

ADMINISTRATIVE REGISTER OF KENTUCKY



LEGISLATIVE RESEARCH COMMISSION FRANKFORT, KENTUCKY

VOLUME 24, NUMBER 6
MONDAY, DECEMBER 1, 1997

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MEETING NOTICE: The Administrative Regulation Review Subcommittee is scheduled to meet on December 9, 1997. See tentative agenda beginning on page 1203 of this Register.

The **ADMINISTRATIVE REGISTER OF KENTUCKY** is the monthly supplement for the 1997 Edition of **KENTUCKY ADMINISTRATIVE REGULATIONS SERVICE**.

HOW TO CITE: Cite all material in the **ADMINISTRATIVE REGISTER OF KENTUCKY** by Volume number and Page number. Example: Volume 2, Kentucky Register, page 318 (short form: 2 Ky.R. 318).

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

(ISBN 0096-1493)

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The Administrative Register of Kentucky is published monthly by the Legislative Research Commission, Frankfort, Kentucky 40601. Subscription rate, postpaid in the United States: \$48 (plus 6% Kentucky sales tax) per year for 12 issues, beginning in July and ending with the June issue of the subsequent year. Periodical postage paid at Frankfort, Kentucky.

POSTMASTER: Send address changes to Administrative Register of Kentucky, Room 64, State Capitol, Frankfort, Kentucky 40601.

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ADMINISTRATIVE REGULATION REVIEW SUBCOMMITTEE

TENTATIVE AGENDA - December 9, 1997 at 10 a.m. in Room 149, Capitol Annex

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

COUNCIL ON POSTSECONDARY EDUCATION

Public Educational Institutions

13 KAR 2:060. Degree program approval; equal opportunity goals. (Amended After Hearing)

KENTUCKY REVENUE CABINET

Office of General Counsel

Division of Tax Policy

Sales and Use Tax; Administration and Accounting

103 KAR 31:030. Direct pay authorization. (Public Hearing in October)

FINANCE AND ADMINISTRATION CABINET

Purchasing

200 KAR 5:021. Manual of policies and procedures. (Public Hearing in October)

State Investment Commission (Deferred from October)

200 KAR 14:011E. General rules.

200 KAR 14:081E. Repurchase agreement.

200 KAR 14:200E. Linked Deposit Investment Program.

GENERAL GOVERNMENT CABINET

Board of Pharmacy

201 KAR 2:030. License transfer.

Board of Dentistry

201 KAR 8:390. General anesthesia, deep sedation, and conscious sedation by dentists. (Deferred from November)

Board of Nursing

201 KAR 20:390. Nursing Incentive Scholarship Fund.

Board of Examiners of Psychologists

201 KAR 26:145. Code of conduct.

201 KAR 26:155. Application procedures and temporary license or certificate.

201 KAR 26:160. Fee schedule.

201 KAR 26:171. Requirements for supervision.

201 KAR 26:175. Continuing education.

201 KAR 26:180. Requirements for granting licensure or certification in psychology by reciprocity.

201 KAR 26:185. Requirements for granting licensure or certification in psychology to an applicant licensed or certified in another state.

201 KAR 26:215. Nonresident status.

201 KAR 26:230. Examinations.

201 KAR 26:250. Employment of a psychological associate.

TOURISM CABINET

Department of Fish and Wildlife Resources

Game

301 KAR 2:225E. Dive, wood duck, teal and other migratory game bird hunting. (Deferred from November)

DEPARTMENT OF AGRICULTURE

Division of Pesticides

302 KAR 31:040. Storage and handling of bulk pesticides and bulk fertilizers for agricultural facilities. (Deferred from October)

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET

Department for Environmental Protection

Division of Water

Water Quality

401 KAR 5:008E. Swine feeding operations. (Agency Requests Deferral)

Division for Air Quality

New Source Standards

401 KAR 59:174. Stage II controls at gasoline dispensing facilities. (Amended After Hearing)

General Standards of Performance

401 KAR 63:005. Open burning. (Amended After Hearing)

Mobile Source-related Emissions

401 KAR 65:010. Vehicle emission control programs. (Amended After Hearing)

Department for Surface Mining Reclamation and Enforcement

Permits (Received Written Comments in September)

405 KAR 8:001. Definitions for 405 KAR Chapter 8.

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405 KAR 8:030. Surface coal mining permits.

405 KAR 8:040. Underground coal mining permits.

Performance Standards for Surface Mining Activities (Received Written Comments in September)

405 KAR 16:001. Definitions for 405 KAR Chapter 16.

405 KAR 16:060. General hydrologic requirements.

405 KAR 16:090. Sedimentation ponds.

405 KAR 16:100. Permanent and temporary impoundments.

405 KAR 16:160. Coal mine waste dams and impoundments.

Performance Standards for Underground Mining Activities (Received Written Comments in September)

405 KAR 18:001. Definitions for 405 KAR Chapter 18.

405 KAR 18:060. General hydrologic requirements.

405 KAR 18:090. Sedimentation ponds.

405 KAR 18:100. Permanent and temporary impoundments.

405 KAR 18:160. Coal mine waste dams and impoundments.

405 KAR 18:210. Subsidence control.

JUSTICE CABINET

Department of Corrections

Division of Adult Institutions

Office of the Secretary

501 KAR 6:060. Northpoint Training Center.

501 KAR 6:170. Green River Correctional Complex

Department of Juvenile Justice

Child Welfare

505 KAR 1:040E. Policy and procedures manual. (Deferred from November)

TRANSPORTATION CABINET

Department of Vehicle Regulation

Division of Motor Carriers

Department of Fiscal Management

Division of Audit Review

Division of Motor Carriers

601 KAR 1:146. Fair market rental or lease value of vehicles operated pursuant to a U-Drive-It permit.

601 KAR 1:147. Auditing of U-Drive-It permit holders.

Department of Highways

Division of Transportation Planning

Division of Operations

Traffic

603 KAR 5:070E. Motor vehicle dimension limits. (Deferred from August)

603 KAR 5:230. The extended weight coal or coal by-products haul road system and associated bridge weight limits.

EDUCATION, ARTS, AND HUMANITIES CABINET

Education Professional Standards Board

704 KAR 20:210. Substitute teachers and Emergency school personnel.

704 KAR 20:305 & E. Written examination prerequisites for teacher certification.

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. (Deferred from September)

Department for Employment Services

Unemployment Insurance

787 KAR 1:200(&E). Maximum weekly benefit rate.

LABOR CABINET

Department of Workplace Standards

Division of Occupational Safety and Health Compliance

Division of Occupational Safety and Health Education and Training

Occupational Safety and Health

803 KAR 2:060. Employers' responsibilities.

803 KAR 2:301 & E. Adoption and extension of established federal standards.

803 KAR 2:320 & E. Air contaminants.

803 KAR 2:403 & E. Occupational health and environmental controls.

803 KAR 2:411 & E. Scaffolds.

803 KAR 2:425 & E. Toxic and hazardous substances.

803 KAR 2:500 & E. Maritime employment.

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Department of Workers' Claims

Workers' Claims

803 KAR 25:130. Notice of rejection of Workers' Compensation Act.

Department of Housing, Buildings and Construction Division of Plumbing

Plumbing

815 KAR 20:030. License application; qualifications for examination, examination requirements, expiration, renewal, revival or reinstatement of licenses. (Deferred from November)

CABINET FOR HEALTH SERVICES Office of Certificate of Need

Certificate of Need

900 KAR 6:050 & E. Certificate of need administrative regulations.

Department for Public Health

State Health Plan

902 KAR 17:041E. State health plan for facilities and services. (Deferred from October)

Division of Environmental Health and Community Safety

Controlled Substances

902 KAR 55:095 & E. 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). (Deferred from October)
- 904 KAR 2:016E. Standards for need and amount for the Kentucky Transitional Assistance Program (K-TAP). (Deferred from October)
- 904 KAR 2:017 & E. Kentucky Works child care and supportive services.
- 904 KAR 2:035 & E. Right to apply and reapply. (Deferred from November)
- 904 KAR 2:040 & E. Procedures for determining initial and continuing eligibility. (Public Hearing in October)
- 904 KAR 2:046 & E. Adverse action; conditions. (Public Hearing in October)
- 904 KAR 2:050E. Time and manner of payments. (Deferred from October)
- 904 KAR 2:055 & E. Hearings and appeals. (Public Hearing in October)
- 904 KAR 2:060 & E. Delegation of power for oaths and affirmations. (Deferred from November)
- 904 KAR 2:370 & E. Technical requirements for Kentucky Works.

Food Stamp Program

904 KAR 3:025E. Technical requirements.

Department for Social Services

Child Welfare

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

Day Care

905 KAR 2:150E. Child day care assistance program.

CABINET FOR HEALTH SERVICES Division of Licensing and Regulation

Office of Inspector General

906 KAR 1:120 & E. Informal dispute resolution.

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. (Deferred from October)
- 907 KAR 1:025E. Payments for nursing facility and intermediate care facility for the mentally retarded services. (Deferred from October)
- 907 KAR 1:145E. Supports for community living services for individuals with mental retardation or developmental disabilities. (Deferred from November)
- 907 KAR 1:151E. Repeal of 907 KAR 1:140 and 907 KAR 1:150. (Deferred from November)
- 907 KAR 1:155E. Payments for supports for community living services for individuals with mental retardation or developmental disabilities. (Deferred from November)
- 907 KAR 1:755E. Preadmission Screening and Annual Resident Review Program. (Deferred from October)
- 907 KAR 1:765E. Repeal of 907 KAR 1:460. (Deferred from October)

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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

KENTUCKY STATE BOARD OF ACCOUNTANCY

October 30, 1997

Kentucky State Board of Accountancy

- (1) **201 KAR 1:300.** Rules of professional conduct.
- (2) The Kentucky State Board of Accountancy 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 December 22, 1997, at 10 a.m., at 332 W. Broadway, Suite 310, Louisville, Kentucky 40202.
- (4)(a) The public hearing will be held if:
 1. It is requested, in writing, by at least 5 persons, or an administrative body, or an association having at least 5 members; and
 2. A minimum of 5 persons, or the administrative body or association, agree, in writing, to be present at the public hearing.
- (b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 20 days prior to December 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: 332 W. Broadway, Suite 310, Louisville, Kentucky 40202.
- (b) On the 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 State Board of Accountancy at the address listed above.
- (7) Information relating to the proposed administrative regulation:
 - (a) The statutory authority of the promulgation of an administrative regulation relating to updating and incorporating the most recent versions of the Standards of Practice and Accounting Principles is KRS 325.240.
 - (b) The administrative regulation that the Kentucky State Board of Accountancy intends to promulgate will amend 201 KAR 1:300. Rules of professional conduct. It will update and incorporate by reference the most current Standards of Practice and Accounting Principles.
 - (c) The necessity and function of the proposed administrative regulation is as follows: These nationally promulgated standards and principles are updated regularly. CPAs adhere to these standards when performing professional services.
 - (c) The benefits expected from administrative regulation are: To insure that current financial reporting procedures are followed.
 - (d) The administrative regulation will be implemented as follows: The Board of Accountancy will advise all Kentucky CPAs of these changes in the newsletter and annual registry book. The regulation does not require any further board action.

KENTUCKY STATE BOARD OF REGISTRATION FOR PROFESSIONAL ENGINEERS AND LAND SURVEYORS

January 17, 1997

Kentucky State Board of Registration for Professional Engineers and Land Surveyors

- (1) **201 KAR 18:132.** Repeal of 201 KAR 18:130.
- (2) The Kentucky State Board of Registration for Professional Engineers and Land Surveyors intends to promulgate an administrative regulation governing the subject matter above.
- (3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for December 22, 1997, at 1 p.m., at the State Board's office, 160 Democrat Drive, 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 December 22, 1997, the public hearing will be canceled.
- (5)(a) Persons wishing to request a public hearing should mail their written requests to the following address: Larry Perkins, Executive Director, Kentucky State Board of Registration for Professional Engineers and Land Surveyors, 160 Democrat Drive, Frankfort, Kentucky 40601.
- (b) On request for public hearing, a person shall state:
 1. "I agree to attend the public hearing."; or
 2. "I will not attend the public hearing."
- (6)(a) KRS Chapter 13A provides that persons who desire to be informed of the intent of an administrative body to promulgate an administrative regulation governing a specific subject matter may file a request to be informed by the administrative body.
- (b) Persons who wish to file this request may obtain a request form by writing to Larry Perkins at the above address, or by calling (502) 573-2680 between the hours of 7:30 a.m. and 5 p.m., Monday through Friday.
- (7) Information relating to the proposed administrative regulation:
 - (a) The statutory authority for the promulgation of the administrative regulation relating to the subject matter listed above is KRS 322.290(2)(a).
 - (b) The administrative regulation that the Kentucky State Board of Registration for Professional Engineers and Land Surveyors intends

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to promulgate will not amend an existing regulation. It will serve to repeal 201 KAR 18:130.

(c) The necessity and function of the proposed administrative regulation is as follows: to repeal 201 KAR 18:130 which conflicts with 201 KAR 18:131.

(d) The benefit expected from administrative regulation is: The conflict between two (2) regulations will be eliminated.

(e) The administrative regulation will be implemented as follows: Once the existing administrative regulation is repealed, the repealing administrative regulation is no longer necessary and will not require implementation.

March 12, 1997

Kentucky State Board of Registration for Professional Engineers and Land Surveyors

(1) **201 KAR 18:150.** Standards of practice.

(2) The Kentucky State Board of Registration for Professional Engineers and Land Surveyors 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 December 22, 1997, at 2 p.m., at the State Board's office, 160 Democrat Drive, 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 December 22, 1997, the public hearing will be canceled.

(5)(a) Persons wishing to request a public hearing should mail their written requests to the following address: Larry Perkins, Executive Director, Kentucky State Board of Registration for Professional Engineers and Land Surveyors, 160 Democrat Drive, Frankfort, Kentucky 40601.

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

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

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

(b) Persons who wish to file this request may obtain a request form by writing to Larry Perkins at the above address, or by calling (502) 573-2680 between the hours of 7:30 a.m. and 5 p.m., Monday through Friday.

(7) Information relating to the proposed administrative regulation:

(a) The statutory authority for the promulgation of the administrative regulation relating to the subject matter listed above is KRS 322.290(2)(f).

(b) The administrative regulation that the Kentucky State Board of Registration for Professional Engineers and Land Surveyors intends to promulgate will amend 201 KAR 18:150, Standards of practice.

(c) The necessity and function of the proposed administrative regulations is as follows: To promulgate standards of practice for land surveyors in Kentucky.

(d) The benefits expected from administrative regulation are: That the standards of practice for land surveyors will be codified.

(e) The administrative regulation will be implemented as follows: Registrants will be required to comply with the administrative regulations, and the Kentucky State Board of Registration for Professional Engineers and Land Surveyors will enforce the administrative regulation.

January 17, 1997

Kentucky State Board of Registration for Professional Engineers and Land Surveyors

(1) **201 KAR 18:162.** Repeal of 201 KAR 18:160.

(2) The Kentucky State Board of Registration for Professional Engineers and Land Surveyors intends to promulgate an administrative regulation governing the subject matter above.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for December 22, 1997, at 1:30 p.m., at the State Board's office, 160 Democrat Drive, 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 December 22, 1997, the public hearing will be canceled.

(5)(a) Persons wishing to request a public hearing should mail their written requests to the following address: Larry Perkins, Executive Director, Kentucky State Board of Registration for Professional Engineers and Land Surveyors, 160 Democrat Drive, Frankfort, Kentucky 40601.

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

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

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

(b) Persons who wish to file this request may obtain a request form by writing to Larry Perkins at the above address, or by calling (502) 573-2680 between the hours of 7:30 a.m. and 5 p.m., Monday through Friday.

(7) Information relating to the proposed administrative regulation:

(a) The statutory authority for the promulgation of the administrative regulation relating to the subject matter listed above is KRS 322.290(2)(a).

(b) The administrative regulation that the Kentucky State Board of Registration for Professional Engineers and Land Surveyors intends to promulgate will not amend an existing regulation. It will serve to repeal 201 KAR 18:160.

(c) The necessity and function of the proposed administrative regulation is as follows: 201 KAR 18:160 is being repealed because 201

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KAR 18:200, which was promulgated after 201 KAR 18:160, establishes minimum standards of practice for mortgage inspections eliminating the need for 201 KAR 18:160.

(d) The benefit expected from administrative regulation is: That excess verbiage will be eliminated.

(e) The administrative regulation will be implemented as follows: Once the existing administrative regulation is repealed, the repealing administrative regulation is no longer necessary and will not require implementation.

KENTUCKY REAL ESTATE APPRAISERS BOARD

November 14, 1997

Kentucky Real Estate Appraisers Board

(1) **201 KAR 30:050**. Examination, education, and experience requirement.

(2) The Kentucky Real Estate Appraisers Board intends to promulgate an administrative regulation governing the subject matter listed above.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for December 22, 1997, at 10 a.m., Capitol Building, 700 Capitol Avenue, Room 114, 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 December 22, 1997, the public hearing will be canceled.

(5)(a) Persons wishing to request a public hearing should mail their written requests to the following address: James J. Grawe, Assistant Attorney General, Capitol Building, 700 Capitol Avenue, Frankfort, Kentucky 40601-3449.

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

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

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

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

(b) Persons who wish to file this request may obtain a request form by writing to James J. Grawe at the above address, or by calling (502) 696-5602 between the hours of 8:30 a.m. and 5 p.m., Monday through Friday.

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of an administrative regulation relating to examination, education, and experience requirement is KRS 324A.035(1) and 324A.040(2).

(b) The administrative regulation that the Kentucky Real Estate Appraisers Board intends to promulgate will amend 201 KAR 30:050 to implement new federal minimum requirements for education, experience, and continuing education of licensed and certified real estate appraisers.

(c) The necessity, function, and conformity of the proposed administrative regulation is as follows: KRS 324A.035(1) requires the board to establish by administrative regulation requirements for certification or licensure of appraisers of real property in federally-related transactions. KRS 324A.035(3)(d), (e), and (f) requires the board to establish by administrative regulations requirements for experience, examination of applicants, and the continuing education of appraisers. Title XI of the Financial Institutions Reform, Recovery and Enforcement Act of 1989, 12 USC 3331-3351, establishes requirements for certification or licensure of appraisers of real property in federally-related transactions. This administrative regulation establishes the examination, education, and experience requirements for appraisers of real property in federally-related transactions.

(d) The benefit expected from this administrative regulation is that the education, experience and continuing education requirements for licensed and certified appraisers will be in accord with the federal minimum requirements.

(e) This administrative regulation will be implemented as follows: Certified, licensed, and trainee real property appraisers will be required to comply with this administrative regulation, and the Kentucky Real Estate Appraisers Board will enforce the administrative regulation.

GENERAL GOVERNMENT CABINET Department of Veterans Affairs

November 14, 1997

General Government Cabinet

Department of Veterans Affairs

(1) **201 KAR 37:010**, Kentucky Veterans' Program Trust Fund, implementation of program.

(2) The Department of Veterans Affairs 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 December 22, 1997, at 9 a.m., at 545 South Third Street, Louisville, Kentucky 40202.

(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 December 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: James N. Halvatgis, Deputy Commissioner, Department of Veterans Affairs, 545 South Third Street, Louisville, Kentucky 40202.

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

ADMINISTRATIVE REGISTER - 1210

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 Veterans Affairs 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 implementation of the Kentucky Veterans' Program Trust Fund is a state statute.
- (b) The administrative regulation that the Department of Veterans Affairs intends to promulgate will amend 201 KAR 37:010, Kentucky Veterans' Program Trust Fund, implementation of program. It will authorize the Department of Veterans Affairs to administer the fund and programs financed by the proceeds and interest derived from the fund.
- (c) The necessity, function, and conformity of the proposed administrative regulation is as follows: Establishes a board of directors to administer the fund and establishes criteria for programs financed by the fund.
- (d) The benefits expected from administrative regulation are: Provide funds to approved programs to assist Kentucky's veterans which do not duplicate assistance available from programs established by federal or state law or appropriation.
- (e) The administrative regulation will be implemented as follows: Upon approval of the regulation, the board of directors will be appointed by the governor with input provided by the Commissioner of the Department of Veterans Affairs. Subsequently, the commissioner will call the first meeting of the board of directors and begin the process of functioning to administer the fund.

TOURISM DEVELOPMENT CABINET Department of Fish and Wildlife Resources

August 21, 1997

Tourism Development Cabinet

Department of Fish and Wildlife Resources

- (1) Regulation Number and Title: **301 KAR 2:221**, Waterfowl seasons and limits; **301 KAR 2:222**, Waterfowl hunting requirements.
- (2) The Department of Fish and Wildlife Resources intends to amend the administrative regulations cited above.
- (3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for December 22, 1997 at 9 a.m. in the Commission Room, Arnold L. Mitchell Building, at the Game Farm, five miles west of Frankfort on U.S. 60.
- (4)(a) The public hearing will be held if:
 1. It is requested, in writing, by at least five persons, or an administrative body, or an association having at least five members; and
 2. A minimum of five persons, or the administrative body or association agree, in writing, to be present at the public hearing.
- (b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least ten days prior to December 22, 1997 the public hearing will be canceled.
- (5)(a) Persons wishing to request a public hearing should mail their written request to John Wilson, Assistant Director, Public Affairs/Policy, Kentucky Department of Fish and Wildlife Resources, #1 Game Farm Road, Frankfort, Kentucky 40601.
- (b) In a request for a public hearing, a person shall state:
 1. "I agree to attend the public hearing"; or
 2. "I will not attend the public hearing."
- (6)(a) KRS Chapter 13A provides that persons who desire to be informed of the intent of an administrative body to promulgate an administrative regulation governing a specific subject matter may file a request to be informed by the administrative body.
- (b) Persons who wish to file this request may obtain a request from the department at the address listed above.
- (7) Information relating to the proposed administrative regulation.
- (a) The statutory authority for the promulgation of this administrative regulation is KRS 150.025(1) and 150.600(1).
- (b) The administrative regulation that the department intends to promulgate will amend:
 1. 301 KAR 2:221 by establishing 1997-98 waterfowl season dates and bag limits in conformity with federal requirements.
 2. 301 KAR 2:22 by adjusting hunting dates, shooting hours and other requirements on wildlife management areas; and to open Cane Creek Wildlife Management Area to duck hunting, Central Kentucky, Mill Creek and Redbird Wildlife Management Areas to waterfowl hunting.
- (c) The necessity and function of the proposed administrative regulation is to establish waterfowl season dates and bag limits that fall within frameworks established by the U. S. Fish and Wildlife Service.
- (d) The benefits expected from the administrative regulation are conservation of waterfowl populations while allowing recreational hunting.
- (e) The administrative regulation will be implemented as follows: Its provisions will be publicized through departmental publications and mass media outlets; it will be enforced by the Department's Division of Law Enforcement.

KENTUCKY DEPARTMENT OF AGRICULTURE

November 3, 1997

Kentucky Department of Agriculture

- (1) Regulation number and title: **302 KAR 10:070**: Consumer grade quality standards.
- (2) The Kentucky Department of Agriculture intends to promulgate an administrative regulation governing the above subject matter.
- (3) A public hearing to receive oral and written comments has been scheduled for Monday, December 22, 1997 at 10 a.m. at the Department of Agriculture's Conference Room, 7th Floor, Capital Plaza Tower, 500 Mero Street, Frankfort, Kentucky 40601.
- (4)(a) The public hearing will be held if:

ADMINISTRATIVE REGISTER - 1211

1. It is requested, in writing, by at least five persons, or an administrative body, or an association having at least five members; and
2. A minimum of five persons, or the administrative body or association, agree, in writing, to be present at the public hearing.
- (b) If a request for a public hearing is not received from the required number of people at least ten days prior to December 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: Mark Farrow, General Counsel, Kentucky Department of Agriculture, 7th Floor, Capital Plaza Tower, 500 Mero Street, Frankfort, Kentucky 40601.
- (b) On a request for a public hearing, a person shall state:
 1. "I agree to attend the public hearing."; or
 2. "I will not attend the public hearing."
- (6)(a) KRS Chapter 13A provides that a person who desires to be informed of the intent of an administrative body to promulgate an administrative regulation governing a subject matter may file a request to be informed by the administrative body.
- (b) Persons who wish to file this request may obtain a request form from the Kentucky Department of Agriculture at the address listed above.
- (7) Information relating to the proposed administrative regulation:
 - (a) The statutory authority for the promulgation of an administrative regulation relating to consumer grades is KRS 260.620.
 - (b) The administrative regulation that the Kentucky Department of Agriculture intends to promulgate will amend 302 KAR 10:070. It sets forth the changes in quality standards for individual eggs.
 - (c) The necessity and function of the proposed administrative regulation is as follows: Same as (b).
 - (d) The benefits expected from the proposed administrative regulation are: USDA compliance. USDA no longer approves grade C eggs.
 - (e) The administrative regulation will be implemented as follows: The Division of Regulation and Inspection field inspectors will closely monitor the implementation of regulation and make timely reports to the Regulation & Inspection Director.

November 3, 1997

- (1) Regulation number and title: **302 KAR 20:077**. Repeal of 302 KAR 20:076, Identification of "farm fresh" cattle.
- (2) The Kentucky Department of Agriculture intends to promulgate an administrative regulation governing the above subject matter.
- (3) A public hearing to receive oral and written comments has been scheduled for Monday, December 22, 1997, at 1 p.m. at the Department of Agriculture's Conference Room, Capital Plaza Tower, 7th Floor, Frankfort, Kentucky 40601.
- (4)(a) The public hearing will be held if:
 1. It is requested, in writing, by at least five persons, or an administrative body, or an association having at least five members; and
 2. A minimum of five persons, or the administrative body or association, agree, in writing, to be present at the public hearing.
- (b) If a request for a public hearing is not received from the required number of people at least 10 days prior to December 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: Mark Farrow, General Counsel, Kentucky Department of Agriculture, 7th Floor, Capital Plaza Tower, 500 Mero Street, Frankfort, Kentucky 40601.
- (b) On a request for a public hearing, a person shall state:
 1. "I agree to attend the public hearing."; or
 2. "I will not attend the public hearing."
- (6)(a) KRS Chapter 13A provides that a person who desires to be informed of the intent of an administrative body to promulgate an administrative regulation governing a subject matter may file a request to be informed by the administrative body.
- (b) Persons who wish to file this request may obtain a request form from the Kentucky Department of Agriculture at the address listed above.
- (7) Information relating to the proposed administrative regulation.
 - (a) The authority for the promulgation of an administrative regulation relating to identification of "farm fresh" cattle is KRS 257.030.
 - (b) The administrative regulation that the Kentucky Department of Agriculture intends to promulgate will repeal 302 KAR 20:076 and is a new administrative regulation. It sets forth the reason for repeal of 302 KAR 20:076, that being that the "farm fresh" cattle program is not enforceable.
 - (c) The necessity and function of the proposed administrative regulation is as follows: Same as (b).
 - (d) The benefits expected from the proposed administrative regulation are: This regulation furthers Kentucky health and disease control initiatives for livestock.
 - (e) The administrative regulation will be implemented as follows: This regulation will repeal 302 KAR 20:076.

JUSTICE CABINET Department of Corrections

November 13, 1997

Justice Cabinet

Department of Corrections

- (1) Regulation Number and Title: **501 KAR 6:180**, Department of Corrections.
- (2) The Justice Cabinet, Department of Corrections, intends to establish a new administrative regulation governing infectious diseases.
- (3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for December 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 December 22, 1997, the public hearing will be canceled.

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

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

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

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

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

(7) Information relating to the proposed administrative regulation:

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

(b) The administrative regulation that the Department of Corrections intends to promulgate will establish 501 KAR 6:180, as follows: Infectious disease control shall be established to protect the safety and health of employees, inmates and the public. It will also provide punitive action against inmates who refuse to be treated or tested for such diseases and who create health hazards.

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

1. KRS 196.035, 197.020, 197.055, and 215.550 authorizes the Commissioner to promulgate administrative regulations necessary and suitable for the proper administration of the department or any division therein. This administrative regulation is promulgated in order to comply with the accreditation standards of the American Correctional Association.

2. This administrative regulation codifies operating procedures at the Department of Corrections 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, to codify current operating procedures, and safeguard public health and safety.

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

TRANSPORTATION CABINET

November 14, 1997

Transportation Cabinet

(1) **601 KAR 1:005** relating to the federal motor carrier safety regulations.

(2) The Kentucky Transportation Cabinet intends to promulgate an administrative regulation updating the adopted federal regulations governing the safe operation of commercial motor vehicles in Kentucky. Specifically, adoption of the recently published changes to 49 CFR Part 385 relating to federal motor carrier safety ratings. The remainder of the administrative regulation will be reviewed at the same time to insure continued compliance with state and federal laws.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for December 22, 1997 at 3 p.m. local prevailing time, at 501 High Street, 4th Floor Hearing/Conference Room, Frankfort, Kentucky 40622.

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

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

(b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 10 days prior to December 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: Sandra Pullen Davis, 501 High Street, 10th Floor, State Office Building, Frankfort, Kentucky 40622.

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

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

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

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

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of an administrative regulation relating to the safety of commercial motor vehicles and their operators is KRS 138.665, 281.600, 281.730, 281.750, and Title 49 CFR Parts 40, 382-383, 385, and 390-397.

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

(c) The necessity and function of the proposed administrative regulation is as follows: This administrative regulation is necessary to set forth the safety requirements that KRS 281.600 allows the Transportation Cabinet to establish. Further, these safety requirements are imposed by U.S. DOT on commercial vehicles operating in interstate commerce and most commercial vehicles operating in intrastate commerce. By promulgating these federal regulations in a state administrative regulation, the Transportation Cabinet's motor vehicle enforcement officers can enforce the federal regulations as required by federal mandate.

(d) The benefits expected are increased safety on the public highways of Kentucky and uniformity with the federal government and other states' motor carrier safety requirements.

(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 December 15, 1997.

ADMINISTRATIVE REGISTER - 1213

December 1, 1997

Transportation Cabinet

(1) **601 KAR 9:135** relating to the apportioned registration of motor vehicles pursuant to the provisions of the International Registration Plan (IRP).

(2) The Kentucky Transportation Cabinet intends to promulgate an administrative regulation to amend the existing administrative regulation relating to the apportioned registration of motor vehicles pursuant to the provisions of the International Registration Plan. The amendment will include new forms, electronic filing of applications, and an evaluation of the program to ensure that it is still in compliance with the federally mandated IRP.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for December 22, 1997 at 3:30 p.m. local prevailing time, at 501 High Street, 4th Floor Hearing/Conference Room, Frankfort, Kentucky 40622.

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

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

(b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 10 days prior to December 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: Sandra Pullen Davis, 501 High Street, 10th Floor, State Office Building, Frankfort, Kentucky 40622.

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

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

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

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

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of an administrative regulation relating to the apportioned registration of motor vehicles is KRS 186.050.

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

(c) The necessity and function of the proposed administrative regulation is as follows: KRS 186.050 required the Transportation Cabinet to promulgate administrative regulations concerning the registration of commercial motor vehicles under the Articles of the International Registration Plan. This administrative regulation sets forth the procedures, recordkeeping requirements, audit responsibilities, and appeal procedures to be followed in registering a commercial motor vehicle under the provisions of the International Registration Plan. It further clarifies when a vehicle licensed under the provisions of KRS 186.050(13) shall be deemed to be licensed under the provisions of other sections of KRS 186.050.

(d) The benefits expected by this amendment are allowing a motor carrier to electronically file its applications for apportioned license plates which should speed up the process for the tax payers.

(e) The amendment will be implemented by providing electronic access to the Division of Motor Carriers.

(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 December 12, 1997.

LABOR CABINET

Kentucky Department of Workers' Claims

November 14, 1997

Kentucky Department of Workers' Claims

(1) Regulation No. and Name: **803 KAR 25:010**, Procedure for adjustments of claims.

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

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for December 22, 1997, at 10 a.m. at the Department of Workers' Claims, 1270 Louisville Road, 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 ten (10) days prior to December 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: Department of Workers' Claims, Perimeter Park West, Building C, 1270 Louisville Road, Frankfort, Kentucky 40601, ATTN: Carla H. Montgomery, (502) 564-5550, fax number (502) 564-5934.

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

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

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

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

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of an administrative regulation relating to the subject matter of administrative regulation

ADMINISTRATIVE REGISTER - 1214

is KRS 342.260 and 342.270(7)

(b) The administrative regulation that the commissioner intends to promulgate will amend an existing administrative regulation. It will address some technical corrections in the regulation and some necessary clarifications in the regulation language.

(c) The necessity and function of the proposed administrative regulation is as follows: This regulation is necessary to regulate the practice and procedure before arbitrators, administrative law judges, and the Workers' Compensation Board. As stated earlier, the amendments will clarify and correct some language in the regulation.

(d) The benefits expected from administrative regulation are: To clarify issues raised in the practice before arbitrators, administrative law judges, and the Workers' Compensation Board.

(e) The administrative regulation will be implemented as follows: The regulation will continue to be implemented as it is currently.

November 14, 1997

Kentucky Department of Workers' Claims

(1) Regulation No. and Name: **803 KAR 25:101**, Provision of workers' compensation rehabilitation services.

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

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for December 22, 1997, at 10 a.m. at the Department of Workers' Claims, 1270 Louisville Road, 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 ten (10) days prior to December 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: Department of Workers' Claims, Perimeter Park West, Building C, 1270 Louisville Road, Frankfort, Kentucky 40601, ATTN: Carla H. Montgomery, (502) 564-5550, fax number (502) 564-5934.

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

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

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

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

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

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of an administrative regulation relating to the subject matter of administrative regulation is KRS 342.260.

(b) The administrative regulation that the commissioner intends to promulgate will amend an existing administrative regulation. It will amend the language to conform with statutory changes made in the extraordinary legislative session on workers' compensation in December 1996. It also eliminates unnecessary language. It also allows other facilities to be in the directory besides those facilities accredited by CARF.

(c) The necessity and function of the proposed administrative regulation is as follows: KRS 342.710 requires the commissioner to maintain a directory of rehabilitation facilities. The regulation sets forth the requirements for the directory and other provisions of rehabilitation.

(d) The benefits expected from administrative regulation are: The language of the regulation will conform with the changes made in the extraordinary legislative session on workers' compensation in December 1996. It also will allow assessment centers operated by the Department of Technical Education to provide assessment services.

(e) The administrative regulation will be implemented as follows: The regulation will continue to be implemented as has been done in the past. The director for rehabilitative services will continue to be maintained as are the other requirements for rehabilitation.

PUBLIC PROTECTION AND REGULATION CABINET Department of Insurance

October 24, 1997

Public Protection and Regulation Cabinet

Department of Insurance

(1) **806 KAR 6:100**. Actuarial opinion and memorandum.

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

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for December 22, 1997, at 10 a.m., at the Department of Insurance, 215 West Main Street, Frankfort, Kentucky.

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

1. It is requested, in writing, by at least 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 December 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: Kentucky Department of Insurance, Attn.: Sharron S. Burton, P.O. Box 517, Frankfort, Kentucky 40602, (502) 564-6032, fax number (502) 564-1456.

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

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

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

ADMINISTRATIVE REGISTER - 1215

(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 Insurance at the address listed above.

(7) Information relating to the proposed administrative regulation:

(a) The statutory authority for the promulgation of an administrative regulation relating to the subject matter of this administrative regulation is KRS 304.6-171.

(b) The administrative regulation that the Department of Insurance intends to promulgate will not amend an existing administrative regulation. It will define the specific information which is to be included in the actuarial opinion and memorandum required by KRS 304.6-171.

(c) The necessity and function of the proposed administrative regulation is as follows: KRS 304.6-171 requires every life insurance company doing business in this state to annually submit the opinion of a qualified actuary as to whether the reserves and related actuarial items held in support of the policies and contracts specified by the Commissioner of Insurance are computed appropriately. This administrative regulation is necessary to implement the requirement of an actuarial opinion and to define the specific information that is to be included in that opinion and the accompanying actuarial memorandum. The administrative regulation is also necessary in that it is required by the National Association of Insurance Commissioners in order for the department to maintain accreditation status.

(d) The benefits expected from this administrative regulation are: The Department of Insurance will receive actuarial opinions which are uniform and which contain the information necessary to evaluate whether or not a company's reserves and related actuarial items held in support of the policies and contracts are computed appropriately, are based on assumptions which satisfy contractual provisions, are consistent with prior reported amounts, and comply with applicable laws of this state.

(e) The administrative regulation will be implemented as follows: The regulation will apply to all life insurance companies, fraternal benefit societies doing business in this state, and to all life insurance companies and fraternal benefit societies which are authorized to reinsure life insurance, annuities, or accident and health insurance business in this state. These entities will be required to submit an actuarial opinion with the annual statement for each year beginning with the year in which this regulation becomes effective. This administrative regulation will provide specific information which shall be required to be included in the actuarial opinion. For those entities whose actuarial opinion is based on an asset adequacy analysis, this administrative regulation will require an actuarial memorandum which describes the actuarial analysis accomplished in support of the actuarial opinion.

KENTUCKY PUBLIC SERVICE COMMISSION

November 13, 1997

Kentucky Public Service Commission

(1) Regulation Number and Title: **807 KAR 5:069**. Water district and water association construction cases.

(2) The Kentucky Public Service Commission intends to promulgate an amendment to the administrative regulation governing the subject matter cited above.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for December 22, 1997, at 9 a.m., Eastern Standard Time, in Hearing Room 2, 677 Comanche Trail, 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 December 22, 1997, the public hearing will be cancelled.

(5)(a) Persons wishing to request a public hearing should mail their written requests to the following address: Deborah Eversole, Staff Attorney, Kentucky Public Service Commission, 730 Schenkel Lane, P.O. Box 615, Frankfort, Kentucky 40602.

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

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

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

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

(7) Information relating to the proposed administrative regulation:

(a) The statutory authority for the promulgation of an administrative regulation relating to the subject matter of this administrative regulation is as follows: KRS 278.020(1), 278.023, 278.040(3), 278.190, 278.300.

(b) The administrative regulation that the Kentucky Public Service Commission intends to promulgate will amend 807 KAR 5:069 as follows: The regulation will be updated by replacing references to the Farmers Home Administration throughout the regulation with references to the U.S. Department of Agriculture which, pursuant to KRS 278.023, along with the U.S. Department of Housing and Urban Development, is the federal agency which grants loans to water utilities for construction projects. The regulation will be updated by amending numbered references to construction and operating requirements of 807 KAR 5:066, which has been amended since the effective date of 807 KAR 5:069. Further amendments involve drafting changes to comply with KRS Chapter 13A.

(c) The necessity and function of the proposed amendments to this administrative regulation is as follows: The proposed amendments will clarify requirements and ensure consistency with applicable regulations and statutes.

(d) The benefits expected from the administrative regulation are: Utilities will have a clear understanding of the requirements for filing for approval of construction projects pursuant to KRS 278.023, obsolete references within the existing regulation will be eliminated, and drafting changes will bring the administrative regulation into compliance with statutory requirements.

(e) The administrative regulation will be implemented as follows: The requirements of the regulation as amended will be implemented as stated as soon as they are effective.

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

Date: November 15, 1997

Public Protection and Regulation Cabinet

Department of Housing, Buildings and Construction

(1) Regulation Number and Title: **815 KAR 20:055**. Water heater devices.

(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 December 23, 1997 at 10 a.m., local time, in the department's Conference Room at 1047 U.S. Highway 127 South, Suite #1, Frankfort, Kentucky.

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

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

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

(b) If a request for a public hearing and agreement to attend the public hearing are not received from the required number of people at least ten (10) days prior to December 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 318.200.

(b) The department intends to amend this administrative regulation to conform with statutory changes made in 1992 requiring statewide reporting of water heater devices and not limiting the jurisdiction to cities of the first and second class and urban county governments.

(c) The Necessity and Function of the proposed administrative regulation is as follows: This administrative regulation requires that retailers, wholesalers and installers of water heater devices submit a list of names and addresses of purchasers to the Division of Plumbing every thirty (30) days.

(d) The benefits expected from this administrative regulation are: To assure that water heating devices are properly permitted and inspected by a licensed plumber.

(e) This administrative regulation will be implemented by the Division of Plumbing.

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

November 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 December 30, 1997, 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 December 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

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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 create requirements regarding denial of passports, change procedures regarding resolution of a dispute prior to a scheduled hearing, and change the distribution of escrow money.

(c) The Necessity, Function and Conformity of the proposed administrative regulation is as follows: This administrative regulation is necessary:

1. To extend the activities currently being performed in certification for federal tax refund intercept to also provide for the certification of passport denial by the U.S. Department of State. Passport denial shall apply to noncustodial parents, or obligors, owing in excess of \$5,000, who are certified for federal tax refund intercept.

2. As a result of the Debt Collection Act of 1996, cases submitted for federal tax refund offset will be subjected to administrative offset. Delinquent noncustodial parents, or obligors, subject to administrative offset, shall be denied any federal assistance.

3. 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.

4. To change the distribution of escrow money due to a change in the Personal Responsibility and Work Opportunity Reconciliation Act. The federal share of collections shall be paid to the federal government. Any remaining amount collected will be retained by the state or distributed to the family.

(d) The benefits expected from administrative regulation are: The amendments to this administrative regulation will bring the cabinet in compliance with federal mandates of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 relating to passport denial and thus, prevent the loss of federal funds. The Cabinet for Families and Children is required to include the mandatory provisions of 42 USC 651 et seq. in the Title IV-D State Plan. Further amendments concerning hearings 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 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 Department for Medicaid Services

November 15, 1997

Cabinet for Health Services

Department for Medicaid Services

(1) **907 KAR 1:725**, Medicaid appropriations for a long-term nursing facility.

(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 December 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 December 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 - 4W-C, Frankfort, Kentucky 40621, (502) 564-7905, (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 Medicaid appropriations for a long term nursing facility are KRS 194.050, 205.520; EO 96-862; 42 CFR 430, 431, 432, 433, 435, 440, 441, 442, 447, 456; 42 USC 1396, a, b, c, d, g, l, l, n, o, p, r, r-2, r-3, r-5, s.

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(b) The administrative regulation that the Department for Medicaid Services intends to promulgate will enact 907 KAR 1:725E which provides a budget cap for the state fiscal year 1998 of \$504 million for nursing facility reimbursement and provides a methodology for monitoring and adjusting rates in order to ensure that expenditures do not exceed this amount.

(c) The necessity, function and conformity of the proposed administrative regulation is as follows: This administrative regulation sets forth budgetary requirements relating to the provision of nursing facility services to Medicaid eligible recipients.

(d) The benefits expected from administrative regulation are: The enacted budget for nursing facilities will be met.

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

EMERGENCY ADMINISTRATIVE REGULATIONS NOW IN EFFECT

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

STATEMENT OF EMERGENCY
301 KAR 2:221E

Waterfowl hunting season frameworks are established annually by the United States Fish and Wildlife Service. Under federal law, states which wish to establish waterfowl hunting seasons must do so within these federal frameworks. Development of the federal regulations involves consideration of harvest and population data, coordination with state wildlife agencies, and public involvement. Consequently, federal migratory bird hunting regulations are promulgated less than six (6) weeks before the opening dates of the hunting season. An ordinary administrative regulation cannot be adopted in the short time between final promulgation of federal regulations and the scheduled opening of state waterfowl hunting seasons, necessitating the promulgation of an emergency administrative regulation. This emergency administrative regulation will be replaced by an ordinary administrative regulation.

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

TOURISM DEVELOPMENT CABINET
Department of Fish and Wildlife Resources

301 KAR 2:221E. Waterfowl seasons and limits.

RELATES TO: KRS 150.010(40), 150.025(1), 150.305(1), 150.330, 150.340(1), (3), 150.600(1), 150.990, 50 [59] CFR 20, 21
STATUTORY AUTHORITY: KRS 150.025(1), 150.600(1), 50 CFR 20, 21

EFFECTIVE: October 15, 1997

NECESSITY, FUNCTION, AND CONFORMITY: KRS 150.025(1) and 150.600(1) authorize the department to set waterfowl season dates and limits. This administrative regulation is necessary to set limits and dates within federal waterfowl hunting frameworks established by 50 CFR Part 20. This administrative regulation imposes a shorter season in the Western Goose Zone [Ballard Reporting Area] than permitted by federal frameworks in an effort to build Canada goose populations in that portion of the state.

Section 1. (1) Except as authorized by 301 KAR 2:222, a person shall not take waterfowl except on the dates and within the limits prescribed by this administrative regulation.

(2) ~~[Zone Descriptions:]~~ Hunting zones, special hunt areas and reporting areas are described in 301 KAR 2:224.

Section 2. Gun and Archery Season Dates and Bag Limits for Ducks, Coots and Mergansers. (1) Season dates. Statewide, November 1 through November 2 and November 22 through January 18. ~~[November 28 through December 1 and December 5 through January 19.]~~

(2) Gun and archery daily limits.

(a) Six (6) [Five (5)] ducks, which shall include no more than:

1. Four (4) mallards, which shall include no more than two (2) hen mallards. ~~[one (1) hen mallard.]~~

2. Two (2) wood ducks.

3. One (1) black duck.

4. Two (2) redheads.

5. Three (3) pintails. ~~[One (1) pintail.]~~

6. One (1) canvasback.

(b) Fifteen (15) coots.

(c) Five (5) mergansers, which shall include no more than one (1) hooded merganser.

(d) Possession limits shall be ~~[are]~~ double daily limits.

~~[(3) Youth hunt.~~

~~(a) Season date: October 12.~~

~~(b) Bag limits: as specified in subsection (2) of this section.~~

~~(c) A person sixteen (16) years old or older shall not hunt.~~

~~(d) A person over the age of eighteen (18) shall accompany the juvenile hunter.~~

~~(e) A person accompanying a juvenile hunter shall:~~

~~1. Not hunt.~~

~~2. Not be required to possess a hunting license or Kentucky waterfowl permit.~~

~~3. Remain in a position to take immediate control of the juvenile's firearm.]~~

Section 3. Gun and Archery Seasons Dates and Bag Limits for Geese. (1) White-fronted goose and brant season dates:

~~[(a)] November 27 [28] through:~~

~~(a) January 20 in the Ballard Reporting Area;~~

~~(b) January 31 in the remainder of the state. [November 28 through January 31 in:~~

~~1. The remainder of the Western Goose Zone;~~

~~2. The Pennyroyal-Coalfield Goose Zone; and~~

~~3. The Eastern Goose Zone.]~~

(2) Snow goose and Ross' goose season dates.

~~(a) Ballard Reporting Area: November 27 through January 20 and February 14 through March 10.~~

~~(b) Remainder of state, November 27 through March 10. [Pennyroyal-Coalfield and Eastern Goose Zones: November 28-January 31.~~

~~(b) Western Goose Zone:~~

~~1. Ballard Reporting Area: November 28 through January 20 and February 15 through March 10.~~

~~2. That portion of Fulton County in the Western Goose Zone: November 28 through March 10.~~

~~3. The remainder of the Western Goose Zone: November 28 through January 31 and February 15 through March 10.]~~

~~(c) The reporting requirements specified in 301 KAR 2:223 shall not apply when Canada goose seasons are not open. [during the February 15-March 10 portion of the season:]~~

(3) Canada goose season dates.

(a) Eastern Goose Zone: December 13 through January 31.

~~(b) Pennyroyal/Coalfield Goose Zone: December 28 through January 31. [16 through January 19:]~~

(c) Western Goose Zone: December 6 [5] through:

1. January 20 in the Ballard Reporting Area;

2. February 15 in the portion of Fulton County in the Western Goose Zone;

3. January 31 in the remainder of the Western Goose Zone; unless

4. The quotas specified in Section 6 [7] of this administrative regulation are reached.

(d) West-Central and Northeast Special Hunt zones: January 23 [11] through January 31 [19].

(3) A person shall not hunt geese in:

(a) Breathitt, Knott, and Perry counties.

(b) The portions of Bell, Clay, Laurel, Pulaski and Whitley Counties owned by the U.S. Forest Service, including Laurel River Lake.

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(c) McCreary County east of US 27.

(d) Cave Run Lake and the public lands inside a boundary formed by Highways 801, 1274, 36, 211, US 60 and Highway 826.

(4) ~~[A person shall not hunt Canada geese in Christian County north of Highway 68/80:~~

~~(5)] Daily limits.~~

~~(a) [Except in the Northeast Special Hunt Zone, ten (10) geese, which shall include no more than:~~

~~1.] Two (2) Canada geese.~~

~~(b) [2.] Two (2) white-fronted geese.~~

~~(c) [3.] Two (2) brant.~~

~~(d) Ten (10) snow geese.~~

~~[(b) In the Northeast Special Hunt Zone, two (2) Canada geese. A person shall not take snow geese, brant or white-fronted geese.]~~

~~(5) [(6)] Possession limits shall be [are] double daily limits.~~

Section 4. Shooting Hours. A person shall not hunt waterfowl except from one-half (1/2) hour before sunrise until:

(1) 2 p.m. in the Northeast Special Hunt Zone; or

(2) Sunset in the remainder of the state, except as specified in 301 KAR 2:222. [(1) Except as specified in this administrative regulation or on wildlife management areas as stipulated in 301 KAR 2:222, one-half (1/2) hour before sunrise until sunset.

(2) In the Northeast Special Hunt Zone, one-half (1/2) hour before sunrise until 2 p.m.

Section 5. ~~Ballard Wildlife Management Area.~~ (1) Ducks, coots and mergansers:

~~(a) December 5 through January 18 or until the Ballard Reporting Area goose quota is reached:~~

~~(b) During waterfowl hunts occurring before October 15:~~

~~(2) Geese, December 5 through January 18 or until the Ballard Reporting Area quota is reached:~~

~~(3) No hunting on Sundays, Mondays, Christmas Day or New Year's Day:~~

~~(4) Shooting hours: one-half (1/2) hour before sunrise until noon:~~

~~(5) A waterfowl hunter:~~

~~(a) Shall apply in advance as stipulated in 301 KAR 2:222:~~

~~(b) Shall not have more than ten (10) shotgun shells in his possession:~~

~~(c) Shall case his gun while using department-supplied transportation to and from blinds:~~

~~(d) Shall be accompanied by an adult if under eighteen (18) years old:~~

~~(6) More than four (4) person shall not occupy a blind:~~

~~(7) A person shall not hunt waterfowl on the Ohio River from fifty (50) yards upstream from Dam 53 to fifty (50) yards downstream from the southern border of the Ballard Wildlife Management Area from October 15 through March 15.]~~

Section 5. [6:] Falconry Waterfowl Season and Limits. (1) Season dates.

(a) Snow geese and Ross' geese, November 24 through March 10.

(b) Other waterfowl, November 5 through January 31. [:statewide; November 5 through January 31 for ducks, coots, mergansers, Canada geese, and except in the Western Goose Zone, other geese.

(2) For other geese in the Western Goose Zone, November 24 through November 27 and during the open gun and archery season:]

(2) [(3)] Daily limit: three (3) waterfowl.

(3) [(4)] Possession limit: six (6) waterfowl.

Section 6. [7:] Quotas and Early Goose Season Closings. (1) If hunters reach a quota of 8,000 Canada geese in the Ballard Reporting Area before January 20, goose hunting shall cease in the Ballard Reporting Area.

(2) If hunters reach a quota of 3,135 [3,999] Canada geese in the

Henderson-Union Reporting Area before January 31:

(a) Goose hunting shall cease in the Henderson-Union Reporting Area.

(b) In the counties associated with the Henderson-Union Reporting Area, goose hunting shall cease:

1. Seven (7) days later; or

2. On the scheduled closing date, whichever occurs first.

(3) If hunters reach a quota of 16,500 [21,000] Canada geese in the Western Goose Zone before January 31, goose hunting shall cease in the Western Goose Zone.

(4) The department shall provide at least a twenty-four (24) hour notice of the time and date of early closures.

(5) Closures as stipulated in this section shall not apply after January 31 [to the February 15-March 10 portion of the snow goose season:]

C. THOMAS BENNETT, Commissioner

ANN R. LATTA, Secretary

MIKE BOATWRIGHT, Chairman

DOUGLAS SCOTT PORTER, Assistant Attorney General

APPROVED BY AGENCY: August 21, 1997

FILED WITH LRC: October 15, 1997 at 2 p.m.

REGULATORY IMPACT ANALYSIS

Contact Person: John Wilson

(1) Type and number of entities affected: Approximately 14,000 persons hunt waterfowl annually in Kentucky.

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

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

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: No impacts are anticipated.

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

1. First year following implementation: Waterfowl hunters must purchase licenses as well as state and federal waterfowl stamps. This is a continuing requirement that will impose no additional requirements.

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

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: No new direct or indirect costs or savings will be incurred.

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

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements: No additional reporting or paperwork requirements.

(4) Assessment of anticipated effect on state and local revenues: No increase or decrease on state or local revenues is anticipated.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Revenue from the sale of hunting and fishing licenses and from the Federal Aid to Wildlife Restoration will be used to implement this administrative regulation.

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

(a) Geographical area in which administrative regulation will be implemented: No public comments received. Waterfowl hunting creates substantial economic activity in certain sections of the state. This administrative regulation will allow waterfowl hunting to continue by establishing hunting seasons within federal frameworks.

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(b) Kentucky: The statewide impact of waterfowl hunting is minimal, but this administrative regulation does allow for the continuance of this activity.

(7) Assessment of alternative methods; reasons why alternatives were rejected: The alternative of not having a waterfowl season was rejected because waterfowl represent a renewable natural resource which affords recreational opportunities and generates economic activity throughout the commonwealth.

(8) Assessment of expected benefits: Continuation of waterfowl hunting and short- and long-term conservation of waterfowl resources are the primary benefits.

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: Regulated harvest of waterfowl ensures the continuation of this important component of the Commonwealth's biological diversity.

(b) State whether a detrimental effect on environmental and public health would result if not implemented: Yes

(c) If detrimental effect would result, explain detrimental effect: Inability to regulate waterfowl resource.

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

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

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: Not applicable.

(10) Any additional information or comments: None

(11) TIERING: Is tiering applied? Tiering was used to apply different season dates and harvest limits to various regions of the state. This was done to maximize hunter opportunity while conserving waterfowl resources.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 50 CFR Parts 20 and 21, Federal Register, Vol. 62, No 189, Tuesday, September 30, 1997.

2. State compliance standards. State seasons and bag limits are within the federal frameworks.

3. Minimum or uniform standards contained in the federal mandate. Ducks, coots and mergansers: Not more than a 60 day season with a six bird bag limit between the Saturday closest to October 1 and the Sunday closest to January 20. The state may be split into two zones with no more than two segments in each zone. The daily bag limit is 6 ducks and may not include more than 4 mallards (no more than 2 hen mallards), 1 black duck, 3 pintail, 2 wood ducks, 1 canvasback and 2 redheads. The possession limit shall be twice the daily bag. The coot daily bag shall be 15 with the possession limit being 30. The merganser limit shall be 5 daily (only 1 may be a hooded merganser) and the possession limit being twice the daily bag. Both the coot and merganser bag shall be in addition to the duck limit.

Geese: The season for light geese (snow geese) may extend for 107 days and the season for white-fronted geese may extend for 70 days. Season framework for light geese is between the Saturday nearest October 1 and March 10. The season framework for white-fronted geese is between the Saturday nearest October 1 and January 31.

The Canada goose season in the Western Goose Zone season may extend for 66 days (81 days in Fulton County) between October 1 and January 31 (except February 15 in Fulton County), or until the harvest of 16,500 birds is taken, whichever occurs first.

Pennyroyal/Coalfield Zone Canada goose season may extend for 35 days with a daily bag limit of 2 Canada geese.

The Canada goose season in the remainder of the state may extend for 50 days with a daily bag limit of 2 Canada geese.

The daily bag limit shall include no more than 10 snow geese, 2 Canada geese, 2 white-fronted geese and 2 brant. Possession limit is twice the daily bag limit.

Shooting hours shall be one-half hour before sunrise until sunset daily for all species.

Falconry season for migratory birds mentioned above shall fall between September 1 and March 10 and shall not exceed 107 days. Daily bag and possession limits shall not exceed 3 birds daily or 6 in possession, singly or in the aggregate of species. Hunting hours shall be the same as for firearms hunting.

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. Seasons for light geese are shorter due to the paucity of birds wintering in Kentucky during the early parts of the framework dates. Exerting hunting pressure on so few birds could jeopardize long-term bird use in Kentucky.

The Ballard Wildlife Management Area season is shorter than the Western Goose Zone so that controlled hunts will not jeopardize goose and duck use. Scheduled resting periods during the framework is a good means of enhancing historic use patterns. Other wildlife management area season dates and shooting hours were adjusted to optimizing public use within sound waterfowl conservation practices.

STATEMENT OF EMERGENCY

301 KAR 2:222E

Waterfowl hunting season frameworks are established annually by the United States Fish and Wildlife Service. Under federal law, states which wish to establish waterfowl hunting seasons must do so within these federal frameworks. Development of the federal regulations involves consideration of harvest and population data, coordination with state wildlife agencies, and public involvement. Consequently, federal migratory bird hunting regulations are promulgated less than six (6) weeks before the opening dates of the hunting season. An ordinary administrative regulation cannot be adopted in the short time between final promulgation of federal regulations and the scheduled opening of state waterfowl hunting seasons, necessitating the promulgation of an emergency administrative regulation. This emergency administrative regulation will be replaced by an ordinary administrative regulation.

PAUL E. PATTON, Governor

C. THOMAS BENNETT, Commissioner

TOURISM DEVELOPMENT CABINET Department of Fish and Wildlife Resources

301 KAR 2:222E. Waterfowl hunting requirements.

RELATES TO: KRS 150.010(40), 150.025(1), 150.305(1), 150.330, 150.340(1), (3), 150.600(1), 150.990, 50 [59] CFR 20, 21
STATUTORY AUTHORITY: KRS 150.025(1)(a), (b), 150.340(1), (2), (3), 150.600(1), 50 CFR 20, 21

EFFECTIVE: October 15, 1997

NECESSITY, FUNCTION, AND CONFORMITY: KRS 150.025(1) and 150.600(1) authorize the department to establish statewide waterfowl hunting requirements and to specify seasons and other requirements on wildlife management areas. Selected wildlife management areas have shorter seasons or more restrictive shooting hours than allowed by federal law to optimize public use within sound waterfowl conservation practices.

Section 1. Definitions. (1) "Blind" means:

(a) A concealing enclosure.

(b) A pit.

(c) A boat.

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(2) "Party" means:

- (a) A person hunting alone; or
- (b) From two (2) to four (4) persons who share a blind.

(3) "Permanent blind" means a blind left in place more than twenty-four (24) hours.

(4) "Statewide waterfowl seasons" means the provisions of this administrative regulation and of 301 KAR 2:221.

(5) "Waterfowl" is defined by KRS 150.010(40).

Section 2. A waterfowl hunter shall not use or carry a shotgun shell:

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

(2) Containing shot:

(a) Made of lead; [~~Shotgun shells containing:~~

(a) ~~Lead shot; or~~

(b) [~~Shot~~] Not approved by the U.S. Fish and Wildlife Service for waterfowl hunting; or

(c) [~~:~~

(2) ~~Shot~~] Larger than size "T."

(3) ~~Shotshells longer than three and one-half (3-1/2) inches.]~~

Section 3. [~~Requirements for Waterfowl Hunters~~] In the Ballard Reporting Area, as described in 301 KAR 2:224:

(1) A waterfowl hunter shall:

(a) [~~Shall~~] Hunt from a blind unless hunting in flooded, standing timber.

(b) [~~Shall~~] Not hunt from or establish a blind:

- 1. Within 100 yards of another blind; or
- 2. Within fifty (50) yards of a property line.

(c) [~~Shall~~] Not possess more than one (1) shotgun while in a blind.

(2) More than five (5) persons shall not occupy a blind.

(3) The requirements of subsection (1) of this section shall not apply after Canada goose season closes. [~~during the February 15-March 10 portion of the snow goose season.~~]

Section 4. [~~Blind Restrictions on Wildlife Management Areas.~~] (1) Except as specified in this section or in Section 5 of this administrative regulation, on wildlife management areas:

(a) A waterfowl hunter shall not establish or hunt from:

- 1. A permanent blind.
- 2. A blind within 200 yards of:
 - a. Another blind; or
 - b. A waterfowl refuge.

(b) A person shall not hunt in designated recreation areas or access points.

(c) More than four (4) persons shall not occupy a blind.

(d) A hunter shall remove decoys and personal effects from the wildlife management area daily.

(2) A person wishing to establish permanent blinds on Barkley Lake, Barren River Lake, Buckhorn Lake, Green River Lake, Nolin River Lake, Paintsville Lake, Rough River Lake and Taylorsville Lake Wildlife Management Areas:

(a) Shall first obtain a permit from the U. S. Army Corps of Engineers.

(b) May designate one (1) other person as a partner.

(c) Shall participate in a drawing for blind permits on the Barkley, Barren, Green, Paintsville, and Taylorsville areas.

(d) Shall present a valid hunting license at the time of the drawing.

(e) Shall not hold more than one (1) permit per area.

(3) The holder of a blind permit shall:

(a) [~~Shall~~] Construct his blind before November 20 or forfeit the permit.

(b) [~~Shall~~] Not lock a blind [blinds].

(c) Unless an extension of time is granted, [~~shall~~] remove his blind within thirty (30) days of the close of waterfowl season or be ineligible

for a permit the following year.

(4) A blind not occupied by the permit holder one-half (1/2) hour before sunrise shall be available to other hunters on a first-come, first-serve basis.

(5) Blind restrictions specified in this section shall not apply to falconers when gun or archery seasons are not open.

Section 5. On wildlife management areas; [Exceptions for Wildlife Management Areas:]

(1)(a) Statewide waterfowl seasons shall apply unless otherwise stated in this section.

(b) If specific hunting dates are given in this section, a person shall not hunt waterfowl except on those dates.

(2) A person shall not:

(a) Hunt on areas or portions of areas marked by signs as closed to hunting;

(b) Enter an area or a portion of an area marked by signs as closed to public access; or

(c) Hunt a species on an area or a portion of an area marked by signs as closed to hunting for that species.

(3) Wildlife management areas in Ballard County.

(a) On the wildlife management areas listing in this subsection:

1. A person shall not:

a. Have in his possession more than fifteen (15) shotgun shells while waterfowl hunting; or

b. Hunt past 12 noon;

2. At least one (1) person in a blind shall be eighteen (18) years old or older.

(b) Ballard Wildlife Management Area:

1. Ducks, coots and mergansers season dates shall be:

a. December 9 through January 17 or until the Ballard Reporting Area goose quota is reached.

b. During waterfowl hunts occurring before October 15.

2. Goose season dates shall be December 9 through January 20 or until the Ballard Reporting Area quota is reached.

3. A person shall not hunt waterfowl on Sundays, Mondays, Christmas Day or New Year's Day.

4. A waterfowl hunter shall:

a. Apply in advance as stipulated in Section 6 of this administrative regulation.

b. Case his gun while using department-supplied transportation to and from blinds.

c. Be accompanied by an adult if under eighteen (18) years old.

d. Not hunt waterfowl on the Ohio River from fifty (50) yards upstream from Dam 53 to fifty (50) yards downstream from the southern border of the Ballard Wildlife Management Area from October 15 through March 15.

(c) Barlow Bottoms Wildlife Management Area:

1. A person shall:

a. Not hunt Mondays or Tuesdays;

b. During Canada goose season, check in and out daily at the designated check station.

2. Department blind assignments shall be made as stipulated in Section 6 of this administrative regulation.

3. When hunting from blinds assigned by the department:

a. At least one (1) person in the blind shall be eighteen (18) years old or older.

b. The blind of a person who has not checked in by 5 a.m. shall be available to other hunters on a first-come, first-served basis.

(d) In addition to the requirements of paragraph (c) of this subsection, on:

1. Lower Bottoms Public Waterfowl Hunting Area a person shall not:

a. Hunt waterfowl except from permanent department blinds.

b. Except as authorized by the department, be on the area after 1 p.m. during waterfowl seasons.

c. During Canada goose seasons, hunt waterfowl except from a

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blind assigned by the department.

2. Peal Public Hunt Lakes:

a. More than seven (7) parties shall not hunt at the same time on:

(i) Buck Lake; or

(ii) Flat Lake.

b. More than four (4) parties shall not hunt at the same time on

Fish Lake.

c. More than three (3) parties shall not hunt at the same time on:

(i) First Lake; or

(ii) Second Lake.

3. Swan Lake Unit, a person shall not hunt:

a. Ducks, coots, mergansers or geese other than Canada geese unless:

(i) The season for these species is open; and

(ii) The season for Canada geese is also open.

b. Except from a blind assigned by the department. [Seasons and hunting requirements for the Ballard Wildlife Management Area shall be as stipulated in 301 KAR 2:221:

(b) Barlow Bottoms Wildlife Management Area:

1. A person shall:

a. Not hunt waterfowl after 12 noon;

b. Not possess more than fifteen (15) shotgun shells while waterfowl hunting;

c. Not hunt Mondays through Wednesdays;

d. During Canada goose season, check in and out daily at the designated check station.

2. When hunting from blinds assigned by the department as stipulated in Section 6 of this administrative regulation:

a. At least one (1) person in the blind shall be eighteen (18) years old or older.

b. The blind of a person who has not checked in by 5 a.m. shall be available to other hunters on a first come, first served basis.

(c) Lower Bottoms Public Waterfowl Hunting Area. In addition to the requirements of paragraph (b) of this subsection:

1. A person shall not:

a. Hunt waterfowl except from permanent department blinds.

b. Except as authorized by the department, be on the area after 1 p.m. during waterfowl seasons.

2. During Canada goose seasons, permanent department blinds shall be allocated by advance application as specified in Section 6 of this administrative regulation.

(d) Peal Public Hunt Lakes. In addition to the requirements of paragraph (b) of this subsection:

1. More than seven (7) parties shall not hunt at the same time on:

a. Buck Lake; or

b. Flat Lake.

2. More than four (4) parties shall not hunt at the same time on

Fish Lake.

3. More than three (3) parties shall not hunt at the same time on:

a. First Lake; or

b. Second Lake.

(e) Swan Lake Unit. In addition to the requirements of paragraph (b) of this subsection:

1. A person shall not hunt ducks, coots, mergansers or geese other than Canada geese unless:

a. The season for these species is open; and

b. The season for Canada geese is also open.

2. A waterfowl hunter shall use the blind assigned by the department as stipulated in Section 6 of this administrative regulation:]

(4) Barkley Lake Wildlife Management Area.

(a) Permanent blinds may be used as specified in Section 4 of this administrative regulation.

(b) A person shall establish permanent blinds within ten (10) yards of his assigned and numbered blind marker within:

1. An area bounded by the mouth of Donaldson Creek, the east side of the Cumberland River Channel and the boat ramp at Linton.

2. An area bounded by the Pryor's Creek Light, the west side of

the Cumberland River Channel, Land Between the Lake Road 204 and river mile 73.5.

(c) The following refuge areas are closed to the public:

1. From November 1 through February 15 within an area west of the main river channel between river mile 51 (Hayes Landing Light) and river mile 57.3 (Crooked Creek Light);

a. Including the row of islands on the west side of the main river channel; and

b. Not including Taylor Bay and Jake Fork Bay.

2. From November 1 through March 15 within Honker Bay and Fulton Bay as marked by buoys and signs.

(d) From October 15 through March 15, a person shall not hunt:

1. Within 200 yards of; or

2. Within the area defined by the levee between river mile 68.4 and river mile 70.4.

(5) Barren River Lake Wildlife Management Area. Permanent blinds may be used as specified in Section 4 of this administrative regulation.

(6) Buckhorn Lake Wildlife Management Area. Permanent blinds may be used as specified in Section 4 of this administrative regulation.

(7) Cane Creek Wildlife Management Area shall be closed to goose [waterfowl] hunting.

(8) Central Kentucky Wildlife Management Area. A person shall not hunt waterfowl from October 15 through January 15.

(9) Cumberland Lake Wildlife Management Area. The following sections are closed to the public from October 15 through March 15:

(a) Wesley Bend, the area bounded by Fishing Creek, Beech Grove Road and Fishing Creek Road.

(b) Yellowhole, the area bounded by Fishing Creek Road and Hickory Nut Road.

(10) [(9)] Cyprus-AMEX Wildlife Management Area shall be closed to waterfowl hunting.

(11) [(10)] Grayson Lake Wildlife Management Area. A person shall not hunt waterfowl:

(a) Within the no wake zone at the dam site marina;

(b) From the shores of Camp Webb;

(c) From the shores of the state park; or

(d) On Deer Creek Fork of Grayson Lake.

(12) [(11)] Green River Lake Wildlife Management Area.

(a) Permanent blinds may be used as specified in Section 4 of this administrative regulation.

(b) Shooting hours shall be [:] one-half (1/2) hour before sunrise until 2 p.m.

[(12)] Higginson-Henry Wildlife Management Area. Portions marked by signs are closed to the public.]

(13) Kaler Bottoms Wildlife Management Area. Shooting hours: one-half (1/2) hour before sunrise until 2 p.m.

(14) Land Between the Lakes.

(a) The following portions are closed to the public from November 1 through March 15:

1. Long Creek Pond.

2. The eastern one-third (1/3) of Smith Bay.

3. The eastern two-thirds (2/3) of Duncan Bay.

(b) The following portions are closed to waterfowl hunting:

1. The Environmental Education Center.

2. Energy Lake.

(c) A person shall possess an annual Land Between the Lakes Hunting Permit when hunting waterfowl:

1. Inland from the water's edge of Kentucky Lake or Barkley Lake; or

2. From boats over flooded portions of Land Between the Lakes when lake levels are above elevation 359.

(d) A person shall not hunt waterfowl on inland areas during quota deer hunts.

(e) A person shall not establish or use permanent blinds:

1. On inland areas; or

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2. Along the Kentucky Lake shoreline of Land Between the Lakes.

(f) A waterfowl hunter shall remove decoys and personal effects daily.

~~(15) [Mill Creek Wildlife Management Area shall be closed to waterfowl hunting.]~~

~~(16) [Nolin River Lake Wildlife Management Area. Permanent blinds may be used as specified in Section 4 of this administrative regulation.]~~

~~(16) [(17)] Obion Creek Wildlife Management Area. Shooting hours are one-half (1/2) hour before sunrise until 2 p.m.~~

~~(17) [(18)] Ohio River Waterfowl Refuge.~~

(a) A person shall not hunt from October 15 through March 15 on the Kentucky portion of the Ohio River from Smithland Lock and Dam upstream to a powerline crossing at approximately river mile 911.5.

(b) Stewart Island shall be closed to the public from October 15 through March 15, except for quota deer hunting.

~~(18) [(19)] Peabody Wildlife Management Area.~~

(a) Shooting hours: one-half (1/2) hour before sunrise until 2 p.m.

(b) The following portions, as posted by signs, are closed to the public from October 15 through March 15:

1. Gibraltar Mine, as bounded by Rockport Road, the Western Kentucky Parkway, Pond Creek and the P&M Haul Road.

2. Sinclair Mine, as bounded by railroad tracks, the haul road and posted signs.

3. Homestead, as bounded by the haul road and the Green River.

~~(19) [(20)] Pioneer Weapons Wildlife Management Area. A waterfowl hunter:~~

(a) ~~[A waterfowl hunter]~~ May use a breech-loading shotgun along the shoreline of Cave Run Lake.

(b) ~~Shall not use a breech-loading firearm [A waterfowl hunter shall use a muzzle-loading shotgun]~~ elsewhere on the area.

~~[(21) Redbird Wildlife Management Area shall be closed to waterfowl hunting.]~~

~~(20) [(22)] The main block of Robinson Forest Wildlife Management Area shall be closed to waterfowl hunting.~~

~~(21) [(23)] Sloughs Wildlife Management Area.~~

(a) Shooting hours, one-half (1/2) hour before sunrise until 2 p.m.

(b) On the Grassy-Pond Powells Lake Unit, a waterfowl hunter:

1. Shall use one (1) of the permanent blinds provided by the department.

2. Shall remove decoys and personal effects from blinds or the vicinity of blinds daily.

(c) On the Jenny Hole-Highlands Creek Unit, a waterfowl hunter:

1. Shall not establish or hunt from a blind closer than 200 yards from another hunting party.

2. Shall remove decoys and personal effects from blinds or the vicinity of blinds daily.

(d) If the Ohio River reaches a level that requires boat access, a waterfowl hunter:

1. May hunt from a boat without regard to department blinds.

2. Shall not hunt closer than 200 yards from another boat.

(e) A waterfowl hunter on the Crenshaw and Duncan Tracts of the Sauerheber Unit:

1. Shall hunt from the blind assigned by the department through a drawing as stipulated in Section 6 of this administrative regulation.

2. May occupy a blind not claimed by the permittee by the opening of shooting hours.

3. Shall not have more than fifteen (15) shotgun shells in his possession.

4. Shall be accompanied by an adult if under eighteen (18) years of age.

(f) The Crenshaw and Duncan tracts shall be closed to hunting except waterfowl from October 15 through March 15.

(g) The remainder of the Sauerheber Unit shall be closed to the public from October 15 through March 15.

~~(22) [(24)] Taylorsville Lake Wildlife Management Area.~~

(a) Permanent blinds may be used as specified in Section 4 of

this administrative regulation.

(b) The portion east of Van Buren Boat Ramp as marked by signs shall be closed to the public from the Monday following the scheduled quota deer hunt through the last day of February.

~~(23) [(25)] Westvaco Wildlife Management Area.~~

(a) Shooting hours, one-half (1/2) hour before sunrise until 2 p.m.

(b) The portion south of the Westvaco Road as posted by signs shall be closed to the public from November 1 through March 15.

(c) A person shall obtain a Westvaco Permit before hunting.

~~(24) [(26)] White City Wildlife Management Area. Shooting hours shall be from one-half (1/2) hour before sunrise until 2 p.m.~~

~~(25) [(27)] Yellowbank Wildlife Management Area. The area designated by signs and painted boundary markers shall be closed to the public from October 15 through March 15.~~

Section 6. ~~[Applying for Waterfowl Hunts:]~~ (1) A person wishing to apply to hunt waterfowl on Ballard, Swan Lake or the Sauerheber unit of Sloughs wildlife management areas shall:

(a) Apply on forms provided by the department.

(b) Submit completed application forms before the deadline date on the form.

(2) A form which are not completed according to the instructions on the form shall be disqualified from the drawing.

(3) A person shall not apply more than one (1) time for each hunt.

(4) Each hunter drawn may bring up to three (3) additional hunters.

(5) The following application forms are incorporated by reference. They may be obtained from or examined at the Department of Fish and Wildlife Resources, #1 Game Farm Road, Frankfort, Kentucky 40601, from 8 a.m. until 4:30 p.m. eastern time during business days.

(a) Sloughs Wildlife Management Area Waterfowl Hunting Application, August, ~~1997~~ ~~[(1995)]~~.

(b) Ballard Wildlife Management Area Goose Hunt Application, August, ~~1997~~ ~~[(1995)]~~.

(c) Application for Lower Bottoms/Swan Lake Waterfowl Blind Drawings in Ballard County, August, ~~1997~~ ~~[(1996)]~~.

C. THOMAS BENNETT, Commissioner

ANN R. LATTA, Secretary

MIKE BOATWRIGHT, Chairman

DOUGLAS SCOTT PORTER, Assistant Attorney General

APPROVED BY AGENCY: August 21, 1997

FILED WITH LRC: October 15, 1997 at 2 p.m.

REGULATORY IMPACT ANALYSIS

Contact Person: John Wilson

(1) Type and number of entities affected: Approximately 14,000 persons hunt waterfowl annually in Kentucky.

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

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

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: No impacts are anticipated.

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

1. First year following implementation: Waterfowl hunters must purchase licenses as well as state and federal waterfowl stamps. This is a continuing requirement that will impose no additional requirements.

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

(3) Effects on the promulgating administrative body:

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(a) Direct and indirect costs or savings:

1. First year: No new direct or indirect costs or savings will be incurred.

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

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements: No additional reporting or paperwork requirements.

(4) Assessment of anticipated effect on state and local revenues: No increase or decrease on state or local revenues is anticipated.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Revenue from the sale of hunting and fishing licenses and from the Federal Aid to Wildlife Restoration will be used to implement this administrative regulation.

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

(a) Geographical area in which administrative regulation will be implemented: No public comments received. Waterfowl hunting creates substantial economic activity in certain sections of the state. This administrative regulation will allow waterfowl hunting to continue by establishing hunting seasons within federal frameworks.

(b) Kentucky: The statewide impact of waterfowl hunting is minimal, but this administrative regulation does allow for the continuance of this activity.

(7) Assessment of alternative methods; reasons why alternatives were rejected: The alternative of not having a waterfowl season was rejected because waterfowl represent a renewable natural resource which affords recreational opportunities and generates economic activity throughout the commonwealth.

(8) Assessment of expected benefits: Continuation of waterfowl hunting and short- and long-term conservation of waterfowl resources are the primary benefits.

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: Regulated harvest of waterfowl ensures the continuation of this important component of the Commonwealth's biological diversity.

(b) State whether a detrimental effect on environmental and public health would result if not implemented: Yes

(c) If detrimental effect would result, explain detrimental effect: Inability to regulate waterfowl resource.

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

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

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: Not applicable.

(10) Any additional information or comments: None

(11) TIERING: Is tiering applied? Tiering was used to apply different season dates and other specialized hunting requirements to various wildlife areas across the state. This was done to maximize hunter opportunity while conserving waterfowl resources.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 50 CFR Parts 20 and 21, Federal Register, Vol. 62, No 189, Tuesday, September 30, 1997.

2. State compliance standards. State seasons and bag limits are within the federal frameworks.

3. Minimum or uniform standards contained in the federal mandate. Ducks, coots and mergansers: Not more than a 60 day season with a six bird bag limit between the Saturday closest to October 1 and the Sunday closest to January 20. The state may be split into two zones with no more than two segments in each zone. The daily bag limit is 6 ducks and may not include more than 4 mallards (no more than 2 hen mallards), 1 black duck, 3 pintail, 2 wood ducks, 1 canvasback and 2 redheads. The possession limit shall be twice the daily bag. The coot daily bag shall be 15 with the

possession limit being 30. The merganser limit shall be 5 daily (only 1 may be a hooded merganser) and the possession limit being twice the daily bag. Both the coot and merganser bag shall be in addition to the duck limit.

Geese: The season for light geese (snow geese) may extend for 107 days and the season for white-fronted geese may extend for 70 days. Season framework for light geese is between the Saturday nearest October 1 and March 10. The season framework for white-fronted geese is between the Saturday nearest October 1 and January 31.

The Canada goose season in the Western Goose Zone season may extend for 66 days (81 days in Fulton County) between October 1 and January 31 (except February 15 in Fulton County), or until the harvest of 16,500 birds is taken, whichever occurs first.

Pennyroyal/Coalfield Zone Canada goose season may extend for 35 days with a daily bag limit of 2 Canada geese.

The Canada goose season in the remainder of the state may extend for 50 days with a daily bag limit of 2 Canada geese.

The daily bag limit shall include no more than 10 snow geese, 2 Canada geese, 2 white-fronted geese and 2 brant. Possession limit is twice the daily bag limit.

Shooting hours shall be one-half hour before sunrise until sunset daily for all species.

Falconry season for migratory birds mentioned above shall fall between September 1 and March 10 and shall not exceed 107 days. Daily bag and possession limits shall not exceed 3 birds daily or 6 in possession, singly or in the aggregate of species. Hunting hours shall be the same as for firearms hunting.

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. Seasons for light geese are shorter due to the paucity of birds wintering in Kentucky during the early parts of the framework dates. Exerting hunting pressure on so few birds could jeopardize long-term bird use in Kentucky.

The Ballard Wildlife Management Area season is shorter than the Western Goose Zone so that controlled hunts will not jeopardize goose and duck use. Scheduled resting periods during the framework is a good means of enhancing historic use patterns. Other wildlife management area season dates and shooting hours were adjusted to optimizing public use within sound waterfowl conservation practices.

STATEMENT OF EMERGENCY 501 KAR 6:180E

In order to continue to operate the Department of Corrections in accordance with KRS Chapters 196 and 197, the department needs to implement this emergency administrative regulation. An ordinary administrative regulation will not suffice because the affected policies must be revised immediately to protect the safety and health of employees, inmates and the public, in regard to infectious diseases that presently exist in Kentucky prisons. This emergency administrative regulation shall be replaced by the ordinary administrative regulation in accordance with KRS Chapter 13A. The Notice of Intent for the ordinary administrative regulation is being filed with the Regulations Compiler at the same time the emergency administrative regulation is being filed.

PAUL E. PATTON, Governor
DOUG SAPP, Commissioner

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JUSTICE CABINET Kentucky Department of Corrections Division of Adult Institutions

APPROVED BY AGENCY: November 13, 1997
FILED WITH LRC: November 13, 1997 at 3 p.m.

REGULATORY IMPACT ANALYSIS

501 KAR 6:180E. Infectious diseases.

RELATES TO: KRS Chapters 196, 197, 439

STATUTORY AUTHORITY: KRS 196.035, 197.020, 197.055, 215.550.

EFFECTIVE: November 13, 1997

NECESSITY, FUNCTION AND CONFORMITY: KRS 196.035, 197.020, 197.055, and 215.550 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. This administrative regulation is promulgated in order to comply with the accreditation standards of the American Correctional Association. The purpose of this administrative regulation is to establish diagnostic procedures, treatment and preventive care for serious infectious diseases in order to protect the public, staff and inmates.

Section 1. Definitions. "Serious infectious disease" means any disease which poses a public health risk. This includes tuberculosis, HIV/AIDS, and hepatitis.

Section 2. Testing. (1) All inmates shall be tested for tuberculosis upon their admission to the Department of Corrections.

(2) All inmates shall submit to tuberculosis testing annually in their birth month.

(3) If it is determined that an inmate has been in a situation with a high risk of exposure to a serious infectious disease, the inmate shall submit to all tests which are deemed necessary for the diagnosis of any serious infectious disease.

(4) All inmates shall submit to all necessary diagnostic testing for serious infectious disease. The type and numbers of tests to be administered shall be determined by the appropriate medical staff. This shall include x-rays, skin tests, sputum and blood tests.

Section 3. Serious Infectious Diseases. (1) If an inmate is diagnosed with active tuberculosis the inmate shall submit to all examinations, testing and treatment determined necessary by the appropriate medical staff.

(2) If an inmate is diagnosed with a serious infectious disease, the inmate shall take all reasonable precautions to prevent the transmission of the serious infectious disease as instructed by the medical department, including the use of protective equipment and avoidance of high risk behavior.

(3) If an inmate is diagnosed with a serious infectious disease, the inmate shall be maintained in housing appropriate to control and reduce the risk of transmission of the serious infectious disease as long as medically necessary, or when required to control the high risk behavior of the inmate.

Section 4. Refusal or Interfering with Health Care. (1) If an inmate refuses the care that is deemed appropriate under this administrative regulation, he shall be subject to disciplinary action as a Category VI offense under CPP 15.2, "Offenses and Penalties" contained in 501 KAR 6:020.

(2) If an inmate creates a health hazard by conduct which may spread infectious diseases, he shall be subject to disciplinary action as a Category VI offense under CPP 15.2, "Offenses and Penalties" contained in 501 KAR 6:020.

Contact Person: Tamela Biggs, Staff Attorney

(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, 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: 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: Funds budgeted for this 1996 - 1998 biennium.

(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 area in which implemented and on Kentucky: None

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

(c) If detrimental effect would result, explain detrimental effect: N/A

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

(a) Necessity of proposed regulation if in conflict: N/A

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

(10) Any additional information or comments: None

(11) TIERING: Is tiering applied? No. Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it. Disparate treatment of any person or entity subject to this administrative regulation could raise questions of arbitrary action on the part of the agency. The "equal protection" and "due process" clauses of the Fourteenth Amendment of the U.S. Constitution may be implicated as well as Sections 2 and 3 of the Kentucky Constitution.

DOUG SAPP, Commissioner
STEVEN P. DURHAM, General Counsel
JACK T. DAMRON, Staff Attorney
TAMELA BIGGS, Staff Attorney

**STATEMENT OF EMERGENCY
806 KAR 6:100E**

In 1994, the Kentucky Department of Insurance received accreditation by the National Association of Insurance Commissioners (NAIC). The purpose of accreditation is to assure that financial examinations and statistics are reliable, uniform with other accredited states, and acceptable to the insurance industry and other insurance departments. In order to maintain accreditation status, the department must promulgate and implement specific model laws and regulations established by the NAIC. According to the NAIC, the accreditation status of the department could be in jeopardy if the department is unable to verify, prior to November 3, 1997, that the Actuarial Opinion and Memorandum Model Act has been promulgated. In order to meet the November 3, 1997, deadline established by the NAIC for the promulgation of the Actuarial Opinion and Memorandum regulation, an emergency administrative regulation is necessary. There is not a sufficient amount of time within which an ordinary administrative regulation may be promulgated. 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 October 24, 1997.

PAUL E. PATTON, Governor
LAURA M. DOUGLAS, Secretary
GEORGE NICHOLS III, Commissioner

**PUBLIC PROTECTION & REGULATION CABINET
Department of Insurance**

806 KAR 6:100E. Actuarial opinion and memorandum.

RELATES TO: KRS 304.6-171

STATUTORY AUTHORITY: KRS 304.2-110, 304.6-171

EFFECTIVE: October 24, 1997

NECESSITY, FUNCTION, AND CONFORMITY: KRS 304.6-171 requires every life insurance company doing business in this state to annually submit the opinion of a qualified actuary as to whether the reserves and related actuarial items held in support of the policies and contracts specified by the commissioner are computed appropriately. KRS 304.6-171 requires the commissioner to define, by administrative regulation, the specifics of the actuarial opinion and to broaden the scope of the opinion if necessary. This administrative regulation is necessary for the commissioner to determine whether each reserve and related actuarial item is computed appropriately, is based on an assumption which satisfies contractual provisions, is consistent with prior reported amounts, and complies with the applicable laws of this state.

Section 1. Definitions. (1) "Actuarial opinion" means the opinion of an appointed actuary regarding the adequacy of the reserves and related actuarial items using presently accepted actuarial standards.

(2) "Actuarial Standards Board" means the board established by the American Academy of Actuaries to develop and promulgate standards of actuarial practice.

(3) "Annual statement" means that statement required by KRS 304.2-205.

(4) "Appointed actuary" means a qualified actuary who is appointed or retained to prepare and provide the statement of actuarial opinion and supporting memorandum required by this administrative regulation; either directly or by the authority of the board of directors through an executive officer of the company.

(5) "Asset adequacy analysis" means an analysis that conforms to presently accepted actuarial standards, methods of analysis, and the standards established by this administrative regulation and which form the basis of the statement of actuarial opinion in accordance with Section 5 of this administrative regulation.

(6) "Commissioner" is defined by KRS 304.1-050.

(7) "Company" means a life insurance company, fraternal benefit society or reinsurer subject to the provisions of this administrative regulation.

(8) "Noninvestment grade bond" means a bond that is designated as a class 3, 4, 5, or 6 by the National Association of Insurance Commissioners Securities Valuation Office.

(9) "Qualified actuary" means any individual who:

(a) Is a member in good standing of the American Academy of Actuaries;

(b) Is qualified to sign a statement of actuarial opinion for a life and health insurance company annual statement in accordance with the qualification standards for actuaries established by the American Academy of Actuaries;

(c) Is familiar with the valuation requirements applicable to life and health insurance companies;

(d) Has not been found by the commissioner, or if so found has subsequently been reinstated as a qualified actuary, following appropriate notice and hearing to have:

1. Violated any provision of, or any obligation imposed by, any law in the course of his or her dealings as a qualified actuary;

2. Been found guilty of fraudulent or dishonest practices;

3. Demonstrated incompetency, lack of cooperation, or untrustworthiness to act as a qualified actuary;

4. Submitted to the commissioner during the past five (5) years, pursuant to this administrative regulation, an actuarial opinion or memorandum that the commissioner rejected because it did not meet a provision of this administrative regulation or presently accepted actuarial standards; or

5. Resigned or been removed as an actuary within the past five (5) years as a result of an act or omission indicated in any adverse report on examination or as a result of the failure to adhere to generally acceptable actuarial standards; and

(e) Has not failed to notify the commissioner of any action taken by any commissioner of any other state which action was based on a disqualification standard outlined in subsection 9, paragraph d of this Section.

(10) "Specified reserve" means an asset held in support of a reserve which is the subject for specific analysis.

Section 2. General Requirements. (1) The actuarial opinion shall:

(a) Be included on or attached to page 1 of the annual statement for each year beginning with the year in which this administrative regulation becomes effective;

(b) Be entitled "Statement of Actuarial Opinion";

(c) Be the statement of an appointed actuary setting forth an opinion relating to a reserve and related actuarial item held in support of a policy or contract;

(2) The commissioner may accept the statement of actuarial opinion filed by a foreign or alien such company with the insurance supervisory regulator of another state if the commissioner determines that the opinion meets the requirements applicable to a company domiciled in this state.

(3) The commissioner may grant an extension of the date for submission of the statement of actuarial opinion upon written request by the company.

(4) The company shall give the commissioner timely written notice:

(a) In the event of the appointment of an actuary which notice shall state:

1. The name of the appointed actuary;

2. The title of the appointed actuary;

3. If the actuary is a consulting actuary, the name of the firm;

4. The manner of appointment or retention by the company of each appointed actuary; and

5. That the person meets the requirements of a qualified actuary.

(b) In the event the actuary ceases to be appointed or retained as

an appointed actuary or to meet the requirements of a qualified actuary; and

(c) In the event that any person appointed or retained as an appointed actuary replaces a previously appointed actuary, which notice shall state the reason for replacement.

(5) The actuarial opinion shall set forth an opinion relating to each reserve and related actuarial item held in support of each policy and contract and be based on an asset adequacy analysis in accordance with Section 5 of this administrative regulation.

(6) Any company exempted pursuant to Section 3 of this administrative regulation from submitting a statement of actuarial opinion based on an asset adequacy analysis shall include on or attach to page 1 of the annual statement a statement of actuarial opinion rendered by an appointed actuary that does not include an asset adequacy analysis in accordance with Section 4 of this administrative regulation.

(7) If in the previous year a company provided a statement of actuarial opinion in accordance with Section 4 of this administrative regulation that does not include an asset adequacy analysis, and in the current year fails the exemption criteria of Section 3 of this administrative regulation to again provide an actuarial opinion that does not include an asset adequacy analysis, the statement of actuarial opinion in accordance with Section 5 of this administrative regulation which is based on an asset adequacy analysis shall not be required until August 1 following the date of the annual statement. In this instance, the company shall provide a statement of actuarial opinion in accordance with Section 4 noting the intent to subsequently provide a statement of actuarial opinion in accordance with Section 5 of this administrative regulation.

Section 3. Required Actuarial Opinion. (1) Every company doing business in this state shall annually submit the opinion of an appointed actuary as provided for by this administrative regulation.

(2) For the purposes of this administrative regulation, companies shall be classified as follows based on the admitted assets as of the end of the calendar year for which the actuarial opinion is applicable:

(a) Category A shall include a company whose admitted assets do not exceed \$20 million;

(b) Category B shall include a company whose admitted assets exceed \$20 million but do not exceed \$100 million;

(c) Category C shall include a company whose admitted assets exceed \$100 million but do not exceed \$500 million; and

(d) Category D shall include a company whose admitted assets exceed \$500 million.

