

# ADMINISTRATIVE REGISTER OF KENTUCKY



LEGISLATIVE RESEARCH COMMISSION  
FRANKFORT, KENTUCKY

VOLUME 24, NUMBER 7  
THURSDAY, JANUARY 1, 1998

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**MEETING NOTICE:** The Administrative Regulation Review Subcommittee is scheduled to meet on Wednesday, January 14, 1998. See tentative agenda beginning on page 1445 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	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 REGISTER - 1445**

**ADMINISTRATIVE REGULATION REVIEW SUBCOMMITTEE  
TENTATIVE AGENDA - January 14, 1998 at 8:30 a.m.  
Room 125, Capitol Annex**

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

**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**

**State Investment Commission**  
200 KAR 14:011 & E. General rules.  
200 KAR 14:081 & E. Repurchase agreement.  
200 KAR 14:200 & E. Linked Deposit Investment Program.

**GENERAL GOVERNMENT CABINET**

**Board of Pharmacy**  
201 KAR 2:030. License transfer. (Deferred from December)

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

**Board of Hairdressers and Cosmetologists**  
201 KAR 12:200. Requirements for continuing education for renewal of license.  
201 KAR 12:210. Requirements for continuing education; active and inactive license and temporary waiver of requirements.

**Board of Examiners of Psychologists** (Deferred from December)  
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 DEVELOPMENT CABINET  
Department of Fish and Wildlife Resources**

**Fish**  
301 KAR 1:192. Closing Lake Chumbley.

**Game**  
301 KAR 2:221E. Waterfowl seasons and limits.  
301 KAR 2:222E. Waterfowl hunting requirements.  
301 KAR 2:225 & E. Dove, wood duck, teal and other migratory game bird hunting.

**NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET  
Department for Environmental Protection  
Division of Water**

**Water Quality**  
401 KAR 5:008E. Swine feeding operations. (Deferred from December)  
**Division for Air Quality**

**General Administrative Procedures**  
401 KAR 50:032. Prohibitory rule for hot mix asphalt plants.

**New Source Performance Standards**  
401 KAR 60:750. Standards of performance for municipal solid waste landfills.

**Existing Source Standards**  
401 KAR 61:036. Emission guidelines and compliance times for municipal solid waste landfills.  
**Department for Surface Mining Reclamation and Enforcement**

**Permits** (Deferred from December)  
405 KAR 8:001. Definitions for 405 KAR Chapter 8.  
405 KAR 8:030. Surface coal mining permits. (Amended After Hearing)  
405 KAR 8:040. Underground coal mining permits. (Amended After Hearing)

## ADMINISTRATIVE REGISTER - 1446

### **Performance Standards for Surface Mining Activities** (Deferred from December)

- 405 KAR 16:001. Definitions for 405 KAR Chapter 16.
- 405 KAR 16:060. General hydrologic requirements. (Amended After Hearing)
- 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** (Deferred from December)

- 405 KAR 18:001. Definitions for 405 KAR Chapter 18.
- 405 KAR 18:060. General hydrologic requirements. (Amended After Hearing)
- 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**

#### **Office of the Secretary**

- 501 KAR 6:020. Corrections policies and procedures.
- 501 KAR 6:030. Kentucky State Reformatory.
- 501 KAR 6:040. Kentucky State Penitentiary.
- 501 KAR 6:060. Northpoint Training Center. (Deferred from December)
- 501 KAR 6:090. Frankfort Career Development Center.
- 501 KAR 6:110. Roederer Correctional Complex.
- 501 KAR 6:120. Blackburn Correctional Complex.
- 501 KAR 6:170. Green River Correctional Complex.
- 501 KAR 6:180E. Infectious diseases.
- 501 KAR 6:999. Corrections secured policies and procedures.

### **Department of Juvenile Justice**

#### **Child Welfare**

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

## **TRANSPORTATION CABINET**

### **Professional Engineering and Related Services**

- 600 KAR 6:010. Definitions.
- 600 KAR 6:040. Prequalification of firms for professional engineering or related services.
- 600 KAR 6:070. Contracting for professional engineering or related services.

### **Department of Vehicle Regulation**

#### **Division of Motor Vehicle Enforcement**

#### **Division of Motor Carriers**

- 601 KAR 1:025. Transporting hazardous materials by air or highway.
- 601 KAR 1:146. Fair market rental or lease value of vehicles operated pursuant to a U-Drive-It permit. (Amended After Hearing)
- (Agency Requests Deferral to February)
- 601 KAR 1:147. Auditing of U-Drive-It permit holders. (Amended After Hearing) (Agency Requests Deferral to February)

#### **Commercial Driver's License**

- 601 KAR 11:040. Medical waivers for intrastate operators of commercial motor vehicles.

### **Department of Highways**

#### **Division of Transportation Planning**

#### **Department of Vehicle Regulation**

#### **Division of Motor Carriers**

#### **Division of Motor Vehicle Enforcement**

#### **Traffic**

- 603 KAR 5:070 & E. Motor vehicle dimension limits.
- 603 KAR 5:230. The extended weight coal or coal by-products haul road system and associated bridge weight limits. (Amended After Hearing)

## **CABINET FOR WORKFORCE DEVELOPMENT**

### **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)
- 780 KAR 2:131. Repeal of State Board for Adult and Technical Education regulation 780 KAR 2:130.

## **LABOR CABINET**

#### **Department of Workers' Claims**

- 803 KAR 25:120. Training or education programs eligible for retraining incentive benefits.



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### **PUBLIC PROTECTION AND REGULATION CABINET Department of Insurance**

#### **Assets and Liabilities**

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

### **Department of Housing, Buildings and Construction Division of Building Codes Enforcement**

#### **Building Code**

815 KAR 7:014. Repealer administrative regulation.

### **Office of State Fire Marshal**

#### **Hazardous Materials**

815 KAR 30:060. Certification of underground petroleum storage tank contractors.

### **CABINET FOR HEALTH SERVICES Office of Certificate of Need**

#### **Certificate of Need**

900 KAR 6:050 & E. Certificate of need administrative regulations. (Public Hearing in November)

### **Department for Health Services**

#### **State Health Plan**

902 KAR 17:041 & E. State health plan for facilities and services.

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

#### **Public Assistance**

904 KAR 2:006 & E. Technical requirements for the Kentucky Transitional Assistance Program (K-TAP).

904 KAR 2:016 & E. Standards for need and amount for the Kentucky Transitional Assistance Program (K-TAP).

904 KAR 2:017 & E. Kentucky Works child care and supportive services. (Public Hearing in November)

904 KAR 2:040 & E. Procedures for determining initial and continuing eligibility. (Amended After Hearing)

904 KAR 2:046 & E. Adverse action; conditions. (Amended After Hearing)

904 KAR 2:050 & E. Time and manner of payments.

904 KAR 2:055 & E. Hearings and appeals. (Amended After Hearing)

904 KAR 2:370 & E. Technical requirements for Kentucky Works. (Public Hearing in November)

904 KAR 2:410E. Child support collection and distribution.

#### **Food Stamp Program**

904 KAR 3:025E. Technical requirements. (Deferred from December)

### **Department for Social Services**

#### **Child Welfare**

905 KAR 1:360E. Private child care levels of care. (Deferred from December)

#### **Day Care**

905 KAR 2:150E. Child day care assistance program. (Deferred from December)

### **CABINET FOR HEALTH SERVICES Division of Licensing and Regulation**

#### **Office of Inspector General**

906 KAR 1:120 & E. Informal dispute resolution. (Deferred from December)

### **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 1:725E. Medicaid appropriations for a long term nursing facility.

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)

## ADMINISTRATIVE REGISTER - 1448

### 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.

NOTICES OF INTENT TO PROMULGATE ADMINISTRATIVE REGULATIONS

KENTUCKY PERSONNEL BOARD

December 12, 1997

Kentucky Personnel Board

- (1) Regulation Number and Title: **101 KAR 1:325** - Probationary periods.
- (2) The Kentucky Personnel Board intends to promulgate an administrative regulation governing the subject matter listed above.
- (3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for January 22, 1998, at 9 a.m., 5 Fountain Place, Frankfort, Kentucky 40601.
- (4)(a) The public hearing will be held if:
  1. It is requested, in writing, by at least 5 persons, or an administrative body, or an association having at least 5 members; and
  2. A minimum of 5 persons, or the administrative body or association, agree, in writing, to be present at the public hearing.
- (b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 10 days prior to January 22, 1998, the public hearing will be cancelled.
- (5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Mr. R. Hanson Williams, Executive Director, Kentucky Personnel Board, 28 Fountain Place, Frankfort, Kentucky 40601.
- (b) On a request for public hearing, a person shall state:
  1. "I agree to attend the public hearing."; or
  2. "I will not attend the public hearing."
- (6)(a) KRS Chapter 13A provides that persons who desire to be informed of the intent of an administrative body to promulgate an administrative regulation governing a specific subject matter may file a request to be informed by the administrative body.
- (b) Persons who wish to file this request may obtain a request form from the Kentucky Personnel Board at the address listed above.
- (7) Information relating to the proposed administrative regulation:
  - (a) The statutory authority for the promulgation of an administrative regulation relating to probationary periods is KRS Chapter 13A and 18A.0751.
  - (b) The administrative regulation that the Kentucky Personnel Board intends to promulgate will amend 101 KAR 1:325, Probationary periods. This regulation will clarify what shall be considered as an initial appointment and clarify reinstatement with status.
  - (c) The necessity and function of the proposed administrative regulation is as follows: This amendment is to provide a clarification as to probationary periods upon reinstatement after a break in the classified service.
  - (d) The benefits expected from the proposed administrative regulation are: Enhanced understanding of probationary periods and initial appointments.
  - (e) The administrative regulation will be implemented as follows: Inserts new language to clarify reinstatement after a break in the classified service and clarification of initial appointments.

December 12, 1997

Kentucky Personnel Board

- (1) Regulation Number and Title: **101 KAR 1:335** - Employee actions.
- (2) The Kentucky Personnel Board intends to promulgate an administrative regulation governing the subject matter listed above.
- (3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for January 22, 1998, at 9 a.m., 5 Fountain Place, Frankfort, Kentucky 40601.
- (4)(a) The public hearing will be held if:
  1. It is requested, in writing, by at least 5 persons, or an administrative body, or an association having at least 5 members; and
  2. A minimum of 5 persons, or the administrative body or association, agree, in writing, to be present at the public hearing.
- (b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 10 days prior to January 22, 1998, the public hearing will be cancelled.
- (5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Mr. R. Hanson Williams, Executive Director, Kentucky Personnel Board, 28 Fountain Place, Frankfort, Kentucky 40601.
- (b) On a request for public hearing, a person shall state:
  1. "I agree to attend the public hearing."; or
  2. "I will not attend the public hearing."
- (6)(a) KRS Chapter 13A provides that persons who desire to be informed of the intent of an administrative body to promulgate an administrative regulation governing a specific subject matter may file a request to be informed by the administrative body.
- (b) Persons who wish to file this request may obtain a request form from the Kentucky Personnel Board at the address listed above.
- (7) Information relating to the proposed administrative regulation:
  - (a) The statutory authority for the promulgation of an administrative regulation relating to employee actions is KRS Chapter 13A and 18A.0751.
  - (b) The administrative regulation that the Kentucky Personnel Board intends to promulgate will amend 101 KAR 1:335, Employee actions. This regulation will add a new paragraph under Section 2 that brings this regulation into conformity with other Kentucky administrative regulations.
  - (c) The necessity and function of the proposed administrative regulation is as follows: This amendment is to bring this regulation into conformity with existing regulations.
  - (d) The benefits expected from the proposed administrative regulation are: Conformity with other existing Kentucky administrative regulations.
  - (e) The administrative regulation will be implemented as follows: Create new language to insure consistency with existing regulations.

