous law shall be exempt from the testing requirements of this administrative regulation.

Section 7. Renewals of "General" and "One (1) and Two (2) Family" Certificates. (1) Certification shall be issued to individuals and shall not be issued to corporations, partnerships, companies or any other entities.

(2) Each applicant seeking to renew his electrical inspector certification shall submit the Renewal Application for Electrical Inspector Certification on Form SFM-EL-1A, April 1996[~~hereby incorporated by reference, to the Department of Housing. Copies of the application form are available at the Department of Housing, Buildings and Construction, Electrical Section, 1047 U.S. 127 South, Suite 1, Frankfort, Kentucky 40601, between 8 a.m. and 4:30 p.m., Monday through Friday.~~]

(3) Each [All] electrical inspector certification [certifications], except temporary certificates, shall expire on June 30 every year. The department shall mail each certified inspector, prior to the date of expiration, a renewal application form and the certification shall be renewed subject to the terms and conditions of this administrative regulation.

(4) A renewal fee in the sum of twenty-five (25) dollars shall be paid by each certified electrical inspector. The fee shall be paid before June 30 in each succeeding year in order to maintain certification.

(5) Delinquent renewal fee. A certified electrical inspector who fails to submit the application for renewal on or before July 1 of each year shall pay a delinquent fee of fifty (50) dollars in addition to the renewal fee. If both fees are not paid and all required continuing education completed by January 1 of the following year, the certification shall be canceled and shall not be renewed.

(6) Reinstatement. A certificate that has been revoked or canceled may be reinstated upon petition to the commissioner and for good reason shown in his sole discretion.

(7) The applicant for reinstatement shall:

(a) Pay a reinstatement fee of \$100;

(b) Pay all delinquent renewal fees; and

(c) Submit proof of continuing education for each preceding year;

or

(8) Alternatively, the applicant for reinstatement shall pay a fee of \$100 and shall pass the NCPCCI examination within the current year.

Section 8. Duties and Responsibilities of a Certified Electrical Inspector. (1) Each certified electrical inspector shall attend at least one (1) continuing education program of a minimum of twelve (12) hours each year. The [These] programs shall be acceptable [only] if approved by the electrical advisory committee.

(2) Each [All] electrical inspection [inspections] shall be made in compliance with the edition of the National Electrical Code, set forth in the Kentucky Building Code (815 KAR 7:105 [7:100]).

(3) In addition to the National Electrical Code, the electrical inspector shall familiarize himself with the applicable building codes or fire safety codes governing buildings in the area where he performs inspections to the extent that it is necessary to determine the

occupancy load of a facility.

(4) Temporary service approval shall require a red sticker.

(5) The electrical inspector shall make a rough-in and final inspection on a building's electrical system installation and other inspections as may be necessary to approve the installation.

(a) Upon completion of the rough-in inspection, the inspector shall attach a red sticker with his signature and certification number on the main service equipment or at some other appropriate location.

(b) "Service only" approvals may be issued by the inspector to provide temporary power for heating and lighting and shall not authorize occupancy of the facility. The sticker issued for "service only" approval shall be yellow. The issuance of a temporary yellow sticker shall be at the sole discretion of the inspector.

(c) Upon final approval of an electrical installation, the inspector shall attach a green sticker to the main service equipment with his signature and certification number, name of the project and location, stating that the system has been inspected for compliance with the National Electrical Code. The inspector shall also provide the owner or the owner's agent with a certificate of compliance.

(6) Red, yellow and green stickers and certificates of compliance to be used by the electrical inspector shall be issued or approved by the department.

(7) Each electrical inspector shall make and retain for a minimum of three (3) years a complete record of each inspection. The record [These records] shall contain, as a minimum, the following information:

(a) Sufficient information to identify the location of the structure inspected;

(b) The date of the inspection;

(c) The type of structure, whether residential, commercial, industrial or other;

(d) The designation of any required permits and the agency granting the permit;

(e) The size and complexity of the structure;

(f) Deficiencies in meeting code requirements and the [any] action required to comply; and

(g) [Any] Other pertinent information considered necessary to allow for a review of the inspection.

(8) The [These] records shall be available for examination by an [any] authorized representative of the department upon request.

Section 9. Complaints and Grievance Procedures. (1) A person who believes that an [any] act or omission of an electrical inspector certified by the department has caused him an undue hardship [on him] as a result of the alleged misconduct in the performance of his duties, may file a complaint against the inspector.

(2) A complaint or allegation [All complaints or allegations] of misconduct shall be submitted in writing to the commissioner and [;] shall include:

(a) The nature of the alleged misconduct, with specific details as to acts, names, dates and witnesses; and

(b) Shall specify the action requested of the commissioner.

(3) Following an investigation, the commissioner may, at his discretion, cause the matter to be heard and a recommendation rendered by the electrical advisory committee; or, he may set the matter for public hearing or take any other appropriate action to resolve or correct the matter.

Section 10. Suspension and Revocation of Certification. The commissioner shall revoke, suspend or refuse to renew the certificate of an electrical inspector who is determined, by the commissioner after a departmental hearing, to have:

(1) Engaged as an electrical contractor, worked as an electrician or engaged in any other activity in the electrical industry or has pecuniary or associational interests which constitutes a conflict of interest; or

(2) Engaged in fraud, deceit or misrepresentation in obtaining

certification; or

(3) Been guilty of negligence, incompetence or misconduct as set forth by this administrative regulation in the field of electrical inspection; or

(4) Affixed or caused to be affixed a seal of approval or issuing certificates of approval for an [any] electrical installation subject to his inspection if [when] he has not personally inspected the installation and found it to be satisfactory in accordance with the code; or

(5) Operated as an electrical inspector in a [any] locality where a court of competent jurisdiction has adjudged him to be in conflict with state or local laws, ordinances, or regulations; or

(6) Knowingly overruled the proper findings of another electrical inspector or attempted to supplant, overrule or otherwise invalidate the judgment of another electrical inspector without first obtaining express written consent from the original inspector; or

(7) Maintained inaccurate or inadequate recordkeeping as required by Section 8 of this administrative regulation.

Section 11. Electrical Inspections by State Employed Certified Electrical Inspectors. (1) [All] State-owned property including each building [all buildings] being constructed by the state under the authority of the Finance and Administration Cabinet shall be inspected by a certified electrical inspector who is an employee of the state.

(2) State employed certified electrical inspectors shall also inspect, for a fee, if a certified electrical inspector has not been made available by the local government.

(3) State employed certified electrical inspectors shall assert jurisdiction for the electrical inspection of any project subject to state plan review under the Kentucky Building Code.

(4) State employed certified electrical inspectors may inspect state leased facilities, upon request.

Section 12. Interpretations. If a [any] provision of the National Electrical Code can be shown to be unreasonable or impractical as applied to a particular installation and if deviation from strict compliance would not create a safety hazard because of a particular use or condition, an individual may request to appear before the electrical advisory committee of the Department of Housing, Buildings and Construction to request a variance from the code. Upon advice from the committee, the department shall render its decision in the matter and the decision shall be appealable to the Board of Housing, Buildings and Construction [where appropriate].

Section 13. Material Incorporated by Reference. (1) The following material is incorporated by reference:

(a) Form SFM-EL-1, April, 1996 Edition, Application for Electrical Inspectors.

(b) Form SFM-EL-1A, April, 1996 Edition, Renewal Application for Electrical Inspector Certification.

(2) Copies of the application forms may be obtained from, examined or copied at the Department of Housing, Buildings and Construction, Electrical Section, 1047 US 127 South, Suite 1, Frankfort, Kentucky 40601, between 8 a.m. and 4:30 p.m., Monday through Friday.

CHARLES A. COTTON, Commissioner

LAURA M. DOUGLAS, Secretary

APPROVED BY AGENCY: July 15, 1997

FILED WITH LRC: July 23, 1997 at 2 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on August 21, 1997 at 10 a.m., local time, in the office of the Department of Housing, Buildings and Construction, 1047 U.S. 127 South, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by August 14, 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 canceled. This hearing is open to the

public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made in which case the person requesting the transcript shall have the responsibility of paying for same. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation by the above date to the contact person.

Contact Person: Judith G. Walden, Office of General Counsel, Department of Housing, Buildings and Construction, The 127 Building, 1047 U.S. 127 South, Frankfort, Kentucky 40601, Telephone: (502) 564-8044, Fax: (502) 564-6799.

## REGULATORY IMPACT ANALYSIS

Contact person: Judith G. Walden

(1) Type and number of entities affected: There are approximately 283 certified electrical inspectors 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: This amendment will have no impact on either cost of living or employment in the state.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented: This administrative regulation is implemented statewide but does not affect the cost of doing business within the state.

(c) Compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition) for the: The amendment itself will not increase costs or paperwork.

1. First year following implementation: None

2. Second and subsequent years: None

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings: There are no direct or 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: No additional paperwork requirements created by this amendment.

(4) Assessment of anticipated effect on state and local revenues: State or local revenues should not be affected with the implementation of this amendment.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Certification fees will cover the administrative costs of this amendment.

(6) Economic impact, including effects of economic activities arising from administrative regulation, on: There will be no economic impact with implementation of this amendment.

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

(b) Kentucky: Statewide

(7) Assessment of alternative methods; reasons why alternatives were rejected: Electrical Advisory Committee considers and approves amendments within limits defined.

(8) Assessment of expected benefits: This method will reduce the delinquent renewals and provide for examination where too long a period of time without continuing education.

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: No effect on public health or environmental welfare created by this amendment. Public safety only slightly enhanced by greater assurance of appropriate inspections.

(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: No known statute, regulation or policy in conflict with this proposed amendment.

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

(10) Any additional information or comments: The reference material is not being amended. The "Incorporation" section is being relocated at the end of the administrative regulation in compliance with drafting rules.

(11) TIERING: Is tiering applied? No. Applies equally to those who were delinquent or need reinstatement.

**CABINET FOR HEALTH SERVICES**  
**Department for Public Health**  
**Division of Environmental Health and Community Safety**  
**(Amendment)**

**902 KAR 100:165. Notices, reports and instructions to employees.**

RELATES TO: KRS 211.842 to 211.852, 211.990(4)

STATUTORY AUTHORITY: KRS 13B.170, 194.050, 211.090, 211.844, EO 96-862

NECESSITY, FUNCTION, AND CONFORMITY: Executive Order 96-862, effective July 2, 1996, reorganizes the Cabinet for Human Resources and places the Department for Public Health and its programs under the Cabinet for Health Services. The Cabinet for Health Services [Human Resources] is authorized by KRS 211.844 to provide by administrative regulation for the registration and licensing of the possession or use of sources of ionizing or electronic product radiation and the handling and disposal of radioactive waste. This administrative regulation provides notices, instructions, and reports for the protection of workers who may be exposed to radiation in their employment.

Section 1. [Applicability. The requirements of this administrative regulation shall apply to persons working in an environment in which radioactive materials or radiation producing machines are received, owned, possessed, transferred, or used. This administrative regulation establishes requirements for notices, instructions, and reports by licensees and registrants to individuals engaged in work under a license or registration and provides for options available to the individuals in connection with the provisions of the Act and administrative regulations, orders, licenses and registration issued under these administrative regulations regarding radiological working conditions.

Section 2. Posting of Notices to Workers. (1) A [Each] licensee or registrant shall post current copies of the following documents:

(a) The requirements of this administrative regulation and 902 KAR 100:019 [029], relating to standards for protection against radiation;

(b) The license, certificate of registration, conditions or documents incorporated into the license by reference and amendments to the license;

(c) The operating procedures applicable to work under the license or registration; and

(d) A notice of violation involving radiological working conditions, proposed imposition of civil penalty, or order issued as authorized by 902 KAR 100:170 [these administrative regulations], and responses from the licensee or registrant.

(2) If posting of a document specified in subsection (1)(a), (b), or (c) of this section is not practicable, the licensee or registrant may

post a notice which describes the document and states where it may be examined.

(3) Cabinet form KR-441 "Notice to Employees" shall be prominently posted by a [each] licensee or registrant. The form may be obtained from the cabinet at 275 East Main Street, Frankfort, Kentucky 40621, between 8 a.m. and 4:30 p.m., Monday through Friday. [~~wherever individuals work in or frequent a portion of a restricted area.~~]

(4) Documents, notices or forms posted as required by this section shall:

(a) Appear in a sufficient number of places to permit individuals engaged in work under the license or registration to observe them on the way to or from a particular work location to which the document applies;

(b) [~~shall~~] Be conspicuous; and

(c) [~~shall~~] Be replaced if defaced or altered.

(5)(a) Cabinet documents posted as required by subsection (1)(d) of this section shall be posted within two (2) working days after receipt of the documents from the cabinet;

(b) The licensee's or registrant's response shall be posted within two (2) working days after dispatch from the licensee or registrant; and

(c) The documents shall remain posted for a minimum of five (5) working days or until action correcting the violation has been completed, whichever is later.

Section 2. [~~3.~~] Instructions to Workers. (1) [All] Individuals, in the course of employment, likely to receive in a year an occupational dose in excess of 100 millirems (one (1) mSV) [~~working in or frequenting a portion of a restricted area~~] shall be:

(a) [~~(1) Be~~] Kept informed of the storage, transfer, or use of sources of radiation in the licensee's or registrant's workplace;

(b) [~~portions of the restricted area;~~]

(2) [~~Shall be~~] Instructed in the health protection problems associated with exposure to radioactive material or radiation to the individual and potential offspring, in precautions or procedures to minimize exposure, and in the purposes and functions of protective devices employed;

(c) [~~(3) Shall be~~] Instructed in, and instructed to observe, to the extent within the worker's control, the applicable requirements of 902 KAR Chapter 100 [~~cabinet administrative regulations~~] and licenses for the protection of personnel from exposures to radiation or radioactive material;

(d) [~~occurring in the areas;~~]

(4) [~~Shall be~~] Instructed of their responsibility to report promptly to the licensee or registrant a condition which may lead to or cause a violation of the Act, 902 KAR Chapter 100 or license conditions, [~~cabinet administrative regulations and licenses~~] or unnecessary exposure to radiation or radioactive material;

(e) [~~(5) Shall be~~] Instructed in the appropriate response to warnings made in the event of an unusual occurrence or malfunction that may involve exposure to radiation or radioactive material; and

(f) [~~(6) Shall be~~] Advised as to the radiation exposure reports which workers may request as authorized by Section 3 [4] of this administrative regulation. [~~and~~]

(2) In determining the individuals subject to the requirements of this section, licensees or registrants shall take into consideration assigned activities during normal and abnormal situations involving exposure to radioactive material or radiation which can reasonably be expected to occur during the life of a licensed or registered facility. [(7)] The extent of these instructions shall be commensurate with potential radiological health protection problems in the workplace [~~restricted area~~].

Section 3. [4.] Notifications and Reports to Individuals. (1) Radiation exposure data for an individual and the results of [any] measurements, analyses, and calculations of radioactive material

deposited or retained in the body of an individual shall be reported to the individual as specified in this section.

(2) The information reported shall include data and results obtained as required by 902 KAR Chapter 100 ~~[cabinet administrative regulations]~~, orders, or license conditions, as shown in records maintained by the licensee or registrant as required by 902 KAR 100:019, Section 34. ~~[cabinet administrative regulations.]~~

(3) Each notification and report shall:

(a) Be in writing;

(b) Include appropriate identifying data such as:

1. The name of the licensee or registrant; ~~and~~

2. The name of the individual; and

3. The individual's identification number or Social Security number.

(c) The individual's exposure information; and

(d) Contain the following statement: "This report is furnished to you under the provisions of the Kentucky Cabinet for Health Services' ~~[Human Resources]~~ radiation administrative regulations, 902 KAR 100:165. You should preserve this report for further reference."

(4) A ~~[(2) At the request of a worker, each]~~ licensee or registrant shall advise the worker annually of the worker's exposure to radiation or radioactive material as shown in records maintained by the licensee or registrant required by 902 KAR 100:019, Section 34. ~~[these administrative regulations.]~~

(5) ~~[(3)]~~ At the request of a worker formerly engaged in work controlled by the licensee or the registrant, a ~~[each]~~ licensee or registrant shall furnish to the worker a report of the worker's exposure to radiation or radioactive material. The report shall:

(a) Be furnished within thirty (30) days from the time request is made, or within thirty (30) days after the exposure of the individual has been determined by the licensee or registrant, whichever is later;

(b) ~~[shall]~~ Cover ~~[- within]~~ the period of time ~~[specified in the request, each calendar quarter in which]~~ the worker's activities involved exposure to radiation from radioactive materials licensed by, or radiation machines registered with the cabinet; and

(c) ~~[shall]~~ Include the dates and locations of work under the license or registration in which the worker participated during this period.

(6) ~~[(4)]~~ If a licensee or registrant is required, pursuant to 902 KAR 100:019, Sections 40, 41 and 42, to report to the cabinet an exposure of an individual to radiation or radioactive material, the licensee or the registrant shall also provide the individual a report on the exposure data included in the report to the cabinet. The reports shall be transmitted to the individual at a time not later than the transmittal to the cabinet.

(7)(a) ~~[(5)]~~ At the request of a worker who is terminating employment, ~~[in a given calendar quarter]~~ with the licensee or registrant in work involving exposure to radiation or radioactive material, during the current year, the ~~[radiation dose, or of a worker who, while employed by another person, is terminating assignment to work involving radiation dose in the licensee's or registrant's facility in that calendar quarter, each]~~ licensee or registrant shall provide to the ~~[each]~~ worker, or to the worker's designee, at termination, a written report regarding the radiation dose received by that worker from operations of the licensee or registrant during the current year ~~[that specifically identified calendar quarter]~~ or fraction thereof.

(b) If the most recent individual ~~[- or provide a written estimate of that dose if the finally determined]~~ personnel monitoring results are not available at that time, a written estimate of the dose shall be provided.

(c) Estimated doses shall be clearly indicated as estimated doses.

Section 4. ~~[5-]~~ Presence of Representatives of Licensees or Registrants and Workers during Inspection. (1) A ~~[Each]~~ licensee or registrant shall afford to the cabinet at all reasonable times opportunity to inspect materials, machines, activities, facilities, premises, and records required by 902 KAR Chapter 100 ~~[these administrative~~

~~regulations]~~.

(2) During an inspection, cabinet inspectors may consult privately with workers as specified in Section 5 [6] of this administrative regulation. The licensee or registrant may accompany cabinet inspectors during other phases of an inspection.

(3) If, during the inspection, an individual has been authorized by the workers to represent them during cabinet inspections, the licensee or registrant shall notify the inspectors of the authorization and shall give the workers' representative an opportunity to accompany the inspectors during the inspection of physical working conditions.

(4) The ~~[Each]~~ workers' representative shall be routinely engaged in work under control of the licensee or registrant and shall have received instructions as specified in Section 2 [3] of this administrative regulation.

(5) Different representatives of licensees or registrants and workers may accompany the inspectors during different phases of an inspection if there is no resulting interference with the conduct of an inspection. However, only one (1) workers' representative at a time may accompany the inspectors.

(6) With the approval of the licensee or registrant and the workers' representative, an individual who is not routinely engaged in work under control of the licensee or registrant, for example, a consultant to the licensee or registrant or to the workers' representative, shall be afforded the opportunity to accompany cabinet inspectors during the inspection of physical working conditions.

(7) In addition to the other requirements of this section, cabinet inspectors are authorized to refuse to permit accompaniment by an individual who deliberately interferes with a fair and orderly inspection.

(8) With regards to areas containing information classified by an agency of the U.S. government in the interest of national security, an individual who accompanies an inspector shall have access to such information only if authorized to do so.

(9) With regard to an area containing proprietary information, the workers' representative for that area shall be an individual previously authorized by the licensee or registrant to enter that area.

Section 5. ~~[6-]~~ Consultation with Workers during Inspection. (1) Cabinet inspectors may consult privately with workers concerning matters of occupational radiation protection and other matters related to 902 KAR Chapter 100 ~~[applicable requirements of cabinet administrative regulations]~~ and licenses or registrations to the extent the inspectors deem necessary for the conduct of an effective and thorough inspection.

(2) During the course of an inspection a worker may bring privately to the attention of the inspectors, either orally or in writing, a past or present condition which he has reason to believe may have contributed to or caused a violation of the Act, 902 KAR Chapter 100 ~~[these administrative regulations]~~, or license condition, or an unnecessary exposure of an individual to radiation from licensed radioactive material or a registered radiation machine under the licensee's or registrant's control. A written notice shall comply with the requirements of Section 6 [7](1) of this administrative regulation.

(3) The requirements of subsection (2) of this section shall not be interpreted as authorization to disregard instructions required by Section 2 [3] of this administrative regulation.

Section 6. ~~[7-]~~ Requests by Workers for Inspections. (1)(a) A worker or representative of workers who believes that a violation of the Act, 902 KAR Chapter 100 ~~[these administrative regulations]~~ or license conditions exists or has occurred in work under a license or registration with regard to radiological working conditions in which the worker is engaged, may request an inspection by giving notice of the alleged violation to the Cabinet for Health Services ~~[Human Resources]~~, Radiation Control.

(b) The notice shall:

1. Be in writing;

2. ~~[- shall]~~ Set forth the specific grounds for the notice; and

## ADMINISTRATIVE REGISTER - 773

3. ~~[shall]~~ Be signed by the worker or representative of the workers.

(c) A copy shall be provided to the licensee or registrant by the cabinet no later than at the time of inspection. ~~If [except that, upon the request of]~~ the worker giving the notice requests, his name and the name of individuals referred to in the notice shall not appear in the copy or on a record published, released, or made available by the cabinet, except for good cause shown.

(2) If, upon receipt of the notice, the Manager, Radiation Control, determines that the complaint meets the requirements set forth in subsection (1) of this section, and that there are reasonable grounds to believe that the alleged violation exists or has occurred, he shall cause an inspection to be made as soon as practicable, to determine if the alleged violation exists or has occurred. Inspections authorized by this section need not be limited to matters referred to in the complaint.

(3) A ~~[No]~~ licensee or registrant or contractor or subcontractor of a licensee or registrant shall not discharge or in any manner discriminate against a worker because the worker has:

(a) Filed a complaint;

(b) ~~[or]~~ Instituted or caused to be instituted a proceeding under 902 KAR 100:170;

(c) ~~[these administrative regulations or has]~~ Testified or is about to testify in a proceeding; or

(d) ~~[because of the]~~ Exercised an option ~~[by the worker]~~ on behalf of himself or others ~~[of an option]~~ afforded by this administrative regulation.

Section 7. ~~[&]~~ Inspections not Warranted; Informal Review. (1)(a) If the Cabinet for Health Services ~~[Human Resources]~~, Radiation Control determines, with respect to a complaint under Section 6 ~~[7]~~ of this administrative regulation, that an inspection is not warranted because there are no reasonable grounds to believe that a violation exists or has occurred, the cabinet shall notify the complainant in writing of the determination.

(b) The complainant may obtain a review of the determination by submitting a written statement of position with the Commissioner, Department for Public Health. The commissioner ~~[Health Services, of the cabinet, who]~~ shall provide the licensee or registrant with a copy of the statement by certified mail, excluding, at the request of the complainant, the name of the complainant.

(c) The licensee or registrant may submit an opposing written statement of position with the commissioner, who shall provide the complainant with a copy of the statement by certified mail.

(2) Upon the request of the complainant, the commissioner shall ~~[may]~~ hold an administrative hearing in accordance with 902 KAR 1:400. ~~[informal hearing in which the complainant and the licensee or registrant may orally present their views. An informal hearing may also be held at the request of the licensee or registrant, but disclosure of the identity of the complainant shall be made only following receipt of written authorization from the complainant. After considering all written or oral views presented, the commissioner shall affirm, modify, or reverse the determination of Radiation Control, and furnish the complainant and the licensee or registrant a written notification of the decision and the reason therefor.]~~

(3) ~~[(2)]~~ If Radiation Control determines that an inspection is not warranted because the requirements of Section 6 ~~[7]~~(1) of this administrative regulation have not been met, ~~[the manager of the branch shall notify]~~ the complainant shall be notified, in writing, of the determination. The determination shall be without prejudice to the filing of a new complaint meeting the requirements of Section 6 ~~[7]~~(1) of this administrative regulation.

RICE C. LEACH, M.D., Commissioner

JOHN H. MORSE, Secretary

APPROVED BY AGENCY: August 4, 1997

FILED WITH LRC: August 15, 1997 at 11 a.m.

PUBLIC HEARING: A public hearing on this regulation will be held, September 22, 1997 at 9 a.m. in the Cabinet for Health Services Auditorium, 1st floor, Department for Health Services Building, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending shall notify this agency in writing by, September 15, 1997. If no notice of intent to attend the hearing is received by that date, the hearing may be canceled. The hearing is opened to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. If you do not wish to attend the public hearing, you may submit written comments on the proposed administration regulation. Send written notice of intent to attend the public hearing or written comments to: Mae B. Lewis, Administrative Specialist Principal, Cabinet for Health Services, Office of Counsel, 275 East Main Street - 4 Floor West, Frankfort, Kentucky 40621, Phone: (502) 564-7900, Fax: (502) 564-7573.

### REGULATORY IMPACT ANALYSIS

Agency Contact Person: John A. Volpe, Ph.D.

(1) Type and number of entities affected: All radioactive material licensees will be impacted by the amending of this regulation which will provide a better understanding by workers for provisions for their protection when working with radiation in the workplace.

(2) Direct and indirect costs or savings to those affected:

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: No public hearing was requested and 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 public hearing was requested and no comments were received.

(c) Compliance, reporting, and paperwork requirements, including factors increasing or decreasing cost (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: Fees from the licensing of radioactive material users.

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

(a) Geographical area in which administrative regulation will be implemented: No comments were received.

(b) Kentucky: No comments were received.

(7) Assessment of alternative methods: reasons why alternatives were rejected: This administrative regulation must be compatible with the U.S. Nuclear Regulatory Commission's requirements and must meet statutory requirements of KRS Chapter 13A and 13B.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: The amended regulation provides a better understanding by workers for provisions for their protection when working with radiation in the workplace.

(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:

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Provisions would not be made for workers' protection in the work-place.

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: No conflict with statutes or administrative regulations.

(a) Necessity of regulation if in conflict:

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

(10) Any additional information or comments: Not applicable.

(11) TIERING: Is tiering applied? No, this regulation applies equally to all radioactive material licensees.

### FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. The Atomic Energy Act of 1954, as amended, and 10 CFR 35, as promulgated by the U.S. Nuclear Regulatory Commission.

2. State compliance standards. Administrative regulation provides requirements for licensing of radioactive material, for possession, use, and transfer for medical use.

3. Minimum or uniform standards contained in the federal mandate. This administrative regulation maintains compatibility with U.S. Nuclear Regulatory Commission's requirements.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Not applicable.

### CABINET FOR FAMILIES AND CHILDREN Department for Social Insurance Division of Management and Development (Amendment)

#### 904 KAR 3:060. Administrative disqualification hearings and penalties.

RELATES TO: 7 CFR 273.15, FNS/Sero Regulations Supplement, 273.15-a-1 (82-14) (7-28-82), 273.16, FNS/Sero Regulations Supplement, 273.16-a-1 (83-5) (12-15-82), 59 FR 44343-47, 7 USC 2015

STATUTORY AUTHORITY: KRS Chapter 13B, 194.050(1), 7 CFR 271.4, EO 96-862

NECESSITY, FUNCTION, AND CONFORMITY: Executive Order 96-862, effective July 2, 1996, reorganized the Cabinet for Human Resources and placed the Department for Social Insurance and its programs under the Cabinet for Families and Children. The Cabinet for Families and Children shall administer a Food Stamp Program pursuant to 7 USC 2011 to 2029. KRS 194.050(1) provides that the secretary shall, by administrative regulation, develop policies and operate programs concerned with the welfare of the citizens of the Commonwealth. This administrative regulation sets forth the procedures used by the cabinet to determine when an act of intentional program violation has occurred and appropriate penalties which shall be applied.

Section 1. Administrative Disqualification Hearings. (1) An administrative disqualification hearing shall be initiated by the cabinet whenever it has documented evidence to prove that a household member has committed an act of intentional program violation, pursuant to (as defined by) 904 KAR 3:050, Section 5(3).

(2) An administrative disqualification hearing may be initiated regardless of the current eligibility of the individual.

Section 2. Disqualification Hearing Procedures. (1) The cabinet shall provide state level administrative disqualification hearings which

shall be heard by a fair hearing official.

(2) A hearing shall be conducted by an impartial official who:

(a) Did not have any personal stake or involvement in the case;

(b) Was not directly involved in the initial determination that the household member had committed intentional program violation; and

(c) Was not the immediate supervisor of the case worker who took the action.

(3) The powers and duties of the hearing official shall be the same as those pursuant to [specified in] 904 KAR 3:070, Section 13.

(4) The household's rights during the hearing shall be the same as those pursuant to [specified in] 904 KAR 3:070, Section 14.

(5) Form FS-80, "Notice of Suspected Intentional Food Stamp Program Violation", is incorporated into this administrative regulation by reference and shall serve as the notification to a household of:

(a) The cabinet's suspicion that an intentional program violation has been committed;

(b) The amount and period of the overpayment; and

(c) The household's right to an administrative disqualification hearing.

(6) The hearing decision shall comply with provisions pursuant to [specified in] 904 KAR 3:070, Section 15.

(7) [(6)] At the hearing, the hearing official shall advise the household member or representative that they may refuse to answer questions during the hearing.

(8) [(7)] Within ninety (90) days of the date the household member is notified in writing that a hearing has been scheduled, the cabinet shall:

(a) Conduct the hearing;

(b) Arrive at a decision; and

(c) Notify the household member of the decision.

(9) If [(8) Provided that] the request is made at least ten (10) days in advance of the date of the scheduled hearing, the household member or representative is entitled to one (1) postponement not to exceed thirty (30) days.

(10) [(9)] If a hearing is postponed, the time limits pursuant to [specified in] subsection (8) [(7)] of this section shall be extended for as many days as the hearing is postponed.

Section 3. Advance Notice of Disqualification Hearing. (1) The cabinet shall provide written notice to the household member suspected of intentional program violation at least thirty (30) days in advance of the date a hearing initiated by the cabinet has been scheduled.

(2) The notice shall be sent certified mail - addressee only - return receipt requested and shall comply with the requirements of KRS 13B.050 and also contain the following:

(a) A summary of the evidence;

(b) A statement that the decision shall be based solely on information provided by the Food Stamp Office if the household member fails to appear at the hearing;

(c) A statement that the household member or representative shall have ten (10) days from the date of the scheduled hearing to present good cause for failure to appear;

(d) A statement that a determination of intentional program violation shall result in disqualification penalties as described in Section 10 of this administrative regulation, and a statement of which penalty is applicable to the case scheduled for a hearing;

(e) A listing of the household member's rights as contained in 904 KAR 3:070, Section 14;

(f) A statement that the hearing shall not preclude the state or federal government from:

1. Prosecuting the household member for intentional program violation in a civil or criminal court action; or

2. Collecting the overissuance; and

(g) If there is an individual or organization available that provides free legal representation, a statement of the availability of this service.

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Section 4. Scheduling the Disqualification Hearing. (1) The time and place of the hearing shall be arranged so that the hearing is accessible to the household member suspected of intentional program violation.

(2) If the applicant, recipient and any party or witness required to testify under oath or affirmation consents, a telephonic hearing may be conducted.

(3) A party who wishes to introduce a document or written material into the record at the hearing shall mail a copy of the document to the hearing officer and to the opposing party prior to the date of the hearing.

(4) Failure to provide both the hearing officer and the opposing party with a copy of ~~such~~ evidence may result in the exclusion of this evidence from the record.

(5) If the household member or his representative does not appear for a face-to-face or telephonic hearing, the state agency shall determine whether proper advance notice was received by the household member.

(a) If there is no proof that the household member received or refused a timely notice of the hearing, the hearing shall not be conducted.

(b) The hearing process is again initiated if ~~when~~ the household member is located and another notice can be provided to that member.

(c) If the agency has sufficient evidence to verify that the household member either received or refused the notice, the hearing shall be conducted.

(6) Even if the household member is not represented, the hearing official is required to:

1. Carefully consider the evidence; and

2. Determine if intentional program violation was committed based on clear and convincing evidence.

(7) Any administrative disqualification hearing conducted shall comply with the requirements of KRS 13B.080 and 13B.090.

(8) If the household member is found to have committed an intentional program violation, but a hearing official later determined that the household member or representative had good cause, pursuant to [as defined in] 904 KAR 3:070, Section 10, for not appearing:

(a) The previous decision shall not remain valid;

(b) The cabinet shall conduct a new hearing; and

(c) The hearing official who originally ruled on the case may conduct the new hearing.

(9) The household member shall have ten (10) days from the date of the scheduled hearing to present reasons indicating a good cause for failure to appear.

(10) A hearing official shall enter the good cause decision into the record.

Section 5. Participation While Awaiting a Disqualification Hearing.

(1) A pending hearing shall not affect the individual's or the household's right to be certified and participate in the program.

(2) The cabinet shall determine the eligibility and benefit level of the household in the same manner it would be determined for any other household until:

(a) The hearing official or a court of appropriate jurisdiction finds that the individual has committed intentional program violation;

(b) The individual has completed and filed with the department form FS-80, Supplement A, "Voluntary Waiver of Administrative Disqualification Hearing", waiving his [signed a waiver of] right to an administrative disqualification hearing; or

(c) The individual has completed and filed with the department form FS-111, "Deferred Adjudication Disqualification Consent Agreement" [signed a disqualification consent agreement]; and

(d) The cabinet disqualifies the household member for intentional program violation.

Section 6. Disqualification Hearing Decision. (1) The hearing official shall base the determination of intentional program violation on clear and convincing evidence that demonstrates that the household member committed and intended to commit intentional program violation pursuant to [as specified in] Section 1 of this administrative regulation.

(2) The decision of the hearing official shall:

(a) Specify the reasons for the decision;

(b) Identify:

1. The supporting evidence;

2. Kentucky statutory citations, if applicable;

3. The state administrative regulations; and

4. Corresponding federal regulation; and

(c) Respond to reasoned arguments made by the household member or representative.

(3) The case record shall be retained by the cabinet until all appeals have been exhausted.

(a) The content of the case record shall comply with KRS 13B.130.

(b) This record shall be available to the household or its representative during work hours for copying and inspection.

Section 7. Notification of a Disqualification Hearing Decision. (1) The cabinet shall notify the household member in writing of:

(a) The hearing decision; and

(b) His rights to appeal that decision pursuant to KRS 13B.140.

(2) If the hearing finds that the household member committed intentional program violation, the notice shall:

(a) Be provided prior to disqualification;

(b) Inform the household member of the disqualification; and

(c) Advise the household member when the disqualification will take effect.

(3) A notice shall be provided to the remaining household members, if any, informing them of:

(a) The allotment they will receive during the disqualification period; or

(b) That they may reapply because their certification period has expired.

(4) A written demand letter shall be sent to the remaining household members explaining the repayment requirements.

Section 8. Waiver Disqualification Hearings. (1) An individual accused of intentional program violation shall be allowed to waive his rights to an administrative disqualification hearing if he completes and files with the department form FS-80, Supplement A, "Voluntary Waiver of Administrative Disqualification Hearing".

(2) The cabinet shall ensure that:

(a) ~~Ensure that~~

~~4.]~~ The appropriate field services supervisor or designated agency representative reviews the evidence against the household member suspected of the intentional program violation;

~~(b) [HPV; and~~

~~2.]~~ A decision is obtained that the evidence warrants scheduling a disqualification hearing; and

~~(c) [:~~

~~(b) Provide]~~ Written notification is provided to the household member suspected of intentional program violation, informing him of ~~[HPV that the member can waive]~~ his right to waive an administrative disqualification hearing.

Section 9. Deferred Adjudication. (1) An individual accused of intentional program violation shall be allowed to complete and file with the department form FS-111, "Deferred Adjudication Disqualification Consent Agreement", ~~[sign a disqualification consent agreement]~~ in a case of deferred adjudication.

(2) The cabinet shall accept a completed form FS-111, "Deferred Adjudication Disqualification Consent Agreement", if [use a disqualifi-

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~~ation consent agreement for a case in which~~ a determination of guilt is not obtained from a court because the accused ~~[accused]~~ individual:

- (a) Met the terms of a court order; or
- (b) Is not prosecuted because he met the terms of an agreement with the prosecutor.