(3) Any Category A company that, for any year beginning with the year in which this administrative regulation becomes effective, meets all of the following criteria shall be eligible for exemption from submission of a statement of actuarial opinion based on an asset adequacy analysis in accordance with Section 5 of this administrative regulation for the year in which the criteria are met. Each ratio in paragraphs (a), (b), and (c) of this subsection shall be calculated based on amounts as of the end of the calendar year for which the actuarial opinion is applicable.

(a) The ratio of the sum of capital and surplus to the sum of cash and invested assets is at least equal to one-tenth (.10);

(b) The ratio of the sum of each reserve and liability for each annuity and deposit to the total admitted assets is less than three-tenths (.30);

(c) The ratio of the book value of the noninvestment grade bonds to the sum of capital and surplus is less than five-tenths (.50); and

(d) With respect to priority status:

1. The Examiner Team for the National Association of Insurance Commissioners has not designated the company as a first priority company in any of the two (2) calendar years preceding the calendar year for which the actuarial opinion is applicable;

2. The Examiner Team for the National Association of Insurance Commissioners has not designated the company as a second priority

company in each of the two (2) calendar years preceding the calendar year for which the actuarial opinion is applicable; or

3. The company has resolved any first or second priority status established by the Examiner Team for the National Association of Insurance Commissioners to the satisfaction of the commissioner of the state of domicile and the commissioner has so notified the chair of the Life and Health Actuarial Task Force and the Staff and Support Office of the National Association of Insurance Commissioners.

(4) Any Category B company that, for any year beginning with the year in which this administrative regulation becomes effective, meets all of the following criteria shall be eligible for exemption from submission of a statement of actuarial opinion based on an asset adequacy analysis in accordance with Section 5 of this administrative regulation for the year in which the criteria are met. Each ratio in paragraphs (a), (b), and (c) of this subsection shall be calculated based on amounts as of the end of the calendar year for which the actuarial opinion is applicable.

(a) The ratio of the sum of capital and surplus to the sum of cash and invested assets is at least equal to .07;

(b) The ratio of the sum of each reserve and liability for each annuity and deposit to the total admitted assets is less than four-tenths (.40);

(c) The ratio of the book value of the noninvestment grade bonds to the sum of capital and surplus is less than five-tenths (.50); and

(d) With respect to priority status:

1. The Examiner Team for the National Association of Insurance Commissioners has not designated the company as a first priority company in any of the two (2) calendar years preceding the calendar year for which the actuarial opinion is applicable;

2. The Examiner Team for the National Association of Insurance Commissioners has not designated the company as a second priority company in each of the two (2) calendar years preceding the calendar year for which the actuarial opinion is applicable; or

3. The company has resolved any first or second priority status established by the Examiner Team for the National Association of Insurance Commissioners to the satisfaction of the commissioner of the state of domicile and the commissioner has so notified the chair of the Life and Health Actuarial Task Force and the Staff and Support Office of the National Association of Insurance Commissioners.

(5) Any Category A or Category B company that meets all of the criteria set forth in subsection (3) or (4) of this section is exempted from submission of a statement of actuarial opinion in accordance with Section 5 of this administrative regulation unless the commissioner specifically indicates to the company that the exemption is not to be taken.

(6) Any Category A or Category B company that, for any year beginning with the year in which this administrative regulation becomes effective, is not exempt under subsection (3) or (4) of this section shall be required to submit a statement of actuarial opinion in accordance with Section 5 of this administrative regulation for the year for which it is not exempt.

(7) Any Category C company that, after submitting an opinion in accordance with Section 5 of this administrative regulation, meets all of the following criteria shall not be required, unless required in accordance with subsection (8) of this section, to submit a statement of actuarial opinion in accordance with Section 5 of this administrative regulation more frequently than every third year. Any Category C company which fails to meet all of the following criteria for any year shall submit a statement of actuarial opinion in accordance with Section 5 of this administrative regulation for that year. The ratios in paragraphs (a), (b), and (c) of this subsection shall be calculated based on amounts as of the end of the calendar year for which the actuarial opinion is applicable.

(a) The ratio of the sum of capital and surplus to the sum of cash and invested assets is at least equal to .05;

(b) The ratio of the sum of the reserves and liabilities for annuities and deposits to the total admitted assets is less than five-tenths (.50);

(c) The ratio of the book value of the noninvestment grade bonds to the sum of the capital and surplus is less than five-tenths (.50); and
(d) With respect to priority status:

1. The Examiner Team for the National Association of Insurance Commissioners has not designated the company as a first priority company in any of the two (2) calendar years preceding the calendar year for which the actuarial opinion is applicable;

2. The Examiner Team for the National Association of Insurance Commissioners has not designated the company as a second priority company in each of the two (2) calendar years preceding the calendar year for which the actuarial opinion is applicable; or

3. The company has resolved the first or second priority status established by the Examiner Team for the National Association of Insurance Commissioners to the satisfaction of the commissioner of the state of domicile and the commissioner has so notified the chair of the Life and Health Actuarial Task Force and the Staff and Support Office of the National Association of Insurance Commissioners.

(8) Any company which is not required by this section to submit a statement of actuarial opinion in accordance with Section 5 of this administrative regulation for any year shall submit a statement of actuarial opinion in accordance with Section 4 of this administrative regulation for that year.

(9) Every Category D company shall submit a statement of actuarial opinion in accordance with Section 5 of this administrative regulation for each year beginning with the year in which this administrative regulation becomes effective.

Section 4. Statement of Actuarial Opinion Not Including an Asset Adequacy Analysis. (1) The statement of actuarial opinion required by this section shall contain an opening paragraph which shall:

- (a) Identify the name and title of the appointed actuary;
- (b) Identify the name of the consulting firm, if applicable;
- (c) Identify the name of the company;
- (d) Identify each qualification of the appointed actuary; and
- (e) Identify the manner in which the actuary was appointed or retained to render the actuarial opinion.

(2) The statement of actuarial opinion required by this section shall contain a regulatory authority paragraph which shall:

(a) State that the company is exempt pursuant to this administrative regulation from submitting a statement of actuarial opinion based on an asset adequacy analysis; and

(b) State that the opinion, which is not based on an asset adequacy analysis, is rendered in accordance with Section 4 of this administrative regulation;

(3) The statement of actuarial opinion required by this section shall contain a scope paragraph which shall:

- (a) Identify the subject on which the opinion is to be expressed;
- (b) Describe the scope of the work of the appointed actuary;
- (c) List each item and amount with respect to which the appointed actuary is expressing an opinion including:

1. The aggregate reserve and deposit fund for each policy and contract for each of the following statement items:

- a. Life Insurance;
- b. Annuity;
- c. Supplementary contract involving life contingencies;
- d. Accidental death benefit;
- e. Disability - active;
- f. Disability - disabled; and
- g. Miscellaneous.

2. The aggregate reserve and deposit fund for each policy and contract for each of the following statement items:

- a. Active life reserve; and
- b. Claim reserve.

3. Each deposit fund, premium, dividend and coupon accumulation, and supplementary contract not involving a life contingency for each of the following statement items:

- a. Premium and other deposit fund;

b. Policyholder premium;

c. Guaranteed interest contract;

d. Other contract deposit fund;

e. Supplementary contract not involving a life contingency; and
f. Dividend and coupon accumulation.

4. Policy and contract claims - liability end of current year for each of the following statement items:

- a. Life;
- b. Health; and
- c. Separate account.

(d) Complete and submit, with the actuarial opinion required by this section, Form 1000 - "Asset Adequacy Tested Amounts (October 1997 edition)" for each of the statement items listed pursuant to paragraph (c) of this subsection;

(e) State whether or not the appointed actuary has examined the underlying records;

(f) If the appointed actuary has not examined the underlying records, state that the appointed actuary has relied upon a listing and summary of each policy in force prepared by the company or a third party and certified as such;

(4) The statement of actuarial opinion required by this section shall contain an opinion paragraph which shall:

(a) Express the opinion of the appointed actuary;

(b) State that the amount carried in the balance sheet:

1. Is computed in accordance with those presently accepted actuarial standards which specifically relate to the opinion required under this section:

2. Is based on an actuarial assumption which produces a reserve at least as great as those required by any contract provision as to reserve basis and method, and are in accordance with all other contract provisions;

3. Meet the requirements of the insurance law and administrative regulations of the state of domicile and are at least as great as the minimum aggregate amounts required by the state in which this statement is filed;

4. Are computed on the basis of an assumption consistent with those used in computing the corresponding items in the annual statement of the preceding year-end with any exceptions as noted; and

5. Include a provision for each actuarial reserve and related statement item.

(5) The statement of actuarial opinion required by this Section shall contain a concluding paragraph which shall:

(a) State that the opinion does not include an opinion regarding the adequacy of each reserve and related actuarial item when considered in light of each asset which supports them;

(b) Confirm and document the eligibility for the company to provide an opinion as provided by this section by stating that:

1. The ratio of the sum of capital and surplus to the sum of cash and invested assets is (insert specific amount), which is equal to or is in excess of the applicable criterion based on the admitted assets of the company.

2. The ratio of the sum of the reserves and liabilities for annuities and deposits to the total admitted assets is (insert amount), which is less than the applicable criteria based on the admitted assets of the company.

3. The ratio of the book value of the noninvestment grade bonds to the sum of capital and surplus is (insert amount), which is less than the applicable criteria of five-tenths (.50).

4. To the best of the knowledge of the appointed actuary, with respect to priority status;

a. The Examiner Team of the National Association of Insurance Commissioners has not designated the company as a first priority company in any of the two (2) calendar years preceding the calendar year for which the actuarial opinion is applicable;

b. The Examiner Team of the National Association of Insurance Commissioners has not designated the company as a second priority

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company in each of the two (2) calendar years preceding the calendar year for which the actuarial opinion is applicable; or

c. The company has resolved the first or second priority status established by the Examiner Team of the National Association of Insurance Commissioners to the satisfaction of the commissioner of the state of domicile; and

5. The best of the knowledge of the appointed actuary, there is not a specific request from any commissioner requiring an asset adequacy analysis opinion.

(d) Contain the signature, address, and telephone number of the appointed actuary.

(6) The statement of actuarial opinion shall describe any change in an actuarial assumption from that previously employed. A change in actuarial assumption shall not include the adoption for a new issue, a new claim, or other new liability of an actuarial assumption which differs from a corresponding assumption used for a prior new issue, new claim, or other new liability.

(7) If the appointed actuary is unable to form an opinion, the actuary shall refuse to issue a statement of actuarial opinion.

(8) If the opinion of the appointed actuary is adverse or qualified, the actuary shall issue an adverse or qualified actuarial opinion explicitly stating the reason for such opinion. This statement shall follow the scope paragraph and precede the opinion paragraph.

(9) If the appointed actuary does not express an opinion as to the accuracy and completeness of the listing and summary of each policy in force, there shall be attached to the opinion, the statement of a company officer or accounting firm who prepared such underlying data which shall:

(a) Contain the name and title of the officer;

(b) Contain the name and address of the company or accounting firm;

(c) Affirm that the listing and summary of each policy and contract in force were prepared for and submitted to the appointed actuary under the direction of the officer and are substantially accurate and complete; and

(d) Contain the signature and telephone number of the officer of the company or accounting firm.

(10) All statements required by this section to be included in the actuarial opinion shall contain language identical or substantially similar to the language set forth in the "Recommended Actuarial Opinion and Memorandum Statements (October 1997 edition)".

(11) Each actuarial opinion shall include a completed Form 1000 - "Asset Adequacy Tested Amounts (October 1997 edition)" outlining the scope of the opinion in accordance with subsection (3) of this section.

Section 5. Statement of Actuarial Opinion Based on an Asset Adequacy Analysis. (1) The statement of actuarial opinion required by this section shall contain an opening paragraph which shall:

(a) Identify the name and title of the appointed actuary;

(b) Identify the name of the consulting firm, if applicable;

(c) Identify the name of the company;

(d) Identify each qualification of the appointed actuary; and

(e) Identify the manner in which the actuary was appointed or retained to render the actuarial opinion;

(2) The statement of actuarial opinion required by this section shall contain a scope paragraph which shall:

(a) Identify each subject on which the opinion is to be expressed;

(b) Describe the scope of the work of the appointed actuary;

(c) Include a tabulation delineating each reserve and related actuarial item which has been analyzed for asset adequacy and the method of analysis; and

(d) Identify each reserve and related actuarial item covered by the opinion which has not been so analyzed;

(3) The statement of actuarial opinion required by this section shall contain a reliance paragraph which shall:

(a) Describe each area where the appointed actuary has deferred

to another expert in developing data, a procedure, or an assumption;

(b) Include a supporting statement from each expert to which the appointed actuary has deferred.

(c) State whether or not the appointed actuary has examined an underlying asset and liability record; and

(d) State whether or not the appointed actuary has relied upon a listing and summary of any policy in force or asset record prepared by the company or a third party;

(4) The statement of actuarial opinion required by this section shall contain an opinion paragraph which shall:

(a) Express the opinion of the appointed actuary with respect to the adequacy of each supporting asset to each mature liability;

(b) State that each reserve and related actuarial value concerning each statement item:

1. Is computed in accordance with presently accepted actuarial standards consistently applied and are fairly stated, in accordance with sound actuarial principles;

2. Is based on an actuarial assumption which produces a reserve at least as great as those called for in any contract provision as to reserve basis and method, and are in accordance with each other contract provision;

3. Meet the requirements of the insurance laws and regulations of the state of domicile and are at least as great as the minimum aggregate amount required by the state in which this statement is filed;

4. Is computed on the basis of an assumption consistent with those used in computing each corresponding item in the annual statement of the preceding year-end with any exception noted; and

5. Include provision for each actuarial reserve and related statement item.

(c) State that each reserve and related item makes adequate provision for the anticipated cash flow required by the contractual obligation and related expense of the company;

(d) State that each actuarial method, consideration and analysis used in forming the actuarial opinion conforms to the generally accepted actuarial standards of practice;

(e) State whether or not there has been a material change from the applicable date of the annual statement to the date of the rendering of the actuarial opinion which should be considered in reviewing the opinion;

(f) Describe any material change to which paragraph (e) of this subsection refers;

(g) State that the impact of an unanticipated event subsequent to the date of the actuarial opinion is beyond the scope of the opinion; and

(h) Contain the signature, address, and telephone number of the appointed actuary.

(5) A change in an actuarial assumption shall not include the adoption for a new issue, new claim, or other new liability of an actuarial assumption which differs from a corresponding assumption used for a prior new issue, new claim, or other new liability.

(6) If the appointed actuary is unable to form an opinion, he shall refuse to issue a statement of actuarial opinion.

(7) If the opinion of the appointed actuary is adverse or qualified, the actuary shall issue an adverse or qualified actuarial opinion explicitly stating the reason for such opinion. This statement shall follow the scope paragraph and precede the opinion paragraph.

(8) If the appointed actuary does not express an opinion as to the accuracy and completeness of the listing and summary of each policy in force, there shall be attached to the opinion, the statement of a company officer or accounting firm who prepared such underlying data which shall:

(a) Contain the name and title of the officer;

(b) Contain the name and address of the company or accounting firm;

(c) Affirm that the listings and summaries of policies and contracts in force were prepared for and submitted to the appointed actuary

under the direction of the officer and are substantially accurate and complete; and

(d) Contain the signature and telephone number of the officer of the company or accounting firm.

(9) A company may include additional paragraphs:

(a) If the appointed actuary considers it necessary to state a qualification of the opinion of the actuary;

(b) If the appointed actuary must disclose the method of aggregation for a reserve for each different product or line of business for asset adequacy analysis;

(c) If the appointed actuary must disclose reliance upon any portion of the asset supporting the Asset Valuation Reserve, Interest Maintenance Reserve, or other mandatory or voluntary statement of reserve for asset adequacy analysis;

(d) If the appointed actuary must disclose an inconsistency in the method of analysis or basis of asset allocation used at the prior opinion date with that used for this opinion; or

(e) If the appointed actuary must disclose whether an additional reserve of the prior opinion date are released as of this opinion date, and the extent of the release.

(10) Any statement required by this section to be included in the actuarial opinion shall contain language identical or substantially similar to the language set forth in the "Recommended Actuarial Opinion and Memorandum Statements (October 1997 edition)".

Section 6. Description of Actuarial Memorandum Including an Asset Adequacy Analysis. (1) In accordance with KRS 304.6-171, the appointed actuary shall prepare a memorandum to the company which shall describe the actuarial analysis accomplished in support of the actuarial opinion which is based on an asset adequacy analysis pursuant to Section 5 of this administrative regulation;

(2) The memorandum shall:

(a) Be made available to the commissioner, upon request, for examination;

(b) Be returned to the company after an examination by the commissioner; and

(c) Not be considered a record of the insurance department or subject to automatic filing with the commissioner.

(3) The commissioner may designate a qualified actuary to review the actuarial opinion and prepare a supporting memorandum, which reasonable and necessary expense of the independent review shall be paid by the company but shall be directed and controlled by the commissioner, if:

(a) The commissioner requests a memorandum and no such memorandum exists; or

(b) The commissioner finds that the analysis described in the memorandum fails to meet the generally acceptable actuarial standards; or

(c) The commissioner finds that the analysis described in the memorandum fails to meet the standards of this administrative regulation.

(4) In preparing the memorandum, the appointed actuary may rely on, and include as a part of the actuarial memorandum, memoranda prepared and signed by another qualified actuary.

(5) If the appointed actuary relies on the memoranda of another qualified actuary pursuant to subsection (4) of this section, the appointed actuary shall state each subject matter upon which another expert opinion was relied.

(6) The reviewing actuary shall have the same status as an examiner for the purposes of obtaining data from the company and the work papers and documentation of the reviewing actuary shall be retained by the commissioner.

(7) Any information provided by the company to the reviewing actuary and included in the work papers shall be considered as material provided by the company to the commissioner and shall be kept confidential to the same extent as other material provided by the company to the commissioner pursuant to KRS 304.6-171.

(8) The reviewing actuary shall not be an employee of a consulting firm involved with the preparation of any prior memorandum or opinion for the insurer pursuant to this administrative regulation for any one of the current year or the preceding three (3) years.

(9) When an actuarial opinion based on an asset adequacy analysis in accordance with Section 5 of this administrative regulation is provided, the memorandum shall demonstrate that the analysis has been done in accordance with the standards for asset adequacy referred to in this administrative regulation.

(10) The actuarial memorandum referred to in this section shall specify:

(a) For reserves:

1. A product description including a market description, underwriting and any other aspect of a risk profile and the specific risk the appointed actuary deems significant;

2. Source of liability in force;

3. Reserve method and basis;

4. Investment reserves; and

5. Reinsurance agreement.

(b) For assets:

1. A portfolio description, including a risk profile disclosing the quality, distribution and each type of asset;

2. Each investment and disinvestment assumption;

3. Source of asset data;

4. Each asset valuation base.

(c) Analysis basis:

1. Methodology;

2. Rationale for inclusion or exclusion of a different block of business and how a pertinent risk was analyzed;

3. Rationale for degree of rigor in analyzing each different block of business;

4. Criteria for determining asset adequacy; and

5. Effect of federal income tax, reinsurance, and any other relevant factor.

(d) Summary of results; and

(e) Conclusion.

(11) The memorandum shall include a statement which indicates that the memorandum conforms to the generally acceptable actuarial standards of practice.

(12) Any statement required by this section to be included in the actuarial memorandum shall contain language identical or substantially similar to the language set forth in the "Recommended Actuarial Opinion and Memorandum Statements (October 1997 edition)".

Section 7. Additional Considerations for Analysis. (1) For the asset adequacy analysis for the statement of actuarial opinion provided in accordance with Section 5 of this administrative regulation, each reserve and asset may be aggregated by either of the following methods:

(a) Aggregate each reserve and related actuarial item, and, separately, each supporting asset, for each different product or line of business, before analyzing the adequacy of the combination of asset to mature the combination of each liability. The appointed actuary must be satisfied that each asset held in support of the reserve and related actuarial item so aggregated are managed in such a manner that the cash flow from each aggregated asset is available to help mature the liability from each block of business that has been aggregated.

(b) Aggregate the result of each asset adequacy analysis of one (1) or more products or lines of business, the reserve for which proves through analysis to be redundant, with the result of one (1) or more products or lines of business, the reserve for which proves through analysis to be deficient. The appointed actuary shall determine that the asset adequacy result for each product or line of business for which the result is so aggregated:

1. Is developed using a consistent economic scenario; or

2. Is subject to a mutually independent risk, i.e., the likelihood of

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events impacting the adequacy of the assets supporting the redundant reserves is completely unrelated to the likelihood of events impacting the adequacy of the assets supporting the deficient reserves.

(2) In the event of any aggregation, the actuary shall disclose that such reserve was aggregated on the basis of either of the methods outlined in subsection (1)(a) or (b) of this section, and describe the aggregation in the supporting memorandum.

(3) The appointed actuary shall analyze only the specified reserve. A particular asset or portion of asset which supports a group of specified reserves cannot support any other group of specified reserves. An asset may be allocated over several groups of specified reserves. The annual statement value of any asset held in support of the reserve shall not exceed the annual statement value of the specified reserves, except as specified in subsection (4) of this section. If the method of asset allocation is not consistent from year to year, the extent of inconsistency shall be described in the supporting memorandum.

(4) An appropriate allocation of each asset in the amount of the Interest Maintenance Reserve, whether positive or negative, shall be used in any asset adequacy analysis. Analysis of each risk regarding asset default may include an appropriate allocation of each asset supporting the Asset Valuation Reserve. An asset valuation reserve asset may not be applied for any other risk with respect to reserve adequacy. Analysis of these and any other risk may include an asset supporting other mandatory or voluntary reserve available to the extent not used for risk analysis and reserve support. The amount of the asset used for the Asset Valuation Reserve shall be disclosed in the Table of Reserves and Liabilities of the opinion and in the memorandum. The method used for selecting a particular asset or allocated portion of an asset shall be disclosed in the memorandum.

(5) For the purpose of performing the asset adequacy analysis required by this administrative regulation:

(a) The qualified actuary is expected to follow generally accepted actuarial standards; and

(b) The appointed actuary must consider in the analysis the effect of at least the following interest rate scenarios:

1. Level with no deviation;
2. Uniformly increasing over ten (10) years at a half percent per year and then level;
3. Uniformly increasing at one (1) percent per year over five (5) years and then uniformly decreasing at one (1) percent per year to the original level at the end of ten (10) years and then level;
4. An immediate increase of three (3) percent and then level;
5. Uniformly decreasing over ten (10) years at a half percent per year and then level;
6. Uniformly decreasing at one (1) percent per year over five (5) years and then uniformly increasing at one (1) percent per year to the original level at the end of ten (10) years and then level; and
7. An immediate decrease of three (3) percent and then level.

(6) For a scenario outlined in subsection (5) of this section, projected interest rates for a five (5) year Treasury Note need not be reduced beyond the point where the five (5) year Treasury Note yield would be at fifty (50) percent of its initial level.

(7) The beginning interest rate may be based on the following:

(a) The interest rate for new investment as of the valuation date similar to a recent investment allocated to support the product being tested; or

(b) On an outside index for an asset of the appropriate length on a date close to the valuation date.

(8) The method used to determine the beginning yield curve and associated interest rates described in subsection (7) of this section shall be specifically defined. The beginning yield curve and associated interest rate shall be consistent for each interest rate scenario.

(9) The appointed actuary shall retain on file, for at least seven (7) years, sufficient documentation to determine:

(a) The procedure followed;

- (b) The analysis performed;
- (c) The base for any assumption; and
- (d) The result obtained.

Section 8. Liabilities to be Covered. (1) The statement of actuarial opinion shall apply to all in force business on the statement date regardless of when or where issued.

(2) If the appointed actuary determines as the result of asset adequacy analysis that a reserve should be held in addition to the aggregate reserve held by the company and calculated in accordance with KRS 304.6-171, the company shall establish an additional reserve.

(3) For years ending prior to December 31, 1998, the company may, in lieu of establishing the full amount of the additional reserve in the annual statement for that year, set up an additional reserve in an amount not less than the following:

(a) For December 31, 1996, the additional reserve divided by three (3);

(b) For December 31, 1997, two (2) times the additional reserve divided three (3).

(4) An additional reserve established pursuant to subsection (2) or (3) of this section and deemed not necessary in subsequent years may be released. Any amounts released shall be disclosed in the actuarial opinion for the applicable year. The release of such a reserve would not be deemed an adoption of a lower standard of valuation.

Section 9. The following material is incorporated by reference and may be obtained from the Department of Insurance, 215 West Main Street, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. until 4:30 p.m.:

(1) Form 1000 - "Asset Adequacy Tested Amounts (October 1997 edition)"; and

(2) "Recommended Actuarial Opinion and Memorandum Statements (October 1997 edition)".

LAURA M. DOUGLAS, Secretary
RON KREITER, Deputy Commissioner
ROBIN GWINN, Assistant General Counsel

CONTACT PERSON: Sharron S. Burton, Counsel, Kentucky Department of Insurance, 215 West Main Street, P.O. Box 517, Frankfort, Kentucky 40602, (502) 564-6032 (office), (502) 564-1456 (fax).

APPROVED BY AGENCY: October 23, 1997

FILED WITH LRC: October 24, 1997 at 4 p.m.

REGULATORY IMPACT ANALYSIS

Contact person: Sharron S. Burton

(1) Type and number of entities affected: This administrative regulation will apply to all life insurance companies, fraternal benefit societies, and life insurance reinsurers. There are approximately 607 life insurance companies, 20 fraternal benefit societies, and 35 life insurance reinsurers to which this administrative regulation will apply.

(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 have been no public comments received 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: There have been no public comments received 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 entity to which this

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administrative regulation applies will be required to draft and submit to the department an actuarial opinion and, if applicable, an actuarial memorandum.

2. Second and subsequent years: Each entity to which this administrative regulation applies will be required to draft and submit to the department an actuarial opinion and, if applicable, an actuarial memorandum for the second and subsequent years following the effective date of this administrative regulation.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: The department will receive and evaluate all actuarial opinions and memorandums submitted by the entities to which this administrative regulation applies. The opinions and memorandums will be based on actuarial standards and will contain an actuarial analysis of the companies' reserves and liabilities. Therefore, the review and evaluation of the actuarial opinion and memorandum by the department will require the expertise of a qualified actuary.

2. Continuing costs and savings: A departmental review of the actuarial opinions and memorandums submitted by the companies will require the expertise of a qualified actuary on a yearly basis.

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: Each entity to which this administrative regulation applies will be required to draft and submit to the department an actuarial opinion and, if applicable, an actuarial memorandum which is based on generally accepted actuarial standards and which includes the information specified by 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 budget for the Department of Insurance will be used to implement this administrative regulation.

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

(a) Geographical area in which administrative regulation will be implemented: There have been no public comments received regarding this issue.

(b) Kentucky: There have been no public comments received regarding this issue.

(7) Assessment of alternative methods; reasons why alternatives were rejected: In order to maintain its accreditation status, the Department of Insurance is required by the National Association of Insurance Commissioners to promulgate this administrative regulation. Accreditation assures that all financial examinations and statistics have been produced using uniform procedures and standards. Accreditation status also assures that the financial examinations and statistics produced in the state of Kentucky are reliable and conform with the baseline guidelines established by the National Association of Insurance Commissioners. Absent this administrative regulation, the department's accreditation status is in jeopardy. Therefore, there were no alternatives to the promulgation of this administrative regulation.

(8) Assessment of expected benefits:

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

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

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

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

(a) Necessity of proposed regulation if in conflict:

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

(10) Any addition information or comments: None

(11) TIERING: Is tiering applied? No, tiering is not applied since this administrative regulation applies to all life insurance companies, fraternal benefit societies, and life insurance reinsurers.

STATEMENT OF EMERGENCY 904 KAR 2:410E

The emergency administrative regulation 904 KAR 2:410E, Child support collection and distribution, implements enforcement requirements needed to comply with the mandated requirements pursuant to the Title IV-D State Plan as required by 42 USC 651 et seq. The passage of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 calls for the denial of passports for nonpayment of child support arrearage in excess of \$5,000. The Cabinet for Families and Children is required to include the mandatory provisions of 42 USC 651 et seq. in the Title IV-D State Plan. The deadline imposed by the Department of Health and Human Services for the complete Title IV-D State Plan for implementation of the mandated requirements of the cabinet's IV-D program is October 1, 1997. Therefore, in order to comply with this deadline by the U.S. Department of Health and Human Services and to prevent the loss of federal funds, this emergency administrative regulation must be placed in effect immediately in order to amend the requirements of 904 KAR 2:410. An ordinary administrative regulation would not allow sufficient time to meet the time frames. 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 2:410E. Child support collection and distribution.

RELATES TO: KRS 205.710-205.800, 403.215, 405.450, 405.465, 405.467, 405.490, 405.520, 45 CFR 302.32, 302.37, 302.38, 302.51-302.54, 302.60, 303.6, 303.100-303.102, 15 USC 1673(b)

STATUTORY AUTHORITY: 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., EO 96-862

EFFECTIVE: October 31, 1997

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Families and Children shall administer the Child Support Enforcement Program in accordance with KRS 205.710 to 205.800. KRS 205.712 provides for the child support agency to receive and process all child support payments. Executive Order 96-862, effective July 2, 1996, reorganized the Cabinet for Human Resources and placed the Department for Social Insurance and the Division of Child Support Enforcement under the Cabinet for Families and Children. This administrative regulation sets forth the procedures for collection and distribution of child support payments.

Section 1. Collection of Maintenance. Agency efforts shall include collecting maintenance if it meets the definition of "duty of support" in KRS 205.710(5).

Section 2. Methods of Collection. (1) Wage withholding.

(a) As specified in KRS 403.215, 405.465 and 405.467, the cabinet shall use this method:

1. As the primary tool for child support collection; and

2. As necessary to facilitate enrollment of a child through an employer in an available health insurance plan.

(b) For all cases, the child support agency shall provide for wage withholding without necessity of an amendment or court action to the

child support order.

(c) If a noncustodial parent, or obligor, has more than one (1) child support wage assignment against him, the child support agency shall allocate and distribute child support as specified by KRS 405.467.

(d) If current support and an arrearage amount is owed and is to be paid through a wage withholding order, and no specified arrearage payment amount is ordered by the court, the cabinet shall determine the arrearage payment by multiplying the current court or administratively ordered obligation amount by twenty-five (25) percent.

(e) If the noncustodial parent, or obligor, no longer owes a current child support payment, the cabinet shall determine:

1. The arrearage payment to be equal to the last court or administratively ordered obligation amount; and
2. The frequency of the arrearage payment.

(f) A noncustodial parent, or obligor, shall not be obligated to pay current support when parental rights have been terminated or when all children of a particular order are emancipated.

(g) No amount of an employee paid share of the cost of health insurance shall be deducted if, after child support and maintenance are deducted:

1. The total monthly amount of health care coverage exceeds the Federal Consumer Credit Protection Act limits; or
2. Only a portion of the monthly amount needed to purchase health insurance is available.

(h) If amounts are improperly withheld, the cabinet shall promptly refund those amounts.

(i) To comply with the advance notice requirements of KRS 405.467(4), when the address of the noncustodial parent, or obligor, is known, the agency shall send written notification to the noncustodial parent, or obligor, within fifteen (15) calendar days of the:

1. Request for wage withholding; or
2. The date the arrearage of the noncustodial parent, or obligor, is equal to the monthly obligation amount.

(j) If the address of the noncustodial parent, or obligor, is unknown, the cabinet shall provide advance notice within fifteen (15) calendar days of locating the noncustodial parent, or obligor.

(k) The advance notice shall inform the noncustodial parent, or obligor:

1. He has ten (10) days to contest the withholding; and
2. Failure to contest the withholding within the specified time shall result in the child support agency notifying the employer within five (5) working days to begin withholding; and
3. Withholding shall apply to the current and any subsequent employer.

(l) In addition to the requirements of KRS 405.467(5)-(11), the employer shall be notified, within fifteen (15) days of the request for wage withholding, of the following:

1. The employer shall forward collected child support amounts to the child support agency and collected medical insurance premiums to the health insurance carrier within ten (10) working days of the date the amount is withheld from the noncustodial parent's, or obligor's wages;

2. The employer shall include on the transmittal to the child support agency the name and Social Security number of the noncustodial parent, or obligor, the child support agency assigned case number and the date the money was withheld;

3. The employer may combine amounts due the child support agency into one (1) payment if the employer identifies by the name, Social Security number, and the child support agency assigned case number the amount attributable to each noncustodial parent, or obligor;

4. The employer shall implement withholding no later than the first pay period that occurs after fourteen (14) work days following the date the notice was mailed; and

5. The employer shall notify the child support agency promptly when the noncustodial parent, or obligor, terminates employment and

provide information to the agency as required by KRS 405.465.

(m) The noncustodial parent, or obligor, shall keep the child support agency informed of his current employer, if he has access to health insurance coverage at a reasonable cost, and the health insurance policy information.

(n) The child support agency shall extend the withholding system to include withholding from wages derived in this state although the support order was issued by another state.

1. Within twenty (20) days of determining that withholding is appropriate for an interstate case, the initiating state shall notify the child support agency of the state where the noncustodial parent, or obligor, is employed to implement interstate withholding.

2. The notice shall contain:

- a. The amount requested to be withheld;
- b. The arrearage amount; and
- c. A copy of the child support and medical support order.

3. The state where the support order was entered shall provide the information necessary for withholding within thirty (30) days of the receipt of the request.

4. The state of the employer of the noncustodial parent, or obligor's employer shall:

- a. Send notice to the noncustodial parent, or obligor, within fifteen (15) calendar days of locating the noncustodial parent, or obligor, or his employer;
- b. Provide the noncustodial parent, or obligor, with the opportunity to contest the withholding; and
- c. Send notice to his employer and to the noncustodial parent, or obligor.

5. The child support agency shall notify the state in which the custodial parent resides when the noncustodial parent, or obligor, is no longer employed in the state and provide the state with both the noncustodial parent's, or obligor's, and new employer's name and address, if known.

6. Except for when the withholding shall be implemented in the state where the support order is filed, the laws and procedures of the state where the noncustodial parent, or obligor, is employed shall apply.

(o) The child support agency shall terminate wage withholding when there is no longer a current order of support and all arrearages have been satisfied.

(2) Withholding of unemployment compensation.

(a) The child support agency, through an agreement with the state employment security agency, shall provide withholding of a child support obligation from a noncustodial parent, or obligor, receiving unemployment compensation under the following conditions:

1. A noncustodial parent, or obligor, who is delinquent and owes child support may voluntarily sign an agreement to withhold child support from unemployment compensation benefits.

2. The employment security agency shall commence withholding if:

a. An agreement is signed by the noncustodial parent, or obligor; or

b. A notice of claim of intent to withhold is completed by the child support enforcement agency when the noncustodial parent, or obligor, fails to sign an agreement to withhold within fifteen (15) calendar days; and

c. No mistake in fact or law is proven which causes the noncustodial parent, or obligor, to be found not owing.

(b) Withholding of unemployment shall not exceed fifty (50) percent of the benefit amount unless:

1. Ordered by a court of competent jurisdiction; or
2. Requested by the noncustodial parent, or obligor.

(3) Federal tax refund (offset).

(a) Past-due child support, medical support payments (if a specified dollar amount is included in the order) maintenance, and foster care related support shall qualify for offset if:

1. There is a court ordered or administratively established support

obligation;

2. There has been an assignment of support to the child support agency;

3. The arrearage equals at least \$150 and shall have been delinquent at least three (3) months;

4. The arrearage shall be owed for a child or for a child and the parent with whom the child is presently living;

5. The child support agency shall determine the amount of the arrearage and have a copy of the payment record. If there is no payment record, the child support agency shall have an affidavit signed by the custodial parent attesting to the amount of support paid.

6. The child support agency shall verify the accuracy of the noncustodial parent's, or obligor's, name and Social Security number.

(b) Past due child support, medical support or maintenance in a nonpublic assistance case shall qualify for offset if:

1. There is a court ordered or administratively established support obligation and the child support agency is enforcing the order;

2. The arrearage shall be equal to no less than \$500 dollars and may not include fees, court costs, or any other non child support debt owed to the state or to the family;

3. The child support agency shall have verified the accuracy of the arrearage and have a copy of the support order, including modifications and a copy of the payment record. If there is no payment record, the child support agency shall have an affidavit signed by the custodial parent attesting to the amount of support paid;

4. The arrearage shall be owed on behalf of a child who lives with the client and who is a minor as of December 31 of the year in which the case is submitted for offset;

5. The child support agency shall calculate an assigned arrearage;

6. The child support agency shall verify the accuracy of the noncustodial parent's, or obligor's, name and Social Security number.

(4) State income tax refund (offset).

(a) A K-TAP, foster care, or medical support arrearage which is owed by any person who is required to provide medical support for a child who is eligible for medical assistance (if a specified dollar amount is included in the order) related child support arrearage shall qualify for offset if:

1. There is an arrearage on a legally established child and medical support obligation;

2. The noncustodial parent's, or obligor's, name and Social Security number are known;

3. The arrearage is at least twenty-five (25) dollars; and

4. The arrearage has been verified as accurate.

(b) A nonpublic assistance support arrearage shall qualify for offset if criteria specified in Section 2(3)(b) of this administrative regulation is met and arrearages are not less than \$150.

Section 3. Kentucky Transitional Assistance Program (K-TAP) Accounts Distribution. (1) A child support payment collected on behalf of a recipient of K-TAP shall:

(a) Be made payable to the child support agency; and

(b) Be reported to the K-TAP agency within ten (10) working days of the end of the month in which the support is received.

(2) A child support payment that makes the K-TAP family ineligible for K-TAP shall be reported to the child support agency by the K-TAP agency.

(a) If the family is ineligible for a K-TAP payment, the child support agency shall:

1. Distribute the amount of child support collected; and

2. Notify the family of continuation of child support services as specified in 904 KAR 2:380, Section 4(2).

(b) If the household remains eligible for a K-TAP payment or if a hearing is requested:

1. The K-TAP agency shall notify the child support agency; and

2. The child support agency shall distribute the collection as specified in Section 6 [3(7)] of this administrative regulation.

(3) A current payment that includes payment on a prior month obligation shall be distributed by the child support agency.

(4) A payment received in the month after ineligibility for K-TAP is determined but prior to the last assistance payment being issued shall be used:

(a) To reimburse the state for any assistance paid; and

(b) To pay any excess to the family.

(5) If a hearing is requested and it is determined that the family is ineligible for an assistance payment, the child support agency shall:

(a) Determine the collected amount the family would have received; and

(b) Forward any amount in excess of the assistance payment to the family.

(6) If a hearing is requested and the family is determined to be eligible for an assistance payment, distribution of that month's child support collection shall be made.

Section 4. Distribution of Foster Care Accounts. A child support payment collected on behalf of a foster care recipient shall be:

(1) Made payable to the child support agency; and

(2) Upon receipt by the child support agency, shall be disbursed to the foster care agency for distribution.

Section 5. Tax Refund Intercept. (1) Public assistance accounts.

(a) Amounts collected in public assistance cases shall be applied to assigned arrearages.

(b) If no assigned arrearages remain, the collections shall be forwarded to the K-TAP family or foster care agency within thirty (30) calendar days of the date of initial receipt by the agency.

(c) If a timely appeal is filed by a noncustodial parent, or obligor, and the appeal is resolved, payment shall be made to the family or refunded to the noncustodial parent, or obligor, within fifteen (15) calendar days of the resolution date.

(d) If a joint return has been filed, tax refund intercept collection shall be held by the child support agency for six (6) months prior to being distributed.

(2) Nonpublic assistance accounts. For a nonpublic assistance account, if no assigned arrearage remains, an amount collected which represents an arrearage amount shall be sent to the family within thirty (30) calendar days of the initial receipt date.

(3) If the noncustodial parent, or obligor, contests the accuracy of a past due amount, he may request an administrative review in accordance with specifications in 904 KAR 2:400, Section 4.

Section 6. Treatment of Excess Payments. (1) Collection of child support payments shall be applied to the required obligation amount for the month in which the support was collected.

(2) After the current obligation amount is satisfied, any excess amount shall be treated as payment on previous unpaid arrearage.

Section 7. Wage Withholding Distribution. (1) A child support or medical support payment made through wage or other withholding shall use the date the income is withheld for the date of collection for distribution to meet the support obligation.

(2) Distribution of wage withholding collections shall be made according to specification in Sections 3, 4, 6 or 8 of this administrative regulation.

Section 8. Interstate Case Payment Distribution. Child support payments that are collected by a responding state on behalf of an initiating state shall be forwarded to the initiating state within fifteen (15) calendar days of initial receipt by the responding state.

(1) If the collected amount is less than fifty (50) dollars, the responding state shall send the amount collected to the location specified by the child support agency in the initiating state within fifteen (15) calendar days of the date of initial receipt in the responding state.

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(2) The initiating state upon receipt of collection made by the responding state shall retain the collections to reimburse the assistance payment for the month it was received or the next month if the amount collected exceeds the required support obligation for the month and is in excess of the K-TAP assistance payment.

(3) Collection of child support in the month after the month the family receives its last K-TAP assistance payment shall be distributed and sent to the family within fifteen (15) calendar days of the date of initial receipt in the state.

Section 9. Additional Administrative Enforcement Remedies. (1) When the cabinet determines that the obligor owes an arrearage, the cabinet may implement administrative enforcement remedies listed below to collect the delinquent support amounts:

(a) Filing of liens on personal or real property when an arrearage is equal to or greater than one (1) month's obligation;

(b) Report to credit bureaus; [and]

(c) Notifying the Transportation Cabinet to deny or revoke motor vehicle driver's license; and

(d) Certify cases for passport denial.

(2) The Cabinet for Families and Children shall:

(a) Provide information to consumer reporting agencies as specified by KRS 205.768; and

(b) Provide advance written notice to the noncustodial parent, or obligor, of the release of the information required by KRS 205.768(2).

(c) The name of the noncustodial parent, or obligor, shall be:

1. Deleted from the list provided to consumer reporting agencies when the advance notice is returned as undeliverable, and subsequent location efforts are unsuccessful; or

2. Added to the list provided to the consumer reporting agencies when subsequent location efforts are successful.

(3) Denial or suspension of driver's license.

(a) The cabinet shall as provided by KRS 186.570(2):

1. Identify a case with a verified arrearage equal to one (1) year's obligation amount which accrued beginning January 1, 1994, or thereafter; and

2. Contact the contracting official to determine if the contracting official intends to pursue judicial action.

3. If the contracting official determines that judicial action will not be taken, advise the contracting official of the intent of the agency to proceed with the referral to revoke or deny a driver's license.

4. Send by first class mail to a noncustodial parent, or obligor, who holds a valid Kentucky driver's license and who has the ability to pay support:

a. A notice of intent to request denial or suspension of a driver's license; and

b. A noncustodial parent, or obligor, answer to notice of intent.

5. Notify the noncustodial parent, or obligor, that the only basis for resolution of the dispute shall be:

a. The arrearage is incorrect and does not equal or exceed the amount of support owed for one (1) year;

b. The wrong individual has been identified;

c. A bond is posted for the total arrearage which has accrued since January 1, 1994;

d. A payment agreement is entered into by the noncustodial parent, or obligor, to pay current support, plus a specified monthly payment amount on the total arrearage which has accrued since January 1, 1994. The monthly payments shall be:

(i) Fifty (50) percent if the arrearage owed is less than \$1,000; or

(ii) \$500 plus twenty-five (25) percent of the amount over \$1,000 if the arrearage is not less than \$1,000 and not greater than \$2,000; or

(iii) \$750 plus ten (10) percent of the amount over \$2,000 if the arrearage is \$2,000 or more; or

e. The noncustodial parent, or obligor, pays the total arrearage which has accrued since January 1, 1994.

(b) To assure delivery of the notice of intent, the cabinet shall

refer the case for parent locator service if the notice is returned and the forwarding address is unknown;

(c) If the noncustodial parent, or obligor, requests a dispute hearing by contesting the arrearage based upon a mistake of fact and returns the noncustodial parent, or obligor, answer to notice of intent form within twenty (20) calendar days of the notification date, the cabinet shall:

1. Within ten (10) working days of the noncustodial parent's, or obligor's, response, schedule and hold an interview with the noncustodial parent, or obligor;

2. Attempt to resolve the dispute at the time of the interview; and

3. Forward the noncustodial parent's, or obligor's, written request for a hearing to the agency responsible for conducting the dispute hearing.

(d) The child support agency shall inform the agency responsible for conducting the hearing that:

1. A resolution has been reached as a result of the interview and a written request from the noncustodial parent, or obligor, to withdraw [withdrawn] the hearing request shall be sent; or

2. A resolution to the dispute has not been reached and the hearing request remains in effect.

(e) Upon the decision made by the agency conducting the hearing, and within twenty (20) calendar days of the hearing officer's decision, the child support agency shall notify the Transportation Cabinet of the request for the denial or suspension of the driver's license, unless:

1. The noncustodial parent, or obligor, makes full payment of the total arrearage that may have accrued since January 1, 1994;

2. The noncustodial parent, or obligor, enters into a payment agreement to pay current support, plus the specified amount on the total arrearage which accrued since January 1, 1994 as determined by paragraph (a)5d of this subsection; or

3. The noncustodial parent, or obligor, posts a bond for the total arrearage which has accrued since January 1, 1994.

(f) If the case does not qualify for submittal to the Transportation Cabinet, a notice to deny or suspend the driver's license shall not be sent.

(g) If the noncustodial parent, or obligor, does not contest the arrearage or after the interview and hearing process, the case qualifies for submittal to the Transportation Cabinet, the Cabinet for Families and Children shall refer the name of the noncustodial parent, or obligor, to the Transportation Cabinet for the denial or suspension of the driver's license, unless:

1. The noncustodial parent, or obligor, makes full payment of the arrearage within twenty (20) calendar days of the interview by the Cabinet for Families and Children;

2. The noncustodial parent, or obligor, posts a bond within twenty (20) calendar days of the interview for the total arrearage which accrued since January 1, 1994; or

3. The noncustodial parent, or obligor, enters into a payment agreement to pay current support, plus the specified amount on the total arrearage which has accrued since January 1, 1994 as determined by paragraph (a)5[3]d of this subsection.

(h) The Cabinet for Families and Children shall notify the Transportation Cabinet to reinstate or reissue a previously suspended or revoked driver's license if:

1. The noncustodial parent, or obligor, makes full payment of the arrearage;

2. The noncustodial parent, or obligor, posts a bond for the total arrearage amount; or

3. The noncustodial parent, or obligor:

a. Makes a good faith payment which equals three (3) months' current support; and

b. Enters into a payment agreement to pay the specified amount on the remaining arrearage which has accrued since January 1, 1994 as determined by paragraph (a)5[3]d of this subsection.

(4) Denial of passport.

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(a) The cabinet shall certify for passport denial to the Secretary of the U.S. Department of Health and Human Services any case for which the arrearage exceeds \$5000.

(b) If a timely appeal is filed by a noncustodial parent, or obligor, pursuant to the notice as set forth in the Advance Notice of Intent to Collect Past-Due Support, Form CS-122, edition 10/97, the appeal is resolved and the finding is that the arrearage is less than \$5000, the U.S. Secretary of State shall be notified by the cabinet to issue a passport to the noncustodial parent, or obligor.

(c) The noncustodial parent, or obligor, whose arrearage exceeds \$5000, shall be deleted from passport denial when:

1. An arrearage judgment exists and the noncustodial parent, or obligor, is in full compliance with payments ordered in the judgment;

2. The noncustodial parent, or obligor, makes a payment bringing the arrearage to less than \$5000; or

3. In cases with an arrearage and no ordered arrearage payment, the noncustodial parent, or obligor, agrees to make satisfactory payment arrangements. The noncustodial parent, or obligor, shall:

a. Post a bond for the total amount due; or

b. Enter into a payment agreement to pay current support plus a specified monthly payment on the total arrearage. The monthly arrearage payment shall be:

(i) In the first month, a \$750 lump sum payment plus ten (10) percent of the arrearage balance as of the date of the agreement; and

(ii) In successive months, ten (10) percent of the arrearage balance as of the date of the agreement or the remaining balance if the remaining balance is less than ten (10) percent of the arrearage that was due on the date of the agreement.

Section 10. Appeal Procedure. An obligor may request a dispute hearing in accordance with KRS 405.490 or 405.450 as described in 904 KAR 2:400, Section 4.

Section 11. Material Incorporated by Reference. (1) Forms necessary for the collection and distribution of child support and medical support are incorporated [effective February 15, 1995]. These forms include:

(a) CS-44, "Notice of Intent to Request Denial or Suspension of Driver's License, edition 2/97" [revised 2/97];

(b) CS-63, "Notice to the Transportation Cabinet, edition 2/97" [revised 2/97];

(c) CS-78, "Payment Agreement, edition 2/97" [revised 2/97];

(d) CS-111, "Child Support Received Affidavit, edition 2/97" [revised 2/97];

(e) CS-122, "Advance Notice of Intent to Collect Past-Due Support, edition 10/97" [revised 7/96];

(f) CS-123, "Letter to Obligated Parent Concerning Intercept of State Tax Return, edition 7/96" [revised 7/96];

(g) CS-148, "Custodial Parent Affidavit Letter, edition 2/97" [revised 2/97];

(h) CS-149, "Custodial Parent Affidavit of Support Paid, edition 5/97" [revised 5/97].

(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
CHARLES P. LAWRENCE, Attorney
VIOLA P. MILLER, Secretary

APPROVED BY AGENCY: October 21, 1997

FILED WITH LRC: October 31, 1997 at 10 a.m.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Marty Mason, Director

(1) Type and number of entities affected: The type of entities affected by this passport denial amendment are noncustodial parents,

or obligers, who owe more than \$5,000 in child support arrearage and whose cases have been certified for federal tax refund intercept. There is no way to determine the number of noncustodial parents, or obligers, who will apply for a passport.

(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: First year following implementation: None. Passport denial is an extension of activities which the Division of Child Support Enforcement is already performing to certify arrearage cases for federal tax refund intercept.

2. Second and subsequent years: Same as #1 above.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings to the agency:

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:

Possible effect on state revenues is the potential for increase in child support collections. Also, state compliance with this federal mandate will prevent sanctions and loss of federal funds.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Not applicable.

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

(a) Geographical area in which administrative regulation will be implemented: 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: To be determined after the publication of the Notice of Intent.

(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 passport denial enforcement requirements found in 42 USC 651 et seq.

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

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

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

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

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

(10) Any additional information or comments:

(11) TIERING: Is tiering applied? 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. The process by which the denial of passports will occur when a

noncustodial parent, or obligor, with a \$5,000 arrearage is certified for federal tax intercept beginning October 1, 1997. 42 USC 652(k)

2. State compliance standards. There are no separate state compliance standards.

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 907 KAR 1:725E

This emergency administrative regulation is being promulgated to establish the method by which the Medicaid Program shall maintain reimbursement levels for nursing facility services within the Medicaid budget for the state fiscal year 1998. This action must be taken on an emergency basis to ensure that the Medicaid Program is administered consistent with the budgetary limits for the state fiscal year 1998 to ensure that Medicaid recipients have continued and uninterrupted care. Failure to enact this administrative regulation on an emergency basis would pose an imminent threat to the public health, safety or welfare of Medicaid recipients. Further, enactment of the administrative regulation on an emergency basis will thereby serve to protect public health. 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 1:725E. Medicaid appropriations for a long-term nursing facility.

RELATES TO: KRS 205.520, 42 CFR 430, 431, 432, 433, 435, 440, 441, 442, 447, 456; 42 USC 1396, a, b, c, d, g, i, l, n, o, p, r, r-2, r-3, r-5, s

STATUTORY AUTHORITY: KRS 194.050, 205.520, 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 the method by which the Medicaid Program shall maintain reimbursement levels for nursing facility services within the Medicaid budget for the fiscal year 1998.

Section 1. Definitions. (1) "Department" means the Department for Medicaid Services or its designee.

(2) "Nursing facility" (NFs) means a facility certified to the Medicaid Program by the state survey agency as meeting nursing facility requirements, and in at least twenty (20) percent of the facility's Medicaid participating beds (but not less than ten (10) 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.

(3) "Nursing facility with waiver" (NFs-W) means a facility certified to the Medicaid Program by the state survey agency as meeting NF requirements except the nurse staffing requirement for which an NF waiver has been granted by the survey agency.

(4) "Quarterly rate sheet" means the notice sent to each nursing facility each calendar quarter which provides information pertaining to the quarterly case mix and the resultant prospective payment rate adjustment for a facility.

Section 2. Reimbursement Provisions. (1) With the exceptions of a nursing facility with a certified brain injury unit, a nursing facility with a distinct part ventilator unit, a nursing facility designated as an institution for mental diseases, a pediatric facility or an intermediate care facility for the mentally retarded, a nursing facility, including a nursing facility with waiver, participating in the Medicaid Program shall be reimbursed in accordance with 907 KAR 1:025E and this administrative regulation.

(2) Payment shall be in accordance with coverage requirements established in 907 KAR 1:022E.

Section 3. Prospective Rate Methodology. Nursing facility Medicaid expenditures during the rate year beginning July 1, 1997 and ending June 30, 1998 shall not exceed \$504 million, including appeal and ancillary settlements. In order to ensure that expenditures do not exceed this amount, the department shall:

(1) On a monthly basis, compile a spreadsheet which contains actual and budgeted data, by facility, for each month and year beginning with July 1, 1997 and includes the following items:

- (a) Patient days paid;
- (b) Routine costs paid;
- (c) Ancillary costs paid;
- (d) Medicare crossovers paid;
- (e) Patient liability collected;
- (f) Third party liability collected;
- (g) Appeal settlements; and
- (h) Year end ancillary settlements.

(2) Compile a detailed listing of licensed nursing facility beds and current approved certificates of need that shall be included in the projected \$504 million budgeted limit.

(3) Distribute monthly the Medicaid spreadsheets containing the data identified in subsection (1) of this section to the Technical Advisory Committee on Nursing Home Care, Advisory Council for Medical Assistance, and Budget Review Subcommittee on Human Resources and, upon request, to other interested parties.

(4) Send a survey regarding nursing facility bed resources.

(a) The survey shall be sent no later than five (5) days following the effective date of this administrative regulation to a nursing facility with licensed beds, and to a certificate of need holder as of July 1, 1997 with nursing facility beds which have not been licensed;

(b) Survey results, certified by the facility and updated, shall be used to project additional Medicaid nursing facility patient days and corresponding expenditures during the rate year beginning July 1, 1997; and

(c) These projections shall be distributed by November 14, 1997 to the Technical Advisory Committee on Nursing Home Care, Advisory Council for Medical Assistance, and Budget Review Subcommittee on Human Resources.

(5) Determine any necessary adjustments to the prospective rate of a nursing facility based upon information made available pursuant to the provisions of this administrative regulation and after an analysis by an independent actuarial and accounting firm on or before January 31, 1998 and August 1, 1998.

(a) If nursing facility Medicaid net expenditures during the state fiscal year beginning July 1, 1997 and ending June 30, 1998 are projected to exceed the \$504 million budget limit, the ratio of \$504

million to projected net expenditures shall be applied to proportionately reduce the payments for a nursing facility for the remainder of the 1998 state fiscal year based upon the total net expenditures for all nursing facilities according to the following formula: \$504 million divided by the projected total net expenditures for all nursing facilities shall be the proportionate rate adjustment factor. The proportionate rate adjustment factor shall be weighted based upon the number of Medicaid payment cycles which remain in the state fiscal year. The nursing facility's prospective rate multiplied by the weighted proportionate rate adjustment factor shall be the reduced prospective rate for the nursing facility.

(b) The actual reduction shall be reflected as a separate line item on the quarterly rate sheet for a nursing facility, subsequent to the quarterly case-mix adjustment and any applicable rate add-ons.

(c) The reduced prospective rate adjustment shall not be applied to claims with dates of service earlier than January 1, 1998 or later than May 31, 1998.

(6) Conduct a comparison no later than August 1, 1998 of 1998 state fiscal year end actual and budgeted expenditures. Based on this information:

(a) If a reduction is determined necessary by the department in accordance with subsection (6) of this section, and the reduction is in excess of the amount necessary to stay within the \$504 million budget limit, then the rate shall be readjusted to the lesser of:

1. \$504 million; or

2. The July 1, 1997 quarterly adjusted prospective rate without the adjustment described in subsection (5) of this section.

(b) If a reduction is determined necessary by the department in accordance with subsection (5) of this section, and after the August 1, 1998 analysis of year end actual expenditures by an actuarial and accounting firm, it is deemed not to have been sufficient to stay within the \$504 million budget limit, a recoupment based on an adjustment of each nursing facility's state fiscal year 1998 payments shall be made by the department in the same proportion that \$504 million is to the total expenditures for all nursing facilities for state fiscal year 1998.

(c) If a reduction is not determined necessary by the department in accordance with subsection (5) of this section during the state fiscal year 1998, but after the August 1, 1998 analysis of year end actual expenditures the \$504 million budget limit was exceeded, a recoupment based on an adjustment of each nursing facility's state fiscal year 1998 payments will be made by the department in the proportion that \$504 million is to the total expenditures for all nursing facilities for state fiscal year 1998.

Section 4. Litigation, collection and appeals shall be pursued by the cabinet with vigor. The final court order in West View Nursing home, Inc. et al v. Commonwealth of Kentucky, Cabinet for Health Services and Cabinet for Human Resources, Franklin Circuit Court, No. 97-CI-00418, or extraordinary changes related to nursing facility beds in new or existing Certificate of Need administrative regulations or interpretations thereof shall be excluded from the \$504 million budget target.

Section 5. The provisions of this administrative regulation shall be applicable to payments made for the state fiscal year 1998 and shall be applicable to payments made in the subsequent state fiscal year for claims with dates of service between January 1, 1998 and May 31, 1998.

LARRY A. MCCARTHY, Deputy Commissioner
JOHN H. MORSE, Secretary
JOHN H. WALKER, Attorney

APPROVED BY AGENCY: November 10, 1997

FILED WITH LRC: November 14, 1997 at 11 a.m.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Trish Howard or Karen Doyle

(1) Type and number of entities affected: 316 nursing facilities; and 21,179 Medicaid certified nursing facility beds.

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

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: No public comments have been received. However, no effect should be experienced.

(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. However, no effect should be experienced.

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

1. First year following implementation: Minimal to none.

2. Second and subsequent years: None

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: \$250,000 (cost) and Medicaid expenditures by nursing facilities over \$504 million. (savings).

2. Continuing costs or savings: \$0

3. Additional factors increasing or decreasing costs: At this time the cabinet is not aware of additional factors that may increase or decrease costs. However, cost expenditures will be monitored on a monthly basis to determine anticipated costs to Kentucky's Medicaid Program.

(b) Reporting and paperwork requirements:

1. On a monthly basis a spreadsheet will be compiled which contains actual and budgeted data, by facility, for each month and year beginning with July 1, 1997, and distributed to the Technical Advisory Committee on Nursing Home Care, Advisory Council for Medical Assistance, and Budget Review Subcommittee on Human Resources and other interested parties;

2. A detailed listing will be compiled of licensed nursing facility beds and current approved certificates of need that shall be included in the projected \$504 million budgeted limit;

3. A survey sent to nursing facilities with licensed beds and certificate of need holders with unlicensed beds which will be used to project additional Medicaid nursing facility patient days and corresponding expenditures during the rate year beginning July 1, 1997;

4. Distribution of the surveys to the Technical Advisory Committee on Nursing Home Care, Advisory Council for Medical Assistance, and Budget Review Subcommittee on Human Resources;

5. A determination of any necessary adjustments to the prospective rate of a nursing facility; and

6. Conduct a comparison no later than August 1, 1998 of 1998 state fiscal year end actual and budgeted expenditures.

Existing staff will assume the aforementioned responsibilities.

(4) Assessment of anticipated effect on state and local revenues: None, unless the regulated facilities exceed the \$504 million, at which time those local governments operating nursing facilities will be affected by a reduction in rates.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Federal and state matching funds. *Federal matching funds of 50% equaling \$125,000 and state matching funds of 50% equaling \$125,000. State revenues will come from state funds contained in the enacted 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: To be implemented statewide.

(b) Kentucky: No public comments have been received. However, no effect should be experienced.

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(7) Assessment of alternative methods; reasons why alternatives were rejected: No viable alternatives were identified.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: To ensure that Medicaid recipients throughout the state have continued and uninterrupted 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 leaving them without necessary care.

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: 907 KAR 1:025E.

(a) Necessity of proposed regulation if in conflict: To recognize the budget limit for state fiscal year 1998, establish a method to maintain reimbursement levels, and provide a formula to proportionately reduce nursing facility payments if net nursing facility expenditures are projected to exceed the \$504 million budget limit.

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

(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.

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.

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 those counties operating nursing facilities.

3. State the aspect or service of local government to which this administrative regulation relates. Nursing facilities.

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. There is no impact unless there's a reduction in rates due to overexpenditure in which case those facilities operated by local governments may experience a reduction in reimbursement.

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

ADMINISTRATIVE REGULATIONS AS AMENDED BY
THE PROMULGATING AGENCY AND THE REVIEWING SUBCOMMITTEE

ARRS = Administrative Regulation Review Subcommittee
IJC = Interim Joint Committee

KENTUCKY HIGHER EDUCATION
ASSISTANCE AUTHORITY
(As Amended at ARRS, November 11, 1997)

11 KAR 6:010. KHEAA Work-study Program.

RELATES TO: KRS 164.744(2), 164.748(4), 164.753(6)

STATUTORY AUTHORITY: KRS [13A.100, 13A.110,] 164.748(4)

NECESSITY, FUNCTION, AND CONFORMITY: **KRS 164.748(4)**

requires the authority to promulgate administrative regulations governing work-study payments. This administrative regulation establishes the KHEAA Work-study Program. [The Kentucky Higher Education Assistance Authority ("authority") is empowered to administer student financial assistance programs in the form of work-study. The purpose of this administrative regulation is to name the authority's program, and set forth the procedures under which it will be administered. The purpose of this amendment is to revise the rate at which mileage expense incurred by a student may be included in the budget of educational costs and to provide for the allocation of funds among participating institutions.] [allow participating institutions to be eligible employers.]

Section 1. Definitions. (1) "Administrative cost allowance" means a payment negotiated between the authority and a participating institution [institutions] for annual costs directly related to the administration of the KWSP not to exceed eight (8) percent of the gross wages earned, the amount requested by the institution, or \$15,000 annually, whichever is least.

(2) "Alternate work plan" means a work-study arrangement in which a participating student alternates a school term with a work term. [For example, a participating student attends school full-time one (1) term, works full time the next term, and returns to school full time the following term. Participating students employed during the summer who are not enrolled at least half-time during that term shall be considered alternate for the summer term. Any academic credits earned as a direct result of the KWSP employment shall not be considered in the determination of alternate status.]

(3) "Authority" is defined in KRS 164.740(1).

(4) "Business school" is defined in KRS 164.740(3).

(5) [(2)] "Career-related work experience" means a job which has a correlation with the participating student's career direction determined by the participating institution and evidenced by the student's major course of study.

(6) "College" is defined in KRS 164.740(4).

(7) [(3)] "Cost of education" means those expenses commonly related to obtaining an education at the participating institution plus those costs directly related to the participating student's KWSP work experience, including [any] required dues and travel (at the rate of twenty-five (25) [twenty-two (22) cents] per mile) from the school to the place of employment or, under an alternate work plan, from the student's residence to the place of employment.

(8) [(4)] "Eligible program of study" means a program not leading to a certificate, diploma, or degree in theology, divinity, or religious education.

(9) [(5)] "Financial need" means the total cost of education less financial assistance received from all sources, other than KWSP employment, including grants, loans, and scholarships.

(10) [(6)] "Full-time [enrollment]" means the number of credit

hours determined by the participating institution to constitute full-time enrollment, which:

(a) Is generally twelve (12) semester hours, twenty-four (24) clock hours, or six (6) summer school hours; **and**

(b) **Shall not include academic credit earned from KWSP employment.** [Any academic credits earned as a direct result of KWSP employment shall not be considered in the determination of full-time status.]

(11) [(7)] "KWSP" means the KHEAA work-study program.

(12) [(8)] "Prevailing wage rate" means a base rate of pay per hour for a KWSP participating student who is [students who are] or would be performing equal job tasks as **another employee** [other employees], plus benefits paid to **another employee** [other employees] having the same status as the KWSP employee.

(13) "School of nursing" is defined in KRS 164.740(20) [(19)].

(14) [(9)] "School term" means the equivalent of one (1) semester, one (1) quarter, or one (1) summer school term.

(15) "Vocational school" is defined in KRS 164.740(22) [(21)].

(16) [(10)] "Wage reimbursement" means a payment:

(a) Made to a participating **employer** [employers] by a participating **institution** [institutions] as reimbursement for wages paid **to a participating student; and**

(b) ~~Students. The rate of reimbursement shall be~~ [Specified in an agreement between the participating employer and the participating institution.

(17) "Work study" is defined in KRS 164.740(23) [(22)].

Section 2. **Alternate Work Plan. A participating student shall be considered a participant under an alternate work plan if the student:**

(1) **Attends school full time one (1) school term;**

(2) **Works full time the next school term, including a summer, for a participating employer;**

(3) **Is not enrolled at least half-time during the term of employment; and**

(4) **Returns to school full time the following school term.**

[There is hereby established a program of student financial assistance known as the Work-Study Program, which may be cited as the KWSP.]

Section 3. Institutional Eligibility. To participate in the KWSP, an educational institution shall:

(1) Be a college, business school, vocational school, or school of nursing, ~~[as defined in KRS 164.740;]~~ located within Kentucky;

(2) Offer an eligible program of study;

(3) Have in force an administrative agreement with the authority pursuant to 11 KAR 4:040;

(4) Submit a request for funding ~~[in accordance with instructions specified by the authority]; and~~

(5) Execute a [any] supplemental contractual **arrangement** [arrangements] with the authority and a participating **employer** [employers required to administer the KWSP].

Section 4. Funding Allocation Process. (1) Each year, the authority shall invite an eligible institution [institutions] to submit a proposal [proposals] for funding and shall provide instructions for submitting the proposal. The authority shall consider a proposal [proposals] properly submitted by an eligible institution [institutions]

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by the date specified in the invitation to participate. The authority shall [may] award an administrative cost allowance, if the institution demonstrates need, to administer the KWSP for one (1) year. At least seventy-five (75) percent of wage reimbursement dollars shall be utilized with private[-for-profit] employers.

(2) The authority shall consider the institution's request for funding and its [any] past performance in the KWSP in the determination of approval for funding and the funding level [levels]. The authority shall [may] evaluate the institution's level of participation in and administration of other programs of student financial assistance funded or administered by the authority and the institution's ability to:

(a) Comply with this administrative regulation and contractual obligations under the KWSP;

(b) Administer the program cost-effectively with the greatest results for students, evidenced by previous years' program records;

(c) Utilize the wage-reimbursement dollars allocated, evidenced by previous years' program records;

(d) Avoid using KWSP dollars to supplant existing work-related programs for students; and

(e) Adequately monitor program activities, including eligibility determination of students and employers, continued eligibility of students and employers, and actual job activities as they relate to students' career-related work experience.

(3)(a) At least ninety (90) percent of the available funds that do not exceed the appropriation for the preceding fiscal year shall be awarded to eligible institutions that participated and expended all or the major portion of their wage reimbursement allotment during the prior year.

(b) If available funds do not exceed the appropriation for the preceding fiscal year, the authority shall not award more than ten (10) percent of available funds to eligible institutions that did not participate or had minimal participation in the KWSP during the preceding fiscal year. [Not more than ten (10) percent of the available funds that do not exceed the appropriation for the preceding fiscal year may be awarded to eligible institutions that did not participate or had minimal participation in the KWSP during the prior year.]

(c) Allocation by the authority of available funds that exceed the appropriation for the preceding fiscal year shall not be constrained by the level of participation by an eligible institution [institutions] during the prior year.

(d) If available funds are not sufficient to award each institution the amount requested, the authority shall [may] allocate funds to some or all of the eligible institutions that submit requests for funding, taking into consideration the institution's past performance and level of funding under the KWSP, and the institution's level of participation and demonstrated capability to administer other programs of student financial assistance funded or administered by the authority.

Section 5. Employer Eligibility. To participate in the KWSP, an employer shall:

(1) Provide a bona fide career related work experience for a participating student [students] as determined by the participating institution in which the student is enrolled and submit a descriptive position analysis to the participating institution;

(2)(a) If the employer is not a participating institution, execute a KWSP employer agreement with each participating institution from which a participating student is [students-are] hired; or

(b) If the employer is a participating institution, agree with the authority to be bound by the terms of a KWSP employer agreement [if the employer is a participating institution];

(3) Provide a Kentucky worksite for a [all] participating student [students] employed by the employer;

(4) Not be a business entity formed substantially for the purpose or intention of participating in the KWSP; and

(5) Not utilize a participating student [students] in a work environment that is sectarian in nature or that involves [any] political activity.

Section 6. [5:] Student Eligibility. To participate in the KWSP, a student shall:

(1) Be a citizen of the United States;

(2) Be a Kentucky resident, as determined by the participating institution in accordance with 13 KAR 2:045 [2:040];

(3) Be enrolled or accepted for enrollment on at least a half-time basis at a participating institution;

(4) Demonstrate financial need;

(5) Be in good standing and making satisfactory academic progress toward completion of his [or-her] educational program, as determined by the participating institution, and have a cumulative grade point average of not less than the equivalent of a "C" (inclusive of all postsecondary courses attempted for a postsecondary student [students] or secondary school grade point average for an entering freshman [freshmen]);

(6) Not be participating in another work program [programs] administered by the participating institution;

(7) Not be enrolled in a major course of study in religion, theology, or divinity;

(8) Submit a completed Work-study Program Student Application [KWSP-application] to the participating institution, properly completed in accordance with the instructions, and be approved for participation by the participating institution;

(9) Not be in default on a [any] financial obligation to the authority under a [any] program administered by the authority pursuant to KRS 164.740 through 164.785, except that ineligibility for this reason may be waived by the executive director of the authority, at the recommendation of a designated staff review committee, for cause; and

(10) Execute an [any] employment agreement [agreements] required by the participating institution.

Section 7. [6:] Employer Responsibilities. To receive wage reimbursement, a participating employer shall:

(1) Immediately notify the participating institution in writing if a participating student's employment is terminated, stating the reason for and effective date of termination;

(2) Report promptly to the participating institution a [all] significant change [changes] of the position analysis or the student's work assignment;

(3) Submit to the participating institution on a regular basis a certified, accurate proof of wages paid to a participating student [students];

(4) Pay a participating student [students] the prevailing wage rate, which shall not be less than the federal minimum wage;

(5) Comply with all federal and state employment, safety and civil rights laws applicable to the position [positions] filled;

(6) Not, without prior consent of the participating institution, permit or require a participating student [students] to work in excess of:

(a) Thirty (30) hours per week for a student [students] currently enrolled less than full time;

(b) Twenty (20) hours per week for a student [students] currently enrolled full time; and

(c) Forty (40) hours per week for a student [students] employed under an alternate work plan;

(7) Permit on-site inspection and review of records by a representative [representatives] of the participating institution and the authority during normal business hours; and

(8) Ensure that a regular employee is [employees-are] not displaced by a KWSP participating student [students].

Section 8. [7:] Student Responsibilities. A participating student [students] shall:

(1) Participate in all screening or preplacement activities required by the participating institution;

(2) Maintain eligibility pursuant to Section 5 of this administrative regulation, and immediately notify the participating institution in writing of a change [all-changes] that affects [affect] the student's continued

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eligibility;

(3) Be available for a job interview if requested by a participating employer; and

(4) Perform all reasonable employment obligations and comply with all reasonable policies and requirements of the participating employer.

Section 9. [8:] **(1) An appeal [Appeals]** regarding student or employer participation shall be directed to the participating institution and shall be reviewed, settled or determined by an appeal committee consisting of no fewer than three (3) individuals.

(2) An appeal [Appeals] regarding institutional eligibility or participation shall be determined by the authority in accordance with 11 KAR 4:020.

Section 10. [9:] **Incorporation by Reference.** (1) "KHEAA Work-study Program Student Application" form, November, 1997, is incorporated by reference.

(2) It may be inspected, copied, or obtained at a participating institution during that institution's regulation business hours. [Forms and Agreements. All forms and agreements utilized in the administration of the KWSP shall be provided or approved by the authority. No alteration of any forms or agreements used in the administration of the KWSP shall be binding against the authority without the prior consent of the authority. The KWSP application is available to students at participating institutions or from the authority at 1050 U.S. 127 South, [Suite 102,] Frankfort, Kentucky 40601.]

WAYNE STRATTON, Chairman

RICHARD F. CASEY, General Counsel

APPROVED BY AGENCY: June 24, 1997

FILED WITH LRC: September 12, 1997 at 3 p.m.

GENERAL GOVERNMENT CABINET Kentucky Board of Dentistry (As Amended at ARRS, November 11, 1997)

201 KAR 8:400. Complaint procedure.

RELATES TO: KRS 313.150

STATUTORY AUTHORITY: KRS 313.220(4)

NECESSITY, FUNCTION, AND CONFORMITY: **KRS 313.220(4) authorizes the board to regulate the practice of dentistry and the use of dental auxiliary personnel. KRS 313.150 authorizes the board to institute and maintain actions to restrain and enjoin the unlicensed practice of dentistry. This administrative regulation is necessary to establish the procedure for filing a complaint for the unlicensed practice of dentistry and the action to be taken by the board on a complaint.** [This administrative regulation establishes procedures for filing complaints against licensed persons subject to administrative regulation by the Kentucky Board of Dentistry. KRS 313.150 authorizes the board to institute and maintain actions to restrain or enjoin violations of the unlicensed practice of dentistry. KRS 313.220(4) authorizes the board to regulate the practice of dentistry and the use of dental auxiliary personnel in this state. This administrative regulation is established to protect and safeguard the health and safety of the citizens of Kentucky and to provide procedures for filing, evaluation, and disposing of complaints.]

Section 1. Definitions. (1) ["Act" means KRS Chapter 313 or the administrative regulations promulgated thereunder, or other statutes and administrative regulations applicable to licensed dentists or dental hygienists.

(2) "Board" is defined in KRS 313.010(1) and 313.220[- and for purposes of this administrative regulation, shall also refer to a hearing panel of the board pursuant to KRS Chapter 13B].

(2) [(3)] "Formal complaint" means a formal administrative pleading authorized by the board that sets forth a charge [charges] against a licensee, certificate holder or applicant and commences a formal disciplinary proceeding under KRS Chapter 13B.

(3) "Initiating complaint" means an allegation of:

(a) A violation by a:

1. Licensee;

2. Certificate holder; or

3. Applicant; or

(b) An unlicensed person:

1. Engaging in the practice of dentistry; or

2. Using the title of dentist, dental hygienist, or specialist.

(4) "Law enforcement committee" means a committee that:

(a) Reviews an initiating complaint;

(b) Determines whether an investigation should be conducted;

(c) Appoints one (1) of its members to conduct the investigation; and

(d) May be assisted by:

1. The board's staff;

2. A board agent; or

3. The Office of the Attorney General.

[(4) "Law enforcement committee" means a committee of one (1) or more members of the board who may be assisted by the board's staff, its agents, or the Office of the Attorney General.

(5) "Initiating complaint" means any allegation in whatever form alleging a violation of the Act by a licensee, certificate holder, or applicant or alleging that an unlicensed person is engaging in the practice of dentistry or using the title of dentist, dental hygienist, or specialist.]

(5) [(6)] "Order" means the [whole or any part of a] final disposition of a hearing.

(6) [(7)] "Person" means an:

(a) Individual;

(b) Partnership;

(c) Corporation;

(d) Association;

(e) Public organization; or

(f) Private organization. [any individual, partnership, corporation, association, or public or private organization of any character.]

(7) [(8)] "Presiding officer" means:

(a) The person appointed by the board to preside at a hearing, pursuant to KRS 313.150(1) and (2); and

(b) [shall include] A hearing officer or [a] member of the hearing panel.

(8) [(9)] "Respondent" means the person against whom an initiating or a formal complaint has been made.

Section 2. Initiating Complaint. (1) [Source of initiating complaint.] A complaint may be initiated by:

(a) The board;

(b) A member of the public; or

(c) A state agency.

(2) An initiating complaint shall:

(a) Be in writing, unless the initiating complaint alleges an act relating to the practice of dentistry that creates an immediate and irreparable harm to the public, a patient, or an employee of the respondent;

(b) Bear the date of the complaint; and

(c) Bear the signature of the person making the complaint.

(3) A certified copy of a court record for conviction of a misdemeanor or felony shall be considered a valid initiating complaint.

(4) An initiating complaint may be received by:

(a) A board member;

(b) The Office of the Attorney General; or

(c) A staff member.

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Section 3. Consideration of Initiating Complaint. (1) Review of an initiating complaint shall take place:

(a) At the next regularly-scheduled meeting of the law enforcement committee; or

(b) As soon as practicable.

(2) The law enforcement committee shall:

(a) Review the initiating complaint;

(b) Determine if an investigation is warranted; and

(c) If it is determined that an investigation is warranted, appoint one (1) of its members or an agent or representative of the board to conduct an investigation of the respondent.

(3) Based on consideration of the initiating complaint and the investigative report, the board shall determine if there has been a prima facie violation. The members of the law enforcement committee shall not vote on this determination.

(4) If it is determined that the facts alleged in the complaint or investigative report do not constitute a prima facie violation, the board shall notify the complainant and respondent that further action shall not be taken;

(5) If it is determined that the facts alleged constitute a prima facie violation, the board:

(a) Shall issue a formal complaint, in accordance with KRS Chapter 13B, against the:

1. Licensee;

2. Certificate holder; or

3. Applicant; and

(b) May order that a written response be filed with the board.

Section 4. Final Disposition. (1) Upon reaching a decision, the board shall notify the complainant and respondent of its final disposition of the matter.

(2) The board shall make public:

(a) Its final order in a disciplinary action under KRS 313.130, 313.140, and 313.330; and

(b) An action to restrain or enjoin the unlicensed practice of dentistry. [by the public or by any state agency. All complaints shall be in writing unless special circumstances otherwise require and shall bear the date and signature of the person making the complaint. A certified copy of a court record for a misdemeanor or felony conviction shall be considered a valid complaint.

(2) Receipt of initiating complaint. A complaint may be received by any board member, by the Office of the Attorney General, or by any staff member.

(3) Consideration of initiating complaint. At the next regularly-scheduled meeting of the law enforcement committee or as soon thereafter as practicable, the law enforcement committee shall review the initiating complaint and shall determine if an investigation is warranted, and if so, the law enforcement committee may appoint one (1) of its members or any agent or representative of the board to conduct an investigation of the respondent.

(4) For the purpose of enforcing the Act, the board shall have the authority to administer oaths, receive evidence, interview persons, issue subpoenas and enforce disobedience in a circuit court of competent jurisdiction, and require the production of books, papers, documents, patient records, or other evidence.

(5) Based on consideration of the initiating complaint, the investigative report, if any, the board shall determine if there has been a prima facie violation of the Act. The members of the law enforcement committee shall not vote. If it is determined that the facts alleged in the complaint or investigative report do not constitute a prima facie violation of the Act, the board shall notify the person making the initiating complaint and the respondent that no further action will be taken at the present time. If it is determined that there is a prima facie violation of the Act, the board shall issue a formal complaint against the licensee, certificate holder, or applicant in accord with KRS Chapter 13B and may order a written response be filed with the board. In the case of a prima facie violation of KRS

313.020, the board shall file suit to enjoin the respondent and may seek criminal prosecution pursuant to KRS 313.022 and 313.250.

(6) The board shall notify the person making the initiating complaint and person against whom the complaint was made of the final disposition of the matter by the board. The board shall make public its final order in all disciplinary actions under KRS 313.130 and 313.140 and 313.330 and shall make public all actions taken to restrain or enjoin the unlicensed practice of the Act. The board may issue a press release at least to the newspapers with the largest circulation in Louisville, Lexington, Frankfort, the city of business of the licensee or person against whom the board has taken action to enjoin the unlicensed practice of dentistry or dental hygiene, and to the Associated Press wire service.]

[Section 1. Unless exceptional circumstances otherwise require, all complaints shall be in writing and shall bear the date and signature of the person making the complaint.

Section 2. Unless exceptional circumstances otherwise require, before a complaint is investigated it shall present evidence of a specific violation of law.

Section 3. Complaints may be received by any board member, dentist or hygienist designated by the board, the board's counsel, or by any board staff member.

Section 4. If the complaint warrants a formal hearing, the board shall provide the respondent with:

(1) A formal written presentation of charges;

(2) A notice of the right to be represented by counsel;

(3) At least ten (10) days to prepare any defense;

(4) The right to answer charges;

(5) The right to subpoena witnesses in his or her behalf; and

(6) The notice of the right to appeal after an adjudication against the respondent.

Section 5. Any board member who has participated in the preliminary investigations shall not participate in the hearing process.

Section 6. All subpoenas shall be issued in the name of the board and shall be signed by the secretary-treasurer of the board. The person requesting the subpoena shall bear the cost of serving the subpoena, paying the witness fees, and expenses. The board shall bear the cost of witnesses subpoenaed in the board's behalf.

Section 7. The board shall notify the person making the complaint and the person against whom the complaint was made of the final disposition of the matter.]

PATRICIA G. HOWELL, RDH, President

MARK BRENGELMAN, Assistant Attorney General

APPROVED BY AGENCY: September 9, 1997

FILED WITH LRC: September 12, 1997 at 4 p.m.

NATURAL RESOURCES AND
ENVIRONMENTAL PROTECTION CABINET
Department for Environmental Protection
Division for Air Quality
(As Amended at IJC on Agriculture and Natural
Resources, November 12, 1997)

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, Part 93, [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, **Part 93**, [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, "**EPA**" means **the U.S. Environmental Protection Agency**. [to 51.464; "administrator" means the Secretary of the Natural Resources and Environmental Protection Cabinet.]

Section 2. (1) 40 CFR 51.390, (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 (Federal Transit Laws), as published in the Federal Register, (62 FR 43801), August 15, 1997, is incorporated by reference.** [to 51.464; (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 **Federal Register** [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.

EDUCATION, ARTS, AND HUMANITIES CABINET
Education Professional Standards Board
(As Amended at ARRS, November 11, 1997)

704 KAR 20:084. Interdisciplinary early childhood education, birth to primary.

RELATES TO: KRS 157.3175, 161.020, 161.030

STATUTORY AUTHORITY: KRS 161.028

NECESSITY, FUNCTION, AND CONFORMITY: KRS 161.020 requires that a teacher [teachers] and other professional school personnel hold a certificate [certificates] of legal qualifications for his

[their] respective position [positions] to be issued upon completion of a program [programs] of preparation prescribed by the Education Professional Standards Board. Additionally, the statute requires a teacher education institution [institutions] to be approved for offering the preparation program [programs] corresponding to a particular certificate [certificates] on the basis of standards and procedures established by the Education Professional Standards Board. This administrative regulation establishes the professional certificate for interdisciplinary early childhood education, birth to primary; the teacher standards; and the standards for approval of a program [programs] leading to this [such a] certificate.

Section 1. Definitions. [The following definitions shall apply for purposes of this administrative regulation:] (1) "**Culturally diverse**" means **the wide range of differences among individuals that result from cultural and ethnic backgrounds, socioeconomic status, gender, personality traits, physical abilities and disabilities, and the interaction of factors of variability.**

(2) "Interdisciplinary" means a preparation program that includes child development, family studies, early childhood education, and early childhood special education.

(3) [(2)] "Teacher performance standard" means a set of teaching and managing tasks that an early childhood educator shall be able to demonstrate in early childhood programs. [Each teacher standard statement describes the general set of teaching or managing tasks that an early childhood educator shall perform and the contexts for performance of these tasks.]

[(3)] "Cultural diversity" means the wide range of differences among individuals that result from cultural and ethnic backgrounds; socioeconomic status; gender; personality traits; physical abilities and disabilities; and the interaction of factors of variability.]

Section 2. (1) The professional certificate for interdisciplinary early childhood education, birth to primary, shall be issued [in accordance with the pertinent Kentucky statutes and administrative regulations of the Education Professional Standards Board] to an applicant who has completed:

(a) A bachelor's degree and the approved program of preparation for this certificate as described in Sections 7, 8, and 9 of this administrative regulation at a teacher education institution approved by the Education Professional Standards Board;

(b) [-In addition, the applicant shall complete] The approved written assessments [tests] as required by subsection (2) of this section; and

(c) (a) One (1) year internship as required by subsection (4) of this section. [provided in this administrative regulation.]

(2)(a) In order to satisfy the testing prerequisites for teacher certification as required by KRS 161.030, the applicant shall score at least the following minimum passing scores on the tests identified below:

- 1. The NTE Core Battery tests:
 - a. Communication skills, 646;
 - b. General knowledge, 643; and
 - c. Professional knowledge, 644; and
- 2. The Kentucky test of interdisciplinary early childhood, 150.

(b) The assessments [tests] shall [may] be waived for an out-of-state teacher who has [teachers who have] two (2) or more years of successful experience in a position teaching children from birth to entry into the primary program on at least a half-time basis and whose preparation corresponds to the interdisciplinary early childhood education outlined in this administrative regulation.

(3) [Upon successful completion of an approved program of preparation and assessments [testing], the Education Professional Standards Board shall issue a statement of eligibility in accordance with KRS 161.030:

(4)] The Education Professional Standards Board shall issue the one (1) year certificate for the beginning teacher internship as

provided in KRS 161.030 ~~and 704 KAR 20:320~~ upon applicant's confirmation of employment in a position teaching children from birth to entry into a primary program on at least a half-time basis in a school which meets the criteria identified in KRS 161.030.

(4) [(5)](a) The beginning teacher internship shall [may] be waived for an out-of-state applicant who has [applicants who have] completed two (2) or more years of successful experience in a position teaching children from birth to entry into the primary program.

(b) The beginning teacher internship shall [may] be waived for an applicant who has [applicants who have] completed two (2) or more years of successful experience in a position teaching children from birth to entry into a primary program on at least a half-time basis in Kentucky while holding one (1) of the following credentials:

1. Baccalaureate or higher degree in child development or early childhood education or early childhood special education;
2. Certification valid for kindergarten; or
3. Special education certification valid for primary grades.

Section 3. The professional certificate for interdisciplinary early childhood education, birth to primary, shall be issued and renewed in accordance with the provisions of KRS 161.030 and 704 KAR 20:045.

Section 4. The professional certificate for interdisciplinary early childhood education, birth to primary, shall be valid for teaching children from birth to entry into the primary program, including [-This includes] teaching children in kindergarten or another program [other programs] for five (5) year old children if the program is [where these programs are] operated separately from the primary program. A person [Persons] holding this certificate shall serve as a primary developer and implementer of an individual program [primary developers and implementers of individual programs] for children with and without disabilities including an individual education plan (IEP) [plans (IEP's)] and individual family service plan (IFSP) [plans (IFSP's)] with consultation and support from a specialist [specialists] according to the needs of the child [(e.g., speech-language pathologists, occupational and physical therapists, nurses, educators of the hearing-impaired or vision-impaired, and others)].

Section 5. A teacher [Teachers] serving in a position [positions] identified in Section 4 of this administrative regulation as an early childhood teacher [teachers] during the 1994-95, 1995-96, 1996-97, or 1997-98 school year in a district [districts] with an approved preschool program [programs] shall be eligible to continue serving in the same position without [any] additional certification. Upon application to the Education Professional Standards Board, a teacher [these teachers] shall receive a letter [letters] certifying eligibility.

Section 6. A [All] teacher preparation institution [institutions] offering an approved program [programs] of preparation leading to the professional certificate for interdisciplinary early childhood education, birth to primary, shall establish an assessment system to judge the performance of a candidate [candidates] on the teacher performance standards identified for this certificate.

Section 7. Standards for Program of Preparation. In order to receive approval of the Education Professional Standards Board, a program of preparation leading to the professional certificate for interdisciplinary early childhood education, birth to primary, shall meet the following standards:

(1) The program shall be designed to prepare candidates to teach and manage tasks as identified in the teacher standards established [listed] in Section 9 of this administrative regulation;

(2) The program shall include a system of continuous assessment to evaluate a [the] candidate's progress and level of attainment on the teacher standards. The assessments shall include performance on authentic teaching and managing tasks in settings that are inclusive of children across abilities and contexts. Candidates shall be

evaluated by paper and pencil tests and authentic assessments of performance;

(3) The program of preparation shall ensure that candidates from culturally diverse backgrounds are recruited and retained in the program;

(4) The program of preparation shall provide the candidate with knowledge and experiences to perform teaching and managing tasks identified in the teacher standards with children from culturally diverse backgrounds; and

(5) Student teaching experiences shall be supervised by a teacher who has a letter certifying eligibility to continue teaching in an interdisciplinary early childhood position, or a teacher holding a master's degree with emphasis in early childhood and three (3) years of teaching experience.

Section 8. Application for Program Approval. (1) A teacher education institution which proposes to offer a program of preparation leading to the professional certificate for interdisciplinary early childhood education, birth to primary, shall make application for approval to the Education Professional Standards Board. The application for approval shall include a program description which includes the following:

(a) Program outcomes which [:] include teacher standards for interdisciplinary early childhood education;

(b) Program components which [:] provide a list of coursework, clinical and field experiences, and student teaching related to general education, interdisciplinary specialty studies, and professional studies;

(c) A [Faculty provide] list of faculty responsible for and involved with the conduct of the specific program and their qualifications;

(d) A description of student [Students describe] admission and retention policies and procedures that are specific to this program; and

(e) A [Plan for assessment] description of the system of continuous assessment of teacher standards.

(2) An institution [Institutions] may receive interim program approval for a one (1) year period which may be extended for one (1) additional year while the institution develops the assessments required by [identified in] Section 7(2) of this administrative regulation. At the end of the period of interim approval, the institution shall apply for full approval to the Education Professional Standards Board.

Section 9. Teacher Standards. (1) Teacher Standard I. The early childhood educator shall design and organize learning environments, experiences, and instruction that address the developmental needs of infants, toddlers, preschool children, and kindergarten children and goals established by KRS 158.6451. The early childhood educator shall develop plans for:

- (a) Implementation in a classroom setting;
- (b) Implementation in a home or other settings;
- (c) Implementation by teaching assistants and other staff in a variety of settings; and
- (d) Training teaching assistants, other staff, and parents.

These plans shall include individual family service plans (IFSP's), individual education programs (IEP's), and transition plans for children across disabilities developed in partnership with family members.

(2) Teacher Standard II. The early childhood educator shall create appropriate learning environments for infants, toddlers, preschool children, and kindergarten children that are supportive of developmental needs of the age group and goals established by KRS 158.6451. The early childhood educator shall provide developmental and learning activities in classroom and home settings, and in other settings, such as other preschools, child care programs, and hospitals. Within these settings, the learning context may include individual child activities, parent-child activities, small groups, and large groups. The early childhood educator shall create appropriate learning environments for children with diverse abilities including children with and without disabilities.