## ADMINISTRATIVE REGISTER - 1450

### GENERAL GOVERNMENT CABINET State Board of Examiners and Registration of Architects

December 15, 1997

State Board of Examiners and Registration of Architects of Kentucky

- (1) **201 KAR 19:087.** Continuing education.
- (2) The State Board of Examiners and Registration of Architects of Kentucky intends to promulgate an administrative regulation governing the subject matter listed above.
- (3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for January 22, 1998, 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 January 22, 1998, the public hearing will be canceled.
- (5)(a) Persons wishing to request a public hearing should mail their written requests to the following address: Jerry Herndon, Executive Director, 841 Corporate Drive, Suite 200B, Lexington, Kentucky 40503.
- (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 Jerry Herndon at the above address, or by calling (606) 246-2069 between the hours of 8:30 a.m. and 4:30 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 continuing education is KRS 323.210(3).
  - (b) The administrative regulation that the State Board of Examiners and Registration of Architects of Kentucky intends to promulgate will not amend an existing administrative regulation. It will detail the minimum requirements for continuing education for licensed architects and the requirements for reporting the continuing education that the architect has acquired to the board. The administrative regulation shall also identify certain classifications of persons that are exempt from the continuing education requirements and the bases for the exemptions.
  - (c) The necessity, function, and conformity of the proposed administrative regulation is as follows: KRS 323.210 allows the board to establish by administrative regulation requirements for mandatory continuing education for architects licensed to practice within the Commonwealth as a condition for obtaining their annual renewal certificates. This administrative regulation establishes the continuing education and the reporting requirements that architects must meet to obtain their annual renewal certificates.
  - (d) The benefit expected from this administrative regulation is that continuing education requirements for licensed architects will insure that licensed architects acquire the information necessary maintain their professional competence.
  - (e) This administrative regulation will be implemented as follows: licensed architects will be required to comply with this administrative regulation, and the State Board of Examiners and Registration of Architects of Kentucky will enforce the administrative regulation.

December 15, 1997

State Board of Examiners and Registration of Architects of Kentucky

- (1) **201 KAR 19:095.** Professional practice standards; violation, penalties.
- (2) The State Board of Examiners and Registration of Architects of Kentucky intends to promulgate an administrative regulation governing the subject matter listed above.
- (3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for January 22, 1998, 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 January 22, 1998, the public hearing will be canceled.
- (5)(a) Persons wishing to request a public hearing should mail their written requests to the following address: Jerry Herndon, Executive Director, 841 Corporate Drive, Suite 200B, Lexington, Kentucky 40503.
- (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 Jerry Herndon at the above address, or by calling (606) 246-2069 between the hours of 8:30 a.m. and 4:30 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 continuing education is KRS 323.210.
  - (b) The administrative regulation that the State Board of Examiners and Registration of Architects of Kentucky intends to amend an existing administrative regulation 201 KAR 19:095. It will provide that the board can take action against a licensee if the licensee misrepresents the hours of continuing education reported or fails to attain the required hours of continuing education.
  - (c) The necessity, function, and conformity of the proposed administrative regulation is as follows: KRS 323.210 allows the board to establish by administrative regulation requirements for mandatory continuing education for architects licensed to practice within the

## ADMINISTRATIVE REGISTER - 1451

Commonwealth as a condition for obtaining their annual renewal certificates. The amendment of the administrative regulation will identify those situations when the board will take disciplinary action for misrepresenting the hours a licensee has obtained or for failure to obtain the required continuing education.

(d) The benefit expected from this administrative regulation is that continuing education requirements for licensed architects will insure that licensed architects acquire the information necessary maintain their professional competence.

(e) This administrative regulation will be implemented as follows: licensed architects will be required to comply with this administrative regulation, and the State Board of Examiners and Registration of Architects of Kentucky will enforce the administrative regulation.

### Board of Nursing

December 9, 1997

General Government Cabinet

Board of Nursing

- (1) **201 KAR 20:070.** Licensure by examination.
- (2) The Board of Nursing intends to amend the administrative regulation governing the subject matter listed above.
- (3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for January 23, 1998 at 9 a.m. (EST) in the Board Room, Kentucky Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, Kentucky 40222.
- (4)(a) The public hearing will be held if:
1. It is requested in writing by at least 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 at least ten (10) days prior to January 23, 1998, the public hearing will be canceled.
- (5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Nathan Goldman, General Counsel, Kentucky Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, Kentucky 40222.
- (b) On a request for public hearing, a person should state:
1. "I agree to attend the public hearing."; or
  2. "I will not attend the public hearing."
- (6)(a) KRS Chapter 13A provides that persons who desire to be informed of the intent of an administrative body to promulgate an administrative regulation governing a specific subject matter may file a request to be informed by the administrative body.
- (b) Persons who wish to file this request may obtain a request form from the General Counsel, Kentucky Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, Kentucky 40222.
- (7) Information relating to the proposed administrative regulation.
- (a) The statutory authority for the promulgation of an administrative regulation relating to the regulation of nursing is KRS 314.131.
- (b) The administrative regulation that the Board of Nursing intends to promulgate amends an existing regulation on licensure by examination.
- (c) The necessity and function of the proposed administrative regulation is as follows: To remove the requirement that registered nurse applicants who are graduates of foreign nursing schools must take the Commission on Graduates of Foreign Nursing Schools exam.
- (d) The benefits expected from the administrative regulation are: Uniformity in the examination process.
- (e) The administrative regulation will be implemented as follows: It will be implemented as soon as it is effective.

December 9, 1997

General Government Cabinet

Board of Nursing

- (1) **201 KAR 20:110.** Licensure by endorsement.
- (2) The Board of Nursing intends to amend the administrative regulation governing the subject matter listed above.
- (3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for January 23, 1998 at 9 a.m. (EST) in the Board Room, Kentucky Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, Kentucky 40222.
- (4)(a) The public hearing will be held if:
1. It is requested in writing by at least 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 at least ten (10) days prior to January 23, 1998, the public hearing will be canceled.
- (5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Nathan Goldman, General Counsel, Kentucky Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, Kentucky 40222.
- (b) On a request for public hearing, a person should state:
1. "I agree to attend the public hearing."; or
  2. "I will not attend the public hearing."
- (6)(a) KRS Chapter 13A provides that persons who desire to be informed of the intent of an administrative body to promulgate an administrative regulation governing a specific subject matter may file a request to be informed by the administrative body.
- (b) Persons who wish to file this request may obtain a request form from the General Counsel, Kentucky Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, Kentucky 40222.
- (7) Information relating to the proposed administrative regulation.
- (a) The statutory authority for the promulgation of an administrative regulation relating to the regulation of nursing is KRS 314.131.
- (b) The administrative regulation that the Board of Nursing intends to promulgate amends an existing regulation on licensure by

## ADMINISTRATIVE REGISTER - 1452

endorsement.

(c) The necessity and function of the proposed administrative regulation is as follows: To end recognition of the equivalency of the Canadian Nurses Association Test Service Examination.

(d) The benefits expected from the administrative regulation are: To require Canadian nurses to take the same exam as American nurses.

(e) The administrative regulation will be implemented as follows: It will be implemented as soon as it is effective.

December 9, 1997

General Government Cabinet

Board of Nursing

(1) **201 KAR 20:162.** Procedures for disciplinary hearings pursuant to KRS 314.091.

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

23, 1998 at 9 a.m. (EST) in the Board Room, Kentucky Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, Kentucky 40222.

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

1. It is requested in writing by at least 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 at least ten (10) days prior to January 23, 1998, the public hearing will be canceled.

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

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

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

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

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

(b) Persons who wish to file this request may obtain a request form from the General Counsel, Kentucky Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, Kentucky 40222.

(7) Information relating to the proposed administrative regulation.

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

(b) The administrative regulation that the Board of Nursing intends to promulgate amends an existing regulation on disciplinary hearings.

(c) The Necessity and Function of the proposed administrative regulation is as follows: To conform to KRS Chapter 13B.

(d) The benefits expected from the administrative regulation are: Conformity with KRS Chapter 13B.

(e) The administrative regulation will be implemented as follows: It will be implemented as soon as it is effective.

July 7, 1997

General Government Cabinet

Board of Nursing

(1) **201 KAR 20:370.** Application for licensure and registration.

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

23, 1998 at 9 a.m. (EST) in the Board Room, Kentucky Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, Kentucky 40222.

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

1. It is requested in writing by at least 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 at least ten (10) days prior to January 23, 1998, the public hearing will be canceled.

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

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

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

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

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

(b) Persons who wish to file this request may obtain a request form from the General Counsel, Kentucky Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, Kentucky 40222.

(7) Information relating to the proposed administrative regulation.

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

(b) The administrative regulation that the Board of Nursing intends to promulgate amends an existing administrative regulation.

(c) The necessity and function of the proposed administrative regulation is as follows: To provide a time limit on requesting a hearing following a notice to deny licensure.

(d) The benefits expected from the administrative regulation are: To provide a certain time for requesting a hearing.

(e) The administrative regulation will be implemented as follows: Normal administrative procedures.

## ADMINISTRATIVE REGISTER - 1453

### TOURISM DEVELOPMENT CABINET Department of Fish and Wildlife Resources

December 5, 1997

Tourism Development Cabinet

Department of Fish and Wildlife Resources

(1) Regulation Number and Title: **301 KAR 2:172**, Deer hunting seasons and requirements; **301 KAR 2:174**, Deer hunting zones; and **301 KAR 2:178**, Deer hunting on wildlife management areas.

(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 January 21, 1998 at 9 a.m. in the Commission Room, Arnold L. Mitchell Building, at the Game Farm, five miles west of Frankfort on U.S. 60.

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

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

(b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least ten days prior to January 21, 1998, 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).

(b) The administrative regulation that the department intends to promulgate will amend: 301 KAR 2:172 as follows: Remove the stipulation that only deer hunters may take wild hogs. Wild hog hunting will be governed by an amendment to 301 KAR 3:030.

301 KAR 2:174 as follows: Move counties from one hunting zone to another to increase or decrease deer harvest. Specific recommendations will be made after the 1997 deer season closes on January 15, and harvest data and population survey results are analyzed. These recommendations will be presented to the Fish and Wildlife Commission for action on March 6, 1998. 301 KAR 2:178 as follows: Adjust hunting dates and other deer hunting requirements at wildlife management areas. Specific recommendations will be made after 1997 harvest and population data for wildlife management areas are analyzed. These recommendations will be presented to the Fish and Wildlife Commission for action on March 6, 1998.

(c) The necessity and function of the proposed administrative regulations are to establish season dates and hunting requirements for deer. KRS 150.025(1) authorizes the department to set season dates and other hunting regulations.

(d) The benefits expected from the administrative regulation are better management of the Commonwealth's deer resources and providing optimal recreational opportunity for Kentucky hunters.

(e) This administrative regulation will be implemented by publication in brochures and releases to media outlets, with enforcement primarily by the department's Division of Law Enforcement.

December 5, 1997

Tourism Development Cabinet

Department of Fish and Wildlife Resources

(1) Regulation Number and Title: **301 KAR 2:230**, Shoot to retrieve field trial permits and procedures.