Section 10. Intentional Program Violation Disqualification Penalties. (1) An individual found to have committed an intentional program violation pursuant to [in accordance with] 904 KAR 3:050, Section 5(3)(b)] shall be ineligible to participate in the Food Stamp Program:

(a) For a period of one (1) year upon [six (6) months for] the first occasion of intentional program violation~~[-, except as provided by subsections (2) and (3) of this section];~~

(b) For a period of two (2) years [twelve (12) months] upon the second occasion of [any] intentional program violation[-, except as provided by subsections (2) and (3) of this section]; and

(c) Permanently upon [for] the third occasion of [any] intentional program violation.

(2) An individual found by a federal, state or local court to have committed an act of intentional program violation by using or receiving food stamp [used or received] coupons in a transaction involving the sale of a controlled substance, pursuant to [as defined by] 21 USC 802, shall be ineligible to participate in the program:

(a) For a period of two (2) years [twelve (12) months] upon the first occasion of the violation; and

(b) Permanently upon the second occasion of the violation.

(3) An individual found by a federal, state or local court to have committed an act of intentional program violation by using or receiving food stamp [used or received] coupons in a transaction involving the sale of firearms, ammunition or explosives shall be permanently ineligible to participate in the program upon the first occasion of the violation.

(4) An individual shall be permanently ineligible to participate in the program upon the first occasion of:

(a) The conviction of a trafficking offense pursuant to 7 USC 2024; and

(b) Having a value of \$500 or more.

(5) The penalties in subsections (2), ~~[and]~~ (3), and (4) of this section shall also apply in cases of deferred adjudication, as described in Section 9 of this administrative regulation, where the court makes a finding that the individual engaged in the conduct pursuant to [described in] subsections (2), ~~[and]~~ (3), and (4) of this section.

(6) ~~[(6)]~~ If a court fails to impose a disqualification period for any intentional program violation, the cabinet shall impose the appropriate disqualification penalty pursuant to [specified in] subsections (1), (2), ~~or~~ (3), or (4) of this section, unless it is contrary to the court order.

(7) ~~[(6)]~~ Regardless of when an action was taken by an individual which caused an intentional program violation to occur, the disqualification periods pursuant to [specified in] subsections (2), ~~[and]~~ (3), or (4) of this section shall apply to any case in which the court makes the requisite finding on or after September 1, 1994.

(8) ~~[(7)]~~ The cabinet shall not disqualify everyone in the household from participating in the Food Stamp Program but shall disqualify only the individual who:

(a) Is found to have committed the intentional program violation; or

(b) Has completed and filed with the department form FS-80, Supplement A, "Voluntary Waiver of Administrative Disqualification Hearing" ~~[Signed the waiver of the right to an administrative disqualification hearing];~~ or

(c) Has completed and filed with the department form FS-111, "Deferred Adjudication Disqualification Consent Agreement" ~~[Signed the disqualification consent agreement in cases referred for prosecution].~~

(9) ~~[(8)]~~ The cabinet shall disqualify only the individual from participating in the Food Stamp Program but the remaining household members are responsible for making restitution for the amount of any overpayment, pursuant to [in accordance with] 904 KAR 3:050.

(10) ~~[(9)]~~ If the cabinet's determination of intentional program violation is reversed by a court, the cabinet shall:

(a) Reinstate the individual, if eligible; and

(b) Restore any benefits that were lost as a result of the disqualification.

(11) ~~[(10)]~~ The cabinet shall inform the household in writing of the disqualification penalties for committing intentional program violation at each time it applies for benefits.

Section 11. Appeal Rights of the Household. (1) No further administrative appeal procedure shall exist after an administrative disqualification hearing finds that:

(a) An intentional program violation was committed; or

(b) An individual has waived his right to an administrative disqualification hearing.

(2) The determination of intentional program violation made by a disqualification hearing official shall not be reversed by a subsequent fair hearing decision.

(3) The household member who is subject to subsection (2) of this section is entitled to seek relief in a court having appropriate jurisdiction pursuant to [in accordance with] KRS 13B.140.

(4) The period of disqualification may be subject to stay by:

(a) A court of appropriate jurisdiction; or

(b) Other injunctive remedy.

Section 12. Material Incorporated by Reference. (1) Form FS-80, "Notice of Suspected Food Stamp Program Violation", revised [1/97 edition] [9/94], is necessary:

(a) To provide an individual suspected of committing an intentional program violation with information regarding his claim;

(b) To inform an individual of his rights to an administrative disqualification hearing.

(2) Form FS-80, Supplement A "Voluntary Waiver of Administrative Disqualification Hearing", (1/93 edition) ~~[(revised 1/93)],~~ is necessary to permit an individual the opportunity to waive his right to an administrative disqualification hearing.

(3) Form FS-111, "Deferred Adjudication Disqualification Consent Agreement", (1/97 edition) ~~[revised 9/94],~~ is necessary to defer adjudication of an individual suspected of intentional program violation.

(4) These forms may be inspected and copied at the Department for Social Insurance, 275 East Main Street, Frankfort, Kentucky 40621 and at each of the department's local offices. Office hours are 8 a.m. to 4:30 p.m.

JOHN L. CLAYTON, Commissioner

JOHN H. MORSE, Secretary

APPROVED BY AGENCY: August 1, 1997

FILED WITH LRC: August 14, 1997 at 2 p.m.

PUBLIC HEARING: A public hearing on this regulation will be held, September 22, 1997 at 9 a.m. in the Cabinet for Health Services Auditorium, 1st floor, Department for Health Services Building, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending shall notify this agency in writing by, September 15, 1997. If no notice of intent to attend the hearing is received by that date, the hearing may be canceled. The hearing is opened to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. If you do not wish to attend the public hearing, you may submit written comments on the proposed administration regulation. Send written notice of intent to attend the public hearing or written comments to: Judy H. Trigg, Cabinet for Families and Children, Office of the General Counsel, 275 East Main Street, 4th Floor West, Frankfort, Kentucky 40621, Phone: (502) 564-



7900, Fax: (502) 564-7573.

# REGULATORY IMPACT ANALYSIS

Agency Contact Person: Marty Mason, Director

(1) Type and number of entities affected: The affected entities are individuals who are found to have committed an intentional program violation, pursuant to 7 USC 2015(b)1, as amended by PL 104-193, sections 813 and 814. Section 813 increases the disqualification penalty for the first intentional violation from 6 months to 1 year and the disqualification penalty for the second violation from 12 months to 2 years. Also, the penalty for purchasing a controlled substance with food stamps has been increased from 1 year to 2 years. Section 814 implements a new penalty that requires the State agency to permanently disqualify an individual who is convicted of misusing food stamp benefits or devices, pursuant 7 USC 2024, of \$500 or more.

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

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comment received: No public hearing was requested as a result of the Notice of Intent being published and no written comments were received.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comment received: No public hearing was requested as a result of the Notice of Intent being published and no written 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 administrative regulation will not create any additional compliance, reporting or paperwork requirements.

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

(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:

No effect.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: 50 percent federal funds and 50 percent state 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 hearing was requested as a result of the Notice of Intent being published and no written comments were received.

(b) Kentucky: The same as item (6)(a).

(7) Assessment of alternative methods; reasons why alternatives were rejected: Alternative methods were not considered since the cabinet is responsible to meet the federal requirements pursuant to 7 USC 2015(b)1, as amended by PL 104-193, sections 813 and 814.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: The cabinet is required to administer the Food Stamp Program pursuant to 7 USC 2011 et seq. This administrative regulation is necessary in order to comply with the federal requirements.

(b) State whether a harmful effect on environment and public health would result if not implemented: The cabinet's failure to implement the federal requirements pursuant to 7 USC 2015(b)1, would cause a loss of federal funds, thereby jeopardizing the

continuation of this nutrition program. Therefore, failure to implement the above-referenced provisions would have a detrimental effect on public health.

(c) If detrimental effect would result, explain detrimental effect: The loss of the Food Stamp Program would deprive over 400,000 citizens of the Commonwealth of a nutritional diet. Therefore, it is necessary to promulgate this administrative regulation to prevent the loss of federal funding (100 percent of food stamp benefits, 50 percent of federal match for administrative funds, and 100 percent of federal enhanced funding), due to the failure to implement the federal mandates pursuant to 7 USC 2015(b)1, as amended by PL 104-193, section 813 and 814.

(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: None

(11) TIERING: Is tiering applied? No. Tiering was not applied since application of policy is applied in a like manner for all individuals as set forth through federal requirements.

## FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 7 USC 2015(b)1 as amended by PL 104-193, section 813 and 814.

2. State compliance standards. This administrative regulation pertains to disqualification penalties which are germane to the Food Stamp Program, pursuant to 7 USC 2015(b)1, as amended. There are no separate state compliance standards.

3. Minimum or uniform standards contained in the federal mandate. The provisions of this administrative regulation are promulgated pursuant to 7 USC 2011 et seq., as amended, and applied in a like manner on a statewide basis.

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 Services Division of Family Services (Amendment)

### 905 KAR 1:180. DSS policy and procedures manual.

RELATES TO: KRS 194.060, 199.420 to 199.990, 200.080 to 200.120, 205.201 to 205.204, 205.455 to 205.465, Chapters 208, 209, and 600 to 645

STATUTORY AUTHORITY: KRS 194.050(1), 199.420, 200.080, 209.030, 605.150, 615.050, 620.180, 625.120, 630.140, 635.100, 640.120, 645.250, EO 96-862, 96-1576

NECESSITY, FUNCTION, AND CONFORMITY: 42 USC 9901-9912, "Block Grants for Social Services - Title XX," authorizes grants to states for social services. KRS 194.050(1) authorizes the Cabinet for Families and Children [~~Human Resources~~] to adopt administrative regulations as are necessary to implement programs mandated by federal law, or to qualify for receipt of federal funds and as are necessary to cooperate with federal agencies for the proper administration of the cabinet and its programs. Executive Order 96-862, effective July 2, 1996, reorganized the Cabinet for Human Resources and placed the Department for Social Services under the Cabinet for Families and Children. Executive Order 96-1576, effective December 16, 1996, transferred the residential treatment facilities, services and programs for public and youthful offenders from the Cabinet for

Families and Children, Department for Social Services, Division of Children's Residential Services to the Justice Cabinet, Department of Juvenile Justice. This administrative regulation is amended to incorporate into regulatory form, by reference, materials used by the cabinet in the implementation of a statewide social service program.

Section 1. Incorporation by Reference. (1) The Department for Social Services Policy and Procedures Manual as revised August 1997 [December, 1993], is incorporated by reference.

(2) Copies of the Department for Social Services Policy and Procedures Manual may be inspected, copied or obtained in any department field office in each of the 120 counties or at the Office of the Commissioner, Department for Social Services, 275 East Main, 6 Floor West, Frankfort, Kentucky 40621, between the hours of 8 a.m. and 4:30 p.m., Monday through Friday.

DONNA HARMON, MSW, Commissioner

JOHN H. MORSE, Secretary

APPROVED BY AGENCY: August 13, 1997

FILED WITH LRC: August 14, 1997 at 2 p.m.

PUBLIC HEARING: A public hearing on this regulation will be held, September 22, 1997 at 9 a.m. in the Cabinet for Health Services Auditorium, 1st floor, Department for Health Services Building, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending shall notify this agency in writing by, September 15, 1997. If no notice of intent to attend the hearing is received by that date, the hearing may be canceled. The hearing is opened to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. If you do not wish to attend the public hearing, you may submit written comments on the proposed administration regulation. Send written notice of intent to attend the public hearing or written comments to: Judy H. Trigg, Cabinet for Families and Children, Office of the General Counsel, 275 East Main Street, 4th Floor West, Frankfort, Kentucky 40621, Phone: (502) 564-7900, Fax: (502) 564-7573.

#### REGULATORY IMPACT ANALYSIS

Agency Contact: Michael Cheek

(1) Type and number of entities affected: The type and number of entities affected are all families, children and adults who may be benefited by the implementation of a statewide social service program through the current policies and procedures of the department.

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

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comment received. Implementation of these regulations will not affect the cost of living or employment in the areas served. A public hearing was scheduled but no public comments were received.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comment received. Implementation of this regulation will not affect the cost of doing business in the areas served. A public hearing was scheduled but 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 are no first year additional compliance, reporting or paperwork requirements as this administrative regulation only removes from the Department for Social Services policy and procedures manual the Children's Residential Services Program which has been transferred to the Department of Juvenile Justice pursuant to EO 96-1576.

2. Second and subsequent years: There are no second or subsequent year additional compliance, reporting or paperwork requirements as this administrative regulation only removes from the

Department for Social Services policy and procedures manual the Children's Residential Services Program which has been transferred to the Department of Juvenile Justice pursuant to EO 96-1576.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: There are no direct or indirect costs or savings to the promulgating agency as this administrative regulation only removes from the Department for Social Services policy and procedures manual the Children's Residential Services Program which has been transferred to the Department of Juvenile Justice pursuant to EO 96-1576.

2. Continuing costs or savings: There will not be any continuing direct or indirect costs or savings to the Department for Social Services as this administrative regulation only removes from the Department for Social Services policy and procedures manual the Children's Residential Services Program which has been transferred to the Department of Juvenile Justice pursuant to EO 96-1576.

3. Additional factors increasing or decreasing costs: The department is unaware of any additional factors that would increase or decrease the cost or savings.

(b) Reporting and paperwork requirements: There are no additional compliance, reporting or paperwork requirements as this administrative regulation only removes from the Department for Social Services policy and procedures manual the Children's Residential Services Program which has been transferred to the Department of Juvenile Justice pursuant to EO 96-1576.

(4) Assessment of anticipated effect on state and local revenues: There will not be any anticipated effect on state and local revenues.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Sources of revenue used to implement this administrative regulation include the Social Services Block Grant, Title IV-B, Title IV-E, Title IV-A, Medicaid and general funds.

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

(a) Geographical area in which administrative regulation will be implemented: A public hearing was scheduled but no public comments were received.

(b) Kentucky: A public hearing was scheduled but no public comments were received.

(7) Assessment of alternative methods; reasons why alternatives were rejected: No other alternative methods were considered because the proposed amendments update the material incorporated by reference.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: There are no effects on the public health and environmental welfare as this administrative regulation only removes from the Department for Social Services policy and procedures manual the Children's Residential Services Program which has been transferred to the Department of Juvenile Justice pursuant to EO 96-1576.

(b) State whether a detrimental effect on environment and public health would result if not implemented: There are no detrimental effects on the public health or environmental welfare, as this administrative regulation only removes from the Department for Social Services policy and procedures manual the Children's Residential Services Program which has been transferred to the Department of Juvenile Justice pursuant to EO 96-1576.

(c) If detrimental effect would result, explain detrimental effect: There would be no detrimental effect.

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: There is no statute, administrative regulation, or governmental policy which may be in conflict with, overlap, or duplicate the proposed regulation.

(a) Necessity of proposed regulation if in conflict: There is no

statute, administrative regulation, or governmental policy which may be in conflict with, overlap, or duplicate the proposed regulation.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: There is no statute, administrative regulation, or governmental policy which may be in conflict with, overlap, or duplicate the proposed regulation.

(10) Any additional information or comments: There are no additional information or comments of which we are aware.

(11) TIERING: Is tiering applied? No. This administrative regulation amends the policies and procedures of all offices of the Department for Social Services and is effective statewide.

**CABINET FOR HEALTH SERVICES**  
**Department for Medicaid Services**  
**(Amendment)**

**907 KAR 1:160. Home and community based waiver services.**

RELATES TO: KRS 205.520

STATUTORY AUTHORITY: KRS 194.050, 42 CFR 440.180, 42 USC 1396a, b, d, n, EO 96-862

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health Services, Department for Medicaid Services [~~Human Resources~~] has responsibility to administer the Medicaid Program [~~of Medical Assistance~~]. Executive Order 96-862, effective July 2, 1996, 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 authorizes [empowers] the cabinet, by administrative regulation, to comply with a [any] requirement that may be imposed, or opportunity presented, by federal law for the provisions of medical assistance to Kentucky's indigent citizenry. This administrative regulation establishes [sets forth] the coverage provisions applicable to home and community based waiver services provided to an eligible recipient [recipients] as an alternative to nursing facility services. These services are provided pursuant to a waiver granted by the United States Department of Health and Human Services.

Section 1. Definitions. (1) "Adult day health care center" means a center licensed in accordance with 902 KAR 20:066.

(2) "HCB" means home and community based.

(3) "NF" means nursing facility.

Section 2. [4-] General Coverage Provisions. (1) Except as provided in subsection (2) of this section, the [home and community based (HCB)] services shall be provided [only] to an individual [these individuals] eligible for Medicaid:

(a) Who meets [meet] patient status criteria for nursing facility care in accordance with 907 KAR 1:022;

(b) Who is [as set forth in 907 KAR 1:022]. The HCB services are designed to prevent or reduce institutionalization at the nursing facility care level. HCB services shall be provided only to individuals in a community residence living situation and whose placement in [situations who would be admitted to] a nursing facility shall be appropriate if HCB services were not available;

(c) [Individuals requiring only minor home adaptations or minor home adaptations and case management shall not be considered HCB services eligible. These services are provided pursuant to a waiver granted by the United States Department of Health and Human Services. Excluded from coverage shall be those individuals for whom the cost of HCB services would reasonably be expected (on an overall basis) to exceed the cost of the appropriate level of institutional services, and inpatients of hospitals, nursing facilities and intermediate care facilities for the mentally retarded. HCB services shall be provided only to those individuals] For whom the HCB services are an appropriate alternative to institutionalization; [who

~~meet appropriate patient status;] and~~

(d) Who chooses the HCB services option.

(2) The HCB services shall not be provided to an individual who:

(a) Does not require a service other than minor home adaptations or minor home adaptations and case management; or

(b) Is an inpatient of a hospital, nursing facility, or facility for the mentally retarded.

(3) The department may exclude from coverage an individual for whom the cost of HCB services would reasonably be expected to exceed the cost of the appropriate level of institutional services.

(4) The home and community based services agency [provider] shall be responsible for:

(a) Securing an appropriate physician recommendation[s and orders] relating to the need for HCB services; and

(b) Having a team of their employees to perform [care, and for performing] the required comprehensive assessment and care planning that includes the following members:

1. A qualified social worker with a bachelor's degree in social work, sociology or a related field and a registered nurse; or

2. Two (2) registered nurses.

(5) The designated peer review organization shall make the level of care determination as the agent or representative of the cabinet.

(6) HCB services shall be prior authorized with the department by the HCB agency. [cabinet. The assessment shall not be completed and billed for any Medicaid recipient who does not receive other waiver services.]

Section 3. [2-] Provider Participation. (1) A participating HCB services provider [providers] shall meet the [all] applicable certification and licensure requirements for providing in-home and community based waiver services in accordance [under the Kentucky Medicaid Program, and shall be required to comply] with 907 KAR 1:030, 907 KAR 1:671, 907 KAR 1:672, and 907 KAR 1:673.

(2) An adult day health care center shall comply with 907 KAR 1:671, 907 KAR 1:672, and 907 KAR 1:673. [the provider participation agreement providing for services in accordance with the terms and conditions specified in this administrative regulation.]

Section 4. [3-] Covered Services. The following [services] shall be covered HCB services:

(1) Assessment and reassessment including [The assessment includes] the collection of data and documentation necessary to determine the appropriateness of HCB service for the client, and care [case] planning. [A patient care plan shall [to] include services required, duration and frequency[, and estimated cost]]. For only the [each] assessment [or reassessment], the recipient's attending physician shall certify that if HCB services were not available, he may [would] order NF [nursing facility] services and the recipient may [individual would] be admitted in the immediate future.

(2) Case management[This] is the process of locating, coordinating and monitoring a group of services with responsibility resting with a designated person.

(a) A recipient shall have a designated case manager.

(b) A case manager shall be a registered nurse, licensed practical nurse, or a social worker with a degree in social work, sociology or related field.

(c) A [Each] recipient shall have at least one (1) case management contact per month [thirty (30) to thirty one (31) days] to assess the service delivery.

1. The contact may be by telephone or face-to-face.

2. [However,] A face-to-face contact with the recipient shall be made at least every other month.

3. The face-to-face contact with the adult day health care recipient may be made while the recipient is at the adult day health care center.

(3) Homemaker services[Homemaker services] are services relating to general household activities, including [such as] meal

preparation and routine household care. Homemaker services ~~[-and]~~ shall be provided by a ~~[trained]~~ homemaker who is qualified by the agency, supervised by a registered nurse and not a member of the recipient's family if:

(a) ~~[when]~~ The recipient ~~[client]~~ is functionally unable to perform these tasks and the individual regularly responsible for these activities is temporarily absent or functionally unable to manage the home and care; and

(b) Arrangement ~~[arrangements]~~ cannot be made with a relative or friend ~~[relatives or friends]~~ for the performance of the service.

(4) Personal care services ~~[-Personal care services]~~ are medically oriented services relating to the patient's physical requirements that are ~~[prescribed by a physician]~~ in accordance with the recipient's plan of care. Personal care services:

(a) Shall be ~~[treatment and]~~ provided by an individual who is qualified by the agency, supervised by a registered nurse and not a member of the recipient's ~~[client's]~~ family;

(b) ~~[-Personal care services]~~ May include bathing, assistance with clothing, assisting with medications customarily self-administered, and assistance with ambulation. ~~[-etc.]~~

(5) Respite care services.

(a) Respite care services may include:

1. ~~[are]~~ Homemaker or personal care ~~[home health]~~ aide; or

2. Relief ~~[level]~~ services provided on a temporary basis due to the absence or need for relief of the informal caregiver.

(b) Respite care shall be provided:

1. In accordance with the ~~[orders of a physician and the]~~ plan of care;

2. ~~[Provided]~~ At a care level that safely meets the medical needs of the patient;

3. By an individual appropriately trained and qualified by the agency, who is not a family member; ~~[with appropriate training and qualifications;]~~ and

4. If ~~[Provided only when]~~ an appropriate alternative informal caregiver is not available to provide the necessary services.

(c) Respite care may be provided by the HCB provider or the adult day health care center at the center.

(d) The total value of respite care services covered shall not exceed \$4,000 ~~[\$2,000]~~ in a ~~[any]~~ calendar year, and shall not exceed \$2,000 ~~[\$1,000]~~ per six (6) month period (January 1 through June 30 or July 1 through December 31) within that calendar year.

(6) Minor home adaptations ~~[-This]~~ is the addition to or modification of the patient's home environment when the patient's medical condition necessitates a modification of the existing home situation.

(a) ~~[-and may include such items as rails, ramps, grab bars, etc., including labor and necessary supplies.]~~ Prior approval for minor home adaptations shall be ~~[is]~~ required.

(b) Major home repair ~~[repairs]~~ shall not be covered.

(7) Adult day health care services.

(a) Adult day health care services are adult day health care services provided in an appropriately licensed facility according to 904 KAR 20:066. Basic services shall include: one (1) meal per day (including special diets); snacks, as appropriate; registered nurse and other supervision; regularly scheduled daily activities; routine services required to meet daily personal and health care needs; incidental supplies necessary to provide adult day health care services; and equipment essential to the provision of adult day health care services.

(b) Ancillary services shall include physical, speech and occupational therapy ~~[evaluations as indicated for the purpose of developing a plan of treatment which may be carried out by center staff; and necessary ongoing supervision and follow up of the maintenance program by the therapist].~~

(c) Respite care may be provided in the center by the adult day health care provider. The respite care per recipient limitations established in subsection (5)(d) of this section shall apply.

(d) Patient transportation from the home to adult day health care center and the return trip shall not be covered under the service

element, but is a separately reimbursable service under the provisions of [pursuant to] 907 KAR 1:060 and 907 KAR 1:061.

(8) Attendant care services.

(a) Attendant care service provides hands-on care, appropriate to the skill level of the care provider, specific to meet the needs of an individual who is medically stable but functionally dependent.

(b) Attendant care services shall:

1. Be provided to a recipient who has a service performed for him on a part-time and voluntary basis, by family or a friend who is employed outside the home of the family or friend and who may live with the recipient;

2. Be limited to forty-five (45) hours per week;

3. Include supervision by a registered nurse, licensed by the Commonwealth of Kentucky, at least every sixty (60) days; and

4. Have a plan of care which shall:

a. Identify the need for this service;

b. Determine the amount of time required to meet the recipient's needs utilizing all other existing services and resources available to the recipient; and

c. Be developed by the team, the recipient, and the recipient's family;

5. Not be provided by a member of the recipient's family; and

6. Be a service option which precludes a recipient from receiving personal care, homemaker or adult day care services. ~~[Respiratory therapy services. The service shall be available only for ventilator dependent recipients who are receiving home health agency services and shall be in accordance with the physician's written plan of treatment.]~~

Section 5. ~~[4.]~~ Prior Authorization for Services; Hearing Rights. (1) The department ~~[cabinet]~~ shall prior authorize HCB services to ensure that:

(a) Patient status is met; and

(b) ~~[that HCB]~~ Services are adequate to meet ~~[for]~~ the needs of the client.

(2) The department may exclude from coverage those individuals for whom the cost of HCB services would reasonably be expected to exceed the cost of the appropriate level of institutional services. ~~[-and that HCB services would not reasonably be expected to exceed the cost of institutional care (on an overall basis).]~~

(3) A client found unsuitable by the department for failure to meet the specified criteria shall be denied HCB services.

(b) An individual, if eligible for HCB services, shall be given the option of HCB services or other appropriate institutional alternative.

(5) A ~~[or traditional nursing facility services. Any]~~ denial of service to be appealed shall ~~[may]~~ be appealed in accordance with 907 KAR 1:560. ~~[pursuant to 904 KAR 2:055.]~~

Section 6. ~~[5.]~~ Contracting and Subcontracting. An HCB service shall be provided:

(1) By the participating provider; or

(2) Through a contract or subcontract; and

(3) In accordance with 907 KAR 1:671, 907 KAR 1:672, and 907 KAR 1:673.

Section 7. Incorporation by Reference. (1) "Home and Community Based Waiver-Adult Day Health Manual", June 1997 edition, Department for Medicaid Services, is incorporated by reference.

(2) It may be inspected, copied or obtained at the Department for Medicaid Services, 275 East Main Street, Third Floor East, Frankfort, Kentucky, 40621, Monday through Friday, 8 a.m. to 4:30 p.m. ~~[All HCB services, whether provided directly by the participating provider or through contract or subcontract, shall be in accordance with the terms and conditions specified herein, and the contractor or subcontractor shall meet applicable requirements of law and administrative regulations governing the performance of the service.]~~

## ADMINISTRATIVE REGISTER - 781

~~Section 6. Auditing and Reporting. All participating providers, contractors and subcontractors shall be required to maintain fiscal and service records and to provide the reports determined necessary by the cabinet for the effective functioning and administration of the program. The providers, contractors and subcontractors shall be required to make available upon request all service and financial records (including records of ownership, home office costs, etc.) to the Cabinet for Human Resources, the United States Department of Health and Human Services, and the Comptroller General, and their representatives or designees, for auditing and monitoring purposes.]~~

LARRY MCCARTHY, Deputy Commissioner  
JOHN H. MORSE, Secretary

APPROVED BY AGENCY: August 7, 1997

FILED WITH LRC: August 15, 1997 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on September 22, 1997 at 9 a.m. in the Health Services Auditorium, Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by September 15, 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 canceled. The hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: Mae B. Lewis, Cabinet Regulation Coordinator, Cabinet for Health Services, Office of the Counsel, 275 East Main Street - 4th Floor - West, Frankfort, Kentucky 40621, (502) 564-7900, (502) 564-7573 (Fax).

### REGULATORY IMPACT ANALYSIS

Agency Contact Person: Ked Fitzpatrick or Trish Howard

(1) Type and number of entities affected: All home and community based waiver providers and current recipients participating in the Medicaid Program.

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

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

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

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

1. First year following implementation: Paper for reassessment requirement reduced from semiannual to annual.

2. Second and subsequent years: Paperwork for reassessment requirement reduced from semiannual to annual.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: As shown in companion regulation 907 KAR 1:170.

2. Continuing costs or savings: As shown in companion regulation 907 KAR 1:170.

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: See companion regulation 907 KAR 1:170.

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

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

(b) Kentucky: To be determined after the Notice of Intent public hearing which will be held in accordance with KRS Chapter 13A requirement.

(7) Assessment of alternative methods; reasons why alternatives were rejected: No viable alternatives were identified.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: Will expedite the efficiency of the prior authorization process and increase the effectiveness of home and community based waiver services such as respite and attendant care.

(b) State whether a detrimental effect on environment and public health would result if not implemented: Yes

(c) If detrimental effect would result, explain detrimental effect: May pose an imminent threat to the public health, safety, or welfare of Medicaid recipients.

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

(a) Necessity of proposed regulation if in conflict:

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

(10) Any additional information or comments: None

(11) TIERING: Is tiering applied? Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it. Disparate treatment of any person or entity subject to this administrative regulation could raise questions of arbitrary action on the part of the agency. The "equal protection" and "due process" clauses of the Fourteenth Amendment of the U.S. Constitution may be implicated as well as Sections 2 and 3 of the Kentucky Constitution.

### FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. Pursuant to 42 USC 1396a et seq., the Commonwealth of Kentucky has exercised the option to establish a Medicaid Program for indigent Kentuckians. Having elected to offer Medicaid coverage, the state must comply with federal requirements contained in 42 USC 1396 et seq.

2. State compliance standards. This administrative regulation does not set compliance standards.

3. Minimum or uniform standards contained in the federal mandate. This administrative regulation does not set minimum or uniform standards.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No. This administrative regulation does not set stricter requirements.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. No additional standard or responsibilities are imposed.

**CABINET FOR HEALTH SERVICES**  
**Department for Medicaid Services**  
**(Amendment)**

**907 KAR 1:170. Payments for home and community based services.**

RELATES TO: KRS 205.520

STATUTORY AUTHORITY: KRS 194.050, EO 96-862

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health Services, Department for Medicaid Services, [Human Resources] has responsibility to administer the Medicaid Program [of Medical Assistance 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 authorizes [empowers] the cabinet, by administrative regulation, to comply with a [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 establishes [sets forth] the payment provisions applicable to home and community based waiver services provided to an eligible recipient as an alternative to nursing facility care. [methods of payment for home and community based services provided as an alternative to skilled nursing facility and intermediate care facility care.]

Section 1. Definitions. (1) "Adult day health care center" is defined in 907 KAR 1:160.

(2) "Department" means the Department for Medicaid Services or its designee.

(3) "HCB" is defined in 907 KAR 1:160.

Section 2. Coverage. (1) The department [Cabinet for Human Resources] shall reimburse a participating provider [providers (including coordinating agencies)] of home and community based (HCB) services for a service [services] rendered to an eligible Medicaid recipient [medical assistance recipients] who:

(a) Meet patient status criteria for [skilled] nursing [or intermediate care] facility care; and

(b) Is [who are] prior authorized for the HCB service.

(2) Coverage provisions shall be [are contained] in accordance with 907 KAR 1:160.

Section 3. Payment Amounts for Covered Services. (1) A provider [2. Payments. Payment amounts for HCB services shall be determined in accordance with the provisions and principles contained in this administrative regulation.

(1) Assessment, case management, homemaker services, personal care services, respiratory therapy] shall be paid using an interim payment method as defined in 907 KAR 1:002 with a year-end settlement to the lower of actual reasonable costs or [reasonable] charges utilizing Medicare principles of reimbursement, as established in 42 CFR 413 Subparts A-g for the following HCB services:

(a) Assessment or reassessment;

(b) Case management;

(c) Homemaker services; and

(d) Personal care services.

(2) HCB services [In addition, these services, except for case management and respiratory therapy,] shall:

(a) Be subject to a prospectively set upper limit with the upper limit set at 130 percent of the weighted median of the array of services costs using the most recent cost report available as of May 31 with the upper limits updated each July 1. This limit shall not apply until a provider has participated in the program for two (2) full agency [facility] fiscal years. All other applicable limits shall apply.

(b) The interim rate shall be [is] derived by applying a reduction

factor to current charges based on the difference between prior year allowable cost and charges. If a [When] prior year's costs and charges are not available, the interim rate shall [will] be set at the department's [cabinet's] best estimate of current costs [(not to exceed charges, )] based on payments made for similar services.

(3) [(2)] Respite care covered services shall be:

(a) Limited to \$4,000 [paid on the basis of billed charges, with reimbursement for an individual (beginning with the first billed HCB service) not to exceed \$2,000] per calendar year; or \$2,000 per [\$1,000 in any] six (6) month period within that calendar year for the period beginning January 1 through June 30 or July 1 through December 31;

(b) [-The billed charge should include] Only the actual cost of the respite care services, plus actual overhead costs incurred by the provider;

(c) Subject to [-There will be] a year-end settlement to actual cost, or charges if lower, not to exceed the upper limits; and

(d) Payable to a home and community-based provider or licensed adult day health care center, per recipient, subject to the limitations indicated in paragraphs (a) through (c) of this subsection.

(4) [(3)] Minor home adaptations shall be:

(a) Paid on the basis of actual billed charges;

(b) Paid at [-with reimbursement for an individual for a calendar year limited to] a maximum of \$500 per calendar year for [all] modifications;

(c) [-The service shall have been] Appropriately prior authorized and [have been] provided prior to reimbursement;

(d) Paid for [-The billed charge shall include only] the actual cost of the minor home adaptations, plus actual overhead costs incurred by the provider; and

(e) Subject to [-There will be] a year-end settlement to actual costs, or charges if lower, not to exceed the upper limit.

(5) Payment for attendant care services shall be based on a fee for service with a maximum fee set and reviewed periodically by the department. Costs of attendant care services shall be reported as a nonreimbursable cost in an HCB provider's cost report and not subject to cost settlement. For persons receiving attendant care, the total waiver services cost shall not exceed the cost of an appropriate institutional alternative. Attendant care shall be limited to forty-five (45) hours per week.

(6) Payment [(4) Payments] for adult day health care services.

(a) Payment shall be made directly to a licensed participating [participation] adult day health care center [centers] on the basis of an interim rate with a year-end cost settlement to the lower of actual reasonable allowable costs or charges for adult day health care services.

(b) The maximum daily reimbursement rate for an adult day health basic daily service unit shall be thirty-seven and one-half (37 1/2) [The basic rate shall not exceed eighty (80)] percent of the average nursing facility [maximum intermediate care] reimbursement rate for routine services as established on July 1 of each year. An adult day health basic daily service unit shall care for one (1) patient for a minimum of three (3) hours per day up to a maximum of two (2) units which is six (6) or more continuous hours.

(c) Payment for therapy services shall [Reimbursement for ancillary services shall] not exceed eighty (80) percent of the approved maximum reimbursement rate for therapy services under the home health program [element].

Section 3. Audits shall be performed as necessary to ensure that final payments are in accordance with the payment provisions contained in this administrative regulation].

Section 4. A home health agency [agencies] providing HCB [home and community-based] services to an eligible Kentucky Medicaid recipient [medical assistance recipients] shall [also] comply with the provisions established [contained] in 907 KAR 1:030 and 907



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KAR 1:031.

Section 5. An audit of facility records shall be performed by the department as deemed necessary by the department to ensure that final payment is made in accordance with the payment provisions established in this administrative regulation.

Section 6. Incorporation by Reference. (1) "Home and Community Based-Adult Day Health Reimbursement Manual", Department for Medicaid Services, June 1997 edition, is incorporated by reference.

(2) It may be inspected, copied, or obtained at the Department for Medicaid Services, 275 East Main Street, Third Floor East, Frankfort, Kentucky, 40621, Monday through Friday, 8 a.m. to 4:30 p.m.

LARRY MCCARTHY, Deputy Commissioner  
JOHN H. MORSE, Secretary

APPROVED BY AGENCY: August 7, 1997

FILED WITH LRC: August 15, 1997 at 11 a.m.

**PUBLIC HEARING:** A public hearing on this administrative regulation shall be held on September 22, 1997 at 9 a.m. in the Health Services Auditorium, Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by September 15, 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 canceled. The hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: Mae B. Lewis, Cabinet Regulation Coordinator, Cabinet for Health Services, Office of the Counsel, 275 East Main Street - 4th Floor - West, Frankfort, Kentucky 40621, (502) 564-7900, (502) 564-7573 (Fax).

### REGULATORY IMPACT ANALYSIS

Agency Contact Person: Trish Howard or Karen Doyle

(1) Type and number of entities affected: All home and community based waiver providers and waiver recipients (approximately 8,000).