(3) Teacher Standard III. The early childhood educator shall introduce, implement, facilitate, and manage development and learning for infants, toddlers, preschool children, and kindergarten children to promote growth toward developmental needs of the age group and goals established by KRS 158.6451. The early childhood educator shall implement instruction in classroom and home settings, through itinerant services, and in other settings such as day care, other preschools, and hospitals. The early childhood educator shall implement instruction for young children with diverse abilities including children with and without disabilities.

(4) Teacher Standard IV. The early childhood educator shall assess children's cognitive, emotional, social, communicative, adaptive, and physical development; organize assessment information; and communicate the results appropriate to the purpose of the assessment. Assessment purposes shall include:

- (a) Determining learning results;
- (b) Developmental screening;
- (c) Program planning;
- (d) Eligibility for disability services;
- (e) Program evaluation;
- (f) Progress on IFSP's and IEP's; and
- (g) Needs for transition to the next educational setting or program.

(5) Teacher Standard V. The early childhood educator shall reflect on and evaluate teaching and learning situations, learning environments, and programs for infants, toddlers, preschool children, kindergarten children, and their families. This shall include learning situations and programs that are provided in relation to an IFSP or an IEP and by the early childhood educator, a teaching assistant or other staff member, the family, or other caregiver.

(6) Teacher Standard VI. The early childhood educator shall collaborate and consult with the following to design, implement, and support learning programs for children:

- (a) Staff in a team effort;
- (b) Volunteers;
- (c) Families and primary caregivers;
- (d) Other educational, child care, health and social services providers in an interagency and interdisciplinary team; and
- (e) Local, state, and federal agencies.

(7) Teacher Standard VII. The early childhood educator shall engage in self-evaluation of teaching and management skills and participate in professional development to improve performance. This shall include the following performance areas:

- (a) Designing and planning developmental and learning activities;
- (b) Creating learning environments;
- (c) Implementing and managing activities;
- (d) Assessing children's learning development;
- (e) Evaluating learning situations and environmental programs;

and

- (f) Collaborating with colleagues, parents, and others.

(8) Teacher Standard VIII. The early childhood educator shall support and promote the self-sufficiency of families as they care for and provide safe, healthy, stimulating, and nurturing environments for young children.

ROSA WEAVER, Chair

ROBERT SHERMAN, Attorney

APPROVED BY AGENCY: June 23, 1997

FILED WITH LRC: August 28, 1997 at 4 p.m.

WORKFORCE DEVELOPMENT CABINET
State Board for Adult and Technical Education
(As Amended at ARRS, November 11, 1997)

780 KAR 3:070. Attendance, compensatory time, and leave.

RELATES TO: KRS 151B.035, 151B.040, 151B.085, [Chapter 337;] 29 USC 201-219, 2601 to 2654 [et seq.], Part 825

STATUTORY AUTHORITY: KRS 151B.035

NECESSITY, FUNCTION, AND CONFORMITY: KRS 151B.035(3) requires the State Board for Adult and Technical Education to promulgate comprehensive administrative regulations [with—the provisions of KRS 151B.035. KRS 151B.035 specifies that the state board promulgate comprehensive administrative regulations] for the certified and equivalent staff governing attendance, including hours of work, compensatory time, and annual, court, military, sick, voting, and special leave of absence. The Family and Medical Leave Act of 1993, 29 USC 2601 to 2654 [et seq.], [(PL-103-3)] as implemented by 29 CFR Part 825 requires the granting of family and medical leave. This administrative regulation establishes the attendance, compensatory time, and leave requirements for certified and equivalent staff. [is necessary to comply with these statutory requirements.]

Section 1. [Definitions. (1) "Employee" means an employee in active payroll status. An employee who has resigned or retired or who has been placed in unpaid leave status by a personnel action shall not qualify to donate or receive sick leave under the Sick Leave Sharing Program.]

(2) "Immediate family" means a spouse, parent or child.

(3) "Medically certified illness, injury, impairment or physical or mental condition" means a disabling medical condition which renders the employee incapable of performing the essential duties of his job.

(4) "Medical emergency" means an illness or injury of the employee or the employee's immediate family which will require the employee's absence from duty on leave with or without pay for ten (10) or more consecutive working days.

(5) "Child", son or daughter, means a biological, adopted, or foster child (under an agreement with a state government agency); a stepchild, a legal ward, or a child of a person standing in loco parentis who is under eighteen (18) years of age, or eighteen (18) years of age or older and incapable of self-care because of a mental or physical disability.

(6) "Health care provider" means a doctor of medicine or osteopathy who is authorized to practice medicine or surgery by the state in which the doctor practices; or any other person determined by the United States Secretary of Labor to be capable of providing health care services as set forth in regulations found in the Federal Register, Volume 58, No. 106, Section 825.118, dated June 4, 1993.

(7) "Parent" means the biological parent of one (1) employee or an individual who stood in loco parentis to an employee.

(8) "Reduced leave schedule" means a leave schedule that reduces the usual number of hours per workweek, or hours per workday, of an employee.

(9) "Serious health condition" means an illness, injury, impairment, or physical or mental condition that involves inpatient care in a hospital, hospice, or residential medical care facility; or continuing treatment by a health care provider.

(10) "Spouse" means a husband or wife.]

[Section 2.] Attendance. (1) A full-time employee [Full-time employees] shall be required to work thirty-seven and one-half (37 1/2) hours per week [for all positions] unless otherwise specified by the appointing authority.

(2) The normal work day for a school-based employee [employees] shall coincide with the appropriate school schedule as recommended by the school administrator [principal] and approved by the regional executive director of the respective school operation.

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(3) The appointing authority may require an employee [employees] to work hours and work days other than normal including an [but not limited to] inclement weather schedule [schedules] if it is in the best interest of the agency.

(4) An employee who works within a school, region, or division which requires [Employees who work within schools; regions, or divisions which require] more than one (1) shift or seven (7) days a week operation may be assigned from one (10) shift to another and from one (1) post to another or alternate days to meet staffing requirements, or to maintain or provide essential services of the agency, or to meet scheduling needs of students. An employee [Employees] shall be given as much advance notice as possible if a schedule is [when schedules are] changed. The employee shall [is required to] give reasonable notice in advance of absence from a work station.

Section 2, [3:] Compensatory Time. (1) An employee who is requested in advance to work in excess of the prescribed hours of duty shall be granted compensatory leave on an hour for hour basis. Compensatory leave shall [may] be accumulated or taken off in one-half (1/2) hour increments. The maximum amount of compensatory leave that may be accumulated shall be 200 hours.

(2) Compensatory time shall be granted for an employee [these] working in a full-time position [positions only] and who performs [perform] duties and responsibilities pertaining [only] to this full-time position.

(3) Upon separation from state service, an employee [employees] shall be paid for all unused compensatory leave at the greater of his [their] regular hourly rate of pay or at the average rate of pay for the final three (3) years of employment.

(4) A [Any] school-based employee who has accumulated compensatory leave may [shall be permitted to] take time off during the following times:

(a) Spring break.

(b) Christmas break except on the four (4) official holidays normally given to state employees.

(5) A certified or equivalent employee may use accumulated compensatory time if:

(a) Practicable;

(b) Requested in advance; and

(c) Approved by the respective supervisor. [All certified and equivalent employees shall be permitted to use accumulated compensatory time when practicable and requested in advance and if approved by the respective supervisor.]

(6) To maintain a manageable level of accumulated compensatory leave and for the specific purpose of reducing an employee's compensatory leave, the commissioner or designee may direct an employee to take accumulated compensatory time off from work.

Section 3, [4:] Annual Leave. (1) A full-time employee [Full-time employees] in the certified and equivalent personnel system except a seasonal, temporary, per diem, emergency or [and] part-time employee [employees] shall accumulate annual leave with pay at the following rate:

Months of Service	Annual Leave Days
0-59 months	1 leave day per month; 12 per year
60-119 months	1 1/4 leave days per month; 15 per year
120-179 months	1 1/2 leave days per month; 18 per year
180 months and over	1 3/4 leave days per month; 21 per year

(2) Annual leave shall be accumulated [only] in the months in which the employee is hired to work. A teacher employed 228 days [to teach ten and one-half (10 1/2) months] shall [only] accrue leave during the actual school term, unless he is approved to work extended employment.

(3) Computing annual leave.

(a) A full-time employee shall work [must have worked] more than half of the work days in a month to qualify for annual leave.

(b) Leave shall be credited on the first day of the month following the month in which the leave is earned. The [In computing months of total service for the purpose of earning annual leave, only those] months for which an employee earned annual leave shall be counted to compute the months of total service.

(c) A former employee who is reinstated and was [Former employees who have been] reinstated and who have been previously dismissed for cause from state service shall receive credit for service prior to the dismissal, except where dismissal resulted from a violation of KRS 151B.090. The [Only those] months for which the employee earned annual leave shall be counted in computing months of total service.

(4) The maximum accumulated annual leave which may carry forward from one (1) fiscal year to the next shall not exceed the following amounts:

Months of Service	Maximum Amount
0-59 months	Thirty (30) work days
60-119 months	Thirty-seven (37) work days
120-179 months	Forty-five (45) work days
180-239 months	Fifty-two (52) work days;
240 months and over	Sixty (60) work days

Leave in excess of the above maximum amounts shall be converted to sick leave at the end of the fiscal year or upon retirement, whichever comes first. Months of service for the purpose of determining the maximum accumulation of annual leave and the amount to be converted to sick leave shall be computed as provided in subsections (1), (2), and (3) of this section. Annual leave shall not be granted in excess of that earned prior to the starting date of leave.

(5) Absence due to sickness, injury, or disability in excess of that authorized for these purposes may, at the request of the employee and within the discretion of the appointing authority, be charged against annual leave.

(6) Taking annual leave.

(a) Accumulated leave shall be granted by the appointing authority in accordance with operating requirements and, insofar as practicable, with the request of an employee [employees]. An employee who makes a timely request for annual leave shall be granted annual leave by the appointing authority, during the fiscal [calendar] year, up to at least the amount of time he earned that year.

(b) A school-based employee [School-based employees] shall take time off and be on some form of official leave status with the exception of paid state holidays during the following times:

1. Spring break.

2. Christmas break [except on the four (4) official holidays normally given to state employees].

(c) In cases of emergency, the supervisor may request an employee to work during the above times without loss of annual leave.

(d) A teacher employed 228 days [to teach ten and one-half (10 1/2) months] may take annual leave outside the 228 day work year [ten and one-half (10 1/2) months;] if the school administrator and the regional executive director determine [provided that] there is not enough opportunity to take annual leave during the 228 day [ten and one-half (10 1/2) month] employment year [as determined by the school administrator [principal or school director] and the regional director].

(7) [Employees are charged with annual leave for absence only on days they would otherwise work and receive pay or on designated school closure days:

(8) An employee [Employees] shall be allowed up to two (2) professional leave days during the work year for the purpose of

continuing staff development or participation in professional organization workshops and meetings without loss of pay.

(8) [(9)] Annual leave shall accrue if [only when] an employee is working or on authorized leave with pay. Annual leave shall not accrue if [when] an employee is on educational leave with pay.

(9) [(10)] An employee who is transferred to the Department for Adult Education and Literacy or the Department for [and] Technical Education shall retain his accumulated leave.

(10) [(11)] Before an employee may be placed on leave of absence without pay in excess of thirty (30) working days, he shall [must] have used or have been paid for his [any] accumulated annual leave and compensatory leave unless he has requested to retain up to ten (10) days of accumulated annual leave.

(11) [(12)] An employee [Employees] eligible for state contributions for life insurance and health benefits under KRS 151B.040 [the provisions of KRS Chapter 151B] shall have worked or been on paid leave during the previous month subject to the following conditions:

(a) A combination of workdays and paid leave used by the employee within a month shall entitle the employee to state-paid contributions for life insurance and health benefits in the following month; [Any combination of workdays and paid leave used by the employee within a month shall entitle the employee to state-paid contributions for life insurance and health benefits in the following month.]

(b) If [When] an employee is unable to work and elects to use paid leave to qualify for state contribution for life insurance and health benefits, he shall utilize his paid leave days consecutively.

(c) An employee who has exhausted paid leave shall not qualify for state contributions for life insurance and health benefits unless he worked for more than half of the workdays in a month. If the employee is unable to work for more than half of the workdays in a month, the employee may continue his group health and life insurance benefits for the following month by paying the total cost of the state contributions and any employee contributions for these benefits.

(d) An [Any] employee who leaves the Department for Adult Education and Literacy or the Department for [and] Technical Education certified and equivalent personnel system on or prior to the fifteenth day of the month before working or being on paid leave for over half of the workdays in the month shall remain eligible for state contributions for life insurance and health benefits in the following month.

(12) [(13)] Lump sum payment for accumulated annual leave.

(a) An employee [Employees] shall be paid in a lump sum for accumulated annual leave, not to exceed the maximum amounts established [as set forth] in subsection (4) [(5)] of this section if [when] separated by proper resignation or retirement.

(b) In the case of layoff, the employee shall be paid in a lump sum for all accumulated leave.

(c) An employee in the unclassified service who reverts to the classified service or an employee who resigns one day and is employed the next day shall retain his accumulated leave.

(d) The effective date of the separation shall be the last work day.

(13) [(14)] An employee who has been dismissed for cause or who has failed to give proper notice of resignation may, at the discretion of the appointing authority, be paid in a lump sum for accumulated annual leave not to exceed the maximum amounts established [set forth] in subsection (4) of this section.

(14) [(15)] Upon the death of an employee, his estate shall be entitled to receive pay for the unused portion of the employee's accumulated annual leave.

(15) [(16)] Absence for a fraction or part of a day that is charged to annual leave shall be charged in hours or increments of one-half (1/2) hour.

Section 4. [5:] Sick Leave. (1) An employee [Employees] in the certified and equivalent personnel system, except an emergency, per diem, or [and] part-time employee [employees] shall accumulate sick

leave with pay at the rate of one (1) working day for each month of service. An employee shall [must] have worked more than half of the workdays in a month to qualify for sick leave with pay. Each employee shall be credited with additional sick leave on the first day of the month following the month in which the sick leave is earned.

(2) Sick leave credits: full-time and former employees.

(a) A full-time employee [Full-time employees] completing 120 months of total service with the state shall be credited with ten (10) additional days of sick leave upon the first day of the month following the completion of 120 months of service.

1. In computing months of total service for the purpose of crediting ten (10) additional days of sick leave, the [only those] months for which an employee earned sick leave shall be used.

2. [Only those months for which the employee earned sick leave shall be counted in computing total months of service.]

3.] The total service shall [must] be verified before the leave is credited to the employee's record.

(b) A former employee who has [Former employees who have] been rehired and who was [had been] previously dismissed for cause from state service shall receive credit for service prior to the dismissal, except if the [where] dismissal resulted from a [the] violation of KRS 151B.090.

(3) Unused sick leave may be accumulated with no maximum on accumulation.

(4) Sick leave shall accrue if [only when] an employee is working or on authorized leave with pay, with the exception of educational leave with pay.

(5) The appointing authority shall grant accrued sick leave with pay if [when] an employee:

(a) Receives medical, dental, or optical examination or treatment;

(b) Is disabled by sickness, injury, or pregnancy. The appointing authority may require a doctor's statement attesting to the inability to perform his duties;

(c) Is required to care for a sick or injured member of his immediate family for a reasonable period of time. The appointing authority may require a doctor's statement that supports [-supporting] the need for care by the employee;

(d) Would jeopardize the health of others at his duty post because of exposure to a readily transmittable contagious disease; or

(e) Has lost by death a spouse, or a parent, child, brother or sister, or the spouse of any of them, or a person [any persons] related by blood or affinity with a similarly close association. Leave under this paragraph shall be [is] limited to three (3) days or a reasonable extension at the discretion of the appointing authority.

(6) At the termination of sick leave with pay not exceeding six (6) months, the appointing authority shall return the employee to his former position. At the termination of sick leave with pay exceeding six (6) months, the appointing authority shall return the employee to a position for which he is qualified and which resembles his former position as closely as circumstances permit.

(7) Continuous leave limitation, doctor's statements, availability of position on return, dismissal after one (1) year, and sick leave without pay.

(a) The appointing authority shall grant sick leave without pay for a period not to exceed one (1) year for so long as an employee is disabled by sickness, or illness, or pregnancy; and the total continuous leave does not exceed one (1) year].

(b) The appointing authority may require periodic doctor's statements attesting to the continued inability to perform his duties.

(c) If [When] the employee has given notice of his ability to resume his duties, the appointing authority shall return the employee to a position for which he is qualified and which resembles his former position as closely as circumstances permit. If there is not a [no] position available, KRS 151B.085 shall apply. [the statutes pertaining to layoff apply.]

(d) An employee who is unable to return to work at the end of one (1) year of sick leave without pay, after being requested to return to

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work at least ten (10) days prior to the expiration of his sick leave, shall be dismissed by the appointing authority.

(e) An employee granted sick leave without pay may, upon request, retain up to ten (10) days of accumulated sick leave.

(8) **An employee [Employees]** eligible for state contributions for life insurance and health benefits under **KRS 151B.040** ~~[the provision of KRS Chapter 151B]~~ shall have worked or been on paid leave during the previous month subject to the following conditions:

(a) **A [Any]** combination of workdays and paid leave used by the employee within a month shall entitle the employee to state-paid contributions for life insurance and health benefits in the following month;

(b) **If [When]** an employee is unable to work and elects to use paid leave to qualify for state contribution for life insurance and health benefits, he shall utilize his paid leave days consecutively.

(c) An employee who has exhausted paid leave shall not qualify for state contribution for life insurance and health benefits unless he works for more than half of the workdays in a month. If the employee is unable to work for more than half of the workdays in a month, the employee may continue his group health and life insurance benefits for the following month by paying the total cost of the state contributions and **the [any]** employee contributions for these benefits.

(d) The Department for Adult Education and Literacy **or [and] the Department for Technical Education** shall continue to pay the state's contribution toward health and life insurance benefits **for the entire year [between June 15 and August 1] for an employee [employees]** whose normal work year consists of **228 days [ten and one-half (10 1/2) months]**.

(e) **An [Any]** employee who leaves the certified and equivalent personnel system on or prior to the fifteenth day of the month before working or being on paid leave for over half of the workdays in the month shall remain eligible for state contributions for life insurance and health benefits in the following month.

(9) Absence for a fraction or a part of a day that is chargeable to sick leave shall be charged in hours or increments of one-half (1/2) hour.

(10) An employee who is transferred to the Department for Adult Education and Literacy **or [and] the Department for Technical Education** shall retain his accumulated sick leave.

(11) **An employee [Employees]** shall be credited for accumulated sick leave **if [when]** separated by proper resignation, layoff, retirement, or **[when]** granted leave without pay in excess of thirty (30) working days. **A former employee who is [Former employees who are]** reinstated or reemployed shall have **his** unused sick leave **balance [balances]** revived upon reentrance and placed to **his [their]** credit.

(12) **If absent [in cases of absence]** due to illness or injury for which workers' compensation benefits are received, accumulated sick leave may be used in order to maintain regular full salary. If paid sick leave is used, workers' compensation pay benefits shall be assigned back to the state for whatever period of time an employee received paid sick leave. The employee's sick leave shall be immediately reinstated to the extent that workers' compensation benefits were assigned.

(13) Application for sick leave. An employee shall file a written application for sick leave with or without pay within a reasonable time. Except **for an [in cases of]** emergency illness, an employee shall request advance approval for sick leave for medical, dental, or optical examination, and for sick leave without pay. **If there is an [in all cases of]** illness, an employee **shall [is obligated to]** notify his immediate supervisor or other designated person. Failure to do so in a reasonable period of time may be cause for denial of sick leave for the period of absence.

(14) Supporting evidence.

(a) The appointing authority may require an employee to supply supporting evidence in order to receive sick leave. A supervisor's or employee's certificate may be accepted, but a medical certificate may

be required, signed by a licensed practitioner and certifying to the incapacity, examination, or treatment. The appointing authority shall grant sick leave **if [when]** the application is supported by acceptable evidence.

(b) The appointing authority may place on sick leave an employee whose health might be jeopardized by job duties, whose health might jeopardize others, or whose health prevents performance of duties and responsibilities, and who, on request, fails to produce a satisfactory medical certificate.

Section 5. [6:] Sick Leave Sharing Procedures. (1) An employee with a sick leave balance in excess of seventy-five (75) hours may donate **sick leave [any or all excess]** to an employee with a documented medical emergency who has exhausted **his [all]** annual leave, sick leave, and compensatory leave. **An employee who has resigned, retired, or been placed in unpaid leave status by a personnel action shall not qualify to donate or receive sick leave.**

(2) Voluntary donation of excess sick leave shall be subject to the approval of and made on a form prescribed by the Commissioner and shall include:

(a) The name of the donor.

(b) The agency or office in which the donor is employed.

(c) The position number of the donor.

(d) The Social Security number of the donor.

(e) The name of the employee to which leave is being donated.

(f) The agency or office in which the donee is employed.

(g) The donee position number.

(h) The donee Social Security Number.

(i) The maximum amount of the donor's leave in excess of seventy-five (75) hours which may be credited to the individual donee.

(j) Certification by the donor that this donation is given without expectation or promise for **a [any]** purpose other than that authorized by this administrative regulation.

(3) The donating employee shall retain a sick leave balance of not less than seventy-five (75) hours.

(4) A donating employee shall not sell, offer to sell, bargain, exchange, transfer, or assign accumulated sick leave for **[any]** consideration or in **a [any]** manner other than that authorized by this administrative regulation.

(5) An employee with a medical emergency who has exhausted **his [all]** annual leave, sick leave, and compensatory leave may make application to receive donation of sick leave from an employee (or employees) with a sick leave balance in excess of seventy-five (75) hours. Application may be made on behalf of the employee by a personal representative of the employee **if the employee is incapable of making [in the event of the employee's incapacity to make]** application on his own behalf.

(6) Application shall be made to the appointing authority on a form prescribed by the commissioner and shall include:

(a) Employee name.

(b) Position number.

(c) Social Security number.

(d) Employee title.

(e) The reason transferred leave is needed, including a brief description of the nature, severity, and anticipated duration of the medical emergency.

(f) Signature of the requestor or his personal representative.

(7) The application shall be accompanied by certification by one (1) or more physicians of the medical reasons that the employee will be unable to perform the duties and responsibilities of this position for ten (10) or more consecutive working days.

(8) The appointing authority may require additional medical evidence prior to approval or denial of acceptance of sick leave donation. An employee may request an extension of approved, donated sick leave by presenting additional medical evidence to the appointing authority.

(9) At the end of each pay period while an employee is on

donated leave, the appointing authority shall credit that employee's sick leave balance with the number of hours which would otherwise be considered leave without pay and shall reduce the donor's leave balance by that amount.

(10) **An** [No] employee on donated sick leave shall **not** be credited with leave in an amount in excess of the time of the documented medical emergency.

(11) **A person shall not use his office of employment to** [No person shall through his office of employment use any] promise, exchange, or influence [to require] an employee to donate excess sick leave or annual leave to **an** [any other] employee.

(12) Sick leave shall not be transferred in increments of less than seven and one-half (7.5) hours.

(13) **If** [Where] multiple donors donate sick leave to an eligible recipient, **the agency** [agencies] shall transfer leave in chronological order of receipt of the donation forms, up to the maximum amount that has been certified to be needed by the recipient.

(14) The applicant for sick leave sharing shall be responsible for filing the appropriate medical certificates and applications. Donated sick leave shall not be used retroactively except to cover the period between the first day sick leave would have been granted and the date of approval by the appointing authority.

(15) The sick leave sharing recipient shall **monitor** [be responsible for monitoring] the amount of sick leave donated and used.

(16) **Except as provided in Section 4(7)(e) of this administrative regulation,** donated sick leave shall be used on consecutive days. [except as provided by Section 5(7)(e) of this administrative regulation. Any] Leave that an employee accrues while receiving donated sick leave shall be used before donated sick leave.

(17) **If** [When] the recipient of donated leave returns to work, resigns, retires, or otherwise terminates from state employment, unused donated leave shall be restored to the donors, in chronological order of receipt of the donation forms, unless the recipient provides medical evidence that he or a member of his immediate family will require continued, periodic medical treatment relating to the original condition for which leave was donated.

(18) If a sick leave donor resigns, retires or is otherwise terminated from state employment before the donor's sick leave has been transferred to the recipient, **the** [such] leave shall not be available for use by the recipient.

(19) An appointing authority may require a sick leave recipient to provide an updated medical certificate attesting to the continued need for leave after thirty (30) working days of sick leave.

Section 6. [7-] Family and Medical Leave. [All] Leave utilized pursuant to Sections 3 and 4 [4 and 5] of this administrative regulation that qualifies as family and medical leave in accordance with the Family and Medical Leave Act, 29 USC 2601 to 2654, and [et seq., and the federal regulations promulgated thereto] 29 CFR Part 825, shall be designated by the appointing authority as family and medical leave. [(1) Effective August 5, 1993, every employee in state service who has completed twelve (12) months of service and has worked at least 1,250 hours during the preceding twelve (12) months shall qualify for twelve (12) weeks of family and medical leave without pay. On the first day of January of each year thereafter every employee in state service who has completed twelve (12) months of service and has worked at least 1,250 hours during the preceding calendar year shall qualify for twelve (12) weeks of family and medical leave without pay. Unused family and medical leave shall not be carried over from year to year.

(2) Calculating a week of family and medical leave:

(a) A week of family and medical leave is the amount of time an employee normally works each week.

(b) If an employee's schedule varies from week to week, a weekly average of the hours worked over the twelve (12) weeks prior to the beginning of the family and medical leave shall be used for calculating the employee's normal work week:

(c) If there has been a permanent or long-term change in the employee's schedule (for reasons other than family and medical leave), the hours worked under the new schedule shall be used for calculating the employee's normal workweek.

(3) The appointing authority shall grant family and medical leave upon the receipt of a completed application from an employee. The appointing authority shall require the employee to use accumulated sick, annual and compensatory leave prior to granting unpaid family and medical leave, except that the employee may request to reserve ten (10) days of paid sick leave. The amount of available family and medical leave shall be reduced by the amount of paid or unpaid leave used. A completed application consists of the request form and the medical certification required by subsection (6) of this section. The employee shall make the application as far in advance of the start of the leave as reasonable.

(4) Family and medical leave shall be granted:

(a) For the birth of a child of the employee, adoption by the employee of a child, or placement with the employee of a foster child. The appointing authority shall require a couple in the employ of the same agency to limit the total amount of family and medical leave to twelve (12) weeks where leave is sought in connection with the birth, adoption, or placement of a foster child or to care for a sick parent;

(b) Within one (1) year of the birth of a child of the employee; adoption by the employee or placement with the employee of a foster child; for the care of such newborn, adopted, or foster child;

(c) To an employee to care for the employee's spouse, parent, or child if the spouse, parent, or child has a serious health condition.

(d) Because of a serious health condition of the employee that makes the employee unable to perform the essential functions of his position:

(5) Certification requirements:

(a) The appointing authority shall require an employee granted family and medical leave for a serious health condition of the employee or child, spouse or parent to supply a certification, on a form prescribed by the cabinet secretary, from a health care provider that includes a statement that the employee is needed to care for a child, spouse, or parent in order to assist in their recovery. The certifying health care provider shall be a person actually providing services to the employee, child, spouse, or parent.

(b) An employee requesting intermittent leave or leave on a reduced leave schedule due to serious health condition of the employee or child, spouse, or parent shall be required to supply a certification from a licensed health care provider that such leave is medically necessary and the expected duration and schedule of such leave. The certifying health care provider shall be a person actually providing services to the employee, child, spouse, or parent.

(c) If the appointing authority has reason to doubt the validity of a medical certification, the appointing authority may require the employee to obtain a second opinion at the agency's expense. The appointing authority shall designate the health care provider to furnish the second opinion. The designated health care provider shall not be employed on a regular basis by the agency.

(d) If the opinions of the employee and the designated health care provider differ, the appointing authority may request the employee to obtain certification from a third health care provider who is approved by the employee. This third opinion shall be final and binding. If the appointing authority does not act in good faith to attempt to reach an agreement on the third health care provider, the appointing authority shall be bound by the original certification. If the employee does not act in good faith to attempt to reach an agreement on the third health care provider, the employee shall be bound by the opinion of the second health care provider.

(e) The appointing authority may require recertification of the need for family and medical leave every thirty (30) working days and a report on the status and intention of the employee to return to work.

(6) If an employee requests intermittent leave or a reduced work schedule to care for a seriously ill child, parent, or spouse or for the

employee's own serious health condition, and the need for leave is reasonably based on planned medical treatment, the appointing authority may temporarily reassign the employee to an available alternative position with equivalent pay and benefits if the employee is qualified for the position and it better accommodates recurring periods of leave than the employee's regular job.

(7) Employees eligible for state contributions for life insurance and health benefits under the provisions of KRS Chapter 151B shall have worked or been on paid leave or shall have been on family and medical leave during the previous month subject to the following conditions:

(a) Work days and paid leave and family and medical leave used by the employee within a month shall entitle the employee to state-paid contributions for life insurance and health benefits in the following month;

(b) When an employee is unable to work and elects to use paid leave to qualify for state contribution for life insurance and health benefits, he shall use his paid leave days consecutively;

(c) An employee who has exhausted paid leave and family and medical leave shall not qualify for state contribution for life insurance and health benefits unless he works for more than half of the work days in a month. If the employee is unable to work for more than half of the work days in a month, the employee may continue his group health and life insurance benefits for the following month by paying the total cost of the state contribution and the employee contributions for such benefits.

(d) An employee who uses family and medical leave as the sole qualification for the state contribution for life insurance and health benefits who fails to return to work for thirty (30) calendar days after the family and medical leave is exhausted shall reimburse the agency for state contributions paid on behalf of the employee. The employee shall not be required to reimburse the agency if the reason the employee does not return is due to:

1. The continuation, recurrence or onset of a serious health condition which would entitle the employee to family and medical leave under this administrative regulation.

2. Other circumstances beyond the employee's control. These circumstances include but are not limited to when a parent, spouse, or child has a serious health condition and the employee is needed to provide care; or the employee is laid off while on leave. Examples of circumstances which are not beyond the employee's control are where an employee desires to remain with a parent in a distant city even though the parent no longer requires the employee's care; or a parent's decision not to return to work to stay with a newborn child.

(e) An employee on family and medical leave shall continue to be responsible for the employee's share of contributions for life insurance and health benefits. The contributions shall be due at the same time the contributions would be made if by payroll deduction. An employee shall be granted a thirty (30) calendar day grace period to make any employee contributions for life insurance and health benefits. If the employee does not make the contribution within the thirty (30) day grace period, the employee's life insurance and health benefits shall cease on the date the grace period ends. If the life insurance and health benefits cease as a result of nonpayment of premiums by the employee after the grace period, upon the employee's return to work for thirty (30) calendar days, the life insurance and health benefits shall be restored to the same level of coverages as were provided when the leave commenced, effective with the employee's return to work.

(8) At the conclusion of the family and medical leave, an employee shall be restored to the same position that the employee held before going on leave, or an equivalent position with equivalent benefits, pay, and other terms and conditions of employment.]

Section 7. Court Leave. (1) An employee shall be entitled to a leave of absence from duties during his scheduled working hours, without loss of time or pay, for that amount of time

necessary to:

(a) Comply with a subpoena by a court or an administrative agency or body of the federal or state government, or a political subdivision; or

(b) Serve as a juror or witness in a case in which the employee or a member of his family is not a party.

(2) This leave shall include necessary travel time.

(3) If the amount of time required for an activity described in subsection (1) of this section is completed during normal working hours, the employee shall return to work.

[Section 8. Court Leave. An employee shall be entitled to leave of absence from duties during his scheduled working hours, without loss of time or pay for that amount of time necessary to comply with subpoenas by any court, or administrative agency or body of the federal or state government or any political subdivision thereof, to serve as a juror or a witness except in cases where the employee himself or a member of his family is a party to the court or administrative proceeding. This leave shall include necessary travel time. If relieved from duty as a juror or witness during his normal working hours, the employee shall return to work.]

Section 8. [9:] Military Leave: Training Duty and Military Duty. (1) Upon request, an [Any] employee who is an active member of the United States Army Reserve, the United States Air Force Reserve, the United States Naval Reserve, the United States Marine Corps Reserve, the United States Coast Guard Reserve, the United States Public Health Service Reserve, or the Kentucky National Guard shall be relieved from his civil duties [upon request therefor,] to serve under orders on training duty without loss of his regular compensation for a period not to exceed ten (10) working days in a [any one (1)] calendar year. [-and] This absence shall not be charged to leave.

(a) Absence in excess of this amount shall [will] be charged as annual leave, compensatory leave, or leave without pay.

(b) The appointing authority may require a copy of the orders requiring the attendance of an employee before granting military leave.

(2) The appointing authority shall grant an employee entering military duty a leave of absence without pay for a period of duty not to exceed six (6) years. [All] Accumulated annual and compensatory leave may be paid in a lump sum, at the request of the employee, upon receiving this leave.

Section 9. [10:] Voting Leave. An employee who is [All employees who are] eligible and registered to vote shall be allowed, upon prior request, four (4) hours, for the purpose of voting. This absence shall not be charged against leave. An employee who is [Employees who are] not scheduled to work during voting hours shall not receive voting leave and shall not be entitled to compensatory leave in lieu of time off to vote. An employee who is [Employees who are] permitted to work in lieu of voting leave shall be granted compensatory leave on an hour-for-hour basis.

Section 10. [11:] Special Leave of Absence. (1) In addition to leave established in Sections 7, 8, and 9 of this administrative regulation [as above provided], the appointing authority may grant leave without pay for a period or periods not to exceed thirty (30) working days in a [any] calendar year.

(2) The Commissioners of the Department for Adult Education and Literacy and the Department for Technical Education may grant leave of absence if [when] requested by an employee for a period not to exceed twenty-four (24) months, with or without pay, for assignment to and attendance at college, university, vocational or business school for the purpose of training in a subject [subjects] related to the work of the employee and which will benefit the state service. An employee [All employees] granted this leave shall be guaranteed a position as similar as possible to the position held at the time of

beginning of leave. **An employee** [Employees] shall not be guaranteed the identical position held at ~~the~~ time of ~~the~~ beginning of leave.

(3) The appointing authority may grant an employee a leave of absence without pay for a period not to exceed one (1) year for ~~a~~ **purpose** [purposes] other than specified in this administrative regulation that ~~is~~ [are] deemed to be in the best interest of the state. **An employee** [All-employees] granted ~~the~~ [this] leave shall be guaranteed a position as similar as possible to this position held at the time of the beginning of leave. **An employee** [Employees] shall not be guaranteed the identical position held at the time of leave.

(4) The Commissioners of ~~the Department for Adult Education and Literacy and the Department for Technical Education~~ may grant a sabbatical leave of absence without pay ~~if~~ [when] requested by a continuing status employee for a period not to exceed twelve (12) months for attendance at a college, university, vocational, business school or [any] other business and industrial training program for the purpose of retraining due to changing technology. If retraining occurs at a Kentucky Technical institution, the employee shall be exempt from tuition. **An employee** [Employees] granted this leave shall be guaranteed a position as similar as possible to the position held at the time of beginning of leave, or if there is no similar position available, the first opening for a similar position for which the employee is qualified. **An employee** [Employees] shall not be guaranteed the identical position held at the time of beginning leave.

(5) The appointing authority may place an employee on leave without pay for a period of time not to exceed sixty (60) working days pending an investigation into ~~an allegation~~ [allegations] of employee misconduct. Unless there is imminent danger to ~~a staff member, student, or other individual~~ [- students or other individuals], there shall be a preliminary hearing after which the employee shall be notified in writing by the appointing authority that he is being placed on leave without pay and of the reasons ~~for that action~~ [therefor]. If the investigation reveals no misconduct on behalf of the employee, he shall be made whole for the period of leave, and all records relating to the investigation ~~shall~~ [will] be purged from the Department for Adult Education and Literacy and ~~the Department for Technical Education files~~. The appointing authority shall notify the employee in writing of the completion of the investigation and the action taken including ~~if~~ [these cases where] the employee voluntarily resigns in the interim.

(6) **An employee** [Employees] eligible for state contributions for life insurance and health benefits under **KRS 151B.040** [the provisions of KRS Chapter 151B], shall have worked or been on paid leave during the previous month subject to the following conditions:

(a) **A** [Any] combination of workdays and paid leave used by the employee within a month shall entitle the employee to state-paid contributions for life insurance and health benefits in the following month;

(b) **If** [When] an employee is unable to work and elects to use paid leave to qualify for state contributions for life insurance and health benefits, he shall utilize his paid leave days consecutively.

(c) An employee who has exhausted paid leave shall not qualify for state contributions for life insurance and health benefits unless he works for more than half of the workdays in a month. If the employee is unable to work for more than half of the workdays in a month, the employee may continue his group health and life insurance benefits for the following month by paying the total cost of the state contributions and any employee contributions for these benefits.

(d) **An** [Any] employee who leaves the Department for Adult Education and Literacy or the Department for [and] Technical Education certified and equivalent personnel system on or prior to the fifteenth day of the month before working or being on paid leave for over half of the workdays in the month shall remain eligible for state contributions for life insurance and health benefits in the following month.

Section 11. [42:] Absence Without Leave. An employee who is

absent from duty without approval shall report the reason ~~for the absence~~ [therefor] to his supervisor immediately. Unauthorized or unreported absence shall be considered absence without leave and deduction of pay may be made for each period of absence. Absence without leave may constitute grounds for disciplinary action.

DONNA S. PENROSE, Vice Chair

RODNEY CAIN, Secretary

APPROVED BY AGENCY: March 12, 1997

FILED WITH LRC: March 13, 1997 at noon

WORKFORCE DEVELOPMENT CABINET
State Board for Adult and Technical Education
(As Amended at ARRS, November 11, 1997)

780 KAR 3:080. Extent and duration of school term, use of school days and extended employment.

RELATES TO: KRS 151B.035

STATUTORY AUTHORITY: KRS 151B.035

NECESSITY, FUNCTION, AND CONFORMITY: KRS 151B.035 authorizes the State Board for Adult and Technical Education to promulgate comprehensive administrative regulations relating to the extent and duration of the Kentucky Tech System school term, use of school days, and extended employment. This administrative regulation establishes the extent and duration of the Kentucky Tech system's school term, use of school days, and extended employment for secondary teachers in the state-operated Kentucky Tech schools.

Section 1. **A postsecondary school** [Postsecondary schools] shall have a regular school year of four (4) ~~terms or~~ quarters ~~or two~~ (2) ~~semesters~~ with no less than 200 teaching days. A school calendar shall be prepared and distributed annually to students and staff.

Section 2. **A postsecondary school** [Postsecondary schools] may provide a three (3) week intersession in addition to the regular school year.

Section 3. **A** [All] postsecondary **school** [schools] shall close five (5) days during the spring for a break for staff and students in the school. Staff shall be on some form of official leave during this time. The school director may approve an employee to be on work status for security reasons or for extenuating circumstances. If spring break occurs on a date designated for an official statewide conference or an approved staff development activity, the employee may be on official work status without loss of leave.

Section 4. **An instructor or administrator** [Instructors and administrators] employed in ~~a~~ full-time postsecondary **program** [programs] shall be employed twelve (12) months. Leave time shall be utilized ~~if~~ [when] students are not in school or [when] there is ~~not~~ **a** [no] scheduled in-service. **An instructor may** [No instructor shall be prohibited from the opportunity to] use leave time equal to the amount accrued during a given year.

Section 5. (1) The regular work year for ~~a~~ secondary **instructor** [instructors] [teachers] [instructors] in a Kentucky TECH [area centers and state vocational technical] **school shall be** [schools is] 228 days, determined by each school administrator with approval of the regional executive director [shall be determined by each principal with approval of the regional director] [August 1 through June 15]. During this work year, **a secondary student** [secondary students] shall begin **class** [classes] based on the participating school district **schedule** [schedules]. [No area center shall be closed when secondary school students need to be served for the participating school districts.] **An**

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employee [Employees] required to work on an official holiday [official holidays in order] to serve students shall be granted compensatory time.

(2) During a period of unforeseen occurrence, including [periods of unforeseen occurrences, including but not limited to] inclement weather, lack of services, or safety factors, the school administrator, with the approval of the regional executive director, shall decide if:

(a) Staff and students shall report to school as usual;

(b) Specified staff shall report to school for authorized activities with students not reporting to school; or

(c) Staff and students shall not report to school.

(3) A staff person who is directed not to report to school shall take annual leave, compensatory leave or be on leave without pay. [whether staff and students report to school as usual, or some or all staff report to school for authorized activities without students or no staff or students report to school. That portion of the staff that is directed not to report to school, shall take annual leave, compensatory time or be on leave without pay.] [If school districts close due to inclement weather, area centers will also be closed unless directed otherwise by the principal or school director. If a state operated school is closed as of a result of unforeseen occurrences, including but not limited to, inclement weather, lack of services, or safety factors, staff shall not report to work and shall be on some form of official leave.] [staff in the area centers or state schools shall report to work as usual or take official leave unless a state of emergency is declared by the Governor or the appointing authority.]

[Section 6. Extended Employment.] [Effective July 1, 1991, secondary instructors in state vocation/technical schools or area vocational education centers may be employed up to six (6) weeks beyond the ten and one-half (10.5) month calendar year (August 1 through June 15) for specified activities which cannot be carried out routinely during the year and which include at least three (3) weeks of planned direct student contact. The maximum extended time for an instructor without three (3) weeks of planned direct student contact shall be three (3) weeks. Extended instructional summer options are to be planned jointly by the instructor and school principal or director.]

[(1) Extended employment activities shall conform to the following conditions:

(a) Up to six (6) weeks may be approved for supervision of students in specific classroom instruction. Before approval is granted for extended time, an instructional plan for the summer teaching activities shall be approved by the central office. This plan shall include purpose, classes to be taught, time schedule, and inclusive dates.

(b) Up to one (1) week may be approved for required state technical update and school in-service.

(c) Up to two (2) weeks may be approved for staff/industry exchange and other educational approved programs. The commissioner may request secondary instructors to perform other essential services for which extended employment shall be provided. These special requests shall be handled on an individual basis.

(2) All secondary instructors in state vocational/technical schools or area vocational education centers shall make an official request for extended employment to the regional executive director by April 15 and, by May 30 of each year, shall receive written notification of approved extended days.]

Section 6. [7.] [Effective July 1, 1991,] A secondary instructor [The secondary instructors] employed 228 days shall [will] have [ten and one-half (10 1/2) months may request that] the [their] work year divided into [salaries be paid in] twenty-four (24) pay periods, [paychecks. The last two (2) paychecks will be adjusted if necessary to reflect any salary variance due to changes in work schedules.]

Section 7. [8.] Each Kentucky TECH school [All Kentucky TECH

schools] [including area centers, state vocational technical schools,] and regional office [offices] shall be officially closed to employees and students on the official holidays designated for Christmas and New Year's as well as the days in between. An employee [The employees] shall be on some form of official leave status with the exception of the four identified paid holidays. The regional executive director may require an employee to work for safety or security reasons.

Section 8. (1) On the effective date of this administrative regulation or July 1, 1997, whichever comes last, except as provided in this section of the administrative regulation, extended employment shall be eliminated.

(2) Extended employment shall not be eliminated for the following activities:

(a) Secondary student activities;

1. Summer school for middle or high school students;

2. Summer youth exploration class;

3. JTPA summer youth program; or

4. Vocational summer camp;

(b) Postsecondary student activities:

1. Academic core class;

2. Technical related class;

3. Substitute teaching for a postsecondary teacher;

4. Expanded technical class;

5. Short-term preparatory program (at the regular tuition charge); and

6. Short-term continuing education class (at the regular tuition charge);

(c) Student leadership activities:

1. Student organization national conference; or

2. Student organization officer training; or

(d) A cost recovery program which is offered for business and industry.

(3) Except for a cost recovery program offered for business and industry, board approval shall be obtained to start each program. Approval shall be subject to the following conditions:

(a) Extended employment shall be for an instructional purpose and involve student contact;

(b) The instructor shall have a minimum of ten (10) students enrolled in a classroom setting with at least 250 pupil contact hours per week;

(c) The request for extended employment shall include a curriculum outline, a daily schedule and an hourly schedule for the requested extended employment period;

(d) If approved, extended employment shall not last more than thirty (30) work days;

(e) The request for extended employment shall be submitted by the employee to the school principal or director for approval on the Extended Employment Request form;

(f) The request shall be sent by the school administrator to the regional executive director by April 1 of each year;

(g) The regional executive director shall approve the request and forward it to the Department for Technical Education by April 11 of each year; and

(h) The department shall notify the employee by May 1 of each year a request was submitted. The notification shall state whether the request for extended employment is approved or denied, and the reasons for the decision.

(4) Upon recommendation of the supervisor, the regional executive director shall adjust the number of work days or activities on the approved plan for extended employment.

(5) If an employee does not work on an approved day, the paid work time shall be reduced accordingly.

Section 9. Incorporation by Reference. (1) "Extended Employment Request for Approval for Secondary Instructors for

State-operated Vocational Schools" form, November 1997 edition, Department for Technical Education, is incorporated by reference.

(2) It may be inspected, copied, or obtained at the Department for Technical Education, Capital Plaza Tower, Third Floor, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m. [9. Effective July 1, 1997, extended employment shall be eliminated except for specific activities approved by the State Board for Adult and Technical Education. ("Extended Employment for 10 1/2 Month Employee" incorporated by reference.) Applications for expanded work year [extended employment] shall be received by the Secretary of the State Board for Adult and Technical Education on or before April 15th in order to be considered for approval.]

DONNA S. PENROSE, Vice Chair

RODNEY CAIN, Secretary

APPROVED BY AGENCY: March 12, 1997

FILED WITH LRC: March 13, 1997 at noon

WORKFORCE DEVELOPMENT CABINET
State Board for Adult and Technical Education
(As Amended at ARRS, November 11, 1997)

780 KAR 6:060. Attendance, compensatory time, and leave.

RELATES TO: KRS 151B.035, 151B.040, 151B.085, 29 USC 2601 to 2654 [et seq.], Part 825

STATUTORY AUTHORITY: KRS 151B.035

NECESSITY, FUNCTION, AND CONFORMITY: KRS 151B.035(3) requires the State Board for Adult and Technical Education to promulgate comprehensive administrative regulations [consistent with the provisions of KRS 151B.035. KRS 151B.035 specified that the state board promulgate administrative regulations] for the unclassified service staff governing attendance, including hours of work, compensatory time, and annual, court, military, sick, voting, and special leave of absence. The Family and Medical Leave Act of 1993, 29 USC 2601 to 2654 [et seq.], (PL-103-3) as implemented by 29 CFR Part 825 requires the granting of family and medical leave. This administrative regulation establishes the attendance, compensatory time, and leave requirements for unclassified service staff. [is necessary to comply with these statutory requirements.]

Section 1. [Definitions. --(1)] "Employee" means an employee in active payroll status. An employee who has resigned or retired or who has been placed in unpaid leave status by a personnel action shall not qualify to donate or receive sick leave under the Sick Leave Sharing Program.]

[(2)] "Immediate family" means a spouse, parent or child.

[(3)] "Medically-certified illness, injury, impairment or physical or mental condition" means a disabling medical condition which renders the employee incapable of performing the essential duties of his job.

[(4)] "Medical emergency" means an illness or injury of the employee or the employee's immediate family which will require the employee's absence from duty on leave with or without pay for ten (10) or more consecutive working days.

[(5)] "Child", son or daughter, means a biological, adopted, or foster child (under an agreement with a state government agency); a stepchild; a legal ward; or a child of a person standing in loco parentis who is under eighteen (18) years of age, or eighteen (18) years of age or older and incapable of self-care because of a mental or physical disability.

[(6)] "Health care provider" means a doctor of medicine or osteopathy who is authorized to practice medicine or surgery by the state in which the doctor practices; or any other person determined by the United States Secretary of Labor to be capable of providing health care services as set forth in regulations found in the Federal

Register, Volume 58, No. 106, Section 825.118, dated June 4, 1993.

[(7)] "Parent" means the biological parent of one (1) employee or an individual who stood in loco parentis to an employee.

[(8)] "Reduced leave schedule" means a leave schedule that reduces the usual number of hours per workweek, or hours per workday, of an employee.

[(9)] "Serious health condition" means an illness, injury, impairment, or physical or mental condition that involves inpatient care in a hospital, hospice, or residential medical care facility; or continuing treatment by a health care provider.

[(10)] "Spouse" means a husband or wife.]

[Section 2.] Attendance. (1) **A full-time employee** [Full-time employees] shall be required to work thirty-seven and one-half (37 1/2) hours per week [for all positions] unless otherwise specified by the appointing authority.

(2) The appointing authority may require **an employee** [employees] to work hours and work days other than normal if it is in the best interest of the agency. The employee shall be required to give reasonable notice in advance of absence from a work station. **An employee** [Employees] shall be given as much advance notice as possible **if a schedule is** [when schedules are] changed.

Section 2. [3.] Compensatory Time. (1) An employee who is requested in advance to work in excess of the prescribed hours of duty shall be granted compensatory leave on an hour-for-hour basis **in accordance with applicable law** [subject to the provisions of the Fair Labor Standards Act and the Kentucky Labor Laws]. Compensatory leave **shall** [may] be accumulated or taken off in one-half (1/2) hour increments. The maximum amount of compensatory leave that may be accumulated shall be 200 hours.

(2) Upon separation from state service, **an employee shall be paid for** [employees will be paid for all] unused compensatory leave at the greater of **his** [their] regular hourly rate of pay or at the average rate of pay for the final three (3) years of employment.

(3) **An unclassified employee may use accumulated compensatory time if:**

(a) **Practicable;**

(b) **Requested in advance; and**

(c) **Approved by the respective supervisor.** [All unclassified employees shall be permitted to use accumulated compensatory time when practicable and requested in advance and if approved by the respective supervisor.]

(4) To maintain a manageable level of accumulated compensatory leave and for the specific purpose of reducing an employee's compensatory leave, the commissioner or designee may direct an employee to take accumulated compensatory time off from work.

Section 3. [4.] Annual Leave. (1) **A full-time employee** [Full-time employees] in the unclassified service except a seasonal, temporary, per diem, emergency or [and] part-time **employee** [employees] shall accumulate annual leave with pay at the following rate:

Months of Service	Annual Leave Days
0-59 months	1 leave day per month; 12 per year
60-119 months	1 1/4 leave days per month; 15 per year
120-179 months	1 1/2 leave days per month; 18 per year
180 months and over	1 3/4 leave days per month; 21 per year

(2) Annual leave shall be accumulated [only] in the months in which the employee is hired to work.

(3) Computing annual leave.

(a) A full-time employee **shall work** [must have worked] more than half of the work days in a month to qualify for annual leave.

(b) Leave shall be credited on the first day of the month following the month in which the leave is earned. **The** [In computing months of

~~total service for the purpose of earning annual leave, only those~~ months for which an employee earned annual leave shall be counted to compute the months of total service.

(c) A former employee who is rehired and was ~~[Former employees who have been]~~ rehired and who have been previously dismissed for cause from state service shall receive credit for service prior to the dismissal, except if the [where such] dismissal resulted from a violation of KRS 151B.090. ~~The [Chapter 151B, Section 16: Only those]~~ months for which the employee earned annual leave shall be counted in computing months of total service.

(4) The maximum accumulated annual leave which may carry forward from one (1) fiscal year to the next shall not exceed the following amounts:

Months of Service	Maximum Amount
0-59 months	Thirty (30) work days
60-119 months	Thirty-seven (37) work days
120-179 months	Forty-five (45) work days
180-239 months	Fifty-two (52) work days;
240 months and over	Sixty (60) work days

Leave in excess of the above maximum amounts shall be converted to sick leave at the end of the fiscal year or upon retirement, whichever comes first. Months of service for the purpose of determining the maximum amount of annual leave which may be accumulated and the amount to be converted to sick leave shall be computed as provided in subsections (1), (2), and (3) of this section. Annual leave shall not be granted in excess of that earned prior to the starting date of leave.

(5) Absence due to sickness, injury, or disability in excess of that ~~[hereinafter]~~ authorized for these [such] purposes may, at the request of the employee and within the discretion of the appointing authority, be charged against annual leave.

(6) Accumulated leave shall be granted by the appointing authority in accordance with operating requirements and, insofar as practicable, with the request of an employee [employees]. An employee who makes a timely request for annual leave shall be granted annual leave by the appointing authority, during the calendar year, up to at least the amount of time he earned that year.

(7) An employee shall be [Employees are] charged with annual leave for an absence on a day [only on days] upon which he [they] would otherwise work and receive pay.

(8) An employee [Employees] shall be allowed sufficient leave days as determined by the commissioner for the purpose of continuing staff development; i.e., participation in professional organization workshops and meetings without loss of pay.

(9) Annual leave shall accrue if [only when] an employee is working or on authorized leave with pay. Annual leave shall not accrue if [when] an employee is on educational leave with pay.

(10) An employee who is transferred to the Department for Adult Education and Literacy or the Department for [and] Technical Education shall retain his accumulated leave.

(11) Before an employee may be placed on leave of absence without pay in excess of thirty (30) working days, he shall [must] have used or have been paid for his [any] accumulated annual leave and compensatory leave unless he has requested to retain up to ten (10) days of accumulated annual leave.

(12) An employee [Employees] eligible for state contributions for life insurance and health benefits under KRS 151B.040 [the provisions of KRS Chapter 151B] shall have worked or been on paid leave during the previous month subject to the following conditions:

(a) A [Any] combination of workdays and paid leave used by the employee within a month shall entitle the employee to state-paid contributions for life insurance and health benefits in the following month.

(b) If [When] an employee is unable to work and elects to use

paid leave to qualify for state contribution for life insurance and health benefits, he shall utilize his paid leave days consecutively.

(c) An employee who has exhausted paid leave shall not qualify for state contributions for life insurance and health benefits unless he worked for more than half of the workdays in a month. If the employee is unable to work for more than half of the workdays in a month, the employee may continue his group health and life insurance benefits for the following month by paying the total cost of the state contributions and the [any] employee contributions for the [such] benefits.

(d) An [Any] employee who leaves the Department for Adult Education and Literacy or the Department for [and] Technical Education unclassified system on or prior to the fifteenth day of the month before working or being on paid leave for over half of the workdays in the month shall remain eligible for state contributions for life insurance and health benefits in the following month.

(13) An employee who has been dismissed for cause or who has failed to give proper notice of resignation may, at the discretion of the appointing authority, be paid in a lump sum for accumulated annual leave not to exceed the maximum amounts established [set forth] in subsection (4) ~~[(5)]~~ of this section.

(14) Upon the death of an employee, his estate shall be entitled to receive pay for the unused portion of the employee's accumulated annual leave.

(15) Absence for a fraction or part of a day that is charged to annual leave shall be charged in hours or increments of one-half (1/2) hour.

Section 4. [5:] Sick Leave. (1) An employee in the unclassified system, except a per diem or [and] part-time employee [employees] shall accumulate sick leave with pay at the rate of one (1) working day for each month of service. An employee shall [must] have worked more than half of the workdays in a month to qualify for sick leave with pay. Each employee shall be credited with additional sick leave on the first day of the month following the month in which the sick leave is earned.

(2) Sick leave credits: full-time and former employees.

(a) A full-time employee [Full-time employees] completing 120 months of total service with the state shall be credited with ten (10) additional days of sick leave upon the first day of the month following the completion of 120 months of service.

1. In computing months of total service for the purpose of crediting ten (10) additional days of sick leave, the [only those] months for which an employee earned sick leave shall be used.

2. ~~[Only those months for which the employee earned sick leave shall be counted in computing total months of service.]~~

3. The total service shall [must] be verified before the leave is credited to the employee's record.

(b) A former employee who is rehired and was ~~[Former employees who have been]~~ rehired and who had been previously dismissed for cause from state service shall receive credit for service prior to the dismissal, except if the [where such] dismissal resulted from a [the] violation of KRS 151B.090.

(3) Unused sick leave may be accumulated with no maximum on accumulation.

(4) Sick leave shall accrue if [only when] an employee is working or on authorized leave with pay. Sick leave shall not accrue if [when] an employee is on educational leave with pay.

(5) The appointing authority shall grant accrued sick leave with pay if [when] an employee:

(a) Receives medical, dental, or optical examination or treatment;

(b) Is disabled by sickness, injury, or pregnancy. The appointing authority may require a doctor's statement attesting to the inability to perform his duties;

(c) Is required to care for a sick or injured member of his immediate family for a reasonable period of time. The appointing authority may require a doctor's statement; supporting the need for

care by the employee;

(d) Would jeopardize the health of another person [others] at his duty post because of exposure to a readily transmittable contagious disease; or

(e) Has lost by death a spouse, or a parent, child, brother or sister, or the spouse of any of them, or a person [any persons] related by blood or affinity with a similarly close association. Leave under this paragraph shall be [is] limited to three (3) days or a reasonable extension at the discretion of the appointing authority.

(6) At the termination of sick leave with pay not exceeding six (6) months, the appointing authority shall return the employee to his former position. At the termination of sick leave with pay exceeding six (6) months, the appointing authority shall return the employee to a position for which he is qualified and which resembles his former position as closely as circumstances permit.

(7) Continuous leave limitation, doctor's statements, availability of position on return, dismissal after one (1) year, and sick leave without pay.

(a) The appointing authority shall grant sick leave without pay for a period not to exceed one (1) year for so long as an employee is disabled by sickness, or illness, or pregnancy, ~~and the total continuous leave does not exceed one (1) year~~.

(b) The appointing authority may require periodic doctor's statements attesting to the continued inability to perform his duties.

(c) If [When] the employee has given notice of his ability to resume his duties, the appointing authority shall return the employee to a position for which he is qualified and which resembles his former position as closely as circumstances permit. If there is not a [no such] position available, KRS 151B.080 and 151B.085 shall [the administrative regulations pertaining to layoff] apply.

(d) An employee who is unable to return to work at the end of one (1) year of sick leave without pay, after being requested to return to work at least ten (10) days prior to the expiration of the [such] sick leave, shall be dismissed by the appointing authority.

(e) An employee granted sick leave without pay may, upon request, retain up to ten (10) days of accumulated sick leave.

(8) An employee [Employees] eligible for state contributions for life insurance and health benefits under KRS 151B.040 [the provision of KRS Chapter 151B] shall have worked or been on paid leave during the previous month subject to the following conditions:

(a) A [Any] combination of workdays and paid leave used by the employee within a month shall entitle the employee to state-paid contributions for life insurance and health benefits in the following month;

(b) If [When] an employee is unable to work and elects to use paid leave to qualify for state contribution for life insurance and health benefits, he shall utilize his paid leave days consecutively.

(c) An employee who has exhausted paid leave shall not qualify for state contribution for life insurance and health benefits unless he works for more than half of the workdays in a month. If the employee is unable to work for more than half of the workdays in a month, the employee may continue his group health and life insurance benefits for the following month by paying the total cost of the state contributions and the [any] employee contributions for these benefits.

(d) An [Any] employee who leaves the unclassified service on or prior to the 15th day of the month before working or being on paid leave for over half of the workdays in the month shall remain eligible for state contributions for life insurance and health benefits in the following month.

(9) Absence for a fraction or a part of a day that is chargeable to sick leave shall be charged in hours or increments of one-half (1/2) hour.

(10) An employee who is transferred to the Department for Adult Education and Literacy or the Department for [and] Technical Education shall retain his accumulated sick leave.

(11) An employee [Employees] shall be credited for accumulated sick leave if [when] separated by proper resignation, layoff, retire-

ment, or [when] granted leave without pay in excess of thirty (30) working days. A former employee who is [Former employees who are] reemployed shall have his unused sick leave balance [balances] revived upon reentrance and placed to his [their] credit.

(12) If absent [in cases of absence] due to illness or injury for which workers' compensation benefits are received, accumulated sick leave may be used in order to maintain regular full salary. If paid sick leave is used, workers' compensation pay benefits shall be assigned back to the state for whatever period of time an employee received paid sick leave. The employee's sick leave shall be immediately reinstated to the extent that workers' compensation benefits were assigned.

(13) Application for sick leave. An employee shall file a written application for sick leave with or without pay within a reasonable time. Except for an [in cases of] emergency illness, an employee shall request advance approval for sick leave for medical, dental, or optical examination, and for sick leave without pay. If there is an [in all cases of] illness, an employee shall [is obligated to] notify his immediate supervisor or other designated person. Failure to do so in a reasonable period of time may be cause for denial of sick leave for the period of absence.

(14) Supporting evidence.

(a) The appointing authority may require an employee to supply supporting evidence in order to receive sick leave. A supervisor's or employee's certificate may be accepted, but a medical certificate may be required, signed by a licensed practitioner and certifying to the incapacity, examination, or treatment. The appointing authority shall grant sick leave if [when] the application is supported by acceptable evidence.

(b) The appointing authority may place on sick leave an employee whose health might be jeopardized by job duties, whose health might jeopardize others, or whose health prevents performance of duties and responsibilities, and who, on request, fails to produce a satisfactory medical certificate.

Section 5. [6:] Sick Leave Sharing Procedures. (1) An employee with a sick leave balance in excess of seventy-five (75) hours may donate sick leave [any or all of this excess] to an employee with a documented medical emergency who has exhausted his [all] annual leave, sick leave, and compensatory leave. An employee who has resigned, retired, or been placed in unpaid leave status by a personnel action shall not qualify to donate or receive sick leave.

(2) Voluntary donation of excess sick leave shall be subject to the approval of and made on a form prescribed by the commissioner and shall include:

(a) The name of the donor.

(b) The agency or office in which the donor is employed.

(c) The position number of the donor.

(d) The Social Security number of the donor.

(e) The name of the employee to which leave is being donated.

(f) The agency or office in which the donee is employed.

(g) The donee position number.

(h) The donee Social Security number.

(i) The maximum amount of the donor's leave in excess of seventy-five (75) hours which may be credited to the individual donee.

(j) Certification by the donor that such donation is given without expectation or promise for a [any] purpose other than that authorized by this administrative regulation.

(3) The donating employee shall retain a sick leave balance of not less than seventy-five (75) hours.

(4) A donating employee shall not sell, offer to sell, bargain, exchange, transfer, or assign accumulated sick leave for any consideration or in a [any] manner other than that authorized by this administrative regulation.

(5) An employee with a medical emergency who has exhausted his [all] annual leave, sick leave, and compensatory leave may make application to receive donation of sick leave from an employee (or

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employees) with a sick leave balance in excess of seventy-five (75) hours. Application may be made on behalf of the employee by a personal representative of the employee if the employee is incapable of making [in the event of the employee's incapacity to make] application on his own behalf.

(6) Application shall be made to the appointing authority on a form prescribed by the commissioner and shall include:

- (a) Employee name.
- (b) Position number.
- (c) Social Security number.
- (d) Employee title.

(e) The reason transferred leave is needed, including a brief description of the nature, severity, and anticipated duration of the medical emergency.

(f) Signature of the requestor or his personal representative.

(7) The application shall be accompanied by certification by one (1) or more physicians of the medical reasons that the employee will be unable to perform the duties and responsibilities of this position for ten (10) or more consecutive working days.

(8) The appointing authority may require additional medical evidence prior to approval or denial of acceptance of sick leave donation. An employee may request an extension of approved, donated sick leave by presenting additional medical evidence to the appointing authority.

(9) At the end of each pay period while an employee is on donated leave, the appointing authority shall credit that employee's sick leave balance with the number of hours which would otherwise be considered leave without pay and shall reduce the donor's leave balance by that amount.

(10) An [No] employee on donated sick leave shall not be credited with leave in an amount in excess of the time of the documented medical emergency.

(11) A person shall not use his office of employment to [No person shall through his office of employment use any] promise, exchange, or influence [to require] an employee to donate excess sick leave or annual leave to an [any other] employee.

(12) Sick leave shall not be transferred in increments of less than seven and one-half (7.5) hours.

(13) If [Where] multiple donors donate sick leave to an eligible recipient, the agency [agencies] shall transfer leave in chronological order of receipt of the donation forms, up to the maximum amount that has been certified to be needed by the recipient.

(14) The applicant for sick leave sharing shall be responsible for filing the appropriate medical certificates and applications. Donated sick leave shall not be used retroactively except to cover the period between the first day sick leave would have been granted and the date of approval by the appointing authority.

(15) The sick leave sharing recipient shall monitor [be responsible for monitoring] the amount of sick leave donated and used.

(16) Except as provided in Section 4(7)(e) of this administrative regulation, donated sick leave shall be used on consecutive days. [except as provided by Section 5(7)(e) of this administrative regulation. Any] Leave that an employee accrues while receiving donated sick leave shall be used before donated sick leave.

(17) If [When] the recipient of donated leave returns to work, resigns, retires, or otherwise terminates from state employment, unused donated leave shall be restored to the donors, in chronological order of receipt of the donation forms, unless the recipient provides medical evidence that he or a member of his immediate family will require continued, periodic medical treatment relating to the original condition for which leave was donated.

(18) If a sick leave donor resigns, retires or is otherwise terminated from state employment before the donor's sick leave has been transferred to the recipient, the [such] leave shall not be available for use by the recipient.

(19) An appointing authority may require a sick leave recipient to provide an updated medical certificate attesting to the continued need

for leave after thirty (30) working days of sick leave.

Section 6. [7:] Family and Medical Leave. [All] Leave utilized pursuant to Sections 3 and 4 [4 and 5] of this administrative regulation that qualify as family and medical leave in accordance with the Family and Medical Leave Act, 29 USC 2601 to 2654, and [et seq., and the federal regulations promulgated pursuant thereto.] 29 CFR Part 825, shall be designated by the appointing authority as family and medical leave. [(1) Effective August 5, 1993, every employee in state service who has completed twelve (12) months of service and has worked at least 1,250 hours during the preceding twelve (12) months shall qualify for twelve (12) weeks of family and medical leave without pay. On the first day of January of each year thereafter every employee in state service who has completed twelve (12) months of service and has worked at least 1,250 hours during the preceding calendar year shall qualify for twelve (12) weeks of family and medical leave without pay. Unused family and medical leave shall not be carried over from year to year.

(2) Calculating a week of family and medical leave:

(a) A week of family and medical leave is the amount of time an employee normally works each week.

(b) If an employee's schedule varies from week to week, a weekly average of the hours worked over the twelve (12) weeks prior to the beginning of the family and medical leave shall be used for calculating the employee's normal workweek.

(c) If there has been a permanent or long-term change in the employee's schedule (for reasons other than family and medical leave), the hours worked under the new schedule shall be used for calculating the employee's normal workweek.

(3) The appointing authority shall grant family and medical leave upon the receipt of a completed application from an employee. The appointing authority shall require the employee to use accumulated sick, annual and compensatory leave prior to granting unpaid family and medical leave, except that the employee may request to reserve ten (10) days of paid sick leave. The amount of available family and medical leave shall be reduced by the amount of paid or unpaid leave used. A completed application consists of the request form and the medical certification required by subsection (6) of this section. The employee shall make the application as far in advance of the start of the leave as reasonable.

(4) Family and medical leave shall be granted:

(a) For the birth of a child of the employee, adoption by the employee of a child, or placement with the employee of a foster child. The appointing authority shall require a couple in the employ of the same agency to limit the total amount of family and medical leave to twelve (12) weeks where leave is sought in connection with the birth, adoption, or placement of a foster child or to care for a sick parent;

(b) Within one (1) year of the birth of a child of the employee; adoption by the employee or placement with the employee of a foster child, for the care of such newborn, adopted, or foster child;

(c) To an employee to care for the employee's spouse, parent, or child if the spouse, parent, or child has a serious health condition.

(d) Because of a serious health condition of the employee that makes the employee unable to perform the essential functions of his position.

(5) Certification requirements:

(a) The appointing authority shall require an employee granted family and medical leave for a serious health condition of the employee, or child, spouse, or parent, to supply a certification, on a form prescribed by the cabinet secretary, from a health care provider that includes a statement that the employee is needed to care for a child, spouse, or parent in order to assist in their recovery. The certifying health care provider shall be a person actually providing services to the employee, child, spouse, or parent.

(b) An employee requesting intermittent leave or leave on a reduced leave schedule due to serious health condition of the employee or child, spouse, or parent shall be required to supply a

certification from a licensed health care provider that such leave is medically necessary and the expected duration and schedule of such leave. The certifying health care provider shall be a person actually providing services to the employee, child, spouse, or parent.

(c) If the appointing authority has reason to doubt the validity of a medical certification, the appointing authority may require the employee to obtain a second opinion at the agency's expense. The appointing authority shall designate the health care provider to furnish the second opinion. The designated health care provider shall not be employed on a regular basis by the agency.

(d) If the opinions of the employee and the designated health care provider differ, the appointing authority may request the employee to obtain certification from a third health care provider who is approved by the employee. This third opinion shall be final and binding. If the appointing authority does not act in good faith to attempt to reach an agreement on the third health care provider, the appointing authority shall be bound by the original certification. If the employee does not act in good faith to attempt to reach an agreement on the third health care provider, the employee shall be bound by the opinion of the second health care provider.

(e) The appointing authority may require recertification of the need for family and medical leave every thirty (30) working days and a report on the status and intention of the employee to return to work.

(6) If an employee requests intermittent leave or a reduced work schedule to care for a seriously ill child, parent, or spouse or for the employee's own serious health condition, and the need for leave is reasonably based on planned medical treatment, the appointing authority may temporarily reassign the employee to an available alternative position with equivalent pay and benefits if the employee is qualified for the position and it better accommodates recurring periods of leave than the employee's regular job.

(7) Employees eligible for state contributions for life insurance and health benefits under the provisions of KRS Chapter 151B shall have worked or been on paid leave or shall have been on family and medical leave during the previous month subject to the following conditions:

(a) Work days and paid leave and family and medical leave used by the employee within a month shall entitle the employee to state-paid contributions for life insurance and health benefits in the following month;

(b) When an employee is unable to work and elects to use paid leave to qualify for state contribution for life insurance and health benefits, he shall use his paid leave days consecutively;

(c) An employee who has exhausted paid leave and family and medical leave shall not qualify for state contribution for life insurance and health benefits unless he works for more than half of the work days in a month. If the employee is unable to work for more than half of the work days in a month, the employee may continue his group health and life insurance benefits for the following month by paying the total cost of the state contribution and the employee contributions for such benefits.

(d) An employee who uses family and medical leave as the sole qualification for the state contribution for life insurance and health benefits who fails to return to work for thirty (30) calendar days after the family and medical leave is exhausted shall reimburse the agency for state contributions paid on behalf of the employee. The employee shall not be required to reimburse the agency if the reason the employee does not return is due to:

1. The continuation, recurrence or onset of a serious health condition which would entitle the employee to family and medical leave under this administrative regulation.

2. Other circumstances beyond the employee's control. These circumstances include but are not limited to when a parent, spouse, or child has a serious health condition and the employee is needed to provide care; or the employee is laid off while on leave. Examples of circumstances which are not beyond the employee's control are where an employee desires to remain with a parent in a distant city

even though the parent no longer requires the employee's care; or a parent's decision not to return to work to stay with a newborn child.

(e) An employee on family and medical leave shall continue to be responsible for the employee's share of contributions for life insurance and health benefits. The contributions shall be due at the same time the contributions would be made if by payroll deduction. An employee shall be granted a thirty (30) calendar day grace period to make any employee contributions for life insurance and health benefits. If the employee does not make the contribution within the thirty (30) day grace period, the employee's life insurance and health benefits shall cease on the date the grace period ends. If the life insurance and health benefits cease as a result of nonpayment of premiums by the employee after the grace period, upon the employee's return to work for thirty (30) calendar days, the life insurance and health benefits shall be restored to the same level of coverages as were provided when the leave commenced, effective with the employee's return to work.

(8) At the conclusion of the family and medical leave, an employee shall be restored to the same position that the employee held before going on leave, or an equivalent position with equivalent benefits, pay, and other terms and conditions of employment.]

Section 7. Court Leave. (1) An employee shall be entitled to a leave of absence from duties during his scheduled working hours, without loss of time or pay, for that amount of time necessary to:

(a) Comply with a subpoena by a court or an administrative agency or body of the federal or state government, or a political subdivision; or

(b) Serve as a juror or witness in a case in which the employee or a member of his family is not a party.

(2) This leave shall include necessary travel time.

(3) If the amount of time required for an activity described in subsection (1) of this section is completed during normal working hours, the employee shall return to work.

[Section 8. Court Leave. An employee shall be entitled to leave of absence from duties during his scheduled working hours, without loss of time or pay for that amount of time necessary to comply with subpoenas by any court, or administrative agency or body of the federal or state government or any political subdivision thereof, to serve as a juror or a witness except in cases where the employee himself or a member of his family is a party to the court or administrative proceeding. This leave shall include necessary travel time. If relieved from duty as a juror or witness during his normal working hours, the employee shall return to work.]

Section 8. [9:] Military Leave: Training Duty and Military Duty. (1) Upon request, an [Any] employee who is an active member of the United States Army Reserve, the United States Air Force Reserve, the United States Naval Reserve, the United States Marine Corps Reserve, the United States Coast Guard Reserve, the United States Public Health Service Reserve, or the Kentucky National Guard shall be relieved from his civil duties [upon request therefor,] to serve under orders on training duty without loss of regular compensation for a period not to exceed ten (10) working days in a [any-one (1)] calendar year. This [and any such] absence shall not be charged to leave.

(a) Absence in excess of this amount shall [will] be charged as annual leave, compensatory leave, or leave without pay.

(b) The appointing authority may require a copy of the orders requiring the attendance of an employee before granting military leave.

(2) The appointing authority shall grant an employee entering military duty a leave of absence without pay for a period of such duty not to exceed six (6) years. [All] Accumulated annual and compensatory leave may be paid in a lump sum, at the request of the

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employee, upon receiving this leave.

Section 9, ~~[10:]~~ Voting Leave. An employee who is ~~[All employees who are]~~ eligible and registered to vote shall be allowed, upon prior request, four (4) hours, for the purpose of voting. This absence shall not be charged against leave. An employee who is ~~[Employees who are]~~ not scheduled to work during voting hours shall not receive voting leave and shall not be entitled to compensatory leave in lieu of time off to vote. An employee who is ~~[Employees who are]~~ permitted to work in lieu of voting leave shall be granted compensatory leave on an hour-for-hour basis.

Section 10, ~~[11:]~~ Special Leave of Absence. (1) In addition to leave established in Sections 7, 8, and 9 of this administrative regulation ~~[as above provided]~~, the appointing authority may grant leave without pay for a period or periods not to exceed thirty (30) working days in a ~~[any]~~ calendar year.

(2) The Commissioners of the Department for Adult Education and Literacy and the Department for ~~[Commissioner of Adult and]~~ Technical Education may grant leave of absence if ~~[when]~~ requested by an employee for a period not to exceed twenty-four (24) months, with or without pay, for assignment to and attendance at college, university, vocational or business school for the purpose of training in a subject ~~[subjects]~~ related to the work of the employee and which will benefit the state service. An employee ~~[All employees]~~ granted this ~~[such]~~ leave shall be guaranteed a position as similar as possible to the position held at the time of the beginning of leave. An employee ~~[Employees]~~ shall not be guaranteed the identical position held at the time of the beginning of leave.

(3) The appointing authority may grant an employee a leave of absence without pay for a period not to exceed one (1) year for a purpose ~~[purposes]~~ other than specified in this administrative regulation that is ~~[are]~~ deemed to be in the best interest of the state. An employee ~~[All employees]~~ granted this ~~[such]~~ leave shall be guaranteed a position as similar as possible to the ~~[this]~~ position held at the time of the beginning of leave. An employee ~~[Employees]~~ shall not be guaranteed the identical position held at the time of leave.

(4) The Commissioners of the Department for Adult Education and Literacy and the Department for Technical Education may grant a sabbatical leave of absence without pay if requested by a continuing status employee for a period not to exceed twelve (12) months for attendance at a college, university, vocational, business school or other business and industrial training program for the purpose of retraining due to changing technology. If retraining occurs at a Kentucky Technical institution, the employee shall be exempt from tuition. An employee granted this leave shall be guaranteed a position as similar as possible to the position held at the time of beginning of leave, or if there is no similar position available, the first opening for a similar position for which the employee is qualified. An employee shall not be guaranteed the identical position held at the time of beginning leave.

(5) The appointing authority may place an employee on leave without pay for a period of time not to exceed sixty (60) working days pending an investigation into an allegation ~~[allegations]~~ of employee misconduct. Unless there is imminent danger to a staff member, student, or other individual ~~[students or other individuals]~~, there shall be a preliminary hearing after which the employee shall be notified in writing that he is being placed on leave without pay and of the reasons for that action ~~[therefor]~~. If this investigation reveals no misconduct on behalf of the employee, he shall be made whole for the period of this leave, and all records relating to the investigation shall ~~[will]~~ be purged from the Department for Adult Education and Literacy and the Department for ~~[and]~~ Technical Education files. The appointing authority shall notify the employee in writing of the completion of the investigation and the action taken including if ~~[these cases where]~~ the employee voluntarily resigns in the interim.

(6) An employee ~~[5] Employees]~~ eligible for state contributions for life insurance and health benefits under KRS 151B.040 ~~[the provisions of KRS Chapter 151B]~~ shall have worked or been on paid leave during the previous month subject to the following conditions:

(a) A ~~[Any]~~ combination of workdays and paid leave used by the employee within a month shall entitle the employee to state-paid contributions for life insurance and health benefits in the following month;

(b) If ~~[When]~~ an employee is unable to work and elects to use paid leave to qualify for state contributions for life insurance and health benefits, he shall utilize his paid leave days consecutively.

(c) An employee who has exhausted paid leave shall not qualify for state contributions for life insurance and health benefits unless he works for more than half of the workdays in a month. If the employee is unable to work for more than half of the workdays in a month, the employee may continue his group health and life insurance benefits for the following month by paying the total cost of the state contributions and any employee contributions for such benefits.

(d) An ~~[Any]~~ employee who leaves the Department for Adult and Technical Education unclassified system on or prior to the 15th day of the month before working or being on paid leave for over half of the workdays in the month shall remain eligible for state contributions for life insurance and health benefits in the following month.

Section 11, ~~[12:]~~ Absence Without Leave. An employee who is absent from duty without approval shall report the reason for the absence ~~[therefor]~~ to his supervisor immediately. Unauthorized or unreported absence shall be considered absence without leave and deduction of pay may be made for each period of absence without leave. An absence without leave ~~[such absence. Such absence]~~ may constitute grounds for disciplinary action.

J. LARRY STINSON, Chairman

RODNEY CAIN, Secretary

APPROVED BY AGENCY: January 9, 1997

FILED WITH LRC: January 15, 1997 at 8 a.m.

LABOR CABINET

Department of Workers' Claims

(As Amended at ARRS, November 11, 1997)

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

RELATES TO: KRS 342.020, 342.035, 342.125, 342.260, 342.325, 342.735 ~~[Chapter 342]~~

STATUTORY AUTHORITY: KRS ~~[Chapter 13A:]~~ 342.020, 342.035, 342.125, 342.260, 342.325, 342.735

NECESSITY, FUNCTION, AND CONFORMITY: KRS 342.260 requires the Commissioner of the Department of Workers' Claims to promulgate administrative regulations necessary to implement ~~[carry on his work and the work of the arbitrators and administrative law judges under]~~ KRS Chapter 342. KRS 342.325 requires that a question ~~[questions]~~ arising under KRS Chapter 342 which is ~~[are]~~ not settled by agreement of the parties shall be determined by an arbitrator or administrative law judge, ~~[and]~~ KRS 342.735(1) requires the commissioner to promulgate administrative regulations to expedite the payment of medical expense benefits. This administrative regulation establishes a procedure for ~~[regulates]~~ the resolution of a medical fee dispute ~~[disputes]~~ before an ~~[the]~~ arbitrator or administrative law judge ~~[judges]~~.

Section 1. Procedure. (1) A dispute ~~[Disputes]~~ regarding payment, nonpayment, reasonableness, necessity, or work-relatedness of a medical expense, treatment, procedure, statement, or service which has been rendered or will ~~[shall]~~ be rendered under KRS Chapter 342 shall ~~[will]~~ be resolved by an arbitrator or administrative

law judge following the filing of a Form 112 (Medical Fee Dispute).

(2)(a) The Form 112 shall be accompanied by the following items:

1. Copies of all disputed bills;
2. Supporting affidavit~~[(s)]~~ setting forth facts sufficient to show that the movant is entitled to the relief sought;
3. Necessary supporting expert testimony; and
4. The final decision from a utilization review or medical bill audit with the supporting medical opinion.

(b) A single Form 112 may encompass statements, services, or [and] treatment previously rendered as well as a future statements, services, or [and] treatment of the same nature or for the same condition, if specifically stated.

(3) To seek adjudication of a dispute involving medical expenses, an employee, provider of medical services, employer or employer's medical payment obligor shall [may] file a Form 112 [to seek adjudication of a dispute involving medical expenses].

(4)(a) If an application for adjustment of claim concerning the injury or disease which is the subject of the dispute has not been filed, copies of the Form 112 and attachments sufficient to serve the other parties, including the employee, the employer, the medical payment obligor, and the medical provider, shall be filed with the commissioner, who shall make service on the named parties.

(b) An opposing party may thereafter file a response, accompanied by an affidavit [affidavits] setting forth facts sufficient to show that the movant is not entitled to the relief sought, within twenty (20) days after service by the commissioner.

(c) A response shall be served on the commissioner and the parties.

(d) This dispute shall be assigned to the Frankfort [Administrative Law Judge] motion docket, where it shall be either [may be] summarily decided upon the pleadings or assigned for further proof time and resolution by an arbitrator or administrative law judge.

(5) If an application for adjustment of claim is pending concerning the injury or disease which is the subject of the dispute, the movant shall file a Form 112 with the commissioner and shall also serve copies on the other parties of record. The movant shall further file a motion to join the medical provider as a party to the claim. This motion shall conform with the requirements of 803 KAR 25:010, Section 4.

(6) Following resolution of a workers' compensation claim by opinion or order of an arbitrator or administrative law judge, including an order approving settlement of a disputed claim, a motion to reopen pursuant to 803 KAR 25:010, Section 4(6), shall be filed in addition to the Form 112.

(a) Unless utilization review has been initiated, the motion to reopen and Form 112 shall be filed within thirty (30) days following receipt of a complete statement for services pursuant to 803 KAR 25:096.

(b) The motion to reopen and Form 112 shall be served on the parties, upon the employee, even if represented by counsel, and upon the medical providers. If appropriate, the pleadings shall also be accompanied by a motion to join the medical provider as a party.

(c) This dispute shall be assigned to the Frankfort [Administrative Law] Judge motion docket, where it shall be either [may be] summarily decided upon the pleadings, or be assigned to an administrative law judge for further proof time and final resolution.

(7) If there is a pending de novo hearing before an administrative law judge from an arbitrator's determination, the Form 112 shall be filed with the assigned administrative law judge who shall also render a decision on the medical dispute.

(8)(a) Except as provided by paragraph (b) of this subsection, a Form 112 shall be accompanied by a motion for a partial remand to the administrative law judge assigned to the claim if an appeal is pending before the Workers' Compensation Board concerning the injury or disease which is the subject of the dispute.

(b) If entitlement to medical services is dependent upon

resolution of an issue on appeal, the Form 112 shall be accompanied by a motion to the Workers' Compensation Board to hold the Form 112 in abeyance pending a final decision on the appeal. [If an appeal is pending before the Workers' Compensation Board concerning the injury or disease which is the subject of the dispute, the Form 112 shall be accompanied by a motion for a partial remand to the administrative law judge assigned to the claim, unless entitlement to medical services is dependent upon resolution of issues on appeal. If entitlement to medical services is dependent upon resolution of issues on appeal, the Form 112 shall be accompanied by a motion to the Workers' Compensation Board to hold the Form 112 in abeyance pending a final decision on the appeal.]

(9) [(8)] If the contested expense is subject to utilization review, a medical fee dispute shall not be filed prior to completion of the utilization review process. The thirty (30) day period for filing a medical fee dispute shall be tolled by commencement of the utilization review process. Notice of utilization review shall be provided to the affected parties pursuant to 803 KAR 25:096. The employer or its medical payment obligor shall have thirty (30) days following the final utilization review or medical bill audit decision to file a medical fee dispute.

(10) [(9)] Repeated filing of identical Form 112's concerning the same subject matter shall not be necessary if an arbitrator or administrative law judge has ruled on both the past expenses and the necessity of future expenses. If an order from an arbitrator or administrative law judge encompassing future treatment or expenses becomes final, the medical provider shall not tender a future state- ment for a service [statements for services] encompassed by the order to the employer or its medical payment obligor.

(11) A party aggrieved by a decision of an arbitrator in a medical fee dispute may appeal to an administrative law judge by following the procedures in 803 KAR 25:010.

(12) [(10)] A party aggrieved by a decision of the administrative law judge in a medical fee dispute may appeal to the Workers' Compensation Board by following the procedures established [set forth] in 803 KAR 25:010, Section 23 [(13)].

Section 2. In accordance with KRS 342.310, a sanction:

(1) Shall be assessed, as appropriate, if:

(a) [If the arbitrator or administrative law judge determines that proceedings have been brought, caused to be brought, prosecuted or defended without reasonable grounds, the entire cost of the proceedings, including attorneys fees, may be assessed upon the offending party pursuant to KRS 342.310. Sanctions shall be assessed, as appropriate, if] An employer or a medical payment obligor challenges a bill [bills] without reasonable medical or factual foundation; or

(b) [if] A medical provider, without reasonable foundation, submits a bill for a [bills for] nonwork-related condition [conditions] to an employer or its medical payment obligor; and

(2) May be imposed if a movant files [-Filing] a medical fee dispute prior to exhaustion of the required utilization review or medical bill audit procedures [may -[shall]- subject the movant to sanctions pursuant to KRS 342.310].

Section 3. Expedited Medical Fee Disputes. (1) [If, prior to the filing of a formal application for adjustment of claim,] a dispute arises requiring expedited determination of the reasonableness, appropriateness or employer's liability for proposed medical care, the lack of which could lead to serious physical or mental disability or death, an employee or employer shall file a written request on Form 120EX to seek an expedited determination. The form 120EX shall be filed [may seek an expedited determination by filing a written request (on Form 120EX), together] with:

(a) An affidavit of the employee or other witness that the injury or disease which is the subject of the dispute is compensable under KRS Chapter 342 in the format prescribed in Appendix A.

(b) An affidavit of a physician which explains why failure to obtain

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or undertake the proposed medical care within forty-five (45) days could lead to serious physical or mental disability or death of the employee. The physician's affidavit shall set forth the diagnosis of the patient, the clinical and diagnostic findings upon which the diagnosis is based, the proposed treatment, and reason why immediate initiation of the proposed treatment is necessary. If feasible, an estimate of the cost of the proposed treatment shall be presented. **A physician's affidavit shall comply with the format established** ~~[The format for a physician's affidavit is set forth]~~ in Appendix B.

(c) Other **affidavit** ~~[affidavits]~~ or authenticated **document** ~~[documents]~~ necessary to demonstrate that the movant is entitled to the relief sought.

(2) ~~If a claim is currently assigned to an arbitrator or administrative law judge, the written request shall be directed to that arbitrator or administrative law judge.~~

(3) The Form 120EX and attachments shall be filed in triplicate with the commissioner who shall serve copies on the named parties.

(a) A respondent to a Form 120EX may file a response within ten (10) days of the date on which the Form 120EX is served by mail. Service shall be deemed complete the third day after mailing by the commissioner.

(b) A response shall be accompanied by **an affidavit** ~~[affidavits]~~ setting forth facts sufficient to demonstrate that the movant is not entitled to the relief sought, and shall be served on the other parties by the respondent.

(4) ~~The arbitrator or the~~ ~~{(3) The chief}~~ administrative law judge may refer the matter to **a worker's compensation specialist** or an ombudsman to attempt to effectuate a resolution of the dispute.

(5) ~~{(4)}~~ The **arbitrator or** administrative law judge to whom a request for expedited determination of medical issues is assigned shall issue a ruling within seven (7) days after expiration of the response time.

Section 4. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) Form 112, "Medical Fee Dispute", (August 15, 1996 Edition), Department of Workers Claims; and

(b) Form 120EX, "Request for Expedited Determination of Medical Issue", (July 14, 1994 Edition), Department of Workers Claims.

(2) This 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) Perimeter Park West, Building C, 1270 Louisville Road, Frankfort, Kentucky 40601;

(b) 410 West Chestnut Street, Louisville, Kentucky 40202;

(c) 220B North 8th Street, Paducah, Kentucky 42001; or

(d) 101 Summit Drive, Pikeville, Kentucky 41501.

APPENDIX A AFFIDAVIT OF EMPLOYEE

Affiant, (Name), first being duly sworn, states that the attached Request for Expedited Determination of Medical Issue (Form 120EX) concerns treatment for a condition compensable under the Kentucky Workers' Compensation Act. Affiant further states as follows:

1. Date and time of work-related injury or date on which occupational disease was discovered:

2. Brief description of how injury occurred or how occupational disease was acquired:

3. Date and identity of person to whom notice of injury or occupational disease was given:

4. Medical treatment at issue:

5. Attempts, if any, to obtain approval for contested treatment:

Signature:
STATE OF:
COUNTY OF:

Subscribed and sworn to before me by (name) this (day) day of (month), 19(year).

Notary Public:

My commission expires:

APPENDIX B AFFIDAVIT OF PHYSICIAN EXPEDITED MEDICAL DISPUTE

Affiant (Name), a physician whose area of specialization is (specialization), first being duly sworn, states that the attached Request for Expedited Determination of Medical Issue (Form 120EX) concerns a work-related injury or disease.

(1) The following medical care is required: (describe proposed medical care)

(2) The current working diagnosis is as follows:

(3) The proposed treatment is medically necessary because:

(4) The estimated cost of the proposed treatment is:

Affiant further states that failure of (Name of workers' compensation patient) to obtain or undertake this proposed medical care within the next forty-five (45) days could lead to serious physical or mental disability or death because:

Signature:
W.C. Medical Index No.:
Address:
STATE OF:
COUNTY OF:

Subscribed and sworn to before me by (name) this (day) day of (month), 19(year).

Notary Public:

My commission expires:

WALTER W. TURNER, Commissioner
STEPHEN B. COX, General Counsel

APPROVED BY AGENCY: September 15, 1997

FILED WITH LRC: September 15, 1997 at 10 a.m.

LABOR CABINET Department of Workers' Claims (As Amended at ARRS, November 11, 1997)

803 KAR 25:175. Filing of insurance coverage and notice of policy change or termination.

RELATES TO: KRS 342.0011(22), 342.340(2)

STATUTORY AUTHORITY: KRS 342.260(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 342.340 requires an insurance carrier ~~[carriers]~~ to file proof of insurance coverage for an employer ~~[employers]~~ and notice of policy change or termination on a form ~~[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 establishes the requirements for filing ~~[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} "IAABC" means International Association of Industrial~~

Accident Boards and Commissions:]

(2) [(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 established [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 time requirements established in KRS 342.340(2) shall be [are] satisfied once the insurance carrier makes the appropriate filing with NCCI.

(4) Until December 31, 1998 [In the first year, 1998, of filing with NCCI], an insurance carrier shall file the information required on the POC-1 for each new policy, renewal policy, and a change or termination of a policy.

(5) Beginning January 1, 1999 [in any year following 1998], an insurance carrier shall file the information required on the POC-1 for each new policy and a change or termination of a policy. [The electronic filing shall be done in accordance with the IAABC EDI Implementation Guide for Proof of Coverage.]