(2) The Department of Fish and Wildlife Resources intends to amend the administrative regulation cited above.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for January 21, 1998 at 9 a.m. in the Commission Room, Arnold L. Mitchell Building, at the Game Farm, five miles west of Frankfort on U.S. 60.

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

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

(b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least ten days prior to January 31, 1998, 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)

(b) The administrative regulation that the department intends to promulgate will amend 301 KAR 2:230 as follows: It will remove the requirement that wild quail taken during a field trial be replaced with pen-raised birds.

(c) The necessity and function of the proposed administrative regulation is to remove a biologically ineffective requirement, pen-raised quail have a very low survival rate in the wild, and using them as replacements for wild birds accomplishes nothing.

## ADMINISTRATIVE REGISTER - 1454

(d) The benefits expected from the administrative regulation are removing an unneeded regulatory requirement.

(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.

December 5, 1997

Tourism Development Cabinet

Department of Fish and Wildlife Resources

(1) Regulation Number and Title: **301 KAR 2:240**, Special bobcat harvest season.

(2) The Department of Fish and Wildlife Resources intends to amend the administrative regulation cited above.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for January 21, 1998 at 9 a.m. in the Commission Room, Arnold L. Mitchell Building, at the Game Farm, five miles west of Frankfort on U.S. 60.

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

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

(b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least ten days prior to January 31, 1998, 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).

(b) The administrative regulation that the department intends to promulgate will amend 301 KAR 2:240 as follows: It will open twenty-five (25) western-most counties in Kentucky to taking bobcats, with a quota of 300 animals.

(c) The necessity and function of the proposed administrative regulation is to expand the harvest of bobcats to an area where their population has grown large enough to permit limited take.

(d) The benefits expected from the administrative regulation are expanding the utilization of a renewable wildlife resource.

(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.

December 5, 1997

Tourism Development Cabinet

Department of Fish and Wildlife Resources

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

(2) The Department of Fish and Wildlife Resources intends to amend the administrative regulation cited above.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for January 21, 1998, at 9 a.m. in the Commission Room, Arnold L. Mitchell Building, at the Game Farm, five miles west of Frankfort on U.S. 60.

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

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

(b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least ten days prior to January 21, 1998, 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).

(b) The administrative regulation that the department intends to promulgate will amend 301 KAR 3:030 as follows: It will add the wild hog to the list of animals which may be taken year-round.

(c) The necessity and function of the proposed administrative regulation is to help control the population of the wild hog, a species with the potential to cause serious ecological damage and spread disease to domestic livestock when established in the wild.

(d) The benefit expected from the administrative regulation is the control or elimination of wild hogs from Kentucky.

(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.



## ADMINISTRATIVE REGISTER - 1455

### JUSTICE CABINET Department of Corrections

December 12, 1997

Justice Cabinet

Department of Corrections

(1) Regulation Number and Title: **501 KAR 6:120**, Blackburn Correctional Complex.

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

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for January 21, 1998, 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 January 21, 1998, the public hearing will be canceled.

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

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

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

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

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

(7) Information relating to the proposed administrative regulation:

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

(b) The administrative regulation that the Department of Corrections intends to promulgate will amend 501 KAR 6:120, as follows:

1. Inmate canteen (BCC 02-01-01) shall be amended to include referenced standards in policy; a profit and loss statement be reported monthly to the Board of Directors; and the use of canteen funds.

2. Fiscal responsibility (BCC 02-02-01) shall be amended to include a referenced standard in policy; and the deletion of a standard referenced.

3. Fiscal management: accounting procedures (BCC 02-02-02) shall be amended to include the safekeeping of money orders in a locked safe; and to comply with actual practice.

4. Fiscal management: checks (BCC 02-02-03) shall be amended to include a referenced standard; inmate may request a bus voucher when paroled or reinstated on conditional release, the deletion of several referenced Department of Finance Administration Regulations; imprest cash fund to pay utility bills under a limited amount; the deletion of staff canteen and the resident fund and inmate canteen fund included in another policy.

5. Billing method for specialized health services (BCC 02-04-01) shall be amended to change policy name; and word changes throughout the policy.

6. Property inventory (BCC 02-05-01) shall be amended for word changes throughout the policy and to comply with actual practice.

7. Purchasing (BCC 02-06-01) shall be amended to bring policy into compliance with Finance Administration recommendations.

8. Inmate personal accounts (BCC 02-07-01) shall be amended to comply with actual practice.

9. Inmate participation in authorized research (BCC 05-01-01) shall be amended due to the duplication of CPP 5.1 (Inmate participation in authorized research); to justify the referenced standards within the policy; add an attachment; and the deletion of referenced ACA Standards.

10. Release of records (BCC 06-02-01) shall be amended to delete a reference to CPP 6.3 and to comply with actual practice.

11. Offender records (BCC 06-02-02) shall be amended to delete the Deputy Warden of Programs as the supervisor for the offender records specialist; to add request to inspect public records attachment and inmate accounts disbursement/purchase form to the policy.

12. Restricted areas (BCC 09-02-01) shall be amended to comply with actual practice.

13. Radio escorted yard movement during daylight savings time (BCC 09-02-04) shall be deleted as this procedure is no longer applicable to actual practice.

14. Construction crew entry, exit and regulations (BCC 09-04-01) shall be amended to reflect a new procedure and practice for the entry and exit of construction crews.

15. Complex entry and exit (BCC 09-04-02) shall be amended to comply with actual practice.

16. Transportation to courts (BCC 09-06-02) shall be amended to include the authorization of applying restraints and to not use restraints as punishment.

17. Drug abuse and intoxicants testing (BCC 09-07-01) shall be amended to include an inmate returning from furlough being tested; change in the title of Attachment A and the instructions; the addition of two officers being present when taking urine samples.

18. Use of restraints (BCC 09-08-02) shall be amended to include the shift supervisors approval when immediate action is required to use restraints on an inmate.

19. Population counts and count documentation (BCC 09-09-01) shall be amended to reflect the new procedure of implementing the daily count.

20. Search policy and disposition of contraband (BCC 09-15-01) shall be amended to delete an ACA reference; change the title of the strip search log; and delete any reference to CPP 9.8.

21. Security activity logs (BCC 09-16-01) shall be amended to comply with actual practice.

22. Institutional supervisor inspection (BCC 09-17-01) shall be amended to reflect the referenced standards throughout the policy.

23. Use of state vehicles and staff owned vehicles (BCC 09-18-01) shall be amended to comply with actual practice.

## ADMINISTRATIVE REGISTER - 1456

24. Duties and responsibilities of the institutional captain (BCC 09-19-01) shall be amended to comply with actual practice.

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

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

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

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

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

December 15, 1997

Justice Cabinet

Department of Corrections

(1) **501 KAR 6:999**, Department of Corrections secured policies and procedures (amended).

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

(3) There shall be no public hearing on these regulations as they relate to secured policies under the provisions of KRS 197.025 which states that these policies shall not be accessible to the public or inmates.

(4) Information relating to these proposed administrative regulations:

(a) The statutory authority for the promulgation of these administrative regulations relating to the subject matter of these administrative regulations is KRS 196.035, 197.020, and 197.025.

(b) The administrative regulations that the Department of Corrections intends to promulgate shall delete secured policies from existing administrative regulations and establish 501 KAR 6:999, as follows:

1. Emergency planning (CPP 8.3) shall be amended to:

a. Conform to KRS Chapter 13A;

b. Include additional situations to the planning areas; and

c. Provide for annual review and assessment of emergency preparedness needs between the institutions.

2. Emergency squads (CPP 8.5) has been totally revised to: Reflect the accurate composition of the E-Squad; permit a minimum security institution to organize and train its own squad; revise the clothing and equipment issued; update training requirements; clarify administrative matters regarding duty for extended periods and associated costs; and to comply with KRS Chapter 13A.

(c) The necessity and function of the proposed administrative regulations are as follows:

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

2. These administrative regulations establish operating procedures at the Department of Corrections to comply with KRS Chapter 13A and to reflect current operating procedures.

3. KRS 197.025(5) provides: "The policies and procedures of administrative regulations of the department which address the security and control of inmates and penitentiaries shall not be accessible to the public or inmates. The Administrative Regulations Review Subcommittee's review process for these policies and procedures shall be conducted in closed sessions."

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

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

## TRANSPORTATION CABINET

December 15, 1997

Transportation Cabinet

(1) **601 KAR 40:020**, Application for license to operate vehicles transporting municipal solid waste.

(2) The Kentucky Transportation Cabinet intends to promulgate an amendment to administrative regulation 601 KAR 40:020 relating to licensing of companies to transport municipal solid waste. It is the cabinet's intention to issue a three-year license rather than the one-year license currently being issued. KRS 174.450(7) allows a license to be valid for up to three years. The cabinet is also considering not issuing vehicle-specific identification cards.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for January 23, 1998 at 9 a.m. local prevailing time, at 501 High Street, 4th Floor Hearing/Conference Room in the State Office Building, Frankfort, Kentucky 40622.

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

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

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

(b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 10 days prior to January 23, 1998, 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:

## ADMINISTRATIVE REGISTER - 1457

1. "I agree to attend the public hearing."; or
2. "I will not attend the public hearing."
- (6)(a) KRS Chapter 13A provides that persons who desire to be informed of the intent of an administrative body to promulgate an administrative regulation governing a specific subject matter may file a request to be informed by the administrative body.
- (b) Persons who wish to file this request may obtain a request form from the Transportation Cabinet at the address listed above.
- (7) Information relating to the proposed administrative regulation.
- (a) The statutory authority for the promulgation of this administrative regulation is KRS 174.450(9).
- (b) The administrative regulation that the Transportation Cabinet intends to promulgate will amend an existing administrative regulation.
- (c) The necessity, function, and conformity of 601 KAR 40:020 requires that the Transportation Cabinet promulgate administrative regulations to establish a municipal solid waste transportation licensing program. It further requires that each vehicle being used to transport municipal solid waste be identified by the licensee. This administrative regulation sets forth the licensing procedures and method of identifying the individual motor vehicles used to transport municipal solid waste.
- (d) The benefits expected from this proposed amendment will be a reduction in paperwork for both the industry and the Transportation Cabinet.
- (e) The amendment will be implemented by revising the license and application forms as well as the identification cards and providing copies of the new forms to the current licensees.
- (8) If you have a disability for which the Transportation Cabinet needs to make accommodation, please contact Sandra Pullen Davis at the address listed above. Her telephone number is (502) 564-7650 and her fax number is (502) 564-5238.