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

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

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

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

1. First year following implementation: Paperwork for reassessment requirement reduces from semiannual to annual.

2. Second and subsequent years: Paperwork for reassessment requirement reduces from semiannual to annual.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: \$8,308,251 (cost).

2. Continuing costs or savings: \$8,308,251 (cost).

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements: None

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

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Federal and state matching funds. \*Federal matching funds of 70.09% equaling \$5,823,253 and state matching funds of 29.91% equaling \$2,484,998. State revenues for respite will come from previously budgeted funds and state revenues for attendant care will come from the general fund.

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

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

(b) Kentucky: To be determined after the Notice of Intent public hearing which will be held in accordance with KRS Chapter 13A requirement.

(7) Assessment of alternative methods; reasons why alternatives were rejected: No viable alternatives were identified.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: Will expedite the efficiency of the prior authorization process, reduce departmental paperwork and increase home and community based waiver services such as respite and attendant care.

(b) State whether a detrimental effect on environment and public health would result if not implemented: Yes

(c) If detrimental effect would result, explain detrimental effect: May pose an imminent threat to the public health, safety, or welfare of Medicaid recipients.

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

(a) Necessity of proposed regulation if in conflict:

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

(10) Any additional information or comments: None

(11) TIERING: Is tiering applied? Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it. Disparate treatment of any person or entity subject to this administrative regulation could raise questions of arbitrary action on the part of the agency. The "equal protection" and "due process" clauses of the Fourteenth Amendment of the U.S. Constitution may be implicated as well as Sections 2 and 3 of the Kentucky Constitution.

### FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. Pursuant to 42 USC 1396a et seq., the Commonwealth of Kentucky has exercised the option to establish a Medicaid Program for indigent Kentuckians. Having elected to offer Medicaid coverage, the state must comply with federal requirements contained in 42 USC 1396 et seq.

2. State compliance standards. This administrative regulation does not set compliance standards.

3. Minimum or uniform standards contained in the federal mandate. This administrative regulation does not set minimum or uniform standards.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No. This administrative regulation does not set stricter requirements.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. No additional standard or responsibilities are imposed.

## ADMINISTRATIVE REGISTER - 784

### CABINET FOR HEALTH SERVICES Department for Medicaid Services Division of Administration and Development (Amendment)

#### 907 KAR 1:560. Medicaid hearings and appeals for recipients.

RELATES TO: KRS Chapter 13B, 205.231, 205.237, 205.520, 42 CFR 431 subpart E, 42 USC 1396

STATUTORY AUTHORITY: KRS [~~Chapter 13B,~~] 194.025, 194.050[~~, 205.231, 205.237, 42 CFR 431 Subpart E, 42 USC 1396,~~] EO 96-862

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health Services has responsibility to administer the Medicaid Program. Executive Order 96-862, effective July 2, 1996, reorganizes the Cabinet for Human Resources and places Department for Medicaid Services and the Medicaid Program under the Cabinet for Health Services. KRS 205.520 ~~authorizes~~ ~~[empowers]~~ the cabinet, by administrative regulation, to comply with a [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 ~~establishes~~ ~~[sets forth]~~ provisions relating to the Medicaid ~~grievance, hearing and appeal~~ ~~[hearings and appeals]~~ process for recipients.

Section 1. Definitions. (1) "Applicant" means an individual applying for Medicaid.

(2) "Authorized representative" means an individual acting on behalf of an applicant or recipient.

(3) "Department" means the Department for Medicaid Services or its designee.

(4) "Designated hearing agency" means the Department for Social Insurance.

(5) "Medicaid coverage" means items or services a Medicaid recipient may receive through the Medicaid Program.

(6) "Member" is defined in 907 KAR 1:705.

(7) "Recipient" means an individual who receives Medicaid.

Section 2. Informing the Applicant or Recipient of His Rights. (1) ~~An [Each]~~ applicant or recipient shall be informed of his right to a hearing;

(a) Verbally ~~[orally]~~ and in writing when application is made; and

(b) In writing when any action is taken affecting his eligibility in accordance with KRS 13B.050.

(2) ~~An [Each]~~ applicant or recipient shall be informed of the method by which he may obtain a hearing and that he may be represented by:

(a) Legal counsel;

(b) A relative;

(c) A friend;

(d) Other spokesperson; or

(e) Himself.

Section 3. Request for a Hearing. (1) ~~An [Any]~~ applicant or recipient or an authorized representative may request a hearing by filing a request with the designated hearing agency at ~~[either]~~ the local office or central office.

(2) The applicant or recipient shall clearly indicate a desire for a hearing by submitting a statement in:

(a) Written form; or

(b) Verbally ~~[orally]~~ and ~~[later]~~ followed up in writing.

Section 4. Time Limitation for Request. (1) To be considered timely, a written or verbal (with appropriate follow-up in writing) ~~[oral]~~ request from an applicant or recipient with regard to an action by the Department for Medicaid Services or its designee regarding Medicaid eligibility or coverage shall be received by the designated hearing

agency within:

(a) Forty (40) days of the date of the advance notice of adverse action; or

(b) Thirty (30) days of the notice of:

1. Denial of an application;

2. Discontinuance of an active case;

3. Increase in patient liability;

4. Reduction of Medicaid coverage; or

5. If the hearing issue relates to a failure to take a timely ~~[is delayed in]~~ action, the applicant or recipient has a time period equal to the delay in order to request a hearing. ~~[the action is pending.]~~

(2) An additional thirty (30) days for requesting a hearing may be granted if it is determined by the hearing officer that the delay was for good cause in accordance with the following criteria:

(a) The applicant or recipient was away from home during the entire filing period;

(b) The applicant or recipient is unable to read or to comprehend the right to request a hearing on the notice of adverse action or the notice of discontinuance, increase in patient liability or reduction of Medicaid coverage.

(c) The applicant or recipient moved resulting in delay in receiving or failure to receive the notice of adverse action or the notice of discontinuance, increase in patient liability or reduction of Medicaid coverage;

(d) Serious illness of the applicant or recipient; or

(e) The delay was no fault of the applicant or recipient.

Section 5. Continuation of Medicaid. (1) Medicaid coverage shall be continued through the month in which the hearing officer's decision is rendered if the request results from dissatisfaction regarding a proposed discontinuance, proposed increase in patient liability or proposed reduction of Medicaid coverage and is received within ten (10) days of the date of the advance notice of adverse action or notice of decrease or discontinuance from the Department for Medicaid Services or its designee.

(2) Medicaid shall be reinstated and continued through the month in which the hearing officer's decision is rendered if:

(a) The request is received within twenty (20) days of the date of the advance notice of adverse action or notice of discontinuance, increase in patient liability or reduction of Medicaid coverage; and

(b) The reason for delay meets the good cause criteria contained in Section 4 of this administrative regulation.

(3) Subsection (1) of this section shall not apply if the applicant or recipient requests the discontinuance, increase in patient liability or reduction of Medicaid coverage to be in effect pending the hearing decision.

(4) Subsections (1) and (2) of this section shall not apply if the program benefit has been reduced or discontinued as a result of a change in law or administrative regulation~~[or policy of the department]~~.

(5) Continued or reinstated benefits shall be considered overpayments if the agency decision is upheld.

(6) Time limited benefits shall not be extended based on a request for an appeal or hearing.

Section 6. Acknowledgement of the Request. (1) A hearing request shall be acknowledged by the designated hearing agency.

(a) The acknowledgement letter shall contain information regarding the hearing process, including the right to case record review prior to the hearing, the right to representation and, a statement that the local office can provide information regarding the availability of free representation by legal aid or a welfare rights organization within the community.

(b) Subsequent notification shall comply with the requirements of KRS 13B.050.

(2) ~~[All]~~ Parties to the hearing shall be provided at least twenty (20) days timely notice of the hearing to permit adequate preparation

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of the case. Less timely notice may be requested by the applicant or recipient to expedite the scheduling of the hearing.

(3) A hearing complying with the requirements of KRS Chapter 13B shall be scheduled on a timely basis to assure no more than ninety (90) days shall elapse from the date of the request to the date of the decision, with the exception that any hearing determination regarding a community spouse income or resource allowance shall be held within thirty (30) days of the hearing request date.

Section 7. Withdrawal or Abandonment of Request. (1) The applicant or recipient may withdraw his request for a hearing prior to release of the hearing officer's decision, but he shall be granted the opportunity to discuss withdrawal with his legal counsel or representative, if any, prior to finalizing the action.

(2) Abandonment of request.

(a) A hearing request shall be considered abandoned if the applicant or recipient fails without prior notification to report for the hearing.

(b) A hearing request shall not be considered as abandoned without extending to the applicant or recipient, and, if applicable, his legal counsel or representative, a period of ten (10) days to establish that the failure was for good cause in accordance with good cause criteria contained in Section 4 of this administrative regulation.

Section 8. Applicant's or Recipient's Rights Prior to a Hearing. (1) An applicant or recipient shall receive notice consistent with KRS 13B.050 including the ~~[-his]~~ right to:

(a) Legal counsel or other representation;

(b) ~~the right to~~ Review the case record relating to the issue; and

(c) ~~the right to~~ Submit additional information in support of his claim.

(2) If the hearing involves medical issues:

(a) A medical assessment by other than the person or persons involved in the original decision shall be obtained at the department's expense if the hearing officer considers it necessary; and

(b) If a medical assessment at the department's expense is requested by the applicant or recipient and denied by the hearing officer, the reason for denial shall be set forth in writing.

Section 9. Postponement of a Hearing. (1) The applicant or recipient may request and shall be entitled to a postponement of a hearing if the request is made before the hearing and, the request is ~~[for an essential reason beyond the control of the applicant or recipient]~~ in accordance with good cause criteria contained in Section 4 of this administrative regulation.

(2) The decision to grant the postponement shall be made by the hearing officer.

(a) The postponement of the hearing shall not exceed thirty (30) days from the date of the request.

(b) The time limit for action on the decision shall be extended for as many days as the hearing is postponed.

Section 10. Corrective Action for Medicaid. If ~~[after]~~ a hearing has been requested ~~[review of the case record]~~ but a hearing decision has not yet been rendered the department may determine ~~[prior to scheduling a hearing, the hearing officer determines]~~ that corrective action is appropriate to provide or restore services or ~~[taken or proposed to be taken by the agency is incorrect, he shall authorize corrective action in the form of eligibility or]~~ coverage to which the applicant or recipient would have been entitled ~~[or to continuing eligibility or coverage if the issue was a proposed action,]~~ but for the action or proposed action by ~~[incorrect decision of]~~ the department. After corrective action has been taken, [agency-] the applicant or recipient shall [then] be given the opportunity to withdraw the hearing request; however, [but] the hearing process shall continue [be scheduled] if the applicant or recipient wishes to pursue the request.

Section 11. Conduct of a Hearing. (1) The hearing shall be conducted in accordance with the requirements of KRS 13B.080 and 13B.090.

(2) Impartiality.

(a) The hearing officer shall be impartial and shall disqualify himself for any reason set forth in KRS 13B.040.

(b) The applicant or recipient may challenge the hearing officer by presentation of factual evidence that the impartiality criteria are not met.

(3) ~~[(2)]~~ The hearing shall be conducted in-state where the applicant or recipient may attend without undue inconvenience.

(4) ~~[(3)]~~ If necessary to receive full information on the issue, the hearing officer may examine each party who appears and his witnesses.

(5) ~~[(4)]~~ The hearing officer may schedule a hearing and take additional evidence as is deemed necessary.

(a) A party ~~[Parties]~~ to a telephonic hearing who wishes to introduce a document ~~[documents]~~ or written material ~~[materials]~~ not yet supplied to an opposing party ~~[parties]~~ into the record at the hearing shall immediately mail a copy or transmit a facsimile ~~[copies]~~ of the document ~~[documents]~~ to the hearing officer and to the opposing party.

(b) A party ~~[All parties]~~ to a telephonic hearing shall submit all available documentary evidence to be used during the hearing to the hearing officer and the opposing party prior to the convening of the hearing.

(c) Failure to provide both the hearing officer and the opposing party with a copy ~~[copies]~~ of evidence referenced in paragraphs (a) and (b) ~~[and (c)]~~ of this subsection may result in its being excluded from the record.

Section 12. The Decision. (1) After the hearing is concluded, the hearing officer shall issue a decision ~~[set forth]~~ in writing ~~[his finding of facts and conclusions of law, specifying the reasons for the decision and identifying the supporting evidence and administrative regulations]~~. The hearing officer's decision shall state the issue ~~[issues]~~, contain a finding of fact ~~[facts]~~, present the hearing officer's conclusion~~[e]~~ of law, state the decision with regard to the issue ~~[issues]~~, and contain a statement explaining the appellant's further hearing rights.

(2) A decision ~~[Decisions]~~ with regard to a community spouse's income allowance shall be subject to a downward adjustment ~~[adjustments]~~ as deemed necessary by the agency as circumstances causing financial duress change or no longer exist.

(a) The resource allowance shall be subject to this adjustment only with regard to a resource ~~[resources]~~ attributed to the community spouse but not transferred within ~~[the]~~ six (6) months of the Medicaid approval date.

(b) This adjustment is appealable pursuant to Section 5 of this administrative regulation.

(3) A copy of the decision shall be mailed to the applicant or recipient and his representative.

(4) The decision, with respect to the issue ~~[issues]~~ considered, shall be final unless further appeal is initiated within twenty (20) days from the date of mailing of the decision.

Section 13. Appeal from Decision of Hearing Officer for an Applicant and Recipient ~~[Applicants and Recipients]~~. (1) Any applicant or recipient or his authorized representative wishing to appeal the decision of a hearing officer may do so by filing an appeal to an appointed appeal board.

(2) ~~[(1)]~~ The appeal request shall be considered timely, when it is received in a local office or the central office of the designated hearing agency within twenty (20) days of the date on which the hearing officer's decision was mailed.

(3) ~~[(2)]~~ If the good cause criteria in Section 4 of this administrative regulation is met, an appeal request received within thirty (30)

days of the hearing officer's decision shall be considered timely.

(4) The request shall be filed in writing or verbally ~~[orally]~~, but if filed verbally ~~[orally]~~ shall be followed up in writing. It shall be considered filed on the day the verbal ~~[oral]~~ or written request is received.

(5) ~~[(3)]~~ Medicaid eligibility shall continue to be denied, discontinued, patient liability increased, or Medicaid coverage reduced if the department's action is upheld by the hearing officer.

Section 14. Applicant's or Recipient's Rights Prior to an Appeal Board Consideration. (1) An appeal ~~[All appeals]~~ shall be acknowledged in writing to the applicant or recipient and his authorized representative.

(2) The acknowledgment shall offer the opportunity to file a brief or submit new and additional proof and state the tentative date on which the board shall consider the appeal.

Section 15. Appeal Board Review. (1) An appeal to the appeal board shall be considered upon the records of the department and the evidence or exhibits introduced before the hearing officer unless the applicant or recipient specifically requests permission to file additional proof.

(2) When an appeal is being considered on the record, a party ~~[the parties]~~ may present a written argument ~~[arguments]~~ and at the appeal board's discretion, be allowed to present an oral argument ~~[arguments]~~.

(3) If needed, the appeal board may direct the taking of additional evidence to resolve the appeal.

(4) Evidence shall be taken by the appeal board after seven (7) days notice to the parties, giving them the opportunity to object to introduction of additional evidence or to rebut or refute any additional evidence.

Section 16. The Appeal Board Decision. The decision of the appeal board, duly signed by members of the appeal board, shall set forth in writing the facts on which the decision is based and unless set aside through the judicial review process pursuant to KRS 13B.140 and 13B.150, shall be irrevocable in respect to the issue ~~[issues]~~ in the individual case.

Section 17. Medicaid Case Actions Following a Decision. (1) Medicaid case actions following a decision of a hearing officer or the appeal board shall be made promptly and shall include the month of application or, providing it is established that the applicant or recipient was eligible during an entire period, the month in which incorrect action of the department adversely affected the applicant or recipient.

(2) For a reversal ~~[reversal]~~ involving reduction of Medicaid coverage or an increase in patient liability, action shall be taken to restore benefits within ten (10) days of the receipt of the hearing or appeal board decision.

Section 18. Special Procedures Relating to Nursing Facility, Hospital and Psychiatric Residential Treatment Facility Level of Care Determination ~~[Determinations]~~. The department contracts with a peer review organization ~~[organizations]~~ to provide a level of care determination ~~[determinations]~~ for an individual in a nursing facility. For an individual ~~[these individuals in nursing facilities. For these individuals]~~ appealing a peer review organization's determination, the following special provisions shall be applicable:

(1) If the peer review organization's decision is adverse to the recipient, a written notice of the decision shall be given to the recipient, the physician of record, the facility (if any) and the department. The notice shall comply with the requirements of Section 2 of this administrative regulation.

(2) The recipient may appeal the determination of the peer review organization by filing a written request for reconsideration with the utilization review agency.

(a) The request for reconsideration shall be made within thirty (30) days of the date on the notice of the adverse decision.

(b) If the request for reconsideration is made within ten (10) days, benefits shall continue (as appropriate) until the reconsideration decision has been made.

(c) Reconsideration hearings shall be held within ten (10) working days of the request when the recipient is in the facility; if the request for reconsideration is received after the recipient has left the facility, the hearing shall be held within thirty (30) days.

(3) The hearing shall be conducted in accordance with the requirements of KRS 13B.080 and 13B.090.

(4) Impartiality.

(a) The hearing officer ~~[He]~~ shall be impartial and shall disqualify himself for any reason established ~~[set forth]~~ in KRS 13B.040.

(b) The applicant or recipient may challenge the hearing officer by presentation of factual evidence that the impartiality criteria are not met.

(5) ~~[(4)]~~ After the hearing is concluded, the hearing officer shall issue a decision ~~[set forth]~~ in writing ~~[his findings of facts and conclusion of law specifying the reasons for the decision and identifying the supporting evidence and administrative regulations]~~. The hearing officer's decision shall state the issue, contain a finding of fact, present the hearing officer's conclusion of law, state the decision with regard to the issue, and contain a statement explaining the appellant's further hearing rights. A copy of the decision shall be mailed to the recipient and his representative.

(6) ~~[(5)]~~ If the reconsideration decision is adverse to the recipient, he may then appeal to the department for a hearing in accordance with this administrative regulation.

(a) The appeal shall be filed within fifteen (15) days of the date the recipient is notified of the reconsideration decision, any request may be filed with the utilization review agency or directly with the department.

(b) If filed with the utilization review agency, they shall forward the request with appropriate medical records and any other necessary documentation to the department.

(7) ~~[(6)]~~ When a negative decision has been appealed to the department, the appeal shall be processed as established ~~[set forth]~~ in Sections 3, 4, 5, and 6 of this administrative regulation.

Section 19. Special Procedures Relating to a Managed Care Participant. (1) A Medicaid recipient shall be informed by the partnership in writing of all policies and procedures for making a complaint, filing a grievance and requesting a hearing in accordance with 907 KAR 1:705.

(2) If the partnership's decision is adverse to the member, the member may request a hearing regarding any action or inaction on the part of the partnership and its subcontracted provider to the department in accordance with Sections 3 through 12 of this administrative regulation and shall not be required to employ or exhaust any other complaint or grievance resolution processes contained within the partnership plan.

(3) Any member or his authorized representative wishing to appeal the decision of a hearing officer may do so by filing an appeal to an appointed appeal board.

(4) An appeal shall be processed as set forth in Sections 14, 15 and 16 of this administrative regulation.

Section 20. Limitation of Fees. (1) Although the department and its officers and employees, either in their official or personal capacity, shall not be liable for payment of any attorney fee ~~[fees]~~, the department shall in accordance with KRS 205.237, set the maximum fee that an attorney may charge the applicant or recipient for the representation in all categories of Medicaid as follows:

(a) Seventy-five (75) dollars for preparation and appearance at hearing before a hearing officer;

(b) Seventy-five (75) dollars for preparation and presentation

- (brief [briefs] included) of an appeal [appeals] to the appeal board;
- (c) \$175 for preparation and presentation, including a pleading [pleadings] and appearance in court, of an appeal [appeals] to the circuit court;
- (d) \$300 for preparatory work and briefs and all other matters incident to an appeal [appeals] to the Court of Appeals.
- (2) Enforcement of payment of the fee shall be a matter entirely between the counsel or agent and the recipient. The fee shall not be deducted, either in whole or in part, from a public assistance payment [payments] otherwise due and payable to the recipient.

Section 21. ~~[20.]~~ Hearings and appeals relating to a decision [decisions] to reclassify or transfer a person [persons] with mental retardation in a state institution. ~~[Institutions. Hearings and appeals relating to decisions to reclassify or transfer persons with mental retardation in state institutions]~~ shall be in accordance with the requirement of KRS 210.270.

Section 22. ~~[24.]~~ Burden of Proof. In a proceeding [all proceedings] conducted pursuant to this administrative regulation, the burden of proving eligibility or coverage shall be borne by the applicant or recipient.

Section 23. Incorporation by Reference. ~~[22. Material Incorporated by Reference.]~~ (1) ~~[The]~~ Form PAFS-78, revised May 1996, necessary for a hearing and appeal [hearings and appeals] in the Medicaid Program is ~~[shall be]~~ incorporated by reference ~~[in this administrative regulation]~~.

(2) ~~It [The form incorporated by reference]~~ may be inspected, copied, or obtained ~~[reviewed]~~ at the ~~[Office of the Commissioner,]~~ Department for Medicaid Services, 275 East Main Street, Frankfort, Kentucky 40621[-]

~~(3) The form shall be available for review during the normal business week, Monday through Friday, 8 a.m. to [through] 4:30 p.m. [Eastern standard time], excluding state holidays.]~~

LARRY MCCARTHY, Deputy Commissioner  
JOHN H. MORSE, Secretary

APPROVED BY AGENCY: August 7, 1997

FILED WITH LRC: August 15, 1997 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on September 22, 1997 at 9 a.m. in the Health Services Auditorium, Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by September 15, 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 canceled. The hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: Mae B. Lewis, Cabinet Regulation Coordinator, Cabinet for Health Services, Office of the Counsel, 275 East Main Street - 4th Floor - West, Frankfort, Kentucky 40621, (502) 564-7900, (502) 564-7573 (Fax).

#### REGULATORY IMPACT ANALYSIS

Agency Contact Person: Trish Howard or Karen Doyle

- (1) Type and number of entities affected: Potentially all Medicaid recipients and providers enrolled in a managed care partnership.
- (2) Direct and indirect costs or savings on the:
- (a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent

available from the public comments received: No comments have been 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 comments have been received.

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

1. First year following implementation: The partnerships who elect to participate will have compliance reporting and paperwork requirements.

2. Second and subsequent years: Same requirements as first year.

(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 and state matching funds.

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

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

(b) Kentucky: None

(7) Assessment of alternative methods; reasons why alternatives were rejected: No viable alternatives were identified.

(8) Assessment of expected benefits:

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

(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 enrolled in a partnership would not have due process with regard to decisions made regarding their health.

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

(a) Necessity of proposed regulation if in conflict:

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

(10) Any additional information or comments: None

(11) TIERING: Is tiering applied? Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it. Disparate treatment of any person or entity subject to this administrative regulation could raise questions of arbitrary action on the part of the agency. The "equal protection" and "due process" clauses of the Fourteenth Amendment of the U.S. Constitution may be implicated as well as Sections 2 and 3 of the Kentucky Constitution.

#### FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. Pursuant to 42 USC 1396a et seq., the Commonwealth of Kentucky has exercised the option to establish a Medicaid Program for indigent Kentuckians. Having elected to offer Medicaid coverage, the state must comply with federal requirements contained in 42 USC 1396 et seq.

2. State compliance standards. This administrative regulation does not set compliance standards.

3. Minimum or uniform standards contained in the federal

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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.



NEW ADMINISTRATIVE REGULATIONS RECEIVED THROUGH NOON, AUGUST 15, 1997

FINANCE AND ADMINISTRATION CABINET  
Office of the Secretary  
(New Administrative Regulation)

200 KAR 22:041. Repeal of 200 KAR 22:040.

RELATES TO: KRS 18A.430(1)

STATUTORY AUTHORITY: KRS 18A.415, 18A.430(1)(a), (b), (c)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 18A.430(1)(a) provides that each pilot agency participating in the Pilot Personnel Program authorized by KRS 18A.400 to 18A.450 shall develop comprehensive employment manuals establishing conditions of employment for employees in the Pilot Personnel Program. KRS 18A.430(1)(b) requires that the employment manuals be promulgated by administrative regulation. According to KRS 18A.430(1)(c), the head of the agency in which the pilot program is located shall be responsible for preparing the administrative regulation and submitting it to the Secretary of the Finance and Administration Cabinet for promulgation. The comprehensive employment manual of the Natural Resources and Environmental Protection Cabinet's Division of Abandoned Lands, Program Development and Program Services Branches, for use in the Pilot Personnel Program was promulgated by administrative regulation 200 KAR 22:040. KRS 18A.415 provides that the Personnel Steering Committee may discontinue a pilot personnel program at any time if the program goals and objectives set forth in the agency's application are not being met and reasonable attempts at corrective action have failed. 200 KAR 22:040 is no longer required because the Personnel Steering Committee has voted to discontinue the pilot program for the Natural Resources and Environmental Protection Cabinet's Division of Abandoned Lands, Program Development and Program Services Branches due to insufficient interest in the project.

Section 1. 200 KAR 22:040, Comprehensive Employment Manual of the Natural Resources and Environmental Protection Cabinet's Division of Abandoned Lands, Program Development and Program Services Branches, for use in the Pilot Personnel Program, is hereby repealed.

JOHN MCCARTY, Secretary

APPROVED BY AGENCY: August 12, 1997

FILED WITH LRC: August 14, 1997 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on September 22, 1997, at 9 a.m. in Room 386, Capitol Annex, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by September 15, 1997, five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. 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: Gail Prewitt, Office of the Secretary, Finance and Administration Cabinet, Room 383, Capitol Annex, Frankfort, Kentucky 40601, phone (502) 564-4240, FAX (502) 564-6785.

REGULATORY IMPACT ANALYSIS

Contact Person: Gail Prewitt

(1) Type and number of entities affected: This regulation will affect all employees in the Natural Resources and Environmental Protection Cabinet's Division of Abandoned Lands, Program Development and Program Services Branches, who are participating in the Pilot Personnel 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. No direct or indirect costs or savings on the cost of living and employment in the geographical area in which the administrative regulation will be implemented are anticipated. No public comments have yet been received and no public hearing has yet taken place regarding this proposed 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 direct or indirect costs or savings on the cost of doing business in the geographical area in which the administrative regulation will be implemented are anticipated. No public comments have yet been received and no public hearing has yet taken place regarding this proposed regulation.

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

1. First year following implementation: No compliance, reporting or paperwork requirements will result.

2. Second and subsequent years: Same as for first year.

(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:

No effect on state and local revenues is anticipated.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: None required.

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

(a) Geographical area in which administrative regulation will be implemented: No public comments have yet been received and no public hearing has yet taken place regarding this proposed regulation. However, no economic impact is expected.

(b) Kentucky: No public comments have yet been received and no public hearing has yet taken place regarding this proposed regulation. However, no economic impact is expected.

(7) Assessment of alternative methods; reasons why alternatives were rejected: No alternative methods were assessed.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: No effects on public health and environmental welfare are expected in the geographical area in which the regulation will be implemented or in Kentucky.

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

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

Does not apply.

(9) Identify any statute, rule, administrative regulation or government policy which may be in conflict, overlapping, or duplication: To the best of the knowledge of the Office of the Secretary, there are no statutes, rules, administrative regulations or government policies which are in conflict, overlap, or duplicate the proposed administrative regulation.

(a) Necessity of proposed regulation if in conflict: Does not apply.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: Does not apply.

(10) Any additional information or comments: None

(11) TIERING: Is tiering applied? Tiering was not applied. This regulation only applies to employees in the Natural Resources and Environmental Protection Cabinet's Division of Abandoned Lands, Program Development and Program Services Branches, who are participating in the Pilot Personnel Program and applies equally to all such employees.

**FINANCE AND ADMINISTRATION CABINET  
Kentucky Asset/Liability Commission  
(New Administrative Regulation)**

**200 KAR 23:010. Guidelines for use of financial agreements.**

RELATES TO: KRS 56.863(9)

STATUTORY AUTHORITY: KRS 56.863(2), (9)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 56.863(9) requires that the Kentucky Asset/Liability Commission promulgate administrative regulations that limit the net exposure of the Commonwealth as a result of the commission entering into financial agreements. This administrative regulation establishes the limits under which the commission may enter into financial agreements.

Section 1. Definitions. For the purpose of this administrative regulation:

(1) "Hedge" means a position in a financial agreement taken to minimize or eliminate the risk associated with an existing instrument or portfolio of instruments;

(2) "Net exposure" means the difference between the sum of the notional amount of financial agreements based on interest-sensitive assets or interest-sensitive liabilities under which variable payments are owed, less the sum of the notional amount of financial agreements based on interest-sensitive assets or interest-sensitive liabilities under which fixed payments are owed, respectively;

(3) "Notional amount" means the nominal amount on which a financial agreement is based;

(4) "Obligations" means notes, leases, bonds, or other financial liabilities;

(5) "Par amount" means the face or nominal value of a security.

Section 2. Goals of the Commission in the Use of Financial Agreements. The goals of the commission in the use of financial agreements shall include, but not be limited to, the following:

(1) To effectively manage the Commonwealth's net interest margin by more efficiently matching interest-sensitive assets with interest-sensitive liabilities;

(2) To hedge any of the Commonwealth's obligations from adverse changes in interest rates;

(3) To utilize financial agreements to lower interest expenses or the risk of fluctuating interest rates to the Commonwealth; and

(4) To better manage debt service reserve funds and advance refunding escrow accounts.

Section 3. Guidelines of the Commission in the Use of Financial Agreements. The commission shall enter into financial agreements pursuant to the following guidelines:

(1) The commission shall utilize financial agreements in a prudent and nonspeculative manner;

(2) The commission shall only enter into financial agreements with parties which are rated in one (1) of the three (3) highest rating categories by a nationally recognized rating agency;

(3) Financial agreements resulting in variable rate obligations for the Commonwealth shall be entered into only if the aggregate of all variable rate obligations under financial agreements does not exceed a net exposure of more than ten (10) percent of state obligations outstanding which are supported by appropriations by the General Assembly at the time the agreement is executed. Financial agreements utilized related to the issuance of tax and revenue anticipation notes shall be excluded from this limitation;

(4) Financial agreements utilized for the purpose of refunding or aiding in the refunding of obligations of the Commonwealth shall be limited to a notional amount not to exceed the par amount and stated final maturity of the refunding obligations;

(5) Financial agreements utilized as part of a debt service reserve fund investment strategy shall be limited to a notional amount not to exceed the maximum required debt service reserve fund amount required under the resolution, trust indenture, or agreement establishing the debt service reserve fund;

(6) Financial agreements utilized for the purpose of maximizing investment income and alleviating mismatches between an advance refunding escrow and debt service payments due on an obligation shall be limited to a notional amount not to exceed the par amount of the securities held in the escrow plus interest; and

(7) No more than ten (10) percent of the Commonwealth's investment portfolio shall be subject to financial agreements utilized for the purpose of managing the net interest margin. Financial agreements based on the Commonwealth's interest-sensitive assets shall be coordinated with the State Investment Commission.

JOHN P. MCCARTY, Chairman

APPROVED BY AGENCY: August 14, 1997

FILED WITH LRC: August 15, 1997 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on September 24, 1997 at 10 a.m. at the Office of Financial Management and Economic Analysis at 702 Capitol Avenue, Suite 261, Frankfort, Kentucky 40601. Individuals interested in being heard at this meeting shall notify this agency in writing by September 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 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: F. Thomas Howard, Deputy Executive Director, Office of Financial Management and Economic Analysis, 702 Capitol Avenue, Suite 261, Frankfort, Kentucky, 40601, (502) 564-2924, Fax: (502) 564-7416.

**REGULATORY IMPACT ANALYSIS**

Contact Person: F. Thomas Howard

(1) Type and number of entities affected: This administrative regulation affects the State Investment Commission and the Finance and Administration Cabinet in the Executive Branch.

(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 is no anticipated

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cost or savings on the cost of living and employment in the geographical area in which the administrative regulation will be implemented. A public hearing on this regulation has not yet taken place.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received. This administrative regulation poses no anticipated cost on business in the geographical area in which it will be implemented. A public hearing on this regulation has not yet taken place.

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

1. First year following implementation: There are no compliance, reporting, or paperwork requirements associated with this administrative regulation. Nor will there be any effect upon competition.

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: Savings will result from increased investment income on the Commonwealth's assets and decreased interest costs on the Commonwealth's liabilities.

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

3. Additional factors increasing or decreasing costs: No other factors are known at this time.

(b) Reporting and paperwork requirements: None

(4) Assessment of anticipated effect on state and local revenues: No impact is expected on local revenues. State investment income revenue is expected to be enhanced.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: No funds are anticipated to be required for implementation and enforcement of the administrative regulation. If funds are required, the source would be the General Fund.

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

(a) Geographical area in which administrative regulation will be implemented: No impact is expected; however, there has not yet been a public hearing on the regulation.

(b) Kentucky: No impact is expected; however, there has not yet been a public hearing on the regulation.

(7) Assessment of alternative methods; reasons why alternatives were rejected: No other methods were considered as the regulation implements limits required to be established by KRS 56.863.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: No impact is expected.

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

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

(9) Identify any statute, rule, administrative regulation or government policy which may be in conflict, overlapping, or duplication: To the best knowledge of the Finance and Administration Cabinet, Office of Financial Management and Economic Analysis, no statutes, administrative regulations, or government policies conflict, overlap, or duplicate this administrative regulation.

(a) Necessity of proposed regulation if in conflict: Inapplicable

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

(10) Any additional information or comments: None

(11) TIERING: Is tiering applied? No. The regulation only applies to one to entity, the Kentucky Asset/Liability Commission. The goals and guidelines for the use of financial agreements are uniformly applied to this entity.

### GENERAL GOVERNMENT CABINET Kentucky Board of Veterinary Examiners (New Administrative Regulation)

#### 201 KAR 16:071. Repeal of 201 KAR 16:070.

RELATES TO: KRS 321.235(3), 321.240(5)

STATUTORY AUTHORITY: KRS 321.235(3), 321.240(5)

NECESSITY, FUNCTION, AND CONFORMITY: 201 KAR 16:070 is being repealed to conform to KRS Chapter 13B.

Section 1. 201 KAR 16:070, Hearing procedures, is hereby repealed.

JOHN R. McCLURE, Chairman

APPROVED BY AGENCY: July 31, 1997

FILED WITH LRC: August 1, 1997 at noon

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on September 29, 1997, at 10 a.m., at the Division of Occupations and Professions, Berry Hill Annex, 700 Louisville Road, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by September 22, 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 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: David L. Nicholas, Director, Division of Occupations and Professions, P. O. Box 456, Frankfort, Kentucky 40502-0456, Telephone: (502) 564-3296.

#### REGULATORY IMPACT ANALYSIS

Agency Contact: David L. Nicholas

(1) Type and number of entities affected: Approximately 1800 licensed veterinarians and 250 licensed veterinary technicians and technologists 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: No direct or indirect costs or savings on the cost of living and employment.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented: No direct or indirect costs or savings on the cost of doing business.

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

1. First year following implementation: No direct or indirect costs or savings on the compliance, reporting, and paperwork requirements for the first year following implementation.

2. Second and subsequent years: No direct or indirect costs or savings on the compliance, reporting, and paperwork requirements for the second and subsequent years.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: No direct or indirect costs or savings for the first year.

2. Continuing costs or savings: No continuing costs or savings.

3. Additional factors increasing or decreasing costs: No additional factors increasing or decreasing costs.

(b) Reporting and paperwork requirements: No effects on reporting or paperwork requirements.

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(4) Assessment of anticipated effect on state and local revenues: No anticipated effect on state and local revenues.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: The source of revenue to be used for implementation and enforcement of this administrative regulation will be licensing fees.

(6) Economic impact, including effects of economic activities arising from administrative regulation, on:

(a) Geographical area in which administrative regulation will be implemented: No economic impact is anticipated in the geographical area.

(b) Kentucky: No economic impact is anticipated in Kentucky.

(7) Assessment of alternative methods; reasons why alternatives were rejected: This regulation is being repealed to comply with state law. No other alternatives were deemed appropriate.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: No effects are anticipated on public health and environmental welfare.

(b) State whether a detrimental effect on environment and public health would result if not implemented: No detrimental effects on environment and public health would result if this administrative regulation were not implemented.