Section 3. (1) If an insurance carrier wants acknowledgment of a filing, [then] the insurance carrier shall file a copy of the POC-1 form with a request for acknowledgment to NCCI with the original filing.

(2) A report that is [Reports that are] incomplete or provides [provide] incorrect information shall:

(a) [Shall] Be returned by NCCI; and

(b) [Shall] Not be considered as compliance with KRS 342.340(2) until the information is completed or corrected and refiled with NCCI. [The department shall make the following in an electronic format in accordance with IAABC 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) "POC-1 Form", December 1996 Edition, Department of Workers' Claims [The following] is [are] incorporated by reference.

[(a)] [POC-1 Form (December 1996 Edition)];

(b) IAABC 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, Perimeter Park West, Building C, 1270 Louisville Road, Frankfort, Kentucky 40601, Monday through Friday, 9 a.m. to 4 p.m. [at the following locations:

(a) Frankfort -- Perimeter Park West, Building C, 1270 Louisville 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

STEPHEN B. COX, General Counsel

APPROVED BY AGENCY: October 7, 1997

FILED WITH LRC: October 7, 1997 at 11 a.m.

PUBLIC PROTECTION AND REGULATION CABINET

Department of Mines and Minerals

Division of Oil and Gas

(As Amended at IJC on Agriculture and Natural Resources, November 12, 1997)

805 KAR 1:180. Production reporting.

RELATES TO: KRS 353.550(1)

STATUTORY AUTHORITY: KRS 353.540, 353.550(4) [(3)], 353.670(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 353.550(1) authorizes the department to promulgate administrative regulations requiring an operator of oil and gas properties in the Commonwealth to identify producing leases. This administrative regulation is necessary to specify the requirement of annual reporting, the content of the report, and the form on which the report shall be made. [KRS 353.550 provides the department with authority to require all operators of oil and gas properties in the Commonwealth to identify producing leases; submitted on the form on which production is required by the department to be reported. This administrative regulation specifies the content of the annual report of monthly production of natural gas and crude oil and creates the form on which that report is to be made.]

Section 1. Definitions. In addition to the definitions set out in KRS 353.510, the following definitions shall apply to this administrative regulation:

(1) "GPS" means [refers to] a global positioning satellite, which:

(a) Receives radio frequencies from more than one (1) satellite; and

(b) Is able to locate a point on the earth. [is used to obtain a location of a point on the earth by using a receiver to triangulate the position from radio frequencies received from more than one (1) such satellite:]

(2) "Mcf" means 1,000 cubic feet of natural gas.

(3) "Net gas sales" means the amount of metered or prorated gas sold into the line of first purchase and may be different from produced gas, due to line loss and compressor usage.

(4) "Produced gas" means the amount of produced gas metered or prorated at the well head on a monthly basis.

(5) "Purchaser or lease number" means the number assigned by the purchasing company to the lease or well for accounting and payment purposes.

(6) "Topographic spot" means the act of locating a well on a United States Geological Survey 1:24,000 Topographic Map and scaling that well location on the map to determine its Carter Coordinate location.

Section 2. Annual Report of Monthly Production. (1) An oil or gas operator shall:

(a) Compile and retain records of the monthly production of natural gas and crude oil; and

(b) For the preceding year, file the production information with the Division by April 15.

(2) The information may be submitted to the division:

(a) On Form ED-17, "Annual Report of Monthly Production for Natural Gas and/or Crude Oil"; or

(b) By using:

1. Common personal computer spread sheet or database software;

2. An electronic mail attachment.

(3) An operator shall be permitted to submit the information in accordance with subsection (2)(b) of this section, subject to the division being able to process the production data electronically.

(4) The following shall be included in the information submitted by the operator: [An oil or gas operator shall file production information on Form ED-17, entitled "Annual Report of Monthly Production for

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Natural Gas and/or Crude Oil". The operator shall file the following information by April 15 of each year for the preceding year on this form:]

- (a) Operator name and address;
 - (b) Production year;
 - (c) Permit number issued by the Division of Oil and Gas;
 - (d) Purchaser number;
 - (e) Number of wells on the lease for which the report is being filed;
 - (f) Farm name, complete with the individual well name and well number;
 - (g) County of production;
 - (h) Producing formation or, if production is commingled from multiple wells which are not metered separately, the identification of the wells as "commingled" and the pertinent formations from which production was made; and
 - (i) Well status, identified as producing or shut-in.
- (5) [(2)] Production from a gas well shall be reported in Mcf of [produced gas and] net gas sales by well. In addition to reporting net gas sales, produced gas may also be reported at the option of the operator.

(6) [(3)] Monthly oil production shall be reported in barrels by individual well or by lease; if by lease, the operator shall attach to Form ED-17 a list identifying the purchaser number and division permit number of all wells producing on that lease.

(7) [(4)] For a well drilled prior to the date upon which a permit for the drilling and production of a well was statutorily required, the operator shall provide a Carter Coordinate location for each well not having a location on file with the division; that location may be estimated by a topographic spot, a GPS locator, or by survey.

(8) Production information reported pursuant to this administrative regulation shall be organized into a standard format and shall be made available for public release no earlier than January 1 nor later than March 1 of the following year.

[(5) The production reporting requirements of this administrative regulation may be satisfied by using personal computer spreadsheet software or by an electronic mail attachment, subject to the division's being able to view the production data.]

Section 3. Penalties. If an operator does not file his production data on Form ED-17 by April 15 after each production year, the division shall notify him in writing of his noncompliance. If he does not submit all required production information within forty-five (45) days after being notified of his noncompliance, he shall be subject to denial of permits in accordance with KRS 353.570 and the penalties established in KRS 353.991(2), (3) and (4).

Section 4. Incorporation by Reference. (1) "Annual Report of Monthly Production for Natural Gas and/or Crude Oil", (November 12 [February 14], 1997 edition), Division of Oil and Gas, is incorporated by reference. [Material Incorporated by Reference. (1) The following form is incorporated by reference: Form ED-17, effective 2/14/97.]

(2) This form may be obtained, examined, or copied at the Kentucky Department of Mines and Minerals, Division of Oil and Gas, 3572 Ironworks Pike, Lexington, Kentucky 40512, Monday through Friday, 8 a.m. to 4:30 p.m.

LAURA M. DOUGLAS, Secretary

JOHN L. FRANKLIN, Commissioner

APPROVED BY AGENCY: February 24, 1997

FILED WITH LRC: February 27, 1997 at 1 p.m.

PUBLIC PROTECTION AND REGULATION CABINET

Department of Insurance

(As Amended at ARRS, November 11, 1997)

806 KAR 39:070. Proof of motor vehicle insurance.

RELATES TO: KRS 186.021(3), 186A.040, 186A.095, [304.12-020,] 304.39-080, 304.39-083, 304.39-085, 304.39-090, 304.39-117 [(HB-317)]

STATUTORY AUTHORITY: KRS 186.021, 304.2-110(1), 304.39-083, 304.39-085, 304.39-117, 304.39-300

NECESSITY, FUNCTION, AND CONFORMITY: KRS 186.021 requires the Commissioner of Insurance to promulgate an administrative regulation to establish the manner for presenting proof of motor vehicle insurance to a county clerk. KRS 304.39-117 requires the department to promulgate an administrative regulation that establishes the requirements for the insurance card that an insurer is required to give to an insured. KRS 304.39-083 and 304.39-084 require notification to the department if a binder or other contract for temporary insurance or a policy is terminated by cancellation or nonrenewal. This administrative regulation establishes the requirements for the insurance card; the methods for presenting proof of motor vehicle insurance to a county clerk; and the requirements for notifying the department if a binder, contract, or policy is cancelled or not renewed. [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 Repairs 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" is defined by KRS 304.1-050. [means the Commissioner of the Kentucky Department of Insurance.]

(2) "Insurer" means an insurer or self-insurer who provides security covering a motor vehicle pursuant to KRS 304.39-080. [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 that provides [purporting to provide] security covering a motor vehicle pursuant to KRS 304.39-080.

(4) "Person" is defined by [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. Insurance Card [Written Proof of Motor Vehicle Insurance] to be Provided by Insurers. (1) The insurance card required by KRS 304.39-117 shall be provided to the insured at the time a policy is issued, renewed, or amended. [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 insurance card, [written proof of motor vehicle insurance:]

(a) If the motor vehicle insurance policy covers four (4) or less vehicles, a single insurance card [written proof of motor vehicle insurance] shall be provided for each motor vehicle. Two (2) copies of the insurance card [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 insurance card [written proof of motor vehicle insurance] shall be provided for each vehicle covered by the policy. Sufficient copies of the insurance card [written proof of motor vehicle insurance] shall be provided to the policyholder so that the policyholder will have a single insurance card [written proof of motor vehicle insurance] for the county clerk of each county in which the policyholder has motor vehicles registered.

(3) [(4)] Guidelines for size and format of the insurance card [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 insurance card [written proof of motor vehicle insurance] shall be [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) The insurance card may vary slightly from the dimension requirements established in paragraph (a) of this subsection. [Slight variations from the sizes listed in paragraph (a) of this subsection shall be permitted:]

(c) The insurance card [written proof of motor vehicle insurance] shall be on white paper with black or blue ink.

(4) [(5)] Mandatory contents of the insurance card. The insurance card [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) 1. If the insurance contract covers four (4) or fewer vehicles, the motor vehicle identification: year, make or model, and vehicle identification number of each [the] motor vehicle.

2. If the insurance contract covers five (5) or more motor vehicles,

it shall [will] state "Fleet."

(5) Other information to be provided to the insurer. The insurer shall:

(a) If the information required by subsection (4) of this section is not obscured, include the following information on the insurance card:

1. The insurer's logo;

2. A statement that establishes the procedure for contacting the insurer concerning a claim;

3. The insurer's address; and

4. The named insured's address; or

(b) Include the information listed in paragraph (a) of this subsection on a separate document mailed with the insurance card.

(6) An insurer shall furnish with the insurance card written instructions that state:

(a) The insured shall keep a copy of the insurance card in each motor vehicle covered by the policy;

(b) The insured shall present a copy of the insurance card or other proof of compliance with KRS 304.39-080 as required by Section 3 of this administrative regulation to the county clerk for issuance of a replacement plate, decal, or registration certificate or renewal;

(c) If the vehicle identification number on the motor vehicle registration and the vehicle identification number on the motor vehicle do not match, the policyholder shall contact the county clerk to have the vehicle identification number on the motor vehicle registration corrected;

(d) If the vehicle identification number on the insurance card and the motor vehicle do not match, the policyholder shall contact the insurance company to have the vehicle identification number on the insurance card corrected. The insurer shall provide the name, address, and telephone number of an insurer representative to contact concerning a discrepancy in the vehicle identification number numbers. The telephone number shall be:

1. The phone number of a local agent of the insurer; or

2. A toll-free telephone number of the insurer.

(7) Submission of the insurance card for approval. The insurer may file a copy of an insurance card with the commissioner for approval.

(a) If the commissioner approves the insurance card, the insurer shall not be subject to disciplinary action by the commissioner for a violation of this section of the administrative regulation for the period of time covered by the approval.

(b) The commissioner shall not approve the insurance card if the insurance card does not comply with the provisions of KRS 304.39-117 or this administrative regulation.

[(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 shall use one (1) of [may use] the following [alternative] methods to prove that motor vehicle insurance is in effect when registering a motor vehicle:

(1) A copy of the current insurance card;

(2) 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.]

(3) [(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;

(4) [(3)] [(4)] A letter from the Kentucky Automobile Insurance Plan serving as prima facie evidence of insurance in force; or

(5) If [(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 the [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) An insurer [Insurers] shall submit information on a motor vehicle insurance policy cancellation or nonrenewal on a computer cartridge, diskette, or magnetic tape that complies with the requirements established in subsections (3) and (4) of this section [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 a computer cartridge, diskette, [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 a computer cartridge, diskette, [cartridges, three and one-half (3 1/2) inch diskettes,] or magnetic tape is shown.

(2) If an insurer submits notices on less than fifty (50) policies per accounting month, the insurer shall submit the information on Form No. TC96-31, Manual Report of Insurance Cancellation (fifty (50) or less).

(3) Information on a computer cartridge, diskette, or magnetic tape shall comply with the field definitions and explanations established in the Cancellation Tape Data Entry Format.

(a) The cartridge, diskette, or tape shall have the accounting period clearly marked on its label. If the cartridge, diskette, or tape contains a correction for a prior accounting period, the label shall be marked "Correction".

(b) A cartridge shall:

1. Be a 3480 cartridge tape; and

2. Have:

a. An IBM standard label;

b. A logical record length of 300; and

c. A block size of 32700.

(c) A diskette shall:

1. Be a three and one-half (3.5) inch, one and four-tenths (1.4) meg, MS-DOS compatible diskette;

2. Contain records in ASCII with a record length of 300 bytes.

(d) A tape reel shall:

1. Be submitted if the insurer is unable to submit a cartridge or diskette; and

2. Have a:

a. Logical record length of 300; and

b. Block size of 32700.

(4) An insurer shall submit a sample of the cartridge, diskette, or tape to the department for approval of the format. A cartridge, diskette, or magnetic tape that does not comply with the format requirements shall be returned to the insurer for correction.

(5) Information required upon cancellation and nonrenewal. An insurer shall provide the following information to the Department of Vehicle Regulation if a policy is cancelled or not renewed:

(a) 1. If the motor vehicle policy covers four (4) or less motor vehicles, the motor vehicle identification for each vehicle including the:

a. Year;

b. Make or model; and

c. Vehicle identification number; or

2. If the motor vehicle policy covers five (5) or more vehicles, the designation "Fleet";

(b) Name of the named insured;

(c) Policy number;

(d) Company code;

(e) Effective date of the termination of the motor vehicle insurance policy;

(f) Street, city, state, and zip code of the named insured;

(g) Format number denoting the type of media used for the

insurance data:

- (h) Effective date of the original policy;
- (i) The Social Security number or driver's license number of the named insured; and
- (j) The code denoting whether the policy was a cancellation or a nonrenewal.

(6) Unless the technology to edit the list is unavailable to the insurer, an insurer shall:

- (a) Edit the list of cancellations and nonrenewals prior to submitting the list to the Department of Vehicle Regulation; and
- (b) Delete information on a policyholder if that person's policy was:

- 1. Terminated and reinstated; or
- 2. Terminated and replaced by a policy issued by the same insurer. [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. An insurance agent shall submit to the Department of Vehicle Regulation a completed Form TC96-30 if the purchaser of a binder or temporary insurance contract cancels the binder or contract before the agent has submitted the application to the insurance company. [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)", Kentucky Transportation Cabinet, Department of Motor Vehicle Licensing;

(b) "Form No. TC96-31, Manual Report of Insurance Cancellations (Fifty (50) or Less) (November 1996 edition)", Kentucky Transportation Cabinet, Department of Motor Vehicle Licensing; and

(c) "Form No. TC96-30, Motor Vehicle Insurance Agent Insurance Binder Cancellation Form (September 1996 edition)", Kentucky Transportation Cabinet, Department of Motor Vehicle Licensing.

[(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 PROTECTION AND REGULATION CABINET
Department of Housing, Buildings and Construction
Division of Building Codes Enforcement
(As Amended at ARRS, November 11, 1997)

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

RELATES TO: KRS 198B.010, 198B.040, 198B.050, 198B.060, 198B.080, 198B.110, 198B.260, 198B.990

STATUTORY AUTHORITY: KRS 198B.040(7), 198B.050
 NECESSITY, FUNCTION, AND CONFORMITY: KRS 198B.040(7) requires the board to adopt a mandatory uniform state building code to establish standards for the construction of all buildings in the state. This administrative regulation incorporates by reference the Kentucky Building Code, Seventh Edition 1997.

Section 1. Incorporation by Reference. (1) "The Kentucky Building

Code", (Seventh Edition - 1997), as amended October 16 [September 15], 1997, by the Kentucky Board of Housing, Buildings and Construction, is incorporated by reference.

(2) It may be inspected, copied, or obtained at the Kentucky Department of Housing, Buildings, and Construction, 1047 U.S. 127 South, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

CHARLES A. COTTON, Commissioner

LAURA M. DOUGLAS, Secretary

JUDITH G. WALDEN, Office of General Counsel

APPROVED BY AGENCY: September 10, 1997

FILED WITH LRC: September 15, 1997 at noon

CABINET FOR HEALTH SERVICES
Office of Inspector General
(As Amended at ARRS, November 11, 1997)

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

RELATES TO: KRS 214.175, 216B.010 to 216B.130, 216B.990, Chapter 310, 311.241 to 311.247, 311.990, 42 CFR 412.23(e)

STATUTORY AUTHORITY: KRS 216B.042, 216B.105, 314.011(8), 314.042(8), 320.240(14), 42 USC 263a, EO 96-862

NECESSITY, FUNCTION, AND CONFORMITY: KRS 216B.042 mandate that the Kentucky Cabinet for Health Services regulate health facilities and health services. This administrative regulation provides for the minimum licensure requirements for the operation of hospitals and the basic services to be provided by hospitals. 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) "Accredited record technician" means a person who has graduated from a program for medical record technicians accredited by the Council on Medical Education of the American Medical Association and the American Medical Record Association; and who is certified as an accredited Record Technician by the American Medical Record Association.

(2) "Certified radiation operator" means a person who has been certified pursuant to KRS 211.870 and 902 KAR 105:010 to 105:070 as an operator of radiation producing machines.

(3) "Governing authority" means the individual, agency, partnership, or corporation, in which the ultimate responsibility and authority for the conduct of the institution is vested.

(4) "Induration" means a firm area in the skin which develops as a reaction to the intradermal injection of five (5) tuberculin units of purified protein derivative by the Mantoux technique when a person has tuberculosis infection.

(5) "Long-term acute inpatient hospital services" means acute inpatient services provided to patients whose average inpatient stay is greater than twenty-five (25) days.

(6) "Medical staff" means an organized body of physicians, and dentists when applicable, appointed to the hospital staff by the governing authority.

(7) [(6)] "Organ procurement agency" means a federally designated organization which coordinates and performs activities which encourage the donation of organs or tissues for transplantation.

(8) [(7)] "Protective devices" means devices that are designed to protect a person from falling, to include side rails, safety vest or safety belt.

(9) [(8)] "Psychiatric unit" means a department of a general acute care hospital consisting of eight (8) or more psychiatric beds organized for the purpose of providing psychiatric services.

(10) [(9)] "Registered, certified or registry-eligible dietician" means a person who is certified in accordance with KRS Chapter 310.

(11) [(10)] "Registered records administrator" means a person who is certified as a registered records administrator by the American Medical Record Association.

(12) [(11)] "Restraint" means any pharmaceutical agent or physical or mechanical device used to restrict the movement of a patient or the movement of a portion of a patient's body.

(13) [(12)] "Skin test" means a tuberculin skin test utilizing the intradermal (Mantoux) technique using five (5) tuberculin units of purified protein derivative (PPD). The results of the test must be read forty-eight (48) to seventy-two (72) hours after injection and recorded in terms of millimeters of induration.

(14) [(13)] "Two (2) step skin testing" means a series of two (2) tuberculin skin tests administered seven (7) to fourteen (14) days apart.

Section 2. Scope of Operation and Services. Hospitals are establishments with organized medical staffs and permanent facilities with inpatient beds which provide medical services, including physician services and continuous nursing services for the diagnosis and treatment of patients who have a variety of medical conditions, both surgical and nonsurgical.

Section 3. Administration and Operation. (1) Governing authority licensee.

(a) The hospital shall have a recognized governing authority that has overall responsibility for the management and operation of the hospital and for compliance with federal, state, and local laws and administrative regulations pertaining to its operation.

(b) The governing authority shall appoint an administrator whose qualifications, responsibilities, authority, and accountability shall be defined in writing and approved by the governing authority, and shall designate a mechanism for the periodic performance review of the administrator.

(2) Administrator.

(a) The administrator shall act as the chief executive officer and shall be responsible for the management of the hospital, and shall provide liaison between the governing authority and the medical staff.

(b) The administrator shall keep the governing authority fully informed of the conduct of the hospital through periodic reports and by attendance at meetings of the governing authority.

(c) The administrator shall develop an organizational structure including lines of authority, responsibility, and communication, and shall organize the day-to-day functions of the hospital through appropriate departmentalization and delegation of duties.

(d) The administrator shall establish formal means of accountability on the part of subordinates to whom he has assigned duties.

(e) The administrator shall hold interdepartmental and departmental meetings (where appropriate), shall attend or be represented at the meetings on a regular basis, and shall report to such departments as well as to the governing authority the pertinent activities of the hospital.

(3) Administrative records and reports.

(a) Administrative reports shall be established, maintained and utilized as necessary to guide the operation, measure productivity, and reflect the programs of the facility. These reports shall include: minutes of the governing authority and staff meetings, financial records and reports, personnel records, inspection reports, incident investigation reports, and other pertinent reports made in the regular course of business.

(b) The hospital shall maintain a patient admission and discharge register. Where applicable, a birth register and a surgical register shall also be maintained.

(c) Licensure inspection reports and plans of correction shall be made available to the general public upon request.

(4) Policies. The hospital shall have written policies and procedures governing all aspects of the operation of the facility and the services provided, including:

(a) A written description of the organizational structure of the facility including lines of authority, responsibility and communication, and departmental organization;

(b) Admission policies which assure that patients are admitted to the hospital in accordance with policies of the medical staff;

(c) Constraints imposed on admissions by limitations of services, physical facilities, staff coverage or other factors;

(d) Financial requirements for patients on admission;

(e) Emergency admissions;

(f) Requirements for informed consent by patient, parent, guardian or legal representative for diagnostic and treatment procedures;

(g) There shall be an effective procedure for recording accidents involving a patient, visitor, or staff, and incidents of transfusion reactions, drug reactions, medication errors, etc.; and a statistical analysis shall be reported in writing through the appropriate committee;

(h) Reporting of communicable diseases to the health department in whose jurisdiction the disease occurs pursuant to KRS Chapter 214 and 902 KAR 2:020;

(i) Use of restraints and a mechanism for monitoring and controlling their use;

(j) Internal transfer of patients from one (1) level or type of care to another (if applicable);

(k) Discharge and termination of services; and

(l) Organ procurement for transplant protocol developed by the medical staff in consultation with the organ procurement agency.

(5) Patient identification. The hospital shall have a system for identifying each patient from time of admission to discharge (e.g., an identification bracelet imprinted with name of patient, hospital identification number, date of admission, and name of attending medical staff member).

(6) Discharge planning.

(a) The hospital shall have a discharge planning program to assure the continuity of care for patients being transferred to another health care facility or being discharged to the home.

(b) The professional staff of the facility involved in the patient's care during hospitalization shall participate in discharge planning of the patient whose illness requires a level of care outside the scope of the general hospital.

(c) The hospital shall coordinate the discharge of the patient with the patient and the person or agency responsible for the postdischarge care of the patient. All pertinent information concerning postdischarge needs shall be provided to the responsible person or agency.

(7) Transfer procedures and agreements.

(a) The hospital shall have written patient transfer procedures and agreements with at least one (1) of each type of other health care facilities which can provide a level of inpatient care not provided by the hospital. Any facility which does not have a transfer agreement in effect but has documented a good faith effort to enter into such an agreement shall be considered to be in compliance with this requirement. The transfer procedures and agreements shall specify the responsibilities each institution assumes in the transfer of patients and shall establish responsibility for notifying the other institution promptly of the impending transfer of a patient and arranging for appropriate and safe transportation.

(b) If the patient is transferred to another health care facility or to the care of a home health agency, a transfer form shall accompany the patient or be sent immediately to the home health agency. The transfer form shall include at least: attending medical staff member's instructions for continuing care, a current summary of the patient's medical record, information as to special supplies or equipment needed for patient care, and pertinent social information on the patient and family. When such transfer occurs, a copy of the patient's signed discharge summary shall be forwarded to another health care facility or home health agency within thirty (30) days of the patient's discharge.

(c) When a transfer is to another level of care within the same facility, the complete medical record or a current summary thereof shall be transferred with the patient.

(8) Medical staff.

(a) The hospital shall have a medical staff organized under bylaws approved by the governing authority, which is responsible to the governing authority of the hospital for the quality of medical care provided to the patients and for the ethical and professional practice of its members.

(b) The medical staff shall develop and adopt policies or bylaws, subject to the approval of the governing authority, which shall:

1. State the necessary qualifications for medical staff membership including licensure to practice medicine or dentistry in Kentucky, except for graduate physicians in their first year of hospital training. For purposes of this document, medical staff shall mean physicians, and dentists when applicable.

2. Define and describe the responsibilities and duties of each category of medical staff (e.g., active, associate, courtesy, consulting, or honorary), delineate the clinical privileges of staff members and allied health professionals, and establish a procedure for granting and withdrawing staff privileges to include credentials review.

3. Provide a mechanism for appeal of decisions regarding staff membership and privileges.

4. Provide a method for the selection of officers of the medical staff.

5. Establish requirements regarding the frequency of, and attendance at, general staff and department or service meeting of the medical staff.

6. Provide for the appointment of standing and special committees, and include requirements for composition and organization, frequency of and attendance at meetings, and the minutes and reports which shall be part of the permanent records of the hospital. These committees may include: executive committee, credentials committee, medical audit committee, medical records committee, infections control committee, tissue committee, pharmacy and therapeutics committee, utilization review committee, and quality assurance committee.

(9) Personnel.

(a) The hospital shall employ a sufficient number of qualified personnel to provide effective patient care and all other related services and shall have written personnel policies and procedures which shall be available to all hospital personnel.

(b) There shall be a written job description for each position. Job descriptions shall be reviewed and revised as necessary.

(c) There shall be an employee health program for mutual protection of employees and patients including provisions for preemployment and periodic health examination. The hospital shall comply with the following tuberculosis testing requirements:

1. The skin test status of all staff members shall be documented in the employee's personnel record.

a. A skin test shall be initiated on all new staff members before or during the first week of employment and the results shall be documented in the employee's personnel record within the first month of employment.

b. Skin testing shall not be required at the time of initial employment if the employee documents a prior skin test of ten (10) or more millimeters of induration or if the employee is currently receiving or has completed six (6) months of prophylactic therapy or a course of multiple-drug chemotherapy for tuberculosis.

c. Two (2) step skin testing shall be required for new employees over age forty-five (45) whose initial test shows less than ten (10) millimeters of induration, unless they can document that they have had a tuberculosis skin test within one (1) year prior to their current employment.

d. All staff who have never had a skin test of ten (10) or more millimeters induration shall be skin tested annually on or before the anniversary of their last skin test.

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2. All staff who are found to have a skin test of ten (10) or more millimeters induration, on initial employment testing or annual testing, shall receive a chest x-ray unless a chest x-ray within the previous two (2) months showed no evidence of tuberculosis, or the individual can document the previous completion of a course of prophylactic treatment with isoniazid. Such employees shall be advised of the symptoms of the disease and instructed to report to their employer and seek medical attention promptly if symptoms persist.

3. The hospital administrator shall be responsible for ensuring that all skin tests and chest x-rays are done in accordance with subparagraphs 1 and 2 of this paragraph. All skin testing dates and results and all chest x-ray reports shall be recorded as a permanent part of the personnel record.

4. The following shall be reported by the hospital administrator to the local health department having jurisdiction immediately upon becoming known: names of staff who convert from a skin test of less than ten (10) to a skin test of ten (10) millimeters or more induration at the time of employment; and all chest x-rays suspicious for tuberculosis.

5. Any staff whose skin test status changes on annual testing from less than ten (10) to ten (10) or more millimeters of induration shall be considered to be recently infected with *Mycobacterium tuberculosis*. Such recently infected persons who have no signs or symptoms of tuberculosis disease on chest x-ray or medical history should be given preventive therapy with isoniazid for six (6) months unless medically contraindicated, as determined by a licensed physician. Medications shall be administered only upon the written order of a physician or advanced registered nurse practitioner as authorized in KRS 314.011(8) and 314.042(8). If such individual is unable to take isoniazid therapy, the individual shall be advised of the clinical symptoms of the disease, and have an interval medical history and a chest x-ray taken and evaluated for tuberculosis disease every six (6) months during the two (2) years following conversion, for a total of five (5) chest x-rays.

6. Any staff who can document completion of preventive treatment with isoniazid shall be exempt from further screening requirements.

(d) Current personnel records shall be maintained for each employee which include the following:

1. Name, address, Social Security number;
2. Health records;
3. Evidence of current registration, certification, or licensure of personnel;
4. Records of training and experience;
5. Records of performance evaluation.

(10) Physical and sanitary environment.

(a) The condition of the physical plant and the overall hospital environment shall be maintained in such a manner that the safety and well-being of patients, personnel and visitors are assured.

(b) A person shall be designated responsible for services and for the establishment of practices and procedures in each of the following areas: plant maintenance, laundry operations (if applicable), and housekeeping.

(c) There shall be an infection control committee charged with the responsibility of investigating, controlling and preventing infections in the hospital. Infection incident reports shall be filed.

(d) There shall be written infection control policies, which are consistent with the Centers for Disease Control guidelines including:

1. Policies which address the prevention of disease transmission to and from patients; visitors and employees, including but not limited to:

- a. Universal blood and body fluid precautions;
 - b. Precautions for infections which can be transmitted by the airborne route; and
 - c. Work restrictions for employees with infectious diseases.
2. Policies which address the use of environmental cultures.

Results of all testing shall be recorded and reported to the Infection Control Committee; and

3. Policies which address the cleaning, disinfection, and sterilization methods used for equipment and the environment.

(e) The hospital shall provide in-service education programs on the cause, effect, transmission, prevention and elimination of infections.

(f) The hospital buildings, equipment, and surroundings shall be kept in a condition of good repair, neat, clean, free from all accumulations of dirt and rubbish, and free from foul, stale or musty odors.

1. An adequate number of housekeeping and maintenance personnel shall be provided.

2. Written housekeeping procedures shall be established for the cleaning of all areas and copies shall be made available to personnel.

3. Equipment and supplies shall be provided for cleaning of all surfaces. Such equipment shall be maintained in a safe, sanitary condition.

4. Hazardous cleaning solutions, compounds, and substances shall be labeled, stored in closed metal containers and kept separate from other cleaning materials.

5. The facility shall be kept free from insects and rodents with harborages and entrances for these eliminated.

6. Garbage and trash shall be stored in areas separate from those used for preparation and storage of food and shall be removed from the premises regularly. Containers shall be cleaned regularly.

(g) Sharp wastes.

1. Sharp wastes, including needles, scalpels, razors, or other sharp instruments used for patient care procedures, shall be segregated from other wastes and placed in puncture resistant containers immediately after use.

2. Needles shall not be purposely bent or broken, or otherwise manipulated by hand as a means of disposal, except as permitted by Centers for Disease Control and Occupational Safety and Health Administration guidelines.

3. The containers of sharp wastes shall either be incinerated on or off site, or be rendered nonhazardous by a technology of equal or superior efficacy, which is approved by both the Cabinet for Health Services [Human Resources] and the Natural Resources and Environmental Protection Cabinet.

4. Nondisposable sharps such as large-bore needles or scissors shall be placed in a puncture resistant container for transport to the Central Medical and Surgical Supply Department in accordance with 902 KAR 20:009, Section 22.

(h) Disposable waste.

1. All disposable waste shall be placed in suitable bags or closed containers so as to prevent leakage or spillage, and shall be handled, stored, and disposed of in such a way as to minimize direct exposure of personnel to waste materials.

2. The hospital shall establish specific written policies regarding handling and disposal of all wastes.

3. The following wastes shall receive special handling:

a. Microbiology laboratory waste which includes viral or bacterial cultures, contaminated swabs, and specimen containers and test tubes used for microbiologic purposes shall either be incinerated, autoclaved or be rendered nonhazardous by technology of equal or superior efficacy, which is approved by both the Cabinet for Health Services [Human Resources] and the Natural Resources and Environmental Protection Cabinet; and

b. Pathological waste which includes all tissue specimens from surgical or necropsy procedures shall be incinerated.

4. The following wastes shall be disposed of by incineration, or be autoclaved before disposal, or be carefully poured down a drain connected to a sanitary sewer: blood, blood specimens, used blood tubes, or blood products.

5. Any wastes conveyed to a sanitary sewer shall comply with applicable federal, state, and local pretreatment administrative regulations pursuant to 40 CFR 403 and 401 KAR 5:055, Section 9.

6. Any incinerator used for the disposal of waste shall be in compliance with 401 KAR 59:020 and 401 KAR 61:010.

(i) The hospital shall have available at all times a quantity of linen essential to the proper care and comfort of patients.

1. Linens shall be handled, stored, and processed so as to control the spread of infection.

2. Clean linen and clothing shall be stored in clean, dry, dust-free areas designated exclusively for this purpose. Uncovered mobile carts may be used to distribute a daily supply of linen in patient care areas.

3. Soiled linen and clothing shall be placed in suitable bags or closed containers so as to prevent leakage or spillage, and will be handled in such a way as to minimize direct exposure of personnel to soiled linen. Soiled linen shall be stored in areas separate from clean linen.

(11) Medical and other patient records.

(a) The hospital shall have a medical records service with administrative responsibility for medical records. A medical record shall be maintained, in accordance with accepted professional principles, for every patient admitted to the hospital or receiving outpatient services.

1. The medical records service shall be directed by a registered records administrator, either on a full-time, part-time, or consultative basis, or by an accredited record technician on a full-time or part-time basis, and shall have available a sufficient number of regularly assigned employees so that medical record services may be provided as needed.

2. All medical records shall be retained for a minimum of five (5) years from date of discharge, or in the case of a minor three (3) years after the patient reaches the age of majority under state law, whichever is the longer.

3. Provision shall be made for written designation of specific location for storage of medical records in the event the hospital ceases to operate because of disaster, or for any other reason. It shall be the responsibility of the hospital to safeguard both the record and its informational content against loss, defacement, and tampering. Particular attention shall be given to protection from damage by fire or water.

(b) A system of identification and filing to insure the prompt location of a patient's medical record shall be maintained:

1. Index cards shall bear at least the full name of the patient, the birth date, and the medical record number.

2. There shall be a system for coordinating the inpatient and outpatient medical records of any patient whose admission is a result of or related to outpatient services.

3. All clinical information pertaining to inpatient or outpatient services shall be centralized in the patient's medical record.

4. In hospitals using automated data processing, indexes may be kept on punch cards or reproduced on sheets kept in books.

(c) Records of patients are the property of the hospital and shall not be taken from the facility except by court order. This does not preclude the routing of the patient's records, or portion thereof, including x-ray film, to physicians or dentists for consultation.

1. Only authorized personnel shall be permitted access to the patient's records.

2. Patient information shall be released only on authorization of the patient, the patient's guardian or the executor of his estate.

(d) Medical record contents shall be pertinent and current and shall include the following:

1. Identification data and signed consent forms, including name and address of next of kin, and of person or agency responsible for patient;

2. Date of admission, name of attending medical staff member, and allied health professional in accordance with subsection (8)(b)2 of this section;

3. Chief complaint;

4. Medical history including present illness, past history, family history and physical examination;

5. Report of special examinations or procedures, such as consultations, clinical laboratory tests, x-ray interpretations, EKG

interpretations, etc.;

6. Provisional diagnosis or reason for admission;

7. Orders for diet, diagnostic tests, therapeutic procedures, and medications, including patient limitations, signed and dated by the medical staff member or advanced registered nurse practitioner as authorized in KRS 314.011(8) and 314.042(8), or therapeutically-certified optometrists as authorized in KRS 320.240(14);

8. Medical, surgical and dental treatment notes and reports, signed and dated by a physician, or dentist, advanced registered nurse practitioner or therapeutically-certified optometrist when applicable, including records of all medication administered to the patient;

9. Complete surgical record signed by attending surgeon, or oral surgeon, to include anesthesia record signed by anesthesiologist or anesthesiologist, preoperative physical examination and diagnosis, description of operative procedures and findings, postoperative diagnosis, and tissue diagnosis by qualified pathologist on tissue surgically removed;

10. Patient care plan which addresses the comprehensive care needs of the patient, to include the coordination of the facility's service departments that have impact on patient care;

11. Physician's, or dentist's, advanced registered nurse practitioner's or therapeutically-certified optometrist's when applicable, progress notes and nurses' observations;

12. Record of temperature, blood pressure, pulse and respiration;

13. Final diagnosis using terminology in the current version of the International Classification of Diseases or the American Psychiatric Association's Diagnostic and Statistical Manual, as is applicable;

14. Discharge summary, including condition of patient on discharge, and date of discharge;

15. In case of death, autopsy findings, if performed; and

16. In the case of death, an indication that the patient has been evaluated for organ donation in accordance with hospital protocol.

(e) Records shall be indexed according to disease, operation, and attending medical staff member. For indexing, any recognized system may be used.

1. The disease and operative indices shall be developed using a recognized nomenclature, and shall include each specific disease created and each operative procedure performed, and shall include all essential data on each patient having that particular condition;

2. The attending medical staff index shall include all patients attended or seen in consultation by each medical staff member;

3. Indexing shall be current, within six (6) months following discharge of the patient.

(12) Organ donation.

(a) The hospital shall establish and maintain a written organ procurement for transplant protocol, in consultation with an organ procurement agency, which encourages organ donation and identifies potential organ donors.

(b) In cases where an individual has died or death is imminent, the patient's attending physician shall determine, in accordance with the hospital's protocol, whether the patient is a potential organ or tissue donor.

(c) The hospital protocol shall include:

1. Criteria, developed in consultation with the organ procurement agency for identifying potential donors;

2. Procedures for obtaining consent for organ donation;

3. Procedures for the hospital administrator or his designee to notify the organ procurement agency of potential organ donors;

4. Procedures by which the patient's attending physician or designee in accordance with hospital protocol shall document in the patient's medical record that the organ procurement agency has been notified in the case of potential donors or contraindications to donation.

5. Procedures for the hospital administrator or his designee to report any information about the possible sale, purchase, or brokering of a transplantable organ to the Cabinet for Health Services, Office of the Inspector General, as required by KRS 311.241(3).

(d) A patient with impending or declared brain death or cardiopulmonary death as determined pursuant to KRS 446.400 should not be considered as a potential donor if contraindications are identified and documented in the patient's medical record.

Section 4. Provision of Services. (1) Medical staff services.

(a) Medical care provided in the hospital shall be under the direction of a medical staff member in accordance with staff privileges granted by the governing authority.

(b) The attending medical staff member shall assume full responsibility for diagnosis and care of his patient. Other qualified personnel may complete medical histories, perform physical examinations, record findings, and compile discharge summaries, in accordance with their scope of practice and the hospital's protocols and bylaws.

(c) A complete history and physical examination shall be conducted and recorded within twenty-four (24) hours after admission of the patient.

(d) The attending medical staff member shall state his final diagnosis, assure that the discharge summary is completed and sign the records within thirty (30) days following the patient's discharge.

(e) Physician services shall be available twenty-four (24) hours a day on at least an on-call basis.

(f) There shall be sufficient medical staff coverage for all clinical services of the hospital in keeping with their size and scope of activity.

(2) Nursing service.

(a) The hospital shall have a nursing department organized to meet the nursing care needs of the patients and maintain established standards of nursing practice. A registered nurse, preferably one who has a bachelor of science degree in nursing, shall serve as director of the nursing department.

(b) There shall be a registered nurse on duty at all times.

1. There shall be registered nurse supervision and staff nursing personnel for each service or nursing unit to insure the immediate availability of a registered nurse for all patients on a twenty-four (24) hour basis.

2. There shall be other nursing personnel in sufficient numbers to provide nursing care not requiring the service of a registered nurse.

3. There shall be additional registered nurses for surgical, obstetrical, emergency, and other services of the hospital in keeping with their size and scope of activity.

4. All persons not employed by the hospital who render special duty nursing services in the hospital shall be under the supervision of the nursing supervisor of the department or service concerned.

(c) The hospital shall have written nursing care procedures and written nursing care plans for patients. Patient care shall be carried out in accordance with attending medical staff member's orders, nursing process, and nursing care procedures.

1. The nurse shall evaluate the patient by utilizing the nursing process in accordance with KRS 314.011.

2. A registered nurse shall assign staff and evaluate the nursing care of each patient in accordance with the patient's need and the nursing staff available.

3. Nursing notes shall be written and signed on each shift by persons rendering care to patients. The notes shall be descriptive of the nursing care given and shall include information and observations of significance which contribute to the continuity of patient care.

4. Medications shall be administered by a registered nurse, a physician, or dentist except in the case of a licensed practical nurse under the supervision of a registered nurse.

5. Medications or treatments shall not be given without a written order signed by a physician or dentist, when applicable, or advanced registered nurse practitioner as authorized in KRS 314.011(8) and 314.042(8), or therapeutically-certified optometrists as authorized in KRS 320.240(14). Telephone orders for medications shall be given only to a licensed practical or registered nurse or a pharmacist and signed by the physician, dentist, advanced registered nurse prac-

itioner or therapeutically-certified optometrist within twenty-four (24) hours from the time the order is given. Telephone orders may be given to licensed physical, occupational, speech or respiratory therapists in accordance with the therapist's scope of practice and the hospital's protocols.

6. Patient restraints or protective devices, other than bed rails, shall not be used, except in an emergency until the attending medical staff member can be contacted, or upon written or telephone orders of the attending medical staff member. When such restraint is necessary, the least restrictive form of protective device shall be used which affords the patient the greatest possible degree of mobility and protection. In no case shall a locking restraint be used.

7. Meetings of the nursing staff and other nursing personnel shall be held at least monthly to discuss patient care, nursing service problems, and administrative policies. Written minutes of all meetings shall be kept.

(3) Dietary services.

(a) The hospital shall have a dietary department, organized, directed and staffed to provide quality food service and optimal nutritional care.

1. The dietary department shall be directed on a full-time basis by an individual who by education or specialized training and experience is knowledgeable in food service management.

2. The dietary service shall have at least one (1) registered, certified or registry-eligible dietician either full-time, part-time, or on a consultative basis, to supervise the nutritional aspects of patient care.

3. Sufficient additional personnel shall be employed to perform assigned duties to meet the dietary needs of all patients.

4. The dietary department shall have available for all dietary personnel current written policies and procedures for food storage, handling, and preparation.

5. An in-service training program, which shall include the proper handling of food, safety and personal grooming, shall be given at least quarterly for new dietary employees.

(b) Menus shall be planned, written and rotated to avoid repetition. Nutritional needs shall be met in accordance with recommended dietary allowances of the Food and Nutrition Board of the National Research Council of the National Academy of Sciences and in accordance with the medical staff member's orders.

(c) Meals shall correspond with the posted menu. When changes in menu are necessary, substitution shall provide equal nutritive value and the changes shall be recorded on the menu. Menus shall be kept on file for thirty (30) days.

(d) All diets, regular and therapeutic, shall be prescribed in writing, dated, and signed by the attending medical staff member. Information on the diet order shall be specific and complete and shall include the title of the diet, modifications in specific nutrients stating the amount to be allowed in the diet, and specific problems that may affect the diet or eating habits.

(e) Food shall be prepared by methods that conserve nutritive value, flavor, and appearance, and shall be served at the proper temperatures and in a form to meet individual needs (e.g., it shall be cut, chopped, or ground to meet individual patient needs).

(f) If a patient refuses foods served, nutritious substitutions shall be offered.

(g) At least three (3) meals or their equivalent shall be served daily with not more than a fifteen (15) hour span between a substantial evening meal and a breakfast unless otherwise directed by the attending medical staff member. Meals shall be served at regular times with between-meal or bedtime snacks of nourishing quality offered.

(h) There shall be at least a three (3) day supply of food available in the facility at all times to prepare well-balanced palatable meals for all patients.

(i) There shall be an identification system for patient trays, and methods used to assure that each patient receives the appropriate diet as ordered.

(j) The hospital shall comply with all applicable provisions of KRS 219.011 to KRS 219.081 and 902 KAR 45:005 [(Kentucky's Food Service Establishment Act and Food Service Code)].

(4) Laboratory services. The hospital shall have a well-organized, adequately supervised laboratory with the necessary space, facilities and equipment to perform those services commensurate with the hospital's needs for its patients. Anatomical pathology services and blood bank services shall be available either in the hospital or by arrangement with other facilities.

(a) Clinical laboratory. Basic clinical laboratory services necessary for routine examinations shall be available regardless of the size, scope and nature of the hospital.

1. Equipment necessary to perform the basic tests shall be provided by the hospital.

2. All equipment shall be in good working order, routinely checked, and precise in terms of calibration.

3. Provision shall be made to carry out adequate clinical laboratory examinations including chemistry, microbiology, hematology, serology, and clinical microscopy.

a. Some of these services may be provided through arrangements with another licensed hospital which has the appropriate laboratory facilities, or with an independent laboratory licensed pursuant to KRS 333.030 and any administrative regulations promulgated thereunder.

b. When work is performed by an outside laboratory, the original report from this laboratory shall be contained in the patient's medical record.

4. Laboratory facilities and services shall be available at all times.

a. Adequate provision shall be made to assure the availability of emergency laboratory services twenty-four (24) hours a day, seven (7) days a week, including holidays, either in the hospital or under arrangements as specified in paragraph (a)3a of this subsection.

b. Where services are provided by an outside laboratory, the conditions, procedures, and availability of such services shall be in writing and available in the hospital.

5. There shall be a clinical laboratory director and a sufficient number of supervisors, technologists and technicians to perform promptly and proficiently the tests requested of the laboratory. The laboratory shall not perform procedures and tests which are outside the scope of training of the laboratory personnel.

6. Laboratory services shall be under the direction of a pathologist or other doctor of medicine or osteopathy with training and experience in clinical laboratory services, or a laboratory specialist with a doctoral degree in physical, chemical or biological sciences, and training and experience in clinical laboratory services.

7. Signed reports of all laboratory services provided shall be filed with the patient's medical record and duplicate copies kept in the department.

a. The laboratory report shall be signed by the technologist who performed the test.

b. There shall be a procedure for assuring that all requests for laboratory tests are ordered and signed by qualified personnel in accordance with their scope of practice and the hospital's protocols and bylaws.

(b) Anatomical pathology. Anatomical pathology services shall be provided as indicated by the needs of the hospital either in the hospital or under arrangements as specified in paragraph (a)3a of this subsection.

1. Anatomical pathology services shall be under the direct supervision of a pathologist on a full-time, regular part-time or regular consultative basis. If the latter pertains, the hospital shall provide for at least monthly consultative visits by a pathologist.

2. The pathologist shall participate in staff, departmental and clinicopathologic conference.

3. The pathologist shall be responsible for establishing the qualifications of staff and for their in-service training.

4. With exceptions of those exclusions listed in written policies of the medical staff, all tissues removed at surgery shall be macroscopi-

cally, and if necessary, microscopically examined by the pathologist.

a. A list of tissues which do not routinely require microscopic examination shall be developed in writing by the pathologist or designated physician with the approval of the medical staff.

b. A tissue file shall be maintained in the hospital.

c. In the absence of a pathologist, there shall be an established plan for sending to a pathologist outside the hospital all tissues requiring examination.

5. Signed reports of tissue examinations shall be promptly filed with the patient's medical record and duplicate copies kept in the department.

a. All reports of macro and microscopic examinations performed shall be signed by the pathologist.

b. Provision shall be made for the prompt filing of examination results in the patient's medical record and notification of the medical staff member requesting the examination.

c. Duplicate copies of the examination reports shall be filed in the laboratory in a manner which permits ready identification and accessibility.

(c) The laboratory shall meet the proficiency testing and quality control provisions in accordance with certification requirements under 42 USC Part 263a.

(d) Blood bank. Facilities for procurement, safekeeping and transfusion of blood and blood products shall be provided or be readily available.

1. The hospital shall maintain, as a minimum, proper blood storage facilities under adequate control and supervision of the pathologist or other authorized physician.

2. For emergency situations the hospital shall maintain at least a minimum blood supply in the hospital at all times, shall be able to obtain blood quickly from community blood banks or institutions, or shall have an up-to-date list of donors and equipment necessary to bleed them.

3. If the hospital utilizes outside blood banks, there shall be a written agreement governing the procurement, transfer and availability of blood.

4. There shall be a provision for prompt blood typing and cross-matching and for laboratory investigation of transfusion reactions, either through the hospital or by arrangements with others on a continuous basis, under the supervision of a physician.

5. Blood storage facilities in the hospital shall have an adequate alarm system, which shall be regularly inspected and tested and is otherwise safe and adequate.

6. Records shall be kept on file indicating the receipt and disposition of all blood provided to patients in the hospital.

7. A committee of the medical staff or its equivalent shall review all transfusions of blood or blood derivatives and shall make recommendations concerning policies governing such practices.

8. Samples of each unit of blood used at the hospital shall be retained, according to the instructions of the committee indicated in subparagraph 7 of this paragraph, for further testing in the event of reactions. Blood not so retained which has exceeded its expiration date shall be disposed of promptly.

9. The review committee shall investigate all transfusion reactions occurring in the hospital and shall make recommendations to the medical staff regarding improvements in transfusion procedures.

(5) Pharmaceutical services.

(a) The hospital shall have adequate provisions for the handling, storing, recording, and distributing of pharmaceuticals in accordance with state and federal laws and administrative regulations.

1. A hospital which maintains a pharmacy for the compounding and dispensing of drugs shall provide pharmaceutical services under the supervision of a registered pharmacist on a full-time or part-time basis, according to the size and demands of the hospital.

a. The pharmacist shall be responsible for supervising and coordinating all the activities of the pharmacy department.

b. Additional personnel competent in their respective duties shall

be provided in keeping with the size and activity of the department.

2. Hospitals not maintaining a pharmacy shall have a drug room utilized only for the storage and distribution of drugs, drug supplies and equipment. Prescription medications shall be dispensed by a registered pharmacist elsewhere. The drug room shall be operated under the supervision of a pharmacist employed at least on a consultative basis.

a. The consulting pharmacist shall assist in drawing up correct procedures, rules for the distribution of drugs, and shall visit the hospital on a regularly scheduled basis in the course of his duties.

b. The drug room shall be kept locked and the key shall be in the possession of a responsible person on the premises designated by the administrator.

(b) Records shall be kept of the transactions of the pharmacy or drug room and correlated with other hospital records where indicated.

1. In accordance with accounting procedures of the hospital, the pharmacy shall establish and maintain a system of records and bookkeeping in accordance with policies of the hospital for maintaining adequate control over the requisitioning and dispensing of all drugs and drug supplies and charging patients for drugs and pharmaceutical supplies.

2. A record of the stock on hand and of the dispensing of all controlled substances shall be maintained in such a manner that the disposition of any particular item may be readily traced.

(c) The medical staff in cooperation with the pharmacist and other disciplines, as necessary, shall develop policies and procedures that govern the safe administration of drugs, including:

1. The administration of medications only upon the order of an individual who has been assigned clinical privileges or who is an authorized member of the house staff;

2. Review of the original order, or a direct copy by the pharmacist dispensing the drugs;

3. The establishment and enforcement of automatic stop orders;

4. Proper accounting for and disposition of unused medications or special prescriptions returned to the pharmacy as a result of patient being discharged, or when such medications or prescriptions do not meet sterile and label requirements;

5. Provision for emergency pharmaceutical services; and

6. Provision for reporting adverse medication reactions to the appropriate committee of the medical staff.

(d) Therapeutic ingredients of medications dispensed shall be included in the United States Pharmacopoeia, National Formulary, United States Homeopath-Pharmacopoeia, New Drugs, or Accepted Dental Remedies (except for any drugs unfavorably evaluated therein), or shall be approved for use by the appropriate committee of the medical staff.

1. A pharmacist shall be responsible for determining specifications and choosing acceptable sources for all drugs, with approval of the appropriate committee of the medical staff.

2. There shall be available a formulary or list of drugs accepted for use in the hospital which shall be developed and amended at regular intervals by the appropriate committee of the medical staff.

(6) Radiology services.

(a) The hospital shall have diagnostic radiology facilities. The radiology service shall have a current license or registration pursuant to KRS 211.842 to 211.852 and any administrative regulations promulgated thereunder.

1. The hospital shall provide at least one (1) fixed diagnostic x-ray unit which is capable of general x-ray procedures.

2. The hospital shall have a radiologist on at least a consulting basis to function as medical director of the department and to interpret films that require specialized knowledge for accurate reading.

3. Personnel adequate to supervise and conduct the services shall be provided, and at least one (1) certified radiation operator shall be on duty or on call at all times.

(b) There shall be written policies and procedures governing radiologic services and administrative routines that support sound

radiologic practices.

1. Signed reports shall be filed in the patient's record and duplicate copies kept in the department.

2. Radiologic services shall be performed only upon written order of qualified personnel in accordance with their scope of practice and the hospital's protocols and bylaws, and the order shall contain a concise statement of the reason for the service or examination.

3. Reports of interpretations shall be written or dictated and signed by the radiologist.

4. The use of all x-ray apparatus shall be limited to certified radiation operators, under the direction of medical staff members as necessary. The same limitation shall apply to personnel applying, administering and removing radioactive [radium] elements, [its] disintegration products, and radioactive isotopes. Certified radiation operators, under the direction of a physician may administer medications allowed within their professional scope of practice and context of radiological services and procedures being performed.

(c) The radiology department shall be free of hazards for patients and personnel. Proper safety precautions shall be maintained against fire and explosion hazards, electrical hazards and radiation hazards.

(7) Physical restoration or rehabilitation service. If the hospital provides rehabilitation, workhardening, physical therapy, occupational therapy, audiology, or speech pathology services, the services shall be organized and staffed to insure the health and safety of patients.

(a) Hospitals in which physical restoration or rehabilitation services are available shall provide individualized techniques required to achieve maximum physical function normal to the patient while preventing unnecessary debilitation and immobilization.

(b) Written policies and procedures shall be developed for each rehabilitation service provided.

(c) A member of the medical staff shall be designated to have responsibility for coordinating the restorative services provided to the patients in accordance with their needs.

(d) Equipment for therapy shall be adequate to meet the needs of the service and shall be in good condition.

(e) Therapy services shall be provided only upon written orders of qualified personnel in accordance with their scope of practice and according to the hospital's protocols and bylaws.

(f) Therapy services shall be provided by or under the supervision of a licensed therapist, on a full-time, part-time or consultative basis.

(g) Complete therapy reports shall be maintained for each patient provided such services. The reports shall be signed by the therapist who prepared it and shall be a part of the patient's medical record.

(8) Emergency services.

(a) Every hospital shall have procedures for taking care of the emergency patient with at least a registered nurse on duty to evaluate the patient and a physician on call.

(b) If the facility has an organized emergency department or service, policies and an emergency care procedures manual governing medical and nursing care provided in the emergency room shall be established by and be a continuing responsibility of the medical staff.

1. The emergency service shall be under the direction of a licensed physician. Medical staff members shall be available at all times for the emergency service, either on duty or on call. Current schedules and telephone numbers shall be posted in the emergency room.

2. Nursing personnel shall be assigned to, or designated to cover, the emergency service at all times.

3. Facilities shall be provided to assure prompt diagnosis and emergency treatment. A specific area of the hospital shall be utilized for patients requiring emergency care on arrival. The emergency area shall be located in close proximity to an exterior entrance of the facility and shall be independent of the operating room suite.

4. Diagnostic and treatment equipment, drugs, and supplies shall be readily available for the provision of emergency services and shall be adequate in terms of the scope of services provided.

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5. Adequate medical records shall be kept on every patient seen in the emergency room. These records shall be under the supervision of the Medical Record Service and, where appropriate, shall be integrated with inpatient and outpatient records. Emergency room records shall include at least:

- a. A log book listing chronologically the patient visits to the emergency room including patient identification, means of arrival and person transporting patient, and time of arrival;
- b. History of present complaint and physical findings;
- c. Laboratory and x-ray reports, where applicable;
- d. Diagnosis;
- e. Treatment ordered and details of treatment provided;
- f. Patient disposition;
- g. Record of all referrals;
- h. Instructions to the patient or family for those not admitted to the hospital; and
- i. Signatures of attending medical staff member, and nurse when applicable.

(9) Outpatient services.

(a) A hospital which has an organized outpatient department shall have written policies and procedures relating to the staff, functions of service, and outpatient medical records.

(b) The outpatient department shall be organized in sections (clinics), the number of which shall depend on the size and degree of departmentalization of the medical staff, the available facilities, and the needs of the patient it serves.

(c) The outpatient department shall have appropriate cooperative arrangements and communications with community agencies such as home health agencies, the local health department, social and welfare agencies, and other outpatient departments.

(d) Services offered by the outpatient department shall be under the direction of a physician who is a member of the medical staff.

1. A registered nurse shall be responsible for the nursing services of the department.

2. The number and type of other personnel employed shall be determined by the volume and type of services provided and type of patient served in the outpatient department.

(e) Necessary laboratory and other diagnostic tests shall be available either through the hospital or a laboratory in another licensed hospital or a laboratory licensed pursuant to KRS 333.030 and any administrative regulations promulgated thereunder.

(f) Medical records shall be maintained and, where appropriate, coordinated with other hospital medical records.

1. The outpatient medical record shall be filed in a location which insures ready accessibility to the medical staff members, nurses, and other personnel of the outpatient department.

2. Information in the medical record shall be complete and sufficiently detailed relative to the patient's history, physical examination, laboratory and other diagnostic tests, diagnosis, and treatment to facilitate continuity of care.

(10) Surgery services.

(a) Hospitals in which surgery is performed shall have an operating room and a recovery room supervised by a registered nurse qualified by training, experience and ability to direct surgical nursing care.

1. Sufficient surgical equipment including suction facilities and instruments in good repair shall be provided to assure safe and aseptic treatment of all surgical cases.

2. When flammable anesthetics are used, precautions shall be taken to eliminate hazards of explosions, including use of shoes with conductive soles and prohibition of garments or other items of silk, wool, or synthetic fibers which accumulate static electricity.

(b) There shall be effective policies and procedures regarding surgical staff privileges, functions of the service, and evaluation of the surgical patient.

1. Surgical privileges shall be delineated for all members of the medical staff doing surgery in accordance with the competencies of

each, and a roster shall be maintained.

2. Except in emergencies, a surgical operation or other hazardous procedures shall be performed only on written consent of the patient or his legal representative.

3. The operating room register shall be complete and up to date. It shall include the patient's name; hospital room number; preoperative and postoperative diagnosis; complications, if any; names of surgeon, first assistant, anesthesiologist or anesthetist, scrub and circulating nurse; operation performed; and type of anesthesia.

4. There shall be a complete history and physical workup in the chart of every patient prior to surgery. If such has been transcribed but not yet recorded in the patient's chart, there shall be a statement to that effect and an admission note by the attending medical staff member in the chart. The chart of the patient shall accompany him to the operating suite and shall be returned to the patient's floor or room after the operation.

5. An operative report describing the techniques and findings shall be written or dictated immediately following surgery and signed by the surgeon.

6. All tissues removed by surgery shall be placed in suitable solutions, properly labeled, and submitted to the pathologist for macroscopic and, if necessary, microscopic examinations.

7. All infections of clean surgical cases shall be recorded and reported to the appropriate committee of the medical staff. A procedure shall exist for the investigation of such cases.

(c) Rules and policies related to the operating rooms shall be available and posted.

(11) Anesthesia services.

(a) The hospital which provides surgical or obstetrical services shall have anesthesia services available, and these services shall be organized under written policies and procedures regarding staff privileges, the administration of anesthetics, and the maintenance of safety controls.

(b) A physician member of the medical staff shall be the medical director of anesthesia services. Whenever possible, the director shall be a physician specializing in anesthesiology.

(c) If anesthetics are not administered by an anesthesiologist, the medical staff shall designate a medical staff anesthetist or a registered nurse anesthetist qualified to administer anesthetics under the supervision of the operating surgeon.

(d) Every patient requiring anesthesia services shall have a preanesthetic physical examination by a medical staff member with findings recorded within forty-eight (48) hours of surgery, an anesthetic record on a special form, a postanesthetic follow-up, with findings recorded by the anesthesiologist, medical staff anesthetist, or nurse anesthetist.

(e) The postanesthetic follow-up note shall be written upon discharge from the postanesthesia recovery area or within three (3) to twenty-four (24) hours after the procedures which required anesthesia. This note shall include a record of blood pressure, pulse, presence or absence of the swallowing reflex and cyanosis, any postoperative abnormalities or complications, and the general condition of the patient.

(12) Obstetrics service.

(a) Hospitals providing obstetrical care of patients shall have adequate space, necessary equipment and supplies, and a sufficient number of nursing personnel to assure safe and aseptic treatment of mothers and newborns and provide protection from infection and cross-infection.

1. The obstetrics service shall be under the medical direction of a physician and under the supervision of a registered nurse qualified by training, experience, and ability to direct effective obstetrical and newborn nursing care. In hospitals where the obstetrical caseload does not justify a separate nursing staff, obstetrical nurses shall be designated and shall be oriented to the specific needs of obstetrical patients.

2. A registered nurse shall be on duty in the labor and delivery

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unit whenever any patient is in the unit. Each obstetrics patient shall be kept under close observation by professional personnel during the period of recovery after delivery, whether in the delivery room or in a recovery area, until she is transferred to the maternity unit.

3. An on-call schedule or other suitable arrangement shall be provided to ensure that a physician who is experienced in obstetrics is readily available for consultation and obstetrical emergencies.

4. Provisions shall be made for the care of patients in labor with adequately equipped labor rooms.

(b) An adequate supply of prophylaxis for the prevention of infant blindness shall be kept on hand and administered within thirty (30) minutes after delivery, in accordance with 902 KAR 4:020.

(c) The hospital shall comply with the provisions of KRS 214.155 and 902 KAR 4:030 in administering tests for inborn errors of metabolism to infants.

(d) There shall be an acceptable method and procedure for the positive associative identification of the mother and infant. This shall be done in the delivery room at the time of birth and shall remain in place during the entire period of hospitalization.

(e) An up-to-date register book of all deliveries shall be maintained containing the following information:

1. Infant's full name, sex, date, time of birth and weight;

2. Mother's full name, including maiden name, address, birthplace and age at time of this birth;

3. Father's full name, birthplace, age at time of this birth; and

4. Full name of attending physician or nurse midwife.

(f) Each hospital providing maternity service shall provide a nursery which shall not be used for any other purpose. Specific routines for daily care of infants and their environment shall be prepared in writing and posted in the nursery workroom.

(g) A policy shall be established for deliveries occurring outside the delivery room and for patients who are infectious.

(h) Written policies and procedures shall be developed to cover alternative use of obstetrical beds.

(i) The hospital shall comply with the provisions of KRS 214.175 in participating in surveys relating to the determination of alcohol or other substance abuse among pregnant women and newborn infants.

(13) Pediatric services.

(a) Hospitals providing pediatric care shall have proper facilities for the care of children apart from the newborn and maternity nursing services. If there is not a separate area permanently designated as the pediatric unit, there shall be an area within an adult care unit for pediatric patient care. There shall be available beds and other equipment which are appropriate in size for pediatric patients.

(b) There shall be proper facilities and procedures for the isolation of children with infectious, contagious or communicable conditions. At least one (1) patient room shall be available for isolation use.

(c) A physician with pediatric experience shall be on call at all times for the care of pediatric patients.

(d) Pediatric nursing care shall be under the supervision of a registered nurse qualified by training, experience and ability to direct effective pediatric nursing. All nursing personnel assigned to pediatric service shall be oriented to the special care of children.

(e) Policies shall be established to cover conditions under which parents may stay with small children or "room-in" with their hospitalized child for moral support and assistance with care.

(14) Psychiatric services. Hospitals which have a psychiatric unit shall designate the location and number of beds to be licensed as psychiatric beds and meet the requirements of psychiatric hospitals operations and services, licensure administrative regulation.

(15) Chemical dependency treatment services. Hospitals providing chemical dependency treatment services shall meet the requirements of 902 KAR 20:160, Chemical dependency treatment services and facility specifications, Section 3, Administrative and Operation and Section 4, Provision of Services, and designate location and the number of beds to be used for this purpose.

(16) Medical library.

(a) The hospital shall maintain appropriate medical library services according to the professional and technical needs of hospital personnel.

(b) The medical library shall be in a location accessible to the professional staff, and its contents shall be organized and available at all times to the medical and nursing staffs.

Section 5. Long-term Acute Inpatient Hospital Services. (1) A hospital licensed pursuant to this administrative regulation and seeking to qualify for available Title XVIII Medicare reimbursement may provide long-term acute inpatient hospital services pursuant to applicable federal law and upon the following conditions:

(a) The area of the hospital designated to provide long-term acute inpatient hospital services shall provide services in compliance with this administrative regulation and shall have:

1. An average length of inpatient stay greater than twenty-five (25) days.

2. A separate governing body.

3. A separate medical staff.

4. A separate chief executive officer.

(b) All services shall be provided through the use of employees or under contracts or other agreements with entities other than the host hospital or a third entity that controls both the hospital and the area designated to provide long-term acute inpatient hospital services, except that food and dietetic services, housekeeping, maintenance and other services necessary to maintain a clean and safe physical environment may be obtained under contracts or other agreements with the host hospital or a third entity that controls both the host hospital and the area designated to provide long-term acute inpatient hospital services or as otherwise permitted by federal law.

(c) Hospitals wishing to provide long-term acute inpatient hospital services may request authorization from the Division of Licensing and Regulation, Office of Inspector General, Cabinet for Health Services. The Division of Licensing and Regulation shall conduct a survey to determine whether the requirements of this section are met and shall notify the hospital of the survey results by letter.

(2) A hospital that establishes its authority to be reimbursed for Title XVIII Medicare for long-term care acute inpatient hospital services pursuant to this section, shall not receive Title XIX Medicaid reimbursement for these services.

TIMOTHY L. VENO, Inspector General

JOHN MORSE, Secretary

JOHN H. WALKER, Attorney

APPROVED BY AGENCY: September 15, 1997

FILED WITH LRC: September 15, 1997 at 11 a.m.

**CABINET FOR HEALTH SERVICES
Department for Medicaid Services
(As Amended at ARRS, November 11, 1997)**

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

RELATES TO: KRS 45A.095, 45A.690 through 45A.725, 61.872, 61.874, 61.876, 147A.050, 200.020(37), 200.503(2), 200.509, 202A.011(12), 202A.028, 202A.041, 202A.051, 202A.061, 205.520, 205.6334, 205.8451, 205.8453, 209.010, 210.005(2), (3), 210.290(1), 210.370-460, 211.463, 281.607-760, 287.011, 289.021, 290.015, 291.030, 294.032, 304.1-010-070, 304.05-130, 304.05-140, 304.17A-110(3), 304.17A-300, 304.17A-310, 304.38-030, 304.38-035, 304.38-060, 311.623, 311.625, 311.627, 311.629, 311.631, 387.510(15), 387.530(1), (2), 387.540(1)-(10), 387.570(1)-(6), 387.580(1)-(3), 387.600(1)-(2), 422.317, 600.020, 620.030, 645.120, 42 CFR 417.479, 431.52, 431.300-307, 434.44-70, 455.21, 455.100-105, 1001.1301, 42 USC 1396b, d(r), n(b)(1), (3), (4), u-1, 10801, March

7. 1997, HCFA waiver approval letter [KRS 205.520; 205.6334]

STATUTORY AUTHORITY: KRS 194.050, 205.520, 42 USC 1396n, PL 105-33 sec. 4710(c), EO 96-862, March 7, 1997, HCFA waiver approval letter [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 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 recognizes the historical role of the regional mental health-mental retardation boards in the planning, development and coordination of mental health programs for citizens of Kentucky as established in KRS 210.370 to 210.460 and establishes the standards of participation in the Kentucky Access Program. Additionally, 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. This administrative regulation establishes [The waiver provides for the development of] a statewide system of capitated, comprehensive risk-bearing managed care plans for behavioral health and establishes standards which are intended to increase [for] access and improve quality. The cost savings anticipated from more appropriate use of the behavioral health care resources or other efficiencies of managed behavioral health care will permit the reinvestment of savings into more cost efficient, community-based alternatives. [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 an [the] MBHO to deliver behavioral health services.

(3) "Behavioral health services" means clinical, rehabilitative, or support services in an inpatient or outpatient setting to treat a mental illness, emotional disability, or substance abuse disorder. [is defined in Section 1(1) of 907 KAR 1:705.]

(4) "Behavioral health region" is [means] a partnership region or a grouping of partnership regions which may contain one (1) or more area development districts or, a portion of an area development district as established in KRS 147A.050, and is designated by the department as a geographical coverage area of an MBHO in Kentucky.

(5) "Capitation payment" means the total per member, per month payment amount. [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 which shall include:

(a) A representative of:

1. A regional mental health-mental retardation board;

2. An acute care hospital with an inpatient psychiatric service; and

3. A community-based agency or a psychiatric residential treatment facility;

(b) A qualified mental health professional; and

(c) 1. The Chairman of the Department of Psychiatry at the University of Kentucky School of Medicine, if Lexington is within the behavioral health region; or

2. The Chairman of the Department of Psychiatry at the University of Louisville School of Medicine, if Louisville is within the behavioral health region. [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].]

(8) [(9)] "Department" means the Kentucky Department for Medicaid Services or its agent.

(9) [(10)] "Department of Juvenile Justice (DJJ) population" means children who are placed under the custodial control or supervision of the Kentucky Justice Cabinet as defined in KRS 600.020 and who are Medicaid eligible [and for whom the Kentucky Justice Cabinet has been appointed legal guardian pursuant to KRS Chapter 15A].

(10) [(11)] "Department for Social Services (DSS) population" means children in foster care and children receiving adoption assistance as established by [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 387.600(1) or 210.290(1) [387.500 to 387.770].

(11) [(12)] [(11)] "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.

(12) [(13)] [(12)] "Encounter" means a behavioral health care contact or service provided to or arranged for a member by an MBHO in a behavioral health region [to a member].

(13) [(14)] "Evidence-based clinical care standard" means a clinical care standard which has been validated by a national health care organization or through an authenticated clinical study [studies].

(14) [(15)] [(13)] "Managed behavioral health care organization (MBHO)" means an entity that meets the requirements [as] established in Section 8 of this administrative regulation and, under contract or subcontract with the department in accordance with Section 2(3) or (6) of this administrative regulation [KRS Chapter 45A], agrees to provide, or arrange for the provision of, a behavioral health service [services] to a member [members] on the basis of an at-risk prepaid capitation payment [payments].

(15) [(16)] [(14)] "Member" means a Medicaid recipient who is enrolled in an MBHO.

(16) "Mental health disciplines" means psychiatry, social work, counseling, psychology, nursing, art therapy or marriage and family therapy.

(17) "Organizer" means a mental health provider that serves in a behavioral health region and volunteers to represent a coalition in that region within ten (10) days of the publication of a legal notice as established in Section 3(1) of this administrative regulation, or after ten (10) days, shall be a representative of a regional mental health-mental retardation board.

(18) [(17)] [(15)] "Partnership" means an entity that meets the criteria established in 907 KAR 1:705, Section 5, and under contract with the department in accordance with KRS 45A.095 and 45A.690 to 45A.725, agrees to provide, or arrange for the provision of, health services to a member on the basis of an at-risk, prepaid capitation payment. [is defined in Section 1(10) of 907 KAR 1:705.]

(19) "Partnership region" means a grouping of counties designated by the department as a geographical coverage area of a partnership health plan in Kentucky.

(20) "Qualified mental health professional" is defined in KRS

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202A.011(12).

(21) "Recipient" means an individual who is eligible to receive Medicaid services.

~~[(18) [(16)] "Partnership region" is defined in Section 1(11) of 907 KAR 1:705.~~

~~[(19) [(17)] "Primary care provider" is defined in Section 1(12) of 907 KAR 1:705.~~

~~[(20) [(18)] "Recipient" is defined in Section 1(13) of 907 KAR 1:705.]~~

(22) [(21)] [(19)] "Regional interagency council" means a [the] council established pursuant to KRS 200.509.

(23) [(22)] [(20)] "Regional mental health-mental retardation board" means a [the] board established pursuant to KRS 210.370.

(24) "Rural area" means an area outside of the urban area, which is a metropolitan statistical area, as designated by the U.S. Office of Management and Budget, which contains an urban nucleus of at least 50,000 population, along with adjacent counties which have a high degree of economic and social ties, for a total metropolitan population of at least 100,000.

~~[(23) [(21)] "Rural area" is defined in Section 1(14) of 907 KAR 1:705.]~~

(25) [(24)] "Telemedicine technology" means the use of an electronic signal [signals] to transfer medical information from one (1) site to another.

(26) [(25)] [(22)] "Urgent care" means care that is needed within a twenty-four (24) hour period for a condition of mental illness or emotional disability and does not pose a [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 1396n(b)(1), (3), and (4). ~~[(3) and (4).]~~

(2) Kentucky Access shall be implemented [incrementally] statewide, by the establishment of an MBHO concurrently [MBHOs with] or immediately following the implementation of a partnership to ensure the continuity of physical and behavioral health care.

(3) In order to maintain the existing community-based programs which provide behavioral health services to citizens of Kentucky, the department shall initiate a contract with an MBHO organized by a coalition in accordance with the requirements established in Section 3 of this administrative regulation and in accordance with KRS 45A.095 and 45A.690 to 45A.725.

(4) The following shall participate in the design and implementation of an MBHO organized by a coalition:

(a) The regional mental health-mental retardation boards; and

(b) 1. The Department of Psychiatry at the University of Kentucky School of Medicine, if Lexington is within the behavioral health region; or

2. The Department of Psychiatry at the University of Louisville School of Medicine, if Louisville is within the behavioral health region.

(5) A coalition may be organized to serve more than one (1) partnership region pursuant to the completion of the application process established in Section 3 of this administrative regulation.

(6) A contract to provide, or arrange for the provision of, a behavioral health service in accordance with KRS 45A.690 to 45A.725 shall be negotiated by the department if the department:

(a) Fails to receive or approve an application of a coalition as required in Section 3(5) of this administrative regulation; or

(b) Terminates a contract with a coalition in accordance with Section 16 of this administrative regulation.

(7) Except for the requirements established in Section 3 of this administrative regulation, an entity that agrees to provide, or arrange for the provision of, a behavioral health service under contract with the department in accordance with KRS 45A.690 to 45A.725 shall meet the requirements established in this administrative regulation [- 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. Coalition 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 represent the behavioral health care providers and groups established in paragraph (c) of this subsection. An organizer shall register, within sixty (60) [thirty (30)] days of the publication date of the legal notice, an intent to form or the formation of a coalition in the behavioral health region. A [The] registration shall be in the form of a letter addressed to the commissioner of the department and include [the]:

(a) A proposed name of the MBHO [organization];

(b) A proposed geographical area to be served by the MBHO [organization];

(c) The names of the major health care providers and groups participating in the coalition planning efforts including the entities identified in Section 1(7) of this administrative regulation;

(d) The proposed governance structure and information relating to the governance as required by Section 8(6)(a), (b)1, and (c)1 of this administrative regulation;

(e) A proposed target date for implementation of the MBHO; [and]

(f) The name, address and telephone number of the organizer [a person] to contact regarding the letter of registration;

(g) Except as required by paragraph (h) of this subsection, evidence of endorsement from the entities identified in paragraph (c) of this subsection; and

(h) A letter of endorsement from each of the following:

1. A representative of a mental health-mental retardation board that serves the behavioral health region;

2.a. The Chairman of the Department of Psychiatry at the University of Kentucky School of Medicine, if Lexington is within the behavioral health region; or

b. The Chairman of the Department of Psychiatry at the University of Louisville School of Medicine, if Louisville is within the behavioral health region; and

3. A representative of a hospital with an inpatient psychiatric service [intent] [legally organize an MBHO].

(2) Upon receipt of a letter of registration of a coalition, the department shall initiate a registration review to determine if the requirements established in subsection (1) of this section have been met. If more than one (1) letter of registration that meets the requirements established in subsection (1) of this section is received by the department for the same behavioral health region, the department shall:

(a) Immediately suspend the registration review for thirty (30) days in order to permit the organizers to form one (1) coalition; and

(b) On the date of suspension:

1. Notify each organizer in writing of the thirty (30) days suspension of the registration review;

2. Advise each organizer that the department shall approve one (1) registration of a coalition in a behavioral health region to provide, or arrange for the provision of, a behavioral health service in accordance with KRS 45A.095 and 45A.690 to 45A.725;

3. Identify the name and address of each organizer who submitted a letter of registration; and

4. Advise each organizer that prior to the end of the thirty (30) days suspension period that he shall notify the department in writing that he is withdrawing his registration from consideration or consolidating with another organizer to form one (1) coalition. If an organizer fails to notify the department within the thirty (30) days suspension period, the department shall automatically disqualify the nonreplying organizer.

(3) Upon the completion of the departmental review and approval of a registration of one (1) coalition that meets the requirements established in subsection (1) of this section, the department shall:

(a) Notify the organizer of the coalition of the approval of the registration;

(b) Provide an application for response to the organizer; and

(c) Request a response to the application within ninety (90) days of receipt of the approval from the organizer of the coalition.

(4) Upon the receipt of notification of a departmental approved registration of a coalition, an organizer shall submit the response to the application in writing in accordance with subsection (3)(c) of this section to the commissioner of the department. [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 [Suspending] 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) [In] The application submitted by [request,] a [the] coalition [as specified in subsection (4) of this section] shall include a plan for the MBHO which specifies activities, persons responsible and time frames [be required to specify the process] for the:

(a) Establishment of a board of directors in accordance with Section 8(6)(a), (b)1, and (c)1 of this administrative regulation;

(b) Development of a provider network which assures a member of a choice of behavioral health care providers and access to a service as required by [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];

(c) [(b)] Development of [Submission of a plan for implementing] a quality improvement program [that meets the requirements] as required by [specified in] Section 14(1) [(3)] of this administrative regulation [when the MBHO becomes operational];

(d) [(e)] Development of a management information system capable of producing the data and reports as required by [specified in] Sections 8, 10, 11, 13, 14, 15 and 22 of this administrative regulation; and

(e) Proposed date of [(d)] [Submission of an] implementation of [timeline to become operational as] an MBHO which shall be within three (3) [six (6)] months of the approval of an [the] application of the coalition.

(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) [(1)] 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 [(b)] does not meet the requirements as specified in subsections (4) and (5) of this section [8 of this administrative regulation]; or

(d) If the coalition [(c)] 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 the requirements established [as specified] in this subsection and subsection (5) [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) A recipient [Recipients] shall be enrolled in an MBHO, including:

(a) An individual who receives [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

(b) An individual who is eligible to receive Medicaid as follows:

1. [(a)] Kentucky Transitional Assistance Program (K-TAP) and family related Medicaid;

2. [(b)] Aged, blind, and disabled Medicaid;

3. Identified in 907 KAR 1:011, Section 2(12), (13), and (17); [(c) Pass through in accordance with 907 KAR 1:011;]

4. [(d)] Poverty level pregnant women and children;

5. [(e)] State supplementation for aged, blind, and persons with a disability;

6. [(f)] Supplemental security income (SSI);

7. [(g)] Children under the age of twenty-one (21) years and in a psychiatric facility in accordance with 907 KAR 1:011; [and]

8. DSS population, including:

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a. 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 who shall be enrolled, or remain enrolled, in that region's MBHO if an individual plan of care is jointly developed and implemented by DSS and the MBHO;

b. An adult ward who shall be enrolled, or remain enrolled, in the MBHO that serves the region of his residence if an individual plan of care is developed and implemented by the MBHO in consultation with DSS;

c. A child receiving adoption assistance who shall be enrolled, or remain enrolled, in the MBHO that serves the region of his residence if an individual plan of care is jointly developed and implemented by his parent and the MBHO; and

d. A child receiving adoption assistance who is placed outside of Kentucky who shall be enrolled, or remain enrolled, in the MBHO in which he was enrolled prior to placement outside of Kentucky; 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.]~~

9. [(f)] DJJ population. Each person in this category shall be enrolled in the MBHO serving the county in which [where] the case is managed by DJJ if [when] an individual plan of care is jointly developed and implemented by DJJ and the MBHO.

(2) An initial evaluation of a member for an MBHO service shall be performed by a qualified mental health professional. A member shall select or be assigned in accordance with subsection (4) of this section for an initial evaluation in accordance with Section 10(8) of this administrative regulation from a list of qualified mental health professionals who are authorized by the MBHO to conduct an initial evaluation. A member who presents himself to the emergency department of a hospital for an initial evaluation for emergency or urgent care shall be deemed to have selected a qualified mental health professional on the hospital staff for his initial evaluation. If a hospital does not have a qualified mental health professional on staff, a referral to the MBHO for an initial evaluation shall be made.

(3) Except for an initial evaluation or an evaluation [evaluations] for emergency care or [and] urgent care as authorized by [specified in] Section 10(8)(b) and (c) of this administrative regulation if [when] a member presents himself to the emergency department of an acute care hospital, [(2)] a member shall be allowed by the MBHO to [voluntarily] select from the lists [a list] of behavioral health care providers established [as specified] in Section 8(18) [(20)] of this administrative regulation who shall be [as follows]:

(a) A qualified mental health professional [Clinical practitioner] who is authorized by the MBHO to provide a service in accordance with [conduct evaluations and who meets the criteria for timeliness of evaluations as specified in] Section 10(8) of this administrative regulation if [when] the need for an evaluation is determined; and

(b) A 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 if [when] the mem-

ber's plan of care is implemented.

(4) A member shall select a behavioral health care provider for a behavioral health service provided by the MBHO in accordance with Section 10(2) of this administrative regulation from a list of behavioral health care providers who are authorized by the MBHO for that service.

(5) [(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 the:

(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 qualified mental health professional [clinical practitioner] during the evaluation of the member's behavioral health service needs.

(6) [(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(20) [(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.

(7) [(5)] Except for an emergency service [emergency services] in accordance with 42 CFR 431.52 or an evaluation [and evaluations] for emergency care authorized by [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 required by [as specified in] Section 10(7) of this administrative regulation for requesting approval of an MBHO service [services].

(8) [(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 the service [those services] except for:

(a) [Emergency] A service that does [Services that do] not require prior approval as required by [specified in] subsection (7) [(5)] of this section [provided in accordance with 42 CFR 431.52]; or [and]

(b) A service [Services] authorized as a result of and in accordance with the complaint procedure established [as specified] in Section 11 of this administrative regulation or the [and] appeals procedures as established in 907 KAR 1:560.

(9) [(7)] [(6)] For the purpose [purposes] of selecting a behavioral health care provider, filing a complaint or an appeal, or [complaints or appeals, and] otherwise acting on behalf of a [the] child in an interaction [interactions] with an MBHO, a parent, custodial parent, person exercising custodial control or supervision as defined in KRS 600.020(37) [620.020(37)], or an agency with legal responsibility for a child by virtue of voluntary commitment or an emergency or temporary custody order [orders] shall be allowed to act on behalf of a child member, prospective member, or former member.

(10) [(8)] [(7)] A legal guardian who is authorized to make a health care decision [decisions] and appointed pursuant to KRS 210.290(1), 387.530(1), (2), 387.540(1) through (10), 387.570(1) through (6), 387.580(1) through (3) or 387.600(1), (2) [387.500 to 387.770] shall be allowed to act on behalf of a ward as defined in KRS 387.510(15). A [that statute, and a] person authorized to make a health care decision [decisions] pursuant to KRS 311.629 or [and]

311.631 shall be allowed to act on behalf of a member, prospective member, or former member.

~~[(8) 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)(a) Served under the:

1. Alternative intermediate services for an individual with mental retardation or developmental disabilities (AIS-MR-DD) established by 907 KAR 1:140; or

2. Home and community-based waiver established by 907 KAR 1:160; or

(b) A recipient who:

1. Is continuously ventilator dependent;

2. Does not reside in a nursing facility; and

3. Is not served through a home and community-based waiver; [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 the form established by [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), (3), and (4) 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 established by [specified in] 42 USC 10801;

2. Protection services as established by [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 311.623, 311.625, and 311.627; [311.621 through 311.643;]

(i) Provided [To] access to:

1. His medical records in accordance with 908 KAR 3:010,

Section 2; and

2. A copy of his medical records in accordance with KRS 422.317;

(j) Permitted to refuse a behavioral health service [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 a service site [sites] that provides 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 a service [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(9) and (10) [(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 a behavioral health care provider [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. Except as established in Section 4(1)(b)8 and 9 of this administrative regulation, 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. No [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 established [as specified] in Section 4(1) of this administrative regulation;

(2) Except as established in Section 4(1)(b)8 and 9 of this administrative regulation, an [The] MBHO shall recommend disenrollment if a member:

(a)1. Is found guilty of fraud in a court of law if the fraud is related to the Medicaid Program; or

2. Is administratively determined to have committed fraud or abuse related to the Medicaid Program; [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 an adverse change [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)(a) Have experience in the management of capitated risk-based contracts for a comprehensive behavioral health service; [services] or

(b) Subcontract with an entity that shall have experience in the management of capitated risk-based contracts for a comprehensive behavioral health service [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 the requirements of KRS 304.17A-110(3);

(4) Meet the requirements of 42 CFR 417.479 and 434.44 through 434.70;

(5) Meet the 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) Have [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:

1. If Kentucky Access is implemented in accordance with Section 2(3) of this administrative regulation, 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:

a. [1:] Two (2) adults with severe mental illness, one (1) of whom shall be [or has been] a current or former recipient;

b. [2:] A parent, spouse or sibling of an adult with severe mental illness;

c. [3:] A parent of a child with a severe emotional disability; and

d. [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; or

2. If Kentucky Access is implemented in accordance with Section 2(6) of this administrative regulation, at least two (2) persons selected by the MBHO who shall be:

a. One (1) adult consumer of behavioral health services or the guardian of an adult consumer of behavioral health services; and

b. One (1) parent, guardian or foster parent of a child who is under the age of twenty-one (21) years and a consumer of behavioral health services;

(c) Include:

1. If Kentucky Access is implemented in accordance with Section 2(3) of this administrative regulation:

a.(i) Two (2) representatives of one (1) regional mental health-mental retardation board which serves one (1) or more counties in the behavioral health region; or

(ii) One (1) representative from each of two (2) regional mental health-mental retardation boards which serve one (1) or more counties in the behavioral health region;

b.(i) Two (2) representatives of a hospital with a psychiatric bed within the behavioral health region; or

(ii) One (1) representative from each of two (2) hospitals with inpatient psychiatric beds within the behavioral health region;

c.(i) The Chairman of the Department of Psychiatry at the University of Kentucky School of Medicine, if Lexington is within the behavioral health region; or

(ii) The Chairman of the Department of Psychiatry at the University of Louisville School of Medicine, if Louisville is within the behavioral health region; and

d. Service on the board of an entity awarded a contract to administer a managed behavioral health program, absent a financial or other personal interest in a decision on administra-

tion of the contract, shall not constitute a conflict of interest for a representative of a mental health-mental retardation board. Upon the determination that a conflict of interest exists, the representative in question who serves on the board shall recuse himself from participation in a decision on the matter; or

2. If Kentucky Access is implemented in accordance with Section 2(6) of this administrative regulation:

a. One (1) representative of a regional mental health-mental retardation board which serves one (1) or more counties in the behavioral health region. Service on the board of an entity awarded a contract to administer a managed behavioral health program, absent a financial or other personal interest in a decision on administration of the contract, shall not constitute a conflict of interest for a representative of a mental health-mental retardation board. Upon the determination that a conflict of interest exists, the representative in question who serves on the board shall recuse himself from participation in a decision on the matter; and

b. One (1) representative of a hospital with an inpatient psychiatric service;

(7) Comply with the [all] applicable requirements in accordance with KRS 304.17A-300 or 304.38-030 and 304.38-060 relating to licensure of entities that accept prepaid, at-risk capitation payments for comprehensive health services;

(8) Meet the 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 required by [as specified in] this subsection to be held by a regulated financial institution as established by [specified in] KRS 304.1-010 to 304.1-070 or 304.38-030; [Chapters 287, 289, 290, 291, 294, and 304;]

2. Maintaining insolvency insurance that shall:

a. Be obtained through a reinsurer as identified [specified] in KRS 304.05-130 and 304.05-140 [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 made payable to the State Treasurer of Kentucky 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 required by [specified in] KRS 287.011, 289.021, 290.015, 291.030, or 294.032 [Chapter 374], or provider sponsor [or-sponsors-restrict] a portion of the [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 a monthly financial statement [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

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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) A written report as requested by the department [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 455.100-105 [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 a reviewer, investigator, or auditor [reviewers, investigators and auditors] during routine business hours at the site [sites] of operation [operations]; and

(b) If required by a reviewer, investigator, or auditor, an interview [Interviews, if required by reviewers, investigators or auditors,] of the MBHO's staff shall be conducted in-private at the site of operation [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 to [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(6) and in accordance with KRS 205.8453, and [194.030, Section 12] as required by 42 USC 1320a-7(b)(11) [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, and [or] Office of the Attorney General, suspected fraudulent activity concerning services provided by the MBHO;

(17) [19] Refer a public request [public requests] for financial information relating to the MBHO's operations to the department. The department [which] shall respond to the request [requests for information] in accordance with KRS 61.872, 61.874, and 61.876 [Chapter 61];

(18) [20] At the time of enrollment and annually thereafter, provide each member with;

(a) The toll free telephone number required by [as specified in] Section 10(7) of this administrative regulation; and]

(b) A list of participating qualified mental health professionals [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; and

(c) Information on how a list may be obtained from an MBHO of participating behavioral health care providers, including each provider's name, license, certification or other qualifications, and services the provider is authorized by the MBHO to provide;

[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;]

(19) [22] If a member requires continuing behavioral health services following an evaluation by an [the] MBHO's qualified mental health professional [clinical practitioner], ensure that the qualified mental health professional [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 identified [specified] in 907 KAR 1:705;

(20) [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;

(21) [24] Provide a member who meets the criteria established by [as specified in] subsection (20) [23] of this section with the name and telephone number of the coordinator who shall be:

(a) A licensed or certified person who is a [provides] behavioral health care provider [services] and [clinical practitioner who] participates in the MBHO;

(b) A case manager as defined in 907 KAR 1:515, Section 5, and 907 KAR 1:525, Section 5, [3:020] who participates in the

MBHO; or

(c) An employee of the MBHO or its subcontractor who performs the triage [prior authorization] function established [as specified] in Section 10(6) and (7) of this administrative regulation;

(22) [(25)] Directly involve the Kentucky Department for Social Services Send a written request in sufficient time to allow participation of the following in the [development,] review or [and] revision of the individual plan of care for a member as required by Section 4(1)(b)8 and 9 [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; and

(23) [(26)] Develop a [an expedited resolution] process that is approved by the department that requires a decision to be reviewed and either affirmed or denied [for resolution] with two (2) working days if the decision would lead to one (1) of the following circumstances: [which is approved by the department for use in instances where:]

(a) An action [Actions] of the MBHO may result in a court order; or

(b) The responsibility for the service reimbursement may shift to an entity other than the department or the MBHO. [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 regardless of the member's receipt of services [except as established in subsection (5) of this section, whether or not the member receives services during the period covered by the payment].

(2) A capitation payment [Capitation payments] shall be based upon a standard rate setting methodology as established in subsection (3) of this section that complies with the Health Care Financing Administration's upper payment limit requirements.