### TRANSPORTATION CABINET

December 15, 1997

Transportation Cabinet

- (1) **603 KAR 5:301** relating to the weight classification of the state-maintained system of highways needs to be amended to include newly constructed and reconstructed highways.
- (2) The Kentucky Transportation Cabinet intends to promulgate an amendment to the existing administrative regulation which will include the current weight classification of all of the state-maintained highways in Kentucky.
- (3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for January 23, 1998 at 9:30 a.m. local prevailing time, at 501 High Street, 4th Floor Hearing/Conference Room, Frankfort, Kentucky 40622.
- (4)(a) The public hearing will be held if:
  1. It is requested, in writing, by at least 5 persons, or an administrative body, or an association having at least 5 members; and
  2. A minimum of 5 persons, or the administrative body or association, agree, in writing, to be present at the public hearing.
- (b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 10 days prior to January 23, 1998, 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, Mail Code 10-13, 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 weight classification of the state-maintained highways is KRS 189.222.
- (b) The administrative regulation that the Transportation Cabinet intends to promulgate will amend 603 KAR 5:301. It will list the weight classification for each of the state-maintained highways in Kentucky.
- (c) The necessity, function, and conformity of the proposed administrative regulation is as follows: KRS 189.222 authorizes the Secretary of the Transportation Cabinet to establish by Official Order reasonable weight (mass) limits for all highways included in the state-maintained system of highways. This administrative regulation is promulgated to identify and incorporate by reference the Official Order and Guidance Manual setting forth each road in the state-maintained system and to indicate the classification of each. The classification of each highway segment in conjunction with 603 KAR 5:066 establishes the weight (mass) limit for trucks using each road segment.
- (d) The benefits expected from the administrative regulation are the inclusion of highways constructed or reconstructed since the last amendment to this administrative regulation. The administrative regulation specifies that any highway which is not listed in the administrative has a weight limit of 44,000 pounds. Most of the newly constructed highways can accommodate 80,000 pounds. This amendment will allow the legal use of the highways by the trucks for which the new highways were designed and constructed.
- (e) The administrative regulation will be implemented as follows: Publishing the weight classification of each highway and making the list available to the trucking industry.
- (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 January 13, 1998. She can also be reached by telephone at (502) 564-7650, by facsimile at (502) 564-5238, and by e-mail at SDavis@MAIL.KYTC.STATE.KY.US.

# ADMINISTRATIVE REGISTER - 1458

## KENTUCKY BOARD OF EDUCATION

December 4, 1997

Kentucky Board of Education

- (1) **704 KAR 3:303**. Required program of studies.
- (2) The Kentucky Board of Education intends to amend the administrative regulation cited above.
- (3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for January 23, 1998, at 10 a.m. in the State Board Room, 1st Floor, Capital Plaza Tower, 500 Mero Street, Frankfort, Kentucky 40601.
- (4)(a) The public hearing will be held if it is requested, in writing, by at least five (5) persons, or an administrative body, or an association having at least five (5) members; and a minimum of five (5) persons, or the administrative body or association, agree, in writing, to be present at the public hearing.
- (b) If five (5) persons, or an administrative body or association, request this public hearing, and agree in writing to be present at this public hearing, it will be held as scheduled.
- (c) If a request for a public hearing is not received from the required number of people at least 10 days prior to January 23, 1998, the public hearing will be canceled.
- (5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Mr. Kevin Nolan, General Counsel, Office of Legal Services, Kentucky Department of Education, 500 Mero Street, Frankfort, Kentucky 40601, phone (502) 564-4474, fax (502) 564-9321.
- (b) On a request for public hearing, a person shall state:
  1. "I agree to attend the public hearing."; or
  2. "I will not attend the public hearing."
- (6)(a) KRS Chapter 13A provides that persons who desire to be informed of the intent of an administrative body to promulgate an administrative regulation governing a specific subject matter may file a request to be informed by the administrative body.
- (b) Persons who wish to file this request may obtain a request form from the Kentucky Board of Education at the address listed above.
- (7) Information relating to the proposed administrative regulation.
  - (a) The statutory authority for amending an existing administrative regulation relating to the required program of studies for different grades and kinds of common schools is KRS 156.160.
  - (b) The administrative regulation that the Kentucky Board of Education intends to amend is 704 KAR 3:303.
  - (c) The necessity, function, and conformity of the proposed administrative regulation is to ensure that all school districts establish courses of study for the different grades and kinds of common schools that are in compliance with the expected outcomes for students and schools set forth in KRS 158.6451 and minimum high school graduation requirements.
  - (d) The benefits expected from the administrative regulation amendments are to implement statutory requirements.
  - (e) The administrative regulation will be implemented as follows: Copies of the revised administrative regulation will be disseminated to all Kentucky school district superintendents with direction that it be forwarded to each school principal.

## EDUCATION PROFESSIONAL STANDARDS BOARD

November 1997

Education Professional Standards Board

- (1) **704 KAR 20:015**, Rank I classification.
- (2) The Education Professional Standards Board intends to amend the administrative regulation cited above.
- (3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for January 23, 1998, at 10 a.m. in the 1st Floor Local District Conference Room, Capital Plaza Tower, 500 Mero Street, Frankfort, Kentucky 40601.
- (4)(a) The public hearing will be held if it is requested, in writing, by at least 5 persons, or an administrative body, or an association having at least 5 members; and a minimum of 5 persons, or the administrative body or association, agree, in writing, to be present at the public hearing.
- (b) If 5 persons, or an administrative body or association, request this public hearing, and agree in writing to be present at this public hearing, it will be as scheduled.
- (c) If a request for a public hearing is not received from the required number of people at least 10 days prior to January 23, 1998, the public hearing will be canceled.
- (5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Education Professional Standards Board, 1024 Capital Center Drive, Frankfort, Kentucky 40601, fax (502) 573-1610.
- (b) On a request for public hearing, a person shall state:
  1. "I agree to attend the public hearing."; or
  2. "I will not attend the public hearing."
- (6)(a) KRS Chapter 13A provides that persons who desire to be informed of the intent of an administrative body to promulgate an administrative regulation governing a specific subject matter may file a request to be informed by the administrative body.
- (b) Persons who wish to file this request may obtain a request form from the Education Professional Standards Board at the address listed above.
- (7) Information relating to the proposed administrative regulation. Obsolete language in Section 1 will be deleted. Section 2 will be amended to include two additional plans wherein teachers can advance to Rank I classification. In addition to the inclusion of National Board Certification as a plan, the regulation identifies a plan wherein teachers can complete a continuing education program with evidence of continuous progress to advance to Rank I classification. New Section 5 describes the procedures to be followed when a teacher chooses the continuing education plan for advancement in rank. The plan includes the development of an individualized professional development plan which includes goals related to continuous growth on each the Experienced Teacher Standards. The teacher participates in professional development activities or experiences deemed necessary for accomplishment of the plan. The teacher following the continuing education plan for advancement to Rank

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I shall submit a portfolio that shall include the evidence of accomplishment of the professional development plan for review and scoring by a state team. After the determination that the plan was accomplished, the state team recommends the teacher for advancement to Rank I classification. New section 6 identifies the responsibilities of the state review and scoring team and new section 7 establishes the fee that shall be assessed to the teacher who chooses the continuing education plan to advance to Rank I.

(a) The statutory authority for the promulgation of an administrative regulation relating to the advancement in rank classification is KRS 157.390 and 161.095.

(b) The administrative regulation that the Education Professional Standards Board intends to promulgate will amend is 704 KAR 20:015.

(c) The necessity, function, and conformity section of the proposed administrative regulation is as follows: KRS 157.390 authorizes the State Board of Education to adopt an administrative regulation to determine the salary rank of a certified teacher and to determine the equivalent qualification for the salary rank. KAR 704 3:470 vests the authority in the Education Professional Standards Board to establish the standards and procedures for the classification of teachers in rank for purposes of the state teacher salary schedule. KRS 161.095 authorizes the Education Professional Standards Board to establish procedures to maintain his certificate by successfully completing meaningful continuing education. This administrative regulation defines approved graduate work for the Rank I classification and defines equivalent and continuing education programs for Rank I.

(d) The benefits expected from administrative regulation are: A teacher will be provided additional options or ways to reach Rank I classification. The new continuing education plan will allow the teacher to advance to Rank I classification upon the accomplishment of a professional development plan designed by the teacher and focused on his or her individual needs for growth.

(e) The administrative regulation will be implemented as follows: The amendment to the regulation will be communicated to all teachers, school district personnel, and teacher preparation programs as soon as the amendment is effective. The Education Professional Standards Board will select the cadre of team members who will review the evidence that the professional development plan was accomplished and provide training to all members regarding how to review the evidence in a consistent and reliable manner.

November 1997

Education Professional Standards Board

(1) **704 KAR 20:021**, Planned Fifth-year Program.

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

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for January 23, 1998, at 10 a.m. in the Local District Room, First Floor, Capital Plaza Tower, Frankfort, Kentucky 40601.

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

(b) If 5 persons, or an administrative body or association, request this public hearing, and agree in writing to be present at this public hearing, it will be as scheduled.

(c) If a request for a public hearing is not received from the required number of people at least 10 days prior to January 23, 1998, the public hearing will be canceled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Education Professional Standards Board, 1024 Capital Center Drive, Frankfort, Kentucky, 40601, fax (502) 573-1610.

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

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

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

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

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

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the amendment of an administrative regulation relating to the renewal of a certificate is KRS 161.020, 161.028, 161.030.

(b) The administrative regulation that the Education Professional Standards Board intends to amend is 704 KAR 20:021.

(c) The necessity, function, and conformity section of the proposed administrative regulation is as follows: KRS 161.020 requires that a teacher and other professionals hold a certificate of legal qualification for the position held and to be issued upon completion of a program of preparation prescribed by the Education Professional Standards Board.

(d) The benefits expected from administrative regulation are: An additional route to rank one preparation level.

(e) The administrative regulation will be implemented as follows: Institutions of higher education which have approved preparation programs for teaching certificates will take adequate steps to inform candidates of any amendments to this administrative regulation.

November 1997

Education Professional Standards Board

(1) **704 KAR 20:022**, Continuing education alternative to Planned Fifth-year Program.

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

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for January 23, 1998, at 10 a.m. in the 1st Floor Local District Conference Room, Capital Plaza Tower, 500 Mero Street, Frankfort, Kentucky 40601.

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

(b) If 5 persons, or an administrative body or association, request this public hearing, and agree in writing to be present at this public hearing, it will be as scheduled.

(c) If a request for a public hearing is not received from the required number of people at least 10 days prior to January 23, 1998, the

## ADMINISTRATIVE REGISTER - 1460

public hearing will be canceled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Education Professional Standards Board, 1024 Capital Center Drive, Frankfort, Kentucky 40601, fax (502) 573-1610.

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

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

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

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

(7) Information relating to the proposed administrative regulation. 704 KAR 20:022 identifies the procedures to be followed when a teacher chooses the continuing education alternative to the Planned Fifth-year Program for certificate renewal and advancement in rank. Section 2 describes the development of an individualized professional development plan which includes goals related to continuous growth on each of the experienced teacher standards. The teacher shall participate in professional development activities or experiences deemed necessary for accomplishment of the professional development plan. The teacher shall submit a portfolio that includes the evidence of accomplishment of the professional development plan for review and scoring by a state team. Section 3 describes the responsibilities of the three-member state team used to review and score the continuing education portfolio. Section 4 describes the requirements regarding the time limits for the completion of the continuing education alternative for certificate renewal. Section 5 lists the \$1200 fee and stipulates for what purposes the fee will be used.

(a) The statutory authority for the promulgation of an administrative regulation relating to the advancement in rank classification is KRS 157.390 and 161.095.

(b) The administrative regulation that the Education Professional Standards Board intends to promulgate is 704 KAR 20:022.

(c) The necessity, function, and conformity section of the proposed administrative regulation is as follows: KRS 161.095 requires the Education Professional Standards Board, with the advice of the State Board of Education, to establish an administrative regulation identifying procedures for a teacher to maintain a certificate by successfully completing meaningful continuing education. KRS 161.028 and 161.030 vest authority for the issuance and renewal of certification for all school personnel in the Education Professional Standards Board. This administrative regulation establishes the procedures for a continuing education alternative to the Planned Fifth-year Program for certificate renewal.