(c) If detrimental effect would result, explain detrimental effect: No detrimental effect would result.

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication:

(a) Necessity of proposed regulation if in conflict: No such statute, regulation, or policy exists.

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

(10) Any additional information or comments: There is no additional information or comments.

(11) TIERING: Is tiering applied? Tiering was not applied because all licensed social workers are treated uniformly under the law.

### **TOURISM DEVELOPMENT CABINET Department of Fish and Wildlife Resources (New Administrative Regulation)**

#### **301 KAR 2:142. Spring wild turkey hunting.**

RELATES TO: KRS 150.175(r), 150.305, 150.360, 150.390, 150.990(11)

STATUTORY AUTHORITY: KRS 150.025(1), 150.390(1), 150.620

NECESSITY, FUNCTION, AND CONFORMITY: KRS 150.025(1) and 150.390(1) authorize the department to promulgate administrative regulations governing wild turkey hunting. This administrative regulation establishes season dates, shooting hours and other requirements for spring turkey hunting.

Section 1. Definitions. (1) "Quota hunt" means a hunt whose participants register in advance and are selected by a random drawing.

(2) "Youth hunt" means a hunt open to a person at least ten (10) years old but who has not reached his 16th birthday by the day of the hunt.

Section 2. A person may take wild turkeys:

(1) For twenty-one (21) consecutive days beginning on the Monday closest to April 15;

(2) Using firearms or archery equipment as specified in Section 5 of 301 KAR 2:140;

(3) From one-half (½) hour before sunrise until 1 p.m.

Section 3. A person shall not take more than:

(1) One (1) turkey with a visible beard per day; or

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

Section 4. (1) Unless otherwise specified in this section, spring season dates and the requirements of 301 KAR 2:140 shall apply to wildlife management areas.

(2) A person shall not hunt wild turkeys during the spring on the areas listed in this section except on the dates specified in this administrative regulation.

(3) Turkeys listed as bonus birds shall not:

(a) Count against statewide limits.

(b) Require a carcass tag portion of the turkey permit be attached to the carcass.

(4) Ballard Wildlife Management Area.

(a) Season. Quota youth hunt, the Saturday and Sunday before the Monday closest to April 15.

(b) Applicants for the quota youth hunt shall participate in a drawing held at 1 p.m. on the Saturday closest to April 1 on the area.

(c) Shooting hours are one-half (½) hour before sunrise until noon.

(d) A person hunting wild turkey shall:

1. Check in and out daily.

2. Not take more than one (1) turkey.

(5) Fort Campbell Wildlife Management Area.

(a) Season. The last Saturday in March through the second Sunday in May.

(b) Turkeys taken on Fort Campbell shall be bonus birds.

(c) A person shall:

1. Obtain a post combination hunting-fishing permit before hunting.

2. Not hunt except during daylight hours.

3. Attach a Fort Campbell game check card to turkeys before leaving the post.

(6) Fort Knox Wildlife Management Area.

(a) Seasons. The last Saturday in March through the second Sunday in May.

(b) A person shall:

1. Hunt in assigned areas.

2. Check turkeys by 2 p.m. on the day harvested.

3. Not take more than one (1) turkey during the spring season.

(7) Grayson Lake Wildlife Management Area in Carter County and the portion in Elliott County east of Bruin Creek.

(a) Seasons. Quota youth hunts.

1. The Saturday and Sunday before the Monday closest to April 15.

2. The Saturday and Sunday two (2) weeks after the first quota youth hunt.

(b) An applicant for the quota youth hunts shall participate in a drawing held at 1 p.m. on the Saturday closest to April 1 on the area.

(c) Shooting hours are one-half (½) hour before sunrise until noon.

(d) A person hunting wild turkeys:

1. Shall check in and out daily.

2. Shall not take more than one (1) turkey.

(8) Green River Wildlife Management Area.

(a) This area shall be open during the spring season.

(b) Quota youth hunt, the Saturday and Sunday before the Monday closest to April 15.

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

(d) Shooting hours for the youth hunt shall be one-half (½) hour before sunrise until noon.

(e) A person participating in the youth hunt shall:

1. Check in and out daily.

2. Not take more than one (1) turkey.

(9) Higginson-Henry Wildlife Management Area. During the spring

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season a person:

(a) Shall not use or possess firearms while turkey hunting.

(b) Shall check in and check out daily.

(10) Land Between the Lakes.

(a) Seasons.

1. Quota hunts of no more than six (6) days beginning on or after the first Saturday in April.

2. Up to sixteen (16) days between the first Saturday in April and the second Saturday in May.

(b) A person shall:

1. Check in and out.

2. Hunt in assigned areas.

3. Check turkeys at a Land Between the Lakes check station before leaving Land Between the Lakes.

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

5. Not take more than one (1) turkey in the spring.

(c) Shooting hours shall be from one-half (½) hour before sunrise until one-half (½) hour after sunset.

(11) Pioneer Weapons Wildlife Management Area. During the spring season a person:

(a) Shall not use breech-loading shotguns.

(b) May use crossbows with working safety devices.

(12) Reelfoot National Wildlife Refuge.

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

(b) A person shall:

1. Not take more than one (1) turkey.

2. Obtain written permission from the area manager before hunting.

(13) The main block of Robinson Forest shall be closed to turkey hunting.

(14) Swan Lake Wildlife Management Area shall be closed to turkey hunting.

(15) West Kentucky Wildlife Management Area shall be closed to turkey hunting.

C. THOMAS BENNETT, Commissioner

ANN R. LATTA, Secretary

MIKE BOATWRIGHT, Chairman

APPROVED BY AGENCY: June 13, 1997

FILED WITH LRC: August 15, 1997 at 9 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on September 29, 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 September 22, 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 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 15,000 persons hunt wild turkey in Kentucky. Most of this activity occurs during the spring firearms season.

(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. The amendment to this administrative regulation will have no impact on 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: No public comments received. The amendment to this administrative regulation will have no impact on cost of doing business.

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

1. First year following implementation: No additional paperwork requirements.

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

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: No additional costs or savings.

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

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: No additional reporting or paperwork requirements.

(4) Assessment of anticipated effect on state and local revenues: No effect.

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

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

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

(b) Kentucky: No economic impact.

(7) Assessment of alternative methods; reasons why alternatives were rejected: KRS 150.360 specifies that a person shall not take wildlife unless the department opens a season for a particular species; there is no alternate way of opening a season on wild turkey except by administrative regulation. Alternatives to the specifics contained within this administrative regulation were considered and rejected because they would not provide the desired combination of protection for Kentucky's wild turkey flock and optimal recreational opportunities for hunters.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: Requiring tags to be cut or marked so they cannot be reused is a conservation measure that will help keep the harvest of wild turkey within acceptable limits.

(b) State whether a detrimental effect on environmental and public health would result if not implemented: Possibly

(c) If detrimental effect would result, explain detrimental effect: Possible overharvest of wild turkey, leading to reduced seasons and lessened hunter opportunity.

(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: This new administrative regulation contains season dates and other requirements for spring turkey hunting which were formerly contained in 301 KAR 2:140. The Fish and Wildlife Commission's approval of a fall turkey gun hunting season makes it desirable to split 301 KAR 2:140 into 3 separate administrative regulation, 1 for spring hunting, 1 for fall hunting, and 1 with general turkey hunting requirements applicable to spring and fall seasons.

(11) TIERING: Is tiering applied? Tiering is not appropriate because the administrative regulation applies equally to all individuals or entities it regulates. Disparate treatment of any persons of entity subject to this administrative regulation could raise questions of arbitrary action on the part of the agency. The "equal protection" and "due process" clauses of the Fourteenth Amendment of the U. S. Constitution may be implicated as well as Sections 2 and 3 of the Kentucky Constitution.

**TOURISM DEVELOPMENT CABINET**  
**Department of Fish and Wildlife Resources**  
**(New Administrative Regulation)**

**301 KAR 2:144. Fall wild turkey hunting.**

RELATES TO: KRS 150.175(r), 150.305, 150.360, 150.390, 150.990(11)

STATUTORY AUTHORITY: KRS 150.025(1), 150.390(1), 150.620  
 NECESSITY, FUNCTION, AND CONFORMITY: KRS 150.025(1) and 150.390(1) authorize the department to promulgate administrative regulations governing wild turkey hunting. This administrative regulation establishes season dates, shooting hours and other requirements for fall gun and archery turkey seasons.

Section 1. A person may take wild turkeys:

(1) From the third Saturday in September through December 31, except during the modern gun deer season:

(a) Using archery equipment as specified in Section 5 of 301 KAR 2:140;

(b) From one-half (½) hour before sunrise until one-half (½) hour after sunset.

(2) Beginning in 1998, for five (5) consecutive days beginning on the Wednesday closest to December 1:

(a) Using firearms as specified in Section 5 of 301 KAR 2:140;

(b) From one-half (½) hour before sunrise until one-half (½) hour after sunset.

Section 2. Except as specified by 301 KAR 2:111, a person shall not take more than:

(1) One (1) wild turkey per day;

(2) Two (2) wild turkeys of either sex during the fall archery season; and

(3) One (1) wild turkey of either sex during the fall gun season.

Section 3. A person shall not hunt wild turkeys during the fall gun season except in Adair, Anderson, Allen, Barren, Boone, Bracken, Bullitt, Butler, Caldwell, Carroll, Christian, Crittenden, Cumberland, Edmonson, Franklin, Gallatin, Grant, Grayson, Green, Hardin, Harrison, Hart, Henry, Hopkins, Larue, Logan, Marion, Mason, Metcalfe, Muhlenburg, Nelson, Ohio, Owen, Pendleton, Robertson, Shelby, Spencer, Taylor, Todd, Trimble, Warren or Washington counties.

Section 4. On a wildlife management area owned or operated by the department, a person:

(1) May hunt wild turkeys during the fall gun season:

(a) If the wildlife management area lies completely or partially in a county listed in Section 3 of this administrative regulation; except

(b) During days when firearms are allowed for deer hunting on the wildlife management area;

(2) Shall not hunt during the fall turkey archery season on days when firearms are allowed for deer hunting on the wildlife management area;

(3) May archery turkey hunt during the modern gun deer season if deer hunting with:

(a) Firearms is prohibited; and

(b) Archery equipment is permitted on the area during the modern gun deer season;

(4) Shall check in and out daily at Higginson-Henry Wildlife Management Area;

(5) May use a crossbow during the fall archery turkey season on the Pioneer Weapons Area;

(6) Shall not fall turkey hunt on the following wildlife management areas:

(a) Ballard Wildlife Management Area;

(b) Grayson Lake Wildlife Management Area;

(c) Reelfoot National Wildlife Refuge;

(d) The main block of Robinson Forest;

(e) Swan Lake Wildlife Management Area; or

(f) West Kentucky Wildlife Management Area.

C. THOMAS BENNETT, Commissioner

ANN R. LATTA, Secretary

MIKE BOATWRIGHT, Chairman

APPROVED BY AGENCY: June 13, 1997

FILED WITH LRC: August 15, 1997 at 9 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on September 29, 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 September 22, 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 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 15,000 persons hunt wild turkey in Kentucky. Most of this activity occurs during the spring firearms season. It is unknown at this time how many hunters will participate in the fall firearm season initiated by this administrative regulation.

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

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: No public comments received. The amendment to this administrative regulation will have no impact on 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: No public comments received. The amendment to this administrative regulation will have no impact on cost of doing business.

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

1. First year following implementation: No additional paperwork requirements.

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

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: No additional costs or savings.



2. Continuing costs or savings: Same as for first year.
3. Additional factors increasing or decreasing costs: None
- (b) Reporting and paperwork requirements: No additional reporting or paperwork requirements.
- (4) Assessment of anticipated effect on state and local revenues: No effect.
- (5) Source of revenue to be used for implementation and enforcement of administrative regulation: Fish and Game Fund.
- (6) To the extent available from the public comments received, the economic impact, including effects of economic activities arising from administrative regulation, on:
  - (a) Geographical area in which administrative regulation will be implemented: Implemented statewide.
  - (b) Kentucky: No economic impact.
- (7) Assessment of alternative methods; reasons why alternatives were rejected: KRS 150.360 specifies that a person shall not take wildlife unless the department opens a season for a particular species; there is no alternate way of opening a season on wild turkey except by administrative regulation. Alternatives to the specifics contained within this administrative regulation were considered and rejected because they would not provide the desired combination of protection for Kentucky's wild turkey flock and optimal recreational opportunities for hunters.
- (8) Assessment of expected benefits:
  - (a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: Requiring tags to be cut or marked so they cannot be reused is a conservation measure that will help keep the harvest of wild turkey within acceptable limits.
  - (b) State whether a detrimental effect on environmental and public health would result if not implemented: Possibly
  - (c) If detrimental effect would result, explain detrimental effect: Possible overharvest of wild turkey, leading to reduced seasons and lessened hunter opportunity.
- (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: This new administrative regulation contains season dates and other requirements for fall archery turkey hunting which were formerly contained in 301 KAR 2:140, and adds the season dates and requirements for a new fall firearms season. The Fish and Wildlife Commission's approval of a fall turkey gun hunting season makes it desirable to split 301 KAR 2:140 into 3 separate administrative regulations, 1 for spring hunting, 1 for fall hunting, and 1 with general turkey hunting requirements applicable to spring and fall seasons.
- (11) TIERING: Is tiering applied? Tiering is not appropriate because the administrative regulation applies equally to all individuals or entities it regulates. Disparate treatment of any persons of entity subject to this administrative regulation could raise questions of arbitrary action on the part of the agency. The "equal protection" and "due process" clauses of the Fourteenth Amendment of the U. S. Constitution may be implicated as well as Sections 2 and 3 of the Kentucky Constitution.

**DEPARTMENT OF AGRICULTURE**  
**Division of Pesticides**  
**(New Administrative Regulation)**

**302 KAR 31:040. Storage and handling of bulk pesticides and bulk fertilizers for agrichemical facilities.**

RELATES TO: KRS Chapter 217B, 40 CFR, 49 CFR, 7 USCA 135 et seq., 42 USCA 9601

STATUTORY AUTHORITY: KRS 217B.050

NECESSITY, FUNCTION, AND CONFORMITY: To regulate the storage and handling of bulk pesticides and bulk fertilizers for agrichemical facilities.

Section 1. Definitions. (1) "Agrichemical" means liquid bulk pesticides, dry bulk pesticides, or bulk fertilizers, but does not include anhydrous ammonia fertilizer material.

(2) "Agrichemical facility" means any site where agrichemicals are stored, sold, mixed, repackaged, or transferred for compensation and includes any person who performs field operations for compensation.

(3) "Approved" means approval by an agent of the Kentucky Department of Agriculture, except where otherwise stated.

(4) "Best management practices" means schedules of activities, prohibitions of practices, maintenance procedures, and other management practices to prevent or reduce the pollution of waters of the Commonwealth. Best management practices also includes treatment requirements, operating procedures, practices to control site run-off, spillage or leaks, sludge or waste disposal, or drainage from raw material storage.

(5) "Bulk fertilizer" means either dry or liquid fertilizer in any unpackaged quantity.

(6) "Repackaging" means the transfer of a pesticide from one (1) bulk container (containing undivided quantities) of greater than fifty-five (55) U.S. gallons liquid measure or 100 U.S. pounds net dry weight to an approved mobile container (containing undivided quantities) of greater than fifty-five (55) U.S. gallons liquid measure or 100 U.S. pounds net dry weight in an unaltered state in preparation for sale or distribution.

(7) "Bulk storage container" see "storage container".

(8) "Dry bulk pesticide" means any pesticide in dry form which is nonmobile or held in an individual container in undivided quantities of greater than 300 U.S. pounds of dry net weight.

(9) "Elephant ring" means a temporary operational containment device with an open top which is used for recovering spillage and leakage from transfer connections and pumps and has sufficient capacity to contain the volume of the hoses, transfer connections and pumps.

(10) "Fertilizer" means any substance containing one (1) or more recognized plant nutrients, which is used for its plant nutrient content and which is designed for use or claimed to have value in promoting plant growth, except unmanipulated animal and vegetable manures, marl, lime, limestone, wood ashes, and other products exempted by administrative regulation.

(11) "Field operations" means the application of fertilizer or pesticides to soil or plants in the course of normal agricultural or horticultural practices.

(12) "Impervious" means any material which will not permit the passage of water at a rate greater than 1 X 10<sup>-6</sup> centimeters per second (cm/sec).

(13) "Impregnation" means the application of pesticides onto fertilizer.

(14) "Lead agency" means that there is one (1) governing agency that will be responsible for the enforcement of these administrative regulations.

(15) "Liquid bulk pesticide" means any pesticide in fluid form held in an individual container either mobile or nonmobile in undivided quantities of greater than fifty-five (55) U.S. gallons.

(16) "Liquid fertilizer" means fertilizer in fluid form, and includes solutions, emulsions, suspensions, and slurries. Liquid fertilizer does not include anhydrous ammonia.

(17) "Load/loading" means the transfer of liquid bulk pesticides, dry bulk pesticides or bulk fertilizer from the storage facility to transport vehicles, application equipment, or mobile containers.

(18) "Low pressure nitrogen solutions" means an aqueous solution of ammonium nitrate or urea or other nitrogen carriers, containing various quantities of free ammonia exceeding two (2)

percent by weight. Aqua ammonia and nonpressure nitrogen solutions commonly referred to as twenty-eight (28) percent, thirty (30) percent, or thirty-two (32) percent nitrogen solutions are excluded from this definition.

(19) "Mini-bulk pesticides" means an amount of liquid pesticide greater than fifty-five (55) U.S. gallons but not greater than 299 U.S. gallons, or an amount of dry pesticide greater than 100 U.S. pounds but not greater than 299 U.S. pounds that is held in undivided quantities in a mobile container designed for handling and transport.

(20) "Mobile containers" means containers designed and used for transporting liquid bulk pesticides, dry bulk pesticides, or bulk fertilizer materials.

(21) "New" means an agrichemical facility not in existence at the time of adoption of these administrative regulations, or existing facility which undergoes modification where the fixed cost of construction exceeds fifty (50) percent of the fixed capital cost of a comparable, entirely new facility and such modifications occurs within a two (2) year period.

(22) "Nonmobile container" means all containers not defined as mobile.

(23) "Operational area" means any site at an agrichemical facility where operational activities including the loading, unloading, repackaging, mixing, impregnation and transferring of pesticides or fertilizers and the rinsing, washing or cleaning of pesticide and fertilizer application equipment occurs.

(24) "Operational containment" means any structure or system designed and constructed to effectively intercept and contain operational spills of fertilizer and pesticides including rinsate, wash water or rain water resulting from any operational activity defined and approved for an operational area.

(25) "Pesticide" means any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest, insect, rodent, nematode, fungus, weed or other form of plant or animal life, or virus, except viruses on or in living humans or animals, and any substance or mixture of substances intended for the use as a plant regulator, defoliant or desiccant.

(26) "Portable operational containment" means any structure or system with a capacity greater than 100 U.S. gallons designed and constructed with the capability of movement between operational areas and to intercept and contain spills from operational activities including the loading, unloading, repackaging, impregnation, and transfer of pesticides or fertilizer and the rinsing, washing or cleaning of pesticide and fertilizer application equipment.

(27) "Primary containment" means the storage of liquid bulk pesticides, dry bulk pesticides, bulk fertilizer or rinsate in storage containers at a storage facility.

(28) "Release" means any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing hazardous substances, pollutants, or contaminants into the environment including the abandonment or discarding of barrels, containers, and other closed receptacles containing any hazardous substance, pollutant, or contaminant, but excludes emissions from the engine exhaust of a motor vehicle, rolling stock, aircraft, vessel, or pipeline pumping station engine; the release of source, by-product, or special nuclear material from a nuclear incident, as those terms are defined in the Atomic Energy Act of 1954, if the release is subject to requirements with respect to financial protection established by the Nuclear Regulatory Commission under Section 170 of the Act, or any release of source by-product, or special nuclear material from any processing site designated under Sections 102(a)(1) or 302(a) of the Uranium Mill Tailings Radiation Control Act of 1978; and the normal application of fertilizer.

(29) "Reportable discharge" means an uncontrolled release outside an operational containment or secondary containment structure that equals or exceeds the reportable quantity (RQ) for those substances.

(30) "Reportable quantity" or "(RQ)" means a quantity that equals

or exceeds the reportable quantity for substances listed in the Appendix to 49 CFR 172.101 or in Appendix A of 40 CFR 355.

(31) "Rinsate" means water or other liquid resulting from the washing of equipment, operational areas, or containers used in the application or handling of any fertilizer or pesticide.

(32) "Roofed" means protected from precipitation.

(33) "Secondary containment" means any structure, including dikes, liners, or other devices used to contain product spills from primary bulk storage containers, and to reduce runoff or leaching.

(34) "Storage container" means a container used for the storage of bulk fertilizer, liquid bulk pesticides or dry bulk pesticides. A storage container includes a rail car, nurse tank, or other mobile container, but does not include:

(a) A mobile container storing fertilizer or pesticide at a storage facility for less than fifteen (15) days, if this storage is incidental to the loading or unloading of a storage container at the storage facility.

(b) A container used solely for temporary emergency storage of leaking fertilizer or pesticide containers.

(c) Any mobile or nonmobile container utilized for the storage of anhydrous ammonia.

(35) "Temporary operational containment" means a system or device which is used for recovering spillage and leakage resulting from the loading and unloading of agrichemicals.

(36) "Storage facility" means all agrichemical facilities at which liquid bulk pesticides, or dry bulk pesticides or bulk fertilizer is stored.

(37) "Unload/unloading" means the transfer of liquid bulk pesticide, dry bulk pesticide or bulk fertilizer in an unaltered state from the transport vehicle into the storage facility.

Section 2. Scope and Application. (1) The Kentucky Department of Agriculture Division of Pesticides is the designated lead agency.

(2) All agrichemical facilities shall make notification of any reportable discharge as required by state and federal laws and regulations.

(3) All agrichemical facilities shall comply with these administrative regulations.

(4) All agrichemical facilities shall have a written contingency/response plan in effect to be followed in cases of emergency. Contingency/response plans required by other regulatory program may be substituted.

(5) All agrichemical facilities subject to SARA Title III shall be in full compliance by the required dates, and each facility shall promptly and accurately complete the required annual reporting forms.

(6) All agrichemical facilities shall register within ninety (90) days after the adoption of these administrative regulations with the Kentucky Department of Agriculture, Division of Pesticides, defining the scope of the existing operations and facilities. Such registration shall be sent to the Kentucky Department of Agriculture, Division of Pesticides, 5th Floor, 100 Fair Oaks Lane, Frankfort, Kentucky 40601. A facsimile copy of the registration form shall not be acceptable.

Section 3. Compliance Schedule. (1) Commencing upon the date of the adoption of this administrative regulation, all new agrichemical facilities shall come under immediate compliance of these administrative regulations and there will be no compliance schedule in effect. Commencing upon the date of the adoption of this administrative regulation, all existing agrichemical facilities shall comply with the compliance schedule set out hereinafter.

(2) Commencing upon the date of the adoption of this administrative regulation, all dry bulk fertilizer materials shall be stored and handled using best management practices.

(3) Commencing one (1) year after the adoption date of this administrative regulation, all nonmobile liquid bulk pesticide and dry bulk pesticide storage containers shall be located within impervious secondary containment.

(4) Commencing two (2) years after the adoption date of this administrative regulation, all impregnation at an agrichemical facility,

unless performed as part of field operations, shall be performed within an impervious operational containment.

(5) Commencing three (3) years after the adoption date of this administrative regulation, all loading, unloading, repacking, or transferring of liquid bulk pesticides, dry bulk pesticides, and liquid bulk fertilizer at an agrichemical facility, unless performed as part of field operations, shall be performed within an impervious operational containment.

(6) Commencing three (3) years after the adoption of this administrative regulation, all rinsing, washing and cleaning of pesticide or fertilizer application equipment at an agrichemical facility, unless performed as part of field operations, shall be performed within an impervious operational containment.

(7) Commencing four (4) years after the adoption of this administrative regulation, all nonmobile liquid bulk fertilizer storage containers at an agrichemical facility, shall be located within an impervious secondary containment.

(8) Commencing five (5) years after the adoption of this administrative regulation, all loading, unloading, mixing and handling of dry bulk fertilizer at an agrichemical facility, unless performed as part of field operations, shall be performed within an impervious operational containment.

Section 4. Operational Area Site Specifications. (1) New permanent operational containment and operational areas located in a flood plain shall be protected from inundation by floods.

(2) New permanent operational containments and operational areas shall be located a minimum of 100 feet from on-site wells and sinkholes, 200 feet from private domestic wells, and 400 feet from any community wells used as a public water source.

(3) All agrichemical facilities where flammable pesticides are stored shall comply with state and federal fire protection rules and regulations.

Section 5. Primary Containment of Liquid Bulk Pesticides and Liquid Bulk Fertilizer. (1) Basic requirements.

(a) Storage containers and appurtenances shall be constructed, installed and maintained so as to prevent the release of liquid fertilizer or pesticides.

(b) Storage containers and appurtenances shall be constructed of materials which are resistant to corrosion, puncture, or cracking and compatible with the product being stored.

(c) Metals used for valves, fittings, repairs on metal containers shall be compatible with the materials used in the construction of the storage container, so that the combination of metals does not cause or increase corrosion which may weaken the storage container or its appurtenances, or create a risk of release.

(d) Storage containers and appurtenances shall be designed to handle all operating stresses, taking into account static head, pressure buildup from pumps and compressors, and any other mechanical stresses to which the storage containers and appurtenances may be subjected to in the foreseeable course of operations.

(e) Storage containers must be properly labeled according to state and federal regulations for fertilizers and pesticides during active use of the container.

(2) Prohibition against underground storage and plumbing.

(a) The storage of liquid bulk fertilizer or liquid bulk pesticide in an underground storage container is prohibited except for a catch basin used for the temporary collection of runoff or rinsate from operational containment or operational areas which is emptied within seventy-two (72) hours of use.

(b) Underground plumbing shall be restricted to the use of concentric piping.

(3) Abandoned containers.

(a) Storage containers and other containers used at a storage facility to hold liquid bulk fertilizer, liquid bulk pesticide, or rinsate are considered abandoned if they have been out of service for more than

six (6) months because of a weakness or leak, or have been out of service for any reason for more than two (2) years and no integrity tests have been performed.

(b) Abandoned aboveground containers shall be thoroughly cleaned. All hatches on the containers shall be secured, and all valves or connections shall be severed or sealed.

(c) Secondary containment is not considered abandoned if there has been no spill into the secondary containment.

(4) Prohibited materials.

(a) Storage containers and appurtenances may not be constructed of copper, brass, zinc, or copper base alloys.

(b) Storage containers and appurtenances used for the storage of liquid bulk fertilizers containing phosphate or chlorides may not be constructed of aluminum alloys.

(c) Storage containers and appurtenances used for the storage of low pH (less than five (5)) liquid bulk fertilizers may not be constructed of ferrous materials other than stainless steel unless the materials are coated or treated with protective substances.

(d) Storage containers and appurtenances used for the storage of low pressure nitrogen solutions may not be constructed of mild steel, fiberglass, polyolefins, or plastic. This prohibition does not extend to nonpressure solutions commonly referred to as twenty-eight (28) percent, thirty (30) percent, or thirty-two (32) percent nitrogen solutions. This prohibition against the use of mild steel does not extend to aqua ammonia.

(e) Storage containers and appurtenances used for the storage of phosphoric acid may not be constructed of ferrous materials other than stainless steel unless the container is lined with a suitable substance.

(f) Storage containers and appurtenances used for the storage of liquid bulk fertilizers containing potassium chloride (muriate of potash) may be constructed of ferrous materials if the following provisions are met:

1. The containers and appurtenances are coated or treated with protective substances; and

2. The container or appurtenance is used for storage periods of not more than six (6) months, and is completely emptied between storage periods, and the empty containers and appurtenances are cleaned and inspected for leaks prior to being refilled for any subsequent period.

(5) Filling storage containers. Storage containers may not be filled beyond the capacity for which they are designed, taking into account the density of the liquid being stored and thermal expansion during storage.

(6) Pipes and fittings. Pipes and fittings shall be adequately supported to prevent sagging and possible breakage because of gravity and other forces which may be encountered in the ordinary course of operations. Underground pipes and fittings are prohibited except as specified in subsection (2)(b) of this section.

(7) Liquid level gauging device.

(a) Every storage container shall be equipped with a liquid level gauging device by which the level of liquid in the storage container can be readily and safely determined. A liquid level gauge device is not required if the level of liquid in a storage container can be readily and reliably measured by other means.

(b) Liquid level gauging devices shall be secured, in a safe manner, to protect against breakage or vandalism which may result in a release.

(c) External sight gauges are prohibited.

(8) Venting. Storage containers are to be vented to manufacturer's specifications for the product being stored in the container.

(9) Minibulk pesticide storage containers shall be considered primary containment provided the container meets the standards set by state and federal laws and regulations for pesticide storage.

(10) Inspection and maintenance. Inspections by the operator shall be conducted quarterly to assure the early detection of cracks and other defects that may compromise the integrity of the primary

containment. Repairable defects that occur in a primary containment must be sealed or repaired immediately.

Section 6. Secondary Containment of Liquid Bulk Pesticides and Liquid Bulk Fertilizers. (1) All agrichemical nonmobile storage containers for liquid bulk pesticides and liquid bulk fertilizer shall be located within a secondary containment.

(2) Basic requirements for the secondary containment of liquid bulk pesticides and liquid bulk fertilizer include:

(a) Floors and walls of secondary containment structures shall be constructed of concrete, concrete block, that has been capped and filled with concrete, steel or other materials that meet or exceed the requirements of subsection (4)(b) of this section which are compatible with the product being stored.

(b) Floors and walls of secondary containment structures which contain pesticides shall be constructed of materials which will maintain their structural integrity under fire conditions.

(c) Secondary containment structures shall not have relief outlets or release valves.

(d) Underground secondary containment, except as provided for in paragraph (k) of this subsection, is prohibited.

(e) Underground plumbing shall be restricted to concentric piping.

(f) Secondary containment for liquid agrichemical storage shall provide for the separation between liquid bulk pesticides and liquid bulk fertilizer to the extent that a common wall or curbing is erected between the area and shall provide for the interception and recovery of spills. The entire secondary containment area shall meet or exceed the total capacity requirements specified in subsection (3) of this section.

(g) Secondary containment structures shall be cleaned and rinsed within seventy-two (72) hours of any agrichemical spill or leakage.

(h) Inspections by the operator shall be conducted to assure the early detection of cracks and other defects that may compromise the integrity of the secondary containment. Repairable defects that occur in a secondary containment shall be sealed or repaired immediately.

(i) Containers, pipes, hoses and valves must be protected against reasonably foreseeable risks of damage by trucks and other moving vehicles.

(j) Clay, natural soil/ clay mixtures, or clay/bentonite mixtures shall not be used to contain any liquid bulk pesticide.

(k) Temporary operational containment or elephant rings shall not be used as secondary containment for any liquid bulk pesticide.

(l) Secondary containment structures shall include a sump or collection point for temporary collection of spillage, leakage, rinsate or other residues. Any sump or collection point shall not be greater than two (2) feet deep and shall not contain more than 109 U.S. gallons.

(3) Secondary containment structures shall provide the following capacity:

(a) When not roofed, the containment shall have a minimum containment volume of a six (6) inch rain storm, plus the total of the capacity of the largest tank, and the volume displaced by the bases of the other tanks located within the secondary containment.

(b) When roofed, the containment shall have a minimum containment volume of the total of the capacity of the largest tank, plus the volume displaced by the bases of the other tanks located within the secondary containment.

(4) The following are the general requirements for secondary containment of liquid bulk fertilizer:

(a) Secondary containment shall be provided which meets or exceeds the requirements in subsection (2) of this section.

(b) Secondary containment shall be constructed to a water permeability rate of  $1 \times 10^{-6}$  centimeters per second and maintained so that liquid movement through the walls and base does not exceed a rate of  $1 \times 10^{-5}$  centimeters per second permeability rate. The secondary containment structure shall be designed and maintained to withstand a full hydrostatic head of any contained liquid.

(c) Synthetic materials or liners may be used as secondary containment provided they are compatible with agrichemicals being contained and it is installed according to manufacturer's recommendations. These directions and recommendations shall be maintained at the agrichemical facility.

(d) Earthen walls used for secondary containment of liquid bulk fertilizer shall be protected against erosion (e.g., sodded and seeded). Side slopes shall not exceed a 3 to 1 ratio of horizontal to vertical. The top width of earthen walls shall not be less than two and one-half (2 1/2) feet.

(e) Provisions shall be made for safe emergency access and exit to and from the secondary containment.

(f) Floors shall be constructed to allow the safe and expeditious removal of precipitation or any spilled liquid to a collection point.

(g) Soil liners used for secondary containment of liquid bulk fertilizer may be constructed of suitable soil or soil treated with bentonite clay or other comparable material, with a minimum depth of twelve (12) inches provided the other requirements stated in this section are met. The liner shall be covered by a soil or smooth aggregate layer not less than six (6) inches thick and shall be maintained to prevent cracking or puncture.

(h) Prefabricated secondary containment shall be composed of a rigid prefabricated basin having both a base and walls constructed of steel, reinforced concrete or synthetic liner or synthetic materials which are resistant to corrosion, puncture or cracking.

(5) Exemptions from secondary containment. A liner is not required under a storage container having a capacity of 100,000 gallons or more which has been constructed on site and put into use prior to the effective date of these administrative regulations, provided that all the following conditions are met:

(a) A second bottom made of steel shall be constructed for the storage container. The second bottom of steel shall be placed over the original bottom and a layer of smooth fine gravel or coarse sand having a minimum thickness of three (3) inches shall be installed between the layers; and

(b) The original bottom of the storage container shall be tested for leaks before the sand layer or second bottom is installed. A record of the test shall be maintained at the agrichemical facility; and

(c) The newly constructed bottom shall be tested for leaks before any liquid bulk fertilizer is stored on the newly constructed bottom. A record of the test shall be maintained at the agrichemical facility; and

(d) There shall be a method by which leaks from the newly constructed bottom into the sand layer may be readily detected with the exception of storage containers constructed of nonferrous materials which have a protection system in place consisting of synthetic liners and leak detection system.

(e) The secondary containment requirements under this section do not apply to rail cars which are periodically transferred to and from storage.

(6) Agrichemical facilities with secondary containment on site and in place on the date of adoption of these administrative regulations shall be exempted if the following conditions are met:

(a) All requirements specified in Section 5 of this administrative regulation are met; and

(b) All requirements specified in subsection (2) of this section are met; and

(c) A minimum secondary containment capacity of 110 percent of the largest container, plus the volume displaced by the other tanks located within the secondary containment.

Section 7. Operational Containment of Liquid Bulk Pesticides and Liquid Bulk Fertilizers. (1) All transfer of liquid bulk pesticides and liquid bulk fertilizer between containers including loading, unloading, repackaging, impregnating, mixing, and equipment cleaning performed at an agrichemical facility, unless temporary operational containment is used, shall be done on an impervious pad with an operational containment system designed to intercept, retain and

recover spillage, leakage, rinsate and residues except as part of field operations.

(2) The basic requirements for permanent operational containment structures for liquid bulk pesticides and liquid bulk fertilizers consisting of floors, curbs, and walls include:

(a) Materials of construction and the design of containment structures shall be compatible with the products handled and be maintained in a condition to retain recovered material until it is used or properly disposed of.

(b) Operational containment shall be constructed of reinforced concrete or other materials with low permeability compatible with the products being handled.

(c) Permanent operational containment shall be sealed or otherwise maintained to provide a rate of permeability not to exceed  $1 \times 10^{-6}$  centimeters per second.

(d) Inspections by the operator shall be conducted to assure the early detection of cracks and other defects that may compromise the integrity of the operational containment. Repairable defects that occur in the operational containment shall be sealed or repaired immediately.

(e) Stormwater drainage shall be diverted away from any operational containment. Subsurface stormwater drainage is permitted.

(f) Operational containment shall include a sump or collection point for the temporary collection of spillage, leakage, rinsate, or other residues. Any sump or collection point shall not be greater than two (2) feet deep nor contain more than 109 U.S. gallons.

(g) Operational containment shall not have relief outlets or release valves.

(h) Operational containment shall be large enough in area to prevent spillage onto unprotected areas and to prevent any release to the surrounding environment.

(i) Underground storage used as operational containment is prohibited except as provided in paragraph (f) of this subsection.