(3) The payment rate shall be:

(a) Negotiated by the department with the MBHO in accordance with Section 2(3) or (6) of this administrative regulation; and

(b) Based upon computations of a certified actuary using national actuarial standards, principles and appropriate actuarial factors which include a member's [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'];

1. [(a)] Category of aid;

2. [(b)] Geographic area;

3. [(c)] Category of service; and

4. [(d)] Other demographic and administrative factors, including age, gender, and service trends.

(4) A capitation payment [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 a recipient [recipients]

prior to the actual enrollment of a recipient [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 Section 2(3) or (6) of this administrative regulation. [KRS Chapter 45A.]

(6) The payment provisions established in [Medicaid administrative regulations] 907 KAR Chapters 1 and 3 for Medicaid shall not be applicable for an MBHO service. [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 a medically necessary behavioral health service [services], including:

(a) A behavioral health service required by 907 KAR Chapters 1 and 3. [Services as specified in Medicaid administrative regulations 907 KAR Chapters 1 and 3, and as required by] federal, and state laws;

(b) A behavioral health service to a member [Services to members] under twenty-one (21) years of age in accordance with 42 USC 1396d(r); and

(c) Transportation to and from a behavioral health care provider in accordance with 907 KAR 1:060.

(2) A medically necessary behavioral health service [services] shall be:

(a) Recommended by a behavioral health care provider; [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) Reasonable and necessary to:

1. Prevent, diagnose, correct, reduce, stabilize, or ameliorate a condition of a:

a. Mental illness;

b. Emotional disability; or

c. Substance abuse disorder in accordance with subsection (4) of this section; and

2. Restore the member to his best possible functional level;

(c) 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 service is [services are] provided; and

(d) [(c)] The [most economical] intensity, frequency, and duration of an available service which is safe and cost-effective [for the member].

(3) An emergency service [Emergency services] in a psychiatric hospital [hospitals] in accordance with 42 CFR 41.52, or an evaluation [and evaluations] for emergency care in accordance with [as specified in] subsection (8)(b) of this section shall be provided within or outside the behavioral health region [in accordance with 42 GFR 431.52 and 907 KAR 1:705].

(4) A substance abuse service [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 a substance abuse service [services] to effectively treat the mental illness.

(5) The MBHO shall not be required to provide or arrange for the

provision of a ~~services as follows~~:

(a) Substance abuse service [services] except as required by [specified in] subsection (4) of this section;

(b) Inpatient hospital service [services] for medical detoxification as defined in Section 1(8) of 907 KAR 1:705;

(c) Behavioral health service [services] to a member who resides in a nursing facility after disenrollment from the MBHO;

(d) Partnership covered service in accordance with [services as specified in] 907 KAR 1:705, Section 7;

(e) School-based health service [services] for a member age [members aged] three (3) to twenty-one (21) years, as determined eligible under the provisions of 907 KAR 1:715 [20-UGC Chapter 33; and in accordance with 707 KAR Chapter 1];

(f) Early intervention program service [services] for a member [members] age birth to three (3) years as determined eligible under the provisions of 908 KAR 2:120, Section 2;

(g) Psychiatric service covered for a currently enrolled, nonpsychiatrist Medicaid physician, including a physician employed by a public health department, primary care center or rural health center, including a federally qualified health center; [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 service [services] provided by a hospice agency [agencies];

(i) Supporting psychiatric service [services] provided by a home health agency [agencies] as defined in 907 KAR 1:030;

(j) Targeted case management service in accordance with [services as specified in] 907 KAR 1:525, provided to a member served by a regional interagency council; or [and]

(k) Service [Services] authorized under 907 KAR 3:020.

(6) The MBHO shall have a plan developed in accordance with evidence-based clinical care standards as required by [specified in] Section 14(1)(c) of this administrative regulation [establish a written policy and procedures that shall be approved by the department] for the [;

(a) triage of [member] requests for or referrals to a behavioral health services [services] into the categories of emergency care, [and] urgent care, or routine care that does not meet the definition [definitions] of emergency or [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) An [The] MBHO shall:

(a) Meet the standards of utilization review established by KRS 211.463 and 906 KAR 1:080; and

(b) Maintain a toll free telephone number for triage purposes to receive a referral or request [referrals and requests] for emergency, urgent, routine or [and] continuing care that is staffed twenty-four (24) hours per day by a person [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 a request or referral [the requests and referrals] as required by [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 (of) a member's need for behavioral health services]:

(a) The consultation service or initial evaluation [or consultation] shall be performed:

1. Face-to-face; or

2. By telemedicine technology in accordance with subsection (14) of this section, [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 in a location other than the emergency department of a hospital 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 in a location other than the emergency department of a hospital 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 [members'] referral from triage or request for a service by a member [services].

(e) The evaluation of a member for involuntary hospitalization pursuant to KRS 202A.028, 202A.041, 202A.051, and 202A.061, [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)(a) Except as provided in subsection (b) of this section, the transport time to a service relating to behavioral health shall not exceed one (1) hour;

(b) In a rural area, the transport time shall be equivalent to the amount of time taken to transport a person: [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;]

1. [(a)] [recipients] Residing in a behavioral health region, but not served by the MBHO; and

2. [(b)] Taken over the same route by a motor carrier with a certificate to transport a person [persons] in accordance with KRS 281.607 through 281.760 [Chapter 281].

(10) A behavioral health care provider [providers] authorized by the MBHO to provide rehabilitation or a [and] support service [services] covered under 907 KAR Chapters 1 and 3 [the Kentucky Medicaid state plan;] or which may be covered as an early and periodic screening, diagnosis and treatment (EPSDT) service [services] in accordance with 907 KAR 1:034, shall be a community mental health center [centers] licensed in accordance with 902 KAR 20:091, or an organization [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 an MBHO service [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) An organization that meets the requirements established by [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 a behavioral health service [services];

(b) Organizational [Organization's] structure, including the responsibility, function, and interrelationship of each unit and line [responsibilities, functions, and interrelationships of all units and lines] of administrative and clinical authority;

(c) Method by which a person who provides a [persons who provide] rehabilitation, support, case management, or other service [and other services] shall be credentialed, recredentialed, supervised, monitored, and sanctioned; and

(d) Method by which a member shall be assisted to access a related vocational, rehabilitation or employment service, a [and employment services;] housing service, and educational service [services, educational services], medical or [and] dental care, or [and] other support service [services] [available through state mental health programs], if needed by the member.

(12) An organization identified [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 the applicable requirements of a facility [facilities where applicable and] as adopted by the respective agency authority as follows:

(a) Federal and state law requirements for making a building or facility accessible to a person with a disability [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 shall be [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 [; 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) Telemedicine technology may be used for an evaluation, consultation, or direct treatment of a member if:

(a) A plan for telemedicine is approved by the medical director of the MBHO and the department; and

(b) The qualified mental health professional who provides the telemedicine service is authorized by the MBHO for the telemedicine procedure.

[(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 the requirements of this section for receiving and resolving a complaint [complaints, and answering inquiries] of a member [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 a complaint [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 if [when]:

(a) The member is enrolled in the MBHO;

(b) An adverse action, other than a utilization review denial, is taken by the MBHO; or

(c) At other times as required by federal or state law.

(3) The written information required by [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 of a member to authorize a representative to act on his behalf in a complaint or an appeal procedure [procedures].

(4) The MBHO shall require in the public area of each facility in which a [where its] behavioral health service is [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 established by [as specified in] Section 6 of this administrative regulation; [and]

(b) The procedure to access [That] a form [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) Except for an adverse action that may result from utilization review as required in Section 10(7) of this administrative regulation, if a member files a complaint relating to an adverse action of the MBHO, the MBHO shall:

(a) Within forty-eight (48) hours, respond and resolve a complaint that relates to a matter which could place a member at risk or which could seriously jeopardize the health or well-being of the member; or

(b) 1. Within ten (10) working days, respond that a complaint of a nonurgent nature has been received; and

2. If substantiated, the complaint shall be resolved within thirty (30) days. [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 required in subsection (5) of this section [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] for review of the MBHO's response and include additional information to the MBHO [including additional information, to the person as specified in subsection (6) of this section] [MBHO's board of directors].

(7) An MBHO: [(8) The MBHO's board of directors:]

(a) May appoint a person or a committee [of persons] to review the responses of the MBHO [to member complaints]; and

(b) Shall [after the next scheduled meeting;] respond in writing to a member within ten (10) working days [of the meeting of the board].

(8) Except for a utilization review denial that shall be appealed to the Cabinet for Health Services pursuant to KRS 211.464, a [(9) A] member may appeal to the department pursuant to 907 KAR 1:560:

(a) Following an adverse decision by the MBHO; [pursuant to 907 KAR 1:560] or

(b) During the complaint, response and review processes established by [as specified in] subsections (5), (6), and (7) [and (8)] of this section.

(9) [(10)] The MBHO shall:

(a) Establish a management information system for documenting:

1. Member [inquiries and] complaints;

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2. The response [responses] to a [each inquiry and] complaint; and

3. Reviews by the person or committee established in subsection (7) of this section; and [its board of directors:]

(b) Submit to the department a quarterly report of the information required by [as specified in] paragraph (a) of this subsection. If a member requests a reconsideration pursuant to Section 5(1)(a) of 906 KAR 1:080 of an MBHO's decision to deny prior authorization for a voluntary or involuntary inpatient psychiatric service, a reconsideration decision by the MBHO shall be rendered within twenty-three (23) hours of the member's request for a reconsideration. Until the reconsideration decision is rendered, the MBHO shall provide and reimburse the behavioral health care provider for an admission of the member to outpatient observation. Prior to rendering a final decision on the reconsideration, the MBHO shall confer with the behavioral health care provider to determine the health status of the member. The behavioral health care provider who provides information relating to the health status of the member shall be the provider who is directly involved in the provision of medical care to the member.

Section 12. Kentucky Access Ombudsman. The Cabinet for Health Services shall operate either directly or indirectly through a contract in accordance with KRS 45A.690 to 45A.725 [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 a response [responses] to an inquiry relating to a Medicaid or [inquiries relating to Medicaid and] behavioral health service [services];

(2) Provide assistance to a member, if requested, in filing a complaint [complaints] to the MBHO in accordance with Section 11 of this administrative regulation or an appeal [and appeals] to the department pursuant to 907 KAR 1:560;

(3) Advocate for member interests or [and] rights under Kentucky Access;

(4) Educate consumer organizations that inquire about managed care and Kentucky Access; and

(5) Provide an information service [services] to a member as necessary to perform the 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 a service [services] provided or arranged by the MBHO. The monitoring and evaluation shall be [;

(2)] 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 a member [members];

(b) Achievement of benchmarks process and dissemination of information relating to:

(a)] [Members'] Access to a behavioral health service by a member [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) [(e)] Prevention of mental or substance abuse disorders;

(e) Satisfaction of a member [Members' satisfaction] with a

service [services];

(f) Adverse incidents and complications; and

(g) EPSDT services related to behavioral health established by [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 the requirements established [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; and

11. A representative of each MBHO; [The Kentucky Department for Social Services:]

(b) Make recommendations to the department based upon the review of information required by [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; and

(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 the 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) Establish [Submit annually to [for continuing evaluation by] the department, a written plan for] a quality improvement program which continually evaluates quality, access, continuity of care, and health outcomes relating to a service provided or arranged by an MBHO. The quality improvement program shall establish a plan which shall be approved annually by the department and shall [reports and data which] include [at least the following]:

(a) Systematic data collection to:

1. Identify the performance levels of an MBHO relating to a specific function, process and outcome;

2. Identify an area for measurement and improvement;

3. Evaluate the utilization and appropriateness of care;

4. Measure the utilization of a clinical resource relating to overutilization, underutilization or inefficient utilization;

5. Evaluate the coordination of care among an MBHO provider, partnership provider and community-based service

agency;

6. Continuously measure the process associated with an adverse clinical event;

7. Evaluate the satisfaction of a member and provider of an MBHO, including the number, type and resolution of complaints or appeals; and

8. Evaluate the effectiveness of a corrective action implemented by an MBHO; [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. [(c)] 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 a member who is [members who are]:

1. [(a)] An adult [Adults] with severe mental illness. The monitoring and evaluation shall include:

a. A service [Services] established to promote [-including:

1. Promotion of] recovery and use of peer support and self-help;

b. [2:] Coordination of a medical, dental, social, housing, vocational, or [and] rehabilitative service with the [services to] behavioral health service [services];

c. Coordination [3-Linkage] with the community support systems of a regional mental health-mental retardation board [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 256(r)(2) [255(r)];

2. [(b)] A child [Children] with severe emotional disabilities. The monitoring and evaluation shall include:

a. [-including:

1:] Coordination of educational, juvenile and family services with [to] behavioral health services;

b. Coordination [2-Linkage] with the regional interagency council;

c. [3:] Transition to the adult services system [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 the [-including linkage with the] substance abuse program [programs] of a regional mental health-mental retardation board [boards];

4. [(d)] Hearing impaired;

5. [(e)] Requesting a provider who shares a common cultural heritage or gender;

6. [(f)] A victim [Victims] of the following:

a. Domestic violence;

b. Physical or [and] [child abuse or] sexual abuse; or [and]

c. Rape or [and] sexual assault;

7. [(g)] Separately identified as] Identified by Section 1(9) and (10) [Specified in Section 1(10) and (11)] of this administrative regulation; or [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]; and

(d) The method [methods] to:

1. [(b)] Identify, recommend and monitor the implementation of an activity [activities] as required by [specified in] paragraph (d) of this subsection [(2) of this section] and the correction of a problem [problems] relating to quality and performance that is [are] identified by the MBHO or the department;

2. Integrate quality improvement into other MBHO management functions; and

3. Update the goals and objectives of the quality improvement program plan as required in subsection (1) of this section;

(2) Establish an internal quality [(e) Be directed, coordinated and monitored by a] committee that:

(a) [1:] Shall be [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 a behavioral health care provider [providers] relating to the provision of a service [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 a member as [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 required by [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 required by [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) Review and make a recommendation about:

1. An MBHO policy affecting a member;

2. The quality of and access to a service; and

3. The grievance [Advise the MBHO regarding complaints] and appeals[-and activities undertaken by the MBHO in the resolution] process;

(b) Be staffed by a person [persons] in the [MBHO's] quality improvement program of the MBHO;

(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 fifty-one (51) percent [five (5)] of the persons serving on the committee shall be consumers of behavioral health services or consumer advocates, 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;

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6. Regional mental health-mental retardation boards;
7. Quality improvement professionals; ~~and~~
8. DSS;

9. DJJ; ~~and~~

10. The Department of Public Advocacy; ~~and~~

11. ~~An MBHO; [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) A licensed or certified professional in a mental health discipline [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 907 KAR Chapters 1 and 3 [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 or [and] training of an individual [individuals] other than an individual identified [those specified] in subsection (7) of this section who may choose to be a provider [providers] of a behavioral health rehabilitation or support service [and support services] in the MBHO; and~~

~~(9) Except as provided in paragraph (a) of this subsection, at least every two (2) years [Annually] [(7)] credential and recredential a behavioral health care provider [clinical practitioners] who participates in the MBHO [at least every two (2) years]. The credentialing and recredentialing process shall include information from the [MBHO's] quality improvement program of an MBHO and, if applicable to the provider, the [and] verification of:~~

~~(a) On an annual basis, the:~~

~~1. License or certificate of a provider to practice in accordance with applicable state licensure laws, including restrictions and history of a loss of license or certificate in a state; and~~

~~2. Disclosure of ownership of a provider in accordance with KRS 205.8477;~~

~~(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 encounter data from a processed claim [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 a financial statement or report required by [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 statement or report [statements and reports].

Section 16. Termination. (1) The department shall terminate an MBHO contract in accordance with Section 2(3) or (6) of this administrative regulation [KRS Chapter 45A].

(2) An MBHO provider or subcontractor of an MBHO who engages in an activity [activities] that results 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(9) of this administrative regulation, is terminated from the Kentucky Medicaid Program contract negotiated in accordance with Section 2(3) or (6) of this administrative regulation [KRS Chapter 45A], or ceases to operate, the department shall:

(1) Immediately notify the 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 required by [as specified in] Section 8(9) 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 a service [services] to a member [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 a recipient [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 the appropriate foreign language [languages] if more than ten (10) percent of the members speak a particular

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language;

(b) Prepared so that a member [members] who reads at a sixth grade level may understand;

(c) Available to a member [members] in written form, Braille, audio ~~tape or [tapes and]~~ telecommunications device [devices]; and

(d) Updated annually.

Section 20. Marketing. An MBHO, or MBHO subcontractor, shall:

(1) Conduct member marketing with a member [only—with members] residing in a behavioral health region;

(2) Not engage in [Be prohibited from]:

(a) Direct face-to-face or telephone marketing, or direct mail advertising to a member [members], or to a recipient [recipients] who ~~is~~ [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 a member [members] regarding the MBHO, department or other government agency; [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 a marketing complaint [complaints]; and

(5) Prepare and distribute marketing materials which factually represent the MBHO and meet the requirements established [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, 434.845, 434.850, 434.855, and 434.860, [~~434.840 to 434.860~~] and 42 CFR 431.300 through 431.307 [~~431, Subpart F~~].

Section 22. Performance of an MBHO. (1) An MBHO shall be required to:

(a) Provide, or arrange for the provision of, a medically necessary behavioral health service [services] to a member [members] as required by [specified in] Section 10 of this administrative regulation; and

(b) Report to the department the delivery of a behavioral health service to a member [services to members] and maintain documentation as required by federal and state laws to substantiate the delivery of a Medicaid behavioral health service [services' delivery], or support the nondelivery of a member's [members'] behavioral health service if the service is not authorized or provided [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 Section 2(3) or (6) of this administrative regulation [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 required by [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)(a) The department shall issue a written notice that complies with the requirements established by paragraph (b) of this subsection if the MBHO fails to:

1. File a corrective action plan;

2. File a corrective action plan that is approved by the department;

3. Implement the corrective action plan as required in subsections (3) and (4) of this section; or

4. Correct a deficiency.

(b) The written notice shall:

1. State the violation; and

2. Notify that failure to take the necessary action to correct the deficiency within the time period established by the department shall result in one (1) or more of the following:

a. Suspension of recipient enrollment;

b. Suspension or recoupment of the capitation payment; or

c. Termination of the MBHO's participation in Kentucky Access in accordance with Section 2(3) or (6) of this administrative regulation.

Section 23. Incorporation by Reference. (1) "HCFA Waiver Approval Letter", March 7, 1997, Department of Health and Human Services, is incorporated by reference.

(2) It may be inspected, copied, or obtained at the Department for Medicaid Services, 275 East Main Street, 6 W-A, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m. [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.

ADMINISTRATIVE REGULATIONS AMENDED AFTER PUBLIC HEARING OR
RECEIPT OF WRITTEN COMMENTS

COUNCIL ON POSTSECONDARY EDUCATION
(Amended After Hearing)

13 KAR 2:060. Degree program approval; equal opportunity goals.

RELATES TO: KRS Chapter 164 [164.020(8)]

STATUTORY AUTHORITY: KRS 164.020(18) [(8)]

NECESSITY, FUNCTION, AND CONFORMITY: Responsibility for the development of a system-wide equal opportunity plan is assigned to the Council on Postsecondary Education pursuant to KRS 164.020(18). The statute connects an institution's eligibility for new academic programs to its performance in implementing equal opportunity objectives. [KRS 164.020(8) requires that] The Council on Postsecondary [Higher] Education approves the offering of [all] academic [degree] programs at each [the] state-supported postsecondary education institution pursuant to KRS 164.020(14) but an institution's eligibility for new academic programs is limited by the requirement of KRS 164.020(18) that an institution meet its equal opportunity objectives. The statute does grant the Council on Postsecondary Education authority to grant a temporary waiver if an institution demonstrates progress in meeting equal opportunity objectives. [institutions of higher education. Unless a temporary waiver is granted by the Council on Higher Education, approval of any new degree program is contingent upon an institution's having met its equal opportunities goals.] This administrative regulation sets forth the criteria used to determine an institution's [terms for determining] compliance with [an institution's] equal opportunity objectives, [goals] and for the granting of a temporary waiver to a [waivers to the] state-supported postsecondary education institution [institutions of higher education] which has [have] not met its objectives. [their goals:]

Section 1. Definitions. (1) "Continuous progress" means that an institution shows an increase in the number of students or employees over the previous year for a [each] category.

(2) "Council" means the Council on Postsecondary Education.

(3) "Kentucky Plan" means the "Kentucky Plan for Equal Opportunities" which is a five (5) year plan developed by the Council on Postsecondary Education.

(4) "Objectives" mean flexible targets in enrollment, retention, graduation and employment developed by the Council on Postsecondary Education and the state-supported postsecondary education institutions and included in the Kentucky Plan.

(5) "State-supported institution" means the eight (8) universities, and [the community colleges that are part of] the Kentucky Community and Technical College system.

Section 2. Scope. (1) The Council on Postsecondary Education maintains a Kentucky Plan for Equal Opportunities to assist in ensuring equal opportunity of access to higher education for all citizens of Kentucky. The Kentucky Plan establishes flexible objectives for state-supported postsecondary education institutions in broad categories of student enrollment, retention, graduation and employment of African-Americans.

(2) Five (5) categories of African-American, resident students are included in the Kentucky Plan with objectives established and measured for each category:

- (a) Undergraduate enrollment;
- (b) Retention of first-year undergraduate enrollment;
- (c) Retention of total undergraduate enrollment;
- (d) Award of baccalaureate degrees; and
- (e) Graduate enrollment.

(3) Seven (7) categories of African-American employment are included in the Kentucky Plan with objectives established and measured for three (3) of those categories:

- (a) Executive, administrative and managerial;
- (b) Faculty; and
- (c) Professional nonfaculty.

(4) The Kentucky Plan includes enhancement provisions for Kentucky State University, the historically black institution, including the following categories which shall be reported on by the university:

(a) Identification by the university, subject to agreement by the council, of new and continuing academic programs which promote and build on the university's strength as a historically black institution;

(b) Evidence of marketing or showcasing programs which are developed and implemented as part of paragraph (a) of this subsection;

(c) Evidence of funding by the university of programs identified in paragraph (a) of this subsection including identification of private funding; and

(d) Identification of quality assurance assessment activities for programs identified in paragraph (a) of this subsection.

(5) The Council on Postsecondary Education evaluates institutional progress in implementing the flexible objectives established in the Kentucky Plan in order to determine:

- (a) An institution's automatic eligibility for new academic programs; or
- (b) An institution's eligibility for a waiver.

Section 3. Enrollment, Retention and Graduation [Institutional] Objectives. (1)(a) An institution's [The] objective for the enrollment of undergraduate, Kentucky resident African-American students [at a state-supported institution of higher education] shall be [equal to] the percentage of African-American high school graduates within the institution's market area.

(b) The market area shall be the geographic area of Kentucky contributing ninety (90) percent of the entering Kentucky resident undergraduate enrollment at an institution as measured by the base year of the Kentucky Plan [the state-supported institution of higher education during the fall semester, 1990].

(2)(a) An [Each] institution's objective for [the] retention of first-year undergraduate Kentucky resident African-American students shall be equal to the institution's [1987] retention rate for first-year undergraduate Kentucky resident white students as measured by the base year of the Kentucky Plan.

(b) The community colleges shall be exempt from this requirement.

(3)(a) An [Each] institution's objective for the retention of total [all] undergraduate Kentucky resident African-American undergraduate students shall be equal to the institution's [1987] retention rate for all Kentucky resident white undergraduate students as measured by the base year of the Kentucky Plan.

(b) The community colleges shall be exempt from this requirement.

(4) An [Each] institution's objective for the awarding of baccalaureate degrees to Kentucky resident African-American students shall be:

(a) For all institutions except Kentucky State University equal to the institution's rate for awarding baccalaureate degrees to Kentucky resident white students.

(b) For Kentucky State University, the rate of award of baccalaureate degrees to Kentucky resident white students shall be equal to that of Kentucky resident African-American students as measured by the base year of the Kentucky Plan.

(c) The community colleges shall be exempt from this requirement [calculated by multiplying the institution's enrollment objective by the institution's retention objective for all undergraduates. However, the objective for Kentucky State University shall be to maintain the level achieved in the 1986-87 school year.]

(5)(a) An [Each] institution's objective for the enrollment of Kentucky resident African-American graduate students shall be the same proportion as [equal to] the institution's percentage of enrollment of [objective for the awarding of baccalaureate degrees to] Kentucky resident white graduate [African-American] students expressed as a proportion of total resident white undergraduate degrees awarded [as measured by the base year of the Kentucky Plan].

(b) [However,] Kentucky State University and the community colleges shall be exempt from this objective.

Section 4. Employment Objectives. (1) The Kentucky Plan incorporates seven (7) institutional employment objectives and provides for the measurement and evaluation of each of the three (3) following categories of employment:

(a) [Each institution's objective for the employment of African-Americans in] Executive, administrative, and managerial;

(b) [positions shall be those established through existing affirmative action plan agreements between the institution and the U.S. Department of Labor or the U.S. Department of Education;

(7) Each institution's objective for the employment of African-American] Faculty; and

(c) [shall be those established through existing affirmative action plan agreements between the institution and the U.S. Department of Labor or the U.S. Department of Education;

(8) Each institution's objective for the employment of African-Americans in the category of] Professional nonfaculty, [not within subsections (6) and (7) of this section shall be those established through existing affirmative action plan agreements between the institution and the U.S. Department of Labor or the U.S. Department of Education.]

(2) Employment objectives for an institution shall be based on an institution's plan developed in compliance with the U.S. Department of Labor or the U.S. Department of Education as appropriate for that institution.

Section 5. Evaluation of [2.] Annual Progress. (1) [Incremental] Progress toward achievement of an objective [all objectives by school year 1995-96] shall be measured annually for the purpose of determining an institution's eligibility to submit requests for new academic programs or for a waiver. [Data from 1987 shall be used as a baseline for measurement.]

(2) An institution shall have met its annual plan implementation objective for undergraduate enrollment when the following conditions have been fulfilled:

(a) For Kentucky State University if:

1. The university maintains the current level of Kentucky resident African-Americans as a percentage of total enrollment; and

2. The university increases the number of entering Kentucky resident freshmen with ACT scores at or above the statewide average.

(b) For all other institutions if:

1. Enrollment of African-American students within the system of state-supported higher education is .073 percent or greater excluding African-American students enrolled at Kentucky State University; and

2. An institution's enrollment of Kentucky resident African-American students is greater than the actual enrollment of African-American students in the prior year.

(3) An institution shall have met its annual plan implementation objectives for:

(a) Retention of first-year undergraduate students;

(b) Retention of total undergraduate students;

(c) Award of baccalaureate degrees;

(d) Enrollment of graduate students; and

(e) In employment of African-Americans by demonstrating continuous progress each year in each category or by meeting the plan objectives in each category. The council may, upon request by an institution, determine that an employment category has too few positions in order to evaluate continuous progress, and may indicate that the institution has met its annual implementation plan objectives for the year.

(f) For Kentucky State University, the council may substitute objectives from Section 2(4) of this administrative regulation for those contained in Sections 3 and 4 of this administrative regulation. [For each objective, annual progress shall be calculated using one (1) of the following two (2) methods:

(a) If the level of achievement for a particular objective exceeds that of the 1987 baseline, the following equation shall be applied:

1. 100, multiplied by the difference between the percentage attained in the year being measured and the percentage attained in 1987, divided by the difference between the percentage expected by 1995-96 and the percentage attained in 1987.

2. Example of the use of the equation identified in subparagraph 1 of this paragraph:

1987	1991-92	1995-96
5.0%	6.0%	8.0%

annual progress = $100 \{ (6.0 - 5.0) / (8.0 - 5.0) \}$
 = $100 \{ 1.0 / 3.0 \}$
 = $100 \{ 0.333 \}$
 = 33.3%

(b) If the level of achievement for a particular objective falls below that of the 1987 baseline, the following equation shall be applied:

1. 100, multiplied by the difference between the percentage attained in the year being measured divided by the percentage attained in 1987 and one (1).

2. Example of the use of the equation identified in subparagraph 1 of this paragraph:

1987	1991-92	1995-96
5.0%	4.0%	8.0%

annual progress = $100 \{ (4.0 / 5.0) - 1 \}$
 = $100 \{ 0.8 - 1 \}$
 = $100 \{ -0.2 \}$
 = -20%

Section 3. Average Annual Progress. An overall level of annual achievement for an institution shall be established by calculating a simple average of annual progress toward all of the objectives.]

Section 6. [4.] Automatic Eligibility. (1) An institution shall be eligible [Automatic eligibility] for the consideration of new academic degree programs [shall exist] if:

(a) For Kentucky State University, the institution exhibits continuous progress in five (5) of seven (7) annual plan implementation objectives established in Sections 2(4), 3 and 4 of this administrative regulation;

(b) For a community college, the institution exhibits continuous progress in three (3) of four (4) annual plan implementation objectives established in Sections 3 and 4 of this administrative regulation; and

(c) For other institutions, an institution exhibits continuous progress in six (6) of the eight (8) annual plan implementation objectives established in Sections 3 and 4 [1] of this administrative regulation.

(2) Automatic eligibility for new academic programs shall be for the calendar year immediately following the certification of eligibility.

(3) Certification of automatic eligibility and for quantitative and

qualitative waivers shall occur prior to the end of each calendar year and shall be reported to the Council on Postsecondary Education and the Committee on Equal Opportunities, [except for:

1. Kentucky State University which shall exhibit progress in five (5) of the seven (7) objectives; and

2. Community colleges which shall exhibit progress in three (3) of the four (4) objectives in Section 1 of this administrative regulation which applies specifically to the community colleges, objectives (1), (6), (7), and (8); and

(b) Average annual progress meets or exceeds forty (40) percent for fiscal year 1991-92; sixty (60) percent for fiscal year 1992-93; eighty (80) percent for fiscal year 1993-94; and, 100 percent for fiscal year 1995-96.

(2) Qualifying for automatic eligibility based on the analysis of fiscal year 1995-96 data shall mean that an institution may submit degree programs for approval in calendar year 1997.]

Section 7. [5:] Waivers. (1) If an institution is not automatically eligible under Section 6 [4] of this administrative regulation and eligible for a quantitative or qualitative waiver, [intends to submit degree programs to the Council on Higher Education for approval,] the institution may request a one (1) year waiver which shall be either:

(a) Quantitative; or

(b) Qualitative.

(2) A waiver request by an institution shall include a resolution submitted to the Council on Postsecondary [Higher] Education approved by the institution's governing board and shall include [be based upon] either a quantitative or qualitative assessment, as appropriate, of the institution's efforts to achieve the institution's objectives as set forth in the Kentucky Plan.

(3) An institution shall be eligible to receive a quantitative waiver if:

(a) For Kentucky State University, the institution exhibits continuous progress in four (4) of seven (7) annual plan implementation objectives established in Sections 3 and 4 of this administrative regulation or in Section 2(4) of this administrative regulation as substituted by the council;

(b) For a community college, an institution exhibits continuous progress in two (2) of four (4) objectives established in Sections 3 and 4 of this administrative regulation;

(c) For other institutions, if an institution exhibits continuous progress in five (5) of eight (8) annual plan implementation objectives established in Sections 3 and 4 of this administrative regulation.

(5) A qualitative waiver may be approved for an institution failing to meet annual objectives if an institution can demonstrate:

(a) [Quantitative basis. A waiver may be granted based upon:

1. Progress in five (5) of the eight (8) objectives established in Section 1 of this administrative regulation except for:

a. Kentucky State University which shall exhibit progress in four (4) of the seven (7) objectives; and

b. Community colleges which shall exhibit progress in two (2) of the four (4) objectives in Section 1 of this administrative regulation which applies specifically to the community colleges, objectives (1), (6), (7), and (8); and

2. Average annual progress which meets or exceeds eighty (80) percent for fiscal year 1995-96.

(b) Qualitative basis:

1. A waiver may be granted based upon the submission of information in support of] Outstanding efforts that were attempted which have not yet proven to be successful or extraordinary circumstances that precluded success; and

(b) [:

2. The submission shall indicate] How the institution's revised plans for recruitment and retention of African-American students or employees show promise of future success.

(6) The written request for a qualitative waiver shall [3. The

submission shall also] include specific and quantifiable aspects of the institution's efforts to meet [the] equal opportunity objectives including:

(a) [:

4. Student-related data or plans may include:

a.] Commitment of funds to equal opportunity related activities;

(b) [b:] Financial aid distribution;

(c) [c:] Student services activities;

(d) [d:] High school visitations and results; [and]

(e) [e:] Academic support services;

(f) [:

5. Employee-related data or plans may include:

a:] Number of interviews granted to African-American applicants for positions;

(g) [b:] Offers of employment made that are accepted or rejected;
(h) [c:] Utilization of funds to stimulate units to improve their employment data;

(i) [d:] Special actions for units within an institution [the institutions] if additional efforts are required; and

(j) [e:] An evaluation of long-range data trends for those objectives that fell below expectations.

(7) An institution's written request for a qualitative waiver shall be reviewed by the Council on Postsecondary Education's Committee on Equal Opportunity which shall make a recommendation to the council on whether a qualitative waiver should be granted.

(8) The Council on Postsecondary Education shall consider an institution's request for a qualitative waiver at a subsequent [the next] meeting of the council following submission of the information by the institution in support of their request and after a recommendation is forwarded from the Committee on Equal Opportunities.

(9) An institution shall not be eligible for a waiver [(3) Receiving a waiver based on the analysis of fiscal year 1995-96 data shall mean that an institution may submit degree programs for approval in calendar year 1997.

(4) A waiver shall not be granted] in consecutive years regardless of the type of waiver.

(10) An institution that has received a quantitative or qualitative waiver shall only submit new academic programs under the waiver provision in the calendar year for which the waiver is granted. An institution's request for a new academic program, advanced under authority of an approved waiver, shall be considered at the next regularly scheduled meeting of the council after an institution has submitted a complete program application. Except that, when the council postpones or delays action, it may extend the period of consideration of a new academic program.

LEONARD V. HARDIN, Chair

DENNIS L. TAULBEE, General Counsel

APPROVED BY AGENCY: November 5, 1997

FILED WITH LRC: November 6, 1997 at 11 a.m.

REGULATORY IMPACT ANALYSIS

Agency Contact: Dennis L. Taulbee

(1) There are 8 public universities and 13 community colleges affected by this administrative regulation. The administrative regulation relates to the eligibility of these institutions to request and receive approval for new academic degree programs.

(2) Direct and indirect costs or savings:

(a) There are no direct or indirect costs or savings on cost of living or employment within the geographical area covered by this administrative regulation.

(b) There is no direct or indirect cost of doing business in the geographical area in which the administrative regulation is to be implemented.

(c) There are no additional compliance, reporting, nor are there paperwork requirements that would increase or decrease costs.

1. First year - no additional costs.

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2. Second and subsequent years - no additional costs.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect cost or savings:

1. First year: There are no effects or direct or indirect cost or savings which will result from this change in the administrative regulation.

2. Continuing costs or savings: Same as (3)(a)1 above.

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: Annual progress reports are prepared by the council staff from information provided by the institutions. No additional information is required as a result of the changes in the administrative regulation.

(4) Impact on state or local revenue. This administrative regulation has no impact, direct or indirect on state revenue.

(5) Source of revenue. State general funds will be used to administer this administrative regulation. No additional state general funds will be required as a result of the changes in this administrative regulation.

(6) Economic impact on Kentucky.

(a) Geographical area. No impact.

(b) Kentucky. No impact.

(7) Alternative measures to implement the Equal Opportunity Plan are under discussion. The proposed changes in the administrative regulation will permit continuance of the current approach to determining program eligibility until a new plan is approved.

(8) Assessment of expected benefits:

(a) Impact on public health and environmental welfare is not applicable.

(b) Same as (a).

(c) Same as (a).

(9) There are no statutes, regulations or policies in conflict.

(10) No additional comments are offered.

(11) Tiering is not being applied.

FINANCE AND ADMINISTRATION CABINET Office of the Secretary (Amended After Hearing)

200 KAR 5:021. Manual of policies and procedures.

RELATES TO: KRS Chapter 45A

STATUTORY AUTHORITY: KRS 45A.045(2)

NECESSITY, FUNCTION, AND CONFORMITY: The Finance and Administration Cabinet is required by KRS 45A.045(2) to promulgate administrative regulations to govern purchasing by various state agencies, and to publish a manual of policies and procedures, which is to be incorporated by reference as an administrative regulation pursuant to KRS Chapter 13A. This amendment updates the [August] 1997 [4996] Finance and Administration Cabinet Manual of Policies and Procedures to reflect recent statutory changes. [~~authorize an expansion in the use of the state procurement card, provide for simpler procedures for purchasing or leasing copy machines, and reduce the number of secretary's orders required for property acquisition.~~]

Section 1. The "Finance and Administration Cabinet Manual of Policies and Procedures ([September] 1997 Edition - Revised 11/97)", is hereby adopted and incorporated by reference, the same as if set forth at length, in and as a part of the administrative regulations of the Finance and Administration Cabinet promulgated [~~adopted~~] pursuant to KRS Chapter 45A. The "Finance and Administration Cabinet Manual of Policies and Procedures ([September] 1997 Edition - Revised 11/97)" shall be available for public inspection and copying Monday through Friday, excluding state holidays, from 8 a.m. to 4:30 p.m. at the Office of Management and Budget, Finance and Administration [~~Administrative~~] Cabinet, Room 388A, Capitol

Annex, Frankfort, Kentucky 40601.

JOHN MCCARTY, Secretary

ANGELA C. ROBINSON, Legal Counsel

APPROVED BY AGENCY: November 12, 1997

FILED WITH LRC: November 12, 1997 at noon

REGULATORY IMPACT ANALYSIS

Contact Person: Angela C. Robinson, Attorney, (502) 564-6660, FAX (502) 564-9875

(1) Type and number of entities affected: This regulation will affect state agencies within the Executive Branch of state government that procure personal service contracts and the Auditor of Public Accounts Office, the Attorney General's Office and the Legislative Research Commission's Personal Service Contract Review Subcommittee.

(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. N/A

(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. Time savings due to reduction of paperwork, automation and electronic approvals.

(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: Streamlining administrative processes.

2. Second and subsequent years: Streamlining administrative processes.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: There are costs associated with modifications to the existing procurement system and training for the redesigned process and on how to use the automation tools. The savings will be in faster processing of personal service contracts and reduced administrative burden.

2. Continuing costs or savings: Reduced administrative burden.

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

(b) Reporting and paperwork requirements: Not affected.

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

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: 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: Minimal, if any.

(b) Kentucky: Minimal, if any.

(7) Assessment of alternative methods; reasons why alternatives were rejected: There were approximately 3 options: Do-nothing, wait for the new enterprise-wide system implementation or streamline and automate as many processes in the personal service contract area as possible. Automation was chosen because it could be adapted into a current procurement system currently available with some modifications.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: Reduction of paper usage.

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

(c) If detrimental effect would result, explain detrimental effect: N/A

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(9) Identify any statute, rule, administrative regulation or government policy which may be in conflict, overlapping, or duplication:

(a) Necessity of proposed regulation if in conflict: N/A

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

(10) Any additional information or comments: N/A

(11) TIERING: Is tiering applied? Tiering was not used because this is intended to be a standard policy that applies to all agencies.

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

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) "Balance system" means a Stage II vapor recovery system which uses direct displacement to force vapor out of the receiving container and back into the space of the container from where the liquid product was withdrawn.

(3) "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.

(4) [(3)] "CARB" means the California Air Resources Board.

(5) [(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.

(6) [(5)] "Classification date" means the date on which this administrative regulation becomes applicable in a county or portion of a county.

(7) [(6)] "Coaxial hose" means a hose-within-a-hose which provides separate passages for the flow of gasoline and vapor return.

(8) [(7)] "Dry break" means a spring-loaded valve that prevents vapor from escaping through the vapor recovery riser pipe opening of a storage tank.

(9) [(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.

(10) [(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.

(11) [(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.

(12) [(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.

(13) [(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.

(14) [(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.

(15) [(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.

(16) [(15)] "Month" means calendar month.

(17) [(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.

(18) [(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 (95) percent or more.

(21) "Storage tank" means a tank at a gasoline dispensing facility which is used for the storage of gasoline.

(22) "Vacuum assist system" means a Stage II vapor recovery system which uses a vacuum inducing device to collect vapor from the receiving container and direct it back into the space of the container from where the liquid product was withdrawn.

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 collected by [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. **The facility representative shall inspect the equipment daily for these defects. If a defect is discovered, through this inspection or otherwise, [the owner or operator shall post] an "Out of Order" sign shall be posted and the defective 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. **The facility representative shall not be required to be present at the facility at all times, but shall perform or oversee the daily inspection of vapor recovery equipment for the defects listed in Section 4(1)(b) of this administrative regulation.**

(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, **by a trained facility representative**, 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; **and**
- (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

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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;

(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 25,000 [40,000] gallons or less. This exemption shall cease to apply if, ~~for any month,~~ the average monthly throughput exceeds 25,000 [40,000] gallons.

(c) A facility located in an air quality control region which has implemented a Stage II program that has been approved by the U.S. EPA. ~~[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 Two (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 Dispensing 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.

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(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

GLENNA JO CURRY, General Counsel

APPROVED BY AGENCY: November 5, 1997

FILED WITH LRC: November 6, 1997 at 9 a.m.

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, and 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 two 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 three to four 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 twenty-five (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 five 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 three 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

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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.

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

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

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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 without an approved burn chamber and a stack or chimney with approved control devices. ~~[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 [which tend to produce dense smoke] are used to cause ignition or aid combustion and the burning is done on [sunny] days when conditions do not pose a threat of igniting a forest fire [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.

(12) heating ropes that are set on fire to repair steel rails during cold weather.

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; and

(6) Fires set for recreational or ceremonial purposes.

JAMES E. BICKFORD, Secretary

GLENNA JO CURRY, General Counsel

APPROVED BY AGENCY: November 5, 1997

FILED WITH LRC: November 6, 1997 at 9 a.m.

REGULATORY IMPACT ANALYSIS

Contact Person: 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.

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(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%. 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.

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% 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.

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

401 KAR 65:010. Vehicle emission control programs.

RELATESTO: 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, [57 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.

(6) [(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.

[(10)] [(11)] [(12)] "Evaporative emission control system" means an unvented fuel cap, motor vehicle fuel tank, vapor vent hoses, and evaporative canister.

[(11)] [(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.

[(12)] [(13)] [(15)] "Exemption certificate" is governed by the definition in KRS 224.20-710(4).

[(13)] [(14)] [(16)] "Exhaust emission standard" or "emission standard" means:

(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.

[(14)] [(15)] [(17)] "Fleet" means a group of vehicles owned, leased, or operated by a person who has the responsibility of obtaining the certificates of registration for the vehicles.

[(15)] [(16)] [(18)] "Fleet operator" means the person who has the responsibility of obtaining the certificates of registration for fleet vehicles.

[(16)] [(17)] [(19)] "Functional standard" means the evaporative system integrity standard (pressure standard) [~~and the evaporative system purge standard~~].

[(17)] [(18)] [(20)] "Gross vehicle weight" or "GVW" means the manufacturer's gross vehicle weight rating of a vehicle.

[(18)] [(19)] [(21)] "Inspection station" is governed by the definition in KRS 224.20-710(5).

[(19)] [(20)] [(22)] "Measurable improvement" means any improvement toward achieving the emission or functional standards when compared to the measured results obtained in the initial test.

[(20)] [(21)] [(23)] "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.

[(21)] [(22)] [(24)] "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.

[(22)] [(23)] [(25)] "Operator" means a person who owns, leases, or operates a vehicle.

[(23)] [(24)] [(26)] "Owner" is governed by the definition in KRS 186.010(7).

[(24)] [(25)] [(27)] "Person" is governed by the definition in KRS 224.01-010(17).

[(25)] [(26)] [(28)] "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,

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pursuant to Section 13 of this administrative regulation.

(26) [(27)] [(29)] "Retest" means any test performed after repair.

(27) [(28)] [(30)] "Tampering" means removing, disconnecting, or rendering inoperative or ineffective any emission control device or element of design installed on or in a motor vehicle, and with which the vehicle was certified by the U.S. EPA. [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.]

(28) [(29)] [(31)] "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.

(29) [(30)] [(32)] "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 antimisfueling] standards, pursuant to Section 5 of this administrative regulation.

(30) [(31)] [(33)] "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) [(32)] [(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.

(31) [(32)] [(35)] "Vehicle" is governed by the definition in KRS 224.20-710(6).

(32) [(33)] [(36)] "Vehicle emission control program" is governed by the definition in KRS 224.20-710(7).

(33) [(34)] [(37)] "Vehicle identification number" or "VIN" means the number assigned to the vehicle by the vehicle's manufacturer or the assigned or replacement vehicle identification number approved by the Department of Vehicle Regulation pursuant to KRS Chapter 186.

(34) [(35)] [(38)] "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.

(35) [(36)] [(39)] "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.

(36) [(37)] [(39)] "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 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) [(5)] 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) [(6)] 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(3) [(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~~(3)~~~~(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~~(5)~~~~(4)~~ 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~~(5)~~ of this administrative regula-

tion.

(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_x 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) [(d)] 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) [(e)] 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.

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:

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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 CO (ppm) (%)	HC CO (ppm) (%)	HC CO (ppm) (%)	HC CO (ppm) (%)
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:

(e) 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;

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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 leaded 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 (CO₂), 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 (CO₂) 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 CO₂ 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
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 (± 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 lane operator shall suggest that the owner or operator of the vehicle take a pamphlet that suggests various types of repairs for vehicles that fail the test. [repairs recommended to correct the system deficiencies shall be included on the vehicle emission repair form.]

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(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 119.0 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

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1	0 to 60 seconds
2	61 to 119 seconds
3	120 to 174 seconds
4	175 to 239 seconds; and

b. Second-by-second mass analysis schedule

PHASE ————— CYCLE PORTION

1	0 to 93 seconds
2	94 to 239 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 lane operator shall suggest that the owner or operator of the vehicle take a pamphlet that suggests various types of repairs for vehicles that fail the test [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 may apply for a permit to operate a fleet inspection station to test the vehicles that are in that fleet. ~~[operating a fleet inspection station to test vehicles that are in that fleet shall comply with this section.]~~ A fleet inspection station shall not be operated without a fleet inspection permit issued by the cabinet. **The owner or operator of a fleet inspection station shall comply with this section.**

(a) 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.

(b) 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.

(c) The fee for a fleet inspection station permit or permit renewal shall be \$200, pursuant to Section 8(7)[(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.

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(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);
- (t)] Whether the test results are from the first test, first retest, or subsequent retest; and

(k) (m) 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)(c)(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)(c)(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)(c)(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_x 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~~

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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 retest 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 Western 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 [+], Hazard, Kentucky, 41701, (606) 435-6022 [439-2391];

(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 [42301, (502) 686-3304]; and

(h) [(g)] Paducah Regional Office, 4500 Clarks River Road, Paducah, Kentucky, 42003, (502) 898-8468.

JAMES E. BICKFORD, Secretary

GLENN A. JO CURRY, General Counsel

APPROVED BY AGENCY: November 5, 1997

FILED WITH LRC: November 6, 1997 at 9 a.m.

REGULATORY IMPACT ANALYSIS

Contact Person: 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 gasoline 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

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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. Explain why tiering was or was not used: 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 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. 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-EPDS-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

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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 (Amended After Hearing)

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 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

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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

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(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 within the permit area or adjacent areas 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 [processing] 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 [processing] waste banks. Coal mine [processing] waste banks shall be designed to comply with the requirements of 405 KAR 16:140.

(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 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

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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

GLENNA JO CURRY, General Counsel

APPROVED BY AGENCY: November 14, 1997

FILED WITH LRC: November 14, 1997 at noon

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 hydrologic 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 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 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
(Amended After Hearing)**

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 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 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 [of] 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 stored, 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 within the permit area or adjacent areas 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 proposed, 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

GLENNA JO CURRY, General Counsel

APPROVED BY AGENCY: November 14, 1997

FILED WITH LRC: November 14, 1997 at noon

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 impound-

ing 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 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 under-

ground 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 authority 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 impound-

ing 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.

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 (Amended After Hearing)

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 350:] 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

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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 ground-water 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 environmentally 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-Any] 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]. If the cabinet determines that a protected water supply has been contaminated, diminished, or interrupted by the mining operation, the cabinet shall issue a notice of noncompliance to the permittee or operator, and order the replacement of 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 from the cabinet that the water supply was adversely impacted by mining, provide drinking water on an emergency basis;

2. Within two (2) weeks after receiving notice from the cabinet 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 from the cabinet 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).

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(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

GLENNA JO CURRY, General Counsel

APPROVED BY AGENCY: November 14, 1997

FILED WITH LRC: November 14, 1997

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 permit-

ing 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
(Amended After Hearing)**

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 requirements for protection of the hydrologic balance, including general requirements for protection of surface and groundwater quantity and quality, prevention and control of drainage from underground workings, control of erosion and sediment, protection of streams, and control of discharges into underground workings.]

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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).

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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. If the cabinet determines that a protected water supply has been contaminated, diminished, or interrupted by the mining operation, the cabinet shall issue a notice of noncompliance to the permittee or operator, and order the replacement of 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 from the cabinet that the water supply was adversely impacted by mining, provide drinking water on an emergency basis;

2. Within two (2) weeks after receiving notice from the cabinet 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 from the cabinet 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;

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(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

GLENN A. JO CURRY, General Counsel

APPROVED BY AGENCY: November 14, 1997

FILED WITH LRC: November 14, 1997 at noon

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, 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.

PROPOSED AMENDMENTS RECEIVED THROUGH NOON, NOVEMBER 14, 1997

**FINANCE AND ADMINISTRATION CABINET
State Investment Commission
(Amendment)**

200 KAR 14:011. General rules.

RELATES TO: KRS Chapter 42

STATUTORY AUTHORITY: KRS 42.525

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. 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

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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
ANGELA C. ROBINSON, Attorney

APPROVED BY AGENCY: November 14, 1997

FILED WITH LRC: November 14, 1997 at noon

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on December 30, 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 December 23, 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, 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) State whether a detrimental effect on environment and public health would result if not implemented: No impact would result.

(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.

ADMINISTRATIVE REGISTER - 1355

FINANCE AND ADMINISTRATION CABINET State Investment Commission (Amendment)

200 KAR 14:081. Repurchase agreement.

RELATES TO: KRS Chapters 41, 42

STATUTORY AUTHORITY: KRS 42.525

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 of 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).

~~Section 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.~~

ADMINISTRATIVE REGISTER - 1356

~~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 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) [In] 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. [10.] 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. [11.] 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 associa-~~

~~tions 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 seven (7) percent.~~

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

~~[Section 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.]~~

ADMINISTRATIVE REGISTER - 1357

GORDON L. MULLIS, Secretary
ANGELA C. ROBINSON, Attorney

APPROVED BY AGENCY: November 14, 1997

FILED WITH LRC: November 14, 1997 at noon

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on December 30, 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 December 23, 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, 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.

GENERAL GOVERNMENT CABINET

Board of Hairdressers and Cosmetologists (Amendment)

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

RELATES TO: KRS 317A.050(8)

STATUTORY AUTHORITY: KRS 317A.050(8)

NECESSITY, FUNCTION, AND CONFORMITY: Beginning July 1, 1997, KRS 317A.050(8) requires cosmetologists, cosmetology instructors and nail technicians to provide proof of continuing education for renewal of license as determined by the board by promulgation of an administrative regulation. This administrative regulation establishes the requirements for sponsoring a continuing education program and for providing proof of attendance at a continuing education program.

Section 1. (1) A sponsor of a continuing education program shall request approval of the board on an "Application for Approval of Continuing Education Program" form and shall agree to submit the information required by subsection (2) of this section. The application shall state the date, subject offered, total hours of instruction, names and qualifications of speakers, fees to be charged, evaluation form, and other pertinent information.

(2) The sponsor shall agree to:

(a) Accurately record attendance at each presentation;

(b) Complete a record of attendance confirming the number of clock hours actually attended for each attendee; and

(c) Submit a list of attendees within thirty (30) days after the program to the board office.

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Section 2. (1) An application for approval of a continuing education program shall be submitted to the office of the board at least sixty (60) [ninety-(90)] days prior to the starting date of the program. The board shall approve or deny the request in writing within thirty (30) [sixty-(60)] days of review by the board [receipt of the application].

Section 3. The program shall consist of an organized program of learning which:

- (1) Contributes directly to the competency of the licensee;
- (2) Pertains to subjects related to the theory, management and practice of cosmetology and nail technology; and
- (3) Pertains to the health, safety, welfare, and protection of the public including sanitation, sterilization, chemical waste disposal, safety in the work place, first aid, bloodborne pathogens, airborne pathogens, and HIV/AIDS education.

(a) Relevant programs provided by the following organizations or institutions that have been received and approved by the board include, but are not limited to the following:

1. American Red Cross Chapters;
 2. American Heart Association;
 3. Cabinet for Health Services;
 4. Kentucky Labor Cabinet, Division of Education and Training;
- and
5. Kentucky State Board of Nursing.

(4) A program shall be limited to a class size appropriate to the classroom or facility.

Section 4. A program shall specify the course objectives, content, prerequisites, requirements, and the number of continuing education hours to be earned. The information shall be specified in all promotional materials.

Section 5. A program shall be generic product related and shall not be used to promote, sell or advertise a product.

Section 6. A sponsor shall be:

- (1) A private and vocational technical schools of cosmetology offering cosmetology and nail technician courses;
- (2) An association or organization whose membership consists of licensees of the board;

(3) A college, university, or other institution of higher education recognized by the Kentucky Council on Higher Education;

(a) Academic coursework. Successful completion of one (1) academic semester credit or one (1) three (3) hour course will satisfy the total annual continuing education hours required for cosmetologists, nail technicians and instructors of cosmetology renewal. The course shall be completed within the license renewal period and the licensee shall provide an original transcript with the seal of the college or university affixed with their application for renewal.

(b) Relevant courses shall include, but not be limited to: biology, chemistry, psychology, health science, and business courses.

(4) Individuals who hold an active cosmetologist license, instructor of cosmetology license or nail technicians license and have special education, training and experience in cosmetology;

(5) Other persons who have a license, degree, special education, training and experience relating to the subject matter of the program;

(6) State agency programs;

(7) Manufacturers and distributor product shows shall not be approved. Manufacturers and distributor product classes shall be approved provided all provisions of 201 KAR 12:200 are met.

Section 7. The board may monitor or review any continuing education program approved by the board. Upon evidence of significant variation in the program presented from the program approved, the board may withdraw approval of the hours granted to the program.

Section 8. (1) In order to receive credit for attendance at a program, a licensee shall:

(a) Complete a "Record of Attendance for Continuing Education Credit" form at the end of the program;

(b) Submit one (1) copy of the form to the program's registration desk at the end of the program; and

(c) Submit one (1) copy of the form with the licensee's renewal application.

(2) The form shall indicate the program title; name of the sponsoring organization or individual; date, location, and number of hours of the program; and the licensee's name, address, phone number, Social Security number, and license number.

Section 9. A licensee not currently working in a salon may choose to let their license expire and may restore said license at any time within five (5) years by obtaining six (6) hours of continuing education and paying a restoration fee of fifty (50) dollars in accordance with KRS 317A.050, Section 11.

Section 10. Incorporation by Reference. (1) The following forms are incorporated by reference:

(a) "Application for Approval of Continuing Education Program" (September 13, 1996 edition), Kentucky State Board of Hairdressers and Cosmetologists; and

(b) "Record of Attendance" (September 13, 1996 edition), Kentucky State Board of Hairdressers and Cosmetologists.

(2) These forms may be inspected, copied, or obtained at Kentucky State Board of Hairdressers and Cosmetologists, 314 West Second Street, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

BEA COLLINS, Chairman

CHERYL LALONDE MOONEY, Board Counsel

APPROVED BY AGENCY: September 2, 1997

FILED WITH LRC: October 28, 1997 at 3 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on December 22, 1997, at 10 a.m. at the office of the Kentucky State Board of Hairdressers and Cosmetologists, 314 West Second Street, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by December 15, 1997, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Carroll Roberts, Administrator, Kentucky State Board of Hairdressers and Cosmetologists, 314 West Second Street, Frankfort, Kentucky, 40601, (502) 564-4262.

REGULATORY IMPACT ANALYSIS

Contact Person: Carroll Roberts, Administrator

(1) Type and number of entities affected: Approximately 100 providers of continuing education; approximately 13,000 licensees.

(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 and indirect costs or savings on the cost of living and employment in the geographical area.

(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 cost of doing business in the geographical area.

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

1. First year following implementation: The decrease in paperwork requirements would reflect the decrease in costs the first year. A decrease in cost to the providers of continuing education on paperwork requirements. Factors decreasing costs include elimination of duplication of credentials, course outline and filing of applications. There will be no effect on competition. A decrease in cost to the licensee who may use higher education courses or dual career requirements to meet their needs.

2. Second and subsequent years: The decrease in paperwork requirements would reflect the decrease in costs the second and subsequent years. A decrease in cost to the providers of continuing education on paperwork requirements. Factors decreasing costs include elimination of duplication of credentials, course outline and filing of applications. There will be no effect on competition. A decrease in cost to the licensee who may use higher education courses or dual career requirements to meet their needs.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: Direct savings on duplication of forms and paperwork requirements. The direct savings would be reflected in the first year.

2. Continuing costs or savings: Direct savings on duplication of forms and paperwork requirements. The direct savings would be reflected in the second and subsequent years.

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: Will decrease.

(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: Agency funds.

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

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

(b) Kentucky: None

(7) Assessment of alternative methods; reasons why alternative were rejected: Methods are most economical and beneficial to licensee and agency.

(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: There would not be a detrimental effect on environment and public health if not implemented.

(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:

(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: Tiering was not applied because all providers must meet the same requirements and all cosmetologists, instructors of cosmetology and nail technicians actively engaged in the practice or teaching of cosmetology and nail technology must meet the same requirements for licensure.

TOURISM CABINET
Department of Fish and Wildlife Resources
(Amendment)

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

RELATES TO: KRS 150.025(1), 150.320(1), 150.330, 150.340, 150.360, 150.603(1), 150.620

STATUTORY AUTHORITY: KRS 150.025(1), 150.360(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 150.025(1) and 150.360(1) authorizes the department to establish open seasons for the taking of wildlife. The function of this administrative regulation is to allow the taking of migratory game birds within reasonable limits based upon an adequate supply, and within the frameworks established by the U.S. Fish and Wildlife Service.

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

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

Section 2. Season Dates for Gun Archery and Falconry. A person shall not hunt migratory game birds except on the dates listed in this administrative regulation.

(1) Doves: September 1 through September 30; October 4 [5] through October 27 [28]; and November 27 [28] through December 2 [3].

(2) Woodcock: October 18 [12] through December 1 [15].

(3) Common snipe: September 17 [18] through November 2 [3] and November 27 [28] through January 25 [26].

(4) Wood duck and teal: September 17 [18] through September 21 [22].

(5) Virginia and sora rails, common moorhen and purple gallinule: September 1 through November 9.

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

(1) Doves: daily limit, fifteen (15); possession limit, thirty (30).

(2) Woodcock: daily limit, three (3) ~~five (5)~~; possession limit, six (6) ~~ten (10)~~.

(3) Common snipe: daily limit, eight (8); possession limit, sixteen (16).

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

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

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

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

Section 4. Shooting Hours. A person shall not take migratory game birds except during the times listed in this section.

(1) Doves:

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

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

(2) Other species listed in this administrative regulation, from one-half (1/2) hour before sunrise to sunset.

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

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- (1) Longer than three and one-half (3 1/2) inches; or
- (2) Containing:
 - (a) Lead shot;
 - (b) Shot not approved by the U.S. Fish and Wildlife Service for waterfowl hunting; or
 - (c) Shot larger than size "T".

Section 6. Youth Hunting Day. (1) A person who has not reached his 16th birthday may hunt ducks, coots or mergansers on October 11.

(2) A person at least eighteen (18) years old shall accompany the juvenile hunter and:

- (a) Shall not hunt ducks, coots or mergansers;
- (b) May hunt other species for which there is an open season.
- (3) The bag limits for the youth hunting day shall be:
 - (a) Ducks: six (6), which shall not include more than:
 - 1. Four (4) mallards, no more than two (2) of which shall be hen mallards;
 - 2. Three (3) pintails;
 - 3. Two (2) wood ducks;
 - 4. Two (2) redheads;
 - 5. One (1) canvasback; or
 - 6. One (1) black duck.
 - (b) Fifteen (15) coots; and
 - (c) Five (5) mergansers, no more than one (1) of which shall be a hooded merganser.

Section 7. Exceptions to Statewide Migratory Bird Seasons on Specified Wildlife Management Areas. (1) On a wildlife management area owned or controlled by the department:

- (a) Unless excepted below, all provisions of this administrative regulation shall apply.
- (b) A person shall not:
 - 1. Hunt wood ducks or teal on areas closed to waterfowl hunting by 301 KAR 2:222.
 - 2. Hunt in an area marked by a sign as closed to hunting.
 - 3. Enter an area marked by a sign as closed to the public.
- (2) A person hunting doves on the Ballard, Barlow Bottoms [Swan Lake, Peal], Sloughs, Ohio River Islands, Duck Island, Kaler Bottoms, Kentucky River and Westvaco Wildlife Management Areas shall not use or possess shotgun shells containing lead shot.
- (3) Ballard Wildlife Management Area. A person shall not hunt:
 - (a) migratory birds after October 13, except as provided in 301 KAR 2:221.
 - [~~(a) Woodcock;~~]
 - (4) Central Kentucky Wildlife Management Area.
 - (a) A person shall not hunt:
 - (1) migratory game birds after October 13, except as provided in 301 KAR 2:221.
 - [~~(1) Woodcock;~~]
 - (b) A dove hunter shall not carry firearms except during shooting hours.
 - (5) Grayson Lake Wildlife Management Area.
 - (a) A migratory bird hunter shall check in and out daily at a designated check station.
 - (b) A person shall not hunt:
 - 1. Within the no wake zone at the dam site marina;
 - 2. On Deer Creek Fork; or
 - 3. On or from the shores of Camp Webb or the state park.
 - (6) Land Between the Lakes. A person shall not hunt doves, woodcock or common snipe between the last Saturday in September and November 30.
 - (7) West Kentucky Wildlife Management Area. A person shall not hunt:
 - (a) Doves after October 13, except on tracts 2, 3, 6, and 7 during the November-December portion of the season.
 - (b) Woodcock and snipe except on tracts 2, 3, 6, and 7.

- (c) On tracts designated by numbers followed by the letter "A".
- (8) Yatesville Lake Wildlife Management Area. A migratory game bird hunter shall check in and out daily.
- (9) A person shall not hunt migratory game birds on the main block of Robinson Forest.

Section 8. [7.] Dove Hunter Guidelines on Wildlife Management Areas. (1) The department may establish hunter density guidelines for dove hunting fields on department property after considering the following:

- (a) Terrain of the field;
- (b) Topography of the field;
- (c) Providing for approximately forty (40) yards between hunters.
- (2) Strategically located signs shall be posted in fields advising hunters:
 - (a) Of recommended hunter densities;
 - (b) That hunting in excess of the desired hunter density limit shall be at the hunter's own risk.
- (3) A hunter behaving in an unsafe or uncooperative manner shall be required to leave the premises.

C. THOMAS BENNETT, Commissioner
MIKE BOATWRIGHT, Chairman
ANN R. LATTA, Secretary
SCOTT PORTER, General Counsel

APPROVED BY AGENCY: June 13, 1997

FILED WITH LRC: November 13, 1997 at 1 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on December 22, 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 being heard at this hearing shall notify this agency in writing by December 15, 1997, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: John Wilson, Assistant Director, Division of Public Affairs/Policy, Department of Fish and Wildlife Resources, Arnold L. Mitchell Building, #1 Game Farm Road, Frankfort, Kentucky 40601, (502) 564-4406, FAX (502) 564-6508.

REGULATORY IMPACT ANALYSIS

Agency Contact: John Wilson

(1) Type and number of entities affected: An estimated 90,000 persons will participate in the migratory bird hunting proposed by this administrative regulation.

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

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: No public comments received. Direct costs involve the purchase of a state hunting license, a federal migratory bird hunting and conservation stamp and a state waterfowl stamp if hunting waterfowl. Indirect costs would be determined by the hunter, depending on his level of participation. U.S. Fish and Wildlife Service approved nontoxic shot is required for all waterfowl hunting. Approved nontoxic shot costs approximately \$2 to \$7 more per box of 25 shells, dependent on shot material selected, than does lead shot.

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

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from the public comments received: No public comments received. This administrative regulation will have no anticipated impact on the cost of doing business.

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

1. First year following implementation: This administrative regulation imposes no reporting or paperwork requirements.

2. Second and subsequent years: Same as for first year.

(3) Effects on the promulgating administrative body: Requires time and effort in developing, publishing reporting on, and enforcing the proposed administrative regulation.

(a) Direct and indirect costs or savings: Primary costs are associated with enforcement of the administrative regulation.

1. First year: This administrative regulation will not impose additional costs or create additional savings.

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

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: No additional reporting or paper work requirements.

(4) Assessment of anticipated effect on state and local revenues: A positive effect could be expected on state revenues since hunters are required to purchase a hunting license and pay other state taxes on items purchased in connection with hunting and the hunting trip. The average migratory bird hunter in Kentucky will expend about \$228 a season on food, lodging, transportation and equipment. This will add about \$20,520,000 to the income of local businesses.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation. Revenue from the sale of hunting and fishing licenses and will be used for implementation and enforcement of this administrative regulation.

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

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

(b) Kentucky: None

(7) Assessment of alternative methods, reasons why alternatives were rejected: Reasons why alternatives were rejected: The U.S. Fish and Wildlife Service requires that any harvest of migratory game birds be through a regulated hunting season that is held within a specific time frame. Therefore, the only available alternative to regulated hunting is to close the season which was rejected since migratory birds are a renewable resource and involved species are at population levels that permit regulated hunting for the benefit of Kentucky.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: This administrative regulation is intended to conserve populations of migratory birds, a positive impact on environmental welfare. It also allows utilization of these populations as a recreational resource, having a positive effect on the health and well-being of those who participate.

(b) State whether a detrimental effect on environment and public health would result if not implemented: Reduction in the potential recreational opportunity and the loss of conservation of migratory birds.

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

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

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: Not applicable.

(10) Any additional information or comments: None

(11) TIERING: Was tiering applied? No. Only one class of citizen, the hunter, is impacted by this administrative regulation. Disregarding physiography, distribution of the species sought by hunters is

assumed to be uniform, thus negating the need to recognize tiers. Tiering according to physiography is impractical and unnecessary as a means of species protection or provision of hunter opportunity.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or administrative regulation constituting the federal mandate. 50 CFR Part 20.

2. State compliance standards. State seasons and bag limits are within federal frameworks.

3. Minimum or uniform standards contained in the federal mandate. Woodcock - season frameworks between the Saturday nearest September 22, 1997, and January 31, with a 45 day maximum season. Bag limits may be a maximum of three per day with six in possession.

Wood duck and teal - season frameworks allow five days in September. Bag limits may total four per day with not more than two of these being wood ducks. Possession limit is eight of which not more than four may be wood ducks.

Dove - season frameworks allow either 70 or 60 days between September 1 and January 15. Bag limits may be either 12 per day with 24 in possession for the 70 day season or 15 per day with 30 in possession for the 60 day season.

Common snipe - season frameworks allow a 107 day season between September 1 and February 28. Bag and possession limit is 8 and 16, respectively.

Virginia and sora rails - the season may not exceed 70 days with a season framework between September 1 and January 20. Bag and possession limit of 25 per day, singly or in aggregate.

Common moorhen and purple gallinule - the season may not exceed 70 days with a season framework between September 1 and January 20. Daily bag limit of 15, singly or in aggregate. Possession limit is twice the daily bag limit.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Not applicable.

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, November 12, 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

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1.6	Extraordinary Occurrence Reports	18.11	Kentucky Correctional Psychiatric Center Transfer Procedures
1.9	Institutional Duty Officer	18.12	Referral Procedure for Inmates Adjudicated Guilty But Mentally Ill
1.11	Population Counts and Reporting Procedures	18.13	Population Categories
1.12	Operation of Motor Vehicles by Department of Corrections Employees	18.15	Protective Custody
2.1	Inmate Canteen	18.17	Interstate Agreement on Transfers
2.2	Warden's Fund	18.18	International Transfer of Inmates
2.10	Surplus Property	19.1	Government Services Projects
3.12	Institutional Staff Housing	19.2	Community Services Projects
4.2	Staff Training and Development [(Amended 4/14/97)]	19.3	Inmate Wage Program
4.3	Firearms and Chemical Agents Training [(Amended 4/14/97)]	20.1	Educational Programs and Educational Good Time
4.7	Uniformed Employee Dress Code	21.1	Staffing Pattern for the First Incarceration Shock Treatment Program (FIST)
6.1	Open Records Law	21.2	Phase I: Program Selection Assessment Criteria
7.2	Asbestos Abatement	21.3	Program Schedule - Phase II and Phase III
[8.1]	Occupational Exposure to Bloodborne Pathogens (Deleted 11/12/97)	21.4	Platoon Size and Composition
9.4	Transportation of Inmates to Funerals or Bedside Visits	21.5	Physical Conditions Program Component
[9.5]	Execution (Deleted 11/12/97)	21.6	Group and Individual Counseling
9.6	Contraband	21.7	Drug and Alcohol Abuse Counseling and Treatment
9.8	Search Policy	21.8	Work Programs Component
9.18	Informants [(Amended 4/14/97)]	21.9	Education and Life Management
9.19	Found Lost or Abandoned Property [(Amended 4/14/97)]	21.10	Auxiliary Services
10.2	Special Management Inmates	21.11	Offenses and Penalties
10.3	Safekeepers	22.1	Privilege Trips
10.4	Special Needs Inmates	23.1	Religion
11.2	Nutritional Adequacy of the Diet for Inmates	25.1	Gratuities
11.3	Special Diet Procedures	25.2	Public Official Notification of Release of an Inmate
11.4	Alternative Diet	25.3	Prerelease Program
13.1	Pharmacy Policy and Formulary	25.4	Inmate Furloughs
13.2	Health Maintenance Services	25.6	Community Center Program
13.3	Medical Alert System	25.7	Expedient Release
13.4	Health Program Audits	25.8	Extended Furloughs
13.5	Acquired Immune Deficiency Syndrome	25.10	Administrative Release of Inmates
13.6	Sex Offender Treatment Program	25.11	Victim Notification
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		
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		
			(c) "Department of Corrections Policies and Procedures, Volume III, November 12, 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
		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

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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 (Deleted 11/12/97)
 9.1 ——— Use of Force (Deleted 11/12/97)
 9.7 ——— Storage, Issue and Use of Weapons Including Chemical Agents (Deleted 11/12/97)
 9.9 ——— Transportation of Inmates (Deleted 11/12/97)
 9.10 ——— Security Inspections (Deleted 11/12/97)
 9.11 ——— Tool Control (Deleted 11/12/97)

(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

TAMELA BIGGS, Staff Attorney

APPROVED BY AGENCY: November 4, 1997

FILED WITH LRC: November 13, 1997 at 1 p.m.

PUBLIC HEARING: Pursuant to KRS 197.025, policies governed by these administrative regulations shall not be accessible to the public or inmates. Therefore, a public hearing is not required and will not be scheduled.

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

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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 6:030. Kentucky State Reformatory.

RELATES TO: KRS Chapters 196, 197, 439

STATUTORY AUTHORITY: KRS 196.035, 197.020, 439.470, 439.590, 439.640

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

Section 1. (1)(a) Kentucky State Reformatory policies and procedures November 12, 1997 [March 13, 1996], are incorporated by reference.

(b) There will be no public hearing on these policies and procedures as they are secured policies under the provisions of KRS 197.025 which states that such policies shall not be accessible to the public or inmates. [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) Kentucky State Reformatory policies and procedures include:

KSR 01-00-09	Public Information and News Media Relations	(Deleted 11/12/97)
KSR 01-00-10	Entry Authorization for All Cameras and Tape Recorders Brought into the Institution	KSR 09-00-05 Gate 1 Entrance and Exit Procedure Limited Issue (Deleted 11/12/97)
KSR 01-00-15	Cooperation and Coordination with Oldham County Court	KSR 09-00-09 Contraband, Dangerous Contraband and Search Policy (Deleted 11/12/97)
KSR 01-00-19	Personal Service Contract Personnel	KSR 09-00-21 Crime Scene Camera
KSR 02-00-01	Inmate Canteen	KSR 09-00-22 Collection, Preservation, and Identification of Physical Evidence
KSR 02-00-03	Screening Disbursements from Inmate Personal Accounts	KSR 09-00-23 Drug Abuse Testing
KSR 02-00-11	Inmate Personal Accounts	KSR 09-00-26 Contraband Outside Institutional Perimeter
KSR 02-00-12	Institutional Funds and Issuance of Checks	[KSR 09-00-27 Construction Crew Entry/Exit (Deleted 11/12/97)]
KSR 04-00-02	Staff Training and Development	KSR 09-00-28 Restricted Areas
KSR 05-00-01	Officers' Daily Housing Security and Safety Log	KSR 09-00-29 Transportation of Inmates
KSR 05-00-02	Research Activities	KSR 09-00-30 Parole Board
KSR 05-00-03	Management Information Systems	KSR 09-00-31 Forced Cell Move in Medium or Maximum Area
KSR 06-00-01	Inmate Master File	KSR 10-00-10 Segregation - Special Management Inmate Legal Access
KSR 06-00-03	Kentucky Open Records Law and Release of Psychological/ Psychiatric Information	KSR 10-00-11 Unit D - Behavior Problem Control
KSR 07-00-02	Institutional Tower Room Regulations	KSR 10-01-13 Unit D - Property Room Access
KSR 07-00-04	Handling of PCB Articles and Containers	KSR 10-01-01 Segregation Unit - Staffing Pattern, Staff Allocation, Position Description, Staff Selection, Training and Evaluation
KSR 07-00-05	Proper Removal of Transformers	KSR 10-01-02 Segregation - General Operational Procedures
KSR 07-00-06	Asbestos Abatement	KSR 10-01-03 Segregation - Inmate Tracking System and Records System
KSR 07-00-07	Discharge Monitoring Report (DMR)	KSR 10-01-04 Segregation - Administrative Segregation
KSR 07-00-08	Control of Hazardous Energy (Lockout or Tagout)	KSR 10-01-05 Segregation - Disciplinary Segregation
KSR 07-00-09	Inventory Control of Underground Storage Tanks	KSR 10-01-06 Segregation - Protective Custody
KSR 08-00-07	Inmate Family Emergency - Life Threatening Illness or Death in Inmate's Immediate Family	KSR 10-01-07 Segregation - Convalescent Care Unit
KSR 08-00-08	Death of an Inmate/Notification of Inmate Family in Case of Serious Injury, Critical Medical Emergency, Major Surgery or Death	KSR 10-01-08 Unit D - Safekeepers and Pretrial Contract Hold Status Inmates
KSR 08-00-10	Hazardous Chemicals and Material Safety Data Sheet	KSR 10-01-09 Unit D - Hold Ticket Residents
[KSR 09-00-04 Horizontal Gates/Box 1 Entry and Exit Procedure		KSR 10-01-11 Segregation Unit - Behavior Problem Control
		KSR 10-01-13 Segregation Unit - Property Room Access
		KSR 10-02-01 Department of Corrections Division of Mental Health's Intensive Services Transitional Program: Staffing Pattern, Staff Allocation, Position Description, Staff Selection, Training, Time and Attendance
		KSR 10-02-02 Unit E Designated Staff Visits
		KSR 10-02-03 Unit E-1 Convalescent Care
		KRS 10-02-04 Department of Corrections Division of Mental Health's Intensive Services Transitional Program: General Operating Procedures
		KSR 11-00-01 Meal Planning for the General Population
		KSR 11-00-02 Special Diets
		KSR 11-00-03 Food Service Inspections
		KSR 11-00-04 Dining Room Rules and Dress Code for Inmates
		KSR 11-00-06 Health Standards/Regulations for Food Service Employees
		KSR 11-00-07 Early Chow Line Passes for Medically Designated Inmates
		KSR 12-00-01 Inmate Summer Dress Regulations
		KSR 12-00-03 State Items Issued to Inmates
		KSR 12-00-05 Sanitation Policy and Standards
		KSR 12-00-07 Regulations for Inmate Barbershop
		KSR 12-00-09 Treatment of Inmates with Body Lice
		KSR 13-00-02 Hospital Operations, Rules and Regulations
		KSR 13-00-03 Medication for Inmates Leaving Institution Grounds
		KSR 13-00-04 Medical and Dental Care
		KSR 13-00-05 Medical Records
		KSR 13-00-08 Institutional Laboratory Procedures
		KSR 13-00-09 Institutional Pharmacy Procedures
		KSR 13-00-10 Requirements for Medical Personnel
		KSR 13-00-11 Health Evaluation
		KSR 13-00-12 Vision Care/Optomety Services
		KSR 13-00-14 Periodic Health Examinations for Inmates
		KSR 13-00-15 Medical Alert System

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KSR 13-00-16 Suicide Prevention and Intervention Program
 KSR 13-00-17 Special Care
 KSR 13-02-01 Mental Health Services
 KSR 13-02-02 Mentally Retarded Inmates
 KSR 13-02-03 Suicide Prevention and Intervention Program
 KSR 13-02-04 Department of Corrections Division of Mental Health's Intensive Services Transitional Program: Program Description
 KSR 13-02-05 Access to Intensive Services Programs Operated at Kentucky State Reformatory by the Division of Mental Health
 KSR 14-00-01 Inmate Rights
 KSR 14-00-02 Americans with Disabilities Act Inmate Program Access
 KSR 14-00-04 Inmate Grievance Procedure
 KSR 15-00-02 Regulations Prohibiting Inmate Control or Authority Over Other Inmate(s)
 KSR 15-00-06 Inmate I.D. Cards
 KSR 15-00-07 Inmate Rules and Discipline - Adjustment Committee Procedures
 KSR 15-00-08 Firehouse Living Area
 KSR 15-00-09 Smoking and No Smoking Areas for Inmates and Staff
 KSR 15-00-10 Program Services for Special Housing Placement
 KSR 15-01-01 Operational Procedures and Rules and Regulations for Unit A, B & C: Functions of Assigned Personnel
 KSR 15-01-02 Operational Procedures and Rules and Regulations for Unit A, B, & C: Staff Operational Procedures
 KSR 15-01-03 Operational Procedures and Rules and Regulations for Unit A, B & C: Inmate Rules and Regulations
 KSR 15-01-04 Operational Procedures and Rules and Regulations for Unit A, B & C: Institutional Medical and Fire Safety Service: Unit Application
 KSR 15-01-05 Operational Procedures Rules and Regulations for Unit A, B, & C: Institutional Inmate Services
 KSR 15-01-06 Operational Procedures and Rules and Regulations for Unit A, B & C: Inmate Honor Housing Criteria and Regulations
 KSR 16-00-02 Inmate Correspondence and Mailroom Operations
 KSR 16-00-03 Inmate Access to Telephones
 KSR 16-01-01 Visiting Regulations [(Amended 3/13/96)]
 KSR 16-01-02 Lawn Visit Procedure and Regulations [(Amended 3/13/96)]
 KSR 16-01-03 Night Visit Regulations
 KSR 17-00-05 Assessment and Orientation, Consent Decree Notification to Inmates
 KSR 17-00-07 Inmate Personal Property
 KSR 17-00-08 Repair of Inmate Owned Appliances by Outside Dealers
 KSR 18-00-04 Intratransfers, Identification Department, Departure- Admission and Discharge
 KSR 18-00-05 Transfer of Residents to Kentucky Correctional Psychiatric Center, and Referral Procedure for Residents Adjudicated Guilty but Mentally Ill
 KSR 18-00-06 Classification
 KSR 18-00-07 Kentucky State Reformatory Placement Committee
 KSR 19-00-01 Inmate Work Incentives
 KSR 19-00-02 On-the-job Training Program
 KSR 19-00-03 Safety Inspections of Inmate Work Assignment Locations
 KSR 20-00-01 Technical and Adult Basic Level Learning Center Programs
 KSR 20-00-04 Criteria for Participation in A College Program
 KSR 20-00-06 English as a Second Language
 KSR 21-00-01 Legal Aide Office and Inmate Law Library Services and Supervision
 KSR 21-00-02 Inmate Library Services

KSR 21-00-03 Library Services for Unit D
 KSR 22-00-03 Inmate Organizations
 KSR 22-00-07 Inmate Magazine
 KSR 22-00-08 Privilege Trips
 KSR 23-00-02 Chaplain's Responsibility and Inmate Access to Religious Representatives
 KSR 23-00-03 Religious Programming
 KSR 24-00-02 Substance Abuse and Chemical Dependency Program
 KSR 25-00-01 Discharge of Inmates to Hospital or Nursing Home
 KSR 26-00-01 Volunteer Services Program

DOUG SAPP, Commissioner

TAMELA BIGGS, Staff Attorney

APPROVED BY AGENCY: November 4, 1997

FILED WITH LRC: November 13, 1997 at 1 p.m.

PUBLIC HEARING: Pursuant to KRS 197.025, policies governed by these administrative regulations shall not be accessible to the public or inmates. Therefore, a public hearing is not required and will not be scheduled.

REGULATORY IMPACT ANALYSIS

Contact person: Kenneth Vaughan, Procedures Officer

(1) Type and number of entities affected: 533 employees of the correctional institutions, 1451 inmates, and all visitors to state correctional institutions.

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

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented: None

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented: None

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

1. First year following implementation: None

2. Second and subsequent years: None

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: None

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: Policy revisions.

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

(5) Source of revenue to be used for implementation and enforcement of administrative regulation is the funds budgeted for this 1994-1996 biennium.

(6) Economic impact, including effects of economic activities arising from administrative regulation, on:

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

(b) Kentucky: None

(7) Assessment of alternative methods; reasons why alternatives were rejected: None

(8) Assessment of expected benefits:

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

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

(c) If detrimental effect would result, explain detrimental effect: N/A

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

(a) Necessity of proposed administrative regulation if in conflict: N/A

(b) If in conflict, was effort made to harmonize the proposed

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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 6:040. Kentucky State Penitentiary.

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 Kentucky State Penitentiary.

Section 1. (1)(a) Kentucky State Penitentiary policies and procedures, November 12 [~~September 15~~], 1997 are incorporated by reference.

(b) There will be no public hearing on these policies and procedures as they are secured policies under the provisions of KRS 197.025 which states that such policies shall not be accessible to the public or inmates. [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) Kentucky State Penitentiary policies and procedures include:

KSP 01-02-01	Public Information and Media Communications
KSP 020000-15	Legal Assistance
KSP 02-01-01	Inmate Commissary Program
KSP 02-08-01	Inventory Records and Control
KSP 02-11-01	Requisition and Purchase of Supplies and Equipment [(Amended 9/15/97)]
KSP 02-12-01	Inmate Personal Funds [(Amended 9/15/97)]
KSP 05-02-01	Management Information System
KSP 06-01-01	Inmate Records
[KSP 09-08-01	Searches and Preservation of Evidence (Deleted 11/12/97)]
KSP 10-02-01	Special Management Units: Assignment, Classification Review and Release
KSP 10-02-05	Special Security Unit
KSP 10-04-01	Special Needs Inmates
KSP 11-03-01	Therapeutic Diets
KSP 11-06-01	Food Service Inspections
KSP 120000-11	Religious Services - Staffing
KSP 120000-18	Religious Services - Religious Programming
KSP 120000-20	Marriage of Inmates
KSP 13-01-01	Pharmacy Procedures
KSP 13-02-01	Hospital Services
KSP 13-02-02	Sick Call

KSP 13-02-03	Health Evaluations
KSP 13-02-04	Emergency Medical Procedure
KSP 13-02-05	Consultations
KSP 13-02-08	Medical Records
KSP 13-02-09	Psychiatric and Psychological Services
KSP 13-02-11	Psychological and Psychiatric Treatment Upon Release
KSP 13-02-12	Dental Services for Special Management Units
KSP 13-02-13	Optometric Services
KSP 14-03-01	Marriage of Inmates
KSP 14-04-01	Legal Services
KSP 14-06-01	Inmate Grievance Procedure
KSP 15-01-01	Inmate Grooming and Dress Code
KSP 15-03-01	Award of Meritorious Good Time
KSP 15-06-01	Adjustment Procedures [(Amended 9/15/97)]
KSP 16-01-01	Visiting Program [(Amended 9/15/97)]
KSP 16-02-01	Inmate Correspondence
KSP 16-03-02	Inmate Telephone Access
KSP 16-04-01	Inmate Packages
KSP 17-01-01	Inmate Personal Property
KSP 17-01-02	Disposition of Unauthorized Property
KSP 17-01-03	Procedures for Providing Clothing, Linens and Other Personal Items
KSP 17-01-04	Property Room, Clothing Storage and Property Inventory Control
KSP 18-01-01	General Guidelines and Functions of the Classification Committee
KSP 18-01-02	Functions of the Classification Committee
KSP 18-06-01	Classification Document
KSP 18-10-01	Parole Progress Report
KSP 18-11-01	Transfers to Kentucky Correctional Psychiatric Center (KCPC)
KSP 18-15-01	Protective Custody Unit
KSP 19-04-01	Inmate Work Programs: Safety Inspections of Inmate Work Locations
KSP 19-04-02	Unit Classification Committee: Inmate Work Assignments
KSP 19-05-01	Correctional Industries
KSP 20-04-01	Educational Programs
KSP 22-04-01	Arts and Crafts Program
KSP 25-04-01	Inmate Furloughs
KSP 25-08-01	Extended Furloughs
KSP 25-10-01	Discharge of Inmates by Shock Probation

DOUG SAPP, Commissioner

TAMELA BIGGS, Staff Attorney

APPROVED BY AGENCY: November 4, 1997

FILED WITH LRC: November 13, 1997 at 1 p.m.

PUBLIC HEARING: Pursuant to KRS 197.025, policies governed by these administrative regulations shall not be accessible to the public or inmates. Therefore, a public hearing is not required and will not be scheduled.

REGULATORY IMPACT ANALYSIS

Contact person: Barry Banister, Procedures Officer

(1) Type and number of entities affected: 322 employees of the correctional institutions, 827 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:

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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 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, November 12 [August 14], 1997, are incorporated by reference.

(b) There will be no public hearing on these policies and procedures as they are secured policies under the provisions of KRS

197.025 which states that such policies shall not be accessible to the public or inmates. [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
- FCDC 01-09-01 Organization and Assignment of Responsibilities
- FCDC 02-02-01 Inventory Control
- FCDC 02-09-01 Inmate Account
- FCDC 02-10-01 Fiscal Management and Control
- FCDC 02-11-01 Fiscal Management: Accounting Procedures
- FCDC 02-12-01 Fiscal Management: Checking Accounts
- FCDC 02-13-01 Purchasing and Receiving [~~(Amended 8/14/97)~~]
- 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 (Deleted 11/12/97)]~~
- ~~FCDC 09-03-01 Control and Accountability of Flammable, Toxic, Gaseous and Other Hazardous Materials (Deleted 11/12/97)]~~
- FCDC 09-06-08 Searches and Contraband Procedures: Disposition of Contraband
- 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)~~]
- FCDC 12-04-01 Safety and Sanitation Practices and Inspections [~~(Amended 8/14/97)~~]
- FCDC 13-01-01 Use of Pharmaceutical Products [~~(Amended 8/14/97)~~]
- FCDC 13-01-02 Medical Emergencies and Medical Psychiatric Transfers
- FCDC 13-01-03 Informed Consent
- FCDC 13-02-01 Inmate Medical Screenings and Health Evaluations
- FCDC 13-03-01 Psychiatric and Psychological Services
- FCDC 13-03-02 Parental Administration of Medications and Use of Psychotropic Drugs [~~(Amended 8/14/97)~~]
- FCDC 13-05-01 Family Notification: Serious Illness, Injury, Major Surgery or Death
- FCDC 13-06-01 Chronic and Convalescent Care
- FCDC 13-08-01 Sick Call and Physician's Weekly Clinic
- FCDC 13-09-01 Management of Serious Clinic and Infectious Diseases
- FCDC 13-10-01 Treatment Protocol Regarding First-Aid Procedures, Routine Health Care
- FCDC 13-11-01 Health Education: Provision of Special Health Care Needs
- FCDC 13-13-01 Physicians Referrals
- FCDC 13-14-01 Health Records
- FCDC 13-15-01 Routine and Emergency Dental Appointments
- FCDC 13-16-01 Routine and Emergency Eye Examinations
- FCDC 14-01-01 Prohibiting Inmate Authority Over Other Inmates
- FCDC 14-02-01 Inmate Grievance System
- FCDC 14-03-01 Inmate Rights and Responsibilities
- FCDC 14-04-01 Legal Services Program
- FCDC 15-01-01 Good Time Credits
- FCDC 15-01-02 Restoration of Forfeited Good Time
- FCDC 15-03-01 Due Process and Disciplinary Procedure [~~(Amended 8/14/97)~~]

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FCDC 15-04-01 Detention Orders and Protective Custody Requests [(Amended 8/14/97)]
 FCDC 16-01-01 Visiting [(Amended 8/14/97)]
 FCDC 16-02-01 Inmate Correspondence
 FCDC 16-03-01 Inmate Access to Telephones
 FCDC 16-04-01 Inmate Packages
 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)]
 FCDC 18-01-01 Inmate Classification and Review [(Amended 8/14/97)]
 FCDC 19-01-01 Security and Operation of the Governmental Services Program
 FCDC 19-02-01 Inmate Work Programs
 FCDC 20-01-01 Academic and Vocational Education
 FCDC 22-01-01 Privilege Trips
 FCDC 22-01-03 Shopping Trips
 FCDC 22-02-01 Recreation and Inmate Activities
 FCDC 23-01-01 Religious Services
 FCDC 24-01-01 Social Services Program [(Amended 8/14/97)]
 FCDC 24-02-01 Substance Abuse Programs
 FCDC 25-01-01 Escorted Leaves
 FCDC 25-03-01 Release Preparation Program

DOUG SAPP, Commissioner

TAMELA BIGGS, Staff Attorney

APPROVED BY AGENCY: November 4, 1997

FILED WITH LRC: November 13, 1997 at 1 p.m.

PUBLIC HEARING: Pursuant to KRS 197.025, policies governed by these administrative regulations shall not be accessible to the public or inmates. Therefore, a public hearing is not required and will not be scheduled.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Ron Rice, Procedures Officer

(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.

JUSTICE CABINET

Department of Corrections

Division of Adult Institutions

(Amendment)

501 KAR 6:110. Roederer Correctional Complex.

RELATES TO: KRS Chapters 196, 197, 439

STATUTORY AUTHORITY: KRS 196.035, 197.020, 439.470, 439.590, 439.640

NECESSITY, FUNCTION, AND CONFORMITY: KRS 196.035, 197.020, 439.470, 439.590, and 439.640 authorizes 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.

Section 1. Incorporation by Reference. (1)(a) Roederer Correctional Complex policies and procedures, November 12 [July 11], 1997, are incorporated by reference.