(d) The benefits expected from administrative regulation are: A teacher will be provided additional ways to renew a certificate for the first and second time. The continuing education alternative to the Planned Fifth-year Program will allow the teacher to renew a certificate upon the accomplishment of a professional development plan designed by the teacher and focused on his or her individual needs for growth.

(e) The administrative regulation will be implemented as follows: The new administrative regulation will be communicated to all teacher, school district personnel, and teacher preparation programs as soon as the regulation is effective. The Education Professional Standards Board shall select the cadre of team members to review the evidence that the professional development plan was accomplished and provide training to all members regarding how to review the evidence in a consistent and reliable manner.

November 1997

Education Professional Standards Board

(1) **704 KAR 20:045**, Recency and certification fees.

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

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for January 23, 1998, at 10 a.m. in the Local District Room, First Floor, Capital Plaza Tower, Frankfort, Kentucky 40601.

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

(b) If 5 persons, or an administrative body or association, request this public hearing, and agree in writing to be present at this public hearing, it will be as scheduled.

(c) If a request for a public hearing is not received from the required number of people at least 10 days prior to January 23, 1998, the public hearing will be canceled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Education Professional Standards Board, 1024 Capital Center Drive, Frankfort, Kentucky, 40601, fax (502) 573-1610.

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

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

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

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

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the amendment of an administrative regulation relating to the renewal of a certificate is KRS 161.020, 161.028, 161.030.

(b) The administrative regulation that the Education Professional Standards Board intends to amend is 704 KAR 20:045.

(c) The necessity, function, and conformity section of the proposed administrative regulation is as follows: KRS 161.020 requires that a teacher and other professionals hold a certificate of legal qualification for the position held and to be issued upon completion of a program of preparation prescribed by the Education Professional Standards Board.

(d) The benefits expected from administrative regulation are: An additional route to the rank one preparation level.

(e) The administrative regulation will be implemented as follows: Institutions with approved preparation programs and all local school districts will be notified of the alternative plan for certification.

## ADMINISTRATIVE REGISTER - 1461

November 1997

Education Professional Standards Board

- (1) **704 KAR 20:060**, Renewals.
- (2) The Education Professional Standards Board intends to amend the administrative regulation cited above.
- (3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for January 23, 1998, at 10 a.m. in the Local District Room, First floor, Capital Plaza Tower, Frankfort, Kentucky, 40601.
- (4)(a) The public hearing will be held if it is requested, in writing, by at least 5 persons, or an administrative body, or an association having at least 5 members; and a minimum of 5 persons, or the administrative body or association, agree, in writing, to be present at the public hearing.
  - (b) If 5 persons, or an administrative body or association, request this public hearing, and agree in writing to be present at this public hearing, it will be as scheduled.
  - (c) If a request for a public hearing is not received from the required number of people at least 10 days prior to January 23, 1998, the public hearing will be canceled.
- (5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Education Professional Standards Board, 1024 Capital Center Drive, Frankfort, Kentucky 40601, fax (502) 573-1610.
  - (b) On a request for public hearing, a person shall state:
    1. "I agree to attend the public hearing."; or
    2. "I will not attend the public hearing."
- (6)(a) KRS Chapter 13A provides that persons who desire to be informed of the intent of an administrative body to promulgate an administrative regulation governing a specific subject matter may file a request to be informed by the administrative body.
  - (b) Persons who wish to file this request may obtain a request form from the Education Professional Standards Board at the address listed above.
  - (7) Information relating to the proposed administrative regulation.
    - (a) The statutory authority for the amendment of an administrative regulation relating to the renewal of a certificate is KRS 161.020, 161.028, 161.030.
    - (b) The administrative regulation that the Education Professional Standards Board intends to amend is 704 KAR 20:060.
    - (c) The necessity, function, and conformity section of the proposed administrative regulation is as follows: KRS 161.020 requires that a teacher and other professionals hold a certificate of legal qualification for the position held and to be issued upon completion of a program of preparation prescribed by the Education Professional Standards Board.
    - (d) The benefits expected from administrative regulation are: An additional route to the rank one preparation level.
    - (e) The administrative regulation will be implemented as follows: Institutions with approved preparation programs and all local school districts will be notified of the alternative plan for certification.

November 1997

Education Professional Standards Board

- (1) **704 KAR 20:210**, Substitute teachers and emergency personnel.
- (2) The Education Professional Standards Board intends to amend the administrative regulation cited above.
- (3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for January 23, 1998, at 10 a.m. in the Local District Room, First Floor, Capital Plaza Tower, 500 Mero Street, Frankfort, Kentucky 40601.
- (4)(a) The public hearing will be held if it is requested, in writing, by at least 5 persons, or an administrative body, or an association having at least 5 members; and a minimum of 5 persons, or the administrative body or association, agree, in writing, to be present at the public hearing.
  - (b) If 5 persons, or an administrative body or association, request this public hearing, and agree in writing to be present at this public hearing, it will be as scheduled.
  - (c) If a request for a public hearing is not received from the required number of people at least 10 days prior to January 23, 1998, the public hearing will be canceled.
- (5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Education Professional Standards Board, 1024 Capital Center Drive, Frankfort, Kentucky 40601, fax (502) 573-1610.
  - (b) On a request for public hearing, a person shall state:
    1. "I agree to attend the public hearing."; or
    2. "I will not attend the public hearing."
- (6)(a) KRS Chapter 13A provides that persons who desire to be informed of the intent of an administrative body to promulgate an administrative regulation governing a specific subject matter may file a request to be informed by the administrative body.
  - (b) Persons who wish to file this request may obtain a request form from the Education Professional Standards Board at the address listed above.
  - (7) Information relating to the proposed administrative regulation.
    - (a) The statutory authority for the amendment of an administrative regulation relating to a certificate for substitute teaching is KRS 161.020, 161.028, and 161.030.
    - (b) The administrative regulation that the Education Professional Standards Board intends to amend is 704 KAR 20: 210, Substitute teachers and emergency personnel.
    - (c) The necessity, function, and conformity section of the proposed administrative regulation is as follows: KRS 161.020 requires that a teacher and other professional school personnel hold a certificate of legal qualification for the position held and to be issued upon completion of a program of preparation prescribed by the Education Professional Standards Board.
    - (d) The benefits expected from administrative regulation are: A procedure to ensure training for emergency personnel utilized in a classroom when a certified substitute cannot be secured.
    - (e) The administrative regulation will be implemented as follows: Notification of the amendments to this regulation will be given to all Kentucky school districts from the Office of Teacher Education and Certification.

## ADMINISTRATIVE REGISTER - 1462

November 1997

Education Professional Standards Board

- (1) **704 KAR 20:420**, Certification for school superintendent.
- (2) The Education Professional Standards Board intends to amend the administrative regulation cited above.
- (3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for January 23, 1998, at 10 a.m. in the Local District Room, first floor, Capital Plaza Tower, 500 Mero Street, Frankfort, Kentucky 40601.
- (4)(a) The public hearing will be held if it is requested, in writing, by at least 5 persons, or an administrative body, or an association having at least 5 members; and a minimum of 5 persons, or the administrative body or association, agree, in writing, to be present at the public hearing.
  - (b) If 5 persons, or an administrative body or association, request this public hearing, and agree in writing to be present at this public hearing, it will be held as scheduled.
  - (c) If a request for a public hearing is not received from the required number of people at least 10 days prior to January 23, 1998, the public hearing will be canceled.
- (5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Education Professional Standards Board, 1024 Capital Center Drive, Frankfort, Kentucky 40601, fax (502) 573-1610.
  - (b) On a request for public hearing, a person shall state:
    1. "I agree to attend the public hearing."; or
    2. "I will not attend the public hearing."
- (6)(a) KRS Chapter 13A provides that persons who desire to be informed of the intent of an administrative body to promulgate an administrative regulation governing a specific subject matter may file a request to be informed by the administrative body.
  - (b) Persons who wish to file this request may obtain a request form from the Education Professional Standards Board at the address listed above.
  - (7) Information relating to the proposed administrative regulation.
    - (a) The statutory authority for the amendment of an administrative regulation relating to the preparation and certification for school superintendent is KRS 161.020, 161.028 and 161.030.
    - (b) The administrative regulation that the Education Professional Standards Board intends to amend is 704 KAR 20:420, certification for school superintendent.
    - (c) The necessity, function, and conformity section of the proposed administrative regulation is as follows: KRS 161.020 requires that a teacher and other professional school personnel hold a certificate of legal qualification for the position held and to be issued upon completion of a program of preparation prescribed by the Education Professional Standards Board.
    - (d) The benefits expected from administrative regulation are: An improved preparation program for school superintendent.
    - (e) The administrative regulation will be implemented as follows: Institutions of higher education which have approved preparation programs for school superintendent shall take adequate steps to inform candidates of any amendments to this administrative regulation.

November 1997

Education Professional Standards Board

- (1) **704 KAR 20:475**, Probationary certificate for teachers of technology education.
- (2) The Education Professional Standards Board intends to amend the administrative regulation governing the subject matter listed above.
  - (3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for January 23, 1998, at 10 a.m. in the Local District Room, 1st Floor, Capital Plaza Tower, 500 Mero Street, Frankfort, Kentucky 40601.
  - (4)(a) The public hearing will be held if it is requested, in writing, by at least 5 persons, or an administrative body, or an association having at least 5 members; and a minimum of 5 persons, or the administrative body or association, agree, in writing, to be present at the public hearing.
    - (b) If 5 persons, or an administrative body or association, request this public hearing, and agree in writing to be present at this public hearing, it will be held as scheduled.
    - (c) If a request for a public hearing is not received from the required number of people at least 20 days prior to January 23, 1998, the public hearing will be canceled.
  - (5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Executive Secretary, Education Professional Standards Board, 1024 Capital Center Drive, Frankfort, Kentucky 40601, (502) 573-4606.
    - (b) On a request for public hearing, a person shall state:
      1. "I agree to attend the public hearing."; or
      2. "I will not attend the public hearing."
  - (6)(a) KRS Chapter 13A provides that persons who desire to be informed of the intent of an administrative body to promulgate an administrative regulation governing a specific subject matter may file a request to be informed by the administrative body.
    - (b) Persons who wish to file this request may obtain a request form from the Education Professional Standards Board at the address listed above.
    - (7) Information relating to the proposed administrative regulation.
      - (a) The statutory authority for the amendment of an administrative regulation relating to a Probationary Certificate for Teachers of Technology Education is KRS 161.028 and 161.030.
      - (b) The administrative regulation that the Education Professional Standards Board intends to amend will provide for the issuance of a Probationary Certificate for Teachers of Technology Education when a qualified teacher is not available as attested by the local superintendent.
      - (c) The necessity and function of the proposed administrative regulation is as follows: KRS 161.020 and 161.030 require that teachers and other professional school personnel hold certificates of legal qualifications for their respective positions to be issued upon completion of programs of preparation prescribed by the Educational Professional Standards Board; furthermore, the teacher education institutions are required to be approved for offering the preparation programs corresponding to particular certificates on the basis of standards and procedures adopted by the Education Professional Standards Board. This administrative regulation establishes a plan for recruiting certified classroom teachers and



## ADMINISTRATIVE REGISTER - 1463

individuals from work related areas into positions for teachers of technology education.