(j) Operational containment structures shall provide for the separation of pesticide and fertilizer spillage, leakage, washwater or rinsate into compatible combinations to allow for easier, safer and more effective disposal. Management of operational containment areas shall meet or exceed the requirements specified in Section 8 of this administrative regulation.

(3) Operational containment shall provide the following capacity:

(a) Operational containment for roofed permanent structures shall be constructed with a volume sufficient to contain a minimum of 1,000 U.S. gallons. Containment capacity of the sump is figured in addition to the containment capacity of the structure; and

(b) Operational containment for unroofed permanent structures shall be constructed with a volume sufficient to contain a minimum of 1,250 U.S. gallons. Containment capacity of the sump is figured in addition to the containment capacity of the structure.

(c) Portable operational containment may be utilized to meet the requirements of this section if the following conditions are met:

1. Portable operational containment shall have a minimum capacity no less than 100 U.S. gallons.

2. Portable operational containment may be used provided materials of construction are compatible with products handled and a written copy of the manufacturer's installation directions, compatibility statement, and expected life expectancy are forwarded to the Division of Pesticides prior to the use of such structure. These documents shall be maintained at the agrichemical facility.

3. All requirements specified in subsection (2) of this section are met.

(4) Temporary operational containment including elephant rings, with a minimum capacity of five (5) U.S. gallons may be utilized for recovering spillage and leakage from transfer connections and pumps.

Section 8. Containment of Dry Bulk Pesticide. (1) Storage

containers and appurtenances shall be constructed, installed and maintained so as to prevent the release of dry bulk pesticides.

(2) Storage containers and appurtenances shall be constructed of materials which are resistant to corrosion, puncture, or cracking and compatible with the product being stored.

(3) Storage containers must be properly labeled according to state and federal regulations during active use of the container.

(4) Minibulk pesticide storage containers shall be considered primary containment provided the container meets the standards set by state and federal laws and regulations.

(5) All nonmobile storage containers for dry bulk pesticides shall be located within secondary containment. The secondary containment shall be segregated from other containment area by a six (6) inch curb that extends at least two (2) feet beyond the storage container.

(6) Inspections by the operator shall be conducted quarterly to assure the early detection of cracks and other defects that may compromise the integrity of the storage container and secondary containment.

Section 9. Containment of Dry Bulk Fertilizer. (1) Dry bulk fertilizer materials shall be stored and handled using best management practices.

(2) Dry bulk fertilizers shall be stored inside a structure or device having a cover or roof top, sidewalls and base sufficient to prevent contact with precipitation, surface and ground waters.

(3) All mixing and handling for mixing of dry bulk fertilizer, unless performed as part of field operations, shall be located within an operational containment. The operational containment shall be of a size and design that will contain fertilizer. Any collected material shall be applied at agronomic fertilizer rates or otherwise recycled.

(4) Dry bulk fertilizer blending operations, including impregnation shall be conducted in a manner to provide for the total collection and reuse of any spilled fertilizer.

Section 10. Containment Management. (1) Agrichemicals, agrichemical residues, rinsates, or agrichemical contaminated wash waters recovered from the secondary or operational containment shall be field applied at agronomic rates, used in a liquid mixing operation, or otherwise recycled or disposed of in accordance with these regulations. Any pesticide-laden residues, rinsates, or pesticide contaminated wash waters that are to be land applied shall be handled in accordance with the product's labels. Field application of diluted pesticide solutions is an acceptable use if the total annual application amounts of the pesticide do not exceed the pesticide label application rates. Rinsates and pesticide contaminated wash waters may be used to make up the total spray mixture if the mixture does not exceed the pesticide label application rates.

(2) Best management practices shall be taken to keep rinsate, and other recovered material segregated by compatible uses.

(3) Uncontaminated precipitation collected can be discharged from containment areas.

(4) Contaminated precipitation must be applied to labeled target areas, or disposed of in other approved methods.

(5) Rinsate or recovered material that cannot be applied to a labeled target use must be handled and disposed of consistent with hazardous waste and solid waste regulations in effect.

Section 11. Field Mixing and Transferring. (1) Field mixing, transferring, or rinsing of liquid bulk pesticides, dry bulk pesticides, or bulk fertilizers shall be performed at the field site, or at a temporary or permanent operational containment site.

(2) No mixing and transferring of liquid bulk pesticides, dry bulk pesticides, or bulk fertilizer or rinsing of equipment shall be conducted on public highways, roads, and streets.

Section 12. Distribution. (1) Bulk repackaging for sale or delivery may occur provided the establishment conducting the transfer, sale

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or delivery complies with FIFRA regulations and the Department of Transportation administrative regulations.

(2) Sale by weight or meter shall be the approved method of resale for liquid bulk pesticides, dry bulk pesticides and bulk fertilizer. Both methods shall meet the specifications, tolerances and other technical requirements for weighing and measuring devices as approved by or exempted by the Division of Regulations and Inspections, of the Kentucky Department of Agriculture.

(3) If meters are used, a limit of one (1) product per meter shall be used when distributed for sale.

Section 13. Incorporation by Reference. The "Registration of all Agrichemical and Agrichemical Business with Bulk Storage Facilities of Fertilizer and or Pesticide" form is incorporated herein by reference. A copy of the form 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.

BILLY RAY SMITH, Commissioner

APPROVED BY AGENCY: August 14, 1997

FILED WITH LRC: August 14, 1997 at noon

PUBLIC HEARING: A public hearing on this administrative regulation will be held on Tuesday, September 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 September 15, 1997, five (5) workdays prior to the hearing, of this 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/Chief of Staff, Department of Agriculture, Capital Plaza Tower, 7th Floor, 500 Mero Street, Frankfort, Kentucky 40601, (502) 564-4696, Fax (502) 564-2133.

### REGULATORY IMPACT ANALYSIS

Contact Person: John McCauley, Director, Division of Pesticides

(1) Type and number of entities affected: All agrichemical storage facilities engaged in the storage and handling of liquid bulk pesticides and dry bulk pesticides.

(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.

(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:

1. First year following implementation: There is a compliance schedule set forth in Section 3. All facilities have to come into compliance within five (5) years.

2. Second and subsequent years: Same

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: There will be cost involved for the facilities who store in dry bulk fertilizer.

2. Continuing costs or savings: There will be additional cost for

the five (5) year period.

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements:

1. All agrichemical facilities are required to have a written contingency/response plan in effect to be followed in case of an emergency. Contingency/response plans required by other regulatory programs may be substituted.

2. All agrichemical facilities shall register with the Kentucky Department of Agriculture, Division of Pesticides, defining the scope of the existing operations and facilities, on a form provided by the department.

(4) Assessment of anticipated effect on state and local revenues: Current perennial will be used to insure compliance.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Existing personnel will be used for enforcement.

(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: It is difficult to determine the economic impact and who will be effected.

(b) Kentucky: Same

(7) Assessment of alternative methods; reasons why alternatives were rejected: This regulation has been discussed extensively for several years. This is the most reasonable regulation possible.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: A spill of these bulk fertilizers or pesticides could potentially be a hazard to the environment and other health. This regulation will help to prevent a hazardous spill.

(b) State whether a detrimental effect on environment and public health would result if not implemented: Same

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

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

(a) Necessity of proposed regulation if in conflict: N/A

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: N/A

(10) Any additional information or comments: None

(11) TIERING: Is tiering applied? No. All agrichemical storage facilities engaged in the storage and handling of liquid bulk pesticides and dry bulk pesticides will be treated the same.

### NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET Department for Environmental Protection Division for Air Quality (New Administrative Regulation)

**401 KAR 50:066. Conformity of transportation plans, programs, and projects.**

RELATES TO: KRS 224.10-100, 224.20-100, 224.20-110, 23 CFR Part 450, 40 CFR 51.390 to 51.464, 49 CFR Part 613, 42 USC 7506(c)(4)

STATUTORY AUTHORITY: KRS 224.10-100, 224.20-100, 224.20-110, 40 CFR 51.390 to 51.464, 42 USC 7506(c)(4)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.10-100 requires the Natural Resources and Environmental Protection Cabinet to prescribe administrative regulations for the prevention, abatement, and control of air pollution. The federal regulation incorporated by reference in this administrative regulation establishes policy, criteria, and procedures for demonstrating conformity of federal transportation



plans to the Kentucky State Implementation Plan.

Section 1. Definitions. As used in 40 CFR 51.390 to 51.464, "administrator" means the Secretary of the Natural Resources and Environmental Protection Cabinet.

Section 2. (1) 40 CFR 51.390 to 59.464, (40 CFR 51, Subpart T), Conformity to State or Federal Implementation Plans of Transportation Plans, Programs, and Projects Developed, Funded or Approved Under Title 23 USC or the Federal Transit Act, as published in the Code of Federal Regulations, 40 CFR Part 51, July 1, 1996, is incorporated by reference.

(2) The material incorporated by reference may be obtained, inspected, or copied at the following offices of the Division for Air Quality, Monday through Friday, 8 a.m. to 4:30 p.m.:

(a) The Division for Air Quality, 803 Schenkel Lane, Frankfort, Kentucky 40601, (502) 573-3382;

(b) Ashland Regional Office, 3700 Thirteenth Street, Ashland, Kentucky 41105, (606) 920-2067;

(c) Bowling Green Regional Office, 1508 Westen Avenue, Bowling Green, Kentucky 42104, (502) 746-7475;

(d) Florence Regional Office, 7964 Kentucky Drive, Suite 8, Florence, Kentucky 41042, (606) 292-6411;

(e) Hazard Regional Office, 233 Birch Street, Suite 2, Hazard, Kentucky 41701, (606) 435-6022;

(f) London Regional Office, 85 State Police Road, Regional State Office Building, Room 345, London, Kentucky 40741, (606) 878-0157;

(g) Owensboro Regional Office, 3032 Alvey Park Drive W., Suite 700, Owensboro, Kentucky 42303, (502) 687-7304; and

(h) Paducah Regional Office, 4500 Clarks River Road, Paducah, Kentucky 42003, (502) 898-8468.

(3) Copies of the Code of Federal Regulations (CFR) are available for sale from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402.

JAMES E. BICKFORD, Secretary

APPROVED BY AGENCY: August 7, 1997

FILED WITH LRC: August 11, 1997 at 9 a.m.

PUBLIC HEARING SCHEDULED: A public hearing on the new administrative regulation will be held on September 22, 1997, at 10 a.m. (ET) in the Conference Room of the Division for Air Quality, 803 Schenkel Lane, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing, at least five work days prior to the hearing, of their intent to attend. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the new administrative regulation. Send written notification of intent to be heard at the public hearing or written comments on the regulation to the contact person.

CONTACT PERSON: Millie Ellis, Supervisor, Division for Air Quality, 803 Schenkel Lane, Frankfort, Kentucky, 40601, (502) 573-3382, and fax number (502) 573-3787.

To request appropriate accommodations for the public hearing (such as an interpreter), or alternate formats of the printed material, please call (502) 573-3382, ext 362. The cabinet does not discriminate on the basis of race, color, national origin, sex, religion, age, or disability in employment or the provision of services and provides, upon request, reasonable accommodation including auxiliary aids and services necessary to afford individuals with disabilities an equal opportunity to participate in all programs and activities.

#### REGULATORY IMPACT ANALYSIS

Agency Contact: Millie Ellis, Supervisor

(1) Type and number of entities affected: The new administrative regulation incorporates by reference the federal rule, as published in the 1996 Code of Federal Regulations (40 CFR 51 Subpart T), which establishes criteria and procedures for determining transportation

plans, programs, and projects, funded or approved under Title 23 USC or the Federal Transit Act, to conform with state or federal air quality implementation plans. It also establishes the process by which the Federal Highway Administration, the Federal Transit Administration, and metropolitan planning organizations (MPOs) determine conformity of highway and transit projects. The Commonwealth of Kentucky is required to submit revisions to its state implementation plan (SIP) that are consistent with the federal rule. This administrative regulation will affect moderate and above ozone nonattainment and maintenance areas with respect to those transportation-related pollutants for which an area is designated nonattainment or is subject to a maintenance plan approved under CAA section 175A (i.e., ozone, carbon monoxide (CO), nitrogen dioxide (NO<sub>2</sub>), and particles with an aerodynamic diameter of less than or equal to a nominal 10 micrometers (PM-10)). In addition, the following precursors of these pollutants apply: volatile organic compounds (VOC) and oxides of nitrogen (NO<sub>x</sub>) in ozone areas, NO<sub>x</sub> in NO<sub>2</sub> areas, and VOC and NO<sub>x</sub> in PM-10 areas.

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

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented. There is no known effect.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented. There is no known effect.

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

1. First year following implementation: MPOs are required to assess regional transportation and emissions modeling and submit documentation of regional air quality impacts. There may be additional costs to federal agencies in lieu of the compliance and reporting requirements in the federal mandate.

2. Second and subsequent years: The requirements in (c) above, will continue in subsequent years unless amended at the state or federal level.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: The division will review emission budgets and establish caps relative to each affected region. The costs of these activities will be absorbed as a part of the operating budget. There are no additional costs or savings resulting from this administrative regulation.

2. Continuing costs or savings: There are no known additional costs or savings resulting from this administrative regulation.

3. Additional factors increasing or decreasing costs: There are no known additional factors increasing or decreasing costs.

(b) Reporting and paperwork requirements: The division will continue to issue reports to regional MPOs, the Kentucky Department of Transportation (DOT), and the U.S. EPA.

(4) Assessment of anticipated effect on state and local revenues: Promulgation of this administrative regulation will grant oversight to the Commonwealth in the disbursement of federal highway funds in affected areas. There is no other known effect on state and local revenues.

(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 administrative regulation. There are no additional costs associated with this administrative regulation.

(6) 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 allow Kentucky to establish control strategies and monitor the release of federal highway funds in the affected areas of the Commonwealth. The National Ambient Air Quality Standards (NAAQS) nonattainment and mainte-

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nance areas could be denied federal highway funding pursuant to the federal Clean Air Act.

(b) Kentucky: Kentucky is required to promulgate this administrative regulation in order to develop an implementation plan which will set forth policy, criteria, and procedures for demonstrating conformity pursuant to the Clean Air Act as amended. Federal EPA sanctions against the Commonwealth may result if this administrative regulation is not promulgated.

(7) Assessment of alternative methods; reasons why alternatives were rejected: No alternative methods were considered because this administrative regulation is mandated by the CAA, as amended, and required by the U.S. EPA.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: Federal conformity to the SIP's emissions reduction program may significantly reduce or eliminate the severity and number of violations of the NAAQS and help achieve such standards. Additionally, DOT and MPOs will work with the cabinet to ensure that their activities conform to the SIP of the Commonwealth.

(b) State whether a detrimental effect on environment and public health would result if not implemented: A detrimental effect on environment and public health would result if this administrative regulation is not implemented.

(c) If detrimental effect would result, explain detrimental effect: This administrative regulation will insure that federal actions carried out in Kentucky conform with the state's SIP. Therefore, these federal actions will not cause or contribute to new violations of air quality standards, worsen existing violations, or interfere with attainment of standards required by the SIP.

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: There are no statutes, regulations, or government policies which are in conflict, or which overlap or duplicate this administrative regulation.

(a) Necessity of proposed regulation if in conflict: This administrative regulation is not in conflict.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: This administrative regulation is not in conflict.

(10) Any additional information or comments: The cabinet is promulgating this administrative regulation in order to monitor proposed federal highway funding programs and to establish control strategies and guidelines for affected areas of the Commonwealth. Implementation of this administrative regulation will satisfy the CAA requirements.

(11) TIERING: Is tiering applied? No. Promulgation of this administrative regulation will incorporate the federal rule by reference. This required SIP revision will set forth programs and plans, relative to each nonattainment area within the state, for the purpose of achieving attainment status.

### FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 42 USC 7506(c)(4), as amended in 1990 (42 USC 7521(a)), mandates that the U.S. EPA require each state to submit a SIP revision that includes criteria and procedures for assessing the conformity to the SIP of transportation plans, programs, and projects which are developed, funded, or approved by the U.S. Department of Transportation and by metropolitan planning organizations or other recipients of funds under Title 23 USC or the Federal Transit Act (49 USC 5301).

2. State compliance standards. KRS 224.10-100 requires the Cabinet for Natural Resources and Environmental Protection to provide an air quality program for Kentucky.

3. Minimum or uniform standards contained in the federal mandate. The minimum standards are set forth in the federal mandate

in order to eliminate or reduce the severity and number of violations of the NAAQS in affected areas, and to attain these standards as quickly as possible.

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 incorporates by reference the federal regulation (40 CFR 51 Subpart T), in order to assure compatibility with the federal mandate.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Stricter standards and requirements are not imposed by this administrative regulation.

### 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. This administrative regulation does not affect any unit, part or division of local government.

3. State the aspect or service of local government to which this administrative regulation relates. This administrative regulation does not relate to any aspect or service of local government.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a local government for the first full year the regulation is to be in effect. If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-): There is no known effect on current revenues.

Expenditures (+/-): There is no known effect on current expenditures.

Other Explanation: There is no further explanation.

### NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET Department for Environmental Protection Division for Air Quality (New Administrative Regulation)

**401 KAR 59:174. Stage II controls at gasoline dispensing facilities.**

RELATES TO: KRS 224.01-010, 224.10-100, 224.20-100, 224.20-110, 224.20-120, 42 USC 7511a(b)(1)(A)

STATUTORY AUTHORITY: KRS 224.10-100, 42 USC 7511a(b)(3), 7521(a)(5), 7624, and 7625

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.10-100 requires the Natural Resources and Environmental Protection Cabinet to prescribe administrative regulations for the prevention, abatement, and control of air pollution. This administrative regulation provides for the control of emissions from gasoline dispensing facilities.

Section 1. Definitions. Terms not defined in this section shall have the meaning given them in 401 KAR 59:001.

(1) "Average monthly throughput" means:

(a) For an existing facility, the total gallons of gasoline dispensed during the months of operation in the previous twelve (12) months, divided by the number of months of operation during those twelve (12) months; or

(b) For a facility which commenced construction on or after the effective date of this administrative regulation, an estimate provided by the owner or operator and approved by the cabinet, of the total gallons of gasoline that will be dispensed during the first twelve (12) months of operation divided by twelve (12).

(2) "Boot" means an accordion-like tubular cover used over the

spout of a gasoline nozzle to provide a return-path for gasoline vapors displaced during refueling.

(3) "CARB" means the California Air Resources Board.

(4) "CARB certification" means a document such as an executive order or approval letter provided by CARB or by an equivalent authority which certifies that a vapor recovery system or system components achieve at least a ninety-five (95) percent reduction in the VOC emissions during refueling, and which identifies the performance standards required for the system or system components. An executive order may also identify the range of permissible components, permissible construction configurations, and the required tests for compliance.

(5) "Classification date" means the date on which this administrative regulation becomes applicable in a county or portion of a county.

(6) "Coaxial hose" means a hose-within-a-hose which provides separate passages for the flow of gasoline and vapor return.

(7) "Dry break" means a spring-loaded valve that prevents vapor from escaping through the vapor recovery riser pipe opening of a storage tank.

(8) "Equivalent authority" means an authority recognized by the cabinet and by the U.S. EPA as having a program for certification of vapor recovery systems equivalent to that of CARB.

(9) "Faceplate" means a soft, donut-shaped device attached to the boot of a balance nozzle which forms a tight seal with the vehicle fill pipe during refueling.

(10) "Facility" or "gasoline dispensing facility" means a site, except a farm not engaged in the sale of gasoline, where gasoline is transferred from a stationary storage tank to a motor vehicle fuel tank.

(11) "Facility representative" means a facility employee who has been trained to serve at that facility as prescribed in Section 5 of this administrative regulation.

(12) "Flexible cone" means a cone-shaped device attached to the boot of a vacuum-assist nozzle that prevents too low a vacuum from forming in the vehicle fuel tank.

(13) "Leak" means liquid or vapor loss from the gasoline dispensing system or vapor recovery system as determined by visual inspection or operation of the equipment.

(14) "Modification" or "modify" means:

(a) The repair, replacement, or upgrade of a facility's Stage II equipment at a cost equal to seventy-five (75) percent or more of the cost of a total system replacement at the time of modification; or

(b) A change, such as the removal of a CARB certified component and the addition or removal of piping or fittings, which may cause the vapor recovery system to be incapable of maintaining an overall control efficiency of at least a ninety-five (95) percent reduction in the VOC emissions.

(15) "Month" means calendar month.

(16) "Month of operation" means a month during which a facility is not closed for the purpose of dispensing gasoline for more than four (4) consecutive days.

(17) "Motor vehicle" means a vehicle, machine, or mechanical contrivance propelled by an internal combustion engine and licensed for operation and operated upon the public highways.

(18) "Small business marketer" means an independent small business marketer of gasoline pursuant to 42 USC 7625(c).

(19) "Stage I vapor recovery system" means a vapor recovery system certified by CARB or by an equivalent authority to reduce the emissions of VOCs by ninety-five (95) percent or more during the transfer of gasoline to a stationary storage tank at a facility.

(20) "Stage II vapor recovery system" means a vapor recovery system certified by CARB or by an equivalent authority to reduce the emissions of VOCs during the refueling of a motor vehicle at a facility by ninety-five percent (95) percent or more.

(21) "Storage tank" means a tank at a gasoline dispensing facility which is used for the storage of gasoline.

Section 2. Applicability. (1) This administrative regulation shall

apply to the owner or operator of a gasoline dispensing facility located in a county or a portion of a county designated severe, serious, or moderate nonattainment for ozone pursuant to 401 KAR 51:010, Attainment status designations, except as exempted in Section 9 of this administrative regulation.

(2) After the date specified in Section 8 of this administrative regulation, an owner or operator of a facility shall not transfer or allow the transfer of gasoline from a storage tank at that facility into a motor vehicle fuel tank unless the displaced vapors are vented to a Stage II vapor recovery system and the requirements of this administrative regulation are met.

Section 3. Registration and Notification Requirements. The owner or operator shall submit registration and notification forms to the Division for Air Quality as specified in this section. These forms are incorporated by reference in Section 10 of this administrative regulation.

(1) Registration of facilities. DEP 7105, Gasoline Dispensing Facility Registration Form, shall be submitted at least thirty (30) days prior to installing or modifying a Stage II vapor recovery system.

(2) Compliance test notification. DEP 7105A, Compliance Test Notification Form, shall be submitted at least thirty (30) days prior to the performance of the compliance tests required in Section 6 of this administrative regulation.

(3) Stage II post inspection report. DEP 7105B, Stage II Post Inspection Form, shall be submitted within ten (10) work days after the applicable compliance tests have been performed.

Section 4. Control Measures and Operating Requirements. (1) The Stage II vapor recovery system shall:

- (a) Be designed and operated to be at least ninety-five (95) percent effective in recovering displaced vapors;
- (b) Be certified by CARB or an equivalent authority;
- (c) Employ only coaxial hoses at the dispensers;
- (d) Contain no components that would impede the performance of the functional or compliance tests of the system;
- (e) Be integrated with a Stage I vapor recovery system; and
- (f) Meet the testing requirements contained in Section 6 of this administrative regulation.

(2) The owner or operator shall comply with the following operational restrictions for the Stage II vapor recovery system:

(a) The system shall be installed, operated, and maintained in accordance with the manufacturer's specifications and the applicable certification granted by CARB.

(b) The system shall be free of defects listed in this subsection. If a defect is discovered, the owner or operator shall post an "Out of Order" sign and the equipment shall be rendered inoperable. Defects include:

1. The absence or disconnection of any component that is part of the Stage II vapor recovery system;
2. The use of equipment not in accord with the system certification;
3. A vapor hose that is crimped or flattened so that:
  - a. The vapor passage is completely blocked; or
  - b. The pressure drop through the vapor hose is greater than two (2) times the certification requirements;
4. A boot that is torn in one (1) or more of the following ways:
  - a. A triangular shaped or similar tear more than one-half (1/2) inch on a side; or
  - b. A hole more than one-half (1/2) inch in diameter; or
  - c. A slit more than one (1) inch in length;
5. A faceplate or flexible cone on a boot that is damaged so that the ability to achieve a seal with a fill pipe interface is impaired for at least one-quarter (1/4) of the total circumference of the faceplate or flexible cone;
6. A malfunctioning nozzle shutoff mechanism;
7. Vapor return lines, including components such as swivels,

antirecirculation valves, and underground piping, that malfunction or are blocked, or are restricted so that the pressure drop through the line is greater than two (2) times the certification requirement;

8. An inoperative vapor processing unit;
9. An inoperative vacuum producing device;
10. An inoperative pressure/vacuum relief valve, vapor check valve, or dry break;
11. Leaks; and
12. An equipment defect which substantially impairs the control efficiency of the system.

(c) A defect in a component of the Stage II vapor recovery system which is not listed in paragraph (b) of this section shall not prevent operation but shall be repaired or replaced within fifteen (15) days after being identified as defective.

(d) If the cabinet identifies a defect specified in paragraph (b) of this subsection, the cabinet shall affix a tag to the defective equipment stating that the equipment is out of order. The tag shall not be removed until the cabinet has been notified that the defect has been corrected, and the tagged equipment has been approved for use by the cabinet.

(3) The owner or operator shall ensure that safe access to the system components and monitoring equipment is maintained for inspection and compliance determination by the cabinet.

(4) The owner or operator shall display instructions for dispensing gasoline on or near each dispenser, in a print type and size that is easily readable, which include at a minimum:

- (a) A description of how to use the equipment;
- (b) A warning not to dispense fuel after automatic shutoff; and
- (c) A telephone number established by the cabinet to report problems with equipment.

(5) At least one (1) person at the facility shall be trained pursuant to Section 5 of this administrative regulation.

Section 5. Training of Facility Representative. (1) The owner or operator shall ensure that at least one (1) person at the facility is trained to operate the vapor recovery system.

(2) Training may be provided by the vapor recovery equipment manufacturer or distributor, by the person constructing or modifying the Stage II vapor recovery system, or by training manuals provided by the manufacturer, distributor, or the person constructing or modifying the Stage II vapor recovery system. If training manuals are used, they shall be kept at the facility and made available to the cabinet upon request.

(3) Training shall include the following topics:

- (a) Purposes of the Stage II vapor recovery program;
- (b) Operation of the vapor recovery system at that facility;
- (c) Daily equipment inspections;
- (d) How to repair or replace faulty equipment without voiding the equipment warranties;
- (e) Procedures for posting and removing "Out of Service" signs;
- (f) The executive orders of CARB (or the equivalent authority certifying the system), the range of components certified for use in the system, and the requirements placed on the owner or operator;
- (g) Maintenance schedules and requirements for the system and its components;
- (h) Equipment warranties; and
- (i) Equipment manufacturer and rebuilder contacts, including names, addresses, and phone numbers, for parts and service.

(4) The training shall include a practical demonstration on how to operate and inspect the equipment and how to perform a start-up and shut-down of the facility. This demonstration may be performed at another facility with a similar vapor recovery system. The cabinet may require that this demonstration be witnessed by the cabinet as a condition for compliance.

(5) The owner or operator shall maintain a record for each facility representative which includes the following:

- (a) The name of the facility representative and the date training

was received;

- (b) Proof of attendance and successful completion of training;
- (c) If applicable, the date the facility representative left the employ of the owner or operator.

(6) The owner or operator shall not operate the facility for more than thirty (30) consecutive days without a facility representative.

Section 6. Compliance Demonstration Test. (1) Within sixty (60) days after the installation or modification of a Stage II vapor recovery system, the owner or operator shall comply with the applicable test procedures specified in this subsection. These tests are incorporated by reference in Section 10 of this administrative regulation.

(a) A leak test shall be performed in accordance with the applicable procedure specified in this paragraph. The vapor recovery system shall comply with the leak rate criteria specified in the applicable test procedure.

1. Vapor Recovery Test Procedure TP-201.3, Determination of Two (2) Inch (WC) Static Pressure Performance of Vapor Recovery Systems of Dispensing Facilities;

2. Vapor Recovery Test Procedure TP-201.3A, Determination of Five (5) Inch (WC) Static Pressure Performance of Vapor Recovery Systems of Dispensing Facilities; or

3. Vapor Recovery Test Procedure TP-201.3B, Determination of Static Pressure Performance of Vapor Recovery Systems of Dispensing Facilities with Above-ground Storage Tanks.

(b) A dynamic back pressure test shall be performed in accordance with Vapor Recovery Test Procedure TP-201.4, Determination of Dynamic Pressure Performance of Vapor Recovery Systems of Dispensing Facilities.

1. The cabinet may require that this test be conducted simultaneously on all the nozzles of a dispenser for which gasoline can be dispensed simultaneously.

2. The vapor recovery system shall comply with the maximum allowable average dynamic pressures given in the test procedure.

(c) Vapor Recovery Test procedure TP-201.5, Determination (by Volume Meter) of Air to Liquid Volume Ratio of Vapor Recovery Systems of Dispensing Facilities, shall be performed for a system if required by the applicable CARB certification. The vapor recovery system shall comply with the criteria specified in the test procedure.

(d) Vapor Recovery Test Procedure TP-201.6, Determination of Liquid Removal of Phase II Vapor Recovery Systems of Dispensing Facilities, shall be performed for a system if required by the applicable CARB certification. The vapor recovery system shall comply with the criteria specified in the test procedure.

(2) At intervals not to exceed five (5) years, the owner or operator shall demonstrate compliance with the requirements of the applicable test procedure specified in subsection (1)(a) of this section. The notification requirements of Section 3(2) of this administrative regulation shall apply for these tests.

(3) The cabinet may require the owner or operator to perform other tests if necessary to demonstrate the adequacy of a vapor recovery system.

Section 7. Recordkeeping Requirements. (1) The owner or operator shall maintain at the facility the following documents:

(a) Current CARB certification for the Stage II vapor recovery system installed at the facility;

(b) Proof of training for the current facility representative; and

(c) Test results which verify that the vapor recovery system meets or exceeds the requirements of the compliance tests required in Section 6 of this administrative regulation.

(2) The following records shall be maintained at the facility for a period not less than three (3) years:

(a) A log of the quantity of gasoline delivered to the facility during each month;

(b) A log of maintenance records including any repaired or replacement parts and description of the problem;

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(c) Inspection reports issued by the cabinet, kept in chronological order;

(d) Compliance records including warnings or notices of violation issued by the cabinet, kept in chronological order; and

(e) The facility representative record specified in Section 5(3) of this administrative regulation.

(3) Records shall be kept current and made available to the cabinet upon request.

**Section 8. Compliance Timetable.** The owner or operator shall comply with this administrative regulation in the following manner:

(1) Facilities with an average monthly throughput of 100,000 gallons or more, which commenced construction on or before the classification date, shall comply within one (1) year of the classification date.

(2) Facilities with an average monthly throughput between 10,000 and 100,000 gallons, which commenced construction on or before the classification date, shall comply within two (2) years of the classification date.

(3) Facilities commencing construction after the effective date shall comply before beginning to dispense gasoline.

**Section 9. Exemptions.** (1) The fuels and facilities specified in this subsection shall be exempt from this administrative regulation.

(a) Diesel fuel and kerosene. These fuels shall not be used in calculating the average monthly throughput to determine the applicability of this administrative regulation.

(b) A facility with an average monthly throughput of 10,000 gallons or less. This exemption shall cease to apply if, for any month, the average monthly throughput exceeds 10,000 gallons.

(c) A small business marketer whose monthly gasoline throughput does not exceed 50,000 gallons. This exemption shall cease to apply if, for any month, the average monthly throughput exceeds 50,000 gallons.

(2) Recordkeeping for exempted facilities. An exempted facility shall maintain records for a period not less than two (2) years which demonstrate that the facility's average monthly throughput has not exceeded the applicable throughput limit.

(3) Loss of exemption status. If a monthly record documents an average monthly throughput equal to or greater than the applicable throughput limit, the owner or operator shall notify the division by phone or fax within thirty (30) days. If the exemption ceases to apply, the owner or operator shall comply with this administrative regulation within one (1) year of notification by the cabinet.

**Section 10. Material Incorporated by Reference.** (1) The following forms are incorporated by reference:

(a) "DEP 7105, Gasoline Dispensing Facility Registration, August 1997";

(b) "DEP 7105A, Compliance Demonstration Notification, August 1997"; and

(c) "DEP 7105B, Stage II Post Inspection Form, August 1997".

(2) The test methods specified in this subsection, as published by California Environmental Protection Agency, Air Resources Board, in the "Stationary Source Test Methods, Volume 2, Certification and Test Procedures for Vapor Recovery Systems, April 12, 1996", is incorporated by reference. This document is available from the California Air Resources Board, P.O. Box 2815, 2020 L St., Sacramento, California 95812, Phone (916) 322-2990.

(a) Vapor Recovery Test Procedure TP-201.3, Determination of Tow (2) Inch (WC) Static Pressure Performance of Vapor Recovery Systems of Dispensing Facilities.

(b) Vapor Recovery Test Procedure TP-201.3A, Determination of Five (5) Inch (WC) Static Pressure Performance of Vapor Recovery Systems of Dispensing Facilities.

(c) Vapor Recovery Test Procedure TP-201.3B, Determination of Static Pressure Performance of Vapor Recovery Systems of Dispens-

ing Facilities with Above-ground Storage Tanks.

(d) Vapor Recovery Test Procedure TP-201.4, Determination of Dynamic Pressure Performance of Vapor Recovery Systems of Dispensing Facilities.

(e) Vapor Recovery Test Procedure TP-201.5, Determination (by Volume Meter) of Air to Liquid Volume Ratio of Vapor Recovery Systems of Dispensing Facilities.

(f) Vapor Recovery Test Procedure TP-201.6, Determination of Liquid Removal of Phase II Vapor Recovery Systems of Dispensing Facilities.

(3) The material incorporated by reference may be obtained, inspected, or copied at the following offices of the Division for Air Quality, Monday through Friday, 8 a.m. to 4:30 p.m.:

(a) Division for Air Quality, 803 Schenkel Lane, Frankfort, Kentucky 40601-1403, (502) 573-3382;

(b) Ashland Regional Office, 3700 Thirteenth Street, Ashland, Kentucky 41105-1507, (606) 920-2067;

(c) Bowling Green Regional Office, 1508 Westen Avenue, Bowling Green, Kentucky 42104, (502) 746-7475;

(d) Florence Regional Office, 7964 Kentucky Drive, Suite 8, Florence, Kentucky 41042, (606) 292-6411;

(e) Hazard Regional Office, 233 Birch Street, Suite 2, Hazard, Kentucky 41701, (606) 435-6022;

(f) London Regional Office, 85 State Police Road, London, Kentucky, 40741, (606) 878-0157;

(g) Owensboro Regional Office, 3032 Alvey Park Drive W., Suite 700, Owensboro, Kentucky 42303, (502) 687-7304; and

(h) Paducah Regional Office, 4500 Clarks River Road, Paducah, Kentucky 42003, (502) 898-8468.

JAMES E. BICKFORD, Secretary

APPROVED BY AGENCY: August 7, 1997

FILED WITH LRC: August 11, 1997 at 9 a.m.

**PUBLIC HEARING SCHEDULED:** A public hearing on the new administrative regulation will be held on September 22, 1997, at 10 a.m. (ET) in the Conference Room of the Division for Air Quality, 803 Schenkel Lane, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing, at least five work days prior to the hearing, of their intent to attend. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the new administrative regulation. Send written notification of intent to be heard at the public hearing or written comments on the regulation to the contact person.

**CONTACT PERSON:** Millie Ellis, Supervisor, Division for Air Quality, 803 Schenkel Lane, Frankfort, Kentucky, 40601, (502) 573-3382, and fax number (502) 573-3787.

To request appropriate accommodations for the public hearing (such as an interpreter), or alternate formats of the printed material, please call (502) 573-3382, ext 362. The cabinet does not discriminate on the basis of race, color, national origin, sex, religion, age, or disability in employment or the provision of services and provides, upon request, reasonable accommodation including auxiliary aids and services necessary to afford individuals with disabilities an equal opportunity to participate in all programs and activities.

### REGULATORY IMPACT ANALYSIS

Agency Contact: Ken Hines, Manager

(1) Type and number of entities affected: This administrative regulation requires that gasoline dispensing facilities, which are located in an area that is designated moderate, serious, or severe nonattainment for ozone, and which have an average monthly gasoline throughput of greater than 10,000 gallons, to install Stage II vapor recovery systems as mandated by the 1990 Clean Air Act Amendments. The areas which are affected in Kentucky are the moderate ozone nonattainment areas: Boone, Campbell, and Kenton counties, 2 portions of Oldham and Bullitt counties. The cabinet has

identified the following number of facilities which must install Stage II systems in these counties: Boone County - 58; Kenton County - 67; Campbell County - 41; Oldham County - 24; Bullitt County - 22; Total Facilities - 212.