(b) There will be no public hearing on these policies and procedures as they are secured policies under the provisions of KRS 197.025 which states that such policies shall not be accessible to the public or inmates. (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) Roederer Correctional Complex policies and procedures include:

RCC 01-06-01	Inmate Access to and Communication with RCC Staff
RCC 01-08-01	Public Information and News Media Access
RCC 01-10-01	RCC Cooperation with Outside Bodies Including Courts, Governmental Legislative, Executive, and Community Agencies
RCC 02-01-01	Fiscal Management: Organization [(Amended 7/11/97)]
RCC 02-01-02	Fiscal Management: Accounting Procedures
RCC 02-01-03	Fiscal Management: Agency Funds

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RCC 02-01-04	Fiscal Management: Insurance	RCC 13-07-04	Self-administered Medication Program
RCC 02-02-01	Fiscal Management: Budget	RCC 13-09-01	Notification of Inmate Family in the Event of Serious Illness, Surgery, or Inmate Death
RCC 02-02-02	Inmate Control of Personal Funds [(Amended 7/11/97)]	RCC 13-10-01	Health Education and Special Health Programs [(Amended 7/11/97)]
RCC 02-02-03	Storage and Disposition of Monies received on Weekends, Holidays, and Between 4 p.m. and 8 a.m. Weekdays [(Amended 7/11/97)]	RCC 13-11-01	Informed Consent
RCC 02-02-05	Inmate Canteen Services [(Amended 7/11/97)]	RCC 13-12-01	Mental Health/Provision of Psychiatric Services by KCPC
RCC 02-03-01	Fiscal Management: Audits [(Amended 7/11/97)]	RCC 13-12-02	Transfer of Inmates to Kentucky Correctional Psychiatric Center
RCC 02-04-01	Purchase Orders [(Amended 7/11/97)]	RCC 13-13-01	Identification of Special Needs Inmates
RCC 02-04-02	Processing of Invoices	RCC 13-15-01	Medical Restraints
RCC 02-06-01	Property Inventory	RCC 13-16-01	Specialized Health Services
RCC 04-01-01	Employee Training and Development	RCC 13-17-01	Vision Care and Optometry Services
RCC 04-01-02	First Aid and CPR Training	RCC 13-18-01	Infection Control
RCC 06-01-01	Offender Records	RCC 14-01-01	Inmate Rights and Responsibilities [(Amended 7/11/97)]
RCC 06-03-01	Records Release of Information	RCC 16-01-01	Inmate Visiting
RCC 06-03-02	Storage of Expunged Records	RCC 16-01-03	Extended and Special Visits [(Amended 7/11/97)]
RCC 06-03-04	Access to Psychological and Psychiatric Reports	RCC 16-02-01	Telephone Communications
RCC 06-04-01	Court Trips [(Amended 7/11/97)]	RCC 16-03-01	Mail Regulations
RCC 06-04-02	Receipt of Order of Appearance	RCC 17-01-01	Assessment/Orientation Procedure for Intrasystem Transfers
RCC 08-01-01	Fire Prevention (Amended 7/11/97) (Deleted 11/12/97)	RCC 17-03-01	Inmate Personal Property and Property Control [(Amended 7/11/97)]
RCC 08-08-01	Control and Use of Flammable, Toxic, and Caustic Materials (Amended 7/11/97) (Deleted 11/12/97)	RCC 17-05-02	Housing Unit Assignment Assessment/Classification Center
RCC 09-04-03	Duties and Responsibilities of the Fire Safety Officer (Deleted 11/12/97)	RCC 17-05-03	Notifying Inmate's Families of Admission and Procedures for Mail and Visiting
RCC 09-06-01	Search Policy/Disposition of Contraband (Deleted 11/12/97)]	RCC 17-05-04	Assessment Center Operations Rules and Regulations
RCC 11-01-01	Food Services: General Guidelines [(Amended 7/11/97)]	RCC 17-05-05	Assessment Center Operations and Reception Programs
RCC 11-02-01	Food Service: Security [(Amended 7/11/97)]	RCC 18-01-01	Institutional Classification Committee
RCC 11-03-01	Dining Room Guidelines [(Amended 7/11/97)]	RCC 19-01-01	Job Assignments
RCC 11-04-01	Food Service: Meals	RCC 20-01-01	Academic Education Program [(Amended 7/11/97)]
RCC 11-04-02	Food Service: Menu, Nutrition and Special Diets	RCC 20-01-03	Vocational Horticulture Program
RCC 11-05-02	Health Requirements of Food Handlers	RCC 21-01-01	Library Services [(Amended 7/11/97)]
RCC 11-06-01	Food Service: Inspections and Sanitation [(Amended 7/11/97)]	RCC 22-01-01	Recreation and Inmate Activities [(Amended 7/11/97)]
RCC 11-07-01	Food Service: Purchasing, Storage and Farm Products	RCC 22-03-01	Inmate Clubs and Organizations [(Amended 7/11/97)]
RCC 12-01-01	Sanitation, Living Conditions Standards, Clothing Issues	RCC 23-01-01	Religious Services [(Amended 7/11/97)]
RCC 12-01-02	Bed Areas	RCC 24-01-01	Social Services and Counseling [(Amended 7/11/97)]
RCC 12-01-03	General Guidelines for Living Units	RCC 25-04-02	Parole Eligibility Dates [(Amended 7/11/97)]
RCC 12-02-01	Issuance of Clean Laundry and Receiving of Dirty Laundry	RCC 25-05-01	Inmate Discharge Procedures [(Amended 7/11/97)]
RCC 12-03-01	Personal Hygiene Items: Issuance and Placement Schedule		
RCC 12-03-02	Barber Shop Services and Equipment Control		
RCC 12-04-01	Institutional Inspections		
RCC 12-05-02	Use of Noncombustible Receptacle		
RCC 12-06-01	Insect and Vermin Control		
RCC 13-01-01	Organization of Health Services		
RCC 13-02-01	Health Maintenance Services: Sick Call and Pill Call [(Amended 7/11/97)]		
RCC 13-03-01	Dental Procedures and Sick Call		
RCC 13-04-01	Preliminary Health Evaluation and Establishment of Inmate Medical		
RCC 13-04-02	Medical Intake Processing for Inmates in Hold Status [(Added 7/11/97)]		
RCC 13-05-02	Licensure and Training Standards for Medical Department [(Amended 7/11/97)]		
RCC 13-06-01	Suicide Prevention and Intervention Program		
RCC 13-06-03	Emergency Medical and Dental Care Services [(Amended 7/11/97)]		
RCC 13-07-01	Health Records		
RCC 13-07-03	Use of Pharmaceutical Products [(Amended 7/11/97)]		

DOUG SAPP, Commissioner

TAMELA BIGGS, Staff Attorney

APPROVED BY AGENCY: November 4, 1997

FILED WITH LRC: November 13, 1997 at 1 p.m.

PUBLIC HEARING: Pursuant to KRS 197.025, policies governed by these administrative regulations shall not be accessible to the public or inmates. Therefore, a public hearing is not required and will not be scheduled.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Sheila Kamrani, Procedures Officer

(1) Type and number of entities affected: 171 employees of the correctional institutions, 657 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

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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 6:120. Blackburn Correctional Complex.

RELATES TO: KRS Chapters 196, 197, 439

STATUTORY AUTHORITY: KRS 196.035, 197.020, 439.470, 439.590, 439.640

NECESSITY, FUNCTION, AND CONFORMITY: KRS 196.035, 197.020, 439.470, 439.590, and 439.640 authorize the Justice Cabinet and Department of Corrections 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 by the American Correctional Association. This administrative regulation establishes the policies and procedures for the Blackburn Correctional Complex.

Section 1. Incorporation by Reference. (1)(a) "Blackburn Correctional Complex Policies and Procedures", November 12 [May 14], 1997, is incorporated by reference.

(b) There will be no public hearing on these policies and procedures as they are secured policies under the provisions of KRS 197.025 which states that such policies shall not be accessible to the public or inmates. [It may be inspected, copied, or obtained at the Office of the General Counsel, Department of Corrections, State Office Building, 501 High Street, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.]

(2) Blackburn Correctional Complex Policies and Procedures:

BCC 01-07-01	Extraordinary Occurrence Reports [(Amended 5/14/97)]
BCC 01-09-01	Legal Assistance for Staff
BCC 01-11-01	Roles of Consultants, Contract Employees, Volunteers and Employees of Other Agencies
BCC 01-13-01	Relationships with Public, Media, and Other Agencies
BCC 01-13-02	Public Information and News Media Access
BCC 01-15-01	Internal Affairs Office
BCC 01-16-01	Tours of Blackburn Correctional Complex
BCC 01-19-01	Inmate Access to BCC Staff [(Amended 5/14/97)]
BCC 02-01-01	Inmate Canteen
BCC 02-02-01	Fiscal Responsibility
BCC 02-02-02	Fiscal Management: Accounting Procedures
BCC 02-02-03	Fiscal Management: Checks
BCC 02-02-04	Fiscal Management: Budget
BCC 02-02-05	Fiscal Management: Insurance
BCC 02-02-06	Fiscal Management: Audits
BCC 02-04-01	Billing Method for Health Services Staff Paid by Personal Service Contract
BCC 02-05-01	Property Inventory
BCC 02-06-01	Purchasing
BCC 02-07-01	Inmate Personal Accounts
BCC 04-02-01	Firearms Training
BCC 04-03-01	Educational Assistance Program
BCC 05-01-01	Inmate Participation in Authorized Research
BCC 06-02-01	Records - Release of Information
BCC 06-02-02	Offender Records
BCC 06-03-01	Reporting Inmate Misconduct Following Favorable Recommendation by the Parole Board
BCC 08-02-01	Natural Disaster Plan (Tornado)
BCC 08-03-01	Emergency Preparedness Plan Manual
BCC 08-04-01	Fire Safety Plan, Drills and Related Staff Duties [(Amended 5/14/97)]
BCC 08-04-02	Immediate Release of Inmates from Locked Areas
BCC 08-05-01	Duties of Fire Safety and Sanitation Officer [(Amended 5/14/97)]
BCC 08-06-01	Storage Control and Accountability of Flammable, Toxic, Caustic and Other Hazardous Materials [(Amended 5/14/97)]
[BCC 09-01-01]	Inmate Weather/Emergency Condition Operation (Deleted 11/12/97)
BCC 09-02-01	Restricted Areas (Deleted 11/12/97)
BCC 09-02-02	Inmate Pass System to Restricted Areas (Deleted 11/12/97)
BCC 09-02-03	Regulation of Inmate Movement (Deleted 11/12/97)
BCC 09-02-04	Radio-Escorted Yard Movement During Daylight Savings Time (November 1 - April 30) (Deleted 11/12/97)
BCC 09-03-01	Inmate Identification (Deleted 11/12/97)
BCC 09-04-02	Complex Entry & Exit (Deleted 11/12/97)
BCC 09-05-01	Key Control (Deleted 11/12/97)
BCC 09-06-02	Transportation to Courts (Deleted 11/12/97)
BCC 09-07-01	Drug Abuse and Intoxicants Testing (Deleted 11/12/97)

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BCC 09-08-02	Use of Restraints	BCC 14-04-01	Inmate Rights and Responsibilities [(Amended 5/14/97)]
BCC 09-09-01	Population Counts and Count Documentation (Deleted 11/12/97)	BCC 14-06-01	Legal and Support Services for Inmates [(Amended 5/14/97)]
BCC 09-10-03	Development of Institutional Post Orders (Deleted 11/12/97)	BCC 15-02-02	Room Assignment
BCC 09-14-01	Prohibiting Inmate Authority Over Other Inmates (Deleted 11/12/97)	BCC 15-03-01	Rules and Regulations for Dormitories
BCC 09-15-01	Search Policy/Disposition of Contraband (Deleted 11/12/97)	BCC 15-05-01	Extra Duty Assignments [(Amended 5/14/97)]
BCC 09-16-01	Security Activity Logs (Deleted 11/12/97)	BCC 16-01-01	Inmate Furloughs [(Amended 5/14/97)]
BCC 09-17-01	Institutional Supervisor Inspections (Deleted 11/12/97)	BCC 16-02-01	Inmate Visiting
BCC 09-18-01	Use of State Vehicles and Staff Owned Vehicles (Deleted 11/12/97)	BCC 16-03-02	Outgoing Inmate Packages
BCC 09-19-01	Duties and Responsibilities of the Institutional Captain (Deleted 11/12/97)	BCC 16-03-03	Inmate Correspondence [(Amended 5/14/97)]
BCC 09-20-01	Inmate Death (Deleted 11/12/97)	BCC 17-02-01	Authorized Inmate Personal Property
BCC 09-21-01	Tool Control (Deleted 11/12/97)	BCC 17-03-01	Processing of New Inmates From Local Jails
BCC 09-22-01	Emergency Communication System (Deleted 11/12/97)]	BCC 18-01-01	Classification: Institutional Classification and Re-classification
BCC 10-01-01	Special Management Inmates	BCC 18-02-01	Racial Balance in Living Areas
BCC 10-01-02	Temporary Segregation Holding Area [(Amended 5/14/97)]	BCC 19-01-01	Inmate Work Programs
BCC 11-01-01	Menu and Special Diets	BCC 19-02-01	Classification of Inmates to Governmental Service Program [(Amended 5/14/97)]
BCC 11-02-01	Food Service: Inspection, Health Protection and Sanitation	BCC 19-03-01	Correctional Industries [(Amended 5/14/97)]
BCC 11-03-01	Food Service: Meals	BCC 20-01-01	Academic and Vocational School
BCC 11-04-01	Dining Room Guidelines	BCC 20-04-01	Educational Program Evaluation
BCC 11-05-01	Food Service Security: Knife & Other Sharp Instrument and Utensil Control	BCC 20-05-01	Educational Program Planning
BCC 11-06-01	Purchasing, Storage and Farm Products [(Amended 5/14/97)]	BCC 20-06-01	Academic and Vocational Curriculum
BCC 11-07-01	Food Service Operations Manual	BCC 21-01-01	Library Services
BCC 12-02-01	Personal Hygiene Items [(Amended 5/14/97)]	BCC 21-01-02	Audio or Video Tape Court Transcripts
BCC 12-02-02	Clothing, Linens, Bedding Issuance and Shower Facilities	BCC 22-01-01	Arts and Crafts/Production and Sale of Items
BCC 12-05-01	Barber Shop Services	BCC 22-02-01	Privileged Trips
BCC 12-06-01	BCC Housekeeping Plan	BCC 22-03-01	Recreational Employees
BCC 13-01-01	Sick Call and Pill Call	BCC 22-04-01	Recreation and Inmate Activities
BCC 13-02-01	Administration and Authority for Health Services	BCC 22-04-02	Inmate Clubs and Organizations [(Amended 5/14/97)]
BCC 13-03-01	Provisions of Health Care Delivery	BCC 22-04-03	Conducting Inmate Organizational Meetings and Programs [(Amended 5/14/97)]
BCC 13-04-01	Licensure and Training Standards	BCC 22-04-04	Recreation Program Availability [(Amended 5/14/97)]
BCC 13-05-01	Medical Alert System [(Amended 5/14/97)]	BCC 22-04-05	Supervision of Leisure-time Craft Club Activities and Materials
BCC 13-06-01	Health Care Practices	BCC 22-06-01	Music Club
BCC 13-07-01	Emergency Medical Care Plan	BCC 22-08-01	Unit Recreation Program [(Amended 5/14/97)]
BCC 13-07-02	Emergency and Specialized Health Services	BCC 22-09-01	Use of Inmates in Recreation Programs
BCC 13-07-03	Immediate Medical Treatment for Person's Injured by Weapon or Chemical Agent	BCC 23-01-01	Religious Services [(Amended 5/14/97)]
BCC 13-08-01	Inmate Health Screening and Evaluation	BCC 24-01-01	Duties and Responsibilities of Classification and Treatment Officers [(Amended 5/14/97)]
BCC 13-09-01	Prohibition on Medical Experimentation	BCC 24-02-01	Duties and Responsibilities of the Unit Director and Assistant to the Unit Director [(Amended 5/14/97)]
BCC 13-10-01	Dental Services	BCC 24-03-01	Social Services
BCC 13-11-01	Suicide Prevention and Intervention Program	BCC 25-01-01	Inmate Check Out Procedure
BCC 13-12-01	Use of Pharmaceutical Products	BCC 25-05-01	Supplemental Parole Progress Reports
BCC 13-12-02	Parenteral Administration of Medications and Use of Psychotropic Drugs	BCC 26-01-01	Citizen Involvement and Volunteer Service Program.
BCC 13-13-01	Inmate Health Education		
BCC 13-14-01	Management of Serious and Infectious Diseases		
BCC 13-15-01	Informed Consent		
BCC 13-16-01	Health Records		
BCC 13-17-01	Notification of Inmate Family in the Event of Serious Illness, Injury or Surgery		
BCC 13-19-01	Physicians Referrals/Continuity of Care		
BCC 13-20-01	Chronic and Convalescent Care		
BCC 13-22-01	Psychiatric and Psychological Services, Handling of Mentally Retarded Inmates and Transfers		
BCC 14-01-01	Office of Public Advocacy Attorney Visits		
BCC 14-02-01	Law Library		

DOUG SAPP, Commissioner

TAMELA BIGGS, Staff Attorney

APPROVED BY AGENCY: November 4, 1997

FILED WITH LRC: November 13, 1997 at 1 p.m.

PUBLIC HEARING: Pursuant to KRS 197.025, policies governed by these administrative regulations shall not be accessible to the public or inmates. Therefore, a public hearing is not required and will not be scheduled.

REGULATORY IMPACT ANALYSIS

Contact person: Betty Ann Walker, Procedures Officer

(1) Type and number of entities affected: 92 employees of the correctional institution, 403 inmates, and all visitors to state correctional institutions.

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(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

(4) 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 6:170. Green River Correctional Complex.

RELATES TO: KRS Chapters 196, 197, 439

STATUTORY AUTHORITY: 196.035, 197.020, 439.470, 439.590, 439.640

NECESSITY, FUNCTION, AND CONFORMITY: KRS 196.035, 197.020, 439.470, 439.590, and 439.640 authorize the Justice Cabinet and Department of Corrections 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 Green River Correctional Complex.

Section 1. Incorporation by Reference. (1)(a) Green River Correctional Complex Policies and Procedures, November 12 [October 14], 1997, is incorporated by reference.

(b) There will be no public hearing on these policies and procedures as they are secured policies under the provisions of KRS 197.025 which states that such policies shall not be accessible to the public or inmates. [It may be inspected, copied, or obtained at the Office of the General Counsel, Department of Corrections, State Office Building, 501 High Street, Frankfort, Kentucky 40601, Monday through Friday 8 a.m. to 4:30 p.m.]

(2) Green River Correctional Complex Policies and Procedures include:

GRCC 02-06-01 Inmate Canteen

GRCC 02-07-01 Inmate Personal Funds

~~[GRCC 08-03-01 Escape Plan (Deleted 11/12/97)]~~

~~GRCC 08-05-01 Emergency Squad: Selection, Training and Evaluation (Deleted 11/12/97)~~

~~GRCC 08-06-01 Response Units (Deleted 11/12/97)]~~

GRCC 09-02-01 Drug Abuse Testing

~~[GRCC 09-03-01 Procedure for Operation in Event of Dense Fog, Inclement Weather or Loss of Power (Deleted 11/12/97)]~~

~~GRCC 09-04-01 Inmate Death (Deleted 11/12/97)~~

~~GRCC 09-06-01 Entry and Exit Procedures (Deleted 11/12/97)]~~

GRCC 09-09-01 Contraband Control: Collection, Preservation and Disposition of Contraband and Identification of Physical Evidence

GRCC 10-01-01 Special Management Unit ~~[(Amended 10/14/97)]~~

GRCC 11-01-01 Food Service Guidelines

GRCC 11-02-01 Food Service: Security

GRCC 11-03-01 Dining Room Guidelines

GRCC 11-04-01 Food Service: Meals

GRCC 11-04-02 Food Service: Menu, Nutrition and Special Diets

GRCC 11-06-01 Health Requirements of Food Handlers

GRCC 11-07-01 Food Service: Inspections and Sanitation

GRCC 12-01-01 Clothing, Bedding, Hygiene Supplies and Barber Services

GRCC 13-01-01 Organization of Medical Services

GRCC 13-02-01 Medical Services: Sick Call, Physician's Clinics and Pill Call

GRCC 13-02-03 Continuing of Care: Health Evaluations, Intra-System Transfer and Individual Treatment Plans

GRCC 13-03-01 Use of Pharmaceutical Products ~~[(Amended 10/14/97)]~~

GRCC 13-04-01 Health Records

GRCC 13-04-02 Psychological and Psychiatric Reports

GRCC 13-05-01 Management of Serious and Infectious Diseases

GRCC 13-06-01 Mental Health Services

GRCC 13-07-01 Medical Restraints

GRCC 13-08-01 Eye Care

GRCC 13-09-01 Dental Care

GRCC 13-10-01 Transfers and Medical Profiles

GRCC 13-11-01 Informed Consent

GRCC 13-12-01 Infirmary Care

GRCC 13-13-01 Inmate Self-administration of Medication

GRCC 13-15-01 Health Education Program and Detoxification

GRCC 14-01-01 Inmate Rights and Responsibilities

GRCC 14-02-01 Legal Services Program

GRCC 15-01-01 GRCC Adjustment Program and Procedures

GRCC 16-01-01 Inmate Visiting ~~[(Amended 10/14/97)]~~

GRCC 16-02-01 Inmate Correspondence and Privilege Mail

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GRCC 16-02-02 Inmate Correspondence and Privileged Mail [~~Added 10/14/97~~]
GRCC 16-03-01 Inmate Telephone Communications
GRCC 16-04-01 Inmate Packages
GRCC 17-01-01 GRCC Inmate Property Control
GRCC 17-02-01 GRCC Inmate Receiving and Orientation Process
GRCC 17-03-01 Procedure for Sending Televisions to Outside Dealer for Repair
GRCC 18-01-01 Inmate Classification
GRCC 18-02-01 Meritorious Housing
GRCC 18-02-02 Meritorious Visitation Program
GRCC 19-01-01 Inmate Work Programs
GRCC 19-01-02 Unassigned Status
GRCC 20-01-01 Educational Programs
GRCC 21-01-01 Library Services
GRCC 22-01-01 Recreation Programs
GRCC 22-02-01 Inmate Organizations
GRCC 22-05-01 Inmate Photo Project
GRCC 23-02-01 Death or Hospitalization of an Inmate's Family Member and Notification of Inmates
GRCC 24-01-01 Social Services and Counseling Program
GRCC 25-01-01 Prerelease Program
GRCC 25-01-02 Inmate Release Process [~~Amended 10/14/97~~]
GRCC 25-02-01 Parole Hearing Procedure

DOUG SAPP, Commissioner
TAMELA BIGGS, Staff Attorney

APPROVED BY AGENCY: November 4, 1997

FILED WITH LRC: November 13, 1997 at 1 p.m.

PUBLIC HEARING: Pursuant to KRS 197.025, policies governed by these administrative regulations shall not be accessible to the public or inmates. Therefore, a public hearing is not required and will not be scheduled.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Michael R. Riley, Procedures Officer

(1) Type and number of entities affected: 213 employees of the correctional institutions, 614 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.

TRANSPORTATION CABINET (Amendment)

600 KAR 6:010. Definitions.

RELATES TO: KRS 45A.800 through 45A.835, 23 CFR 172, 48 CFR, 49 CFR 18, 23 USC

STATUTORY AUTHORITY: KRS 13A.100(1), 45A.800 through 45A.835, 23 CFR 172, 48 CFR, 49 CFR 18, 23 USC

NECESSITY, FUNCTION, AND CONFORMITY: This administrative regulation adopts the definitions to be used in all of the administrative regulations set forth in 600 KAR Chapter 6.

Section 1. Definitions. (1) "Award" means the presentation of an agreement or contract to a professional.

(2) "Cabinet" means the Kentucky Transportation Cabinet.

(3) "Change order" means as defined in KRS 45A.030(2).

(4) "Competitive negotiation" means as described in KRS 45A.085.

(5) "Consultant" means a firm which has been selected to perform engineering or related services for the cabinet as the prime firm in accordance with 600 KAR 6:060.

(6) "Continuous professional liability policy" means professional liability insurance coverage which is maintained without a gap in coverage in order to become and to remain prequalified with the Transportation Cabinet.

(7) "Contract" means as defined in KRS 45A.030(5).

(8) [(7)] "Contract modification" means as defined in KRS 45A.030(6).

(9) [(8)] "Cost per unit of work" means a price based on units when the extent of work cannot be defined but a cost of the work per unit can be determined in advance with reasonable accuracy.

(10) [(9)] "Cost plus a fixed fee" means a price based on the actual allowable cost of the work plus any preestablished fixed amount for operating margin.

(11) [(10)] "DBE" means a disadvantaged business enterprise as defined and certified in accordance with the provisions of 600 KAR 4:010.

(12) [(11)] "Direct salary" means the salary of persons directly involved with and chargeable to a specific project, e.g., engineering or draftsman time spent on a project.

(13) [(12)] "Firm" means an individual or other entity which offers

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professional engineering or related services.

(14) [(13)] "Lump sum" means a fixed price, including cost and operating margin, agreed upon between a consultant and cabinet for a group of tasks without a breakdown of individual values, i.e., a lot price.

(15) [(14)] "Modification" means a formal revision to the terms of a contract.

(16) [(15)] "Noncompetitive negotiation" means as described in KRS 45A.095.

(17) [(16)] "Overhead costs" means the indirect costs, including salaries and other costs, not chargeable to any specific project. These costs normally support the different projects in which a firm is involved, e.g., accounting, general maintenance and repair, building rent, utilities, furniture, etc.

(18) "Overhead submission packet" means a package of information containing a summary of the firm's overhead expense accounts, the direct labor and indirect labor rates, and direct costs of the items outlined in 600 KAR 6:080, Section 1 (3).

(19) "Prequalification" means the evaluation of professionals in which the cabinet considers such factors as financial capability, reputation, and management, in order to develop a list of professionals qualified to contract with the cabinet for professional engineering or related services.

(20) "Prequalification category" means a type of project for which professional engineering or related services are contracted.

(21) "Prime" means a consultant awarded a contract under 600 KAR 6:070 and who performs at least fifty (50) percent of the dollar value of the work for a project.

(22) [(17)] "Principal" means any individual who owns directly or indirectly more than ten (10) percent of the voting interest in a consulting firm or who is an officer of the firm (i.e., president, treasurer, vice president, secretary, or director).

(23) "Project-specific professional liability insurance" means separate professional liability coverage which provides noncancelable coverage for the duration of a specific project and continuing through a discovery period after construction is complete.

[(18)] "Proof of necessity" means the justification to employ consulting engineers, architects, appraisers, attorneys, consultants and others.

[(19)] "Prequalification" means the evaluation of professionals in which the cabinet considers such factors as financial capability, reputation, and management, in order to develop a list of professionals qualified to contract with the cabinet for professional engineering or related services.

[(20)] "Prequalification category" means a type of project for which professional engineering or related services are contracted.]

(24) [(21)] "Professional engineer" means an individual or firm licensed to practice engineering in the Commonwealth of Kentucky under KRS Chapter 322.

(25) [(22)] "Professional engineering or related services" means specialized engineering or related professional services performed by individuals, consultants, or other organizations of recognized technical competence, education or experience that are involved in the planning, design, construction, maintenance or operation of Kentucky's transportation systems.

(26) "Professional liability policy" means claims-made insurance coverage for professional engineering or related services which indemnifies a firm and past or present partners, officers, directors, stockholders or employees while acting within the scope of their duties for the firm against the following:

(a) A negligent act;

(b) An error or omission in performing a professional service; or

(c) Failure to provide a service in accordance with standard of care.

(27) [(23)] "Professional services" means specialized services performed by individuals or consultants of recognized technical competence.

(28) [(24)] "Project" means an undertaking by the Transportation Cabinet as defined in KRS 45A.800(4).

(29) [(25)] "Project supervisor" means the director of the user division or person designated by the user division director to oversee the performance of a consultant to perform contracted services on a project.

(30) "Proof of necessity" means the justification to employ consulting engineers, architects, appraisers, attorneys, consultants and others.

(31) [(26)] "Proposal" means an offer made by a firm to the cabinet as a basis for negotiations for entering into a contract.

(32) [(27)] "Salary additives" means employer-paid fringe benefits including an employer portion of FICA, hospitalization, group life insurance, unemployment contributions to the state and other similar benefits.

(33) [(28)] "Scope of work" means all services and actions required of the consultant by the contract.

(34) [(29)] "Services" means as defined in KRS 45A.030(19).

(35) [(30)] "Six (6) year plan" means the document prepared by the Transportation Cabinet in accordance with the provisions of KRS 176.419 through 176.470.

(36) "Standard of care" means the ordinary and reasonable care required and established by expert testimony of what a reasonable and prudent professional would have done under the same or similar circumstances.

(37) [(31)] "Subconsultant" means a second consultant contracted to a prime consultant for the performance of work contracted by the cabinet to the prime consultant.

(38) [(32)] "Termination clause" means a contract clause which allows the cabinet to terminate, at its own discretion, the performance of work and to make settlement of the consultant's claims.

(39) [(33)] "User division" means as defined in KRS 45A.800(6).

(40) [(34)] "Work unit" means an item on a list of tasks which are required to be accomplished by the consultant in order to satisfactorily complete the scope of work.

J.M. YOWELL, P.E., State Highway Engineer

JAMES C. CODELL, III, Secretary

TODD SHIPP, Office of General Counsel

APPROVED BY AGENCY: October 16, 1997

FILED WITH LRC: October 17, 1997 at 11 a.m.

PUBLIC HEARING: A public comment hearing on this administrative regulation will be held on December 22, 1997 at 10 a.m. local prevailing time in the Transportation Cabinet, 4th Floor Hearing/Conference Room, 501 High Street, Frankfort, Kentucky 40622. Any person who intends to attend this meeting must in writing by December 15, 1997 so notify this agency. If no notification of intent to attend the hearing is received by this date, the hearing may be canceled. This hearing is open to the public. Any person who attends will be given the opportunity to comment on the administrative regulation. A transcript of the public comment hearing will not be made unless a written request for a transcript is made and then only at the requestor's expense. If you have a disability for which the Transportation Cabinet needs to provide accommodations, please notify us of your requirements by December 15, 1997. This request does not have to be in writing. If you do not wish to attend the public hearing, you may submit written comments on the administrative regulation. If the hearing is held, written comments will be accepted until the close of the hearing. If the hearing is canceled, written comments will be accepted until close of business on December 22, 1997. Send written notification of intent to attend the public comment hearing or written comments on the administrative regulation to: Sandra Pullen Davis, Staff Assistant, Transportation Cabinet, State Office Building 10-13, 501 High Street, Frankfort, Kentucky 40622, (502) 564-7650, Fax: (502) 564-5238.

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REGULATORY IMPACT ANALYSIS

Agency Contact Person: Sandra Pullen Davis, Staff Assistant

(1) Type and number of entities affected: There are 250 firms prequalified to perform professional engineering or related services each year. These are the same firms which provide proposals on projects and ultimately negotiate contracts.

(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: This administrative regulation only contains the definitions which are applicable to this entire chapter of administrative regulations, 600 KAR 6:010 -080. For the set of administrative regulations which, with very few changes, amend existing administrative regulations, there is an expense to each firm which averages \$300 to prepare and submit the required prequalification forms each year. In addition, a complete proposal for a particular project will also cost each firm making a proposal to the Transportation Cabinet approximately \$500 per proposal. With 250 firms prequalified each year the cost of prequalification to the industry is approximately \$75,000. Approximately 20 separate firms submit proposals on each project advertised by the Transportation Cabinet. With about 60 projects each year, there is a cost to the industry of about \$600,000 to prepare the proposals.

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

1. First year following implementation: While the administrative regulation specifies the specific forms which the firms are required to use to apply for prequalification or to submit a proposal, the process is mandated by KRS Chapter 45A. Through the amendments to this administrative regulation, 600 KAR 6:040, and 600 KAR 6:070, the Transportation Cabinet is adding an additional prequalification requirement of continuous professional liability insurance coverage in a minimum amount of \$1 million. The cost to individual firms will vary greatly depending on the size of the firm and the complexity of the projects for which they are prequalified. It is possible that a cost of \$300,000 will be incurred by the largest firms. However, it should be noted that many of the firms already carry professional liability insurance.

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

3. Additional factors increasing or decreasing costs: (note any effects upon competition): None

(3) Effects on the promulgating administrative body: The Transportation Cabinet is required to review the 250 applications for prequalification and 1200 proposals on projects each year. Not only is the entire staff of the Contract Negotiating Branch of Division of Professional Services constantly involved in this process, but also the user divisions are required to involve significant amounts of man-hours in the reviews and evaluations. Approximately 100 change orders are issued on these contracts each year. It is almost as time-consuming to negotiate a change order as the original contract. The amendments to the administrative regulation require the selection committee members to complete more forms certifying that the process required by KRS Chapter 45A have been carried out.

(a) Direct and indirect costs or savings: The annual budget for the Contract Negotiating Branch of the Division of Professional Services is \$300,000. At least double that cost is incurred collectively by the user divisions each year.

1. First year: The total cost to the Transportation Cabinet is approximately \$900,000.

2. Continuing costs or savings: Same each year.

3. Additional factors increasing or decreasing costs: Without a process like this, the public could not be assure of getting the best

possible product. Therefore, there is an ultimate savings to the Commonwealth.

(b) Reporting or paperwork requirements: Review and evaluation of any applications for prequalification received and the evaluation of all proposals submitted on projects.

(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: None

(b) Kentucky: None

(7) Assessment of alternative methods; reasons why alternatives were rejected: Rather than specifically placing long and complicated advertisements in a newspaper for each project proposal requested, the Transportation Cabinet has elected to issue a procurement bulletin approximately four times each year. This bulletin will provide all of the information that would appear in an advertisement plus other information that is beneficial to firms when preparing proposals. The cabinet will place make these bulletins electronically available to every prequalified firm as well as placing newspaper advertisements regarding the availability of the bulletin.

The alternative of continuing to not require professional liability insurance for prequalified firms was discarded, because if the consultant does make a mistake which results in injury to a person or property damage, the Transportation Cabinet wants the injured party to be reimbursed for the injury.

The alternative of continuing to require all persons to be physically present in order to conduct a Consultant Selection Committee meeting was discarded in view of the great advances made in teleconferencing and computer access.

(8) Assessment of expected benefits:

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

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

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

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

(a) Necessity of proposed administrative regulation if in conflict:

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

(10) Any additional information or comments: The majority of this regulatory impact analysis relates to all of the administrative regulations to which the definitions in 600 KAR 6:010 refer.

(11) Tiering: Was tiering applied? No. There is no way to tier definitions. However, when considering the entire chapter of administrative regulations as a whole, there are different requirements for the prequalification categories. In addition, subconsultants do not have to submit as much information to the Transportation Cabinet as does the firm executing the main contract.

TRANSPORTATION CABINET (Amendment)

600 KAR 6:040. Prequalification of firms for professional engineering or related services.

RELATES TO: KRS 45A.800 through 45A.835, 23 CFR 172, 49 CFR 18, 23 USC

STATUTORY AUTHORITY: KRS 13A.100(1), 45A.800 through 45A.835, 23 CFR 172, 49 CFR 18, 23 USC

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NECESSITY, FUNCTION, AND CONFORMITY: This administrative regulation sets forth the procedure and standards for the prequalification of firms for professional engineering or related services while implementing the provisions of KRS 45A.800 to 45A.835.

Section 1. Application for Prequalification for Professional Engineering or Related Services. (1) A firm desiring consideration for prequalification shall complete each qualification questionnaire pertaining to the categories for which prequalification is desired. The prequalification questionnaire forms are incorporated by reference in Section 8 of this administrative regulation.

(2)(a) A firm desiring to be considered for an award as a prime shall provide an original certificate of a continuous professional liability policy in an amount not less than \$1,000,000 with the application.

(b) A certificate of self-insurance shall not be submitted.

(3) The completed prequalification form and original certificate of a continuous professional liability policy shall be submitted to the Division of Professional Services, 6th Floor, Room 610, State Office Building, 501 High Street, Frankfort, Kentucky 40622.

Section 2. Evaluation of Applications for Prequalification. (1) Each firm's qualifications for a requested prequalification category shall be reviewed by the offices or divisions within the cabinet with expertise in that requested prequalification category.

(2) The Division of Professional Services shall review and maintain the original certificate of continuous professional liability policy for each firm desiring prequalification as a prime.

(3) The criteria for prequalification to be used by the user divisions and offices are listed in the Appendix to the Consulting Engineer and Related Services Prequalification Application as adopted July 1994 which is incorporated by reference in Section 8 of this administrative regulation.

(4) [(3)] The head of the user division or office shall notify the Division of Professional Services of its evaluation results.

(5) [(4)](a) The Division of Professional Services shall notify each firm of all evaluation results involving that firm.

(b) If a firm is disapproved for any requested prequalification category or service, the firm shall also be notified of the appeals procedure set forth in Section 6 of this administrative regulation.

Section 3. Annual Requalification. (1) A prequalified firm shall annually submit the following to the Division of Professional Services:

(a) [qualification and performance data] On or prior to its anniversary dates of prequalification;

1. Qualification and performance data; and

2. An original certificate of continuous professional liability policy in an amount not less than \$1,000,000; and

(b) Within five (5) months of the end of the firm's fiscal year, an updated overhead submission packet.

(2) The annual application shall include eleven (11) completed sets of the appropriate qualification forms and eleven (11) copies of the firm's current marketing brochure, if one exists, unless different instructions are communicated to the firm either verbally or in writing.

(3) Failure to submit the completed forms or the original certificate of a continuous professional liability policy in a timely manner shall cause the removal of the firm's prequalification status.

(4) The annual renewal application shall be evaluated in accordance with the provisions of Section 2 of this administrative regulation.

Section 4. Changes in Firm. (1) A prequalified firm shall notify the Division of Professional Services of the following:

(a) A major change [any major changes] either increasing or decreasing the firm's professional or financial qualifications, capabilities, or personnel; or

(b) A change in:

1. The address of the firm;

2. Name of the firm;

3. The continuous professional liability policy on file with the Division of Professional Services; or

4. Another [address, name change, or other] of the major qualification criteria.

(2) The user division or office shall review the updated information received from the firm and shall reclassify the firm as appropriate with respect to types of work and capacity of the firm.

(3)(a) If a prequalified firm fails to notify the Division of Professional Services of a change of the address, it may be removed from the list of prequalified firms until it notifies the division of its new address.

(b) If the change of address notification is submitted to the Division of Professional Services during what would have been the firm's prequalification year and no other changes have occurred in the firm, the firm shall be restored to the list of prequalified firms.

(c) Removal from the list of prequalified firms pursuant to this subsection, shall not be a basis for appeal under the provisions of Section 6 of this administrative regulation.

Section 5. Removal from List of Prequalified Firms. (1) A firm may be removed from the list of prequalified firms by the Consultant Prequalification Committee for any of the following reasons:

(a) Failure to submit an annual application on the firm's anniversary date;

(b) Falsification of the firm's prequalification application as to its qualifications;

(c) Falsification of the firm's response to announcement of any project;

(d) Violation of the Executive Branch Ethics Law contained in KRS Chapter 11A;

(e) Falsification of the information provided to the Transportation Cabinet for audit purposes;

(f) Failure to have a current license from the Kentucky Professional Board of Registration;

(g) Failure to notify the Transportation Cabinet of the loss of personnel which has an impact on the firm's prequalification or project management within thirty (30) days; [or]

(h) Violation of the firm's certification that the firm's owner, principals or partners, or any family member having an interest of ten (10) percent or more in any business entity involved in the performance of the contract have not contributed more than the amount specified in KRS 121.056(2) to the gubernatorial campaign of the current governor;

(i) Failure to maintain with the Division of Professional Services a current certificate of a continuous professional liability policy in an amount not less than \$1,000,000;

(j) Failure to annually submit an up-to-date overhead submission packet to the Division of Professional Services; or

(k) Failure to perform on a project in a manner acceptable to the Transportation Cabinet.

(2) The Chairperson [Chairman] of the Prequalification Committee shall notify the firm in writing of its proposed removal from the list of prequalified firm and the reason for the proposed removal.

Section 6. Appeal Procedure for Firms Not Prequalified or Removed from Prequalified List. (1) The cabinet shall establish a permanent Consultant Prequalification Committee to evaluate the statements of qualifications of firms which appeal a disapproval rating or removal from the list of prequalified firms.

(2) The members of the Consultant Prequalification Committee shall be the following:

(a) Director, Division of Professional Services, Chairperson;

(b) Director, Division of Aeronautics;

(c) Director, Division of Traffic;

(d) Director, Division of Highway Design;

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- (e) Director, Division of Bridge Design;
- (f) Director, Division of Materials;
- (g) Director, Division of Transportation Planning;
- (h) Director, Division of Environmental Analysis;
- (i) Director, Division of Operations;
- (j) Director, Division of Construction; and
- (k) Director, Division of Multimodal Programs.

(3) A firm may appeal any disapproval relating to its request for approval of a prequalification category pursuant to Section 2 of this administrative regulation.

(4) A firm may appeal its removal from the list of prequalified firms pursuant to Section 5 of this administrative regulation.

(5) An appeal pursuant to this section of this administrative regulation shall be made in writing to the Chairperson [Chairman] of the Consultant Prequalification Committee within thirty (30) days of notification of the action of the Transportation Cabinet.

(6) The basis of the appeal and the relief sought shall be stated in the written communication to the chairperson [chairman].

(7)(a) Within sixty (60) days from receipt of an appeal, the committee members or their designees shall review the appeal and shall make a decision regarding the appeal.

(b) If the firm agrees, the committee may delay its decision for an additional sixty (60) days while the committee meets with the firm to discuss the appeal.

(8) The committee shall notify the State Highway Engineer and the firm of its decision.

(9) If the firm's appeal is denied by the committee, the firm may appeal the decision within thirty (30) days of written notice:

- (a) Relating to nonqualification to the State Highway Engineer; or
- (b) Relating to removal from the list of prequalified firms to the Secretary of the Transportation Cabinet.

(10) The State Highway Engineer or Transportation Cabinet Secretary, as appropriate, shall notify the firm of his decision within thirty (30) days. The decision of the State Highway Engineer or Transportation Cabinet Secretary shall be final.

Section 7. Conditional Prequalification. (1) The user division or office or Consultant Prequalification Committee may grant conditional prequalification to a firm if the firm:

(a) Has no direct highway or transportation experience but has identified personnel who have technical training or education and other types of experience which may allow the firm to perform the required services; or

(b) Performed poorly on past projects for the cabinet or has been removed from the list of prequalified firms for performance-related reasons and has restructured itself to address the problems.

(2) After the firm has performed services for the cabinet in the category of work for which it was conditionally prequalified, it may request a prequalification determination from the committee in accordance with Section 1 of this administrative regulation.

(3) Denial of conditional prequalification of a firm to perform services for the cabinet shall not be appealed.

Section 8. Material Incorporated by Reference. (1) The following material is incorporated by reference:

(a) Consulting Engineer and Related Services Prequalification Application, TC 40-1, July 1994 edition;

(b) Prequalification Requirements for Geotechnical Drilling Services, TC 64-540, May 1992 edition;

(c) Prequalification Requirements for Geotechnical Engineering Services, TC 64-541, May 1992 edition; and

(d) Prequalification Requirements for Geotechnical Laboratory Services, TC 64-542, May 1992 edition; and

(e) Appendix to the Consulting Engineer and Related Services Prequalification Application, July 1994 edition.

(2) All material incorporated by reference as a part of this administrative regulation may be obtained, viewed, or copied at the

Division of Professional Services, 6th Floor State Office Building, 501 High Street, Frankfort, Kentucky 40622. The telephone number is (502) 564-4555. The office 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

TODD SHIPP, Office of General Counsel

APPROVED BY AGENCY: October 16, 1997

FILED WITH LRC: October 17, 1997 at 11 a.m.

PUBLIC HEARING: A public comment hearing on this administrative regulation will be held on December 22, 1997 at 10 a.m. local prevailing time in the Transportation Cabinet, 4th Floor Hearing/Conference Room, 501 High Street, Frankfort, Kentucky 40622. Any person who intends to attend this meeting must in writing by December 15, 1997 so notify this agency. If no notification of intent to attend the hearing is received by this date, the hearing may be canceled. This hearing is open to the public. Any person who attends will be given the opportunity to comment on the administrative regulation. A transcript of the public comment hearing will not be made unless a written request for a transcript is made and then only at the requestor's expense. If you have a disability for which the Transportation Cabinet needs to provide accommodations, please notify us of your requirements by December 15, 1997. This request does not have to be in writing. If you do not wish to attend the public hearing, you may submit written comments on the administrative regulation. If the hearing is held, written comments will be accepted until the close of the hearing. If the hearing is canceled, written comments will be accepted until close of business on December 22, 1997. Send written notification of intent to attend the public comment hearing or written comments on the administrative regulation to: Sandra Pullen Davis, Staff Assistant, Transportation Cabinet, State Office Building 10-13, 501 High Street, Frankfort, Kentucky 40622, (502) 564-7650, Fax: (502) 564-5238.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Sandra Pullen Davis, Staff Assistant

(1) Type and number of entities affected: There are 250 firms prequalified to perform professional engineering or related services each year. These are the same firms which provide proposals on projects and ultimately negotiate contracts.

(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: For the set of administrative regulations which, with very few changes, amend the existing administrative regulations, there is an expense to each firm which averages \$300 to prepare and submit the required prequalification forms each year. In addition, a complete proposal for a particular project will also cost each firm making a proposal to the Transportation Cabinet approximately \$500 per proposal. With 250 firms prequalified each year the cost of prequalification to the industry is approximately \$75,000. Approximately 20 separate firms submit proposals on each project advertised by the Transportation Cabinet. With about 60 projects each year, there is a cost to the industry of about \$600,000 to prepare the proposals.

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

1. First year following implementation: While the administrative regulation specifies the specific forms which the firms are required to use to apply for prequalification or to submit a proposal, the process is mandated by KRS Chapter 45A. Through the amendments to this

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administrative regulation, 600 KAR 6:040, and 600 KAR 6:070, the Transportation Cabinet is adding an additional prequalification requirement of continuous professional liability insurance coverage in a minimum amount of \$1 million. The cost to individual firms will vary greatly depending on the size of the firm and the complexity of the projects for which they are prequalified. It is possible that a cost of \$300,000 will be incurred by the largest firms. However, it should be noted that many of the firms already carry professional liability insurance.

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

3. Additional factors increasing or decreasing costs: (note any effects upon competition): None

(3) Effects on the promulgating administrative body: The Transportation Cabinet is required to review the 250 applications for prequalification and 1200 proposals on projects each year. Not only is the entire staff of the Contract Negotiating Branch of Division of Professional Services constantly involved in this process, but also the user divisions are required to involve significant amounts of man-hours in the reviews and evaluations. Approximately 100 change orders are issued on these contracts each year. It is almost as time-consuming to negotiate a change order as the original contract. The amendments to the administrative regulation require the selection committee members to complete more forms certifying that the process required by KRS Chapter 45A have been carried out.

(a) Direct and indirect costs or savings: The annual budget for the Contract Negotiating Branch of the Division of Professional Services is \$300,000. At least double that cost is incurred collectively by the user divisions each year.

1. First year: The total cost to the Transportation Cabinet is approximately \$900,000.

2. Continuing costs or savings: Same each year.

3. Additional factors increasing or decreasing costs: Without a process like this, the public could not be assure of getting the best possible product. Therefore, there is an ultimate savings to the Commonwealth.

(b) Reporting or paperwork requirements: Review and evaluation of any applications for prequalification received and the evaluation of all proposals submitted on projects.

(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: None

(b) Kentucky: None

(7) Assessment of alternative methods; reasons why alternatives were rejected: Rather than specifically placing long and complicated advertisements in a newspaper for each project proposal requested, the Transportation Cabinet has elected to issue a procurement bulletin approximately four times each year. This bulletin will provide all of the information that would appear in an advertisement plus other information that is beneficial to firms when preparing proposals. The cabinet will place make these bulletins electronically available to every prequalified firm as well as placing newspaper advertisements regarding the availability of the bulletin.

The alternative of continuing to not require professional liability insurance for prequalified firms was discarded, because if the consultant does make a mistake which results in injury to a person or property damage, the Transportation Cabinet wants the injured party to be reimbursed for the injury.

The alternative of continuing to require all persons to be physically present in order to conduct a Consultant Selection Committee meeting was discarded in view of the great advances made in

teleconferencing and computer access.

(8) Assessment of expected benefits:

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

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

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

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

(a) Necessity of proposed administrative regulation if in conflict:

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

(10) Any additional information or comments: The majority of this regulatory impact analysis relates to all of the administrative regulations to which the definitions in 600 KAR 6:010 refer.

(11) Tiering: Was tiering applied? No. When considering the entire chapter of administrative regulations as a whole, there are different requirements for the prequalification categories. In addition subconsultants do not have to submit as much information to the Transportation Cabinet as does the firm executing the main contract.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. Title 23 of the United States Code, and 23 CFR 172.7. The cited federal regulation requires that a state using federal aid on projects utilize qualifications-based procedures in the award of engineering and design-related services contracts.

2. State compliance standards. This administrative regulation sets forth the qualification procedures which all engineering and related services contractors must follow and comply with.

3. Minimum or uniform standards contained in the federal mandate. The mandate requires just that the state have a qualifications-based procedure and that it be approved by the U.S. Department of Transportation.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? The prequalification procedures are applicable not only to federal-aid projects but also those state funded projects since any prequalified consultant will be able to submit a proposal on a federally-funded project.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. A prequalified firm may be selected for a federally-funded project at any time. Therefore, even if it has only previously been selected for state-funded projects, it has to be prequalified in accordance with the federal mandate.

TRANSPORTATION CABINET (Amendment)

600 KAR 6:070. Contracting for professional engineering or related services.

RELATES TO: KRS 45A.800 through 45A.835, 23 CFR 172, 48 CFR, 49 CFR 18, 23 USC

STATUTORY AUTHORITY: KRS 13A.100(1), 45A.800 through 45A.835, 23 CFR 172, 48 CFR, 49 CFR 18, 23 USC

NECESSITY, FUNCTION, AND CONFORMITY: This administrative regulation sets forth the procedure to be used by the Transportation Cabinet when selecting professional engineering or related services while implementing the provisions of KRS 45A.800 to 45A.835.

Section 1. Methods of Contracting with Consultants. (1) The following methods of contracting with consultants shall be acceptable:

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- (a) Lump sum;
- (b) Cost plus a fixed fee;
- (c) Specific rates of compensation; or
- (d) Cost per unit of work.

(2)(a) When the cabinet chooses the lump sum method of contracting, the consultant shall present a statement to the Division of Professional Services showing the probable cost for the elements of work and the expected operating margin.

(b) This statement shall include a supported breakdown of the direct and indirect costs and subconsultant costs which the consultant expects to incur.

(c) The method of dividing the project into work units and the calculation of related time units shall be devised so that the estimate can be easily reviewed.

(d) The Division of Professional Services and the user division shall verify the following supporting documentation before recommending the contract for approval:

1. Reasonableness of the amount proposed and consideration of the degrees of risk and responsibility to be assumed by the consultant;

2. The extent, scope, complexity, character and duration of the required services;

3. Professional and financial investments to be required of the consultant;

4. The consultant's normally-expected return for such services;

5. Conditions under which the consultant is expected to perform;

6. The cabinet's estimate of the appropriate amount for the services required; and

7. The cabinet's findings on the basis of experience and knowledge.

(3)(a) When the cabinet chooses the cost plus a fixed fee method of contracting, an upper limit of payment of actual cost shall be established which cannot be exceeded without obtaining cabinet approval.

(b) During negotiations, the Division of Professional Services or other negotiation unit shall be responsible for establishing the upper limit along with the fixed fee to be paid to the consultant for the services required.

(c) The Division of Professional Services or other negotiation unit shall establish the fixed fee and an upper limit based on past experience gained from negotiations of similar projects, judgment regarding scheduling and complexity of work and the user division's estimates.

(4)(a) When the cabinet chooses the specific rate of compensation method of contracting, the Division of Professional Services or other negotiation unit shall document the basis on which the amount specified as the upper limit or upset limit was established.

(b) The agreement shall contain provisions which permit adjustment to this upper limit when the consultant establishes, and the user division agrees, that there has been or is to be a significant change in the:

- 1. Scope, complexity or character of the services to be performed;
- 2. Conditions under which the work is required to be performed;

or

3. Duration of the work if the change from the time period specified in the agreement for completion of the work warrants such adjustment.

(c) In the case of statewide agreements under which there is to be subsequent individual authorizations, the establishment of a maximum amount for the overall contract shall be submitted to the LRC's Personal Service Contract Review Subcommittee. A maximum amount shall be established for each of the individual authorizations which shall not exceed the maximum amount for the overall contract.

(5)(a) When the cabinet is using the cost per unit of work method of compensation, the consultant shall be paid on the basis of units completed.

(b) This method of contracting is appropriate when the extent of

the work cannot be definitely defined but when cost of the work per unit may be determined in advance with reasonable accuracy.

(c) A proposal using this method of contracting shall be supported in the same manner as that indicated for the lump sum method used for consultants.

(6)(a) For an individual acting as a consultant, the specific rates of compensation shall include the direct salary costs, salary additives, indirect costs and the net fee. The agreement of supporting data shall specifically identify these costs.

(b) Other direct costs may be included as an element of a specific rate or as independent cost items.

Section 2. Prenegotiation Procedures. (1)(a) A consultant selected pursuant to 600 KAR 6:060 shall meet with cabinet representatives in accordance with the schedule identified in the procurement bulletin issued pursuant to 600 KAR 6:050 to discuss in detail the scope of services to be provided by the consultant for the project.

(b) The Transportation Cabinet may require a consultant to obtain project-specific professional liability insurance for an unusual project.

(c) If project-specific professional liability insurance is required:

1. A firm's audit may be reexamined to determine if a change in the overhead rate is needed; or

2. And there is more than one (1) consultant involved in the project, the consultants may jointly purchase the insurance.

(2) After this meeting, the consultant shall submit the following to the cabinet:

(a) For roadway design, work units which quantify the tasks to be performed to achieve the roadway design services that appeared in the advertisement or procurement bulletin and an identification of the assignment of the work units to the prime consultant or a subconsultant.

1. The cabinet has the following options regarding the submittal:

a. Concur;

b. Modify and return the modification to the consultant; or

c. Reject and ask the consultant to evaluate and resubmit the work units.

2. After an agreement on the work units between the cabinet and the consultant, each shall independently develop production rates to be applied to the work units to determine person-hours for each task.

(b) For structure work, work units include a description of the structure to be designed including but not limited to type, length, span arrangement, curves, skew, piling based on preliminary geotechnical information, an identification of the assignment of the work units to the prime consultant or a subconsultant, and any other pertinent considerations.

1. The cabinet has the following options regarding the submittal:

a. Concur;

b. Modify and return the modification to the consultant; or

c. Reject and ask the consultant to evaluate and resubmit the work units.

2. After an agreement on the work units between the cabinet and the consultant, each shall independently develop production rates to be applied to the work units to determine person-hours for each task.

(c) For environmental services, a scope of work for each task and corresponding person-hours to achieve each task and an identification of the assignment of the work units to the prime consultant or a subconsultant.

(d) For geotechnical assessments, a copy of the work units and corresponding cost derivatives to achieve each task which qualifies and quantifies the tasks to be performed to achieve the geotechnical services that appear in the announcement and an identification of the assignment of the work units to the prime consultant or a subconsultant.

1. The cabinet has the following options regarding the submittal:

a. Concur;

b. Modify and return the modification to the consultant; or

c. Reject and ask the consultant to evaluate and resubmit the

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work units.

2. After an agreement on the work units between the cabinet and the consultant, each shall independently develop production rates to be applied to the work units to determine person-hours for each task.

(e) For bridge maintenance inspection, a copy of work units and proposed equipment usage to achieve the inspection services that appeared in the announcement and an identification of the assignment of the work units to the prime consultant or a subconsultant.

1. The cabinet has the following options regarding the submittal:

a. Concur;

b. Modify and return the modification to the consultant; or

c. Reject and ask the consultant to evaluate and resubmit the work units.

2. After an agreement on the work units between the cabinet and the consultant, each shall independently develop production rates to be applied to the work units to determine person-hours for each task.

(f) For planning studies, work units which qualify the tasks to be performed to achieve the planning study services that appeared in the announcement and an identification of the assignment of the work units to the prime consultant or a subconsultant.

1. The cabinet has the following options regarding the submittal:

a. Concur;

b. Modify and return the modification to the consultant; or

c. Reject and ask the consultant to evaluate and resubmit the work units.

2. After an agreement on the work units between the cabinet and the consultant, each shall independently develop production rates to be applied to the work units to determine person-hours for each task.

(3) The consultant shall submit to the Division of Professional Services a fair and reasonable fee proposal which shall be prepared using the following:

(a) Personnel classifications and average wage rates for each classification as they appear in the audit and adjusted for work in the future years;

(b) Distribution of work by the personnel classifications;

(c) Overhead rates as determined by an audit;

(d) Subconsultants and fee proposals for each;

(e) Direct expenses not included in the overhead and subject to the limitations of subsections (5), (6), (7), and (8) of this section; and

(f) Person-hours to achieve the agreed upon task to achieve the scope of services that appear in the advertisement or procurement bulletin.

(4) After the Division of Professional Services requests a proposal and fee estimate from the consultant, the user division shall:

(a) Prepare an estimate of resources required to complete the project;

(b) Discuss the project with other divisions and request resource estimates from them as necessary; and

(c) Coordinate all of the resource estimates from other divisions to be used by the Division of Professional Services in negotiation of the contract.

(5)(a) Except as set forth in subparagraph (b) of this subsection, for contract negotiation purposes, the maximum allowable overhead rate shall be 150 percent;

(b) For contract negotiation purposes, if a consultant or subconsultant offers special expertise in engineering or related services which is outside normal project development activities, the limitations in 600 KAR 6:080, Section 2, may be suspended and the allowable overhead rate may exceed 150 percent if:

1. The director of the Division of Professional Services recommends approval;

2. The State Highway Engineer recommends approval;

3. The Secretary of the Transportation Cabinet approves; and

4. The approved overhead rate does not exceed the actual overhead rate established pursuant to 48 CFR Part 31.

(6) For contract negotiation purposes, travel expenses for consultant employees or survey crews shall be limited to those

incurred from an office in Kentucky or the border of Kentucky nearest the consultant's office;

(7) For contract negotiation purposes, direct expenses shall be limited to the following items and limits:

(a) Passenger car - twenty-seven (27) [twenty-five (25)] cents per mile;

(b) Truck or four (4) - wheel drive vehicle - thirty-five (35) cents per mile;

(c) Lodging:

1. Professional staff - fifty-five (55) dollars per night per person; and

2. Survey field personnel - seventy (70) dollars per night for two (2) persons in one (1) room;

(d) Meals:

1. Breakfast - six (6) [five (5)] dollars per day per person;

2. Lunch - seven (7) [six (6)] dollars per day per person; or

3. Dinner - fourteen (14) [thirteen (13)] dollars per day per person;

(e) Printing of reports for distribution external to the Transportation Cabinet - estimated cost from the printer per document;

(f) Travel time for a survey crew - travel time to and from a job site in hours multiplied by the survey crew wage rate multiplied by one and three-tenths (1.3) for salary additives;

(g) Special equipment which is project-specific;

(h) Capital cost of money; and

(i) Computer time, if accounted for as a direct charge, shall not exceed fifteen (15) dollars per hour.

(8) For contract negotiation purposes, the maximum direct salary per year shall be:

(a) \$90,000 for a nonprincipal or nonpartner of a firm; and

(b) \$100,000 for a principal or partner of a firm. [shall be \$90,000 per year.]

Section 3. Contract Negotiations. (1)(a) The Division of Professional Services shall be the designated negotiating agent for the Department of Highways in the Cabinet.

(b) If professional engineering or related services are requested by user divisions within the cabinet but not in the Department of Highways, that user division shall be responsible for negotiating the fee.

(2)(a) The Division of Professional Services or other designated negotiation unit shall receive the proposal and fee estimate from the consultant. The proposal submitted by the consultant shall include either a statement that the payment shall be based on the percentage of work completed or the proposed project milestones and corresponding maximum percentage payments and a breakdown of the estimated fee for performing the work including the following:

1. Direct salaries;

2. Overhead;

3. Other direct costs including cost of materials which are not included in the overhead;

4. Subconsultant costs;

5. Operating margin; and

6. Use of DBE firms.

(b) The Division of Professional Services or other designated negotiation unit shall analyze the proposal and may confer with others regarding the proposal as necessary. The proposal shall be used as a basis for further negotiation of the professional services agreement.

(c) Unreasonable or deliberately inflated proposals shall be rejected and may be cause for terminating negotiations in accordance with KRS 45A.825(9).

(3) If the contract which is being negotiated uses a method of compensation other than lump sum, the consultant shall use an accounting system which segregates and accumulates reasonable, allocable and allowable costs to be charged to a contract for an audit by the External Audit Branch.

(4)(a) If a consultant intends to utilize the services of a subconsultant to perform any part of the work, at the time of negotiations the

consultant shall submit a fee proposal for the amount of work to be subcontracted.

(b) The fee proposal shall be based on the audited overhead and wage rates for the subconsultant.

(c) A subconsultant shall be prequalified with the cabinet to perform the services to be subcontracted to it if the services are required to be prequalified.

(d) Prior approval from the Division of Professional Services or other negotiation unit shall be necessary.

(e) If a consultant desires to utilize a subconsultant to perform part of the work after a contract has been approved and notice has been given to begin work, the procedures set forth in Section 6 of this administrative regulation shall be followed.

(5) A consultant which is awarded a contract for professional engineering or related services with the cabinet shall perform at least fifty (50) percent of the dollar value of the work for the project unless otherwise approved by the Director of the Division of Professional Services.

(6)(a) The operating margin allowed a professional engineering or related services consultant shall be allowed only on the negotiated direct labor and overhead costs regardless of the type of contract and shall not exceed the following:

1. Lump sum contract:

a. Fifteen (15) percent of the total direct labor cost plus overhead costs for a contract, including all contract modifications, less than \$2,000,000; or

b. Ten (10) percent of the total direct labor cost plus overhead costs for a contract, including all contract modifications, equal to or in excess of \$3,000,000; or

c. For a contract with the total direct labor cost, plus overhead cost of \$2,000,000 to \$3,000,000, the operating margin shall be fourteen (14) percent to ten (10) percent with a one (1) percent reduction for each \$200,000 increase in fee.

2. Unit price contract - fifteen (15) percent of the estimated unit cost at the time of execution of the contract.

(b) A cost plus fixed fee contract shall have a lump sum fee equal to ten (10) percent of the estimated cost at the time of the execution of the agreement.

(7) The Division of Professional Services or other negotiation unit shall compare the consultant's established fee with the cabinet's estimate to determine both the reasonableness of the fee and areas of substantial differences which may require further negotiation.

(8) The Division of Professional Services or other negotiation unit shall negotiate with the consultant to establish a reasonable fee and basis of payment, including incremental payments for completed work where appropriate, for the services to be performed under the contract.

(9)(a) The consultant shall keep written documentation of each negotiation meeting and shall submit to the Division of Professional Services or other negotiation unit the following:

1. Minutes of negotiations;
2. As-negotiated fee;
3. As-negotiated person-hours;
4. Classification percentage distribution; and
5. Direct cost breakdowns.

(b) The public shall not be denied access to the items set forth in paragraph (a) of this subsection.

(10) After the Division of Professional Services or other negotiation unit has negotiated a contract, the head of the unit shall comply with the provisions of KRS 45A.825(10).

Section 4. Contract Preparation and Execution. (1) The Division of Professional Services or other negotiation unit shall prepare an agreement or contract to cover the services to be provided, method and amount of payment, the time of completion and necessary special provisions.

(a) The agreement shall also include by reference the General

Provisions Attachment as revised July 1994 unless the project is for a consultant structure inspection. The General Provisions Attachment is incorporated by reference as a part of this administrative regulation.

(b) If the project is for a consultant structure inspection, the agreement shall also include by reference the Division of Operations, Consultant Structure Inspection Provisions as revised in May 1993. The Division of Operations, Consultant Structure Inspection Provisions Form is incorporated by reference as a part of this administrative regulation.

(2) The contract and negotiation minutes shall be sent to the consultant for the signature of an authorized representative. All original documents shall be returned to the Division of Professional Services or other negotiation unit.

(3) The contract shall be reviewed and approved by the secretary of the cabinet.

(4) When the project is subject to approval from the FHWA and after the contract has received final approval from the cabinet, the Division of Professional Services shall send to the FHWA the following requesting their approval:

- (a) A copy of the contract;
- (b) The negotiated fee and person-hours;
- (c) The consultant's fee and person-hour proposal;
- (d) The cabinet's person-hour estimate;
- (e) The minutes of the negotiation;
- (f) The minutes of the predesign conference;
- (g) A copy of the advertisement and announcement;
- (h) The list of firms that responded to the announcement in a timely manner;

(i) The written approval from the secretary of the cabinet to engage a professional firm;

(j) The minutes of the Professional Engineering Services Selection Committee;

(k) The memorandum from the Chairman of the Selection Committee stating the ranking of the three best-qualified firms by the Professional Engineering Services Selection Committee; and

(l) The audit report of overhead and wage rates which was used to establish the fee.

(6) If FHWA does not approve the contract, the secretary of the cabinet, after discussion with the State Highway Engineer and staff, may decide to modify the contract, redefine the project, terminate the project or ask for reconsideration by the FHWA.

Section 5. Notice to Proceed and Payments. (1)(a) Before a notice of approval for payment can be issued, funds shall be encumbered by the cabinet.

(b) The funds for statewide contracts shall be encumbered on a project by project basis.

(2) ~~After~~ [When] the Division of Professional Services or other negotiation unit receives notification ~~[a copy of the transmittal sheet]~~ indicating that the LRC Personal Service Contract Review Subcommittee has received the contract and project information for review, a notice to proceed shall be transmitted ~~[sent]~~ to the consultant indicating that it may commence work but it shall not bill for services until specifically authorized to do so. For projects requiring approval of a unit of the federal government, notice to proceed shall not be issued until the federal approval is obtained.

(3) When the LRC Personal Service Contract Review Subcommittee issues a notification of acceptance on a contract, the Division of Professional Services or other negotiation unit shall issue a letter to the consultant informing it that it may bill the cabinet for charges incurred while working on the project.

(4)(a) If the LRC Personal Service Contract Review Subcommittee objects to the contract and the cabinet determines that the contract is to be canceled, the Division of Professional Services or other negotiation unit shall notify the consultant of the cancellation and shall take necessary steps to close the contract.

(b) If the cabinet determines that the contract is to be modified to

comply with the concerns of the LRC Personal Service Contract Review Subcommittee, the Division of Professional Services or other negotiation unit shall notify the consultant of the necessary modifications and shall follow the contract modification and change order procedures specified in Section 7 of this administrative regulation.

(c) If the cabinet determines that the contract is to be executed as submitted to the LRC Personal Service Contract Review Subcommittee, the Division of Professional Services or other negotiation unit shall issue a letter to the consultant informing it that it may bill the cabinet for charges incurred while working on the project.

Section 6. Contract Administration. All work performed under a professional services contract shall be subject to general supervision, direction, review and approval by the cabinet.

(1)(a) A project supervisor shall be assigned to the project by the director or office head of the user division.

(b) The division director or office head may serve as the project supervisor.

(c) The project supervisor shall be responsible for coordinating all cabinet activities with the consultant and for providing necessary supervision through the duration of the contract. This coordination shall include the following:

1. Scheduling, monitoring and controlling the consultant's activities;
2. Reporting the status of these activities to the appropriate authority;
3. Periodically reviewing the work to determine if the work:
 - a. Is acceptable;
 - b. Is in accordance with the agreement for the particular project; and
 - c. Scope has changed to the point that it may require a supplemental agreement and increased or decreased compensation; and
4. Completing and processing the Consultant Monthly Report Form incorporated by reference in Section 9 of this administrative regulation.

(2)(a) During the project, the consultant may subcontract with other firms to perform specialized services in a manner similar to Section 1(4) of this administrative regulation. The subconsultant shall be prequalified by the cabinet in accordance with the provisions of 600 KAR 6:040 if the services that are subcontracted are required to be prequalified.

(b) If the services to be performed by the subconsultant are subject to prequalification by the cabinet and were not previously identified in the original negotiation or subsequent change orders, the consultant shall submit a request for a fee adjustment for the person-hours to be performed by the subconsultant.

(c) If the subconsultant services are not subject to prequalification procedures and exceed \$25,000, they shall be reviewed by the External Audit Branch for reasonableness of cost. For subcontracts equal to or less than \$25,000, the Director of the Division of Professional Services or other negotiation unit, upon recommendation of the negotiator, may accept the rates and costs if they are reasonable and in line with past costs incurred for similar work.

Section 7. Contract Modifications. (1) When it is determined by either the consultant or the cabinet that one (1) or more of the following conditions are acceptable and necessary, a contract modification for a fee or schedule adjustment may be requested:

- (a) Change in termini or section;
- (b) Addition of major phases of work to the negotiated scope of work;
- (c) Modification of previously approved work resulting from factors beyond the control of the consultant;
- (d) Modification of a major item, if in the original contract, the item is designated as a basis of the original negotiations and the conditions for a change order consideration are identified in the original contract;

(e) Delay by the cabinet as outlined in each contract;

(f) Use of a subconsultant for services previously identified to be done by the consultant or other subconsultant; or

(g) Availability of current audit established in accordance with 600 KAR 6:080.

(2) The request for a contract modification may be originated by the Division of Professional Services, user division, highway district office or the consultant.

(3) When the director or office head of the user division determines the change is appropriate, the user division shall advise the consultant in writing of the contemplated change in the scope, complexity, extent, character or duration of the original agreement.

(a) When additional or reduced compensation is justified, the user division shall request a revised proposal from the consultant.

(4) The contract modification shall be negotiated using the procedures set forth in Sections 1, 2, and 3 of this administrative regulation.

(5) The Division of Professional Services or other negotiation unit shall send the Change Order form TC 40-17 as revised June 1992 or the Construction Consultant Change Order form, TC 63-53 revised June 1992, to the consultant for its approval. These forms are incorporated by reference in Section 11 of this administrative regulation.

(6) After approval by the cabinet, the change order, LRC's proof of necessity form and other supporting documentation shall be submitted to the LRC Personal Service Contract Review Subcommittee.

(7) For projects requiring FHWA oversight, the approved change order shall be sent to the Federal Highway Administration for approval in accordance with Section 4(4) of this administrative regulation.

(8) Funds shall be encumbered by the cabinet sufficient to pay for the approved change order.

(9) If a change order results in a fee negotiated for the change order in other than lump sum as a method of compensation, the consultant shall use an accounting system which segregates and accumulates allocable and allowable costs which are to be charged to the change order.

Section 8. Completion of Contract. (1) Upon completion of the contract, the cabinet shall review the work performed to determine that it meets the terms and conditions of the contract and shall evaluate the consultant for future reference.

(2) The project supervisor or the director of the user division shall review the work performed by the consultant, including any progress and final reports, to determine that all terms and conditions of the contract have been met before processing the final voucher for payment or releasing the consultant.

(3) Before approving the final invoice for payment, the director of the user division or the project supervisor shall evaluate the consultant and prepare written documentation of the consultant's performance on the project.

(4) The user division shall send the consultant written documentation of the consultant's performance for the project. Copies of the documentation shall be placed in the contract file maintained by the Division of Professional Services and in the consultant's experience record file.

(5)(a) The consultant may appeal in writing a below average rating to the user division director within thirty (30) days of written documentation of the consultant's performance for the project.

(b) The appeal shall specifically set forth the reasons why the consultant believes the below average rating is in error.

(c) The user division director shall notify the consultant within thirty (30) days from the consultant's appeal of the director's decision of whether or not to revise the performance rating.

(d) The consultant may appeal in writing the user division director's decision to the Chairman of the Consultant Prequalification Committee within thirty (30) days.

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(e) The Consultant Prequalification Committee shall review all documentation relating to the consultant's performance for the project. The committee may discuss the performance rating with the project supervisor or the consultant.

(f) The committee shall notify the consultant and the user division of its decision within ninety (90) days from the consultant's appeal.

(g) If the consultant's appeal is denied by the Consultant Prequalification Committee, it may appeal the decision to the State Highway Engineer within thirty (30) days of written notice of denial of its appeal by the Consultant Prequalification Committee.

(h) The State Highway Engineer shall notify the consultant of his decision within thirty (30) days.

(i) The decision of the State Highway Engineer shall be final.

(j) If the performance evaluation documentation is revised, the initial documentation shall be removed from all files and replaced with the revised performance document.

(6) The Director of the Division of Professional Services or head of other negotiation unit shall request the External Audit Branch to perform a final audit if appropriate. The audit shall determine the total allowable contract costs and the total dollars to be paid to the consultant. All contracts utilizing a cost plus fixed rate method of payment shall be audited.

(7) The user division shall forward the Federal Highway Administration a copy of all progress and final reports for federal-aid projects if required or requested by the FHWA.

Section 9. Cancellation of Contract. (1) Each professional service contract shall include a provision for the termination of the agreement and shall allow for the cancellation of the contract by the cabinet with proper notice to the consultant.

(2) When the cabinet decides to cancel a professional services contract, the Division of Professional Services or other negotiation unit shall notify the consultant of the cancellation and of the reasons for the cancellation.

(3) The cabinet shall be liable only for payment of services up to the effective date of cancellation of the contract as specified by the terms of the contract.

(4) The cabinet shall be liable for a demobilization fee equal to ten (10) percent of the remaining balance of the contract not to exceed \$25,000.

Section 10. Payments to Consultants. Before payment of a partial or final request for payment, the cabinet shall review the work of the consultant, including any progress or final reports, to ensure that the work for which the payment is to be made has been completed and that the terms and conditions of agreement have been satisfactorily followed.

(1) During the course of the project, progress billings shall be submitted by the consultant as agreed upon in the contract. The consultant shall submit an Engineer's Pay Estimate, TC 61-408 revised March 1988 and a Consultant Monthly Report, TC 61-2 revised October 1995 as an invoice to the chief district engineer or director of the user division or to their designees. These two (2) forms are incorporated by reference in Section 11 of this administrative regulation.

(2) The chief district engineer or director of the user division or his designee shall review the Engineer's Pay Estimate and Consultant Monthly Report, verify that the work has been completed as described in the document, and sign both forms.

(3) If an Engineer's Pay Estimate is not needed to be submitted to the chief district engineer or director of the user division within a given month, the Consultant Monthly Report shall still be submitted.

(4) Final invoices and requests for payment shall be authorized only after all work has been reviewed and accepted or approved, including any final reports prepared by the consultant. All terms and conditions of the contract shall be satisfactorily met and the final audit shall be performed prior to processing the final payment.

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

(a) "Change Order," Form TC 40-17, June 1992 edition;

(b) "Construction Consultant Change Order", Form TC 63-53, June 1992 edition;

(c) "Engineer's Pay Estimate", Form TC 61-408, March 1988 edition; and

(d) "Consultant Monthly Report", Form TC 61-2, October 1995 edition.

(2) All material incorporated by reference as a part of this administrative regulation may be obtained, viewed or copied at the Division of Professional Services, 6th Floor State Office Building, 501 High Street, Frankfort, Kentucky 40622. Its telephone number is (502) 564-4555. Its office 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

TODD SHIPP, Office of General Counsel

APPROVED BY AGENCY: October 16, 1997

FILED WITH LRC: October 17, 1997 at 11 a.m.

PUBLIC HEARING: A public comment hearing on this administrative regulation will be held on December 22, 1997 at 10 a.m. local prevailing time in the Transportation Cabinet, 4th Floor Hearing/Conference Room, 501 High Street, Frankfort, Kentucky 40622. Any person who intends to attend this meeting must in writing by December 15, 1997 so notify this agency. If no notification of intent to attend the hearing is received by this date, the hearing may be canceled. This hearing is open to the public. Any person who attends will be given the opportunity to comment on the administrative regulation. A transcript of the public comment hearing will not be made unless a written request for a transcript is made and then only at the requestor's expense. If you have a disability for which the Transportation Cabinet needs to provide accommodations, please notify us of your requirements by December 15, 1997. This request does not have to be in writing. If you do not wish to attend the public hearing, you may submit written comments on the administrative regulation. If the hearing is held, written comments will be accepted until the close of the hearing. If the hearing is canceled, written comments will be accepted until close of business on December 22, 1997. Send written notification of intent to attend the public comment hearing or written comments on the administrative regulation to: Sandra Pullen Davis, Staff Assistant, Transportation Cabinet, State Office Building 10-13, 501 High Street, Frankfort, Kentucky 40622, (502) 564-7650, Fax: (502) 564-5238.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Sandra Pullen Davis, Staff Assistant

(1) Type and number of entities affected: There are 250 firms prequalified to perform professional engineering or related services each year. These are the same firms which provide proposals on projects and ultimately negotiate contracts.

(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: For the set of administrative regulations which, with very few changes, amend existing administrative regulation 600 KAR 1:101, there is an expense to each firm which averages \$300 to prepare and submit the required prequalification forms each year. In addition, a complete proposal for a particular project will also cost each firm making a proposal to the Transportation Cabinet approximately \$500 per proposal. With 250 firms prequalified each year the cost of prequalification to the industry is

approximately \$75,000. Approximately 20 separate firms submit proposals on each project advertised by the Transportation Cabinet. With about 60 projects each year, there is a cost to the industry of about \$600,000 to prepare the proposals.

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

1. First year following implementation: While the administrative regulation specifies the specific forms which the firms are required to use to apply for prequalification or to submit a proposal, the process is mandated by KRS Chapter 45A. Through the amendments to this administrative regulation, 600 KAR 6:040, and 600 KAR 6:070, the Transportation Cabinet is adding an additional prequalification requirement of continuous professional liability insurance coverage in a minimum amount of \$1 million. The cost to individual firms will vary greatly depending on the size of the firm and the complexity of the projects for which they are prequalified. It is possible that a cost of \$300,000 will be incurred by the largest firms. However, it should be noted that many of the firms already carry professional liability insurance.

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

3. Additional factors increasing or decreasing costs: (note any effects upon competition): None

(3) Effects on the promulgating administrative body: The Transportation Cabinet is required to review the 250 applications for prequalification and 1200 proposals on projects each year. Not only is the entire staff of the Contract Negotiating Branch of Division of Professional Services constantly involved in this process, but also the user divisions are required to involve significant amounts of man-hours in the reviews and evaluations. Approximately 100 change orders are issued on these contracts each year. It is almost as time-consuming to negotiate a change order as the original contract. The amendments to the administrative regulation require the selection committee members to complete more forms certifying that the process required by KRS Chapter 45A have been carried out.

(a) Direct and indirect costs or savings: The annual budget for the Contract Negotiating Branch of the Division of Professional Services is \$300,000. At least double that cost is incurred collectively by the user divisions each year.

1. First year: The total cost to the Transportation Cabinet is approximately \$900,000.

2. Continuing costs or savings: Same each year.

3. Additional factors increasing or decreasing costs: Without a process like this, the public could not be assured of getting the best possible product. Therefore, there is an ultimate savings to the Commonwealth.

(b) Reporting or paperwork requirements: Review and evaluation of any applications for prequalification received and the evaluation of all proposals submitted on projects.

(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: None

(b) Kentucky: None

(7) Assessment of alternative methods; reasons why alternatives were rejected: Rather than specifically placing long and complicated advertisements in a newspaper for each project proposal requested, the Transportation Cabinet has elected to issue a procurement bulletin approximately four times each year. This bulletin will provide all of the information that would appear in an advertisement plus other information that is beneficial to firms when preparing proposals. The

cabinet will place make these bulletins electronically available to every prequalified firm as well as placing newspaper advertisements regarding the availability of the bulletin.

The alternative of continuing to not require professional liability insurance for prequalified firms was discarded, because if the consultant does make a mistake which results in injury to a person or property damage, the Transportation Cabinet wants the injured party to be reimbursed for the injury.

The alternative of continuing to require all persons to be physically present in order to conduct a Consultant Selection Committee meeting was discarded in view of the great advances made in teleconferencing and computer access.

(8) Assessment of expected benefits:

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

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

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

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

(a) Necessity of proposed administrative regulation if in conflict:

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

(10) Any additional information or comments: The majority of this regulatory impact analysis relates to all of the administrative regulations to which the definitions in 600 KAR 6:010 refer.

(11) Tiering: Was tiering applied? Yes. When considering the entire chapter of administrative regulations as a whole, there are different requirements for the prequalification categories. In addition, subconsultants do not have to submit as much information to the Transportation Cabinet as does the firm executing the main contract.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. Title 23 of the United States Code and 23 CFR 172.5.

2. State compliance standards. The state has promulgated this administrative regulation setting forth the method of negotiating of the reimbursement to be paid to the selected consultant.

3. Minimum or uniform standards contained in the federal mandate. The federal mandate specifies that the contracting agency shall prepare written procedures for each method of procurement it proposes to utilize. These procedures are required to set forth each step used in the method of negotiating of the reimbursement to be paid to the selected consultant.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? The method for negotiating of the reimbursement to be paid to the selected consultant is extended to all projects regardless of the source of funding for a particular project.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. This is not a conflict with the federal regulation, just a way of simplifying all negotiations with the Transportation Cabinet.

TRANSPORTATION CABINET Department of Vehicle Regulation Division of Motor Vehicle Enforcement (Amendment)

601 KAR 1:025. Transporting hazardous materials by air or highway.

RELATES TO: KRS 174.400 through 174.425, 49 CFR 107, 130, 171-173, 175, 177, 180

STATUTORY AUTHORITY: KRS 174.410(2), 49 CFR Parts 130,

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171-173, 175, 177, 180

NECESSITY, FUNCTION, AND CONFORMITY: KRS 174.410(2) provides that the Secretary of the Transportation Cabinet, in consultation with the Secretary of the Natural Resources and Environmental Protection Cabinet and the Secretary of the Cabinet for Human Resources (now Health Services), shall adopt by reference or in its entirety, the federal hazardous materials transportation regulation, 49 CFR (1978), as amended, to effectively carry out the intent of KRS 174.400 through 174.425 relating to the transportation of hazardous materials by air or highway. This administrative regulation implements these statutory provisions.

Section 1. The hazardous materials transportation regulations adopted and issued by the United States Department of Transportation relating to the following subjects shall govern the transportation of hazardous materials within Kentucky if the transportation of hazardous material is by air or highway:

(1) 49 CFR Part 107, effective October 1, 1997 [1996 as amended at 62 Fed. Reg. 2970, January 21, 1997]. Part 107 sets forth the requirements for a national registration of the transporters of hazardous materials.

(2) 49 CFR Part 130 effective October 1, 1997 [1996]. Part 130 sets forth general information, regulations and definitions applicable to oil spill prevention and response plans;

(3) 49 CFR Part 171 effective October 1, 1997 [1996, as amended at 61 Fed. Reg. 65958, December 16, 1997; 61 Fed. Reg. 68952, December 30, 1996; 62 Fed. Reg. 1208, January 8, 1997; 62 Fed. Reg. 1217, January 8, 1997; 62 Fed. Reg. 2970, January 21, 1997; 62 Fed. Reg. 7638, February 19, 1997]. Part 171 sets forth general information, regulations and definitions applicable to all hazardous materials transportation;

(4) 49 CFR Part 172 effective October 1, 1997 [1996, as amended at 62 Fed. Reg. 1217, January 8, 1997 and 62 Fed. Reg. 14334, March 26, 1997]. Part 172 lists and classifies those materials which the United States Department of Transportation has designated as hazardous materials for purposes of transportation and prescribes the requirements for the following:

- (a) Shipping papers;
- (b) Package marking; and

(c) Labeling and transport vehicle placarding applicable to the shipment and transportation of those hazardous materials;

(5) 49 CFR Part 173 effective October 1, 1997 [1996, as amended at 61 Fed. Reg. 51495, October 2, 1996; 61 Fed. Reg. 68952, December 30, 1996; 62 Fed. Reg. 1208, January 8, 1997; 62 Fed. Reg. 1217, January 8, 1997; and 62 Fed. Reg. 14334, March 26, 1997]. Part 173 sets forth the general requirements which shippers are required to meet for shipments and packaging;

(6) 49 CFR Part 175 effective October 1, 1997 [1996, as amended at 62 Fed. Reg. 1217, January 8, 1997]. Part 175 includes requirements in addition to those contained in Parts 171, 172, and 173 which are applicable to aircraft operators transporting hazardous materials aboard, attached to or suspended from civil aircraft;

(7) 49 CFR Part 177, effective October 1, 1997 [1996, as amended at 62 Fed. Reg. 1217, January 8, 1997]. Part 177 includes requirements in addition to those contained in Parts 171, 172, and 173 which are applicable to private contract or common motor carriers transporting hazardous materials on public highways;

(8) 49 CFR Part 178 effective October 1, 1997 [1996 as amended at 62 Fed. Reg. 14334, March 26, 1997]. Part 178 prescribes the manufacturing and testing specifications for packaging and containers used for the transportation of hazardous materials; and

(9) 49 CFR Part 180, effective October 1, 1997 [1996, as amended at 62 Fed. Reg. 1208, January 8, 1997]. Part 180 prescribes requirements pertaining to the maintenance, reconditioning, repair, inspection and any other function having an effect on the continuing qualification and use of a packaging used to transport hazardous materials.

[Section 2. Material Incorporated by Reference: (1) The following material is incorporated by reference as a part of this administrative regulation:

- (a) 61 Fed. Reg. 51495, October 2, 1996;
- (b) 61 Fed. Reg. 65958, December 16, 1996;
- (c) 61 Fed. Reg. 68952, December 30, 1996;
- (d) 62 Fed. Reg. 1208, January 8, 1997;
- (e) 62 Fed. Reg. 1217, January 8, 1997;
- (f) 62 Fed. Reg. 2970, January 21, 1997;
- (g) 62 Fed. Reg. 7638, February 19, 1997;
- (h) 62 Fed. Reg. 14334, March 26, 1997.

(2) The material incorporated by reference in this administrative regulation may be inspected, copied, or obtained at the Division of Motor Vehicle Enforcement, 8th Floor, State Office Building, Corner of High and Clinton Streets, Frankfort, Kentucky 40622. The office hours are 8 a.m. through 4:30 p.m. eastern time on week days. The telephone number is (502) 564-3276.]

ED LOGSDON, Commissioner

JAMES C. CODELL, III, Secretary

RON CHRISTOPHER, Office of General Counsel

APPROVED BY AGENCY: October 17, 1997

FILED WITH LRC: November 12, 1997 at 3 p.m.

PUBLIC HEARING: A public comment hearing on this administrative regulation will be held on December 22, 1997 at 1 p.m. local prevailing time in the Transportation Cabinet, Corner of High, Clinton and Holmes Streets, 4th Floor Hearing/Conference Room 1003, 501 High Street, Frankfort, Kentucky 40622. Any person who intends to attend this meeting must in writing by December 15, 1997 so notify this agency. If no notification of intent to attend the hearing is received by this date, the hearing may be canceled. This hearing is open to the public. Any person who attends will be given the opportunity to comment on the administrative regulation. A transcript of the public comment hearing will not be made unless a written request for a transcript is made and then only at the requestor's expense. If you have a disability for which the Transportation Cabinet needs to provide accommodations, please notify us of your requirements by December 15, 1997. This request does not have to be in writing. If you do not wish to attend the public hearing, you may submit written comments on the administrative regulation. Written comments will be accepted until the close of business on December 22, 1997. Send written notification of intent to attend the public comment hearing or written comments on the administrative regulation to: Sandra Pullen Davis, Staff Assistant, Transportation Cabinet, State Office Building 10-13, 501 High Street, Frankfort, Kentucky 40622, (502) 564-7650, Fax: (502) 564-5238.

REGULATORY IMPACT ANALYSIS

Contact Person: Sandra Pullen Davis

(1) Type and number of entities affected: All transporters of hazardous materials by highway or air in Kentucky.

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

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: A public hearing was not requested. However, there is no known cost of living or employment impact expected in Kentucky as a result of the changes to this administrative regulation.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: A public hearing was not requested. However, there is no known cost of doing business impact expected in Kentucky as a result of the changes to this administrative regulation.

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

competition) for the:

1. First year following implementation: No change as a result of the changes to the administrative regulation.

2. Second and subsequent years: Same

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings: None

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements: None

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

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Federal Highway Administration funding through the Motor Carrier Safety Assistance Program Grant.

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

(a) Geographical area in which administrative regulation will be implemented: A public comment hearing was not held. However, no economic impacts are anticipated.

(b) Kentucky: Same as above

(7) Assessment of alternative methods; reasons why alternatives were rejected: Only one alternative exists to the administrative regulation amendment as proposed. The do-nothing alternative was rejected because of the requirement in KRS Chapter 174 that the federal regulations be adopted. Therefore, the new federal regulations are proposed to be adopted because all changes are currently allowed by US DOT. A motor carrier should not be cited for complying with the new federal requirements.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: There should be an added measure of safety in the transportation of hazardous materials, particularly on public highways.

(b) State whether a detrimental effect on environment and public health would result if not implemented: Possibly, since the list of hazardous materials covered under this administrative regulation has been revised to include several additional materials, they will now have to be packaged, labeled, shipped and placarded in accordance with the safety procedures established in this administrative regulation. There should be fewer air or highway problems with the transportation of these hazardous materials if the administrative regulation is promulgated.

(c) If detrimental effect would result, explain detrimental effect: Without the safest and most up-to-date shipping and transportation procedures being implemented and enforced, it is possible that highway crashes could cause more environmental problems due to spills, leakage, or explosions.

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

(a) Necessity of proposed regulation if in conflict:

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

(10) Any additional information or comments:

The proposed amendment adopts changes to the 49 CFR Parts which govern the transportation of hazardous materials by air or highway and are included in this administrative regulation. These changes were published in the "Federal Register" during the last several months. The changes of significance are as follows:

(a) Amends the hazardous materials regulations to maintain alignment with corresponding provisions of international standards. Because of recent changes to the International Maritime Dangerous Goods Code (IMDG Code), the International Civil Aviation Organization's Technical Instructions for the Safe Transport of Dangerous Goods by Air (ICAO Technical Instructions), and the United Nations

Recommendations on the Transport of Dangerous Goods (UN Recommendations), these revisions are necessary to facilitate the transport of hazardous materials in international commerce.

(b) Allows the transportation of certain liquid hazardous materials in nonspecification open-head fiber drums until September 30, 1999, if the fiber drums have been filled before, and are not emptied and refilled after, the expiration of the current authority for the use of these packagings.

(c) Amends the hazardous materials regulations to add a specific shipping description to the Hazardous Materials Table for chemical oxygen generators and to require approval of a chemical oxygen generator, and its packaging, when the chemical oxygen generator is to be transported with its means of initiation attached. Oxygen generators currently are transported under several different shipping descriptions which identify chemical constituents but do not identify that the packaged articles are oxygen generators. These changes will facilitate the identification of oxygen generators in transportation, making it easier to comply with and enforce existing prohibitions against the carriage of chemical oxygen generators on passenger aircraft and in inaccessible locations on cargo aircraft, and enhance packaging requirements.

(d) Changes hazardous materials regulations to assist emergency response personnel in responding to and mitigating the effects of incidents involving the transportation of hazardous materials, and to improve safety to transportation workers and the public.