(d) The benefits expected from administrative regulation are: There is a shortage of certified and qualified teachers of technology education. This administrative regulation will provide for recruiting certified middle and secondary school teachers and individuals from work related areas into technology teaching positions (examples include, but are not limited to drafting, electronic communication systems, woods, metals, computer aided manufacturing, electricity/electronics, transportation systems). The proposed amendment shall provide for training related to student safety. Furthermore, the applicant shall have developed a plan with an appropriate technology education teacher trainer and a program consultant representing the Division of Secondary Vocational Education which shall lead to full certification and shall include a plan for curriculum completion.

(e) The administrative regulation will be implemented as follows: A joint communication from the Division of Certification and the Division of Secondary Vocational Education shall communicate the provisions of the recruitment plan and the procedures for applying for the Probationary Certificate for Teachers of Technology Education to all local school districts.

November 1997

Education Professional Standards Board

(1) **704 KAR 20:696**, Standards for accreditation of teacher education units and approval of programs.

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

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for January 23, 1998, at 10 a.m. in the Local District Room, 1st Floor, 500 Mero Street, Capital Plaza Tower, Frankfort, Kentucky 40601.

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

(b) If 5 persons, or an administrative body or association, request this public hearing, and agree in writing to be present at this public hearing, it will be as scheduled.

(c) If a request for a public hearing is not received from the required number of people at least 10 days prior to January 23, 1998, the public hearing will be cancelled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Education Professional Standards Board, 1024 Capital Center Drive, Frankfort, Kentucky 40601, fax (502) 573-1610.

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

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

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

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

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

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of an administrative regulation relating to the accreditation of teacher education units and program approval are in KRS 161.028 and 161.032.

(b) The administrative regulation that the Education Professional Standards Board intends to promulgate will amend 704 KAR 20:696.

(c) The necessity, function, and conformity section of the proposed administrative regulation is as follows: KRS 161.028 requires that all teacher education institutions be approved for offering the preparation programs corresponding to particular certificates on the basis of standards and procedures established by the Education Professional Standards Board. KRS 161.030 requires that certificates be issued to all persons who have completed programs approved by the Education Professional Standards Board. This administrative regulation establishes the standards for accreditation of teacher education units and approval of programs to prepare educators.

(d) The benefits expected from administrative regulation are: 26 institutions of higher education in Kentucky will have up to date standards for retaining their current accreditation. Inclusion of experienced teacher standards make it necessary to amend this regulation. Institutions will be systematically moving to performance based teacher education through this amended regulation.

(e) The administrative regulation will be implemented as follows: Each institution of higher education having accredited teacher education programs will be copied with this regulation and be required to forward an acknowledgement of receipt. Staff will be available on request to respond to specific questions relating to the regulation.

## KENTUCKY DEPARTMENT OF WORKERS' CLAIMS

December 15, 1997

Kentucky Department of Workers' Claims

(1) Regulation number and name: **803 KAR 25:096**, Selection of physicians treatment plans and statements for medical 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 January 21, 1998, 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 it is requested in writing, by at least 5 persons, or an administrative body, or an association having at least 5 members; and a minimum of 5 persons, or the administrative body or association, agree, in writing, to be present at the public hearing.

(b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least ten (10) days prior to January 21, 1998, 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: Donna Elsen Floyd, (502) 564-5550, fax

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number 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 342.020, 342.035, 342.260, 342.320, and 342.375.

(b) The administrative regulation that the commissioner intends to promulgate will amend an existing administrative regulation. It will further clarify the procedures for designating an injured worker's treating physician.

(c) The necessity and function of the proposed administrative regulation is as follows: To assure compliance with current regulations that function to deliver expedient medical care in an economical manner to injured workers.

(d) The benefits expected from administrative regulation are: Enhanced compliance with existing requirements to designate a treating physician.

(e) The administrative regulation will be implemented as follows: Authority given to carriers to suspend benefits until compliance with the regulation has occurred.

## KENTUCKY DEPARTMENT OF INSURANCE

December 12, 1997

Kentucky Department of Insurance

(1) **806 KAR 17:110**, Establishment of the Kentucky Risk Assessment and Risk Adjustment System.

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

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for January 21, 1998, at 10 a.m., at the Department of Insurance, 215 West Main Street, Frankfort, Kentucky.

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

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

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

(b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least ten (10) days prior to January 21, 1998, 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, Fax Number: (502) 564-1456.

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

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

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

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

(7) Information relating to the proposed administrative regulation:

(a) The statutory authority for the promulgation of an administrative regulation relating to the subject matter of administrative regulation is KRS 304.17A-130.

(b) The administrative regulation that the department intends to promulgate will not amend an existing administrative regulation. It will implement the administrative regulation promulgated by the Kentucky Health Policy Board for the establishment of a risk adjustment process to be used in equalizing risk between insurers which participate in the modified community rated market, both within and outside of the Kentucky Health Purchasing Alliance.

(c) The Necessity and Function of the proposed administrative regulation is as follows: Pursuant to KRS 304.17A-130, the department is required to implement the administrative regulation promulgated by the Kentucky Health Policy Board. In order to implement and enforce provisions regarding risk adjustment, it is necessary for the department to promulgate the administrative regulation. The administrative regulation will establish a risk adjustment process for insurers which issue or renew health benefit plans to employers with fifty (50) employees or less, to individuals, or to members of the Kentucky Health Purchasing Alliance.

(d) The benefits expected from the administrative regulation are: The department expects that the administrative regulation will equalize health risk between insurers which participate in the modified community rated market, both within and outside of the Kentucky Health Purchasing Alliance.

(e) The administrative regulation will be implemented as follows: Pursuant to the administrative regulation, the department will contract with an administrator to manage the day-to-day operations of the risk adjustment system. The administrator will assume various duties pertaining to the risk adjustment system. The department, through reports submitted by the administrator on an annual basis, will monitor the system.

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### KENTUCKY PUBLIC SERVICE COMMISSION

December 8, 1997

Kentucky Public Service Commission

- (1) Regulation Number and Title: **807 KAR 5:004**. Repeal of 807 KAR 5:002.
- (2) The Kentucky Public Service Commission intends to promulgate an administrative regulation to repeal 807 KAR 5:002.
- (3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for January 26, 1998, at 10 a.m., Eastern Standard Time, in Hearing Room 1, 730 Schenkel Lane, Frankfort, Kentucky.
- (4)(a) The public hearing will be held if:
  1. It is requested, in writing, by at least 5 persons, or an administrative body, or an association having at least 5 members; and
  2. A minimum of 5 persons, or the administrative body or association, agree, in writing, to be present at the public hearing.
- (b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 10 days prior to January 26, 1998, 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, Esq., 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 13A.310 requires an administrative agency to repeal an administrative regulation if it no longer wishes the regulation to be effective.
  - (b) The administrative regulation that the Kentucky Public Service Commission intends to promulgate will repeal 807 KAR 5:002.
  - (c) The necessity and function of the proposed administrative regulation is as follows: KRS 278.115 has been amended since the promulgation of 807 KAR 5:002 to provide that the commission's offices are to be organized pursuant to the procedure specified in KRS Chapter 12 rather than by commission regulation. The proposed administrative regulation will repeal 807 KAR 5:002, for which no current statutory authority exists.
  - (d) The benefits expected from the administrative regulation are: 807 KAR 5:002 will be repealed pursuant to current statutory provisions for organizing the commission's offices.
  - (e) The administrative regulation will be implemented as follows: 807 KAR 5:002 will be deleted from the Kentucky Administrative Regulations Service on the date the repealing administrative regulation is effective.

### PUBLIC PROTECTION AND REGULATION CABINET Department of Financial Institutions

October 23, 1997

Public Protection and Regulation Cabinet

Department of Financial Institutions

- (1) Regulation(s) to be amended: **808 KAR 10:010**, Forms for application, registration; reporting and compliance; **808 KAR 10:130**, Amendments to registration statement; **808 KAR 10:160**, Definitions; **808 KAR 10:240**, Registration exemptions - sale of business.
- (2) The Department of Financial Institutions intends to promulgate administrative regulation(s) governing the subject matter listed above.
- (3) A public hearing to receive oral and written comments on the proposed administrative regulation(s) has been scheduled for January 22, 1998 at 10 a.m. at the Department of Financial Institutions, 477 Versailles Road, Frankfort, Kentucky.
- (4)(a) The public hearing will be held if:
  1. It is requested, in writing, by at least 5 persons, or an administrative body, or an association having at least 5 members; and
  2. A minimum of 5 persons, or the administrative body or association, agree, in writing, to be present at the hearing.
- (b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 10 days prior to January 22, 1998, 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 Financial Institutions, 477 Versailles Road, Frankfort, Kentucky 40601, Attn: Colleen Keefe.
- (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(s) 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 Financial Institutions at the address listed above.
- (7) Information relating to the proposed administrative regulation(s):
  - (a) The statutory authority for the promulgation of the proposed administrative regulation(s) is KRS 292.500(3).
  - (b) The department will amend 808 KAR 10:010, 808 KAR 10:130, 808 KAR 10:160, and 808 KAR 10:240. The amendments will delete references to forms no longer used by the department, add references to forms currently used, delete language rendered obsolete by technological advances or changes in the regulated industries, and correct a typographical error.

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(c) The necessity and function of the proposed administrative regulation(s) is as follows: To modernize the language of the regulation(s) to reflect current practices of the department and the regulated industries.

(d) The benefits expected from the proposed administrative regulation(s) are: The amendments will make the regulation(s) more informative and useful to the regulated industries.

(e) The proposed administrative regulation(s) will be implemented as follows: They will be implemented by publishing the regulation(s) in securities law publications available to the general public. They will be applied to all matters before the Department of Financial Institutions immediately after becoming effective.

October 23, 1997

Public Protection and Regulation Cabinet

Department of Financial Institutions

(1) Regulation(s) to be amended: **808 KAR 10:020**, Net capital of broker-dealers; **808 KAR 10:200**, Investment advisors' minimum liquid capitalization; books and records; bond.

(2) The Department of Financial Institutions intends to promulgate administrative regulation(s) governing the subject matter listed above.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation(s) has been scheduled for January 22, 1998 at 10 a.m. at the Department of Financial Institutions, 477 Versailles Road, Frankfort, Kentucky.

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

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

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

(b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 10 days prior to January 22, 1998, 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 Financial Institutions, 477 Versailles Road, Frankfort, Kentucky 40601, Attn: Colleen Keefe.

(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(s) 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 Financial Institutions at the address listed above.

(7) Information relating to the proposed administrative regulation(s):

(a) The statutory authority for the promulgation of the proposed administrative regulation(s) is KRS 292.500(3).

(b) The department will amend 808 KAR 10:020 and 808 KAR 10:200 to adopt federal requirements with respect to recordkeeping by broker dealers and investment advisers.

(c) The necessity and function of the proposed administrative regulation(s) is as follows: To reflect model act language and promote uniformity among the states per NSMIA mandate.

(d) The benefits expected from the proposed administrative regulation(s) are: They will promote uniformity among the states and will ease the burden on broker dealers and investment advisers of complying with differing state and federal requirements.

(e) The proposed administrative regulation(s) will be implemented as follows: They will be implemented by publishing the regulation(s) in securities law publications available to the general public. They will be applied to all matters before the Department of Financial Institutions immediately after becoming effective.

October 23, 1997

Public Protection and Regulation Cabinet

Department of Financial Institutions

(1) Regulation(s) to be amended: **808 KAR 10:030**, Conduct of broker-dealers and employees; **808 KAR 10:040**, Dishonest or unethical practice defined.

(2) The Department of Financial Institutions intends to promulgate administrative regulation(s) governing the subject matter listed above.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation(s) has been scheduled for January 22, 1998 at 10 a.m. at the Department of Financial Institutions, 477 Versailles Road, Frankfort, Kentucky.