Independent small business marketers with an average monthly throughput of 50,000 gallons or less and all other gasoline dispensing facilities with an average monthly throughput of 10,000 gallons or less have been exempted from this administrative regulation. These facilities are required to maintain current records covering a 2 year period which demonstrate that the applicable throughput limits have not been exceeded.

(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 cost of gasoline may increase by 1 to 1.5 cents per gallon to offset the annual maintenance costs and the amortized costs of installation of the Stage II vapor recovery systems for several years. However, after 3 to 4 years only the maintenance costs will apply and these range between 0.2 cents per gallon for large facilities and 0.7 cents per gallon for small facilities.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented. Businesses operating motor vehicles in an area in Kentucky that is designated moderate and above nonattainment for ozone will pay the extra costs of gasoline, which may be up to 1.5 cents per gallon for the first few years and as much as approximately 0.7 cents per gallon afterwards. The gasoline service stations will also have extra costs. The cost for constructing a new facility with Stage II adds about \$1,000 per dispenser for large facilities and up to \$1,500 per dispenser for small facilities. (This includes Stage I costs.) The cost for retrofitting a facility with Stage II varies between \$1,800 per dispenser for a large facility and \$4,000 per dispenser for a small facility. The compliance tests are conducted every five (5) years and cost approximately \$600 to \$850 per facility. The annual extra costs, covering increased maintenance and capital recovery, vary for a balance system or a balanced vacuum system between \$70 extra per dispenser for a new large facility and \$500 per dispenser for a small retrofitted facility. For vacuum systems using a processor unit to burn part of the recovered vapors, the annual cost varies between \$200 extra per dispenser for a new large facility and \$1000 per dispenser for a small retrofitted facility.

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

1. First year following implementation: The owner or operator of each facility is required to register with the cabinet prior to installing a Stage II vapor control system. A facility representative for each facility is required to be trained in operating the Stage II equipment. With controls in place, no facility has a large enough throughput to produce 25 tons of VOCs, and thus no emissions fees will be required from them under the present Kentucky emissions fee regulation.

2. Second and subsequent years: Each facility is required to keep on-site files with maintenance and repair records of the vapor recovery system, inspection reports, compliance records, facility representative records, and monthly throughput records. Every 5 years and whenever a modification of the facility occurs, the owner or operator must conduct additional compliance testing. In addition, the owner or operator of each exempted facility is required to maintain records of monthly throughputs for the previous 3 years.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: The division's existing operating budget will provide for Stage II training for inspectors at the Florence and Frankfort Regional offices. Existing funds will also be used to set up a computer database, for development of training materials, public information materials, guidance for owners and operators, division

personnel, enforcement guidance, and to cover staff time devoted to maintaining records and responding to the public.

2. Continuing costs or savings: The division's existing operating budget will be used to provide funds during the second and third years as implementation of the Stage II program continues. After the registration and inspection demands become stable, the program will be maintained through the division's existing operating budget.

3. Additional factors increasing or decreasing costs: There are no additional factors.

(b) Reporting and paperwork requirements: While most records will be maintained at the subject facility, Form DEP 7105, Gasoline Dispensing Facility Registration, and Form DEP 7105A, Compliance Demonstration Notification, will be submitted to and processed by the division.

(4) Assessment of anticipated effect on state and local revenues: Costs for implementing and enforcing the Stage II program will be covered by the general budget. After installation of controls, none of the affected gasoline dispensing facilities will pump enough gasoline to exceed the emission fee-threshold amount of 25 tons annually. Therefore, these facilities will not be required to pay emission fees under present state statutes and administrative regulations.

(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 administrative regulation.

(6) Economic impact, including effects of economic activities arising from administrative regulation, on:

(a) Geographical area in which administrative regulation will be implemented: The administrative regulation will have minimal economic impact in the geographical location of affected sources other than an increase in the cost of gasoline. However, if the areas to which this administrative regulation applies do not expeditiously achieve a 15% reduction in VOC emissions, the attainment status will be degraded to serious ozone nonattainment classification, burdening all new businesses there.

(b) Kentucky: This administrative regulation will have no economic impact in any geographical location in Kentucky other than those noted in paragraph (a) of this subsection.

(7) Assessment of alternative methods; reason why alternatives were rejected: All the alternative possibilities that were as cost effective as Stage II were either already implemented or are being implemented in conjunction with this administrative regulation.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which administrative regulation will be implemented and on Kentucky: Projections show that this administrative regulation will help reduce the VOC emissions in Kentucky's ozone nonattainment areas and contribute significantly to the Commonwealth's efforts toward achieving the national ambient air quality standard for ozone.

(b) State whether a detrimental effect on environment and public health would result if not implemented: If this administrative regulation is not implemented, achievable reductions in the unacceptable levels of ozone in the ambient air will not be accomplished.

(c) If detrimental effect would result, explain detrimental effect: Unless this administrative regulation is implemented, VOC emissions in these ozone nonattainment areas cannot be reduced sufficiently to achieve a 15% reduction in VOC emissions.

(9) Identify any statute, rule, regulation or government policy which may be in conflict, overlapping, or duplication: There is no overlapping or duplication.

(a) Necessity of proposed regulation if in conflict: There is no conflict with other administrative regulations.

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

(10) Any additional information or comments: The cabinet has no



additional information or comment.

(11) TIERING: Is tiering applied? Yes. This administrative regulation does not apply to facilities with an average monthly throughput of 10,000 gallons or less, or to facilities owned by independent small business marketers with an average monthly throughput of 50,000 gallons or less.

#### FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute of regulation constituting the federal mandate. The federal mandate is contained in the Clean Air Act at 42 USC 7511a(b)(3), 7624, and 7625.

2. State compliance standards. KRS 224.10-100 requires the Cabinet for Natural Resources and Environmental Protection to provide an air quality program for Kentucky.

3. Minimum or uniform standards contained in the federal mandate. 42 USC 7511a(b)(3), 7624, and 7625 require states to submit a SIP revision requiring designated gasoline dispensing facilities to install and operate vapor recovery systems that capture gasoline vapors displaced from motor vehicle gasoline tanks during refueling. 42 USC 7521(a)(6) allows a state to waive this requirement in moderate ozone nonattainment areas if, using other means, the VOC emissions can be reduced by November 15, 1996, by 15% from the 1990 baseline level, so that the national ambient air quality standard for ozone is attained. The reductions due to the installation of Stage II are needed for the required 15% reduction in VOC emissions. The sources that are required to install Stage II vapor control systems are identified in 42 USC 7511a(b)(3), 7624, and 7625. The construction requirements, monitoring requirements, and reporting and recordkeeping requirements, are published in the California Air Resources Board (CARB), Gasoline Facilities Vapor Recovery, Phase I & II, volumes I and II (September 1994). The performance test methods are those mandated by CARB in Stationary Source Test Methods, Volume 2: Certification and Test Procedures for Vapor Recovery Systems (April 12, 1996). The standards set and the requirements developed by CARB serve as a basis for the federal standards and requirements. The provisions in this administrative regulation fulfill the requirements of the U.S. EPA Technical Guidance - Stage II Vapor Recovery Systems for Control of Vehicle Refueling Emissions at Gasoline Dispensing Facilities, volumes I and II (EPA-450/3-91-022a and -022b), November 1991, and U.S. EPA, Enforcement Guidance for Stage II Vehicle Refueling Control Programs, (Draft Final), October 1991.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities of requirements, than those required by the federal mandate? This administrative regulation does not impose requirements beyond those specified in federal guidance.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Stricter standards and requirements are not imposed.

#### FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? Yes

2. State what unit, part or division of local government this administrative regulation will affect. This administrative regulation will affect any gasoline dispensing facility owned by a local government agency if it has an average monthly throughput of 10,000 gallons or more.

3. State the aspect or service of local government to which this administrative regulation relates. This administrative regulation relates to any gasoline dispensing facility owned by a local government if it has an average monthly throughput of 10,000 gallons or more.

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 import of the administrative regulation.

Revenues (+/-): There is no known effect on current revenues.

Expenditures (+/-): There is no known effect on current expenditures.

Other Explanation: The division has not identified a gasoline dispensing facility that is run by a local government and which has a large enough monthly throughput to require Stage II vapor recovery equipment.

#### LABOR CABINET

##### Department of Workers' Claims (New Administrative Regulation)

#### 803 KAR 25:175. Filing of insurance coverage and notice of policy change or termination.

RELATES TO: KRS 342.340(2)

STATUTORY AUTHORITY: KRS 342.260(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 342.340 requires insurance carriers to file proof of insurance coverage for employers and notice of policy change or termination on forms prescribed by the commissioner. KRS 342.260(1) requires the commissioner to promulgate administrative regulations necessary to carry on the work of the department. This administrative regulation requires insurance carriers to file proof of coverage and policy change or termination of coverage on Form POC-1 with NCCI. Then NCCI shall file the information electronically with the Department of Workers' Claims.

Section 1. Definitions. (1) "EDI" means electronic data interchange.

(2) "Insurance carrier" is defined in KRS 342.0011(22).

(3) "IAIABC" means International Association of Industrial Accident Boards and Commissions.

(4) "NCCI" means the National Council on Compensation Insurance.

Section 2. Reporting Requirements. (1) Beginning on January 1, 1998, each insurance carrier shall file the information required on the Form POC-1 with NCCI pursuant to the time requirements set forth in KRS 342.340(2); and

(2) NCCI shall electronically file the information filed pursuant to subsection (1) with the Department of Workers' Claims.

(3) The electronic filing shall be done in accordance with the IAIABC EDI Implementation Guide for Proof of Coverage.

Section 3. The department shall make the following in an electronic format in accordance with IAIABC EDI Implementation Guide for Proof of Coverage through the NCCI to each insurance carrier:

(1) Acknowledgments of accepted filings made pursuant to this administrative regulation; and

(2) Requests for resubmission of reports due to incomplete or incorrect information.

Section 4. Incorporation by Reference. (1) The following are incorporated by reference:

(a) POC-1 Form (December 1996 Edition); and

(b) IAIABC EDI Implementation Guide for Proof of Coverage (Feb. 1996 Edition).

(2) The material may be inspected, copied, or obtained at the Department of Workers' Claims Monday through Friday, 9 a.m. to 4 p.m. at the following locations:

(a) Frankfort - Perimeter Park West, Building C, 1270 Louisville

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Road, Frankfort, Kentucky 40601;

(b) Paducah - 220 B. North 8th Street, Paducah, Kentucky 42001; and

(c) Pikeville - 412 Second Street, Pikeville, Kentucky 41501.

WALTER W. TURNER, Commissioner

APPROVED BY AGENCY: August 15, 1997

FILED WITH LRC: August 15, 1997 at 11 am.

PUBLIC HEARING: A public hearing on the administrative regulation shall be held on September 22, 1997, at 10 a.m. (ET) in the offices of the Kentucky Department of Workers' Claims, Perimeter Park West, Building C, 1270 Louisville Road, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by September 15, 1997, five (5) working days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be 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 September 22, 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 Workers' Claims, Perimeter Park West, Building C, 1270 Louisville Road, Frankfort, Kentucky 40601, Telephone Number: (502) 564-5550, Ext. 465, Fax Number: (502) 564-5934.

### REGULATORY IMPACT ANALYSIS

Contact Person: Carla H. Montgomery

(1) Type and number of entities affected: Approximately 525 workers' compensation insurers and 22 group self-insurers.

(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 were received. The department does not anticipate an effect on the cost of living or employment in Kentucky.

(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 were received. Insurance carriers were already filing similar forms with the department. They will now file POC-1 form with the same information with NCCI.

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

1. First year following implementation: Insurance carriers already file these forms with the Department of Workers' Claims. Now these documents will be filed with NCCI. Costs should not increase or decrease.

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: The Department of Workers' Claims should not have any effect on monetary costs or savings. There will be a time savings since all reports will come from one source electronically. There will be a space savings because the department will not have to save all hard copies of forms.

2. Continuing costs or savings: See above.

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: As stated earlier the department will be able to save time and space. Time will also be

saved because all rejections will be done electronically to avoid the time consuming job of calling insurance carriers and returning hard copies of documents.

(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: There will be no fee for the department to receive this information from NCCI. The normal budget will be in place for enforcement of the 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 were received, but the Department does not anticipate an economic impact.

(b) Kentucky: Same as above.

(7) Assessment of alternative methods; reasons why alternatives were rejected: This option to have the information filed electronically by NCCI will save time and space. It will allow for more timely receipt of proof of coverage and cancellation. It is a free service to the department. To not move forward with this project would prevent better service from the department.

(8) Assessment of expected benefits: As stated earlier, time and space will be saved. Reporting will be more accurate and delivered to the department in a timely manner to allow the department more up-to-date information on workers' compensation coverage.

(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: N/A

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: N/A

(10) Tiering: Tiering is not applied because this administrative regulation is applied to workers' compensation insurers and group self-insurers equally.

### CABINET FOR HEALTH SERVICES Department For Medicaid Services Division of Administration and Development (New Administrative Regulation)

907 KAR 1:429. Repeal of 907 KAR 1:428 and 907 KAR 1:432.

RELATES TO: KRS 205.520

STATUTORY AUTHORITY: KRS 194.050, EO 96-862

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health Services, Department for Medicaid Services, has responsibility to administer the Medicaid Program. 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 authorizes the cabinet, by administrative regulation, to comply with a 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 repeals 907 KAR 1:428 and 907 KAR 1:432 which are no longer needed because the information contained in these administrative regulations are now located in 907 KAR 1:160 and 907 KAR 1:170.

Section 1. 907 KAR 1:428, Incorporation by reference of the Adult Day Health Care Services Manual and 907 KAR 1:432, Incorporation by reference of the Home and Community Based Waiver Services

## ADMINISTRATIVE REGISTER - 809

Manual, are hereby repealed.

LARRY A. MCCARTHY, Deputy Commissioner  
JOHN H. MORSE, Secretary

APPROVED BY AGENCY: August 8, 1997

FILED WITH LRC: August 15, 1997 at 11 a.m.

**PUBLIC HEARING:** A public hearing on this administrative regulation shall be held on September 22, 1997 at 9 a.m. in the Health Services Auditorium, Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by September 15, 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 canceled. The hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: Mae B. Lewis, Cabinet Regulation Coordinator, Cabinet for Health Services, Office of the Counsel, 275 East Main Street - 4th Floor - West, Frankfort, Kentucky 40621, (502) 564-7900, (502) 564-7573 (Fax).

### REGULATORY IMPACT ANALYSIS

Agency Contact Person: Trish Howard or Karen Doyle

- (1) Type and number of entities affected: None
- (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: \$0
      2. Continuing costs or savings: \$0
    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

None

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Federal and state matching funds.

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

- (a) Geographical area in which administrative regulation will be implemented: To be implemented statewide.
- (b) Kentucky: None
- (7) Assessment of alternative methods; reasons why alternatives were rejected: No viable alternatives were identified.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: The promulgation of this administrative regulation will result in increased access to home and community based waiver services such as respite and attendant care.

(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: See 8(a).

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

(a) Necessity of proposed regulation if in conflict:

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

(10) Any additional information or comments: None

(11) **TIERING:** Is tiering applied? Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it. Disparate treatment of any person or entity subject to this administrative regulation could raise questions of arbitrary action on the part of the agency. The "equal protection" and "due process" clauses of the Fourteenth Amendment of the U.S. Constitution may be implicated as well as Sections 2 and 3 of the Kentucky Constitution.

### FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. Pursuant to 42 USC 1396a et seq., the Commonwealth of Kentucky has exercised the option to establish a Medicaid Program for indigent Kentuckians. Having elected to offer Medicaid coverage, the state must comply with federal requirements contained in 42 USC 1396 et seq.

2. State compliance standards. This administrative regulation does not set compliance standards.

3. Minimum or uniform standards contained in the federal mandate. This administrative regulation does not set minimum or uniform standards.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No. This administrative regulation does not set stricter requirements.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. No additional standard or responsibilities are imposed.

### CABINET FOR HEALTH SERVICES Department For Medicaid Services Division of Administration and Development (New Administrative Regulation)

**907 KAR 1:720. Coverage and payments for the Kentucky Early Intervention Program services provided through an agreement with the state Title V agency.**

RELATES TO: KRS 200.650 - 676, 205.520, 42 CFR 431.615, 42 USC 1471-1485

STATUTORY AUTHORITY: KRS 194.050, 200.660(7), EO 96-862

**NECESSITY, FUNCTION, AND CONFORMITY:** The Cabinet for Health Services, Department for Medicaid Services, has responsibility to administer the Medicaid Program. 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 authorizes the cabinet, by administrative regulation, to comply with a 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 establishes requirements for coverage and payment for early intervention services provided through an agreement with the state Title V agency, the Department for Public Health.

Section 1. Definitions. (1) "Department" means the Department for

Medicaid Services or its designee.

- (2) "Early intervention services" is defined by KRS 200.654(7).
- (3) "Title V agency" means the Department for Public Health.

Section 2. Covered Services. (1) Services shall be provided for a Medicaid eligible child under the age of three (3) who meets eligibility requirements for early intervention as established in 908 KAR 2:120, Section 2.

(2) The service to be provided shall be a service described in 908 KAR 2:160 except for the following services which shall not be covered:

- (a) Respite care;
- (b) Transportation;
- (c) Teacher of the deaf and hard of hearing; and
- (d) Teacher of the visually impaired.

(3) Services shall be coordinated and information exchanged with the child's assigned primary care physician in the Health Care Partnership in accordance with 907 KAR 1:705. Information shall also be exchanged with providers in the managed behavioral health care waiver with appropriate consent.

(4) Services shall be provided pursuant to an interagency agreement between the department, the Title V agency and the Department for Mental Health and Mental Retardation Services.

Section 3. Provider Qualifications and Conditions for Participation. The following provider qualifications and conditions for participation shall be applicable for services provided pursuant to this administrative regulation.

(1) Services shall be provided by the Title V agency directly, or through subcontractors, or through agreement with the Department for Mental Health and Mental Retardation Services.

(2) If the Department for Mental Health and Mental Retardation Services seeks to subcontract for the provision of services, the Department for Mental Health and Mental Retardation Services shall subcontract for the provision of services in accordance with the provisions of the agreement.

(3) A service which is provided by the Departments for Public Health or Mental Health and Mental Retardation Services or their subcontractors shall meet the appropriate requirements for the service, as established in 908 KAR 2:160.

Section 4. Reimbursement. Reimbursement shall be the documented cost for the direct provision of the services. The administrative and indirect overhead costs to the Departments for Public Health and Mental Health and Mental Retardation Services shall not be reimbursed by the department.

(1) Payments shall be based on actual expenditures incurred for the provision of services by the Title V agency or the Department for Mental Health and Mental Retardation Services.

(2) Amounts paid for Department for Mental Health and Mental Retardation Services subcontracted services shall be at service rates established by the Department for Mental Health and Mental Retardation Services in 908 KAR 2:200, Section 3, and shall not be adjusted except as necessary to correct billing or payment errors.

(3) Amounts paid for Department for Public Health subcontracted services shall be at rates not to exceed the rate established by the Department for Mental Health and Mental Retardation Services in 908 KAR 2:200.

LARRY A. MCCARTHY, Deputy Commissioner  
JOHN H. MORSE, Secretary

APPROVED BY AGENCY: August 8, 1997

FILED WITH LRC: August 15, 1997 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on September 22, 1997 at 9 a.m. in the Health Services Auditorium, Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky. Individuals interested in

attending this hearing shall notify this agency in writing by September 15, 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 canceled. The hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: Mae B. Lewis, Cabinet Regulation Coordinator, Cabinet for Health Services, Office of the Counsel, 275 East Main Street - 4th Floor - West, Frankfort, Kentucky 40621, (502) 564-7900, (502) 564-7573 (Fax).

#### REGULATORY IMPACT ANALYSIS

Agency Contact Person: Trish Howard or Karen Doyle

(1) Type and number of entities affected: Approximately 1,150 Medicaid-eligible children.

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

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

(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 comments 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\* (See (10)).

2. Continuing costs or savings: None\* (See (10)).

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: None

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

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Federal and state matching funds.

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

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

(b) Kentucky: None

(7) Assessment of alternative methods; reasons why alternatives were rejected: No viable alternatives were identified.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: This regulation will assure access to early intervention services by Medicaid-eligible infants and toddlers who are disabled.

(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-eligible children who are disabled may be unable to access or receive necessary early intervention services.

(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: Some transfer of

funds from EPSDT and other Medicaid Programs may be experienced.

(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.

**CABINET FOR HEALTH SERVICES  
Department for Mental Health and  
Mental Retardation Services  
Division of Mental Retardation  
(New Administrative Regulation)**

**908 KAR 2:200. Coverage and payment for Kentucky Early Intervention Program Services.**

RELATES TO: 20 USC 1471-1485

STATUTORY AUTHORITY: KRS 200.650-676, EO 96-862

**NECESSITY, FUNCTION, AND CONFORMITY:** The Cabinet for Health Services is directed by KRS 200.650 to 200.676 to administer all funds appropriated to implement provisions, to enter into contracts with service providers, and to promulgate administrative regulations. Executive Order 96-862, effective July 2, 1996, reorganized the Cabinet for Human Resources and placed the Department for Mental Health and Mental Retardation Services and the First Steps, Kentucky's Early Intervention Program, under the Cabinet for Health Services. This administrative regulation sets forth the provisions relating to early intervention services for which payment shall be made by the First Steps Program on behalf of eligible recipients.

**Section 1. Definitions.** For purposes of determination of coverage and payment, the following definitions shall apply.

- (1) "Cabinet" means the Cabinet for Health Services.
- (2) "Commercial transportation carriers" means those commercial carriers licensed in accordance with the laws of Kentucky or other states, to transport members of the general public, such as a taxi cab.
- (3) "Department" means the Department for Mental Health and Mental Retardation Services.
- (4) "Direct contact" means activity or contacts, face to face or by telephone, with the child, or on behalf of the child, with the parent, family or person in custodial control, professionals, and other service providers, or other significant persons. This does not include direct supervision of paraprofessionals by professionals.
- (5) "First Steps" means Kentucky's early intervention system as established by KRS 200:650 through 200:676.
- (6) "Noncommercial group carriers" means those vendors who provide bus or bus-type transportation to an identifiable segment of the population eligible for service from those carriers.
- (7) "Period of eligibility" means from the date the child was determined eligible to the date of the child's third birthday or prior to the child's third birthday, to the date the child is determined ineligible.
- (8) "Private automobile carrier" means a person owning or having access to a private vehicle not used for commercial transportation purposes and who uses that vehicle for the occasional transportation of eligible children.
- (9) "Providers" means those agencies, persons, or other entities that meet the requirements for approval as established in 908 KAR 2:100 through 908 KAR 2:180 and who sign an agreement with the department.
- (10) "Usual and customary charge" means the uniform amount which the individual provider charges in the majority of the cases for a specific service.

**Section 2. Participation Requirements.** (1) Early intervention providers that request to participate as an approved First Steps provider shall be required to comply with the following:

- (a) Submit to an annual review by the Department for Mental Health and Mental Retardation Services, or its agents, for compliance with 908 KAR 2:100 through 908 KAR 2:180.
  - (b) Meet, or employ or contract with professionals and staff who meet the qualifications specified in 908 KAR 2:150.
  - (c) Professionals and staff who provide services in the First Steps Program attend a minimum of a one (1) day, not to exceed an eight (8) hour period, training on First Steps' philosophy, practices, and procedures provided by First Steps representatives prior to providing First Steps services. For professionals and staff presently providing First Steps services evidence of equivalent training shall be required.
  - (d) Agree to provide First Steps services according to an individualized family service plan as required in 908 KAR 2:130.
  - (e) Agree to submit as requested by the department and to maintain all required information, records, and reports to insure compliance with this administrative regulation.
  - (f) Establish a contractual arrangement with the Cabinet for Health Services for the provision of First Steps services.
  - (g) Agree to provide upon request information necessary for reimbursement for services by the Cabinet for Health Services in accordance with this administrative regulation, which shall include tax identification number and usual and customary charges.
- (2) The Department for Mental Health and Mental Retardation Services may grant provider approval for participation to those providers who meet the criteria in subsection (1) of this section.

**Section 3. Reimbursement.** The department shall reimburse participating First Steps providers the lower of actual billed charges for the service or the preestablished fixed upper limit taking into consideration information available to the department with regard to cost and the department's estimate as to the amount necessary to secure the service.

- (1) Charges submitted to the department shall be the provider's usual and customary charges for the same services.
- (2) The preestablished upper limit fee for services shall be as follows:
  - (a) Primary service coordination:
    1. In the office the fee shall be sixty-five (65) dollars per hour of direct contact service.
    2. In the home or community site the fee shall be eighty-eight (88) dollars per hour of direct contact service.
  - (b) Initial service coordination:
    1. In the office the fee shall be sixty-eight (68) dollars per hour of direct contact service.
    2. In the home or community site the fee shall be ninety-one (91) dollars per hour of direct contact service.
  - (c) Primary evaluation:
    1. In the office or center based site the fee shall be \$250 per service event.
    2. In the home or community site the fee shall be \$250 per service event.
  - (d) Service assessment:
    1. For an audiologist:
      - a. In the office or center based site the fee shall be eighty-six (86) dollars per hour of direct contact service.
      - b. In the home or community site the fee shall be \$112 per hour of direct contact service.
    2. For a family therapist:
      - a. In the office or center based site the fee shall be eighty-six (86) dollars per hour of direct contact service.
      - b. In the home or community site the fee shall be \$112 per hour of direct contact service.
    3. For a licensed psychologist and certified psychologist with autonomous functioning:

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- a. In the office or center based site the fee shall be \$207 per hour of direct contact service.
- b. In the home and community site the fee shall be \$268 per hour of direct contact service.
4. For a developmental interventionist:
  - a. In the office or center based site the fee shall be eighty-three (83) dollars per hour of direct contact service.
  - b. In the home or community site the fee shall be \$108 per hour of direct contact service.
5. For a registered nurse:
  - a. In the office or center based site the fee shall be eighty-six (86) dollars per hour of direct contact service.
  - b. In the home or community site the fee shall be \$112 per hour of direct contact service.
6. For a nutritionist:
  - a. In the office or center based site the fee shall be eighty-six (86) dollars per hour of direct contact service.
  - b. In the home or community site the fee shall be \$112 per hour of direct contact service.
7. For a dietitian:
  - a. In the office or center based site the fee shall be eighty-three (83) dollars per hour of direct contact service.
  - b. In the home or community site the fee shall be \$108 per hour of direct contact service.
8. For an occupational therapist:
  - a. In the office or center based site the fee shall be ninety-six (96) dollars per hour of direct contact service.
  - b. In the home or community site the fee shall be \$112 per hour of direct contact service.
9. For an orientation and mobility specialist:
  - a. In the office or center based site the fee shall be eighty-three (83) dollars per hour of direct contact service.
  - b. In the home or community site the fee shall be \$108 per hour of direct contact service.
10. For a physical therapist:
  - a. In the office or center based site the fee shall be eighty-six (86) dollars per hour of direct contact service.
  - b. In the home or community site the fee shall be \$112 per hour of direct contact service.
11. For a speech therapist:
  - a. In the office or center based site the fee shall be eighty-six (86) dollars per hour of direct contact service.
  - b. In the home or community site the fee shall be \$112 per hour of direct contact service.
12. For a social worker:
  - a. In the office or center based site the fee shall be eighty-three (83) per hour of direct contact service.
  - b. In the home or community site the fee shall be \$108 per hour of direct contact service.
13. For a teacher of the deaf and hard of hearing:
  - a. In the office or center based site the fee shall be eighty-three (83) dollars per hour of direct contact service.
  - b. In the home or community site the fee shall be \$108 per hour of direct contact service.
14. For a teacher of the visually impaired:
  - a. In the office or center based site the fee shall be eighty-three (83) dollars per hour of direct contact service.
  - b. In the home or community site the fee shall be \$108 per hour of direct contact service.
- (e) Therapeutic intervention and collateral services:
  1. For an audiologist:
    - a. In the office or center based site the fee shall be seventy (70) dollars per hour of direct contact service.
    - b. In the home or community site the fee shall be ninety-four (94) dollars per hour of direct contact service.
  2. For a family therapist:
    - a. In the office or center based site the fee shall be seventy (70)

- per hour of direct contact service.
- b. In the home or community site the fee shall be ninety-four (94) per hour of direct contact service.
3. For a licensed psychologist and certified psychologist with autonomous functioning:
  - a. In the office or center based site the fee shall be \$155 per hour of direct contact service.
  - b. In the home and community site the fee shall be \$226 per hour of direct contact service.
4. For a certified psychological associate:
  - a. In the office or center based site the fee shall be \$116 per hour of direct contact service.
  - b. In the home or community site the fee shall be \$170 per hour of direct contact service.
5. For a developmental interventionist:
  - a. In the office or center based site the fee shall be sixty-eight (68) dollars per hour of direct contact service.
  - b. In the home or community site the fee shall be ninety-one (91) dollars per hour of direct contact service.
6. For a developmental associate:
  - a. In the office or center based site the fee shall be fifty-one (51) dollars per hour of direct contact service.
  - b. In the home or community site the fee shall be sixty-eight (68) dollars per hour of direct contact service.
7. For a developmental assistant, in the office or center based site the fee shall be ten (10) dollars per hour of direct contact service.
8. For a registered nurse:
  - a. In the office or center based site the fee shall be seventy (70) dollars per hour of direct contact service.
  - b. In the home or community site the fee shall be ninety-four (94) dollars per hour of direct contact service.
9. For a licensed practical nurse:
  - a. In the office or center based site the fee shall be twenty-four (24) dollars per hour of direct contact service.
  - b. In the home or community site the fee shall be thirty-two (32) dollars per hour of direct contact service.
10. For a nutritionist:
  - a. In the office or center based site the fee shall be seventy (70) dollars per hour of direct contact service.
  - b. In the home or community site the fee shall be ninety-four (94) per hour of direct contact service.
11. For a dietitian:
  - a. In the office or center based site the fee shall be sixty-eight (68) dollars per hour of direct contact service.
  - b. In the home or community site the fee shall be ninety-one (91) dollars per hour of direct contact service.
12. For an occupational therapist:
  - a. In the office or center based site the fee shall be seventy (70) dollars per hour of direct contact service.
  - b. In the home or community site the fee shall be ninety-four (94) dollars per hour of direct contact service.
13. For an occupational therapist assistant:
  - a. In the office or center based site the fee shall be fifty-two (52) dollars per hour of direct contact service.
  - b. In the home or community site the fee shall be seventy (70) dollars per hour of direct contact service.
14. For an orientation and mobility specialist:
  - a. In the office or center based site the fee shall be sixty-eight (68) dollars per hour of direct contact service.
  - b. In the home or community site the fee shall be ninety-one (91) dollars per hour of direct contact service.
15. For a physical therapist:
  - a. In the office or center based site the fee shall be seventy (70) dollars per hour of direct contact service.
  - b. In the home or community site the fee shall be ninety-four (94) dollars per hour of direct contact service.
16. For a physical therapist assistant:



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a. In the office or center based site the fee shall be fifty-two (52) dollars per hour of direct contact service.

b. In the home or community site the fee shall be seventy (70) dollars per hour of direct contact service.

17. For a speech therapist:

a. In the office or center based site the fee shall be seventy (70) dollars per hour of direct contact service.

b. In the home or community site the fee shall be ninety-four (94) dollars per hour of direct contact service.

18. For a speech therapist assistant:

a. In the office or center based site the fee shall be fifty-two (52) dollars per hour of direct contact service.

b. In the home or community site the fee shall be seventy (70) dollars per hour of direct contact service.

19. For a social worker:

a. In the office or center based site the fee shall be sixty-eight (68) dollars per hour of direct contact service.

b. In the home or community site the fee shall be ninety-one (91) dollars per hour of service.

20. For a teacher of the deaf and hard of hearing:

a. In the office or center based site the fee shall be sixty-eight (68) dollars per hour of direct contact service.

b. In the home or community site the fee shall be ninety-one (91) dollars per hour of direct contact service.

21. For a teacher of the visually impaired:

a. In the office or center based site the fee shall be sixty-eight (68) dollars per hour of direct contact service.

b. In the home or community site the fee shall be ninety-one (91) dollars per hour of direct contact service.

22. For a physician providing collateral services in the office or center based site the fee shall be seventy-six (76) dollars per hour of direct contact service. Physicians shall not receive reimbursement for therapeutic intervention.

(f) Respite shall be seven (7) dollars and sixty (60) cents per hour.

(g) Integrated disciplines center-based services shall be fifty-six (56) dollars per hour of direct contact service.

(3) Except as specified in subsection (4) of this section, payments for professional and staff services listed in subsection (2) of this section shall be based on units of service which shall be fifteen (15) minutes increments.

(4) Payments for evaluation listed in subsection (2) of this section shall be based on a complete evaluation as a single unit of service.

(5) Payments for assistive technology devices shall be based on actual invoiced cost including the cost of shipping and handling, for the authorized equipment included in the individualized family service plan.

(6) Payment for transportation shall be the lesser of the billed charge or:

(a) For commercial transportation carrier an amount derived by multiplying one (1) dollar by the actual number of loaded miles.

(b) For private automobile carriers at the basic fee of twenty-five (25) cents per mile transported.

(c) For noncommercial group carriers at the rate of fifty (50) cents per eligible child per mile transported.

(7) Payments for services provided in a group setting shall be per hour fee divided by two.

Section 4. Limitations. (1) For primary service coordination payment shall be limited to no more than fifteen (15) hours per child per six (6) month period unless preauthorized by the department.

(2) For initial service coordination payment shall be limited to no more than twenty-five (25) hours per child per period of eligibility unless preauthorized by the department.

(3) For service assessment:

(a) Payment shall be limited to no more than two and one-half (2 1/2) hours per child per discipline per assessment unless preauthor-

ized by the department.

(b) Payment shall be limited to four (4) assessments per discipline per child from birth to the age of three (3) unless preauthorized by the department.

(c) No service assessment payment shall be made for the provision of routine therapeutic intervention services by a discipline in the general practice of their discipline. Payment for a unit of service assessment shall be restricted to the needs for additional testing or other activities by the discipline that go beyond routine practice. Routine activity of assessing outcomes shall be billed as therapeutic intervention.

(4) For therapeutic intervention:

(a) For office and center:

1. Payment shall be limited to no more than one (1) hour of service per day per child for each professional or discipline and paraprofessional meeting the qualifications in 908 KAR 2:150 unless preauthorized by the department, except in those circumstances where the professional or discipline and paraprofessionals are participating in a group. In a group setting the service time for each professional or discipline and paraprofessional may extend to the time period of the group.

2. Payment shall be limited to no more than one (1) office visit per child, per day, per discipline unless preauthorized by the department, except that billing for a collateral visit with the parent in the same day shall be allowed.

(b) For home and community sites:

1. Payment shall be limited to no more than one (1) hour of service per day per child for each professional or discipline and paraprofessional unless preauthorized by the department.

2. Payment shall be limited to no more than three (3) disciplines per child per day unless preauthorized by the department, except that billing for a collateral visit with the parent in the same day shall be allowed.

(c) The ratio of staff to children in group therapeutic intervention shall be limited to a maximum of three (3) eligible children per professional or discipline and paraprofessional per group.

(5) For respite payment shall be limited to no more than eight (8) hours of respite per month, per eligible child.

ELIZABETH REHM WACHTEL, Commissioner

JOHN H. MORSE, Secretary

APPROVED BY AGENCY: August 8, 1997

FILED WITH LRC: August 11, 1997 at 9 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on September 22, 1997 at 9 a. m. in the Health Services Auditorium, 1st Floor, CHR Building. Individuals interested in attending this hearing shall notify this agency in writing by September 15, 1997, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made, in which case the person requesting the transcript shall be responsible for payment. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: Mae B. Lewis, Administrative Specialist Principal, Cabinet for Health Services, Office of the Counsel, 275 E. Main Street - 4th Floor - West, Frankfort, Kentucky 40621, (502) 564-7900, (502) 564-7573 (Fax).