(e) Incorporates safety requirements for mobile and temporary Liquefied Natural Gas (LNG) facilities by referencing the National Fire Protection Association (NFPA) Standard 59A (1996 edition), Standard for the Production, Storage and Handling of Liquefied Natural Gas (LNG). This rule will reduce the burden on the industry and state and federal governments by eliminating waiver requirements for mobile and temporary LNG facilities.

(f) Adopts temporary requirements for cargo tank motor vehicles in certain liquefied compressed gas service. It requires a specific marking on affected cargo tank motor vehicles and requires motor carriers to comply with additional operational controls intended to compensate for the inability of passive emergency discharge control systems to function as required by the Hazardous Materials Regulations. The interim operational controls specified in this rule will improve safety while the industry and government continue to work to develop a system that effectively stops the discharge of hazardous materials from a cargo tank if there is a failure of a transfer hose or piping.

These operational controls are necessary because a substantial portion of the industry failed to comply with an important excess flow requirement, which has been in place since 1941, and has failed to comply with the IFR.

(g) Removes Radiation Protection Program regulations and related modal provisions that require the development and maintenance of a written radiation protection program for persons who offer, accept for transportation, or transport radioactive materials. This action is necessary to address difficulties and complexities concerning implementation of and compliance with the requirements for a radiation protection program, as evidenced by comments received from the radioactive material transportation industry and other interested parties.

The remainder of the changes are technical or clarifying in nature or are an attempt by the U.S. Department of Transportation to restructure the hazardous materials regulations to reduce repetitive statements.

(11) TIERING: Is tiering applied? Yes. The adopted federal regulations are tiered based on the amount and type of hazardous material being transported.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate.

49 CFR Part 350 encourages each state to enforce uniform motor carrier safety and hazardous materials regulations for both interstate and intrastate motor carriers and drivers. A coordinated program of inspection and enforcement activities is needed to avoid duplication of effort, to promote compliance with uniform safety requirements by all types of motor carriers, and to provide a basis for sanctioning carriers for poor safety performance. The states may apply for a Motor Carrier Safety Assistance Program Grant to implement this federal policy. To be eligible for such a grant the state must adopt and assume responsibility for enforcement of the federal motor carrier safety regulations found in 49 CFR Parts 107, 130, 171 - 173, 177, 178, and 180.

2. State compliance standards. Kentucky has been a participant in the Motor Carrier Safety Assistance Program since its inception in the 1980's. The Transportation Cabinet has adopted all of the federal regulations contained in 49 CFR Parts 107, 130, 171 - 173, 177, 178, and 180.

3. Minimum or uniform standards contained in the federal mandate. These federal regulations contain the following minimum standards:

- (a) The listing of the materials and their minimum quantities which require a material to be treated as a hazardous material;
- (b) Establishes the emergency response information requirements for each transporter of a hazardous material;
- (c) Defines the general requirements for shipping and packaging of each type of hazardous material;
- (d) Defines the unacceptable hazardous material shipments on a highway;
- (e) Establishes requirements for the transportation of hazardous materials that are unique to highway transportation;
- (f) Establishes shipping container specifications for the transportation of hazardous materials;
- (g) Establishes the qualification and maintenance requirements for cargo tanks which are used in the transportation of hazardous materials; and
- (h) Establishes an oil spill prevention and response plan for all transporters of oils.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? Yes. State law requires that the transportation of hazardous materials by air be regulated in accordance with the federal regulations. Therefore 49 CFR Part 175 relating to the carriage of hazardous materials by aircraft has also been adopted even though the federal incentive program does not include this part.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. State law requires that the transportation of hazardous materials by air be regulated in accordance with the federal regulations.

TRANSPORTATION CABINET
Department of Vehicle Regulation
Division of Driver Licensing
(Amendment)

601 KAR 11:040. Medical waivers for intrastate operators of commercial motor vehicles.

RELATES TO: KRS Chapter 281A, 281.600, 49 CFR Part 383, 49 CFR Part 391

STATUTORY AUTHORITY: KRS 281A.040, 281.600, 49 CFR 383 Subpart E, 49 CFR 391 Subpart E

NECESSITY, FUNCTION, AND CONFORMITY: The federal requirements for the issuance of a commercial driver's license to a driver operating in interstate commerce include a certification that the driver meets the qualification requirements contained in 49 CFR Part

391. The Federal Highway Administration does not require a person who operates entirely in intrastate commerce to be subject to 49 CFR Part 391. He is subject however, to Kentucky driver qualification requirements. In 601 KAR 1:005 the Transportation Cabinet adopted the majority of the driver qualification requirements of 49 CFR Part 391 on both an interstate and intrastate commerce basis. However, medical waivers in addition to those allowed in 49 CFR 391.49 are allowed by the Federal Highway Administration for drivers operating exclusively in intrastate commerce. This administrative regulation sets forth the procedure and standards for obtaining an intrastate medical waiver.

Section 1. Application for Intrastate Medical Waiver. (1) A commercial driver may apply to the Transportation Cabinet for a medical waiver if he:

- (a) Operates exclusively in intrastate commerce; and
- (b) Has failed to meet the physical requirements of 49 CFR 391, Subpart E, which govern [adopted in] 601 KAR 1:005.

(2) The application for medical waiver shall be on Kentucky Transportation Cabinet form TC 94-38, "Request for Medical Waiver" effective December 1996. [January, 1991. This form is incorporated by reference as a part of this administrative regulation.]

(3)(a) A copy of the completed medical examination form required by 49 CFR 391.43 and 601 KAR 1:005 shall be attached to the application for medical waiver.

(b) The medical examination form shall have been completed by a health care professional as [delineated in 49 CFR Part 390.5 and] adopted in 601 KAR 1:005, Section 7.

(c) The medical examination form shall indicate the reason the applicant failed to meet the requirements of 49 CFR 391 Subpart E.

(4)(a) Except as provided in paragraph (b) of this subsection, [(d)1:] a copy of the applicable supplemental medical report form shall be completed by a licensed doctor of medicine or osteopathy [shall be attached to the application for medical waiver].

(b) [2:] The "Vision Conditions" form shall [may] be completed by a licensed doctor of optometry or ophthalmology.

[(e)] The following supplemental medical report forms each with an edition date of December 1990, shall be incorporated by reference as a part of this administrative regulation:

- 1. "Cardiovascular Conditions";
- 2. "Neurological Conditions";
- 3. "Musculoskeletal Conditions";
- 4. "Metabolic Conditions";
- 5. "Alcohol or Other Drug Dependence";
- 6. "Mental and Emotional Conditions"; and
- 7. "Vision Conditions".

(f)] The licensed doctor of medicine or osteopathy shall determine which [ones] of the following [these] supplemental medical report forms are applicable to the medical waiver applicant:

- 1. "Cardiovascular";
- 2. "Neurological";
- 3. "Musculoskeletal";
- 4. "Metabolic";
- 5. "Alcohol or Drug Dependence"; and
- 6. "Mental and Emotional Conditions".

(4) The application for medical waiver, medical examination form and supplemental medical report form shall be submitted to the Transportation Cabinet, Division of Driver Licensing, State Office Building, Frankfort, Kentucky 40622.

[(5)] A copy of the forms incorporated by reference may be obtained, inspected or copied at the Division of Driver Licensing, State Office Building, Frankfort, Kentucky 40622 by writing or appearing in person, 8 a.m. to 4:30 p.m. Eastern time, Monday through Friday.]

Section 2. (1) The Division of Driver Licensing shall base its decision on granting the requested medical waiver on the information

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obtained from the following:

- (a) Driving history record of the applicant;
- (b) Original medical examination form; and
- (c) Supplemental medical report form;

(d) A skills test if suggested by the Medical Review Board, the applicant if his medical problem is exoskeletal or visual, or the provisions of this administrative regulation; and

(e) Any other information supplied to the Division of Driver Licensing about the driving ability of the applicant by the Medical Review Board, a physician, police officer or acquaintance.

(2) The following medical guidelines shall be considered by the Division of Driver Licensing in evaluating the information related to the commercial driver:

- (a) Paraplegics or quadriplegics.

[1-] If the applicant has a loss or impairment of foot, leg, arm, hand or fingers, he shall not be issued a medical waiver unless he passes a skills test administered by the Kentucky State Police in the commercial vehicle adapted for his specific disability.

[2- If a waiver is issued, it shall be vehicle specific.

3- If the applicant makes any adjustments to the specially adapted commercial vehicle or acquires a different commercial vehicle, it shall be approved by the Division of Driver Licensing prior to operation by the person with the medical waiver.]

(b) Vision. To be considered for a medical waiver, the commercial driver shall:

- 1. Have a distance visual acuity of 20/60 (Snellen) or better with corrective lenses in one (1) or both eyes;
- 2. Have visual fields which are not narrowed to less than 110 degrees of total visual field;
- 3. Readily distinguish which light of traffic signals and devices showing standard red, green and amber is illuminated;

- 4. Not wear bioptic lenses; and
- 5. Not have uncorrectable double vision.

(c) Hearing. A waiver of 49 CFR 391.41(11) shall be issued.

(d) Epilepsy or other condition likely to cause loss of consciousness. A commercial driver with epilepsy or other condition which may cause loss of consciousness shall:

- 1. Have been seizure free for one (1) year prior to requesting the waiver;
- 2. Not have experienced loss of consciousness, blackout, fainting or disorientation in the year immediately prior to requesting the waiver; and
- 3. Be reliable in taking his prescribed medication to be considered for a medical waiver as proven by the blood content levels of his medication.

(e) Cardiovascular.

1. In the year immediately preceding a waiver request, a commercial driver shall not have experienced:

- a. A fainting or blackout spell;
 - b. Uncontrollable attacks of choking, suffocation, or shortness of breath; or
 - c. Uncontrollable instances of syncope or vertigo.
2. A commercial driver shall not have heart disease symptoms while:

- a. Operating a motor vehicle; or
 - b. Sitting at rest.
3. A commercial driver shall not have:
- a. Difficulty in breathing;
 - b. Painful breathing; or
 - c. An aortic or ventricular aneurysm.
4. A commercial driver's:
- a. Blood pressure shall not be irregular; or
 - b. Diastolic blood pressure shall not consistently be above 110 millimeters of mercury.

(f) Diabetes. A commercial driver shall not have:

- 1. An uncontrolled condition of diabetes; or
- 2. In the year immediately preceding a waiver request, had an

instance of diabetes shock or coma.

(g) Alcohol or drugs. A commercial driver shall have been free of addiction to or abuse of alcohol or other drugs for at least one (1) year.

(h) Emotional or mental. A commercial driver shall:

- 1. Not exhibit homicidal, suicidal, or destructive behavior;
- 2. In the year immediately preceding a waiver request, not have experienced bouts of:
 - a. Extreme anxiety;
 - b. Depression;
 - c. Paranoia;
 - d. Confusion;
 - e. Delusions; or
 - f. Hallucinations.
- 3. Not, in the three (3) years immediately preceding a waiver request, have been hospitalized for a mental or emotional condition.

Section 3. (1) If a commercial driver is granted a medical waiver, he shall submit to medical reexaminations required by the Division of Driver Licensing.

(2) After a reexamination, a waiver shall remain in effect if the physician performing the reexamination certifies that:

(a) The condition for which a waiver was issued has not worsened; and

(b) An additional nonqualifying condition has not manifested.

(3)(a) The driving history record of a commercial driver approved for a medical waiver may be evaluated by the Division of Driver Licensing at any time [:

1- At any time; and

2- At least once a year.]

(b) If a review of the person's driving history record, submitted medical information, or related items would cause the person to ordinarily be referred to the Medical Review Board under the provisions of 601 KAR 13:090[040], the waiver or waiver request shall be referred to the Medical Review Board for evaluation.

(4)(a) After completion of a test of the commercial driver's driving skills requested by the Division of Driver Licensing, the Kentucky State Police shall submit to the Division of Driver Licensing:

1. The test results; and

2. Recommendations for waiver refusal or restrictions on a medical waiver.

(b) If a medical waiver with restrictions is issued, the restriction shall be noted on the commercial driver's motor vehicle operator's license or commercial driver's license.

(5) If an intrastate medical waiver is issued to a commercial driver, he shall notify the Division of Driver Licensing immediately of any change in or worsening of his physical or mental condition.

(6) If an intrastate medical waiver is issued to a commercial driver with a progressive disease, the Division of Driver Licensing may require the commercial driver to submit to a periodic skills test with the Kentucky State Police.

(7) If an intrastate medical waiver is issued to a person with a pacemaker, he shall submit an annual report on the functioning of the device to the Division of Driver Licensing.

(8) A medical waiver shall be cancelled if a commercial driver fails to within forty-five (45) days:

(a) Submit to a periodic report requested by the Division of Driver Licensing; or

(b) Report for a skills test.

(9) The employer of a commercial driver who has obtained a medical waiver shall notify the Division of Driver Licensing of a change in the commercial driver's:

(a) Physical or mental condition; or

(b) Employment or employment conditions.

Section 4. (1) If a commercial driver is denied a medical waiver by the Division of Driver Licensing, he may request reconsideration

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from ~~[appeal to]~~ the Commissioner of the Department of Vehicle Regulation. In considering the request for reconsideration ~~[appeal]~~, the Commissioner of the Department of Vehicle Regulation shall request from the Medical Review Board established in accordance with 601 KAR 13:090~~[040]~~ a review of the case and recommendation on the request for reconsideration ~~[appeal]~~.

(2) The request for reconsideration ~~[appeal]~~ shall be filed with the Commissioner of the Department of Vehicle Regulation in writing within thirty (30) days of the decision of the Division of Driver Licensing.

(3) A member of the Medical Review Board with specific qualifications in the medical area relating to the request for reconsideration ~~[appeal]~~ shall review the request ~~[appeal]~~ when requested by the commissioner.

(4) The commissioner's review shall be based on the information provided to the Division of Driver Licensing, the recommendation of the Medical Review Board and any additional information requested by the commissioner.

(5) ~~[The findings of the Commissioner of the Department of Vehicle Regulation shall be administratively final.]~~

(6) The Commissioner of the Department of Vehicle Regulation shall provide a copy of his findings to the:

- (a) Commercial driver; and
- (b) Division of Driver Licensing.

(6) ~~[(7)]~~ A commercial driver aggrieved by the findings of the Commissioner of the Department of Vehicle Regulation may file an appeal with the Secretary of the Transportation Cabinet in accordance with the provisions of KRS Chapter 13B. ~~[appeal to Franklin Circuit Court.]~~

Section 5. Medical Review Board. Any applicant denied a medical waiver under the provisions of this administrative regulation shall be referred to the Medical Review Board under the provisions of 601 KAR 13:090~~[040]~~.

Section 6. Waiver Cancellation. If at any time after the issuance of a medical waiver, the Division of Driver Licensing cancels the waiver pursuant to the provisions of this administrative regulation, the driver's commercial driver's license shall also be cancelled.

Section 7. Material Incorporated by Reference. (1) The following Transportation Cabinet forms are incorporated by reference as a part of this administrative regulation:

- (a) TC 94-38, "Request for Medical Waiver" effective December 1996;
- (b) TC 94-38A "MEDICAL REPORT FORM - Vision" effective October 1996;
- (c) TC 94-38B "MEDICAL REPORT FORM - Metabolic" effective June 1995;
- (d) TC 94-38C "MEDICAL REPORT FORM - Neurological" effective April 1996;
- (e) TC 94-38D "MEDICAL REPORT FORM - Cardiovascular" effective March 1994;
- (f) TC 94-38E "MEDICAL REPORT FORM - Musculoskeletal" effective March 1994;
- (g) TC 94-38F "MEDICAL REPORT FORM - Alcohol or Drug Dependence" effective February 1991; and
- (h) TC 94-38G "MEDICAL REPORT FORM - Mental and Emotional Conditions" effective March 1994.

(2) The material incorporated by reference in this administrative regulation may be viewed, copied, or obtained from the Transportation Cabinet, Division of Driver Licensing, Second Floor, 501 High Street, Frankfort, Kentucky 40622. The telephone number is (502) 564-6800. The hours of operation are 8 a.m. to 4:30 p.m. weekdays. It is also available from the Driver Licensing Office of any Circuit Court Clerk.

ED LOGSDON, Commissioner

JAMES C. CODELL, III, Secretary

APPROVED BY AGENCY: October 21, 1997

FILED WITH LRC: November 6, 1997 at 2 p.m.

PUBLIC HEARING: A public comment hearing on this administrative regulation will be held on December 22, 1997 at 2:30 p.m. local prevailing time in the Transportation Cabinet, Fourth Floor Conference Room, Corner of High, Clinton and Holmes Streets, 501 High Street, Frankfort, Kentucky 40622. Any person who intends to attend this meeting must in writing by December 15, 1997, so notify this agency. If no notification of intent to attend the hearing is received by this date, the hearing may be cancelled. This hearing is open to the public. Any person who attends will be given the opportunity to comment on the administrative regulation. A transcript of the public comment hearing will not be made unless a written request for a transcript is made and then only at the requestor's expense. If you have a disability for which the Transportation Cabinet needs to provide accommodations, please notify us of your requirements by December 15, 1997. This request does not have to be in writing. If you do not wish to attend the public hearing, you may submit written comments on the administrative regulation. If the hearing is held, written comments will be accepted until the close of the hearing. If the hearing is cancelled, written comments will be accepted until close of business on December 22, 1997. Send written notification of intent to attend the public comment hearing or written comments on the administrative regulation to: Sandra Pullen Davis, Staff Assistant, Transportation Cabinet, State Office Building, 501 High Street, Frankfort, Kentucky 40622, (502) 564-7650, Fax: (502) 564-5328.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Sandra Pullen Davis, (502) 564-7650, Fax: (502) 564-5238

(1) Type and number of entities affected: The 4,000+ motor carriers based in Kentucky and the drivers of their commercial motor vehicles.

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

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: Public hearing was not held, but no effect on the cost of living or employment are 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: Public hearing was not held, but no effect on the cost of living or employment are anticipated.

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

1. First year following implementation: An individual who cannot pass the medical examination for a commercial driver's license may choose to apply for a medical waiver. If so, he must complete the appropriate ones incorporated by reference in this administrative regulation. Further, he will have to undergo a medical examination. The cost of the additional medical examinations will be approximately \$75 per person. However, of the 300 anticipated waiver applications, we anticipate 80% will be eligible for the medical waivers and therefore, able to retain or obtain jobs as commercial drivers. Assuming a salary of \$20,000 per person the overall savings to the applicants will be almost \$0.5 million.

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

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings: The Transportation Cabinet will be required to review the 300 applications for medical waiver. Physicians may have to be retained on contract to evaluate the applications and supplemental medical report forms of those persons who apply for the medical waiver.

1. First year: The cost to the Transportation Cabinet will be the

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cost of reviewing the applications.

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

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements: The Transportation Cabinet will have to carefully monitor each of the persons granted a medical waiver to ensure that the person continues to safely operate a commercial motor vehicle.

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

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Road fund monies appropriated for use of the Department of Vehicle Regulation.

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

(a) Geographical area in which administrative regulation will be implemented: A public hearing was not held, however, no economic impact is anticipated.

(b) Kentucky: A public hearing was not held, however, no economic impact is anticipated.

(7) Assessment of alternative methods; reasons why alternatives were rejected: None. The General Assembly in 1992 required the Transportation Cabinet to continue issuing medical waivers as long as the Federal Highway Administration allowed.

(8) Assessment of expected benefits:

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

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

(c) If detrimental effect would result, explain detrimental effect: Not applicable

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

(a) Necessity of proposed regulation if in conflict:

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

(10) Any additional information or comments: The vast majority of these motor carriers operate on an interstate basis and are subject to the federal motor carrier safety regulations. The promulgation of this administrative regulation allows a commercial driver who operates exclusively on an intrastate commerce basis to apply for a medical waiver. In the first year 1300 persons applied for the medical waiver. These were persons who are not legally able to operate a commercial motor vehicle under the current federal and state administrative regulations, but who have been driving anyway. (Most are unaware of the requirement for a biennial medical examination.) We anticipate an additional 300 applications for a medical waiver this year.

(11) TIERING: Is tiering applied? (Explain why tiering was or was not used) Yes. Tiering was applied in this administrative regulation by allowing persons who would otherwise be ineligible for a commercial driver's license to apply for a medical waiver and setting standards for the issuance of the waivers.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. Title XII of PL 99-570 mandated the issuance of Commercial Driver's Licenses by all states. The Federal Highway Administration promulgated 49 CFR Part 383 to implement this requirement. While 49 CFR Part 383 mandates that the commercial driver meet the physical requirements in 49 CFR Part 391, the Federal Highway Administration did allow states who were already allowing drivers in intrastate commerce to be licensed with less stringent standards to continue this practice for two years after the CDL requirement was in place. This administrative regulation formally adopts the medical waivers allowed for intrastate commercial vehicle operators. There is no federal mandate or standard for these waivers. Therefore the remaining

questions in this form are not applicable.

2. State compliance standards. Not applicable.

3. Minimum or uniform standards contained in the federal mandate. Not applicable.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? Not applicable.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Not applicable.

TRANSPORTATION CABINET Department of Highways Division of Transportation Planning Department of Vehicle Regulation Division of Motor Carriers Division of Motor Vehicle Enforcement (Amendment)

603 KAR 5:070. Motor vehicle dimension limits.

RELATES TO: KRS 189.222, 23 CFR Part 658

STATUTORY AUTHORITY: KRS 189.222(1), 23 CFR Part 658

NECESSITY, FUNCTION, AND CONFORMITY: KRS 189.222

authorizes the Secretary of Transportation to establish reasonable size limits for motor vehicles using the State Primary Road System, that is, the [-The State Primary Road System consists of those] roads maintained by the Department of Highways. Further, 23 CFR Part 658 requires that a reasonable access on state-maintained highways and locally controlled highways be included with the list of highways over which motor vehicles with increased dimensions shall be allowed to operate. The federal regulation strongly suggests that the states allow the motor vehicles with increased dimensions to operate with a gross weight of up to 80,000 pounds (36,287.36 kilograms) where the motor vehicles with increased dimensions are allowed. The federal regulation also requires that vehicles with increased dimensions which are transporting household goods and truck tractors towing only one (1) semitrailer which does not exceed twenty-eight (28) feet (8.53 meters) in length be provided statewide access unless a route is specifically excluded for safety reasons. This administrative regulation is adopted to set the maximum motor vehicle and combination vehicle dimensions for all classes of highways. The federal regulation 23 CFR Part 658 sets forth the highways available for use by vehicles with increased dimensions. This administrative regulation includes these highways as well as others which have been constructed to accommodate the motor vehicles with increased dimensions. In addition, 23 CFR 658.19 requires each state to allow the increased dimension vehicles to operate within one (1) driving mile (1.61 kilometers) of the designated highways. On state-maintained highways in Kentucky, the increased dimension vehicles are allowed to operate within five (5) driving miles (8.05 kilometers) of a designated highway. However, bus dimension limits are set forth in 603 KAR 5:071.

Section 1. Definitions. (1) "Length exclusion safety device" means an appurtenance at the front or rear of a motor vehicle semitrailer or trailer whose function is related to the safe and efficient operation of the semitrailer or trailer and shall not be designated, designed or used for carrying cargo.

(2) "Width exclusion safety device" means an appurtenance at the side of a motor vehicle semitrailer or trailer whose function is normally related to the safe and efficient operation of the semitrailer or trailer and shall not be designated, designed or used for carrying cargo.

Section 2. (1) The following items shall be designated as width exclusion safety devices:

(a) Rearview mirrors;

(b) Turn signal lamps;

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- (c) Hand holds for cab entry or egress;
- (d) Splash and spray suppressant devices; and
- (e) Load induced tire bulge.

(2) The following items shall be designated as width exclusion safety devices as long as they do not extend beyond three (3) inches (0.0762 meters) on either side of the vehicle:

- (a) Corner cap;
- (b) Rear and side door hinges and their protective hardware;
- (c) Rain gutters;
- (d) Side marker lamps;
- (e) Lift pads for piggyback trailers;
- (f) Hazardous materials placards;
- (g) Tarp and tarp hardware;
- (h) Tie-down assembly on platform trailers;
- (i) Wall variation from true flat; and
- (j) Weevil pins and sockets on low bed trailers.

Section 3. Except as provided in Section 4 of this administrative regulation, the maximum dimensions for a motor vehicle or combination motor vehicle, except a bus, using a public highway in Kentucky [all motor vehicles and combination vehicles except buses using all classes of highways] shall be as follows:

(1) Height: including body and load, not to exceed thirteen (13) feet and six (6) inches (4.115 meters).

(2) Width: including body and load, not to exceed eight (8) feet (2.44 meters), excluding a [any] width exclusion safety device.

(3) Length. [The maximum lengths listed below shall not include length exclusion safety devices:]

(a) The length of a single unit motor vehicle, including any part of the body or load, but excluding a length exclusion safety device, shall not exceed forty-five (45) feet (13.716 meters).

(b) [A single unit motor vehicle transporting utility poles or pipes in which the vehicle and load do not exceed forty-five (45) feet (13.716 meters) shall not be required to obtain an overdimensional permit.]

(c) [If the front or rear overhang of a single unit motor vehicle exceeds five (5) feet (1.524 meters), an overdimensional permit shall be obtained prior to the operation of the vehicle.]

(d) A motor vehicle and trailer or semitrailer combination, including any part of the body or load, but excluding a length exclusion safety device, shall not exceed sixty-five (65) feet (19.812 meters).

(e) [If a truck tractor or semitrailer unit is exclusively engaged in the transportation of motor vehicles or boats, a three (3) foot (0.914 meters) front and four (4) foot (1.22 meters) rear overhang shall not be included in the measurement of the sixty-five (65) feet (19.812 meters) limit established in paragraph (d) of this subsection.]

(4) Length exceptions:

(a) If a truck tractor or semitrailer unit is exclusively engaged in the transportation of motor vehicles or boats, a three (3) foot (0.915 meters) front and four (4) foot (1.22 meters) rear overhang shall not be included in the measurement of the sixty-five (65) feet (19.812 meters) limit established in subsection 3(b) of this section;

(b) A single unit motor vehicle transporting utility poles or pipes in which the vehicle and load do not exceed forty-five (45) feet (13.716 meters) shall be allowed to operate on the public highways of Kentucky.

(5) Weight.

(a) The gross weight limit for each highway segment is set forth in 603 KAR 5:301.

(b) The axle weight limit and the bridge weight formula are set forth in 603 KAR 5:066.

Section 4. (1) A motor vehicle or a combination motor vehicle, except a bus, [Motor vehicles or combination vehicles except buses] with dimensions greater than those specified in Section 3 of this administrative regulation but which do not exceed the dimensions set

forth in subsection (2) of this section may be operated without an overweight or overdimensional permit [only] on the following highways:

(a) Those listed in Section 5(1) of this administrative regulation;

(b) ~~[-on]~~ The five (5) mile (8.05 kilometers) access authorized in Section 5(2) of this administrative regulation; and

(c) ~~[on]~~ The one (1) mile (1.61 kilometers) access authorized in Section 5(3) of this administrative regulation.

(2) A motor vehicle, combination motor vehicle, or towed unit, including any part of the body and load, but excluding a length or width exclusion safety device [Motor vehicles] shall not exceed, without an overdimensional permit, the following width and length dimensions when operating on those highways listed in Section 5(1) of this administrative regulation:

(a) Width - 102 inches (2.59 meters) [including any part of the body or load except for width exclusion devices].

(b) Length of a towed unit.

1. ~~[Semitrailers - excluding length exclusion devices;]~~ Fifty-three (53) feet (16.154 meters) [including body and load] when operated in tractor and single semitrailer combination.

2. ~~[Trailers - excluding length exclusion safety devices;]~~ twenty-eight (28) feet (8.53 meters) [including body and load] when operated in a tractor-semi-trailer-trailer combination or a tractor-semi-trailer-semi-trailer combination ~~[-, not to exceed two (2) trailers per truck tractor].~~

3. Twenty-eight (28) feet (8.53 meters) ~~[-, excluding length exclusion safety devices, shall be the maximum length of a trailer including body and load] when operated in a truck-trailer combination.~~

~~[3. If the load overhangs the body of the trailer or semitrailer by more than five (5) feet (1.524 meters) an overdimensional permit shall be required regardless of the overall length of the unit, except in truck tractor and semitrailer units exclusively engaged in the transportation of motor vehicles or boats, a three (3) foot (0.914 meters) front and four (4) foot (1.22 meters) rear overhang of the transported vehicles or boats shall be excluded in the measurement.]~~

4. There shall not be an ~~[no]~~ overall length limitation on a motor vehicle or combination motor vehicle [vehicles operating on highways listed in Section 5(1) of this administrative regulation or on the five (5) mile (8.05 kilometers) local access authorized in Section 5(2) of this administrative regulation] as long as the requirements set forth in this subsection are met.

5. In a tractor semitrailer-semi-trailer combination vehicle in which the two (2) trailing units are connected with a rigid frame extension attached to the rear frame of the first semitrailer which allows for a fifth wheel connection point for the second semitrailer, the length of the extension shall be excluded from the measurement of semitrailer length.

6. If there is not a second semitrailer mounted to the fifth wheel of the rear frame of a semitrailer [-; however, when there is no second semitrailer mounted to the fifth wheel], the length of the extension shall be included in the length measurement for the semitrailer.

(3) The gross vehicle weight limit for a motor vehicle with the dimensions set forth in Section 4(2) of this administrative regulation while operating on a [each of the] highway segment [segments] set forth in Section 5 of this administrative regulation shall be 80,000 pounds (36,287.36 kilograms) except the axle weight limits and bridge weight limits set forth in 603 KAR 5:066 shall not be exceeded.

(4) The dimensions and weights specified in this section shall not be subject to any enforcement tolerances provided in any other section.

Section 5. (1) The following highways are designated to permit the operation of motor vehicles with increased dimensions but which do not exceed the limitations stated in Section 4(2) of this administrative regulation:

The Interstate and National Defense Highway System.

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Audubon Parkway - from Pennyryle Parkway at Exit 77 in Henderson to US 60 Bypass in Owensboro.

Bluegrass Parkway - from I-65 at Exit 93 in Elizabethtown to US 60 near Versailles.

Cumberland Parkway - from I-65 at Exit 43 near Smiths Grove to US 27 west of Somerset.

Daniel Boone Parkway - from US 25 north of London to KY 15 north of Hazard.

Green River Parkway - From I-65 at Exit 20 in Bowling Green to US 60 Bypass in Owensboro.

Jackson Purchase Parkway - from Tennessee state line to US 62 in Marshall County.

Mountain Parkway and Extension - from I-64 at Exit 98 in Winchester to US 460 at Salyersville.

Pennyryle Parkway - From US 41A south of Hopkinsville to US 41 near Henderson.

Western Kentucky Parkway - from I-24 at Exit 42 south of Eddyville to US 31W/KY 61 in Hardin County.

KY 1 - From the I-64 ramps south of the I-64 interchange at Exit 172 to KY 9 north of I-64 all in Carter County.

KY 3 - From the junction with US 23 at Auxier to the junction with KY 645 south of Inez.

KY 4 - The entire circle of Lexington.

~~[KY 8 - From the junction with KY 19 at Augusta in Bracken County to a point one (1) mile east of the junction with KY 1597 in Mason County.]~~

KY 9 - From the junction with KY 1 in Carter County to the junction with I-275 at Exit 77 in Kenton County.

KY 11 - from the junction with KY 32 in Fleming County to US 62/68 in Maysville.

KY 15 - from US 119 in Whitesburg to KY 15 Spur/KY 191 at Campton, via KY 7 in Letcher County.

KY 15 Spur - From KY 15/KY 191 to the Mountain Parkway at Exit 43.

KY 18 - from KY 237 northwest of Florence to KY 1017 in Florence.

~~[KY 19 - From the junction with KY 9 to the junction with KY 8 at Augusta.]~~

KY 21 - from I-75 at Exit 76 near Berea to US 25 south in Berea.

US 23 - from the Virginia state line to US 119 near Jenkins.

US 23 - From the junction with KY 610 at Dorton to the south end of the U.S. Grant Bridge at South Portsmouth.

US 23 Spur - from US 60 in Ashland to the Ohio state line.

US 25 - from KY 461 in Rockcastle County to I-75 at Exit 62 in Rockcastle County.

US 25/421 - from US 421 south of Richmond to KY 876 in Richmond.

US 25/421 - from KY 418 southeast of Lexington via KY 4 to Nandino Boulevard in Lexington.

US 25 - from US 42 in Florence to Ohio State Line.

US 25E - from Virginia state line to I-75 at Exit 29 north of Corbin.

US 27 - from Tennessee state line to the Ohio State Line (via KY 4 in Lexington).

US 31E - from Tennessee state line to KY 90 at Glasgow (via the Scottsville Bypass and the Glasgow Bypass).

US 31E/150 - From the junction with I-265 at Exit 17 in southeast Jefferson County to the junction with I-264 at Exit 16.

US 31W - from Tennessee state line to KY 255 in Park City, via KY 1008 in Simpson County.

US 31W - from US 31W Bypass in Elizabethtown to I-264 at Exit 8 in Louisville.

US 31W Bypass - from Western Kentucky Parkway at Exit 136 to US 31W in Elizabethtown.

KY 32 - from KY 11 in Fleming County to I-64 at Exit 137 at Morehead.

KY 35 - from US 127 at Bromley to I-71 at Exit 57 north of Sparta.

KY 36 - from the Hunter Heights [~~Kawneer Corporation Plant~~] Road in Carroll County (running concurrently with US 42 in Carrollton) to KY 227.

US 41 - from US 68 (Main Street) in Hopkinsville to US 68 (McLean Avenue) in Hopkinsville.

US 41 - from Pennyryle Parkway at Henderson to Indiana state line.

US 41A - from Tennessee state line to Pennyryle Parkway at south city limits of Hopkinsville.

US 41A - From Wanamaker Road north of Dixon in Webster County (milepoint 11.524) to KY 425, the Henderson Bypass in Henderson County.

US 42 - from I-75 at Exit 180 in Florence to US 25 in Florence.

US 42 - from KY 36 in Carroll County at milepoint 4.519 (running concurrently with KY 36 for 2.699 miles) north to KY 47 at Ghent.

US 45 - from the Jackson Purchase Parkway north of Mayfield to US 60 in Paducah.

US 49 - Concurrent with KY 55 south of Lebanon to north of Lebanon.

US 51 - from Jackson Purchase Parkway at Exit 1 in Fulton County to Illinois state line.

KY 52 - from KY 876 in Richmond to KY 499 at Irvine.

KY 55 - from Cumberland Parkway at Exit 49 in Columbia to US 150 at Springfield, via US 68 and KY 49.

US 60 - from US 51 in Wickliffe via US 45 in McCracken County to US 62 east of Paducah.

US 60 - from KY 109 at Sullivan in Union County to KY 425, the Henderson Bypass.

US 60 - from KY 1554 to US 60B, the Owensboro Bypass, all in Daviess County.

US 60 - from US 60 Bypass east of Owensboro to KY 69 at Hawesville.

US 60 - from KY 144 at Hog Wallow to US 31W at Tip Top, all in Meade County.

US 60 - from US 421/460 at Frankfort to I-75 at Exit 110 near Lexington (via Versailles and KY 4 in Lexington).

US 60 - from junction of KY 180 near Cannonsburg to US 23 in Ashland.

US 60 Bypass - from US 60 west of Owensboro to US 60 east of Owensboro.

KY 61 - from Tennessee state line to KY 90 at Burkesville.

KY 61 - from the junction with US 31E in Hodgenville to US 31W in Elizabethtown.

US 62 - from I-24 at Exit 7 in Paducah to US 45 in Paducah.

US 62 - from US 60 east of Paducah to US 68, all in McCracken County.

US 62 - from KY 341 northeast of Midway to US 421 in Scott County, concurrent with US 421.

US 62 - from US 68 at Washington to the Ohio state line at Maysville, all in Mason County.

US 68 - from US 62 at Reidland to the south ramps of I-24 at Exit 16, all in McCracken County.

US 68 - from I-24 at Exit 65 in Trigg County to Green River Parkway at Exit 5 at Bowling Green via US 41 in Hopkinsville.

US 68 - from KY 55 southwest of Campbellsville to KY 55 in Lebanon.

US 68 - from its east intersection with US 150 in Perryville to its west intersection with US 150 in Perryville.

US 68 - from US 127 south in Harrodsburg to US 127 north in Harrodsburg.

US 68 - from US 27 at Paris to US 62 at Washington (via Paris Bypass).

KY 69 - from US 60 at Hawesville to Indiana state line.

KY 70 - from I-65 at Exit 53 west of Cave City to KY 90 southeast of Cave City.

KY 79 - from KY 1051 in Brandenburg to Indiana state line.

KY 80 - from KY 80B east of Somerset to US 25 north of London.

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KY 80 - from KY 15 north of Hazard to US 23 at Watgap.
KY 80 - from the south ramps of the Daniel Boone Parkway at Exit 20 to US 421 near Manchester.
KY 80B - From US 27 at Somerset to KY 80 east of Somerset.
KY 90 - from KY 70 at Cave City to US 31E north of Glasgow.
KY 90 - from KY 61 at Burkesville to US 27 at Burnside.
KY 109 - from KY 670 in Webster County to US 60 in Union County.
KY 114 - from US 460 east of Salyersville to US 23/460 at Prestonsburg.
KY 118 - from US 421 and KY 80 northwest of Hyden to the Daniel Boone Parkway at Exit 44.
US 119 - from KY 15 east of Whitesburg to US 23 near Jenkins.
US 119 - from US 25E south of Pineville to US 421 at Harlan.
US 119 - from US 23 at Pikeville to KY 1441 northeast of Pikeville.
KY 121 - from the Jackson Purchase Parkway at Exit 24, at Mayfield to US 51 in Wickliffe.
US 127 - from KY 90 west to KY 90 east in Clinton County (concurrent with KY 90).
US 127 - from the Cumberland Parkway at Exit 62 in Russell County north to the junction with US 127 Bypass and US 150 Bypass in Danville.
US 127 - from US 127 Bypass north of Danville to US 127 Bypass south of Lawrenceburg.
US 127 - from US 127 Bypass north of Lawrenceburg to US 421 in Frankfort.
US 127 - from KY 22 in Owenton to KY 35 at Bromley.
US 127 Bypass - from US 127 south of Danville to US 127 north of Danville.
US 127 Bypass - from US 127 south of Lawrenceburg to US 127 north of Lawrenceburg.
KY 144 - from KY 448 south of Brandenburg to US 60.
US 150 - from US 62 at Bardstown to US 27 at north city limits of Stanford (via US 68 in Perryville and via the US 150 Bypass in Danville).
US 150B - from US 127 south of Danville to US 150 east of Danville.
US 150 Bypass - from US 150 at northern city limits of Stanford to US 27, all in Lincoln County.
KY 151 - from US 127 near Lawrenceburg to I-64 at Exit 48 near Graefenburg.
KY 180 - from I-64 at Exit 185 near Cannonsburg to US 60 at Cannonsburg.
KY 191 - from KY 205 north to KY 205 south in Wolfe County, concurrent with KY 205.
KY 192 - from I-75 at Exit 38 south of London to Daniel Boone Parkway east of London.
KY 205 - from Mountain Parkway at Helechawa to US 460 west in Morgan County, concurrent with KY 191.
KY 212 - from the Greater Cincinnati Airport to KY 20, all in Boone County.
KY 227 - from I-71 at Exit 44 to KY 36 at Carrollton.
US 231 - from US 60 Bypass in Owensboro to Indiana state line.
KY 236 - from US 25 at Erlanger to KY 212 near the Greater Cincinnati Airport.
KY 237 - from KY 18 east of Burlington to I-275 at Exit 7 in Boone County.
KY 245 - from US 150 east of Bardstown to I-65 at Exit 112 south of Shepherdsville.
KY 255 - from US 31W (2nd Street) in Park City to the I-65 interchange northwest ramps at Exit 48.
KY 259 - from Western Kentucky Parkway at Exit 107 to US 62 in Leitchfield.
KY 313 - from the I-65 bridge overpass extending west to the junction with US 31W in Radcliffe.
KY 341 - from US 62/421 near Midway north to I-64 at Exit 65.

KY 348 - from Jackson Purchase Parkway at Exit 43 west of Benton to US 641 in Benton.
KY 418 - from US 25 south of Lexington to I-75 at Exit 104.
US 421 - from 0.1 mile south of Harlan Appalachian Regional Hospital.
US 421 - from Daniel Boone Parkway at Exit 20 to KY 2438 (2nd Street) in Manchester.
US 421 - from KY 4 in Lexington to US 62 east in Scott County.
US 421 - from US 60/460 in Frankfort to US 127 north.
US 421 - from KY 55 south of Newcastle in Henry County to I-71 at Exit 34 west of Campbellsburg.
KY 425 - from US 60 at Henderson to the Pennyrile Parkway at Exit 76.
US 431 - from US 60 Bypass in Owensboro to US 60 (4th Street) in Owensboro.
KY 446 - from US 31W northeast of Bowling Green to I-65 at Exit 28.
KY 448 - from KY 144 to KY 1051 at Brandenburg.
US 460 - from I-64 at Exit 110 north of Mt. Sterling to KY 686.
US 460 - from Mountain Parkway Extension at Exit 75 to US 23 near Paintsville.
KY 461 - from KY 80 in Pulaski County to US 25 north of Mt. Vernon in Rockcastle County.
KY 471 - from US 27 in Campbell County to the I-275/471 interchange at Exit 1.
KY 555 - from US 150 at Springfield to Bluegrass Parkway at Exit 42.
KY 627 - from I-75 interchange at Exit 95 in Madison County to the junction with KY 1958 (Winchester Bypass) in Clark County.
US 641 - from Tennessee state line to KY 348 in Marshall County.
US 641 Spur - from US 641 south of Benton to the Jackson Purchase Parkway at Exit 41.
KY 645 - from US 23 south of Ulysses to KY 3 south of Inez.
KY 676 - from US 127 in west Frankfort to US 60 in east Frankfort.
KY 686 - from US 460 north of Mt. Sterling to KY 11 south of Mt. Sterling.
KY 841 - from US 31W (Dixie Highway) in southwestern Jefferson County to I-65 at Exit 125.
KY 841 - from I-71 at Exit 9 in Jefferson County to US 42 northeast of Louisville.
KY 876 - from I-75 at Exit 87 at Richmond to KY 52 east of Richmond.
KY 922 - from KY 4 in Lexington north to I-64 and I-75 at Exit 115.
KY 1008 - from US 31W in south Franklin to US 31W in north Franklin.
KY 1017 - from US 25 in Florence to I-75 at Exit 182.
KY 1051 - from KY 448 south of Brandenburg to KY 79.
~~[KY 1597 - From KY 3056 northwest of Maysville to KY 8 all in Mason County.]~~
KY 1682 - from US 68 west of Hopkinsville to Pennyrile Parkway at Exit 12.
KY 1958 - from KY 627 south of Winchester to I-64 at Exit 94 at Winchester.
KY 1998 - from US 27 at Cold Springs to KY 8 near Silver Grove.
KY 3071 - from KY 9 to KY 8, all in Mason County.
(2) Motor vehicles with the increased dimensions specified in Section 4 of this administrative regulation shall be allowed five (5) driving miles (8.05 kilometers) on state maintained highways from the highway segments specified in subsection (1) of this section for the purpose of attaining reasonable access to terminals, facilities for food, fuel, repairs and rest.
(3) Motor vehicles with the increased dimensions specified in Section 4 of this administrative regulation shall be allowed one (1) driving mile (1.61 kilometers) on nonstate maintained public use

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highways from the highway segments specified in subsection (1) of this section for the purpose of attaining reasonable access to terminals, facilities for food, fuel, repairs and rest.

Section 6. (1) Household Goods Transporters. Motor vehicles with the increased dimensions specified in Section 4 of this administrative regulation and which are used to transport household goods by a motor carrier certificated by either the Interstate Commerce Commission or the Kentucky Transportation Cabinet to transport household goods shall have access to any public roadway in the Commonwealth of Kentucky.

(2) Single unit semitrailers. Motor vehicles with the increased dimensions specified in Section 4 of this regulation and which consist of only a truck tractor and single semitrailer which does not exceed twenty-eight (28) feet excluding any length exclusion safety device shall have access to any public roadway in the Commonwealth of Kentucky.

(3) Recreational vehicle. A recreational vehicle which has a registration license plate issued pursuant to KRS 186.050(11), 186.655, or equivalent statute from another licensing jurisdiction shall have access to any public state-maintained roadway in the Commonwealth of Kentucky as long as the dimensions of the recreational vehicle do not exceed those set forth in Section 4 of this administrative regulation. This shall not be considered a waiver of the weight restrictions of any highway.

Section 7. Nonstate Maintained Exceptions to One (1) Mile (1.61 Kilometers) Automatic Access. The following local government has adopted ordinances which exempt for safety reasons certain locally maintained roadways from the automatic one (1) mile (1.61 kilometers) access provision of Section 5(3) of this administrative regulation: The city of Anchorage in Jefferson County - the streets all within the corporate city limits of Anchorage listed in the city ordinance which shall not be used by motor vehicles with the increased dimensions specified in Section 4 of this administrative regulation are:

- (1) Evergreen Road;
- (2) Bellewood Road;
- (3) Lucas Lane; and
- (4) Old Harris Creek Road.

Section 8. State-maintained Exceptions to Automatic Five (5) Mile (8.05 Kilometers) Access. The Department of Highways has found the following road segment for safety reasons to be exempt from the five (5) mile (8.05 kilometers) automatic access on state-maintained highways set forth in Section 5(4)(2) of this administrative regulation. These road segments shall not be used by vehicles with the increased dimensions [which exceed the dimension limits] set forth in Section 4 of this administrative regulation [without an overdimensional permit]:

KY 146 - from the west boundary of the city of Anchorage at milepoint 4.258 to the east boundary of the city of Anchorage at milepoint 5.878.

KY 418 - from milepoint 2.892 at the intersection with the Blue Sky Parkway just southeast of the I-75 interchange in Fayette County to milepoint 6.089 at the Fayette/Clark County line.

KY 1973 - from milepoint 0.000 at the intersection with US 25 to milepoint 1.866 at its intersection with KY 418, all in Fayette County.

Section 9. Length Measurements. (1) The Federal Highway Administration interpretation of truck length and width exclusive devices published in the "Federal Register" on March 13, 1987 shall govern measuring the length of a semitrailer or trailer. Pages 7834 through 7840 of the March 13, 1987 "Federal Register" are incorporated by reference as a part of this administrative regulation.

(2) The material incorporated by reference may be viewed, copied, or obtained from the Transportation Cabinet, Division of Motor Vehicle Enforcement, 8th Floor, 501 High Street, Frankfort, Kentucky

40622. The telephone number is (502) 564-3276. The business hours of the division are 8 a.m. to 4:30 p.m. eastern time on weekdays.

ED LOGSDON, Commissioner
J.M. YOWELL, P.E., State Highway Engineer
JAMES C. CODELL, III, Secretary

APPROVED BY AGENCY: October 21, 1997

FILED WITH LRC: November 6, 1997 at 2 p.m.

PUBLIC HEARING: A public comment hearing on this administrative regulation will be held on December 22, 1997 at 11 a.m. local prevailing time in the Transportation Cabinet, Corner of High, Clinton and Holmes Streets, 4th Floor Hearing/Conference Room 1003, 501 High Street, Frankfort, Kentucky 40622. Any person who intends to attend this meeting must in writing by December 15, 1997 so notify this agency. If no notification of intent to attend the hearing is received by this date, the hearing may be canceled. This hearing is open to the public. Any person who attends will be given the opportunity to comment on the administrative regulation. A transcript of the public comment hearing will not be made unless a written request for a transcript is made and then only at the requestor's expense. If you have a disability for which the Transportation Cabinet needs to provide accommodations, please notify us of your requirements by December 15, 1997. This request does not have to be in writing. If you do not wish to attend the public hearing, you may submit written comments on the administrative regulation. Written comments will be accepted until the close of business on December 22, 1997. Send written notification of intent to attend the public comment hearing or written comments on the administrative regulation to: Sandra Pullen Davis, Staff Assistant, Transportation Cabinet, State Office Building 10-13, 501 High Street, Frankfort, Kentucky 40622, (502) 564-7650, Fax: (502) 564-5238.

REGULATORY IMPACT ANALYSIS

Contact person: Sandra Pullen Davis

(1) Type and number of entities affected: All operators of STAA type 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, to the extent available from the public comments received: The only amendment in the emergency administrative regulation is the removal of the legal availability of KY 418 and KY 1973 by STAA vehicles. Since these highways are inadequate for the use of these vehicles, the only change in reality will be the posting of signs near I-75 notifying the truck drivers that these road segments are inadequate. There should be no 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: There should be no change in the cost of doing business.

(c) Compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition) for the: No change as a result of the changes to this administrative regulation.

1. First year following implementation: None

2. Second and subsequent years: None

(3) Effects on the promulgating administrative body: The Department of Highways will have to construct and erect several new signs, but there will be no other changes on the Transportation Cabinet.

(a) Direct and indirect costs or savings: The cost of the signs will be approximately \$5000.

1. First year: \$5000

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements: None

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

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None

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Road funds are used in the enforcement of this administrative regulation.

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

(a) Geographical area in which administrative regulation will be implemented: No economic impacts are anticipated.

(b) Kentucky: Ditto

(7) Assessment of alternative methods; reasons why alternatives were rejected: The do-nothing alternative was rejected because many truck drivers seeking to avoid construction delays on I-75 are exiting the interstate highway onto KY 418 which was not constructed to accommodate these larger dimension vehicles.

(8) Assessment of expected benefits: An increase in highway safety on KY 418 and KY 1973.

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: Improved highway safety.

(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: It is likely that the truck drivers would continue to attempt to use these road segments and continue the unsafe conditions on the segments.

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

(a) Necessity of proposed regulation if in conflict:

(b) If in conflict, was effort made to harmonize the proposed

administrative regulation with conflicting provisions:

(10) Any additional information or comments:

(11) TIERING: Is tiering applied? (Explain why tiering was or was not used) Yes, Tiering was applied by allowing larger vehicles to operate on those highways with geometrics conducive to the safe operation of those vehicles.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 23 CFR Part 658, Truck Size and Weight; Reasonable Access requires each state to establish access provisions to the National Truck Network of Highways which meet the criteria set forth in the federal regulation and to get federal approval of the criteria.

2. State compliance standards. The state compliance standards set forth in this administrative regulation meet the federal requirements, but do not exceed them. Specifically, five-mile access on state-maintained highways and one-mile access on locally-maintained highways are allowed from the National Truck Network of Highways. However, if there are reasonable safety grounds for excluding a road segment from the access provisions, the Transportation Cabinet in accordance with 603 KAR 5:250 may do so.

3. Minimum or uniform standards contained in the federal mandate. Same as adopted in the state administrative regulation.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Not applicable.

LABOR CABINET Department of Workers' Claims (Amendment)

803 KAR 25:120. Training or education programs eligible for retraining incentive benefits.

RELATES TO: KRS [Chapter] 342.040(3), 342.732

STATUTORY AUTHORITY: KRS [Chapter 13A:] 342.732(1)(a)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 342.732 requires the Commissioner of the Department of Workers' Claims to promulgate administrative regulations to approve bona fide training or education programs eligible to receive a maximum of \$5,000 for standard instruction, tuition, and material costs directly from the employer for a student who has been awarded [in which an employee may enroll, while continuing to work in the mining industry, and have payment of] retraining incentive benefits [made to the institution conducting the training or education program on a semimonthly basis].

Section 1. Definitions. (1) "Bona Fide Training or Education Program" means a postsecondary education or training program ~~[that has been in existence for at least two (2) years, which provides not less than a four (4) month program of training] to prepare students for gainful employment [in an occupation other than the severance or processing of coal], which has been certified by the Commissioner of the Department of Workers' Claims as eligible for receipt of instruction, tuition, and material costs [retaining incentive benefits (RIB)] pursuant to this administrative regulation.~~

(2) "RIB student" is a student receiving retraining incentive benefits and meeting the requirements established in KRS 342.732(1)(a).

Section 2. Certification by Commissioner. (1) Any training institution or education program seeking certification from the commissioner of the Department of Workers' Claims as a "bona fide training or education program" shall apply by letter to the following address: Commissioner/Retraining Incentive Benefit Education Program Certification, Department of Workers' Claims, 1270 Louisville Road, Frankfort, Kentucky 40601.

(2) Each application shall:

(a) Provide proof of licensure and accreditation [assurance that tuition and other required instructional materials shall be paid in installments, each of which shall be payable not more often than bimonthly and shall not exceed on dollar amounts the sum granted the RIB student for like periods by the RIB award, less the RIB student's travel expenses as set forth in Section 4 of this administrative regulation];

(b) Provide evidence that the successful completion of the training or education program shall qualify a student for gainful employment ~~[other than work in the severance and processing of coal];~~

(c) Include catalogs, brochures, or other descriptive material pertaining to education or training programs and their costs [Describe the training or education offered, and the professional experience of the instructional staff];

(d) Provide any available job placement rates for students who have completed the education or training program [Describe the history of the program relative to the number of students who participated, the number who completed the course, and the number of students who were successful in obtaining job placement in the field covered by the course];

(e) Provide assurances that funds paid to the program under this administrative regulation shall be applied only to tuition charges and the purchase of instructional materials; and

(f) Provide assurance that the insurance carrier or self-insured employer will be notified in writing within ten (10) days of the date that a RIB student ceases to participate in the program or graduates].

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Section 3. Each program certified by the commissioner shall:

(1) Apply funds paid to the program under this administrative regulation only to instruction, tuition, material costs, and any fees necessary for the completion of the program;

(2) Notify an insurance carrier or self-insured and the Department of Workers' Claims in writing within ten (10) days of the date that a RIB student ceases to participate in the program or graduates;

(3) Send bills directly and promptly to the self-insured employer or insurance carrier for standard instruction, tuition, material costs, and any fees necessary for the completion of the program.

Section 4. Continuing Eligibility. (1) The Commissioner of the Department of Workers' Claims shall certify the eligibility of a training or education program for RIB students following receipt of an application from the program adequate to assure that the criteria outlined in this administrative regulation have been met.

(2) If at any time thereafter the commissioner has reason to believe that certification of the program should be terminated, the program shall:

(a) Be given notice of the termination of certification thirty (30) days in advance; and

(b) [shall] Have the opportunity to challenge the termination by requesting a hearing before the commissioner within the thirty (30) day notice period.

Section 5. RIB Student Responsibilities. (1) The RIB student shall notify the self-insured employer or the insurance carrier and the Commissioner of the Department of Workers' Claims in writing within seven (7) days of the following events:

(a) Application for admission to a training or education program;

(b) Enrollment and participation date;

(c) Withdrawal from a class or program for reasons other than completion;

(d) Graduation; and

(e) Return to work, including name and address of employer, job title, and earnings.

(2) Copies of the following documents shall be submitted to the self-insured employer or insurance carrier and the Commissioner of the Department of Workers' Claims within seven (7) days of receipt:

(a) All final grades; and

(b) Notice of academic or disciplinary probation or expulsion. [4: Travel Expenses. An employee who participates in a bona fide training or education program pursuant to this administrative regulation may request reimbursement for travel expenses at a rate not to exceed that paid to state employees under 200 KAR 2:006 or other appropriate Finance and Administration Cabinet administrative regulations.]

Section 6. [5:] Alternative Agreements. The RIB student[~~the training program;~~] and the employer or insurance carrier responsible for payment of RIB benefits may in writing agree that the number of instruction hours per week for a RIB student in [time and amounts of payments to] a bona fide training or education program may vary from that established [set forth] in KRS 342.732(1)(a) [Section 2(2)(a) of this administrative regulation].

WALTER W. TURNER, Commissioner

STEPHEN B. COX, General Counsel

APPROVED BY AGENCY: November 14, 1997

FILED WITH LRC: November 14, 1997 at noon

PUBLIC HEARING: A public hearing on the administrative regulation shall be held on December 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 December 22, 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 December 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: Training and education programs certified to offer training and education to injured employees who receive retraining incentive benefits. Currently, there are no certified programs.

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

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: No public comments were received. The amendments to this regulation should not affect 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: No public comments were received. Cost of business should not be affected by amendments.

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

1. First year following implementation: Programs that are certified must give notice to the Department of Workers' Claims if a student ceases to participate in a program.

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: None

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: No new reporting or paperwork requirements for the agency.

(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 usual budget for the Department of Workers' Claims.

(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. No economic impact is expected.

(b) Kentucky: No public comments were received. No economic impact is expected.

(7) Assessment of alternative methods; reasons why alternatives were rejected: The amendments to the regulation bring it into conformity with statutory changes made in the Special Legislative Session on Workers' Compensation in December 1996. If no amendments are made, the regulation is in conflict with statutory provisions.

(8) Assessment of expected benefits: To bring regulation into

conformity with statutory requirements. Also to clean up the language of the regulation.

(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 detrimental effect.

(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: N/A

(10) Any additional information or comments: None

(11) Tiering: Tiering is not applied. All programs certified by the Department of Workers' Claims would be treated equally.

PUBLIC PROTECTION AND REGULATION CABINET
Department of Housing, Buildings and Construction
Office of State Fire Marshal
(Amendment)

815 KAR 30:060. Certification of underground petroleum storage tank contractors.

RELATES TO: KRS 224.60-105, 224.60-135

STATUTORY AUTHORITY: KRS 224.60-135, 227.300

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.60-135 requires the State Fire Marshal to promulgate administrative regulations requiring any person or organization who installs, repairs, interior lines, installs corrosion protection, closes or removes an underground petroleum storage tank for an owner or operator to demonstrate financial capability, including maintenance of pollution liability insurance and technical competency and proficiency. This administrative regulation establishes the minimum requirements for determining technical competency and proficiency of companies who are responsible for the installation, repair, interior lining, installation of corrosion protection, removal or closure of these systems by qualifying individuals and to determine financial capability through proof of insurance.

Section 1. Definitions. (1) "Certified contractor" means an individual or organization certified by the State Fire Marshal as qualified to engage in the business of installing, repairing, interior lining, installing corrosion protection, removing or closing [removing, closing,] and supervising of other employees engaged in these activities on [the installation, performance of repairs on site for closure or removal of] UPST systems. A person [or organization] may be certified [qualified] pursuant to this administrative regulation to engage in the limited business of removal and closure, interior [or] lining, or installation of corrosion protection, but the certification shall be limited to removal and closure, interior tank lining, or installation of corrosion protection [tank lining].

(2) "Close or closure" means permanently taking an underground storage tank out of service without removing it from the ground.

(3) "Repair" means the restoration of a UPST system [tank or an underground storage tank] or its components that has caused a release of a product from the system or the modification of the tank or a system component. "Repair" shall not include routine maintenance or corrosion [cathodic] protection applied to existing installations, or the application of interior lining.

(4) "Remove or removal" means permanently taking an underground storage tank or any of its components out of service by removing it from the ground.

(5) "Routine maintenance" means servicing the UPST system or any of its components without excavation or making or breaking of any connections below ground.

(6) "Supervise" means being physically on site and having the authority and responsibility for the direction of other employees engaged in carrying out the installation of, making repairs on site to, closure, or removal of interior lining or installation of corrosion protection of UPST systems as well as having the authority to exercise independent judgment regarding the recommendation of activities to other employees acting under his direction.

(7) [(6)] "Underground storage tank" is defined by KRS 224.60-100(1).

(8) "Upgrade" means any modification or addition to a UPST system except routine maintenance.

(9) [(7)] "UPST liner" means an individual or organization who applies an interior coating of material to existing [steel and fiberglass reinforced plastic (FRP)] underground storage tanks used solely for the storage of petroleum and petroleum products.

(10) [(8)] "UPST system" means an underground storage tank as defined by KRS 224.60-100(1) that is used solely for the storage of petroleum and petroleum products.

Section 2. (1) A permit for the installation of a [an] UPST system shall not be issued by the State Fire Marshal unless the applicant for the permit:

(a) Is [a] certified by the State Fire Marshal's Office [contractor]; and

(b) Assures the State Fire Marshal's Office, in writing, that the installation shall comply with all applicable requirements of the Natural Resources and Environmental Protection Cabinet promulgated in 401 KAR Chapter 42.

(2) An individual or company shall not install, remove, repair, interior line, install corrosion protection or close a UPST system unless the installation, removal, interior lining, installation of corrosion protection repair, interior lining, or closure:

(a) Is made by a certified contractor; and

(b) Complies with applicable administrative regulations of the Natural Resources and Environmental Protection Cabinet, set forth in 401 KAR Chapter 42.

(3) A certificate may be issued under the name of a company and the company [may be the certified contractor and] may engage in the activities regulated by this administrative regulation if it has in its employ at least one (1) person who has passed the examination and demonstrated the experience to obtain qualification for the company as a certified contractor and that person supervises the activities described by Section 3 of this administrative regulation.

Section 3. Supervision Requirements. (1) A certified contractor shall be present on site for each of the following activities:

(a) Preparation of the excavation immediately prior to receiving backfill or any component of the UPST system;

(b) Setting of the UPST system, including placement of an anchoring device, backfilling to the level of the UPST system and strapping, if any;

(c) Installing piping and its components, [or] field coating, or corrosion [and cathodically] protecting any [the] piping and its components;

(d) Final inspection and pressure testing of a component of the tank or piping components of the UPST system; and

(e) Completion of the backfilling and filling of the excavation.

(2) Repairs to a UPST system shall require a certified contractor to be present on site for each of the following activities:

(a) The actual excavation of existing UPST systems;

(b) The actual performance of repairs to the UPST system;

(c) The connection of components of the piping during the repair project;

(d) The pressure testing of the UPST or its associated piping during the repair project;

(e) The replacement of piping valves, fill pipes, vents, leak detection devices, or spill and overflow protection devices; and

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(f) The addition of leak detection devices or spill and overflow devices.

(3) Preparation for closing a UPST system shall require a certified contractor to be present on site for each of the following activities:

- (a) The cleaning and purging of a UPST system;
- (b) The filling of a UPST system with an inert solid material;
- (c) All testing associated with the cleaning and purging processes;

and

(d) The disconnection or capping of the components of the UPST system during the closing.

(4) Removal of a UPST system shall require a certified contractor to be present on site during each of the following activities:

- (a) The cleaning and purging of the UPST system;
- (b) The actual excavation and removal of the UPST system or a component;
- (c) All testing associated with the cleaning and purging processes;

and

(d) The disconnection or capping of the components of the UPST system during the removal.

(5) The interior tank lining of a UPST system shall require a certified contractor to be present on site during each of the following activities:

- (a) The cleaning and purging of the UPST system;
- (b) The excavation of the tank top;
- (c) The cutting of the top of the tank;
- (d) The entry of the tank;
- (e) The preparation of the interior of the tank;
- (f) The application of the lining of the tank; and
- (g) The closing and testing of the tank.

(6) The installation of corrosion protection to a UPST system shall require a certified contractor to be present on site during each of the following activities:

- (a) Excavation; and
- (b) The installation of an approved corrosion protection system.

Section 4. Certificate Availability. Each certified contractor shall have a copy of the current certificate issued by the State Fire Marshal at the location where he is supervising work. Upon request of a fire official or agent of the Natural Resources and Environmental Protection Cabinet, a certified contractor shall make the current certificate available for inspection.

Section 5. Application for Certification Requirements. Each applicant for certified contractor shall:

(1) Submit an application accompanied by a nonrefundable fee of \$150, to the State Fire Marshal, on application form "SFM/UPST #01, August, 1996", incorporated by reference;

(2) Be an individual at least eighteen (18) years of age;

(3) Verify to the State Fire Marshal the individual's experience in the installation of, performance of repairs on site to, interior lining of, installation of corrosion protection, closure and removal of UPST systems, as required by Section 6 of this administrative regulation;

(4) Complete the examination requirements of Section 7 of this administrative regulation;

(5) Provide proof of financial capability for taking corrective action and for compensating third parties for bodily injury and property damage by submitting certificates of general liability insurance in the minimum amount of \$500,000 and pollution liability insurance or other proof of financial capability to respond to damages in the minimum amount of \$25,000 per occurrence; and

(6) If the individual wishes the certificate to be issued with a company name, the company name shall be indicated on the application form and the company shall provide the insurance certificates required by subsection (5) of this section and otherwise be subject to this administrative regulation.

Section 6. Experience Requirements. (1) The person making

application shall demonstrate that within five (5) years immediately prior to making application, that he has participated in the installation of, performance of repairs on site to, closure of, interior lining of, installation of corrosion protection to, or removal of a minimum of six (6) underground storage tanks [~~Of the participations, a minimum of three (3) shall have involved the installation of UPST tanks~~], except that:

(a) Technical training of the type provided and documented by the manufacturer of the underground storage tanks and approved by the State Fire Marshal shall reduce the experience requirements of this subsection by one-third (1/3); or

(b) A BS degree in engineering with a concentration in the area of underground containment systems or a Kentucky license to practice engineering shall reduce the experience requirements of subsection (1) by two-thirds (2/3).

(2) An applicant requesting installer/remover certification shall have installed at least three (3) UPST systems, plus three (3) other additional experience requirements. The certified installer/remover shall be qualified to perform any and all work on a UPST system.

(3) An applicant requesting contractor certification pursuant to this administrative regulation for the limited function of removal and closure shall demonstrate experience in removal and closure of six (6) underground storage tanks.

(4) [(3)] An applicant requesting contractor certification pursuant to this administrative regulation for the limited function of tank lining shall demonstrate experience in lining of six (6) underground storage tanks or provide proof of certification from the tank interior lining manufacturer or supplier of lining material.

(5) An applicant requesting certification pursuant to this administrative regulation for the limited function of installing corrosion protection shall demonstrate experience in the installation of six (6) corrosion protection systems.

Section 7. Probationary Certification. If the applicant does not comply with the level of experience required by Section 6 of this administrative regulation, the applicant may receive a probationary certificate under the following conditions:

(1) An applicant shall obtain a minimum score of eighty-five (85) percent on the written examination;

(2) An applicant shall complete three (3) applicable UPST activities for which the applicant seeks certification [tank installations] within one (1) year of the issuance of the certificate;

(3) All UPST activities shall comply with applicable codes and statutes;

(4) An applicant shall not install, interior line, install corrosion protection, remove, close, [~~line;~~] backfill around or cover a tank installation during the probationary period without prior approval of the State Fire Marshal's office; and

(5) An applicant shall pay a \$100 add-on inspection fee for each site where a tank is removed, closed, installed, upgraded or repaired, [~~or installed;~~]

Section 8. Examination Requirements. Each applicant for certified contractor shall take and pass a written examination administered by the State Fire Marshal in compliance with this section.

(1) The applicant shall submit payment of a twenty-five (25) dollar nonrefundable fee at least ten (10) days prior to the date of examination.

(2) The examination for [full] certification as installer/remover shall be a written multiple choice examination covering all aspects of the installation, repair, interior lining, installation of corrosion protection, closure, and removal of underground petroleum storage tank systems. The examination shall test the applicant's knowledge of codes, standards, laws and administrative regulations and of current technological and industry recommended practices with respect to the proper installation, repair, interior lining, installation of corrosion protection, closure, and removal of UPST systems.

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(3) An applicant who requests to be a certified contractor for the limited purpose of removing and permanently closing UPST systems shall be tested on knowledge of closure and removal.

(4) An applicant who requests to be a certified contractor for the limited function of interior lining of UPST systems shall be tested on knowledge of cleaning, and lining the interior of underground petroleum storage tanks.

(5) An applicant who requests to be a certified contractor for the limited purpose of installing corrosion protection shall be tested on the installation, monitoring and general knowledge of cathodic protection systems.

(6) An applicant may request permission to take the examination orally, upon good cause shown.

(7) [(6)] An applicant shall obtain a minimum score of seventy-five (75) percent on the written examination to satisfactorily pass.

(8) [(7)] An applicant who fails the examination may request reexamination upon payment of a nonrefundable twenty-five (25) dollar fee. An application shall remain pending for that purpose for a period of one (1) year after the date the application was submitted. If the applicant has not requested reexamination within the one (1) year period, the applicant shall file a new application for certification with the State Fire Marshal.

(9) [(8)] Examinations shall be given monthly in the State Fire Marshal's Office located at 1047 U.S. 127 South, Frankfort, Kentucky.

(10) [(9)] All examinations shall be graded and the applicants notified on the day of the examination. Examination papers shall not be returned to the applicant, but may be reviewed by the applicant on the day of the examination.

(11) [(10)] With the application, the State Fire Marshal shall furnish the applicant with a set of instructions and sample examination questions. Instruction sheets shall refer the applicant to appropriate laws, administrative regulations and industry publications.

Section 9. Certification and Renewal Procedures. (1) The State Fire Marshal shall issue a certificate to each individual ~~or company~~ as set forth in Sections 5 through 7 of this administrative regulation. Each [The] certificate shall be renewed annually for a fee of fifty (50) dollars.

(2) The application or renewal for a certified contractor shall be denied by the State Fire Marshal if the applicant:

(a) Fails to provide the information required by the application form SFM/UPST #01;

(b) Fails to provide the insurance or financial responsibility certificates or the fee required for application and examination;

(c) Fails to comply with the experience and education requirements of this administrative regulation;

(d) Fails to successfully pass the examination required by this administrative regulation; or

(e) Makes a misrepresentation or submits false statements with the application.

(3) If a certified contractor fails to renew his certification within a one (1) year period from the most recent expiration date of his certification, the individual shall be treated as a new applicant and shall be required to retest and otherwise meet all new applicant requirements. ~~[contractor's certificate shall be revoked.]~~ The contractor may become certified at a later date by complying with Sections 5 through 7 of this administrative regulation, and successfully retaking the examination.

Section 10. Revocation or Suspension of Certification. A certificate issued pursuant to this administrative regulation may be suspended or revoked by the State Fire Marshal if:

(1) The certified contractor negligently, incompetently, recklessly or intentionally violated a provision of this administrative regulation or a required code relating to installation, repair, lining, closure or removal;

(2) The certified contractor recklessly or intentionally caused or

permitted a person under the contractor's supervision to install, perform a repair on site to, interior line, install corrosion protection, close, [line,] or remove a UPST system in violation of the Kentucky Standards of Safety (815 KAR 10:050);

(3) The certified contractor obtained the certification through fraud or misrepresentation;

(4) The individual who took the examination, provided the experience requirements and requested the certificate to be issued with a company's name and proof of insurance is no longer employed by the company in whose name the certificate was issued; or

(5) The certified contractor failed to renew the certification in accordance with Section 9 of this administrative regulation.

Section 11. Incorporation by Reference. (1) Application Form SFM/UPST#01, "Application for Certification as an Underground Tank Contractor", (August, 1996 Edition), State Fire Marshal's Office, is incorporated by reference.

(2) It may be inspected, copied or obtained at the State Fire Marshal's Office, Division of Hazardous Materials, 1047 US 127 South, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

LAURA M. DOUGLAS, Secretary

DAVE MANLEY, State Fire Marshal

JUDITH G. WALDEN, General Counsel

APPROVED BY AGENCY: November 10, 1997

FILED WITH LRC: November 14, 1997 at 10 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on Tuesday, December 23, 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 December 16, 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 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 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: All companies engaged in the business of installing, repairing, lining, closing or removing underground petroleum storage tanks.

(2) Direct and indirect costs or savings on the: This amendment clarifies the requirements for the contractor being present. No extra costs should be incurred, unless the installation has not been installed correctly.

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

(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 increases expected.

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

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competition) for the:

1. First year following implementation: No additional requirements from this amendment.

2. Second and subsequent years: No additional requirements from this regulation.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings: No additional costs or savings result from this amendment.

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements: Permits are required for all upgrade work. Permits will be filed pertaining to the facility for the completed upgrades.

(4) Assessment of anticipated effect on state and local revenues: Some increase to state revenues for permit cost (no amount); there are no real statistics for the number of permits required.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Costs of administering program are intended to be maintained by the fees charged.

(6) 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: Present regulation was not sufficiently definitive as to when the contractor was required to be on site. Also, a category for lining of tanks only was needed.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: Better supervision by the contractor results in assuring against leaks and helps to speed the job if an inspection shows a deficiency.

(b) State whether a detrimental effect on environment and public health would result if not implemented: Possibly due to leakage in storage or piping system.

(c) If detrimental effect would result, explain detrimental effect: More on-site supervision by the contractor assures the piping is properly without leaks, etc.

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: There is no known conflict or duplication of this amended regulation.

(c) Necessity of proposed regulation if in conflict:

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

(10) Any additional information or comments: The reference material is not being amended.

(11) TIERING: Is tiering applied? Yes. Each contractor is certified and qualified based upon the level of work done.

CABINET FOR FAMILIES AND CHILDREN Department for Social Insurance Division of Management and Development (Amendment)

904 KAR 2:006. 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, 8 USC 1611-1645, 42 USC 601 et seq., 602, "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, PL 104-208

STATUTORY AUTHORITY: KRS 194.050(1), 205.010, 205.200(2), (3), 42 USC 601 et seq., 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 [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:

1. Age fifteen (15) or under;

2. Age sixteen (16) or seventeen (17) in regular full-time attendance in elementary, junior high, or high school or equivalent level of vocational or technical school;

3. Age [or under or, if] eighteen (18), in regular full-time attendance in high school or equivalent level of vocational or technical school and expected to complete a course of study;

a. Before reaching age nineteen (19); or

b. During the month of the 19th birthday; or

4. 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.

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[(4)] "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) "Kentucky Works" means a program which assists recipients in obtaining gainful employment and self-support. ["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) "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) "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) [(10)] "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 training;

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 training;

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 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 2:016, Standards for need and amount for 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) 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

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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 [is] 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 subsection, K-TAP [AFDC] shall be provided only to United States[
1:] 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 [is] 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

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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 2:055.

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 if 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:

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1. Registered for work under Section 14 of this administrative regulation; or

2. Subject to Kentucky Works [JOBS], as specified in 904 KAR 2:370; or

(g) Has refused a bona fide offer of employment or training for employment without good cause in the thirty (30) days prior to [AFDG] UP eligibility or during the course of receipt of [AFDG] UP benefits. Good cause exists if criteria specified in 904 KAR 2:016, Section 4(4)(a)1, 2, 3, or 4 are met.

Section 10. Living with a Specified Relative. To be eligible for K-TAP [AFDG] 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 [AFDG] 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 or more 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 or more, 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) consecutive 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 2:016.

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 [will] serve as rebuttal to the evidence present in subsection (1)(a) or (b) of this section and a determination of paternity shall [will] not be acknowledged.

Section 12. One (1) Category of Assistance. (1) A child or adult relative shall not be eligible for K-TAP [AFDG] if receiving SSI.

(2) If a child who receive SSI meets the K-TAP [AFDG] requirements of age, deprivation and living in the home of a specified relative, the specified relative may be approved for K-TAP [AFDG] if all other eligibility factors are met.

(3) If a child who receives foster care benefits meets the K-TAP

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[AFDG] requirements of age, deprivation and living in the home of a specified relative, the specified relative may be approved for K-TAP [AFDG] 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 2:016;

(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 2:370.

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 [AFDG] 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 AFDG 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 department 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, or the [absent or] 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:

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- 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 [AFDG]; 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 2:016; [The relative shall be ineligible for benefits;] and
 - (b) The agency shall attempt to obtain a protective payee to administer the K-TAP [AFDG] 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 [AFDG] UP case, failure to apply for another benefit or comply with its requirements shall result in ineligibility for K-TAP [AFDG].

(3) If a PWE or second parent in an [AFDG] 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 PA-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 2:016, 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

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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 2:050.

(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 904 KAR 2:370, Section 2 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 2:016, 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) Participation in Kentucky Works requirements pursuant to 904 KAR 2:370.

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 2:016, Section 1, 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 December 1, 1993]. These forms include:

(a) PA-1C Supplement D, "Qualifying Parent Fact Sheet, edition 5/97" [revised 3/92];

(b) PA-14, "Declaration of citizenship or Alien Status, edition 8/97" [revised 11/91];

(c) PA-33D, "Child's Certification of School Enrollment/Attendance, edition 8/97" [revised 1/92];

(d) PA-121, "Good Cause Claim/Determination, edition 8/97" [revised 8/87];

(e) PA-202TP, "Teen Parent Personal Responsibility Plan, edition 2/97" [PA-125, revised 6/83];

(f) PA-219, "Kentucky Works Program Fact Sheet, edition 4/97" [PA-125 Supplement A, revised 6/83];

(g) PA-125 Supplement B, revised 12/82;

(h) PA-125.1, revised 5/90;

(g) [(h)] PA-511, "Work Registration Form, edition 10/92" [revised 10/92];

(j) KA-125, revised 7/92;

(k) KA-125, Supplement A, revised 1/93;

(l) KA-125, Supplement B, revised 7/92;

(m) KA-125, Supplement C, revised 7/92;

(h) [(n)] CS-333, "Facts About the Child Support Enforcement Program, edition 5/97" [revised 10/94]; and

(i) [(e)] CS-333.1, "Facts About the Right to Claim Good Cause, edition 5/97" [revised 9/86].

(2) Material incorporated by reference may be inspected and copied at the Department for Social Insurance, 275 East Main Street,

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Frankfort, Kentucky 40621. Office hours are 8 a.m. to 4:30 p.m.

JOHN L. CLAYTON, Commissioner

VIOLA P. MILLER, Secretary

CHARLES P. LAWRENCE, Attorney

APPROVED BY AGENCY: November 11, 1997

FILED WITH LRC: November 13, 1997 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on December 22, 1997, at 9 a.m. at the Health Services Auditorium, 1st Floor, CHR Building. Individuals interested in attending this hearing shall notify this agency in writing by December 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 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, 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: Judy H. Trigg, Cabinet for Families and Children, Office of the Counsel, 275 East Main Street, 4th Floor West, Frankfort, Kentucky 40621, Telephone: (502) 564-7900, (502) 564-7573 (fax).

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 August 1997, approximately 60,530 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: No requests for a hearing were received as a result of the publication of the Notice of Intent 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 requests for a hearing were received as a result of the publication of the Notice of Intent 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: 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, PA-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 two 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.

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: Time limits - a five-year limit and a two-year limit for work: no immediate cost impact-budget neutral. 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). Qualified alien provisions are budget neutral to the agency effective 2/1/97. Grant reduction of twenty-five (25) percent of grant maximum due to noncooperation of child support activities effective March 1, 1997, is budget neutral to the agency. 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). 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). 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).

2. Continuing costs or savings: The breakdown of costs and savings to the agency for the second year are as listed below: Time limits - a five-year limit and a two-year limit for work: no immediate cost impact-budget neutral. 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). Qualified alien provisions are budget neutral to the agency. Grant reduction of twenty-five (25) percent of grant maximum due to noncooperation of child support activities is budget neutral to the agency. K-TAP form revisions, printing and system form revisions is no cost to the agency for the second year (SFY 98). Ineligibility of 16 to 18 year olds not in school is \$2,400,000 savings to the agency for the second (SFY 99) year. 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: No requests for a hearing were received as a result of the publication of the Notice of Intent and no written comments were received.

(b) Kentucky: No requests for a hearing were received as a result of the publication of the Notice of Intent and no written comments were received.

(7) Assessment of alternative methods; reasons why alternatives

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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 et seq., and to implement K-TAP that replaces the AFDC 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: 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. 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

CABINET FOR FAMILIES AND CHILDREN Department for Social Insurance Division of Management and Development (Amendment)

904 KAR 2:016. Standards for need and amount for the Kentucky Transitional Assistance Program (K-TAP) [;AFDC].

RELATES TO: KRS [47-011,] 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

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 2:006, 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 2:006, 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-

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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 [v] 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 K-TAP [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 2:006, Section 1 [45-GFR-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 overpay-

ment;

- (j) Children's toys and bicycles;
- (k) Household pets;
- (l) Resources of a child excluded from the K-TAP [AFDG] 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 [AFDG] 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 [AFDG] 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 AFDG] 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 [AFDG] 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 [AFDG] 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 [AFDG] 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; 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

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[AFDG] the following shall apply:

(1) Gross income test.

(a) The total gross non-K-TAP [AFDG] 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 [AFDG] 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 [AFDG] 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;

(g) ~~(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 2:017;

(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 [AFDG] program;

(j) ~~(h)~~ 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;

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(g) [(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 Government to compensate for hardships experienced during World War II;

(bb) [(cc)] 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 [AFDG] 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)-AFDG] 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 2:006, 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 K-TAP [AFDG] 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;~~

(e) Standard work expense deduction of ninety (90) dollars for full-time and part-time employment; and

(b) [(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 [AFDG];

c. A sanctioned individual whose earned income is considered available to the K-TAP [AFDG] household;

d. At the option of the recipient, a K-TAP [An-AFDG] case which would otherwise be ineligible for K-TAP [AFDG] without the benefit of the disregard for child care; or

e. The month of application for K-TAP [AFDG] 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) For new employment, or increased wages, acquired after approval and reported timely, a one (1) time only disregard per employed adult member of the benefit group, the amount of two (2) full calendar months earnings.

1. The two (2) months earnings disregard shall be consecutive, and at the option of the recipient.

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) and (b) [(c) and (d)] 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 K-TAP [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 and 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 pursuant to 904 KAR 2:370 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) ~~[(d)]~~ of this administrative regulation, on or after November 1, 1995, child care expenses incurred as a result of employment shall be paid according to 905 KAR 2:150. [:

~~(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 2:017; and~~

~~(2) Be authorized upon the receipt of appropriate verification of the cost of care.]~~

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 non-household 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

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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:

<u>Number of Eligible Persons</u>	<u>Maximum Gross Income Limits</u>
1 Person	\$ 729
2 Persons	\$ 851
3 Persons	\$ 974
4 Persons	\$1096
5 Persons	\$1218
6 Persons	\$1340
7 or more Persons	\$1462

(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 1/3), a biweekly amount by two and one-sixth (2 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 1/3), a biweekly amount by two and one-sixth (2 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. [Not] 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 [AFDG] Recoupment. Except for those overpayments in administrative regulation 904 KAR 2:017, 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 [AFDG] 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 2:055 is given and the administrative and judicial remedies have been exhausted or abandoned.

Section 11. Avoiding an Overpayment. (1) A K-TAP [An-AFDG]

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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 2:006;

(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 2:055.

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 2:055.

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 December 1, 1993]. These forms include:

- (a) PA-30.2, "Payment Receipt, edition 2/97" [revised 7/85];
 - (b) PA-35, "Sale of Property Agreement to Repay K-TAP Benefits to the Commonwealth of Kentucky, edition 8/97" [revised 2/91];
 - (c) [PA-36, revised 1/85;
 - (d)] PA-37, "Bridge-the-Gap Payment Form, edition 5/97";
 - (d) FA-1, "Transitional Assistance Self-assessment, edition 2/97";
 - (e) FA-2, "Family Alternatives Assessment, edition 8/97";
 - (f) RA-1, "Application for Relocation Assistance, edition 2/97".
- [revised 12/95;
- (e) PA-412, revised 1/91; and
 - (f) PA-415, revised 11/89.]
- (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
 CHARLES P. LAWRENCE, Attorney

APPROVED BY AGENCY: November 3, 1997

FILED WITH LRC: November 12, 1997 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on December 22, 1997, at 9 a.m. at the Health Services Auditorium, 1st Floor, CHR Building. Individuals interested in attending this hearing shall notify this agency in writing by December 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 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, 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: Judy H. Trigg, Cabinet for Families and Children, Office of the Counsel, 275 East Main Street, 4th Floor West, Frankfort, Kentucky 40621, Telephone: (502) 564-7900, (502) 564-7573 (fax).

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 August 1997, approximately 60,530 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: A public hearing was held on September 30, 1997, as a result of the publication of the Notice of Intent. However, no written or oral comments were received regarding direct or indirect costs or savings on the cost of living and employment in the geographical area.

(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: A public hearing was held on September 30, 1997, as a result of the publication of the Notice of Intent. However, no written or oral comments were received regarding direct or indirect costs or savings on the cost of doing business in the geographical area.

(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:

a. Excluding one (1) vehicle per household effective February 1, 1997, is \$50,000 cost to the agency for the first year (SFY 97).

b. 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).

c. Family Alternative Diversion - A one-time payment in lieu of on-

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going cash assistance payments to maintain self-sufficiency is budget neutral to the agency.

d. Alien income and resources policy is budget neutral to the agency.

e. Ratable reduction is no change in current policy and is budget neutral to the agency.

f. K-TAP form revisions is a cost of \$33,800 to the agency for the first year (SFY 97).

g. Disregard of earnings for two (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 two (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.

h. 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.

i. Exemption of individual development accounts effective May 1, 1997, is cost neutral to the agency for the first year (SFY 97).

j. Elimination of the six (6) months 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).

k. 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).

l. 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).

2. Continuing costs or savings: The breakdown of costs and savings to the agency for the second year are listed below:

a. A cost of excluding one (1) vehicle per household is \$300,000 for the second (SFY 98) as a cost to the agency.

b. 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).

c. Family Alternative Diversion - A one-time payment in lieu of ongoing cash assistance payments to maintain self-sufficiency is budget neutral to the agency for the second year (SFY 98).

d. Alien income and resources is budget neutral to the agency for the second year (SFY 98).

e. Ratable reduction is no change in current policy and is budget neutral to the agency for the second year (SFY 98).

f. K-TAP form revisions is no cost to the agency for the second year (SFY 98).

g. Disregard of earnings for two (2) months is an indeterminable cost to the agency for the second year (SFY 98). Even though there is a two (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.

h. 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.

i. Exemption of individual development accounts is cost neutral to the agency for the second year. (SFY 98)

j. Elimination of the six (6) months 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).

k. 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).

l. 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: A public hearing was held on September 30, 1997, as a result of the publication of the Notice of Intent. However, no written or oral comments were received regarding the economic impact on the cost of living and employment in the geographical area.

(b) Kentucky: A public hearing was held on September 30, 1997, as a result of the publication of the Notice of Intent. However, no written or oral comments were received regarding the economic impact on the cost of living and employment in Kentucky.

(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 K-TAP that replaces the AFDC 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: A public hearing was held on September 30, 1997, as a result of the publication of the Notice of Intent. The statement of consideration addresses the written and oral comments received.

(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. 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

CABINET FOR FAMILIES AND CHILDREN
Department for Social Insurance
Division of Management and Development
(Amendment)

904 KAR 2:050. 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

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 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 [AFDC] Assistance Payments. (1) Method of payment.

- (a) A payment shall be issued monthly by check; and
- (b) A payment may [shall] be issued prospectively.
- (2) Initial payment.

(a) A Kentucky Transitional Assistance Program [An 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 [an 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 [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 [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 [AFDC] for all other purposes if a Kentucky Transitional Assistance Program check is not received pursuant to paragraph (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 [An 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 2:006 and 904 KAR 2:370, 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 2:006, 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 [An 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 Kentucky Transitional Assistance Program check shall not be issued to an eligible Kentucky Transitional Assistance Program recipient who is a wage supplementation participant pursuant to 904 KAR 2:370, Section 2. The amount of the eligible Kentucky Transitional Assistance Program 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 for all other purposes.

Section 2. Supportive Services for Kentucky Works [JOBS] Participants. ~~[(1) A JOBS supportive services or child care payment shall be made by check and shall be made monthly.~~

~~[(2)] A supportive services payment for a Kentucky Works [JOBS] participant shall be made according to the type of service provided, as follows:~~

~~[(1) [(a)] A child care payment shall be issued according to 905 KAR 2:150. [:~~

- ~~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 2:017.]~~

~~[(2) [(b)] Transportation.~~

~~[(a) [(1)] A transportation payment shall be made prospectively, not to exceed ninety-three (93) dollars a month; for anticipated transportation costs.~~

~~[(b) [(2)] A transportation payment may [shall] be made directly to the Kentucky Transitional Assistance Program [AFDC] recipient.~~

~~[(3) [(e)] Other approved supportive services payments shall be made:~~

- ~~[(a) [(1)] Directly to the provider; and~~
- ~~[(b) [(2)] Within thirty (30) days of receipt of appropriate verification of service delivery of billing, as specified in 904 KAR 2:017.~~

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

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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
CHARLES P. LAWRENCE, Attorney

APPROVED BY AGENCY: November 5, 1997

FILED WITH LRC: November 12, 1997 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on December 22, 1997, at 9 a.m. at the Health Services Auditorium, 1st Floor, CHR Building. Individuals interested in attending this hearing shall notify this agency in writing by December 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 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, 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: Judy H. Trigg, Cabinet for Families and Children, Office of the Counsel, 275 East Main Street, 4th Floor West, Frankfort, Kentucky 40621, Telephone: (502) 564-7900, (502) 564-7573 (fax).

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 K-TAP as the result of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996. As of August 1997, approximately 60,530 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: A public hearing was held on September 30, 1997, as a result of the publication of the Notice of Intent. However, no written or oral comments were received regarding direct or indirect costs or savings on the cost of living and employment in the geographical area.

(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: A public hearing was held on September 30, 1997, as a result of the publication of the Notice of Intent. However, no written or oral comments were received regarding direct or indirect costs or savings on the cost of doing business in the geographical area.

(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:

a. Diverting grants of wage supplementation participants to the employer is budget neutral to the agency for the first year (SFY 98).

b. 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).

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: A public hearing was held on September 30, 1997, as a result of the publication of the Notice of Intent. However, no written or oral comments were received regarding the economic impact on the cost of living and employment in the geographical area.

(b) Kentucky: A public hearing was held on September 30, 1997, as a result of the publication of the Notice of Intent. However, no written or oral comments were received regarding the economic impact on the cost of living and employment in Kentucky.

(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 amendments to this administrative regulation are needed to comply with the mandated requirements in 42 USC 601 et seq. and to conform with the mandates found in 904 KAR 2:006 and 2:016.

(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 to conform with the provisions in 904 KAR 2:006 and 2:016. A public hearing was held on September 30, 1997, as a result of the publication of the Notice of Intent. The statement of consideration addresses the written and oral comments received.

(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. 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

NEW ADMINISTRATIVE REGULATIONS FILED AS OF NOON, NOVEMBER 14, 1997

**FINANCE AND ADMINISTRATION CABINET
State Investment Commission
(New Administrative Regulation)**

200 KAR 14:200. Linked Deposit Investment Program.

RELATES TO: KRS 41.600-41.620

STATUTORY AUTHORITY: KRS 42.525

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
ANGELA C. ROBINSON, Attorney

APPROVED BY AGENCY: November 14, 1997

FILED WITH LRC: November 14, 1997 at noon

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on December 30, 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 December 23, 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, 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 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.

**GENERAL GOVERNMENT CABINET
Board of Hairdressers and Cosmetologists
(New Administrative Regulation)**

201 KAR 12:210. Requirements for continuing education; active and inactive license and temporary wavier of requirements.

RELATES TO: KRS 317A.050(8)

STATUTORY AUTHORITY: KRS 317A.050(8)

NECESSITY, FUNCTION, AND CONFORMITY: This administrative regulation pertains to continuing education requirements for renewal of a license and establishes the requirements for an inactive license.

Section 1. Definition. A continuing education hour is defined as a fifty (50) minute period excluding meals and breaks.

Section 2. Those persons newly licensed during the license renewal period shall not be required to complete continuing education as a prerequisite for the first renewal of their license.

Section 3. Continuing education hours exceeding the amount required shall not be carried forward to the next years' requirements.