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

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

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

(b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 10 days prior to January 22, 1998, 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 Financial Institutions, 477 Versailles Road, Frankfort, Kentucky 40601, Attn: Colleen Keefe.

(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(s) 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 Financial Institutions at the address listed above.

(7) Information relating to the proposed administrative regulation(s):

(a) The statutory authority for the promulgation of the proposed administrative regulation(s) is KRS 292.500(3).

(b) The department will amend 808 KAR 10:030 and 808 KAR 10:040 to include references to investment advisors and investment

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advisor representatives.

(c) The necessity and function of the proposed administrative regulation(s) is as follows: To comport with the National Markets Improvement Act (NSMIA).

(d) The benefits expected from the proposed administrative regulation(s) are: They will assist the department to meet the requirements imposed on the states by NSMIA.

(e) The proposed administrative regulation(s) will be implemented as follows: They will be implemented by publishing the regulation(s) in securities law publications available to the general public. They will be applied to all matters before the Department of Financial Institutions immediately after becoming effective.

October 23, 1997

Public Protection and Regulation Cabinet

Department of Financial Institutions

(1) Regulation(s) to be amended: **808 KAR 10:080**, Guidelines for issuers.

(2) The Department of Financial Institutions intends to promulgate administrative regulation(s) governing the subject matter listed above.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation(s) has been scheduled for January 22, 1998 at 10 a.m. at the Department of Financial Institutions, 477 Versailles Road, Frankfort, Kentucky.

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

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

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

(b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 10 days prior to January 22, 1998, 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 Financial Institutions, 477 Versailles Road, Frankfort, Kentucky 40601, Attn: Colleen Keefe.

(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(s) 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 Financial Institutions at the address listed above.

(7) Information relating to the proposed administrative regulation(s):

(a) The statutory authority for the promulgation of the proposed administrative regulation(s) is KRS 292.500(3).

(b) The proposed administrative regulation(s) will amend 808 KAR 10:080 to increase the allowable dilution percentage with respect to sale of by a promotional company.

(c) The necessity and function of the proposed administrative regulation(s) is as follows: To ease the registration process for small business offerings.

(d) The benefits expected from the proposed administrative regulation(s) are: They will ease the registration process for small business offerings.

(e) The proposed administrative regulation(s) will be implemented as follows: They will be implemented by publishing the regulation(s) in securities law publications available to the general public. They will be applied to all matters before the Department of Financial Institutions immediately after becoming effective.

October 23, 1997

Public Protection and Regulation Cabinet

Department of Financial Institutions

(1) Regulation(s) to be amended: **808 KAR 10:090**, Issuer's reports; **808 KAR 10:110**, Records of investment advisers.

(2) The Department of Financial Institutions intends to promulgate administrative regulation(s) governing the subject matter listed above.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation(s) has been scheduled for January 22, 1998 at 10 a.m. at the Department of Financial Institutions, 477 Versailles Road, Frankfort, Kentucky.

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

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

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

(b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 10 days prior to January 22, 1998, 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 Financial Institutions, 477 Versailles Road, Frankfort, Kentucky 40601, Attn: Colleen Keefe.

(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(s) 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 Financial Institutions at the address listed above.

(7) Information relating to the proposed administrative regulation(s):

(a) The statutory authority for the promulgation of the proposed administrative regulation(s) is KRS 292.500(3).

(b) The department will amend 808 KAR 10:090 and 808 KAR 10:110 to delete filing requirement for investment companies and to address recordkeeping requirements of investment advisers who maintain their principal place of business in a state other than Kentucky.

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(c) The necessity and function of the proposed administrative regulation(s) is as follows: To address changes in the regulation of investment companies and investment advisers affected by NSMIA.

(d) The benefits expected from the proposed administrative regulation(s) are: They will assist the department to comply with the requirements of NSMIA.

(e) The proposed administrative regulation(s) will be implemented as follows: They will be implemented by publishing the regulation(s) in securities law publications available to the general public. They will be applied to all matters before the Department of Financial Institutions immediately after becoming effective.

October 23, 1997

Public Protection and Regulation Cabinet  
Department of Financial Institutions

(1) New regulation(s): **808 KAR 10:141**, Repeal of 808 KAR 10:140, 808 KAR 10:190, 808 KAR 10:220, 808 KAR 10:230, and 808 KAR 10:270.

(2) The Department of Financial Institutions intends to promulgate administrative regulation(s) governing the subject matter listed above.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation(s) has been scheduled for January 22, 1998 at 10 a.m. at the Department of Financial Institutions, 477 Versailles Road, Frankfort, Kentucky.

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

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

(b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 10 days prior to January 22, 1998, 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 Financial Institutions, 477 Versailles Road, Frankfort, Kentucky 40601, Attn: Colleen Keefe.

(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(s) 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 Financial Institutions at the address listed above.

(7) Information relating to the proposed administrative regulation(s):

(a) The statutory authority for the promulgation of the proposed administrative regulation(s) is KRS 292.500(3).

(b) The proposed administrative regulation(s) will repeal 808 KAR 10:140, 808 KAR 10:190, 808 KAR 10:220, and 808 KAR 10:230. They will eliminate duplication in the regulations as all the requirements of 10:140 are addressed in other regulations, the exemptions addressed in 10:190 are now self-executing and NSMIA has precluded state regulation of NASDAQ and CBOE listed securities and securities of open-end investment companies.

(c) The necessity and function of the proposed administrative regulation(s) is as follows: To eliminate duplication in the department's regulations and to eliminate regulatory provisions rendered unnecessary or improper in light of NSMIA.

(d) The benefits expected from the proposed administrative regulation(s) are: They will assist the department to meet the requirements imposed on the states by NSMIA.

(e) The proposed administrative regulation(s) will be implemented as follows: They will be implemented by publishing the regulation(s) in securities law publications available to the general public. They will be applied to all matters before the Department of Financial Institutions immediately after becoming effective.

October 23, 1997

Public Protection and Regulation Cabinet  
Department of Financial Institutions

(1) Regulation(s) to be Amended: **808 KAR 10:150**, Registration exemptions.

(2) The Department of Financial Institutions intends to promulgate administrative regulation(s) governing the subject matter listed above.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation(s) has been scheduled for January 22, 1998 at 10 a.m. at the Department of Financial Institutions, 477 Versailles Road, Frankfort, Kentucky.

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

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

(b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 10 days prior to January 22, 1998, 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 Financial Institutions, 477 Versailles Road, Frankfort, Kentucky 40601, Attn: Colleen Keefe.

(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(s) 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 Financial Institutions at the address listed above.

(7) Information relating to the proposed administrative regulation(s):

(a) The statutory authority for the promulgation of the proposed administrative regulation(s) is KRS 292.500(3).

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(b) The proposed administrative regulation(s) will amend 808 KAR 10:150 to delete prior exemption for small business organizations which has been incorporated into the statute and to add an exemption for certain transactions involving limited liability companies and partnerships.

(c) The necessity and function of the proposed administrative regulation(s) is as follows: To reflect changes in the related statute.

(d) The benefits expected from the proposed administrative regulation(s) are: It will expressly exempt the applicable transactions from registration.

(e) The proposed administrative regulation(s) will be implemented as follows: They will be implemented by publishing the regulation(s) in securities law publications available to the general public. They will be applied to all matters before the Department of Financial Institutions immediately after becoming effective.

October 23, 1997

Public Protection and Regulation Cabinet

Department of Financial Institutions

(1) Regulation(s) to be amended: **808 KAR 10:170**, Exemption claims from securities registration; form.

(2) The Department of Financial Institutions intends to promulgate administrative regulation(s) governing the subject matter listed above.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation(s) has been scheduled for January 22, 1998 at 10 a.m. at the Department of Financial Institutions, 477 Versailles Road, Frankfort, Kentucky.

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

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

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

(b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 10 days prior to January 22, 1998, 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 Financial Institutions, 477 Versailles Road, Frankfort, Kentucky 40601, Attn: Colleen Keefe.

(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(s) 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 Financial Institutions at the address listed above.

(7) Information relating to the proposed administrative regulation(s):

(a) The statutory authority for the promulgation of the proposed administrative regulation(s) is KRS 292.500(3).

(b) The department will amend 808 KAR 10:170 to modernize the department's fee structure.

(c) The necessity and function of the proposed administrative regulation is as follows: To modernize fee structure to reflect inflation and to eliminate fees for unused exemption. Fees have not been changed in over fifteen years.

(d) The benefits expected from the proposed administrative regulation are: Fees will more accurately reflect costs to department of processing exemption claims.

(e) The proposed administrative regulation(s) will be implemented as follows: They will be implemented by publishing the regulation(s) in securities law publications available to the general public. They will be applied to all matters before the Department of Financial Institutions immediately after becoming effective.

October 23, 1997

Public Protection and Regulation Cabinet

Department of Financial Institutions

(1) Regulation(s) to be amended: **808 KAR 10:210**, Registration exemptions – Federal Regulation D.

(2) The Department of Financial Institutions intends to promulgate administrative regulation(s) governing the subject matter listed above.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation(s) has been scheduled for January 22, 1998 at 10 a.m. at the Department of Financial Institutions, 477 Versailles Road, Frankfort, Kentucky.

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

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

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

(b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 10 days prior to January 22, 1998, 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 Financial Institutions, 477 Versailles Road, Frankfort, Kentucky 40601, Attn: Colleen Keefe.

(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(s) 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 Financial Institutions at the address listed above.

(7) Information relating to the proposed administrative regulation(s):

(a) The statutory authority for the promulgation of the proposed administrative regulation(s) is KRS 292.500(3).

(b) The department will amend 808 KAR 10:210 to comport with NSMIA and to incorporate concept of "accredited investor" as understood under federal law.

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(c) The necessity and function of the proposed administrative regulation is as follows: To comply with requirements of NSMIA and to facilitate capital formation by small businesses.

(d) The benefits expected from the proposed administrative regulation are: Will encourage capital formation by small businesses.

(e) The proposed administrative regulation(s) will be implemented as follows: They will be implemented by publishing the regulation(s) in securities law publications available to the general public. They will be applied to all matters before the Department of Financial Institutions immediately after becoming effective.

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Public Protection and Regulation Cabinet

Department of Financial Institutions

(1) Regulation(s) to be amended: **808 KAR 10:225**, Administrative hearing procedures.

(2) The Department of Financial Institutions intends to promulgate administrative regulation(s) governing the subject matter listed above.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation(s) has been scheduled for January 22, 1998 at 10 a.m. at the Department of Financial Institutions, 477 Versailles Road, Frankfort, Kentucky.

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

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

(b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 10 days prior to January 22, 1998, 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 Financial Institutions, 477 Versailles Road, Frankfort, Kentucky 40601, Attn: Colleen Keefe.

(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(s) 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 Financial Institutions at the address listed above.

(7) Information relating to the proposed administrative regulation(s):

(a) The statutory authority for the promulgation of the proposed administrative regulation(s) is KRS 292.500(3).

(b) The proposed administrative regulation(s) will amend 808 KAR 10:225 to add references to investment adviser representatives.

(c) The necessity and function of the proposed administrative regulation(s) is as follows: NSMIA charges the states with the regulation of investment advisers with assets under management of less than \$25 million and their representatives. Investment adviser representatives were not previously regulated by the department.

(d) The benefits expected from the proposed administrative regulation(s) are: The procedures set forth in the regulation will expressly apply to proceedings involving investment adviser representative.