### REGULATORY IMPACT ANALYSIS

Agency Contact: Elizabeth Rehm Wachtel, Ph.D., Commissioner

(1) Type and number of entities affected: The provision of First Steps services will affect over 3,000 children and families. It is

estimated that 2 1/2 percent of children under 3, or approximately 3800 children, are eligible for the program. The provision of First Steps services will affect over 200 providers statewide, including: mental health/mental retardation boards; private and public home health agencies; private, nonprofit early childhood agencies; hospital outpatient clinics; and private practice professionals.

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

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented to the extent available from the public comments received. No public comments have been received relevant to cost of living. The cost of living will not be affected by this administrative regulation. Existing providers will be used. However, there will be an increase in employment as additional children are identified and the need for services increases, and new providers are identified.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented to the extent available from the public comments received. No public comments have been received relevant to cost of doing business. No effect to business is anticipated.

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

1. First year following implementation: Routine record keeping for the provision of services will not increase over existing requirements for service provision. Billing and data requirements will not dramatically increase, but will require some changes in the first year. A minimal cost to the programs for the changes will occur.

2. Second and subsequent years: After changes in the first year, no additional demands will occur other than general updates and maintenance of the system.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: The 1996 session of the General Assembly allocated \$5,665,495 in state general funds and \$4,000,000 in federal funds in the Department for Mental Health and Mental Retardation Services, and \$930,700 in state general funds in the Department for Public Health to implement First Steps, Kentucky's Early Intervention System. In addition, federal funds will be available through Title V agreements. It is anticipated that the cost of services will not exceed the available revenue.

2. Second and subsequent years: The same amount of state funding is available for subsequent years. The federal funds are considered available unless this is changed by Congress. The amount of the federal may vary depending on the formula, but no dramatic changes are anticipated.

3. Additional factors increasing or decreasing cost: No additional factors are anticipated.

(b) Reporting and paperwork requirements: Nearly all data will be gathered by means of provider contracts, service plans and through the reporting of the bills. Some additional minimal data will be required from the district intake offices on a monthly basis.

(4) Assessment of anticipated effect on state and local revenues: Funding has been allocated to offset the cost of implementation of the program.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: State general funds, Medicaid, and federal Individuals with Disabilities Education Act funds. Some local charity and nonprofit agency fund raising contribute some funds.

(6) To the extent available from the public comments received, the economic impact, including effects of economic activities arising from administrative regulation on: No public comment.

(a) Geographical area in which administrative regulation will be implemented: The provision of over \$15 million dollars in services will have a positive impact.

(b) Kentucky: Same as geographical area.

(7) Assessment of alternative methods; reason why alternatives were rejected: No alternative methods were considered because of the necessity to have regulations.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: In so much as early intervention addresses the health of infants and toddlers, there will be a significant impact on children with disabilities' health, and in the reduction of the need for future educational service needs.

(b) State whether a detrimental effect on environment and public health would result if not implemented. There is no environmental impact. The health and developmental needs of infants and toddlers with disabilities will be dramatically impacted if not implemented.

(c) If detrimental effect would result, explain detrimental effect: Very young children with disabilities who do not receive necessary health and developmental services early deteriorate and require extensive physical, medical and developmental supports later in life. In addition to the high financial cost of waiting, there is the long term detrimental effect on the child's potential and the stress on the family.

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

(a) Necessity of proposed regulation in conflict: N/A

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: N/A

(10) Any additional information or comments: None

(11) Tiering: Is tiering applied? No, tiering was not appropriate in this administrative regulation, because this regulation applies equally to all individuals or entities regulated by it.

#### FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. There is no federal mandate that requires Kentucky to implement early intervention services. However, if Kentucky chooses through application to participate in the federal early intervention program Kentucky is then required to implement early intervention according to 34 CFR 303.

2. State compliance standards. This regulation sets forth the requirements for implementing First Steps, Kentucky's early intervention system, by establishing requirements for coverage and payments.

3. Minimum or uniform standards contained in the federal mandate. The federal regulation requires the states to have the following components: state definition of developmental delay; central directory; public awareness program; child find system; evaluation and assessment procedures; individualized family service plans; personnel standards and training; procedural safeguards; administrative procedures for financial management, monitoring, and disputes; and data.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? Yes. The federal requirements establish the components that must be in the early intervention system. These regulations establish specific requirements and standards within the component areas, and therefore are more strict and comprehensive.

5. Justification for the imposition of the stricter standards, or additional or different responsibilities or requirements. The state is allowed to implement the program according to the standards it sets forth. The federal regulations are broader, and less specific than state regulations.

#### FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local

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government? No

2. State what unit, part or division of local government this administrative regulation will affect.

3. State the aspect or service of local government to which this administrative regulation relates.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a local government for the first full year the regulation is to be in effect. If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

**ADMINISTRATIVE REGULATION REVIEW SUBCOMMITTEE**  
**Minutes of August 12, 1997**

The August meeting of the Administrative Regulation Review Subcommittee was held on Tuesday, August 12, 1997, at 10 a.m. in Room 149 of the Capitol Annex. Representative John Arnold, Chairman, called the meeting to order, and the roll call was taken. The minutes of the July 8, 1997 meeting were approved.

**Present were:**

**Members:** Representative John Arnold, Chairman; Representatives Jimmy Lee, James Bruce, Woody Allen.

**LRC Staff:** Greg Karambellas, Steve Lynn, Donna Little, Susan Wunderlich, Angela Phillips, Donna Valencia, Don Hines, Norman Lawson, Rebecca Barnes, Kim Burch.

**Guests:** Mack Burshart, State Board of Elections; Pat Miler, Kentucky Teachers' Retirement System; Angela C. Robinson, Finance and Administration Cabinet; Horst Schach, John Carman, Jane Alexander Gardner, Board of Examiners and Registration of Landscape Architects; David C. Yancy, Tom Bennett, Department of Fish and Wildlife Resources; Robert W. Logan, Bruce Williams, Roy A. Massey, Jack Wilson, Natural Resources and Environmental Protection Cabinet; Tamela Biggs, Brenda Priestley, Steve Durham, Carol Shirley, Department of Correction; Leon Huff, Department of Juvenile Justice; Kevin Noland, Board of Education; Ronda Tamme, Education Professional Standards Board; Robert Tarvin, School Facilities Construction Committee; Sharron S. Burton, Paula Isaacs, Department of Insurance; Rena Stevels, Bernard J. Hettel, Calvert R. Bratton, Kentucky Racing Commission; Cookie Whitehouse, Vicki D. Jeffs, Eric Friedlander, D. W. Swain, Karen Doyle, Trish Howard, Mark Cornett, John A. Volpe, Ralph Von Derau, Cabinet for Families and Children and Cabinet for Health Services; Nancy Galvagni, Kentucky Hospital Association; Ted Bradshaw, Independent Agents; Lowell Reese, Kentucky Roll Call; Jim Carlross, Kentucky Association of Realtors; John Brazel, Kentucky Chamber of Commerce; Marie Alagia Cull; John F. Nichols, Aik; Dandridge Walton; Louis Stout, KHSAA; Roy Strange, KOA; Mike Porter, Kentucky Dental Association.

The Subcommittee determined that the following administrative regulations, as amended by the promulgating agency and the Subcommittee, complied with statutory requirements:

**State Board of Elections: Forms and Procedures**

31 KAR 4:020. Elections costs, county clerk reimbursement and form. Mack Bushart, Principal Assistant, represented the Board.

This administrative regulation was amended as follows: (1) the STATUTORY AUTHORITY paragraph was amended to correct a statutory citation; (2) the NECESSITY, FUNCTION, AND CONFORMITY paragraph was amended to: (a) correct statutory citations; and (b) accurately state the necessity for and function served by the administrative regulation, pursuant to KRS 13A.220(3)(f); and (3) Section 2 was amended to comply with the formatting requirements for the incorporation by reference of a required form.

**Kentucky Teachers' Retirement System: General Rules**

102 KAR 1:175. Investment policies. Pat Miller, Executive Secretary, represented the System. This administrative regulation was amended as follows: (1) Section 1 was amended to: (a) delete language that repeated or summarized KRS 161.430, as required by KRS 13A.120(2)(e) and (f); and (b) clarify that the executive secretary and deputy executive secretary were authorized to act without board approval if the action conformed to the administrative regulation; and (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).

**Kentucky State Board of Examiners and Registration of Landscape Architects**

201 KAR 10:010. Board personnel. John Carman, Member, and Horst Schach, Member, represented the Board.

In response to a question by Representative Bruce, Mr. Carman stated that these administrative regulations did not increase the fees.

This administrative regulation was amended as follows: (1) the NECESSITY, FUNCTION, AND CONFORMITY paragraph was amended to correct a statutory citation; and (2) Section 1 was amended to clarify that the applicant shall receive a copy of: (a) the required application forms; and (b) the applicable: 1. administrative regulations; and 2. statutes.

201 KAR 10:040. Applications. 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) Section 1 was amended to: (a) establish the requirements for the application form; and (b) clarify the deadline for paying the fees; (3) Section 3 was amended to establish the requirements for personal references; (4) Sections 1, 2, 4, and 6 were amended to comply with the: (a) format requirements of KRS 13A.220(4); and (b) drafting requirements of KRS 13A.222(4); and (5) a new Section 7 was created to incorporate by reference the required application form.

201 KAR 10:070. Seals. 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) 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).

201 KAR 10:080. Continuing education. 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, 2, 7, and 12 were amended to delete language that summarized or repeated statutes, as required by KRS 13A.220(2)(e) and (f); and (4) Sections 1, 3 through 11, and 13 were amended to comply with the: (a) format requirements of KRS 13A.220(4); and (b) drafting requirements of KRS 13A.222(4).

**Tourism Development Cabinet: Department of Fish and Wildlife Resources: Game**

301 KAR 2:111. Deer and turkey hunting on federal areas. Tom Bennett, Commissioner, represented the Cabinet.

This administrative regulation was amended as follows: (1) the RELATES TO and STATUTORY AUTHORITY paragraphs were amended to correct statutory citations; (2) Sections 2, 3, 4, 5, and 7 were amended to clarify the requirements for firearm and archery hunting for antlered or antlerless deer on game preserves, pursuant to KRS 13A.222(4)(a); and (3) Sections 1 and 3 were amended to comply with the drafting requirements of KRS 13A.222(4).

301 KAR 2:125. Small game and furbearer hunting on federal areas. This administrative regulation was amended as follows: (1) Sections 1, 2, and 3 were amended to comply with the drafting requirements of KRS 13A.222(4); and (2) Section 2 was amended to comply with the formatting requirements of KRS 13A.220(4).

**Justice Cabinet: Department of Corrections: Division of Adult Institutions**

501 KAR 6:050. Luther Luckett Correctional Complex. Steve

Durham, General Counsel, and Tamela Biggs, Staff Attorney, represented the Department.

In response to a question by Chairman Arnold, Mr. Durham stated that the term "shall not buck" meant that an inmate was required to remain in his place in a line of prisoners.

In response to a question by Representative Lee, Mr. Durham stated that he: (1) did not know if private industry permitted an employee to listen to a walkman radio during entry of data into a computer; (2) has heard a radio being played when he walked into a Secretary's office; (3) did not know if use of a walkman was prohibited while a prisoner was typing; and (4) could see that mistakes could happen in that situation.

Ms. Biggs stated that the facility: (1) prohibited playing a radio because some people were distracted while working; and (2) permitted an inmate to listen to a walkman while he worked if it did not distract him.

Representative Lee stated that: (1) he was (a) not against permitting the inmates to listen to a walkman if the Department has not had problems with their work; and (b) against permitting activities in prisons that would not be allowed in private business; (2) if he ran a department that permitted walkman radios, he would be concerned with the accuracy of information entered into the computer; (3) he did not think the Department could: (a) prohibit an inmate from listening to a walkman because information was not accurately entered into the computer; and (b) permit an inmate to listen if he accurately entered information; and (4) the Department needed a uniform standard for all inmates.

This administrative regulation was amended as follows: (1) LLCC 11-20-01, B.5. was amended to incorporate by reference the outpatient psychiatrist referral form; (2) LLCC 15-07-01, B.6. was amended to incorporate by reference the Inmate Accounts Authorization and Request for Inspection of Record form; (3) LLCC 15-03-03, C.2. was amended to clarify that a medication order may be phoned or faxed to the pharmacy, pursuant to KRS 13A.222(4)(a); (4) LLCC 15-03-03, C.8. was amended to clarify the personnel who may deliver a prescription, pursuant to KRS 13A.222(4)(a); (5) LLCC 15-07-01, B.1.a. was amended to provide that a medical record not be released except if required by law, pursuant to KRS 13A.120(2)(i); and (6) LLCC 11-09-01, 11-20-01, 15-03-03, and 15-06-05 were amended to comply with the drafting requirements of KRS 13A.222(4).

501 KAR 6:060. Northpoint Training Center. This administrative regulation was amended as follows: (1) NTC 13-02-01, A. was amended to clarify that the health care staff was responsible for the provision of health care, pursuant to KRS 13A.222(4)(a); (2) NTC 13-02-01, B. was amended, pursuant to KRS 13A.222(4)(a), to clearly provide that: (a) the Health Services administrator be a: 1. licensed physician; or 2. registered nurse; and (b) a final medical or dental judgment be made by the responsible doctor or dentist; (3) NTC 13-04-01, A.1. was amended to incorporate by reference the Pharmaceutical Policies and Procedures Manual; (4) NTC 13-04-01, A.4. was amended to incorporate by reference the Medical Administration Record form; (5) NTC 13-04-01, I.6. was amended to incorporate by reference the Medication Error and Adverse Medication Reaction form; (6) NTC 13-04-01, I.8. was amended to delete language that repeated or summarized KRS 218A.010(19), as required by KRS 13A.120(2)(e) and (f); (7) NTC 13-02-01, NTC 13-04-01, NTC 13-11-01, NTC 13-19-03, NTC 19-01-01, and NTC 24-05-01 were amended to comply with the drafting requirements of KRS 13A.222(4); and (8) NTC 13-02-01 was amended to comply with the formatting requirements of KRS 13A.220(4).

#### **Department of Juvenile Justice: Child Welfare**

505 KAR 1:020&E. Internal grievance procedure. Leon Huff, represented the Department.

In response to a question by Representative Allen, Mr. Huff stated that: (1) the grievance aides were residents of the facilities; and (2) the Department had residents who were unable to read and write well enough to: (a) file a grievance; or (b) follow the grievance process.

In response to a question by Chairman Arnold, Mr. Huff stated that a grievance may be made: (1) orally; or (2) in writing through a grievance aide.

In response to a question by Representative Bruce, Mr. Huff stated that he: (1) knew the Department received some grants from the Federal government; (2) heard the statement of a congressman that the State lost three million dollars because the General Assembly had not updated the juvenile laws; and (3) did not know what the congressman meant by the statement.

This administrative regulation was amended as follows: (1) the STATUTORY AUTHORITY paragraph was amended to correct a statutory citation; (2) Section 3(1) was amended to clarify that a grievance aide was required to be able to read and write, pursuant to KRS 13A.222(4)(a); (3) Section 4(2)(d) was amended to clarify that a resident was entitled to a hearing on a written or oral grievance, pursuant to KRS 13A.222(4)(a); and (4) Section 5(2) was amended to authorize the Director or Superintendent to appoint someone to stand in for them during an absence, pursuant to KRS 13A.222(4)(a).

#### **Department of Education: Office of District Support Services: School Terms, Attendance and Operation**

702 KAR 7:065. Designation of agent to manage high school interscholastic athletics. Kevin Noland, General Counsel, represented the Department. Mr. Noland stated that: (1) KRS 156.070 required the State Board to approve the by-laws of the Kentucky High School Athletic Association; (2) each year after the State Board approved the by-law changes, the State Board promulgated an administrative regulation to reflect those changes; and (3) the amended by-laws: (a) clarified that a foreign exchange student was limited to one year of eligibility for athletics; (b) authorized three weeks of spring football practice, including two weeks of contact; and (c) clarified the season for indoor track and field.

In response to a question by Representative Bruce, Mr. Noland stated that: (1) he had read a newspaper article regarding a discussion that the private school, University Heights, be prohibited from participation in tournaments; (2) action by the delegates to the Athletic Association was required before this prohibition could take effect; and (3) the State Board would have to present that change to the Subcommittee.

This administrative regulation was amended as follows: the NECESSITY, FUNCTION, AND CONFORMITY paragraph, and Sections 1 through 4 were amended to comply with the: (1) format requirements of KRS 13A.220(4); and (2) drafting requirements of KRS 13A.222(4).

#### **Education Professional Standards Board**

704 KAR 20:165. Qualifications for professional school positions. Rhonda Tamme, Office of Teacher Education and Certification, represented the Board.

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 this administrative regulation, as required by KRS 13A.220(3)(f); and (2) Sections 1 through 21 were amended to comply with the: (a) format requirements of KRS 13A.220(4); and (b) drafting requirements of KRS 13A.222(4).

704 KAR 20:710. Professional certificate for instructional leadership - school principal, all grades. Section 6 of this administrative regulation was amended to comply with the: (1) format requirements of KRS 13A.220(4); and (2) drafting requirements of KRS 13A.222(4).

#### **School Facilities Construction Commission: Education Technology Funding Program**

750 KAR 2:010. Education Technology Funding Program guidelines. Bob Tarvin, Executive Director, represented the Commission.

In response to a question by Representative Bruce, Mr. Tarvin stated that: (1) this administrative regulation established requirements relating to the technology grant money that was awarded to schools; and (2) the amendment to this administrative regulation was necessary to: (a) comply with the new accounting system used in Kentucky schools; and (b) enable the schools to receive their money.

In response to a question by Chairman Arnold, Mr. Tarvin stated that this administrative regulation involved public schools, not colleges.

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 this administrative regulation, as required by KRS 13A.220(3)(f); (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); and (4) Sections 2 and 4 were amended to delete language that repeated or summarized statute, as required by KRS 13A.120(2)(e) and (f).

#### **Kentucky Racing Commission: Harness Racing**

811 KAR 1:090&E. Stimulants and drugs. Bernie Hettel, Executive Director; Calvert Bratton, Kentucky Racing Commission, and Rena Stevels, Commission Staff, represented the Commission.

In response to a question by Chairman Arnold, Mr. Bratton stated that this administrative regulation did not address sponges.

This administrative regulation was amended as follows: (1) various sections were amended to comply with the: (a) format requirements of KRS 13A.220(4); and (b) drafting requirements of KRS 13A.222; (2) specify required forms; (3) clearly establish requirements; and (4) incorporate required forms by reference.

#### **Cabinet for Health Services: Office of Inspector General: Radiology**

902 KAR 100:073. Use of radionuclides in the healing arts. John Volpe and Vicki Jeffs represented the Department.

In response to a question by Chairman Arnold, Ms. Jeffs stated that this administrative regulation addressed the use of radioactive material in: (1) a nuclear medicine department; or (2) an injection.

Mr. Volpe stated that: (1) this administrative regulation governed the use of radioactive materials to detect or diagnose a medical condition that could not be detected through a traditional x-ray; and (2) examples of this use included the: (a) screening of thyroids; and (b) detection of a bone fracture.

Subcommittee staff stated that: (1) the initial review had questioned the lack of a definition in the administrative regulation; and (2) a definition was not needed because the section provided all the information required.

This administrative regulation was amended as follows: Section 4(4)(c) and (d) were amended to use "shall" as required by KRS 13A.222(4)(b).

#### **Cabinet for Families and Children: Department for Social Insurance: Food Stamp Program**

904 KAR 3:020&E. Financial requirements. Mark Cornett, Internal Policy Analyst, represented the Department.

In response to a question by Chairman Arnold, Mr. Cornett stated that: (1) to determine eligibility for food stamp benefits, certain resources could and could not be counted in determining income; (2) the resource exclusions were established contained in the Federal statutes; and (3) the State was required to comply with these statutes.

This administrative regulation was amended as follows: (1) Section 1(3) was amended to cross-reference the federal income poverty guidelines in 42 U.S.C. 9902(2); (2) Section 5(6) was amended to clearly list covered medical services, pursuant to KRS 13A.100; (3) Section 8(1)(e)3. was amended, pursuant to KRS 13A.222(4)(a), to clearly designate that a vehicle be considered

necessary, regardless of special equipment, if it met the needs of or was used to transport a disabled person; (4) Sections 1, 2, 3, 4, 5, 7, and 8 were amended to comply with the drafting requirements of KRS 13A.222(4); and (5) Sections 2, 3, 4, 5, 7, and 8 were amended to comply with the formatting requirements of KRS 13A.220(4).

904 KAR 3:042&E. Food Stamp Employment and Training Program. This administrative regulation was amended as follows: (1) Sections 2, 3, 4, 5, and 12 were amended to clarify the Cabinet form requirements, pursuant to KRS 13A.222(4)(a); (2) Section 11 was amended to cross-reference 904 KAR 3:070, pursuant to KRS 13A.222(4)(a); (3) Sections 1, 2, 3, 7, 8, 9, and 10 were amended to comply with the formatting requirements of KRS 13A.220(4); and (4) Sections 2, 3, 4, 5, 7, 8, 9, 10, and 13 were amended to comply with the drafting requirements of KRS 13A.222(4).

#### **Cabinet for Health Services: Department for Medicaid Services**

907 KAR 1:645. Resource standards for Medicaid. Karen Doyle, Commissioner's Office, and Trish Howard, Principal Assistant, represented the Department.

In response to a question by Chairman Arnold, Ms. Doyle stated that 907 KAR 1:645, 907 KAR 1:655, and 907 KAR 1:665: (1) did not address the federal cutbacks in Medicaid; and (2) established the eligibility criteria.

Ms. Howard stated that: (1) 907 KAR 1:645, 907 KAR 1:655, and 907 KAR 1:665 contained the eligibility requirements that had been established in 907 KAR 1:004; and (2) the eligibility requirements had not been changed.

In response to a question by Representative Bruce, Ms. Howard stated that 907 KAR 1:645, 907 KAR 1:655, and 907 KAR 1:665 had been deferred since the June, 1997 meeting of the Subcommittee because of a Subcommittee staff recommendation.

Subcommittee staff stated that the reasons the agency had been requested to defer 907 KAR 1:645, 907 KAR 1:655, and 907 KAR 1:665 were: (1) KRS Chapter 13A prohibited the promulgation of an administrative regulation that duplicated the provisions of an existing administrative regulation; (2) because these administrative regulations contained the provisions of 907 KAR 1:004, they could not become effective until the existing administrative regulation was repealed; and (3) the repeal of the existing administrative regulation by 907 KAR 1:003 permitted consideration of 907 KAR 1:645, 907 KAR 1:655, and 907 KAR 1:665.

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 this administrative regulation, as required by KRS 13A.220(3)(f); and (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).

907 KAR 1:655. Spousal impoverishment and nursing facility requirements for Medicaid. This administrative regulation was amended as follows: (1) the STATUTORY AUTHORITY paragraph was amended to correct a statutory citation; (2) the NECESSITY, FUNCTION, AND CONFORMITY paragraph was amended to clearly state the necessity for and function served by the administrative regulation, as required by KRS 13A.220(3)(f); (3) Section 4 was amended to clarify the result of an overpayment of benefits; and (4) 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).

907 KAR 1:665. Special income requirements for alternative intermediate services for individuals with mental retardation (AIS-MR), hospice, and home and community based services (HCBS). This administrative regulation was amended as follows: (1) the NECESSITY, FUNCTION, AND CONFORMITY paragraph and 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); and (2) Section 3(2) was amended to cite the federal statute that



established the hospice routine home care per diem rate for Medicare.

**The Subcommittee determined that the following administrative regulations complied with statutory requirements:**

**Department of Education: Bureau of Learning Support Services: Office of Learning Support Services**

704 KAR 7:130. Minority teacher recruitment. Kevin Noland, General Counsel, represented the Department. Mr. Noland stated that: (1) this administrative regulation addressed minority teacher recruitment; (2) KRS 160.380 required the State Board to promulgate an administrative regulation establishing the requirements for an annual report on minority teacher recruitment from each local school district; and (3) this administrative regulation: (a) reflected the current practice of the majority of school districts that annually reported efforts to identify and recruit qualified minority teachers for their school districts; and (b) established the items required to be included in the annual report.

**Department of Insurance: Health Maintenance Organizations**

806 KAR 38:090&E. HMO open enrollment. Sharron Burton, Counsel, and Paula Isaacs, Life and Health Division, represented the Department.

In response to a question by Representative Bruce, Ms. Isaacs stated that: (1) claims filed against Kentucky Kare were handled by the plan administrator for Kentucky Kare; and (2) she was not certain who the plan administrator was at Kentucky Kare.

In response to questions by Representative Lee, Ms. Burton stated that: (1) while an HMO was required to hold an open period of enrollment prior to the promulgation of this administrative regulation, the HMO was not required to advertise the enrollment period; (2) this administrative regulation required an HMO to place a notice in the newspaper for the open enrollment, which informed the public of: (a) what to expect during the open enrollment period; and (b) the dates of the period; and (3) the main purpose of the administrative regulation was to inform citizens of their insurance options.

In response to questions by Representative Lee, Ms. Isaacs stated that: (1) ground rules for the open enrollment did not exist for enrollments held in previous years; (2) this administrative regulation: (a) established a series of ground rules to be followed by each HMO; (b) brought a consistency to the open enrollment process within the industry; and (c) did not extend to insurance companies because: 1. the administrative regulation was authorized by KRS Chapter 304, Subtitle 38; and 2. Subtitle 38 specifically governed HMOs; and (3) a PPO, or indemnity plan that did not write individual health coverage, was not required under current statutes to have a period of open enrollment.

In response to a question by Chairman Arnold, Ms. Isaacs stated that: (1) the insurance companies did not have a required period of open enrollment; (2) Kentucky Kare: (a) offered coverage to individuals on a year-round basis; and (b) was not affected by the open enrollment provisions; and (3) the open enrollment provisions required an HMO that normally offered only group coverage to offer coverage to individuals during the period of open enrollment.

**Cabinet for Health Services: Office of Inspector General: Health Services and Facilities**

902 KAR 20:036. Operation and services; personal care homes. Ralph von Derau, Health Planner, represented the Office.

**Radiology**

902 KAR 100:040. General provisions for specific licenses. John Volpe and Vicki Jeffs represented the Department.

In response to a question by Chairman Arnold, Mr. Volpe stated that: (1) the Department issued two types of licenses: (a) a specific license; and (b) a general license; (2) the specific license required more detailed plans for handling different types of materials; and (3)

a general license was usually limited to the treatment of exit signs or gauges that did not require a major health or safety plan to utilize.

In response to a question by Chairman Arnold, Ms. Jeffs stated that: (1) a general license was determined based on a review of the device by a regulatory agency; and (2) a specific license could be issued to a nuclear medicine department in a hospital, the University of Kentucky, and the University of Louisville.

In response to questions by Representative Bruce, Mr. Volpe stated that: (1) while his department was not authorized to promulgate administrative regulations governing physicians, the department: (a) regulated the operators of radiation-producing machines; and (b) required certification for anyone who utilized a radiation-producing machine; (2) some of the requirements in 902 KAR 100:073 that applied to doctors and related to: (a) the dosages; and (b) how to use the equipment; and (3) a radiation safety officer, or a committee at the facility, was responsible for the handling of material within the facility.

In response to a question by Chairman Arnold, Mr. Volpe stated that there was a requirement that badges be worn by an individual who: (1) utilized radiation-producing machines; or (2) diffused materials.

**Department for Medicaid Services**

907 KAR 1:003. Repeal of 907 KAR 1:004. Karen Doyle, Commissioner's Office, and Trish Howard represented the Department.

In response to a question by Chairman Arnold, Ms. Doyle stated that: (1) this administrative regulation repealed 907 KAR 1:004; and (2) at the recommendation of Subcommittee staff pursuant to KRS Chapter 13A, the provisions of 907 KAR 1:004 were moved to three topical administrative regulations, 907 KAR 1:645, 1:655, and 1:665.

Subcommittee staff stated that: (1) KRS 13A.221(1) required a separate administrative regulation for each topic; and (2) it was necessary to repeal 907 KAR 1:004 to permit the agency to promulgate an administrative regulation for each of the three topics that had been included in 907 KAR 1:004.

**The following administrative regulations were deferred to the next Subcommittee meeting upon agreement by the Subcommittee and the promulgating agency:**

**Personnel Cabinet: Unclassified**

101 KAR 3:045E. Compensation plan and compensation incentive systems.

**Finance and Administration Cabinet: Kentucky Infrastructure Authority**

200 KAR 17:070. Drinking Water State Revolving Fund, priority formula and application requirements.

**Board of Ophthalmic Dispensers**

201 KAR 13:080. Inspection of establishments.

**Board of Social Work**

201 KAR 23:011. Repeal of 201 KAR 23:010, 201 KAR 23:030, 201 KAR 23:040, 201 KAR 23:100, and 201 KAR 23:110.

201 KAR 23:020. Fees.

201 KAR 23:060. Licensed social workers, certified social workers, and licensed clinical social workers.

201 KAR 23:070. Qualifying education and qualifying experience under supervision.

201 KAR 23:080. Code of ethical conduct.

201 KAR 23:140. Per diem compensation for board members.

**Department of Agriculture: Division of Markets: Organic Agricultural Product Certification**

302 KAR 40:010. Standard organic agricultural product requirements.

## ADMINISTRATIVE REGISTER - 820

### **Justice Cabinet: Department of Corrections: Division of Adult Institutions**

501 KAR 6:130. Western Kentucky Correctional Complex.

### **Department of State Police: Candidate Selection**

502 KAR 45:145E. Merit Pay Program.

### **Department of Juvenile Justice: Child Welfare**

505 KAR 1:030E. DJJ policy and procedures manual.

### **Transportation Cabinet: Department of Highways: Permits Branch: Traffic**

603 KAR 5:070E. Motor vehicle dimension limits.

### **Workforce Development Cabinet: Department for Adult and Technical Education: Personnel System for Certified and Equivalent Employees**

780 KAR 3:070. Attendance, compensatory time, and leave.

780 KAR 3:080. Extent and duration of school term, use of school days and extended employment.

### **Unclassified Personnel Administrative Regulations**

780 KAR 6:060. Attendance, compensatory time, and leave.

### **Department of Insurance: Rates and Rating Organizations**

806 KAR 13:130E. Experience modification factors for workers' compensation insurers.

806 KAR 13:140E. Notice of right to seek review of application of workers' compensation insurance rates.

### **Cabinet for Health Services: Department for Public Health: Division of Health Systems Development: Emergency Medical Services and Ambulance Service Providers**

902 KAR 14:100. Advanced life support (ALS) medical first response providers.

### **Office of Inspector General: Health Services and Facilities**

902 KAR 20:016E. Hospitals, operations and services.

### **Controlled Substances**

902 KAR 55:095E. Prescription for Schedule II controlled substance - facsimile transmission or partial filling.

### **Cabinet for Families and Children: Department for Social Insurance: Division of Management and Development: Public Assistance**

904 KAR 2:006E. Technical requirements for the Kentucky Transitional Assistance Program (K-TAP).

904 KAR 2:016E. Standards for need and amount for the Kentucky Transitional Assistance Program (K-TAP).

904 KAR 2:035E. Right to apply and reapply.

904 KAR 2:040E. Procedures for determining initial and continuing eligibility.

904 KAR 2:046E. Adverse action; conditions.

904 KAR 2:050E. Time and manner of payments.

904 KAR 2:055E. Hearings and appeals.

904 KAR 2:060E. Delegation of power for oaths and affirmations.

### **Department for Social Services: Division of Family Services: Child Welfare**

905 KAR 1:180E. DSS policy and procedures manual.

### **Cabinet for Health Services: Department for Medicaid Services: Division of Administration and Development: Medicaid Services**

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

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

907 KAR 1:160E. Home and community based waiver services.

907 KAR 1:170E. Payments for home and community based waiver services.

907 KAR 1:720E. Coverage and payments for the Kentucky Early Intervention Program services provided through an agreement with

the state Title V agency.

### **Department for Mental Health and Mental Retardation Services: Mental Health**

908 KAR 2:200E. Coverage and payment for Kentucky Early Intervention Program services.

The following administrative regulation was reviewed by the Subcommittee in closed session pursuant to KRS 197.025. This administrative regulation was approved as amended:

### **Justice Cabinet: Department of Corrections: Division of Adult Institutions**

501 KAR 6:020. Corrections policies and procedures. Chairman Arnold stated that: (1) KRS 197.025(5) required the Administrative Regulation Review Subcommittee to review policies and procedures that address the security and control of inmates and penitentiaries in closed session; (2) KRS 61.815(2) and 61.810(1)(i) and (k) exempted the Subcommittee from the notice and procedure requirements established for closed meetings by KRS 61.815(1); and (3) the Subcommittee would go into closed session to review 501 KAR 6:020.

Those present for the closed meeting were: (1) Chairman Arnold; (2) Representatives Allen, Bruce, and Lee; (3) Subcommittee staff: (a) Donna Little; (b) Gregory Karambellas; (c) Stephen Lynn; (d) Angela Phillips; (e) Donna Valencia; and (f) Susan Wunderlich; (4) Norman Lawson, Committee Staff Administrator, Interim Joint Committee on Judiciary, and Assistant Statutes Revisor; (5) Department of Corrections staff: (a) Steve Durham, General Counsel; (b) Carol Shirley, Director of Operations; (c) Tamela Biggs, Staff Attorney; and (d) Brenda Priestly; and (6) Rebecca Barnes, Legislative Research Commission.

Subcommittee staff stated that: (1) 501 KAR 6:020 contained both security and nonsecurity matters; (2) in order to comply with KRS Chapter 197, the Department would: (a) amend 501 KAR 6:020 at this meeting, as specified in (3), (6), and (7) below; (b) file: 1. amendments to other administrative regulations that contained security matters to delete security matters from them; and 2. a new security administrative regulation that would contain all security matters; and (c) with Subcommittee staff, review institutional policies and procedures, and other items utilized by institutions to determine whether they: 1. relate to security matters; and 2. are required to be promulgated as administrative regulations; (3) the amendment to 501 KAR 6:020 proposed by the Department of Corrections: (a) deleted security matters from the existing volumes of material incorporated by reference in 501 KAR 6:020; (b) placed: 1. security matters in a new, Volume IV; and 2. nonsecurity matters in new Volumes I through III; and (c) amended nonsecurity matters as specified in (6), below, to comply with the provisions of KRS Chapter 13A; (4) while the Department was required to file a Notice Of Intent when it intended to amend administrative regulations relating to security matters, it would not have to hold a public hearing on: (a) the security matter portions; or (b) security administrative regulations; (5) Subcommittee staff would: (a) assist the Department in the preparation of necessary documents and filings; and (b) report to the Subcommittee for its approval; (6) the amendments to nonsecurity material incorporated by reference were: (a) CPP 4.2, IV.G. was amended to: 1. delete substantive material from the Definitions section; and 2. pursuant to KRS 13A.100 and 13A.130, provide factors for a determination for whether one is considered a "new employee" for training purposes; (b) pursuant to KRS 13A.100, CPP 4.2, VI.B. was amended to: 1. delete the language "including, but not limited to"; and 2. include the requirements of the orientation process; (c) CPP 4.2, VI.C.1. was amended to include the factors that determined whether one would be permitted a retake of the employment examination; (d) CPP 4.2, VI.D.1. was amended to specify the factors to be considered in allowing a makeup of a missed training session; (e) pursuant to KRS 13A.120(2)(e), CPP 9.1, IV. was amended to delete the definitions of

"Deadly physical force" and "Physical force" that repeated definitions established by KRS 503.010; (f) substantive material from the Definitions section of CPP 9.1, IV. was: 1. deleted; and 2. inserted in CPP 9.1, V.; (g) pursuant to KRS 13A.222(4)(a), CPP 9.1, VI.A.5.a. was amended to clarify the use of deadly force for defense of self or another; (h) pursuant to KRS 13A.222(4)(a), CPP 9.19, IV. DEFINITIONS and V. POLICY were amended to clarify the definition of "abandoned property"; (i) CPP 4.3, V. was amended to comply with the: 1. formatting requirements of KRS 13A.220(4); and 2. drafting requirements of KRS 13A.222(4); and (j) CPP 4.2, 4.3, 9.1, 9.10, 9.11, 9.18, and 14.3 were amended to comply with the drafting requirements of KRS 13A.222(4); and (7) the security policies CPP 8.4 "Emergency Preparedness", CPP 9.1 "Use Of Force", CPP 9.7 "Storage, Issue And Use Of Weapons, Including Chemical Agents", CPP 9.9 "Transportation of Inmates", CPP 9.10 "Security Inspections", and CPP 9.11 "Tool Control" were: (a) deleted from Volume 1; and (b) inserted in new Volume IV.