Section 4. A licensee shall not receive credit for any class repeated within the same licensing year.

Section 5. Inactive Status. (1) A licensee not working in a beauty salon, nail salon, school of cosmetology or actively engaged in the practice or teaching of cosmetology on or after July 15, 1996, may request inactive status. The request for inactive status shall be in writing.

(2) Inactive status shall be granted provided the licensee pays the renewal fee set forth in KRS 317A.050(9).

(3) Inactive status may be applied for, in writing, at any time during the licensure year provided the licensee holds a license which is not expired, revoked or suspended.

(4) A licensee requesting inactive status shall not be required to attend continuing education courses.

(5) A licensee on inactive status shall not engage in the practice of cosmetology, nail technology or teaching of cosmetology.

(6) The inactive license shall be renewed as set forth in KRS 317A.050(8).

(7) Before a license can be changed from inactive to active status, the licensee shall provide proof of continuing education.

(8) A licensee actively engaged in the practice of cosmetology, nail technology or instructor of cosmetology who cannot meet the requirements for continuing education for renewal due to temporary disability, undue hardship, or personal or spouse's military duty, may request a wavier or extension of time to complete a continuing education course. A request for waiver shall be submitted, in writing, and include a detailed statement describing the reasons for the request. Waivers may be granted by the board not to exceed one (1) year. If the circumstance of the waiver exceeds one (1) year, the licensee shall reapply, in writing, for an extension of the waiver.

BEA COLLINS, Chairman

CHERYL LALONDE MOONEY, Board Counsel

APPROVED BY AGENCY: September 2, 1997

FILED WITH LRC: October 28, 1997 at 3 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on December 22, 1997, at 10 a.m. at the office of the Kentucky State Board of Hairdressers and Cosmetologists, 314 West Second Street, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by December 15, 1997, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Carroll Roberts, Administrator, Kentucky State Board of Hairdressers and Cosmetologists, 314 West Second Street, Frankfort, Kentucky 40601, (502) 564-4262.

REGULATORY IMPACT ANALYSIS

Contact Person: Carroll Roberts, Administrator

(1) Type and number of entities affected: Approximately 4,000 cosmetologists; 300 nail technicians; 100 instructors.

(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 and indirect costs or savings on the cost of living and employment in the geographical area.

(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 cost of doing business in the geographical area.

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

1. First year following implementation: Notification from every licensee that is not working that they want to be placed on an inactive status. The notification may be included on the application for renewal. This would require no additional reporting or paperwork and no increase or decrease in costs.

2. Second and subsequent years: The notification would be provided every year the licensee remains inactive.

(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: Agency funds.

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

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

(b) Kentucky: None

(7) Assessment of alternative methods; reasons why alternative were rejected: Licensees, not currently working, wanted to have an inactive license made available.

(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 would be no effect on public health and environmental welfare because the licensees are not practicing cosmetology or nail technology.

(b) State whether a detrimental effect on environment and public health would result if not implemented: There would not be a detrimental effect on environment and public health if not implemented.

(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:

(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: Tiering was applied to exempt licensees who are not actively engaged in the practice or teaching of cosmetology and nail technology from continuing education requirements.

TOURISM DEVELOPMENT CABINET
Department of Fish and Wildlife Resources
(New Administrative Regulation)

301 KAR 1:192. Closing Lake Chumbley.

RELATES TO: KRS 150.025(1), 150.620

STATUTORY AUTHORITY: KRS 150.025(1), 150.620

NECESSITY, FUNCTION, AND CONFORMITY: KRS 150.025(1) authorizes the department to make administrative regulations apply to a limited area or to the entire state; KRS 150.620 authorizes the

department to promulgate administrative regulations for the lands and waters it has acquired. This administrative regulation is necessary to control vandalism at Lake Chumbley.

Section 1. Lake Chumbley and the department-owned property surrounding the lake, in Boyle and Lincoln counties, shall be closed to public access daily from one-half (1/2) hour after sunset until one-half (1/2) hour before sunrise.

C. THOMAS BENNETT, Commissioner

MIKE BOATWRIGHT, Chairman

ANN R. LATTA, Secretary

DOUGLAS SCOTT PORTER, Assistant Attorney General

APPROVED BY AGENCY: August 21, 1997

FILED WITH LRC: November 13, 1997 at 1 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on December 22, 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 being heard at this hearing shall notify this agency in writing by December 15, 1997 five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: John Wilson, Assistant Director, Division of Public Affairs/Policy, Department of Fish and Wildlife Resources, Arnold L. Mitchell Building, #1 Game Farm Road, Frankfort, Kentucky 40601, (502) 564-4406, FAX (502) 564-6508.

REGULATORY IMPACT ANALYSIS

Contact Person: John Wilson

(1) Type and number of entities affected: An unknown small number of anglers who fish at night at Lake Chumbley.

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

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

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: No public comments received. This administrative regulation 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: This administrative regulation imposes no paperwork or reporting 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: The only costs associated with implementing this administrative regulation will be costs of law enforcement patrols to enforce its provision.

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: This administrative regulation will have no effect on state or local

revenues.

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

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

(a) Geographical area in which administrative regulation will be implemented: No public comments received. This administrative regulation should have no positive or negative economic impacts.

(b) Kentucky: No public comments received. This administrative regulation should have no positive or negative economic impacts.

(7) Assessment of alternative methods; reasons why alternatives were rejected: This administrative regulation was promulgated in response to instances of vandalism at Lake Chumbley. The "do nothing" alternative was rejected because this would allow the problem to continue. Closing the lake completely was rejected because it would deprive the people of the area of a recreational resource.

(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 environmental and public health would result if not implemented: No

(c) If detrimental effect would result, explain detrimental effect: Not applicable.

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

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

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: Not applicable.

(10) Any additional information or comments:

(11) TIERING: Is tiering applied? Tiering 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
(New Administrative Regulation)**

401 KAR 50:032. Prohibitory rule for hot mix asphalt plants.

RELATES TO: KRS 224.10-100, 224.20-110, 224.20-120, 40 CFR Part 70, 42 USC 7661-7661f, 401 KAR 50:035

STATUTORY AUTHORITY: KRS 224.10-100, 224.20-120, 42 USC 7661-7661f

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 establishes operational limits for hot mix asphalt plants that do not hold a Title V or conditional major permit pursuant to 40 CFR Part 70 and 401 KAR 50:035.

Section 1. Definitions. Except as provided in this section, terms used in this administrative regulation shall have the meaning given them in 401 KAR 50:010, unless the context clearly indicates otherwise.

(1) "Conditional major permit" means a permit issued to the owner or operator of a source that limits the source's PTE below the major

source thresholds specified in 401 KAR 50:035, Section 1(23).

(2) "Batch mix plant" means a facility that produces hot mix asphalt by heating and drying the aggregate in a dryer before separating and mixing it with asphalt cement in separate batches.

(3) "Drum mix plant" means a facility that produces hot mix asphalt by heating, drying and mixing the aggregate with asphalt cement in one operation.

(4) "Hot mix asphalt plant" means a facility that manufactures hot mix asphalt by heating and drying aggregate and mixing it with asphalt cements. Stationary plants and portable plants shall be treated as separate sources unless two (2) or more plants are located on one (1) or more contiguous or adjacent properties and under common control of the same person or persons under common control.

(5) "Part 70 permit" means a permit issued to the owner or operator of a source pursuant to 401 KAR 50:035 and Kentucky's Part 70 Operating Permit Program approved by the U.S. EPA on November 14, 1995, (60 FR 57186) and made effective on December 14, 1995.

(6) "PTE" or "potential to emit" means the maximum capacity of a stationary source to emit a regulated air pollutant given its physical and operational design. A physical or operational limit on the capacity of a source to emit an air pollutant, including air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed, shall be treated as part of its design if the limit is enforceable as a practical matter, as defined in 401 KAR 50:035, Section 1(15).

(7) "Waste oil" means a petroleum based or synthetic oil such as an engine lubricant, engine oil, motor oil, or lubricating oil for use in an internal combustion engine, or a lubricant for motor transmissions, gears, or axles which through use, storage, or handling has become unsuitable for its original purpose due to the presence of impurities or loss of original properties.

Section 2. Applicability. (1) This administrative regulation applies to owners and operators of hot mix asphalt plants:

(a) Whose PTE, absent the operational limits contained in Section 3 of this administrative regulation, would exceed one (1) or more of the major source thresholds defined in 401 KAR 50:035, Section 1(23); and

(b) That do not hold a Part 70 or conditional major permit.

(2) Compliance with this administrative regulation shall exempt a source from the requirement to obtain a Part 70 permit (unless otherwise required to do so by the U.S. EPA) or a conditional major permit, but shall not exempt a source from the requirement to obtain a state origin permit, or to revise or renew an existing permit, if required to do so pursuant to 401 KAR 50:035.

(3) Compliance with this administrative regulation shall not relieve a source from the requirement to comply with all applicable requirements, including rate-based limits or other terms and conditions stated in a permit issued by the cabinet.

(4) A source may obtain a Part 70 or conditional major permit in lieu of complying with this administrative regulation.

Section 3. Operational Limits. Owners and operators of sources subject to this administrative regulation shall comply with the following operational limits and fuel usage requirements:

(1) Batch mix plants shall not produce more than 360,000 tons of asphalt during any consecutive twelve (12) month period;

(2) Drum mix plants shall not produce more than 500,000 tons of asphalt during any consecutive twelve (12) month period; and

(3) Hot mix asphalt plants shall not use waste oil as fuel in the production of asphalt unless it has been recycled and meets or exceeds the following specifications:

(a) No more than five (5) ppm of arsenic;

(b) No more than two (2) ppm of cadmium;

(c) No more than ten (10) ppm of chromium;

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- (d) No more than 100 ppm of lead;
- (e) No more than 1000 ppm of total halogens; and
- (f) Minimum flash point of 100°F.

Section 4. Recordkeeping Requirements. The owner or operator of a source subject to this administrative regulation shall maintain monthly logs of asphalt production and fuel usage.

(1) The production log shall show the amount of asphalt produced each month, in tons, and a rolling twelve (12) month total of asphalt production, obtained by adding each month's total to those for the previous eleven (11) months.

(2) The fuel usage log shall show the type and amount of fuels used each month.

(a) Gaseous fuels shall be identified as natural (NAT), liquid propane gas (LPG), or liquid butane gas (LBG); and fuel usage shall be expressed in cubic feet or gallons.

(b) Fuel oils shall be identified by number (i.e., #2, #4, etc.) and fuel usage shall be expressed in gallons. Material Safety Data Sheets (MSDS) shall be maintained with the fuel usage log for all fuel oils purchased and used.

(3) All logs and MSDS sheets shall be kept on site for five (5) years from the date of last entry and shall be made available, upon request, for inspection by the cabinet or the U.S. EPA.

JAMES E. BICKFORD, Secretary

GLENNA JO CURRY, General Counsel

APPROVED BY AGENCY: November 13, 1997

FILED WITH LRC: November 14, 1997 at 9 a.m.

PUBLIC HEARING: A public hearing on the new administrative regulation will be held on December 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: Jerry Goebel, Permit Review Branch

(1) Type and number of entities affected: This administrative regulation will affect approximately 122 hot mix asphalt plants located throughout the Commonwealth.

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

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented. There will be no measurable effect on the cost of living or employment in the geographical areas where this regulation will be implemented.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented. The cost of doing business in the geographical areas in which this regulation will be implemented will not be affected.

(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 122 asphalt plants affected by this regulation will each save from \$500 to \$25,000 in paperwork and administrative costs during the first year. This is the estimated cost of preparing a Title V or conditional major application, depending on the size and complexity of the source, and whether the application is prepared in-house or by using outside consultants.

2. Second and subsequent years: There will be some savings in paperwork and administrative costs to affected sources in subsequent years. Revising and renewing existing state origin permits is less complex and, therefore, less expensive than revising and renewing Title V or conditional major permits.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: The Division for Air Quality will save an estimated 200 to 500 manhours for each Title V or conditional major permit it does not have to review and issue, depending on the size and complexity of the source and, in the case of conditional major permits, whether or not the limits exceed 50% of the major source thresholds. Without this administrative regulation, the division estimates that at least thirty (30) of the state's 122 hot mix asphalt plants would require a Title V permit, and the remainder would require conditional major permits. According to the schedule and procedures established by the Permit Review Branch, all conditional major permits would be reviewed and issued during the first year, and all Title V permits would be reviewed and issued in calendar year 1999.

2. Continuing costs or savings: As noted in (a)1 above, the division will save an estimated 6000 to 15,000 manhours in 1999 by not having to review the thirty (30) or so Title V permits that would have been required. In addition, savings will accrue in all subsequent years because state origin permits can be revised and renewed in much less time than Title V or conditional major permits.

3. Additional factors increasing or decreasing costs: There are no additional factors increasing or decreasing costs.

(b) Reporting and paperwork requirements: There will be some decrease in reporting and paperwork requirements, because the division will have fewer Title V and conditional major permits to track, inspect, and report on.

(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 cost of implementing and enforcing this administrative regulation will be absorbed in the division's operating budget.

(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 have no known impact on economic activities in the geographical location of affected sources.

(b) Kentucky: This administrative regulation will have no measurable economic impact anywhere in the Commonwealth.

(7) Assessment of alternative methods; reasons why alternatives were rejected: Following the U.S. EPA's finding that Kentucky's proposal to exempt hot mix asphalt plants from Title V because of inherent physical limits was not acceptable, the division considered all the possible alternatives, i.e., issue all the sources a Title V or conditional major permit, issue one or more general permits to cover all the asphalt plants, try to cover as many sources as possible under 401 KAR 50:031 (the 50% rule), or promulgate a prohibitory rule that would cover most or all of the plants. From the standpoint of cost to the asphalt industry and the division, as well as the time required to implement, the prohibitory rule is the alternative of choice.

(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 will have no perceivable effect on public health or environmental welfare anywhere in Kentucky.

(b) State whether a detrimental effect on environment and public health would result if not implemented: No detrimental effect on public health or the environment 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: There are no statutes, rules, regulations, or government policies which are in conflict, or which overlap or duplicate this administrative regulation.

(a) Necessity of proposed regulation if in conflict: The proposed regulation is not in conflict.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: The proposed regulation is not in conflict.

(10) Any additional information or comments: No additional information or comments are offered.

(11) TIERING: Is tiering applied? No. The compliance standards and recordkeeping requirements in this administrative regulation apply equally to all hot mix asphalt plants in Kentucky.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 40 CFR Part 70 mandates that all major sources apply for a Title V permit within one year following approval of the state's Title V permitting program, unless the source has taken steps to limit its potential to emit (PTE) below the major source thresholds. This prohibitory rule provides all of Kentucky's asphalt plants with a legal and enforceable vehicle for limiting their PTE, thereby avoiding the necessity of obtaining a Title V or conditional major permit.

2. State compliance standards. The compliance standards contained in this administrative regulation are calculated to ensure that affected sources do not exceed 90% of the major source thresholds for Title V. The U.S. EPA recommends a 10% safety factor in prohibitory rules of this nature.

3. Minimum or uniform standards contained in the federal mandate. This administrative regulation meets all the requirements for prohibitory rules and other methods for opting out of Title V contained in guidance documents published by the U.S. EPA.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No. The compliance standards and recordkeeping requirements contained in this administrative regulation are similar to and no more stricter than those contained in model rules published by the U.S. EPA.

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 (New Administrative Regulation)

401 KAR 60:750. Standards of performance for municipal solid waste landfills.

RELATES TO: KRS 224.10-100, 224.20-100, 224.20-110, 224.20-120, 40 CFR 60.750 to 60.759, 42 USC 7411

STATUTORY AUTHORITY: KRS 224.10-100, 224.20-100, 224.20-110, 224.20-120, 40 CFR 60.750 to 60.759, 42 USC 7411

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 provides for the control of emissions from municipal solid waste landfills. Delegation of implementation and enforcement authority for the federal New Source Performance Standards (NSPS) regulation from the U.S. EPA to the Commonwealth of Kentucky is provided under 42 USC 7411(c)(1).

Section 1. Definitions. As used in 40 CFR 60.750 to 60.759, the following terms shall be defined as provided in this section:

(1) Except as provided in subsection (2) of this section, "administrator" means the Secretary of the Natural Resources and Environmental Protection Cabinet.

(2) As used in 40 CFR 60.750(b), "administrator" means the Administrator of the U.S. EPA.

Section 2. (1) 40 CFR 60.750 to 60.759, (40 CF 60, Subpart WWW), Standards of performance for municipal solid waste landfills, as published in the Code of Federal Regulations, Title 40, Part 60, July 1, 1997, 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) 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

GLENNA JO CURRY, General Counsel

APPROVED BY AGENCY: November 13, 1997

FILED WITH LRC: November 14, 1997 at 9 a.m.

PUBLIC HEARING: A public hearing to receive comments on the

proposed administrative regulation will be conducted on December 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 attending this public hearing shall notify this agency in writing, at least five working days prior to the scheduled 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 regulation to the 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: This administrative regulation incorporates by reference of the federal New Source Performance Standards (NSPS) for municipal solid waste landfills, 40 CFR Part 60, Subpart WWW. The federal NSPS regulation applies to each municipal solid waste (MSW) landfill that commenced construction, reconstruction or modification or began accepting waste on or after May 30, 1991. Physical or operational changes made to an existing MSW landfill solely to comply with Subpart Cc of 40 CFR Part 60 are not considered construction, reconstruction, or modification.

(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 direct or indirect costs or savings beyond those which are described in the federal final rulemaking for this source category at 61 FR 9919, (March 12, 1996).

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented. There are no direct or indirect costs or savings beyond those which are described in the federal final rulemaking for this source category at 61 FR 9919, (March 12, 1996).

(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 reporting or paperwork requirements beyond those required in the federal NSPS regulation.

2. Second and subsequent years: There will be no reporting or paperwork requirements beyond those required in the federal NSPS regulation.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: The costs of implementing NSPS regulations are absorbed as a part of the division's operating budget.

2. Continuing costs or savings: The division inspects sources that are subject to NSPS regulations and maintains an emissions inventory for each facility. This activity is a part of the division's normal day-to-day operations and is budget 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 facility as stated in (2)(a)1 and 2 above.

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

There are no anticipated effects 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.

(6) Economic impact, including effects of economic activities arising from administrative regulation, on:

(a) Geographical area in which administrative regulation will be implemented: There is no economic impact in the geographical area in which the administrative regulation will be implemented (Kentucky) beyond those which are described in the federal final rulemaking for this source category at 61 FR 9919, (March 12, 1996).

(b) Kentucky: There is no economic impact in Kentucky beyond those which are described in the federal final rulemaking for this source category at 61 FR 9919, (March 12, 1996).

(7) Assessment of alternative methods; reason why alternatives were rejected: No alternative methods were considered because this administrative regulation contains the same provisions as the federal regulation. Kentucky is promulgating this administrative regulation so that the U.S. EPA will grant the Commonwealth delegation of authority to enforce the provisions of the federal NSPS regulation, so that sources will be able to work with the state to obtain the necessary permits rather than the federal government.

(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: There will be no additional effects on public health and environmental welfare in the geographical area in which this administrative regulation will be implemented (Kentucky), because it will be implemented by the U.S. EPA if Kentucky fails to do so.

(b) State whether a detrimental effect on environment and public health would result if not implemented: A detrimental effect on environment and public health will not result if this administrative regulation is not implemented, because it will be implemented by the U.S. EPA if Kentucky fails to do so.

(c) If detrimental effect would result, explain detrimental effect: A detrimental effect on environment and public health will not result if this administrative regulation is not implemented, because it will be implemented by the U.S. EPA if Kentucky fails to do so.

(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 is promulgating this administrative regulation to incorporate by reference the federal NSPS regulation, 40 CFR Part 60, Subpart WWW, so that Kentucky will be granted delegation of authority to enforce the provisions of the federal NSPS.

(11) TIERING: Is tiering applied? No. The cabinet is incorporating by reference the federal NSPS regulation, which requires uniformity for this source category. There is no further tiering of requirements by the state.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute of regulation constituting the federal mandate. 42 USC 7411 mandates the U.S. EPA to promulgate standards of performance for emissions from new sources. The federal NSPS regulation which implements this mandate is found in 40 CFR Part 60, Subpart WWW, as published in the Code of Federal Regulations, Title 40 Part 60, July 1, 1997. 42 USC 7411(c)(1) allows the U.S. EPA to delegate authority for implementing and enforcing NSPS regulations

to states.

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 standards for air emissions from municipal solid waste landfills is contained in 40 CFR 60.752. The operational standards for collection and control systems is contained in 40 CFR 60.753.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities of requirements, than those required by the federal mandate? There will be no stricter requirements or additional responsibilities or requirements beyond those required in the federal NSPS regulation.

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 would affect a unit, part or division of a local government which operates a municipal solid waste landfill that is subject to the federal NSPS regulation.

3. State the aspect or service of local government to which this administrative regulation relates. This administrative regulation would relate to any municipal solid waste landfill that commenced construction, reconstruction or modification or began accepting waste on or after May 30, 1991, and is operated by a 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 import of the administrative regulation.

Revenues (+/-): There is no effect on current revenues beyond the federal NSPS regulation.

Expenditures (+/-): There is no effect on current expenditures beyond the federal NSPS regulation.

Other Explanation: There is no other explanation.

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET Department for Environmental Protection Division for Air Quality (New Administrative Regulation)

401 KAR 61:036. Emission guidelines and compliance times for municipal solid waste landfills.

RELATESTO: KRS 224.10-100, 224.20-100, 224.20-110, 224.20-120, 40 CFR 60.30c to 60.36c, 42 USC 7411(d)

STATUTORY AUTHORITY: KRS 224.10-100, 224.20-100, 224.20-110, 224.20-120, 40 CFR 60.30c to 60.36c, 42 USC 7411(d)

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 provides for the control of emissions from existing municipal solid waste landfills.

Section 1. Definitions. As used in 40 CFR 60.30c to 60.36c, "state" means the Commonwealth of Kentucky.

Section 2. (1) 40 CFR 60.30c to 60.36c, (40 CFR 60, Subpart Cc), Emission Guidelines and Compliance Times for Municipal Solid Waste Landfills, as published in the Code of Federal Regulations, Title 40, Part 60, July 1, 1997, 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) 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

GLENN JO CURRY, General Counsel

APPROVED BY AGENCY: November 13, 1997

FILED WITH LRC: November 14, 1997 at 9 a.m.

PUBLIC HEARING: A public hearing to receive comments on the proposed administrative regulation will be conducted on December 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 attending this public hearing shall notify this agency in writing, at least five working days prior to the scheduled 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 regulation to the 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: This administrative regulation incorporates by reference of the federal Emission Guidelines (EG) for Municipal Solid Waste Landfills, 40 CFR Part 61, Subpart Cc. The federal EG regulation applies to each existing municipal solid waste (MSW) landfill for which construction, reconstruction or modification was commenced before May 30, 1991. Physical or operational changes made to an existing MSW landfill solely to comply with an emission guideline are not considered a modification or reconstruction and would not subject an existing MSW landfill to the requirements of 40 CFR 60, Subpart WWW.

(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 direct or indirect costs or savings beyond those which are described

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in the federal final rulemaking for this source category at 61 FR 9919, (March 12, 1996).

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented. There are no direct or indirect costs or savings beyond those which are described in the federal final rulemaking for this source category at 61 FR 9919, (March 12, 1996).

(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 reporting or paperwork requirements beyond those required in the federal EG regulation.

2. Second and subsequent years: There will be no reporting or paperwork requirements beyond those required in the federal EG regulation.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: The costs of implementing this EG regulation will be absorbed as a part of the division's operating budget.

2. Continuing costs or savings: The division will inspect sources that are subject to this EG regulation and will maintain an emissions inventory for each facility. This activity will be included in the division's operating budget.

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 facility as stated in (2)(a)1 and 2 above.

(4) Assessment of anticipated effect on state and local revenues: There are no anticipated effects 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.

(6) Economic impact, including effects of economic activities arising from administrative regulation, on:

(a) Geographical area in which administrative regulation will be implemented: There is no economic impact in the geographical area in which the administrative regulation will be implemented (Kentucky) beyond those which are described in the federal final rulemaking for this source category at 61 FR 9919, (March 12, 1996).

(b) Kentucky: There is no economic impact in Kentucky beyond those which are described in the federal final rulemaking for this source category at 61 FR 9919, (March 12, 1996).

(7) Assessment of alternative methods; reason why alternatives were rejected: No alternative methods were considered because this administrative regulation contains the same provisions as the federal regulation. Kentucky is promulgating this administrative regulation so that the U.S. EPA will grant the Commonwealth delegation of authority to enforce the provisions of the federal EG regulation, so that sources will be able to work with the state to obtain the necessary permits rather than the federal government.

(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: There will be no additional effects on public health and environmental welfare in the geographical area in which this administrative regulation will be implemented (Kentucky), because it will be implemented by the U.S. EPA if Kentucky fails to do so.

(b) State whether a detrimental effect on environment and public health would result if not implemented: A detrimental effect on environment and public health will not result if this administrative regulation is not implemented, because it will be implemented by the U.S. EPA if Kentucky fails to do so.

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

detrimental effect on environment and public health will not result if this administrative regulation is not implemented, because it will be implemented by the U.S. EPA if Kentucky fails to do so.

(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 is promulgating this administrative regulation to incorporate by reference the federal EG regulation, 40 CFR Part 60, Subpart Cc, so that Kentucky will be granted delegation of authority to enforce the provisions of the federal EG regulation.

(11) TIERING: Is tiering applied? No. The cabinet is incorporating by reference the federal EG regulation, which requires uniformity for this source category. There is no further tiering of requirements by the state.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute of regulation constituting the federal mandate. 42 USC 7411(d) mandates the U.S. EPA to promulgate emission guidelines and compliance times for the control of certain designated pollutants from certain designated facilities. The federal regulation which implements this mandate is found in 40 CFR Part 60, Subpart Cc, as published in the Code of Federal Regulations, Title 40, Part 60, July 1, 1997. 42 USC 7411(c)(1) allows the U.S. EPA to delegate authority for implementing and enforcing EG regulations to states.

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 emission guidelines for municipal solid waste landfills is contained in 40 CFR 60.33c.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities of requirements, than those required by the federal mandate? There will be no stricter requirements or additional responsibilities or requirements beyond those required in the federal EG regulation.

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 would affect a unit, part or division of a local government that operates a municipal solid waste landfill that is subject to the federal EG regulation.

3. State the aspect or service of local government to which this administrative regulation relates. This administrative regulation would relate to any existing municipal solid waste landfill for which construction, reconstruction or modification was commenced before May 30, 1991, and is operated by a 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 import of the administrative regulation.

Revenues (+/-): There is no effect on current revenues beyond the federal EG regulation.

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Expenditures (+/-): There is no effect on current expenditures beyond the federal EG regulation.

Other Explanation: There is no other explanation.

JUSTICE CABINET Kentucky Department of Corrections (New Administrative Regulation)

501 KAR 6:999. Corrections secured 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: "Department of Corrections Secured Policies and Procedures, November 12, 1997."

BCC 09-01-01	Inclement Weather/Emergency Condition Operation
BCC 09-02-01	Restricted Areas
BCC 09-02-02	Inmate Pass System to Restricted Areas
BCC 09-02-03	Regulation of Inmate Movement
BCC 09-02-04	Radio Escorted Yard Movement During Daylight Savings Time (November 1-April 30)
BCC 09-03-01	Inmate Identification
BCC 09-04-02	Complex Entry and Exit
BCC 09-05-01	Key Control
BCC 09-06-02	Transportation to Courts
BCC 09-07-01	Drug Abuse and Intoxicants Testing
BCC 09-09-01	Population Counts and Count Documentation
BCC 09-10-03	Development of Institutional Post Orders
BCC 09-14-01	Prohibiting Inmate Authority Over Other Inmates
BCC 09-15-01	Search Policy and Disposition of Contraband
BCC 09-16-01	Security Activity Logs
BCC 09-17-01	Institutional Supervisor Inspection
BCC 09-18-01	Use of State Vehicles and Staff Owned Vehicles
BCC 09-19-01	Duties and Responsibilities of the Institutional Captain
BCC 09-20-01	Inmate Death
BCC 09-21-01	Tool Control
BCC 09-22-01	Emergency Communication System
CPP 8.1	Occupational Exposure to Bloodborne Pathogens
CPP 8.2	Fire Safety
CPP 8.3	Emergency Planning
CPP 8.4	Emergency Preparedness
CPP 8.5	Emergency Squads
CPP 9.1	Use of Force
CPP 9.5	Execution
CPP 9.7	Storage, Issue and Use of Weapons Including Chemical Agents
CPP 9.9	Transportation of Inmates
CPP 9.10	Security Inspections
CPP 9.11	Tool Control
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
GRCC 08-03-01	Escape Plan
GRCC 08-05-01	Emergency Squad: Selection, Training and Evaluation
GRCC 08-06-01	Response Units
GRCC 09-03-01	Procedure for Operation in Event of Dense Fog, Inclement Weather or Loss of Power
GRCC 09-04-01	Inmate Death
GRCC 09-06-01	Entry and Exit Procedures
KSP 09-08-01	Searches and Preservation of Evidence
KSR 09-00-04	Horizontal Gates/Box 1 Entrance and Exit Procedure
KSR 09-00-09	Contraband, Dangerous Contraband and Search Policy
KSR 09-00-27	Construction Crew Entry/Exit
RCC 08-01-01	Fire Prevention
RCC 08-08-01	Control and Use of Flammable, Toxic, and Caustic Materials
RCC 09-04-03	Duties and Responsibilities of the Fire and Safety Officer
RCC 09-06-01	Search Policy/Disposition of Contraband

(2) There will be no public hearing on these policies and procedures as they are secured policies under the provisions of KRS 197.025 which states that such policies shall not be accessible to the public or inmates.

DOUG SAPP, Commissioner

TAMELA BIGGS, Staff Attorney

APPROVED BY AGENCY: November 4, 1997

FILED WITH LRC: November 13, 1997 at 1 p.m.

PUBLIC HEARING: Pursuant to KRS 197.025, policies governed by these administrative regulations shall not be accessible to the public or inmates. Therefore, a public hearing is not required and will not be scheduled.

REGULATORY IMPACT ANALYSIS

Contact Person: Tamela Biggs, Staff Attorney

(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, 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: 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: Funds budgeted for this 1996 - 1998 biennium.

(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 area in which implemented and on Kentucky: None

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

(c) If detrimental effect would result, explain detrimental effect: N/A

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

(a) Necessity of proposed regulation if in conflict: N/A

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

(10) Any additional information or comments: None

(11) TIERING: Is tiering applied? No. Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it. Disparate treatment of any person or entity subject to this administrative regulation could raise questions of arbitrary action on the part of the agency. The "equal protection" and "due process" clauses of the Fourteenth Amendment of the U.S. Constitution may be implicated as well as Sections 2 and 3 of the Kentucky Constitution.

**CABINET FOR WORKFORCE DEVELOPMENT
State Board for Adult and Technical Education
(New Administrative Regulation)**

780 KAR 2:131. Repeal of 780 KAR 2:130.

RELATES TO: KRS Chapter 151B

STATUTORY AUTHORITY: KRS 151B.025, 151B.110

NECESSITY, FUNCTION, AND CONFORMITY: House Bill 1 enacted May 30, 1997 in the First 1997 Extraordinary Session of the Kentucky General Assembly placed the postsecondary schools within the definitions of KRS 164.001(10). The definition of "administrative regulation" in KRS 13A.010(2)(e) specifically excludes postsecondary institutions as defined in KRS 164.001. 780 KAR 2:130, establishing minimum standards of admission for postsecondary students, concerns subject matter excluded from the definition of administrative regulation and is prohibited. Therefore, the administrative regulation should be repealed.

Section 1. 780 KAR 2:130 is hereby repealed.

J. LARRY STINSON, Chairman

RODNEY S. CAIN, Secretary

BEVERLY HAVERSTOCK, General Counsel

APPROVED BY AGENCY: September 18, 1997

FILED WITH LRC: November 13, 1997 at 1 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on December 22, 1997, at 9 a.m. at the Capital Plaza Tower, 500 Mero Street, 2nd Floor Conference Room, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify the contact person in writing by December 15, 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: Beverly Haverstock, General Counsel, Cabinet for Workforce Development Cabinet, 500 Mero Street, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Contact Person: Beverly Haverstock

(1) Type and number of entities affected: Kentucky TECH schools - 25 postsecondary schools and the secondary area technology centers which serve postsecondary students are affected.

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

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

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: No new or additional reporting and paperwork requirement

(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 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 government policy which may be in conflict, overlapping, or duplication: None

(10) Any additional information or comments: None

(11) TIERING: Is tiering applied? No. The same admission standards apply to everyone across the Commonwealth.

PUBLIC PROTECTION AND REGULATION CABINET
Department of Housing, Buildings and Construction
Division of Building Codes Enforcement
(New Administrative Regulation)

815 KAR 7:014. Repeal of 815 KAR 7:013.

RELATES TO: KRS Chapter 198B, 815 KAR 7:105

STATUTORY AUTHORITY: KRS 198B.060(18)

NECESSITY, FUNCTION, AND CONFORMITY: This administrative regulation is necessary to repeal administrative regulation 815 KAR 7:013 which is no longer necessary as a separate administrative regulation since the material is now contained in the Kentucky Building Code, 815 KAR 7:105.

SECTION 1. Administrative regulation 815 KAR 7:013 is repealed.

CHARLES A. COTTON, Commissioner

LAURA M. DOUGLAS, Secretary

APPROVED BY AGENCY: October 17, 1997

FILED WITH LRC: October 28, 1997 at 2 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on Tuesday, December 23, 1997 at 10 a.m., in the office of the Department of Housing, Buildings and Construction, 1047 U.S. 127 South, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by December 16, 1997, (five days prior to the hearing) of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made 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: 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) 564-8044.

REGULATORY IMPACT ANALYSIS

Contact person: Judith G. Walden

(1) Type and number of entities affected: This administrative regulation repeals 815 KAR 7:013 because the information contained in that regulation is now located in the Kentucky Building Code as promulgated in 815 KAR 7:105 and a separate administrative regulation is not necessary. Therefore, the impact to this repealer regulation is not applicable.

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

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented:

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented:

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

1. First year following implementation:

2. Second and subsequent years:

(3) Effects on the promulgating administrative body: N/A

(a) Direct and indirect costs or savings:

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements:

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

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: N/A

(6) Economic impact, including effects of economic activities arising from administrative regulation, on: N/A

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

(b) Kentucky:

(7) Assessment of alternative methods; reasons why alternatives were rejected: N/A

(8) Assessment of expected benefits: N/A

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky:

(b) State whether a detrimental effect on environment and public health would result if not implemented:

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

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: N/A

(a) Necessity of proposed regulation if in conflict:

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

(10) Any additional information or comments:

(11) Tiering: Is tiering applied? No. Tiering not applicable because administrative regulation is being repealed.

CABINET FOR HEALTH SERVICES
Department for Health Services
(New Administrative Regulation)

902 KAR 17:041. 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

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 216B.

Section 1. Incorporation by Reference. (1) The 1998-2000 Kentucky State Health Plan is hereby incorporated by reference.

Section 2. Updating of Inventories and Need Analysis. (1) The cabinet shall update the inventory of licensed and/or certificate of need approved health services and health facilities as well as the need analysis contained in the State Health Plan on a periodic basis to reflect any changes in inventory or need projections for health services and health facilities, and the most current update shall be used in making certificate of need decisions.

(2) Notice of such updates shall be published in the cabinet's certificate of need newsletter.

(3) Such updates may be inspected, copied, or obtained at the Cabinet for Health Services, 275 East Main Street, Frankfort, Kentucky 40601, 8 a.m. to 4:30 p.m. Monday through Friday.

RICE C. LEACH, M.D., Commissioner

JOHN H. MORSE, Secretary

JOHN H. WALKER, Attorney

APPROVED BY AGENCY: November 14, 1997

ADMINISTRATIVE REGISTER - 1434

FILED WITH LRC: November 14, 1997 at noon

PUBLIC HEARING: A public hearing on this regulation will be held December 22, 1997, at 9 a.m., in the Cabinet for Health Services Auditorium, 1st floor, Health Services Building, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending shall notify this agency in writing by December 15, 1997. If no notice of intent to attend the hearing is received by that date the hearing may be cancelled. The hearing is open to the public. Any person who attends will be given the opportunity to comment on the proposed administrative regulation. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notice of intent to attend the public hearing or written comments to: Mae B. Lewis, Cabinet Regulation Coordinator, Cabinet for Health Services, 275 East Main Street - 4 West, Frankfort, Kentucky 40621.

to the number of facilities and providers contained in the incorporated document.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Charles Kendell, Branch Manager

(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

ADMINISTRATIVE REGULATION REVIEW SUBCOMMITTEE

Minutes of November 11, 1997

The November meeting of the Administrative Regulation Review Subcommittee was held on Tuesday, November 11, 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 October 14, 1997 meeting were approved.

Present were:

Members: Representative John Arnold, Chairman; Senators Joey Pendleton, Nick Kafoglis, and Dick Roeding; Representatives Jimmy Lee, Woody Allen and James Bruce.

LRC Staff: Donna Little, Stephen Lynn, Susan Wunderlich, Angela Phillips, Donna Valencia, Don Hines.

Guests: Richard Casey, Linda Renschler, KHEAA; Ed Ross, Gail Prewitt, Angela Robinson, Mike Abell, Don Speer, Finance and Administration Cabinet; Mark Brengleman, Assistant Attorney General; Gary Munsie, Board of Dentistry; Jack Damron, Brenda Priestley, Department of Corrections; Stephanie Craycraft, Juvenile Justice; Rhonda Tamme, OTEC; Beverly H. Haverstock, Jeanette S. Downey, Workforce Development Cabinet; Carla H. Montgomery, Department of Workers' Claims; Mona Carter, Karla Thompson, Sharron S. Burton, Department of Insurance; Judith Walden, Rodney Handy, Jack M. Rhody, Department of Housing, Buildings and Construction; Lori A. Davis, Department of Public Advocacy; Eric Friedlander, Trish Howard, Karen Doyle, Cookie Whitehouse, Robert Calhoun, Margaret Pennington, Elizabeth Rehm Wachtel, D. W. Swain, Richard Hein, Paul Weaver, Mike Littlefield, Brenda Parker, Betty Weaver, Bruce Scott, Ralph Von Derau, John Walker, Cabinets for Health Services and Families and Children; William Ullrich, Robert Gunnell, Options Health Care; Dennis Boyd, University of Louisville; Ken R. Christiansen, NCCI; Nancy Galvagni, Kentucky Hospital Association; Jim Curry, Bill Osbourne, Communicare; Shannon Palmer Ware, Joe Toy, Connie Milligan, Arthur Shecket, Bluegrass Regional Mental Health Board; Bart Baldwin, Children's Alliance; Thomas Krause, Commonwealth Health Corporation; J. Patrick Mathes, Medicaid Managed Care; Daniel B. Howard, Kentucky Association of Regional Program; Don Ralph, University of Kentucky Medical Center; John Nichols, Associated Industries of Kentucky; William P. O'Banion, OIG; Ron Sowell, The Medical Center at Bowling Green; Bob Garrett, The Courier-Journal; Laura C. Stammel, AOC; T. Hanna, CKRPE; Joelle Shostell, Advocates Taking Action in Kentucky; Jim Carlross, Jr., Kentucky Association of Realtors; Lowell Reese, Kentucky Roll Call; Robert L. Barnett, Kentucky Pharmacists Association; Howard F. Bracco, Seven Counties Services, Inc.; Joyce Schifano, BHI; Bill Doll, Kentucky Medical Association; John Brazel, Kentucky Chamber of Commerce; William J. Wells.

The Subcommittee determined that the following administrative regulations, as amended by the promulgating agency and the Subcommittee, complied with statutory requirements:

Kentucky Higher Education Assistance Authority: Work Study Program

11 KAR 6:010. KHEAA Work Study Program. Richard Casey, General Counsel, and Linda Renschler, Student Aid Branch Manager, represented the Authority.

In response to questions by Senator Roeding, Mr. Casey stated that: (1) the increase in the mileage expense allowance from 22 to 25 cents equaled an increase of: (a) \$13.50 a year per student; and (b) \$20,000 total for the 1400 participating students; (2) the work study program: (a) offered career-oriented work experience for participating students with private employers who generally were located off-campus; and (b) provided a mileage expense for students traveling to and from campus to the job site; (3) the average hourly wage of \$6.50 to \$7.00 per hour was paid by the Authority and private employers,

with: (a) \$2.00 paid by the Authority; and (b) the remainder paid by the private employer; (4) the mileage expense was: (a) included in the wages that were paid to a student; and (b) included in the student's budget as an extra amount of money the student could earn; and (5) the definition of administrative cost allowance: (a) was a new definition; and (b) reflected the current amount of the allowance.

Ms. Renschler stated that: (1) the federal regulations allowed the cost of education or the student's budget to include reasonable transportation or travel expenses either to and from home or to and from a job site; (2) the administrative cost allowance was limited per school to the lesser of \$15,000 or eight percent of the gross wages earned; and (3) seventeen schools currently participated in the program.

Senator Kafoglis stated that legislators received a reimbursement of 31 cents a mile.

Senator Roeding requested that he be recorded as voting against approval of this administrative regulation.

This administrative regulation was amended as follows: (1) the STATUTORY AUTHORITY paragraph and Sections 1 and 6 were amended to correct 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 through 10 were amended to comply with the: (a) format requirements of KRS 13A.220(4); and (b) drafting requirements of KRS 13A.222(4); (4) Sections 2 and 3 were amended to clarify the requirements for work study participation; (5) Section 10 was amended to incorporate by reference the required application form; and (6) Section 4(1) was amended to require at least 75% of the wage reimbursement dollars be utilized with private employers, rather than private, for-profit employers.

Board of Dentistry

201 KAR 8:400. Complaint procedure. Gary Munsie, Director, and Mark Brengelman, Assistant Attorney General, represented the Board.

In response to a question by Senator Kafoglis, Mr. Munsie stated that the law enforcement committee met monthly on the day before each board meeting.

This administrative regulation was amended as follows: (1) Section 1(1) was amended to delete an unnecessary definition, pursuant to KRS 13A.222(4)(a); (2) Section 1(2) was amended to comply with the statutory definition of "Board", pursuant to KRS 13A.120(2); (3) Section 2(1) was amended to provide the circumstances for taking a non-written complaint, pursuant to KRS 13A.222(4)(a); (4) Section 2 was amended to delete language that repeated or summarized statute, as required by KRS 13A.120(2)(e) and (f); and (5) the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 1 and 2 were amended to comply with the: (a) format requirements of KRS 13A.220(4); and (b) drafting requirements of KRS 13A.222(4).

Justice Cabinet: Department of Corrections: Division of Adult Institutions: Office of the Secretary

501 KAR 6:040. Kentucky State Penitentiary. Jack Damron, Staff Attorney, represented the Department.

In response to questions by Representative Bruce, Mr. Damron stated that: (1) while visitors were generally asked to leave medication in their vehicles, arrangements would be made to permit a visitor to take medicine while visiting at a correctional facility if the medicine was medically necessary; and (2) a visitor was prohibited from bringing medication to a facility for an inmate because the inmates had access to medical services.

In response to a question by Senator Roeding, Mr. Damron stated that he did not know if Benadryl was a highly-used medication in the

correctional system.

This administrative regulation was amended as follows: (1) KSP 16-01-01, H.1. was amended to clarify that the officer in charge use the clothing guidelines in determining whether a visitor is dressed in proper attire, pursuant to KRS 13A.222(4)(a); (2) KSP 16-01-01, K.4. was amended to clarify that a visitor could be prosecuted if he brings a prescribed medication to the institution and fails to follow institutional procedure, pursuant to KRS 13A.222(4)(a); and (3) KSP 02-11-01, 02-12-01, 15-06-01, and 16-01-01 were amended to comply with the: (a) format requirements of KRS 13A.220(4); and (b) drafting requirements of KRS 13A.222(4).

501 KAR 6:090. Frankfort Career Development Center. In response to questions by Senator Roeding, Mr. Damron stated that: (1) most policies and procedures were implemented to gain accreditation of Kentucky's correctional facilities by the American Correctional Association; (2) he did not think the national standards coddled the inmates; (3) the national standards had existed for many years; (4) the accreditation of each of Kentucky's prisons by the American Correctional Association has helped the Department in litigation when an inmate sued over conditions of confinement because: (a) the Department can prove the accreditation; and (b) the accreditation meant certain minimum standards existed; (5) many of Kentucky's jails were not certified by the American Correctional Association; (6) the Department was charged with oversight of those facilities to monitor whether the jails met the standards established: (a) by the American Correctional Association; and (b) in Title 501 of the Kentucky Administrative Regulations; and (7) the national standards covered every facet of prison life.

This administrative regulation was amended as follows: (1) FCDC 12-03-01, A.5. was amended to clarify that unrepairable equipment would be replaced, pursuant to KRS 13A.222(4)(a); (2) FCDC 13-01-01, A.1. was amended to comply with the statutory definition of "Controlled Substance" found in KRS 218A.010(3), pursuant to KRS 13A.120(2); (3) FCDC 16-01-01, B.4. was amended to prohibit loitering in the visitor parking lot, pursuant to KRS 13A.222(4)(a); (4) FCDC 17-02-01, C.2. was amended to clarify that an inmate will receive orientation in his own language if he does not understand English, pursuant to KRS 13A.222(4)(a); and (5) FCDC 02-13-01, 11-03-01, 12-03-01, 13-01-01, 15-03-01, 16-01-01, 18-01-01, and 24-01-01 were amended to comply with the: (a) format requirements of KRS 13A.220(4); and (b) drafting requirements of KRS 13A.222(4).

Education Professional Standards Board

704 KAR 20:084. Interdisciplinary early childhood education, birth to primary. Ronda Tamme, Director, Office of Teacher Certification, represented the Board.

In response to a question by Representative Bruce, Ms. Tamme stated that: (1) the certificate and preparation program covered from birth to primary; (2) schools were currently working with students who were at least three (3) years old; (3) this certificate program was not mandated by the federal government; and (4) the Board felt that preparation in child development from birth to primary was necessary.

In response to questions by Chairman Arnold, Ms. Tamme stated that: (1) the preparation program prepared the teachers, not the children; and (2) local school districts were not becoming a baby-sitting service for that age group.

This administrative regulation was amended as follows: (1) the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 1, 2, 4 through 8 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 2 was amended to delete language that summarized or repeated statute, as required by KRS 13A.120(2)(e) and (f).

Workforce Development Cabinet: State Board for Adult and Technical Education: Personnel System for Certified and Equivalent Employees

780 KAR 3:070. Attendance, compensatory time, and leave. Beverly Haverstock, General Counsel, and Jeanette Downey, Director of School Operations, Kentucky Tech, represented the Cabinet.

In response to a question by Senator Roeding, Ms. Downey stated that: (1) this administrative regulation did not mandate teachers who had been on a twelve month schedule to switch to a schedule of: (a) ten and a half months; or (b) 228 days; and (2) this administrative regulation equated the ten and a half month schedule that previously ran from August 1 to June 15 to a schedule that: (a) consisted of 228 days; and (b) was flexible enough at the local level to accommodate changes in the opening and closing dates of school.

This administrative regulation was amended as follows: (1) the RELATES TO paragraph and Sections 4, 5, 7, and 11 were amended to correct statutory citations; (2) the NECESSITY, FUNCTION, AND CONFORMITY paragraph was amended to clearly state the necessity for and function served by the administrative regulation, as required by KRS 13A.220(3)(f); (3) Sections 1 through 12 were amended to comply with the: (a) format requirements of KRS 13A.220(4); and (b) drafting requirements of KRS 13A.222(4); and (4) Section 4 was amended to insert language from the existing administrative regulation that was inadvertently omitted in this administrative regulation.

780 KAR 3:080. Extent and duration of school term, use of school days and extended employment. This administrative regulation was amended as follows: (1) the NECESSITY, FUNCTION, AND CONFORMITY paragraph was amended to clearly state the necessity for and function served by the administrative regulation, as required by KRS 13A.220(3)(f); (2) Sections 1 through 9 were amended to comply with the: (a) format requirements of KRS 13A.220(4); and (b) drafting requirements of KRS 13A.222(4); and (3) Section 8 was amended to clarify the requirements relating to extended employment.

Unclassified Personnel Administrative Regulations

780 KAR 6:060. Attendance, compensatory time, and leave. This administrative regulation was amended as follows: (1) the RELATES TO paragraph and Sections 4, 5, 7, and 11 were amended to correct statutory citations; (2) the NECESSITY, FUNCTION, AND CONFORMITY paragraph was amended to clearly state the necessity for and function served by the administrative regulation, as required by KRS 13A.220(3)(f); and (3) Sections 1 through 12 were amended to comply with the: (a) format requirements of KRS 13A.220(4); and (b) drafting requirements of KRS 13A.222(4).

Labor Cabinet: Department of Workers' Claims

803 KAR 25:012. Resolution of medical fee disputes. Carla Montgomery, Counsel, represented the Department.

Ms. Montgomery stated that the administrative regulation was promulgated to: (1) comply with House Bill 1 from the 1996 Special Session; and (2) include "arbitrator" in the relevant provisions of the administrative regulation.

In response to questions by Chairman Arnold, Ms. Montgomery stated that: (1) while she did not work with arbitrators or administrative law judges, she knew that most of the ongoing medical fee disputes concerned: (a) overutilization; and (b) whether a service was medically necessary; and (2) the Department had: (a) formed an overutilization committee that: 1. would try to improve the system; and 2. consisted of doctors, employers, insurance company representatives, and others; and (b) hired a doctor to work with a staff attorney in the medical and utilization review areas.

In response to questions by Representative Bruce, Ms. Montgomery stated that: (1) because the Department wanted an entire case decided by the same person, a medical fee dispute would be assigned to the same arbitrator or administrative law judge who was assigned the underlying claim; (2) the arbitrator or administrative law judge tried to resolve medical fee disputes as quickly as possible; and (3) this administrative regulation had been in existence for a long time.

Subcommittee staff stated that: (1) this administrative regulation established the procedure for resolving a medical fee dispute; and (2)

KRS 13A.100 required the promulgation of an administrative regulation if a regulated entity was required to follow a specific procedure.

In response to a question by Senator Roeding, Ms. Montgomery stated that: (1) while she would inquire as to the reasons a Department of Workers' Claims office was not located in Northern Kentucky, an administrative law judge office was located there; and (2) she did not know why the required forms were available at select locations.

This administrative regulation was amended as follows: (1) the RELATES TO and STATUTORY AUTHORITY paragraphs were amended to correct statutory citations; (2) the NECESSITY, FUNCTION, AND CONFORMITY paragraph was amended to clearly state the necessity for and function served by the administrative regulation, as required by KRS 13A.220(3)(f); (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) Section 2 was amended to delete language that repeated or summarized statute, as required by KRS 13A.120(2)(e) and (f).

803 KAR 25:175. Filing of insurance coverage and notice of policy change or termination. This administrative regulation was amended as follows: Sections comply with the: (1) format requirements of KRS 13A.220(4); and (2) drafting requirements of KRS 13A.222(4).

Department of Insurance: Motor Vehicle Reparations (No-fault)

806 KAR 39:070. Proof of motor vehicle insurance. Sharron Burton, Counsel; Mona Carter, Director of Property and Casualty; and Karla Thompson, Insurance Analyst Principal, represented the Department.

In response to a question by Representative Bruce, Ms. Burton stated that: (1) this administrative regulation: (a) required an insurance company to include the expiration date of an insurance policy or renewal period on the proof of insurance card; (b) established the procedures and filing requirements for companies who have canceled or not renewed insurance policies; and (c) required the insurance companies to file specified forms with the Department of Motor Vehicle Regulation; and (2) because the Department of Motor Vehicle Regulation included information received from insurance companies on a person's driving record, a law enforcement officer could access that information to determine if the person was in compliance with the insurance requirements.

In response to a question by Senator Roeding, Ms. Carter stated that: (1) the reason a person did not have insurance would determine if a person would be penalized for not having insurance; (2) the General Assembly enacted legislation in 1992 or 1994 that allowed a person who had a hardship or a broken down vehicle to come back into the insurance system; and (3) the company's underwriting procedure also affected how that situation would be handled.

This administrative regulation was amended as follows: (1) the RELATES TO and STATUTORY AUTHORITY paragraphs were amended to correct statutory citations; (2) the NECESSITY, FUNCTION, AND CONFORMITY paragraph was amended to clearly state the necessity for and function served by the administrative regulation, as required by KRS 13A.220(3)(f); (3) Sections 1 through 6 were amended to comply with the: (a) format requirements of KRS 13A.220(4); and (b) drafting requirements of KRS 13A.222(4); (4) Sections 2, 4, and 5 were amended to clarify the requirements; and (5) Section 2 was amended to delete language that repeated or summarized statute, as required by KRS 13A.120(2)(e) and (f).

Department of Housing, Buildings and Construction: Division of Building Codes Enforcement: Kentucky Building Code

815 KAR 7:105. Kentucky Building Code/1997. Judith Walden, General Counsel, Jack Rhody, Director of the Division of Building Codes Enforcement; and Rodney Handy, Senior Boiler Inspector, represented the Department.

This administrative regulation was amended as follows: Section 1 was amended to correct the edition date of the material incorporated by reference.

Cabinet for Health Services: Office of Inspector General: Health Services and Facilities

902 KAR 20:016 (& E). Hospitals; operations and services. Ralph Von Derau, Health Planner, and John Walker, Counsel, represented the Cabinet.

In response to questions by Representative Bruce, Mr. Walker stated that: (1) this administrative regulation was the ordinary administrative regulation filed to replace the emergency administrative regulation, which the Subcommittee had approved at its September 9, 1997, meeting; (2) Representative Lee and others had raised concerns regarding the relationship between the Title XVIII program and the Title XIX Medicaid program; (3) this administrative regulation: (a) was promulgated to authorize interested people to take advantage of the Title XVIII program; (b) prohibited a Title XIX Medicaid reimbursement for the same service for which a Title XVIII Medicare reimbursement was received; (c) would allow the Bowling Green hospital to establish a program for long-term acute care in that hospital that qualified for Title XVIII Medicare reimbursement; and (d) acknowledged the existence of a federal program that had existed for a few years; (4) the Cabinet and its Office of Inspector General was authorized to conduct a Title XVIII certification inspection to qualify the hospital for a Title XVIII reimbursement; and (5) the federal agency had not put a freeze on this program.

Senator Kafoglis stated that the amendment to this administrative regulation made sure that the hospital did not get paid double for the program.

Representative Lee stated that: (1) when the Subcommittee considered the emergency administrative regulation at its September 9, 1997, meeting, a number of questions had been raised, including questions from long-term care facilities; (2) the amendment clarified that: (a) if a hospital qualified for Title XVIII money, it could not qualify for Title XIX money under Medicaid; and (b) the status would be lowered for a limited time from an acute care standard to a standard for which Medicare provided reimbursement; (3) after that time period, a patient was required to go to a long-term care facility, for which Title XIX money would be available; and (4) the Kentucky Hospital Association and the long-term care facilities supported this administrative regulation with the amendment.

The Subcommittee approved a motion by Representative Lee, seconded by Senator Kafoglis, to amend this administrative regulation to make that clarification.

This administrative regulation was amended as follows: Section 5 was amended to specify that a hospital that establishes its authority to be reimbursed through Title XVIII Medicare for long-term acute inpatient hospital services shall not receive Title XIX Medicaid reimbursement for those services.

Department for Medicaid Services

907 KAR 1:710. Managed behavioral health care initiative (1915b Waiver). Karen Doyle, Commissioner's Office; Margaret Pennington, Director of the Division of Mental Health; and Elizabeth Wachtel, Commissioner of the Department for Mental Health Mental Retardation Services, represented the Cabinet.

Subcommittee staff stated that: (1) this administrative regulation would be amended to: (a) comply with the requirements of KRS Chapter 13A; (b) address the issues that had been raised by the parties affected by the administrative regulation; (c) establish the requirements and membership of the coalition; (d) establish the other requirements relating to the managed behavioral healthcare organizations; and (e) address issues that were raised in the initial staff review; and (2) the initial staff review incorrectly stated that provisions of this administrative regulation violated the federal Balanced Budget Act of 1997, because Section 4710(c) of that Act provided that a state that had received a waiver from the federal government was exempt from the provisions of the federal Balanced Budget Act.

In response to a question by Representative Lee, Ms. Doyle stated that the amendment resolved the concerns that had been raised by: (1) comprehensive care centers; (2) regional program

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managers; (3) the Kentucky Hospital Association; (4) consumers; and (5) the Department of Mental Health Mental Retardation.

Various sections of this administrative regulation were amended to: (1) comply with the drafting and formatting requirements of KRS Chapter 13A; (2) clearly establish standards, conditions, and requirements; and (3) incorporate relevant material by reference.

The Subcommittee determined that the following administrative regulations complied with statutory requirements:

Finance and Administration Cabinet: Travel Expense and Reimbursement

200 KAR 2:006. Employees' reimbursement for travel. Angela Robinson, Attorney, and Ed Ross, Controller, represented the Cabinet.

In response to a question by Representative Lee, Mr. Ross stated that this administrative regulation was promulgated to: (1) comply with House Bill 5, which permitted the Cabinet to require a receipt for charges over \$25, rather than \$2; (2) require a receipt for purchases over \$10; and (3) increase the: (a) mileage reimbursement allowance for state employees from twenty-five to twenty-seven cents; and (b) per diem rates for meal allowances: 1. from \$26 to \$30 for in-state and low-rate areas; and 2. from \$30 to \$33 for high rate areas.

In response to questions by Senator Roeding, Mr. Ross stated that while the fiscal impact for state government was approximately \$1.4 million, the most a Cabinet would be affected was approximately \$250,000.

In response to a question by Representative Lee, Mr. Ross stated that the rates: (1) reflected increases in the cost of living; and (2) had not been increased in two years as of December, 1997.

Senator Roeding requested that he be recorded as voting against approval of this administrative regulation.

Purchasing

200 KAR 5:302. Delegation of authority. Angela Robinson, Attorney; Don Speer, Commissioner for Administration; and Mike Abell, Director of the Division of Purchases, represented the Cabinet.

In response to questions by Senator Kafoglis, Mr. Abell stated that: (1) the Secretary was authorized to promulgate this administrative regulation; and (2) there was an accountability system for the disposal of surplus property, which required: (a) state property to be inventoried and tagged; (b) the granting of permission before state property could be sold or transferred to a school or other eligible agency; (c) a post-audit review to determine which property was disposed; and (d) justification of the disposal.

In response to questions by Senator Kafoglis, Mr. Speer stated that: (1) the State Auditor included in his audit of state agencies information on the disposal of state property during the normal course of business for that agency; (2) the accountability was through the State Auditor; and (3) a report was not submitted to the General Assembly or Legislative Research Commission.

Mr. Abell stated that the reporting was made on demand, rather than as a monthly or annual filing requirement.

In response to a question by Senator Roeding, Mr. Speer stated that: (1) legislative oversight on the disposal of surplus property was not required; and (2) currently, a report on the disposal of surplus property was not submitted to the General Assembly.

200 KAR 5:306. Competitive sealed bidding.

Board of Dentistry

201 KAR 8:411. Repeal of 201 KAR 8:410. Gary Munsie, Director, and Mark Brengelman, Assistant Attorney General, represented the Board.

Labor Cabinet: Department of Workers' Claims

803 KAR 25:096. Selection of physicians, treatment plans and statements for medical services. Carla Montgomery, Counsel, represented the Department.

In response to questions by Representative Bruce, Ms. Montgomery stated that: (1) because an employee was required to submit a completed form designating a treating physician to his insurance company or self-insured group, the employee was not able to: (a) constantly change doctors; or (b) shop for a doctor to support his claim; and (2) the employee made the doctor selection.

In response to questions by Chairman Arnold, Ms. Montgomery stated that while the designated physician was required to begin the employee's treatment, the designated physician could refer the employee to a specialist.

Department of Housing, Buildings and Construction: Division of Building Codes Enforcement: Kentucky Building Code

815 KAR 7:070. The Kentucky Certified Building Inspector Program. Judith Walden, General Counsel, Jack Rhody, Director of the Division of Building Codes Enforcement; and Rodney Handy, Senior Boiler Inspector, represented the Department.

Heating, Ventilation, and Air Conditioning Licensing Requirements

815 KAR 8:010. Master heating, ventilation, and air conditioning (HVAC) contractor licensing requirements. In response to questions by Representative Bruce, Ms. Walden stated that: (1) the Department: (a) required 10 hours of HVAC master contractor licensing continuing education in the amount of 10 hours; (b) did not provide the continuing education; and (c) arranged the continuing education through various providers, including Kentucky Tech, the Mechanical, Heating, and Cooling Contractors, and various industry groups; (2) the Board: (a) had complete oversight of the programs; and (b) approved a course after the Department staff reviewed the course materials and fee information submitted to the Department; (3) alternative providers of continuing education were available; and (4) she would share with the Board his request that the Board review the availability and costs of continuing education.

In response to questions by Senator Kafoglis, Ms. Walden stated that: (1) the fees for the continuing education courses: (a) varied; and (b) were set by the businesses who provided the continuing education; (2) the licensure fees were: (a) not amended; and (b) a standard rate; (3) the continuing education requirement was for 10 hours; (4) the Department believed the continuing education was being provided at a reasonable cost through Kentucky Tech and other providers; (5) the fees ranged from \$50 to \$150 for a five hour course for the master contractors; and (6) the Department: (a) required different training for journeymen, which was offered by the suppliers; and (b) was trying to defray the costs of the journeymen's training.

In response to questions by Chairman Arnold, Ms. Walden stated that: (1) licenses were currently issued to either: (a) a master contractor who was the person authorized to do the contracting; or (b) a journeyman who worked for a master contractor; (2) the Department was considering adding a third level of licensure for duct work because some individuals in the apprentice program: (a) desired to perform only duct work; and (b) were required to take the entire test, including the section on duct work; and (3) if the Department created a third level of licensing, more people would be licensed in the state.

In response to questions by Senator Kafoglis, Ms. Walden stated that: (1) while the continuing education courses were approved by the Department, the Department did not specifically approve the fees for the courses; and (2) because the Board had the authority to approve the fees, she would share with the Board his request that the Board approve the fees established for the courses.

815 KAR 8:020. Journeyman heating, ventilation, and air conditioning (HVAC) mechanic licensing requirements.

Office of the State Fire Marshal: Boilers and Pressure Vessels

815 KAR 15:027. Certificates and fees for boiler and pressure vessel inspection.

815 KAR 15:080. Fees for licensing new boiler and pressure vessel contractors. In response to questions by Chairman Arnold, Ms. Walden stated that: (1) the fees in both 815 KAR 15:027 and 15:080

were increased because: (a) the program needed additional money to meet its financial obligations; and (b) the fees had not been increased in ten years; (2) the program consisted of: (a) boiler plan review; (b) inspection; and (c) licensing; and (3) an annual inspection of boilers was required.

In response to questions by Senator Roeding, Ms. Walden stated that: (1) the program: (a) did not have a surplus; (b) would collect an additional \$46,000 through the increased fees; and (c) would have enough money to meet its obligations with the increased fees; (2) while the program received general fund money last year, it would not receive general fund money in the future; (3) the money that is collected through the fees was deposited into a trust and agency account; and (4) the Board: (a) knew that a fixed amount of money was needed to meet its obligations; (b) needed an additional \$46,000 to meet those obligations; and (c) thought it was appropriate to charge the fees directly to the people who received the services.

In response to questions by Representative Arnold, Ms. Walden stated that: (1) the license fee for a boiler contractor was increased from \$100 to \$125; and (2) the renewal fee was increased from \$70 to \$100.

Mr. Handy stated that: (1) the permit fees were increased \$5 per level; (2) the levels were structured based on the cost of the installation; (2) the fees for the plan review program were increased \$10 per level; and (3) currently the permits: (a) started out at \$60, with \$30 increments until \$150; and (b) then were \$200, \$300, \$500, \$700, and \$1200 for a maximum permit.

Ms. Walden stated that because the fees had not been increased in ten years, the increases reflected the rise in inflation.

Senator Roeding and Representative Bruce requested that they be recorded as voting against approval of this administrative regulation.

Division of Plumbing: Plumbing

815 KAR 20:020. Parts or materials list.

815 KAR 20:130. House sewers and storm water piping; methods of installation. In response to a question by Senator Roeding, Ms. Walden stated that the depth of sewer lines was decreased to 24 inches from 36 inches because the Department had determined that: (1) the three foot requirement was excessive; and (2) other states used a less restrictive measure.

Cabinet for Health Services: Department for Public Health: Division for Health Systems Development: Emergency Medical Technicians

902 KAR 13:120. Emergency medical technician-basic and EMT-first responder automated external defibrillation training and authorization. Robert Calhoun, Manager, Emergency Medical Services Branch, represented the Department.

In response to a question by Chairman Arnold, Mr. Calhoun stated that: (1) this administrative regulation deregulated the use of automatic external defibrillators by EMTs and EMT first responders; (2) EMT training: (a) now included training on the use of defibrillators; and (b) previously did not include that training; (3) previously an EMT had to work for an ambulance service which applied separately for permission to conduct training on and use defibrillation; and (4) now a local ambulance service was authorized to conduct training and use defibrillation if a local medical director authorized and approved the service.

In response to questions by Representative Lee, Mr. Calhoun stated that: (1) this administrative regulation rectified the situation in which fire departments, including in Louisville, quit using the defibrillators because the fire departments did not want to take the required time to receive state approval to train EMT-trained fire fighters on how to use the defibrillators; (2) rather than go through the state bureaucracy, those fire departments decided to use non-EMT fire fighters; (3) national groups including the American Heart Association and the National Institute of Health have recommended that defibrillation training be: (a) more readily available; and (b) included in the

basic training for all emergency responders; (4) the Department did not have authority over fire fighters who were not EMTs; (5) automated external defibrillation training has been included in the basic training for the last year and a half; (6) the 15,000 existing EMTs had until 1999 to complete a transition course that includes a component on automated external defibrillation; and (7) this administrative regulation authorized the utilization of defibrillation by ambulance services, medical directors, and other employers who have EMT basic training.

In response to questions by Chairman Arnold, Mr. Calhoun stated that: (1) the transitional training was available for existing EMTs who were not trained on automated external defibrillation; and (2) the impetus was on the ambulance service to launch an automated external defibrillation program that was: (a) sanctioned by the American Heart Association; and (b) in accordance with the: 1. manufacturer's recommendations; and 2. physician's protocols.

In response to questions by Senator Kafoglis, Mr. Calhoun stated that: (1) the existing EMTs were required to complete the transition course by 1999; (2) while the vocational schools had hoped to offer the transition course for fire fighters and other people, the schools did not have the money right now to do so; (3) the training is available across the state from other providers, including community colleges, local hospitals, ambulance services, and private training programs; (4) fire department oriented ambulance services and EMTs with fire departments had depended on Kentucky Tech for many years to offer their basic training and continuing education training free of charge; (5) he estimated 100 organizations were offering the transition course throughout Kentucky; (6) the training: (a) is offered: 1, in a 25 hour block of time; and 2. by private operators at a charge of \$100 to \$150; (b) included automated external defibrillation, advanced airway skills, and patient assessment; (c) complied with national training standards for emergency positions; and (d) was more expensive because specific people were needed to certify the skills tested by the practical examinations; and (7) the responsibility for paying for the course varied, because some employers provide in-service continuing education for their employees and volunteers.

In response to questions by Representative Lee, Mr. Calhoun stated that: (1) the Department: (a) did not directly pay for the training; (b) tried to keep Kentucky's standard in conformance with the national norms; and (c) had not revised the training in ten or twelve years; (2) while the new national standard of care for EMTs was issued in 1994-95, the Department instituted a four year window until 1999 for completion of that requirement because the Department: (a) wanted to permit adequate training time; and (b) was concerned about the costs of training; (3) Kentucky Tech had requested additional money to offer the fire service training; (4) he did not know if Kentucky Tech or the Fire Commission would ask for increased funds from the General Assembly to offer the training; (5) the money the Fire Commission received from the add-on to fire insurance bills went into a training fund for fire fighters; and (6) there had been a dispute as to the availability of those funds for: (a) pure fire fighting training; and (b) training for ambulance services operated by the fire departments.

The following administrative regulations were deferred to the next Subcommittee meeting upon agreement by the Subcommittee and the promulgating agency:

Finance and Administration Cabinet: State Investment Commission

200 KAR 14:011E. General rules.

200 KAR 14:081E. Repurchase agreement.

200 KAR 14:200E. Linked Deposit Investment Program.

Board of Dentistry

201 KAR 8:390. General anesthesia, deep sedation, and conscious sedation by dentists.

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Tourism Cabinet: Department of Fish and Wildlife Resources: Game

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

Department of Agriculture: Division of Pesticides: Pesticides

302 KAR 31:040. Storage and handling of bulk pesticides and bulk fertilizers for agrichemical facilities.

Justice Cabinet: Department of Juvenile Justice: Child Welfare

505 KAR 1:040E. Policy and procedures manual.

Transportation Cabinet: Department of Highways: Traffic

603 KAR 5:070E. Motor vehicle dimension limits.

Education Professional Standards Board: Board

704 KAR 20:305E. Written examination prerequisites for teacher certification.

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.

Labor Cabinet: Department of Workplace Standards: Division of Occupational Safety and Health Compliance: Division of Occupational Safety and Health Education and Training: Occupational Safety and Health

803 KAR 2:301E. Adoption and extension of established federal standards.

803 KAR 2:320E. Air contaminants.

803 KAR 2:403E. Occupational health and environmental controls.

803 KAR 2:411E. Scaffolds.

803 KAR 2:425E. Toxic and hazardous substances.

803 KAR 2:500E. Maritime employment.

Department of Housing, Buildings and Construction: Division of Plumbing: Plumbing

815 KAR 20:030. License application; qualifications for examination, examination requirements, expiration, renewal, revival or reinstatement of licenses. Judith Walden, General Counsel, Jack Rhody, Director of the Division of Building Codes Enforcement; and Rodney Handy, Senior Boiler Inspector, represented the Department.

In response to questions by Representative Lee, Ms. Walden stated that: (1) because a plumbing contractor had never been required to have liability insurance as a condition of licensure, the requirement was new; (2) the Plumbing Code Committee recommended the requirement, which the Department agreed was appropriate; (3) most other licensing programs, including HVAC, were required to have liability insurance; (4) the administrative regulation required a plumber to have \$300,000 in liability insurance; (5) the Board of Heating, Plumbing, and Cooling Contractors, which was composed on industry representatives, reviewed and recommended this requirement to the Department; (6) a notice of intent public hearing was scheduled, but no one attended it; (7) she did not know if the plumbers received notification of the proposed administrative regulation other than through: (a) their associations; and (b) the board of licensing.

Representative Lee stated that: (1) he: (a) objected to the promulgation of an administrative regulation that increased requirements on a segment of society without specifically notifying that segment of the proposal; and (b) did not think it was fair for the plumbers to find out: 1. after the new requirement became effective; and 2. through a letter that stated the person would not be licensed because he did not comply with the new requirement; (2) the people that were affected by a new requirement should be given an oppor-

tunity to have input in the drafting and formulating of the requirement; and (3) he: (a) thought the state did a poor job of notifying people affected by an administrative regulation of proposed additional requirements; and (b) did not think the General Assembly intended for this situation to occur when KRS Chapter 13A was enacted.

In response to a question by Representative Lee, Ms. Walden stated that: (1) the State Plumbing Advisory Committee, which consisted of plumbers and others, made the recommendation; (2) as a rule, the department typically sent out a notice in advance of promulgating an administrative regulation that stated the: (a) matters that were to be promulgated; and (b) the expected dates relating to the administrative regulation process; and (3) she would find out from the Director of the Division of Plumbing, Tom Barnes, whether that notice was sent.

Representative Bruce made a motion that the: (1) administrative regulation be deferred; and (2) agency send the affected people a letter asking for their comments on this administrative regulation.

Ms. Walden stated that she: (1) thought a deferral was appropriate; and (2) would inquire of Mr. Barnes whether he had sent out the notice.

Representative Bruce stated that his motion was to: (1) defer this administrative regulation; (2) send a letter to the affected people asking for their comments on the administrative regulation; and (3) then take it back to Mr. Barnes.

The motion was seconded by Senator Roeding.

In response to questions by Senator Kafoglis, Ms. Walden stated that: (1) she: (a) did know how much \$300,000 in liability insurance would cost; and (b) believed that some contractors carried as much as \$1,000,000 in liability insurance; and (2) because the contractors were not required to have liability insurance; she did not know if most of them had insurance.

In response to questions by Representative Lee, Ms. Walden stated that: (1) while she could not speak to the motives of all people who wanted this administrative regulation promulgated, she thought the only valuable reason for promulgating the administrative regulation was to protect the public by providing insurance coverage; (2) she did not know of any claims regarding problems with uninsured plumbers; (3) because professional businesses including HVAC, boiler contractors, LP gas, underground storage tank, and others, were required to provide insurance to protect the public in the event of damage to property and persons, there was no reason why plumbers should not have that requirement.

In response to a question by Senator Roeding, Subcommittee staff stated that the annual license renewal fee of \$250 was: (1) an existing part of the administrative regulation; and (2) not being changed by the amendment.

Without objection, the administrative regulation was deferred.

Cabinet for Health Services: Office of Certificate of Need: Certificate of Need

900 KAR 6:050E. Certificate of Need administrative regulations.

Department for Public Health: Division for Health Systems Development: State Health Plan

902 KAR 17:041E. State health plan for facilities 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 2:017E. Kentucky Works supportive services.

904 KAR 2:035 & E. Right to apply and reapply.

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904 KAR 2:050E. Time and manner of payments.

904 KAR 2:060 & E. Delegation of power for oaths and affirmations.

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

Cabinet for Health Services: Division of Licensing and Regulation: Office of Inspector General

906 KAR 1:120E. Informal dispute resolution.

Department for 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 1:145E. Supports for community living services for individuals with mental retardation or developmental disabilities.

907 KAR 1:151E. Repeal of 907 KAR 1:140 and 907 KAR 1:150.

907 KAR 1:155E. Payments for supports for community living services for individuals with mental retardation or developmental disabilities.

907 KAR 1:755E. Preadmission Screening and Annual Resident Review Program.

907 KAR 1:765E. Repeal of 907 KAR 1:460.

The Subcommittee adjourned at 11:30 a.m. until December 9, 1997 at 10 a.m. in Room 149 of the State Capitol Annex.

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OTHER COMMITTEE REPORTS

COMPILER'S NOTE: In accordance with KRS 13A.290(9), the following reports were forwarded to the Legislative Research Commission by the appropriate jurisdictional committees and are hereby printed in the Administrative Register. The administrative regulations listed in each report became effective upon adjournment of the committee meeting at which they were considered.

INTERIM JOINT COMMITTEE ON TRANSPORTATION Meeting of October 7, 1997

The following administrative regulations were available for consideration by the Interim Joint Committee on Transportation during its meeting of October 7, 1997, having been referred to the Committee on September 12, 1997, pursuant to KRS 13A.290(6):

603 KAR 3:080
603 KAR 5:050

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.320:603 KAR 3:080, amended as follows:

Section 1(9)(b)1 - Delete the following language: [The land use for the area as of September 21, 1959 was clearly established by state law as industrial or commercial] and insert in lieu thereof "Within the area there was a commercial or industrial enterprise in existence on September 21, 1959"

Section 1(9)(b)2 - After "September 21, 1959" delete [and is currently zoned for commercial or industrial use at the time of application for an advertising device permit].

Section 1(21) - Delete [excluding] and insert in lieu thereof "which for the purpose of outdoor advertising shall exclude".

Section 6(2)(a) - Delete [August 1997] and insert in lieu thereof "October 1997".

Section 10(1) Delete [pursuant to 603 KAR 3:090].

Section 13(1)(b) - Delete [August 1997] and insert in lieu thereof "October 1997".

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 October 7, 1997 meeting, which are hereby incorporated by reference. Additional committee findings, recommendations, or comments, if any, are attached hereto.

INTERIM JOINT COMMITTEE ON STATE GOVERNMENT Meeting of October 22, 1997

The following administrative regulation was available for consideration by the Interim Joint Committee on State Government during its meeting of October 22, 1997, having been referred to the Committee on October 16, 1997, pursuant to KRS 13A.290(6): 200 KAR 23:010

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 regulation is reflected in the minutes of the October 22, 1997, meeting, which are hereby incorporated by reference. Additional committee findings, recommendations, or comments, if any, are attached hereto.

INTERIM JOINT COMMITTEE ON TRANSPORTATION Meeting of November 4, 1997

The following administrative regulations were available for consideration by the Interim Joint Committee on Transportation during its meeting of November 4, 1997, having been referred to the Committee on October 15, 1997, pursuant to KRS 13A.290(6): 601 KAR 9:135

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 November 4, 1997 meeting, which are hereby incorporated by reference. Additional committee findings, recommendations, or comments, if any, are attached hereto.

INTERIM JOINT COMMITTEE ON LOCAL GOVERNMENT Meeting of November 5, 1997

The following administrative regulation was available for consideration by the Interim Joint Committee on Local Government during its meeting of November 5, 1997, having been referred to the Committee on October 14, 1997, pursuant to KRS 13A.290(6): 815 KAR 35:015

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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 November 5, 1997 meeting, which are hereby incorporated by reference. Additional committee findings, recommendations, or comments, if any, are attached hereto.

INTERIM JOINT COMMITTEE ON EDUCATION Meeting of November 6, 1997

The following administrative regulations were available for consideration by the Interim Joint Committee on Education during its meeting of November 6, 1997, having been referred to the Committee on October 15, 1997, pursuant to KRS 13A.290(6): 704 KAR 3:455

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 November 6, 1997 meeting, which are hereby incorporated by reference. Additional committee findings, recommendations, or comments, if any, are attached hereto.

ADMINISTRATIVE REGISTER - F1

CUMULATIVE SUPPLEMENT

Locator Index - Effective Dates F2

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 F8

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 F14

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 - F2

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
Expired		9-18-97
106 KAR 1:091E	3709	3-31-97
Expires		10-17-97
505 KAR 1:020E	3208	2-14-97
Expired		8-18-97
505 KAR 1:030E	3713	3-25-97
Withdrawn		9-15-97
806 KAR 13:130E	3714	3-24-97
Replaced		10-13-97
806 KAR 13:140E	3715	3-24-97
Replaced	896	10-13-97
806 KAR 38:090E	3541	3-11-97
Replaced		9-15-97
811 KAR 1:090E	3717	4-15-97
Replaced		9-12-97
900 KAR 6:015E	2954	12-18-96
Withdrawn		7-21-97
904 KAR 2:006E	4079	4-30-97
Withdrawn		8-14-97
904 KAR 2:016E	4088	4-30-97
Withdrawn		8-14-97
904 KAR 2:370E	3728	3-27-97
Withdrawn		7-11-97
904 KAR 3:020E	3542	2-27-97
Replaced		8-20-94
904 KAR 3:042E	3548	2-27-97
Replaced		8-20-97
905 KAR 1:180E	3735	3-19-97
Expired		10-17-97
907 KAR 1:022E	3294	1-17-97
Withdrawn		8-14-97
907 KAR 1:025E	3299	1-17-97
Withdrawn		8-14-97
907 KAR 1:160E	3736	4-15-97
Expired		10-17-97
907 KAR 1:170E	3739	4-15-97
Expired		10-17-97
907 KAR 1:720E	3741	3-18-97
Expired		10-17-97
908 KAR 2:200E	3742	3-18-97
Expired		10-17-97

ORDINARY ADMINISTRATIVE REGULATIONS:

200 KAR 17:070	4246	(See Volume 24)
201 KAR 13:080	4250	(See Volume 24)
201 KAR 23:011	4251	10-13-97
201 KAR 23:020		
Amended	4201	10-13-97
201 KAR 23:060		
Amended	4202	(See Volume 24)
201 KAR 23:070		
Amended	4203	(See Volume 24)
201 KAR 23:080		
Amended	4206	(See Volume 24)
201 KAR 23:140	4252	(See Volume 24)
302 KAR 40:010		
Amended	3885	(See Volume 24)
401 KAR 8:030		
Amended	3079	
Amended	3808	(See Volume 24)
501 KAR 6:020		
Amended	3892	(See Volume 24)
501 KAR 6:060		
Amended	4210	9-15-97
501 KAR 6:130		
Amended	1007	
As Amended	1941	10-14-97
Amended	1678	11-14-97
780 KAR 3:070		
Amended	3096	
Amended	3588	(See Volume 24)
780 KAR 3:080		
Amended	3102	
Amended	3594	(See Volume 24)
780 KAR 6:060		
Amended	3104	(See Volume 24)
805 KAR 1:180	3658	(See Volume 24)
807 KAR 5:063	3659	
Amended	4185	(See Volume 24)
902 KAR 100:040		
Amended	3988	8-20-97
907 KAR 1:645	4033	(See Volume 24)
907 KAR 1:655	4035	(See Volume 24)
907 KAR 1:665	4039	(See Volume 24)
907 KAR 1:710	4285	(See Volume 24)

*Statement of Consideration Not Filed by Deadline

ADMINISTRATIVE REGISTER - F3

LOCATOR INDEX - EFFECTIVE DATES

Regulation Number	24 Ky.R Page No.	Effective Date	Regulation Number	24 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
Replaced	1055	10-22-97
301 KAR 2:221E	1219	10-15-97
301 KAR 2:222E	1221	10-15-97
301 KAR 2:225E	842	8-21-97
401 KAR 5:008E	1029	9-18-97
501 KAR 6:180E	1225	11-13-97
502 KAR 45:145E	26	6-3-97
Replaced	1076	11-14-97
505 KAR 1:040E	844	9-15-97
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
803 KAR 2:320E	495	8-14-97
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
806 KAR 6:100E	1227	10-24-97
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
904 KAR 2:017E	311	7-14-97
904 KAR 2:035E	42	5-30-97
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
904 KAR 2:410E	1233	10-31-97
904 KAR 3:025E	1041	10-1-97
905 KAR 1:360E	1044	10-1-97
905 KAR 2:150E	1947	10-1-97
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 1:145E	845	9-11-97
907 KAR 1:151E	848	9-11-97
907 KAR 1:155E	849	9-11-97
907 KAR 1:725E	1238	11-14-97
907 KAR 1:755E	554	8-14-97
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201 KAR 10:070			201 KAR 37:010		
Amended	133		Recodified from 106-2:010		10-20-97
As Amended	563	11-14-97	301 KAR 1:192	1424	
201 KAR 10:080			301 KAR 1:201		
Amended	134		Amended	392	
As Amended	563	11-14-97	As Amended	866	10-8-97
201 KAR 12:200			301 KAR 2:082	427	
Amended	1357		As Amended	869	10-8-97
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201 KAR 13:080			Amended	138	
As Amended	858	10-13-97	As Amended	567	9-10-97
201 KAR 16:060			301 KAR 2:125		
Amended	641		Amended	140	
As Amended	1055	11-14-97	As Amended	568	9-10-97
201 KAR 16:070			301 KAR 2:140		
Repealed	791	11-14-97	Amended	643	
201 KAR 16:071	791	11-14-97	As Amended	1058	11-12-97
201 KAR 20:240			301 KAR 2:142	792	
Amended	391		As Amended	1060	11-12-97
As Amended	1057	11-14-97	301 KAR 2:144	794	
201 KAR 20:411	425		As Amended	1061	11-12-97
As Amended	859		301 KAR 2:225		
201 KAR 20:390			Amended	1359	
Amended	1116		301 KAR 3:022		
201 KAR 23:010			Amended	646	11-12-97
Repealed		10-13-97	302 KAR 31:040	795	
201 KAR 23:030			302 KAR 40:010		
Repealed		10-13-97	As Amended	1062	11-12-97
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Repealed		10-13-97	As Amended	70	
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As Amended	860	10-13-97	401 KAR 46:005	221	
201 KAR 23:070			Died*		9-12-97
As Amended	861	10-13-97	401 KAR 46:010	223	
201 KAR 23:080			Died*		9-12-97
As Amended	864	10-13-97	401 KAR 46:020	225	
201 KAR 23:100			Died*		9-12-97
Repealed	10-13-97		401 KAR 46:030	228	
201 KAR 23:110			Died*		9-12-97
Repealed		10-13-97	401 KAR 46:040	230	
201 KAR 23:140			Died*		9-12-97
As Amended	866	10-13-97	401 KAR 46:050	234	
201 KAR 26:145			Died*		9-12-97
Amended	1117		401 KAR 46:060		
201 KAR 26:155			Amended	142	
Amended	1121		Died*		9-12-97
201 KAR 26:160			401 KAR 46:070		
Amended	1123		Amended	145	
201 KAR 26:171			Died*		9-12-97
Amended	1124		401 KAR 47:150		
201 KAR 26:175			Amended	149	
Amended	1127		Died*		9-12-97
201 KAR 26:180			401 KAR 50:012		
Amended	1129		Amended	648	11-12-97
201 KAR 26:185			401 KAR 50:032	1425	
Amended	1130		401 KAR 50:066	800	
201 KAR 26:215			As Amended	1244	11-12-97
Amended	1131		401 KAR 51:010		
201 KAR 26:230			Amended	650	11-12-97
Amended	1132		401 KAR 59:174	802	
201 KAR 26:250	1182		Amended	1295	
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Amended	1299		Amended	1367	
401 KAR 65:010			501 KAR 6:110		
Amended	656		Amended	396	9-16-97
Amended	1302		Amended	1368	
405 KAR 8:001			501 KAR 6:120		
Amended	667		Amended	1370	
405 KAR 8:030			501 KAR 6:170		
Amended	675		Amended	1136	
Amended	1313		Amended	1372	
405 KAR 8:040			501 KAR 6:999	1431	
Amended	687		502 KAR 31:010	429	
Amended	1325		Withdrawn		10-13-97
405 KAR 16:001			502 KAR 45:145		
Amended	704		Amended	759	
405 KAR 16:060			As Amended	1076	11-14-97
Amended	710		505 KAR 1:020	236	
Amended	1341		As Amended	572	9-15-97
405 KAR 16:090			600 KAR 6:010		
Amended	716		Amended	1373	
405 KAR 16:100			600 KAR 6:040		
Amended	719		Amended	1375	
405 KAR 16:160			600 KAR 6:070		
Amended	723		Amended	1378	
405 KAR 18:001			601 KAR 1:025		
Amended	725		Amended	1384	
405 KAR 18:060			601 KAR 1:146	1183	
Amended	732		601 KAR 1:147	1185	
Amended	1347		601 KAR 9:135		
405 KAR 18:090			Amended	398	
Amended	738		Amended	909	11-4-97
405 KAR 18:100			601 KAR 11:040		
Amended	741		Amended	1387	
405 KAR 18:160			603 KAR 3:080		
Amended	745		Amended	157	
405 KAR 18:210			Amended	612	
Amended	747		As Amended	875	
500 KAR 11:001			As Amended	1076	10-7-97
Amended	151		603 KAR 5:050		
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Amended	152		Amended	1390	
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500 KAR 11:080			Amended	1137	
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Amended	155		704 KAR 3:455		
As Amended	874		Amended	760	
501 KAR 6:020			As Amended	1093	11-6-97
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Amended	755		704 KAR 20:084		
Withdrawn		11-10-97	Amended	937	
Amended	1361		As Amended	1245	
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Amended	1364		Amended	176	
501 KAR 6:040			As Amended	574	9-4-97
Amended	935		704 KAR 20:210		
Amended	1366		Amended	1140	
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704 KAR 20:710			815 KAR 7:014	1433	
Amended	177		815 KAR 7:070		
As Amended	575	9-4-97	Amended	945	
750 KAR 2:010			815 KAR 7:105		
Amended	179		Amended	949	
As Amended	576	9-4-97	As Amended	1267	
780 KAR 2:131	1432		815 KAR 8:010		
780 KAR 3:070			Amended	950	
As Amended	1237		815 KAR 8:020		
780 KAR 3:080			Amended	952	
As Amended	1253		815 KAR 15:027		
780 KAR 6:060			Amended	954	
As Amended	1255		815 KAR 15:080		
785 KAR 1:010			Amended	956	
Amended	407		815 KAR 20:020		
As Amended	894	10-2-97	Amended	957	
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Amended	409		Amended	960	
As Amended	895	10-2-97	815 KAR 20:130		
787 KAR 1:200			Amended	962	
Amended	1144		815 KAR 30:060		
803 KAR 2:060			Amended	1397	
Amended	1145		815 KAR 35:015		
803 KAR 2:301			Amended	767	
Amended	1148		As Amended	1097	11-5-97
803 KAR 2:320			900 KAR 6:050	1188	
Amended	1150		902 KAR 13:120		
803 KAR 2:403			Amended	965	
Amended	1156		902 KAR 14:084	435	
803 KAR 2:411			As Amended	898	10-13-97
Amended	1158		902 KAR 14:100	241	
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Amended	1159		902 KAR 17:041	1433	
803 KAR 2:500			902 KAR 20:016		
Amended	1161		Amended	969	
803 KAR 25:012			As Amended	1268	
Amended	939		902 KAR 20:036		
As Amended	1260		Amended	190	8-20-97
803 KAR 25:096			902 KAR 20:048		
Amended	942		Amended	410	
803 KAR 25:120			Died*		9-5-97
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803 KAR 25:130	1187		Amended	418	
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As Amended	92		Amended	195	
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806 KAR 13:140	432		904 KAR 2:006		
As Amended	896	10-13-97	Amended	1400	
806 KAR 38:090	239	9-15-97	904 KAR 2:016		
806 KAR 39:070			Amended	1409	
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807 KAR 5:063			Amended	978	
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904 KAR 2:050					
Amended	1419				
904 KAR 2:055					
Amended	985				
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Amended	988				
904 KAR 2:370					
Amended	1175				
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As Amended	594	8-20-97			
904 KAR 3:042					
Amended	215				
As Amended	600	8-20-97			
904 KAR 3:060					
Amended	774	11-14-97			
905 KAR 1:180					
Amended	777	11-14-97			
906 KAR 1:120	1196				
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907 KAR 1:140					
Repealed	848	9-11-97			
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907 KAR 1:160					
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907 KAR 1:170					
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907 KAR 1:432					
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907 KAR 1:645					
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907 KAR 1:655					
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907 KAR 1:665					
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16.040	502 KAR 45:145	150.235	301 KAR 3:022
16.080	502 KAR 45:145	150.240	301 KAR 3:022
18A.075	101 KAR 1:365	150.250	301 KAR 2:125
18A.0751	101 KAR 1:365	150.280	301 KAR 2:082
18A.095	101 KAR 1:365		301 KAR 3:022
18A.430	200 KAR 22:041	150.290	301 KAR 2:082
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44.060	200 KAR 2:006		301 KAR 2:144
45.101	200 KAR 2:006		301 KAR 2:221E
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136.100	103 KAR 15:050		301 KAR 2:144
138.462	601 KAR 1:146	150.470	301 KAR 1:201
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138.463	601 KAR 1:146	150.525	301 KAR 3:022
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138.4631	601 KAR 1:146		301 KAR 2:222E
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139.710	103 KAR 31:030	150.620	301 KAR 1:192
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160.380	704 KAR 7:130		815 KAR 7:105
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