The Subcommittee approved the amendments specified in (3), (6), and (7), immediately above.

In response to a question by Representative Lee, Subcommittee staff stated that: (1) the new security volume, Volume IV, would: (a) be incorporated by reference; and (b) contain all security material that KRS Chapter 197 required to be withheld from inmates and the public; (2) security material would be kept from public view; (3) the Department will promulgate a new administrative regulation that will contain all security related matters; (4) when the new security administrative regulation is reviewed, the Subcommittee, and the Interim Joint Committee on Judiciary, during its review, would review it in closed session; and (5) Subcommittee staff and Norman Lawson had reviewed the security and nonsecurity policies before the Subcommittee meeting.

In response to a question by Chairman Arnold, Mr. Lawson stated that: (1) in 1996, the General Assembly passed legislation that provided that: (a) administrative regulations that related to the security of prisons should not be available to inmates, (b) such administrative regulations were confidential and not available to the inmates, and (c) legislative subcommittee hearings on these administrative regulations would also be closed to the general public, (2) the legislation was required because it would be useless to have an administrative regulation that an inmate could not obtain but which could be obtained by anyone else who could furnish it to inmates; (3) security matters related to: (a) emergency preparedness; (b) required action in the event of a natural disaster; (c) the use of force; (d) storage and issuance of weapons, including chemical agents; (e) transportation of inmates; (f) security inspections of the institution; and (g) the control of tools used by inmates in their jobs; and (4) in this administrative regulation the Department had agreed to place: (a) security provisions in one restricted volume so that they were not combined with the remainder of the administrative regulation; and (b) all security provisions in a new security administrative regulation.

In response to a question by Representative Lee, Subcommittee staff stated that: (1) prior to 1996: (a) the security and nonsecurity materials were not segregated; and (b) if an item was known to be a security provision, it would not have been given to a member of the general public; (2) the General Assembly enacted this legislation to avoid problems with open records requirements; and (3) LRC and agency staff had begun the process of removing all of the security material from existing administrative regulations.

In response to a question by Representative Lee, Subcommittee staff stated that because security and nonsecurity material had not been separated in the past, it was not possible to say that a copy of a security policy had never been obtained.

Subcommittee staff stated that the: (1) appropriate administrative body to which a request for a copy of material incorporated by reference should be made was: (a) the Department of Corrections; and (b) not the Regulations Compiler; and (2) Regulations Compiler would refer all requests for records to the Department.

In response to a question by Chairman Arnold, Mr. Lawson stated that: (1) under the Open Records law, the only way that the media or someone else could obtain the information in one of the security policies would be through a court order; (2) the Department was the custodian of the material; (3) another state agency could get the material on a "need to know" basis from the Department; (4) the Department would determine whether it was required to approve the request; and (5) if the Department determined that a person was not entitled to the information, the person could go to court to seek the information.

In response to a question by Representative Lee, Mr. Lawson stated that the only legislators to whom these records would be open were the members of the: (1) Administrative Regulation Review Subcommittee; and (2) Interim Joint Committee on Judiciary because it also reviewed Department administrative regulations.

In response to a question by Chairman Arnold, Subcommittee staff and Mr. Lawson stated that: (1) if a security policy were requested from the Regulations Compiler, she would refer the person to the Department; and (2) if a legislator requested a security policy: (a) Subcommittee staff or Norman Lawson and the Chairmen of the Administrative Regulations Review Subcommittee and Interim Joint Committee on Judiciary would be contacted, and would refer the request to the Chairman; and (b) all requests will be referred to Chairman Arnold.

In response to a question by Representative Lee, Mr. Durham stated that while it would require a lot of work to comb through the administrative regulations for security material, it would be worth the effort, because the administrative regulations contain quite a bit of security information.

Representative Lee stated that he believed that: (1) eventually the Department would be challenged as to what is and is not a secure administrative regulation; and (2) there should be some oversight in what is contained in a security administrative regulation.

Subcommittee staff stated that: (1) if there was a difference of opinion between reviewing staff and the Department concerning an item the Department wanted to include as security, the issue would be presented to the Subcommittee for its determination in a closed meeting; and (2) the Department had deleted two policies from the volume containing security matters, after Subcommittee pointed out that it did not relate to security.

In response to a question by Chairman Arnold, Subcommittee staff stated that there would probably be 12 or 13 administrative regulations that the Department would have to review for security material.

Subcommittee staff stated that the Department, Mr. Lawson, and Subcommittee staff would have to review institutional policies because there may be material in them that are required to be promulgated as administrative regulations.

In response to a question by Ms. Wunderlich, Mr. Lawson stated that: (1) the material published and listed on the Internet would list the number of the policy and include in parenthesis "text confidential pursuant to KRS 197.025"; and (2) being confidential, an application to the courts would be required to obtain the text.

## OTHER BUSINESS

### Natural Resources and Environmental Protection Cabinet: Department for Environmental Protection: Division of Water

401 KAR 8:030. Water treatment plants; water distribution systems; certification of operators. Jack Wilson, Bruce Williams, and Roy Massey represented the Cabinet; John Brazel represented the Kentucky Chamber of Commerce.

Representative Lee stated that: (1) at its June 10, 1997, meeting, the Subcommittee approved a motion finding this administrative regulation deficient; and (2) at its July 9, 1997, meeting, the Interim Joint Committee on Agriculture and Natural Resources and the Cabinet agreed to amendments to this administrative regulation; (3)

the amendments addressed the objections raised by the Subcommittee.

The Subcommittee approved a motion by Representative Lee to remove the finding of deficiency from this administrative regulation.

#### **Revenue Cabinet**

103 KAR 30:091. Representative Bruce stated that: (1) there was a problem with recent action taken by the Revenue Cabinet; (2) Mr. O'Nan stated in a letter dated February, 1997, that sales of liquefied petroleum gas used for grain drying were not exempt from the sales tax; (3) a letter written in 1970 stated that those sales were exempt from the sales tax; (4) Subcommittee staff had located an administrative regulation that stated the sales were exempt from the sales tax.

Representative Bruce moved that the Subcommittee review 103 KAR 30:091 as an existing administrative regulation at its September meeting to give the Revenue Cabinet an opportunity to explain its action.

Subcommittee staff stated that: (1) the issue centered on the issuance of the letter by the Revenue Cabinet to deny the exemption; (2) KRS 13A.130: (a) prohibited action by letter;; and (b) required that the administrative regulation governing the subject matter be amended; (3) the existing administrative regulation clearly appeared to allow the exemption; and (4) if the Subcommittee called the administrative regulation as an existing administrative regulation at the September meeting, the Revenue Cabinet could explain to the Subcommittee why it was violating the existing administrative regulation.

The Subcommittee approved Representative Bruce's motion.

#### **NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET**

##### **Water Patrol**

401 KAR Chapter 4. Subcommittee staff stated that: (1) two sets of water patrol administrative regulations currently existed; (2) amendments to applicable statutes transferred the authority to regulate water patrol from the Natural Resources Cabinet to the Department of Fish and Wildlife; (3) the Department of Fish and Wildlife had promulgated administrative regulations governing water patrol; (4) following the transfer of the authority to the Department for Fish and Wildlife, the Natural Resources Cabinet had not repealed the administrative regulations it had promulgated on the same subject; (5) Subcommittee staff had sent two or three letters in the last two years to the Cabinet requesting the repeal of these administrative regulations; and (6) if the Subcommittee reviewed these administrative regulations at its September meeting, it could find them deficient because: (a) the administrative regulations duplicated the administrative regulations promulgated by the Department of Fish and Wildlife; and (b) the Cabinet was no longer authorized to promulgate administrative regulations governing the subject matter.

The Subcommittee approved a motion by Representative Lee that the Subcommittee review these administrative regulations at its September meeting to find them deficient for the reasons stated by Subcommittee staff.

**The Subcommittee adjourned at noon until September 9, 1997 at 10 a.m. in Room 149 of the State Capitol Annex.**

## ADMINISTRATIVE REGISTER - 823

### OTHER COMMITTEE REPORTS

**COMPILER'S NOTE:** In accordance with KRS 13A.290(9), the following reports were forwarded to the Legislative Research Commission by the appropriate jurisdictional committees and are hereby printed in the Administrative Register. The administrative regulations listed in each report became effective upon adjournment of the committee meeting at which they were considered.

#### INTERIM JOINT COMMITTEE ON HEALTH AND WELFARE Meeting of July 16, 1997

The following administrative regulations were available for consideration by the Interim Joint Committee on Health and Welfare during its meeting of July 16, 1997, having been referred to the Committee on July 10, 1997, pursuant to KRS 13A.290(6):

40 KAR 3:010  
201 KAR 2:225  
902 KAR 14:061  
902 KAR 55:040  
902 KAR 55:045  
902 KAR 55:090  
904 KAR 2:015 & E  
904 KAR 3:010 & E  
907 KAR 1:270  
907 KAR 1:280  
907 KAR 1:413  
907 KAR 1:433

The committee approved the previously listed regulations which is reflected in the Minutes of the July 16, 1997 meeting, which are hereby incorporated by reference.

#### INTERIM JOINT COMMITTEE ON EDUCATION Meeting of August 4, 1997

The following administrative regulations were available for consideration by the Interim Joint Committee on Education during its meeting of August 4, 1997, having been referred to the Committee on July 10, 1997, pursuant to KRS 13A.290(6):

704 KAR 20:440  
704 KAR 20:696  
704 KAR 20:706

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 August 4, 1997 meeting, which are hereby incorporated by reference. Additional committee findings, recommendations, or comments, if any, are attached hereto.

#### INTERIM JOINT COMMITTEE ON LABOR AND INDUSTRY Meeting of July 17, 1997

The following administrative regulations were available for consideration by the Interim Joint Committee on Labor and Industry during its meeting of July 17, 1997, having been referred to the Committee on July 9, 1997, pursuant to KRS 13A.290(6):

803 KAR 2:201  
803 KAR 2:306  
803 KAR 2:308  
803 KAR 2:320  
803 KAR 2:402  
803 KAR 2:403  
803 KAR 2:404  
803 KAR 2:405  
803 KAR 2:410  
803 KAR 2:411  
803 KAR 2:424  
803 KAR 2:425  
803 KAR 2:500  
803 KAR 2:900  
803 KAR 25:010  
803 KAR 25:200  
803 KAR 25:210  
803 KAR 25:220  
803 KAR 25:230  
787 KAR 1:210

The following administrative regulations were found to be deficient pursuant to KRS 13A.290(7) and 13A.030(2):

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 July 17, 1997 meeting, which are hereby incorporated by reference. Additional committee findings, recommendations, or comments, if any, are attached hereto.

The committee had no objections to the regulations.





## ADMINISTRATIVE REGISTER - C1

### CUMULATIVE SUPPLEMENT

#### Locator Index - Effective Dates ..... C2

The Locator Index lists all administrative regulations published in VOLUME 24 of the Administrative Register from July, 1997 through June, 1998. 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 23 are those administrative regulations that were originally published in Volume 23 (last year's) issues of the Administrative Register but had not yet gone into effect when the 1997 bound Volumes were published.

#### KRS Index ..... C9

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 24 of the Administrative Register.

#### Subject Index ..... C13

The Subject Index is a general index of administrative regulations published in VOLUME 24 of the Administrative Register, and is mainly broken down by agency.

# ADMINISTRATIVE REGISTER - C2

## LOCATOR INDEX - EFFECTIVE DATES

Regulation Number	23 Ky.R Page No.	Effective Date	Regulation Number	23 Ky.R Page No.	Effective Date
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### VOLUME 23

The administrative regulations listed under VOLUME 23 are those administrative regulations that were originally published in Volume 23 (last year's) issues of the Administrative Register but had not yet gone into effect when the 1997 bound Volumes were published.

**EMERGENCY ADMINISTRATIVE REGULATIONS:** (Note: Emergency regulations expire 170 days from publication, or 170 days from publication plus number of days of requested extensions, or upon replacement or repeal, whichever occurs first)

101 KAR 3:045E	3533	2-28-97	806 KAR 13:130E	3714	3-24-97
106 KAR 1:091E	3709	3-31-97	806 KAR 13:140E	3715	3-24-97
Expires		10-17-97	806 KAR 18:080E	2443	11-15-96
200 KAR 6:050E	3207	1-15-97	Replaced	4130	5-20-97
Replaced	4245	8-11-97	806 KAR 38:090E	3541	3-11-97
401 KAR 8:030E	1888	10-7-96	811 KAR 1:090E	3717	4-15-97
Expired		5-20-97	900 KAR 6:015E	2954	12-18-96
501 KAR 8:010E	3536	3-14-97	Withdrawn		7-21-97
Replaced		6-17-97	902 KAR 17:035E	2961	12-18-96
505 KAR 1:020E	3208	2-14-97	Expired		7-21-97
505 KAR 1:030E	3713	3-25-97	902 KAR 47:080E	1903	10-1-96
787 KAR 1:210E	3540	3-3-97	Expired		4-20-97
Replaced	4226	7-17-97	902 KAR 47:090E	1907	10-1-96
803 KAR 2:301E	3210	2-6-97	Expired		4-20-97
Replaced	3925	7-17-97	902 KAR 47:100E	1911	10-1-96
803 KAR 2:306E	3211	2-6-97	Expired		4-20-97
Replaced	3927	7-17-97	904 KAR 2:006E	4079	4-30-97
803 KAR 2:308E	3214	2-6-97	Withdrawn		8-14-97
Replaced	3929	7-17-97	904 KAR 2:015E	3271	1-31-97
803 KAR 2:320E	3217	2-14-97	Replaced		7-16-97
Replaced	3932	7-17-97	904 KAR 2:016E	4088	4-30-97
803 KAR 2:402E	3223	2-6-97	Withdrawn		8-14-97
Replaced	3938	7-17-97	904 KAR 2:017E	3719	3-27-97
803 KAR 2:403E	3224	2-6-97	Withdrawn		7-14-97
Replaced	3939	7-17-97	904 KAR 2:370E	3728	3-27-97
803 KAR 2:404E	3226	2-6-97	Withdrawn		7-11-97
Replaced	3941	7-17-97	904 KAR 2:410E	1918	10-1-96
803 KAR 2:405E	3231	2-6-97	Expired		5-25-97
Replaced	3946	7-17-97	904 KAR 3:010E	3285	1-31-97
803 KAR 2:410E	3232	2-6-97	Replaced	4237	7-16-97
Replaced	3947	7-17-97	904 KAR 3:020E	3542	2-27-97
803 KAR 2:411E	3234	2-6-97	904 KAR 3:025E	2700	11-27-96
Replaced	3949	7-17-97	Replaced	4158	6-16-97
803 KAR 2:424E	3236	2-6-97	904 KAR 3:042E	3548	2-27-97
Replaced	3950	7-17-97	905 KAR 1:180E	3735	3-19-97
803 KAR 2:425E	3237	2-6-97	905 KAR 2:140E	2444	11-15-96
Replaced	3952	7-17-97	Expired		5-20-97
803 KAR 2:500E	3240	2-6-97	907 KAR 1:013E	2962	12-18-96
Replaced	3955	7-17-97	Replaced		6-18-97
803 KAR 2:900E	3243	2-14-97	907 KAR 1:022E	3294	1-17-97
Expired		8-18-97	Withdrawn		8-14-97
803 KAR 25:010E	3245	2-11-97	907 KAR 1:025E	3299	1-17-97
Replaced		7-17-97	Withdrawn		8-14-97
803 KAR 25:200E	3257	2-11-97	907 KAR 1:038E	3306	1-17-97
Replaced		7-17-97	Replaced		6-18-97
803 KAR 25:210E	3258	2-11-97	907 KAR 1:160E	3736	4-15-97
Replaced		7-17-97	907 KAR 1:170E	3739	4-15-97
803 KAR 25:220E	3259	2-11-97	907 KAR 1:631E	3308	1-17-97
Replaced		7-17-97	Replaced		6-18-97
803 KAR 25:230E	3261	2-11-97	907 KAR 1:720E	3741	3-18-97
Replaced		7-17-97	908 KAR 2:100E	1554	9-13-96
			Expired		4-4-97
			908 KAR 2:110E	1556	9-13-96
			Expired		4-4-97
			908 KAR 2:120E	1560	9-13-96
			Expired		4-4-97
			908 KAR 2:130E	1563	9-13-96
			Expired		4-4-97



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Regulation Number	23 Ky.R Page No.	Effective Date	Regulation Number	23 Ky.R Page No.	Effective Date
908 KAR 2:140E	1566	9-13-96	201 KAR 30:081	3648	6-13-97
Expired		4-4-97	201 KAR 30:140		
908 KAR 2:150E	1569	9-13-96	Repealed	3648	6-13-97
Expired		4-4-97	301 KAR 2:140		
908 KAR 2:160E	1572	9-13-96	Amended	3867	7-9-97
Expired		4-4-97	301 KAR 2:172		
908 KAR 2:170E	1574	9-13-96	Amended	3870	7-9-97
Expired		4-4-97	301 KAR 2:174		
908 KAR 2:180E	1576	9-13-96	Amended	3873	7-9-97
Expired		4-4-97	301 KAR 2:178		
908 KAR 2:200E	3742	3-18-97	Amended	3874	(See Volume 24)
<b>ORDINARY ADMINISTRATIVE REGULATIONS:</b>			301 KAR 2:251		
1 KAR 6:020			Amended	3879	7-9-97
Amended	2833		301 KAR 3:030		
Withdrawn		8-4-97	Amended	3881	7-9-97
13 KAR 2:045			302 KAR 20:180		
Amended	3380		Amended	3882	(See Volume 24)
Amended	3797		302 KAR 40:010		
As Amended	4099	6-16-97	Amended	3885	
13 KAR 2:080	4017	(See Volume 24)	401 KAR 8:030		
40 KAR 2:250	4018	(See Volume 24)	Amended	3079	
40 KAR 2:260	4019	(See Volume 24)	Amended	3808	(See Volume 24)
40 KAR 3:010			401 KAR 57:011		
Amended	3604	(See Volume 24)	Recodified as 401-58:025		6-10-97
103 KAR 16:200	3645	(See Volume 24)	401 KAR 57:061		
200 KAR 6:050	4245	8-11-97	Recodified as 401-63:060		6-2-97
200 KAR 17:070	4246		401 KAR 58:025		
201 KAR 2:045	3124		Recodified from 401-57:011		6-10-97
Amended	3806		401 KAR 58:040		
As Amended	4108	6-16-97	Recodified from 401-63:042		6-10-97
201 KAR 2:106			401 KAR 63:042		
Amended	3866	(See Volume 24)	Recodified as 401-58:040		6-10-97
201 KAR 2:220	3125		401 KAR 63:060		
Amended	3807		Recodified from 401-57:061		6-2-97
As Amended	4109	6-16-97	401 KAR 63:101	4253	8-13-97
201 KAR 2:225	4021	(See Volume 24)	401 KAR 63:110	4255	8-13-97
201 KAR 11:400			401 KAR 63:160	4257	8-13-97
Amended	3605		401 KAR 63:190	4259	8-13-97
Amended	4175	(See Volume 24)	401 KAR 63:340	4260	8-13-97
201 KAR 13:080	4250		401 KAR 63:360	4262	8-13-97
201 KAR 18:210	3647		401 KAR 63:400	4264	8-13-97
As Amended	4110	6-13-97	401 KAR 63:420	4266	8-13-97
201 KAR 20:057			401 KAR 63:460	4268	8-13-97
Amended	3606		401 KAR 63:520	4270	8-13-97
Amended	4176	(See Volume 24)	401 KAR 63:701	4272	8-13-97
201 KAR 23:011	4251		415 KAR 1:130	3649	
201 KAR 23:020			Amended	4178	(See Volume 24)
Amended	4201		501 KAR 6:020		
201 KAR 23:060			Amended	3892	(See Volume 24)
Amended	4202		501 KAR 6:040		
201 KAR 23:070			Amended	4208	(See Volume 24)
Amended	4203		501 KAR 6:060		
201 KAR 23:080			Amended	4210	
Amended	4206		501 KAR 6:120		
201 KAR 23:140	4252		Amended	3611	6-16-97
201 KAR 30:040			Amended	4212	8-11-97
Amended	3608		501 KAR 6:130		
As Amended	4111	6-13-97	Amended	1007	
201 KAR 30:070			As Amended	1941	
Amended	3609		Amended	1678	
As Amended	4111	6-13-97	501 KAR 6:170		
201 KAR 30:080			Amended	3894	7-7-97
Repealed	3648	6-13-97	501 KAR 8:010		
			Amended	3895	(See Volume 24)

# ADMINISTRATIVE REGISTER - C4

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Regulation Number	23 Ky.R Page No.	Effective Date	Regulation Number	23 Ky.R Page No.	Effective Date
501 KAR 13:020	3652		780 KAR 3:080		
As Amended	4113	6-16-97	Amended	3102	
600 KAR 1:120			Amended	3594	
Amended	3409		780 KAR 6:060		
Amended	3817		Amended	3104	
As Amended	4113	6-2-97	781 KAR 1:030		
600 KAR 3:010			Amended	3425	
Amended	3899	7-1-97	Amended	3829	
600 KAR 5:010			As Amended	4128	6-16-97
Amended	3411		782 KAR 1:020		
Amended	3819		Amended	3427	
As Amended	4115	6-2-97	As Amended	4129	6-16-97
601 KAR 1:025			782 KAR 1:030		
Amended	3917	7-1-97	Amended	3428	(See Volume 24)
601 KAR 9:140			787 KAR 1:210		
Amended	3613		Amended	4226	7-17-97
As Amended	4116	6-2-97	803 KAR 2:301		
602 KAR 15:010			Amended	3925	7-17-97
Amended	3615		803 KAR 2:306		
As Amended	4117	6-2-97	Amended	3927	7-17-97
602 KAR 50:010			803 KAR 2:308		
Amended	4214	8-11-97	Amended	3929	7-17-97
602 KAR 50:060			803 KAR 2:320		
Amended	4217	8-11-97	Amended	3932	7-17-97
602 KAR 50:070			803 KAR 2:402		
Amended	4218	8-11-97	Amended	3938	7-17-97
602 KAR 50:090			803 KAR 2:403		
Amended	4220	(See Volume 24)	Amended	3939	7-17-97
602 KAR 50:100			803 KAR 2:404		
Amended	4222	(See Volume 24)	Amended	3941	7-17-97
602 KAR 50:120			803 KAR 2:405		
Amended	4224	(See Volume 24)	Amended	3946	7-17-97
603 KAR 4:035			803 KAR 2:410		
Amended	3413		Amended	3947	7-17-97
Amended	3821		803 KAR 2:411		
As Amended	4119	6-2-97	Amended	3949	7-17-97
704 KAR 3:305			803 KAR 2:424		
Amended	3419		Amended	3950	7-17-97
Amended	3827	(See Volume 24)	803 KAR 2:425		
704 KAR 20:001			Amended	3952	7-17-97
Repealed	4274	8-4-97	803 KAR 2:500		
704 KAR 20:002			Amended	3955	7-17-97
Repealed	4274	8-4-97	803 KAR 25:010		
704 KAR 20:032			Amended	3958	(See Volume 24)
Repealed	4274	8-4-97	803 KAR 25:200	4022	(See Volume 24)
704 KAR 20:040			803 KAR 25:210	4023	(See Volume 24)
Repealed	4274	8-4-97	803 KAR 25:220	4024	(See Volume 24)
704 KAR 20:045			803 KAR 25:230	4026	(See Volume 24)
Amended	3920	7-2-97	804 KAR 4:340	4027	(See Volume 24)
704 KAR 20:060			805 KAR 1:160	3653	
Amended	3922	7-2-97	Amended	4180	(See Volume 24)
704 KAR 20:070			805 KAR 1:170	3655	
Amended	3923	7-2-97	Amended	4182	(See Volume 24)
704 KAR 20:290			805 KAR 1:180	3658	(See Volume 24)
Amended	3924	7-2-97	806 KAR 3:190	4029	(See Volume 24)
704 KAR 20:440			806 KAR 4:010		
704 KAR 20:585			Amended	3970	(See Volume 24)
Amended	3617		806 KAR 18:080	3126	
As Amended	4124	6-16-97	Amended	3595	
704 KAR 20:696			As Amended	4130	5-20-97
704 KAR 20:706	4281	8-4-97	807 KAR 5:063	3659	
780 KAR 3:070			Amended	4185	(See Volume 24)
Amended	3096		808 KAR 10:225	3459	(See Volume 24)
Amended	3588		815 KAR 15:026		



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## LOCATOR INDEX - EFFECTIVE DATES

Regulation Number	23 Ky.R Page No.	Effective Date	Regulation Number	23 Ky.R Page No.	Effective Date
Amended	3621	(See Volume 24)	907 KAR 1:008		
815 KAR 20:020			Amended	3440	
Amended	3972	6-25-97	Amended	3839	
815 KAR 20:070			As Amended	4162	6-16-97
Amended	3975	6-25-97	907 KAR 1:011		
815 KAR 20:090			Amended	3442	
Amended	3978	6-25-97	Amended	3841	
900 KAR 2:060			As Amended	4162	6-16-97
Amended	2294		907 KAR 1:013		
Amended	3035		Amended	4003	(See Volume 24)
Withdrawn		7-1-97	907 KAR 1:028		
902 KAR 2:020			Amended	3640	
Amended	3119		Amended	4199	(See Volume 24)
Amended	3597		907 KAR 1:038		
As Amended	4131	6-16-97	Amended	4009	(See Volume 24)
902 KAR 14:060			907 KAR 1:270		
Repealed	4282	7-16-97	Amended	4241	(See Volume 24)
902 KAR 14:061	4282	7-16-97	907 KAR 1:280		
902 KAR 20:008			Amended	4243	(See Volume 24)
Amended	3624		907 KAR 1:380		
As Amended	4135	6-16-97	Repealed	4167	6-16-97
902 KAR 47:080	3472		907 KAR 1:381	3491	
As Amended	4137	6-16-97	As Amended	4167	6-16-97
902 KAR 47:090	3475		907 KAR 1:405	3661	(See Volume 24)
As Amended	4140	6-16-97	907 KAR 1:413	4283	(See Volume 24)
902 KAR 47:100	3481		907 KAR 1:433	4284	(See Volume 24)
As Amended	4146	6-16-97	907 KAR 1:560		
902 KAR 55:015			Amended	4011	
Amended	3981		Died*		6-6-97
Withdrawn		6-10-97	907 KAR 1:605		
902 KAR 55:030			Amended	3642	
Amended	3983		As Amended	4167	6-16-97
Died*		6-6-97	907 KAR 1:631		
902 KAR 55:040			Amended	4015	(See Volume 24)
Amended	3985	(See Volume 24)	907 KAR 1:645	4033	(See Volume 24)
902 KAR 55:045			907 KAR 1:655	4035	(See Volume 24)
Amended	4228	7-16-97	907 KAR 1:665	4039	(See Volume 24)
902 KAR 55:090			907 KAR 1:710	4285	(See Volume 24)
Amended	3986	7-16-97	908 KAR 1:350	1833	
902 KAR 100:040			Amended	2827	
Amended	3988		As Amended	3362	
904 KAR 2:015			Withdrawn		7-14-97
Amended	4232	(See Volume 24)	908 KAR 2:060		
904 KAR 2:410			Amended	3454	6-18-97
Amended	3432		908 KAR 2:100	3127	
Amended	3831		Amended	3845	6-16-97
As Amended	4154	6-16-97	908 KAR 2:110	3129	
904 KAR 3:010			Amended	3847	
Amended	4237	7-16-97	As Amended	4168	6-16-97
904 KAR 3:025			908 KAR 2:120	3133	
Amended	3627		Amended	3851	
As Amended	4158	6-16-97	As Amended	4171	6-16-97
905 KAR 2:140			908 KAR 2:130	3136	
Amended	3629		Amended	3854	
Amended	4187	(See Volume 24)	As Amended	4172	6-16-97
905 KAR 5:040			908 KAR 2:140	3139	
Amended	3637		Amended	3857	6-16-97
As Amended	4159	6-16-97	908 KAR 2:150	3142	
905 KAR 5:080	3487		Amended	3860	6-16-97
Amended	4196	(See Volume 24)	908 KAR 2:160	3145	
905 KAR 8:160			Amended	3863	6-16-97
Amended	3995	(See Volume 24)	908 KAR 2:170	3147	6-16-97
905 KAR 8:180			908 KAR 2:180	3149	6-16-97
Amended	4000	(See Volume 24)	*Statement of Consideration Not Filed by Deadline		

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Regulation Number	23 Ky.R Page No.	Effective Date	Regulation Number	23 Ky.R Page No.	Effective Date
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### VOLUME 24

**EMERGENCY ADMINISTRATIVE REGULATIONS:** (Note: Emergency regulations expire 170 days from publication, or 170 days from publication plus number of days of requested extensions, or upon replacement or repeal, whichever occurs first)

200 KAR 14:011E	485	8-15-97
200 KAR 14:081E	487	8-15-97
200 KAR 14:200E	489	8-15-97
200 KAR 23:010E	307	6-25-97
502 KAR 45:145E	26	6-3-97
603 KAR 5:070E	27	5-19-97
704 KAR 20:305E	491	8-11-97
780 KAR 2:130E	308	7-14-97
787 KAR 1:200E	310	6-27-97
803 KAR 2:301E	493	8-14-97
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803 KAR 2:403E	501	8-14-97
803 KAR 2:411E	503	8-14-97
803 KAR 2:425E	504	8-14-97
803 KAR 2:500E	506	8-14-97
900 KAR 6:050E	510	7-21-97
902 KAR 17:041E	517	7-23-97
902 KAR 20:016E	32	6-12-97
Reprint	269	6-12-97
902 KAR 55:095E	41	6-12-97
904 KAR 2:006E	518	8-14-97
904 KAR 2:016E	528	8-14-97
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904 KAR 2:040E	45	5-30-97
904 KAR 2:046E	47	5-30-97
904 KAR 2:050E	49	5-30-97
Withdrawn		8-14-97
Resubmitted	538	8-14-97
904 KAR 2:055E	52	5-30-97
904 KAR 2:060E	55	5-30-97
904 KAR 2:370E	320	7-11-97
906 KAR 1:120E	540	7-25-97
907 KAR 1:022E	542	8-14-97
907 KAR 1:025E	547	8-14-97
907 KAR 1:755E	554	8-14-97
907 KAR 1:765E	557	8-14-97

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13 KAR 2:080		
As Amended	58	7-2-97
31 KAR 4:020		
Amended	128	
As Amended	559	
40 KAR 2:250		
As Amended	328	7-11-97
40 KAR 2:260		
As Amended	328	7-11-97
40 KAR 3:010		
As Amended	329	7-16-97
101 KAR 1:365		
Amended	387	

102 KAR 1:175		
Amended	129	
As Amended	559	
103 KAR 15:050		
Amended	388	
103 KAR 16:200		
As Amended	59	7-16-97
200 KAR 22:041	789	
200 KAR 23:010	790	
201 KAR 2:106		
As Amended	61	6-18-97
201 KAR 2:225		
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Amended	131	
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201 KAR 10:040		
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201 KAR 10:070		
Amended	133	
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201 KAR 10:080		
Amended	134	
As Amended	563	
201 KAR 16:060		
Amended	641	
201 KAR 16:071	791	
201 KAR 11:400		
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201 KAR 20:057		
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201 KAR 20:240		
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201 KAR 20:411	425	
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301 KAR 1:201		
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301 KAR 2:082	427	
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301 KAR 2:125		
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301 KAR 2:142	792	
301 KAR 2:144	794	
301 KAR 2:178		
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301 KAR 3:022		
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302 KAR 20:180		
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401 KAR 46:005	221		501 KAR 6:040		
401 KAR 46:010	223		As Amended	339	8-11-97
401 KAR 46:020	225		501 KAR 6:050		
401 KAR 46:030	228		Amended	156	
401 KAR 46:040	230		501 KAR 6:090		
401 KAR 46:050	234		Amended	757	
401 KAR 46:060			501 KAR 6:110		
Amended	142		Amended	396	
401 KAR 46:070			501 KAR 8:010		
Amended	145		As Amended	79	6-17-97
401 KAR 47:150			502 KAR 31:010	429	
Amended	149		502 KAR 45:145		
401 KAR 50:012			Amended	759	
Amended	648		505 KAR 1:020	236	
401 KAR 50:066	800		As Amended	572	
401 KAR 51:010			601 KAR 9:135		
Amended	650		Amended	398	
401 KAR 59:174	802		602 KAR 50:090		
401 KAR 63:005			As Amended	339	8-11-97
Amended	654		602 KAR 50:100		
401 KAR 65:010			As Amended	341	8-11-97
Amended	656		602 KAR 50:120		
405 KAR 8:001			As Amended	341	8-11-97
Amended	667		603 KAR 3:080		
405 KAR 8:030			Amended	157	
Amended	675		Amended	612	
405 KAR 8:040			603 KAR 5:050		
Amended	687		Amended	403	
405 KAR 16:001			702 KAR 7:065		
Amended	704		Amended	174	
405 KAR 16:060			As Amended	573	
Amended	710		704 KAR 3:305		
405 KAR 16:090			As Amended	82	7-2-97
Amended	716		704 KAR 3:455		
405 KAR 16:100			Amended	760	
Amended	719		704 KAR 7:130	238	
405 KAR 16:160			704 KAR 20:165		
Amended	723		Amended	176	
405 KAR 18:001			As Amended	574	
Amended	725		704 KAR 20:670		
405 KAR 18:060			Amended	404	
Amended	732		704 KAR 20:696		
405 KAR 18:090			As Amended	343	8-4-97
Amended	738		704 KAR 20:710		
405 KAR 18:100			Amended	177	
Amended	741		As Amended	575	
405 KAR 18:160			750 KAR 2:010		
Amended	745		Amended	179	
405 KAR 18:210			As Amended	576	
Amended	747		782 KAR 1:030		
415 KAR 1:130			As Amended	83	7-2-97
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500 KAR 11:001			Amended	407	
Amended	151		785 KAR 1:020		
500 KAR 11:025			Amended	409	
Amended	152		803 KAR 25:010		
500 KAR 11:080			As Amended	349	7-17-97
Amended	154		803 KAR 25:175	807	
500 KAR 11:090			803 KAR 25:200		
Amended	155		As Amended	361	7-17-97
501 KAR 6:020			803 KAR 25:210		
As Amended	569		As Amended	362	7-17-97
Amended	755		803 KAR 25:220		
			As Amended	362	7-17-97

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Regulation Number	24 Ky.R Page No.	Effective Date	Regulation Number	24 Ky.R Page No.	Effective Date
803 KAR 25:230			905 KAR 2:140		
As Amended	363	7-17-97	As Amended	97	6-18-97
804 KAR 4:340			905 KAR 5:080		
As Amended	88	7-11-97	As Amended	104	6-18-97
805 KAR 1:160			905 KAR 8:160		
As Amended	88	7-9-97	As Amended	107	6-18-97
805 KAR 1:170			905 KAR 8:180		
As Amended	90		As Amended	110	6-18-97
As Amended	365	7-9-97	907 KAR 1:003	247	
805 KAR 1:180			907 KAR 1:013		
As Amended	92		As Amended	113	6-18-97
806 KAR 3:190			907 KAR 1:028		
Amended	122	8-11-97	As Amended	118	6-18-97
806 KAR 4:010			907 KAR 1:038		
As Amended	93		As Amended	119	6-18-97
Withdrawn		7-15-97	907 KAR 1:160		
806 KAR 13:130	431		Amended	779	
806 KAR 13:140	432		907 KAR 1:170		
806 KAR 38:090	239		Amended	782	
806 KAR 39:070			907 KAR 1:270		
Amended	764		As Amended	384	7-16-97
806 KAR 40:020	433		907 KAR 1:280		
807 KAR 5:063			As Amended	385	7-16-97
As Amended	367		907 KAR 1:374		
808 KAR 10:225			Repealed	386	7-16-97
As Amended	368	8-11-97	907 KAR 1:378		
811 KAR 1:090			Repealed	386	7-16-97
Amended	180		907 KAR 1:404		
As Amended	577		Repealed	120	6-18-97
815 KAR 15:026			907 KAR 1:405		
As Amended	94	6-25-97	As Amended	120	6-18-97
815 KAR 35:015			907 KAR 1:412		
Amended	767		Repealed	385	7-16-97
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### RACING COMMISSION

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