(e) The proposed administrative regulation(s) will be implemented as follows: They will be implemented by publishing the regulation(s) in securities law publications available to the general public. They will be applied to all matters before the Department of Financial Institutions immediately after becoming effective.

October 23, 1997

Public Protection and Regulation Cabinet

Department of Financial Institutions

(1) Regulation(s) to be amended: **808 KAR 10:260**, Registration exemptions – Federal Regulation D.

(2) The Department of Financial Institutions intends to promulgate administrative regulation(s) governing the subject matter listed above.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation(s) has been scheduled for January 22, 1998 at 10 a.m. at the Department of Financial Institutions, 477 Versailles Road, Frankfort, Kentucky.

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

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

(b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 10 days prior to January 22, 1998, 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 Financial Institutions, 477 Versailles Road, Frankfort, Kentucky 40601, Attn: Colleen Keefe.

(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(s) 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 Financial Institutions at the address listed above.

(7) Information relating to the proposed administrative regulation(s):

(a) The statutory authority for the promulgation of the proposed administrative regulation(s) is KRS 292.500(3).

(b) The proposed administrative regulation(s) will amend 808 KAR 10:260 to expressly state the examinations required of broker dealers and agents.

(c) The necessity and function of the proposed administrative regulation(s) is as follows: To make examination requirements clear.

(d) The benefits expected from the proposed administrative regulation(s) are: Will clarify examination requirements for broker dealers



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and agents.

(e) The proposed administrative regulation(s) will be implemented as follows: They will be implemented by publishing the regulation(s) in securities law publications available to the general public. They will be applied to all matters before the Department of Financial Institutions immediately after becoming effective.

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Public Protection and Regulation Cabinet

Department of Financial Institutions

- (1) Regulation(s) to be amended: **808 KAR 10:300**, Registration exemptions – pension plans.
- (2) The Department of Financial Institutions intends to promulgate administrative regulation(s) governing the subject matter listed above.
- (3) A public hearing to receive oral and written comments on the proposed administrative regulation(s) has been scheduled for January 22, 1998 at 10 a.m. at the Department of Financial Institutions, 477 Versailles Road, Frankfort, Kentucky.
- (4)(a) The public hearing will be held if:
  1. It is requested, in writing, by at least 5 persons, or an administrative body, or an association having at least 5 members; and
  2. A minimum of 5 persons, or the administrative body or association, agree, in writing, to be present at the hearing.
- (b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 10 days prior to January 22, 1998, 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 Financial Institutions, 477 Versailles Road, Frankfort, Kentucky 40601, Attn: Colleen Keefe.
- (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(s) 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 Financial Institutions at the address listed above.
- (7) Information relating to the proposed administrative regulation(s):
  - (a) The statutory authority for the promulgation of the proposed administrative regulation(s) is KRS 292.500(3).
  - (b) The proposed administrative regulation(s) will amend 808 KAR 10:300 to expressly exempt the offer or sale of securities within exempt employee benefit plans from notice filing requirements.
  - (c) The necessity and function of the proposed administrative regulation(s) is as follows: Notice filing in the specified transactions is not necessary or appropriate in the public interest and should be exempt.
  - (d) The benefits expected from the proposed administrative regulation(s) are: The department frequently receives questions regarding this exemption and the amendment will clarify the exemption status.
  - (e) The proposed administrative regulation(s) will be implemented as follows: They will be implemented by publishing the regulation(s) in securities law publications available to the general public. They will be applied to all matters before the Department of Financial Institutions immediately after becoming effective.

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Public Protection and Regulation Cabinet

Department of Financial Institutions

- (1) New regulation(s): **808 KAR 10:310**, Broker-dealer agent de minimis rules.
- (2) The Department of Financial Institutions intends to promulgate administrative regulation(s) governing the subject matter listed above.
- (3) A public hearing to receive oral and written comments on the proposed administrative regulation(s) has been scheduled for January 22, 1998 at 10 a.m. at the Department of Financial Institutions, 477 Versailles Road, Frankfort, Kentucky.
- (4)(a) The public hearing will be held if:
  1. It is requested, in writing, by at least 5 persons, or an administrative body, or an association having at least 5 members; and
  2. A minimum of 5 persons, or the administrative body or association, agree, in writing, to be present at the hearing.
- (b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 10 days prior to January 22, 1998, 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 Financial Institutions, 477 Versailles Road, Frankfort, Kentucky 40601, Attn: Colleen Keefe.
- (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(s) 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 Financial Institutions at the address listed above.
- (7) Information relating to the proposed administrative regulation(s):
  - (a) The statutory authority for the promulgation of the proposed administrative regulation(s) is KRS 292.500(3).
  - (b) The proposed administrative regulation(s) will not amend an existing administrative regulation. It will describe when a broker-dealer agent is exempt from registration.
  - (c) The necessity and function of the proposed administrative regulation(s) is as follows: Under NSMIA, the states may not require registration of certain broker-dealer agents when they engage in certain transactions. This regulation describes those transactions and complies with NSMIA.
  - (d) The benefits expected from the proposed administrative regulation(s) are: Registration requirements will be clearly expressed.

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(e) The proposed administrative regulation(s) will be implemented as follows: They will be implemented by publishing the regulation(s) in securities law publications available to the general public. They will be applied to all matters before the Department of Financial Institutions immediately after becoming effective.

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Public Protection and Regulation Cabinet

Department of Financial Institutions

- (1) New regulation(s): **808 KAR 10:320**, Broker-dealer books and records requirements.
- (2) The Department of Financial Institutions intends to promulgate administrative regulation(s) governing the subject matter listed above.
- (3) A public hearing to receive oral and written comments on the proposed administrative regulation(s) has been scheduled for January 22, 1998 at 10 a.m. at the Department of Financial Institutions, 477 Versailles Road, Frankfort, Kentucky.
- (4)(a) The public hearing will be held if:
  1. It is requested, in writing, by at least 5 persons, or an administrative body, or an association having at least 5 members; and
  2. A minimum of 5 persons, or the administrative body or association, agree, in writing, to be present at the hearing.
- (b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 10 days prior to January 22, 1998, 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 Financial Institutions, 477 Versailles Road, Frankfort, Kentucky 40601, Attn: Colleen Keefe.
- (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(s) 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 Financial Institutions at the address listed above.
- (7) Information relating to the proposed administrative regulation(s):
  - (a) The statutory authority for the promulgation of the proposed administrative regulation(s) is KRS 292.500(3).
  - (b) The proposed administrative regulation(s) will not amend an existing administrative regulation. It will describe the recordkeeping requirements of broker dealers.
  - (c) The necessity and function of the proposed administrative regulation(s) is as follows: The regulation applies the same requirements on broker dealers as imposed under federal law.
  - (d) The benefits expected from the proposed administrative regulation(s) are: Having express recordkeeping requirements will assist the department to implement its new routine examination program and will clarify the requirements for the broker dealers.
  - (e) The proposed administrative regulation(s) will be implemented as follows: They will be implemented by publishing the regulation(s) in securities law publications available to the general public. They will be applied to all matters before the Department of Financial Institutions immediately after becoming effective.

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Public Protection and Regulation Cabinet

Department of Financial Institutions

- (1) New regulation(s): **808 KAR 10:330**, Notice filing requirements for covered advisers.
- (2) The Department of Financial Institutions intends to promulgate administrative regulation(s) governing the subject matter listed above.
- (3) A public hearing to receive oral and written comments on the proposed administrative regulation(s) has been scheduled for January 22, 1998 at 10 a.m. at the Department of Financial Institutions, 477 Versailles Road, Frankfort, Kentucky.
- (4)(a) The public hearing will be held if:
  1. It is requested, in writing, by at least 5 persons, or an administrative body, or an association having at least 5 members; and
  2. A minimum of 5 persons, or the administrative body or association, agree, in writing, to be present at the hearing.
- (b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 10 days prior to January 22, 1998, 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 Financial Institutions, 477 Versailles Road, Frankfort, Kentucky 40601, Attn: Colleen Keefe.
- (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(s) 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 Financial Institutions at the address listed above.
- (7) Information relating to the proposed administrative regulation(s):
  - (a) The statutory authority for the promulgation of the proposed administrative regulation(s) is KRS 292.500(3).
  - (b) The proposed administrative regulation(s) will not amend an existing administrative regulation. It will describe the exemption for investment advisers that are covered advisers under NSMIA.
  - (c) The necessity and function of the proposed administrative regulation(s) is as follows: To comply with NSMIA and to provide for notice filing by covered advisers.
  - (d) The benefits expected from the proposed administrative regulation(s) are: Will clarify the registration requirements for federally covered advisers.
  - (e) The proposed administrative regulation(s) will be implemented as follows: They will be implemented by publishing the regulation(s)

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in securities law publications available to the general public. They will be applied to all matters before the Department of Financial Institutions immediately after becoming effective.

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Public Protection and Regulation Cabinet

Department of Financial Institutions

- (1) New regulation(s): **808 KAR 10:340**, Registration exemption for certain limited offerings made exclusively to accredited investors.
- (2) The Department of Financial Institutions intends to promulgate administrative regulation(s) governing the subject matter listed above.
- (3) A public hearing to receive oral and written comments on the proposed administrative regulation(s) has been scheduled for January 22, 1998 at 10 a.m. at the Department of Financial Institutions, 477 Versailles Road, Frankfort, Kentucky.
- (4)(a) The public hearing will be held if:
  1. It is requested, in writing, by at least 5 persons, or an administrative body, or an association having at least 5 members; and
  2. A minimum of 5 persons, or the administrative body or association, agree, in writing, to be present at the hearing.
- (b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 10 days prior to January 22, 1998, 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 Financial Institutions, 477 Versailles Road, Frankfort, Kentucky 40601, Attn: Colleen Keefe.
- (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(s) 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 Financial Institutions at the address listed above.
- (7) Information relating to the proposed administrative regulation(s):
  - (a) The statutory authority for the promulgation of the proposed administrative regulation(s) is KRS 292.500(3).
  - (b) The proposed administrative regulation(s) will not amend an existing administrative regulation. Exempts from registration certain limited offerings made only to accredited investors.
  - (c) The necessity and function of the proposed administrative regulation(s) is as follows: This regulation clarifies the standard for "accredited investors" and permits contact with accredited investors through Internet websites.
  - (d) The benefits expected from the proposed administrative regulation(s) are: Will facilitate capital formation by start up companies.
  - (e) The proposed administrative regulation(s) will be implemented as follows: They will be implemented by publishing the regulation(s) in securities law publications available to the general public. They will be applied to all matters before the Department of Financial Institutions immediately after becoming effective.

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Public Protection and Regulation Cabinet

Department of Financial Institutions

- (1) New Regulation(s): **808 KAR 10:350**, Internet advertising.
- (2) The Department of Financial Institutions intends to promulgate administrative regulation(s) governing the subject matter listed above.
- (3) A public hearing to receive oral and written comments on the proposed administrative regulation(s) has been scheduled for January 22, 1998 at 10 a.m. at the Department of Financial Institutions, 477 Versailles Road, Frankfort, Kentucky.
- (4)(a) The public hearing will be held if:
  1. It is requested, in writing, by at least 5 persons, or an administrative body, or an association having at least 5 members; and
  2. A minimum of 5 persons, or the administrative body or association, agree, in writing, to be present at the hearing.
- (b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 10 days prior to January 22, 1998, 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 Financial Institutions, 477 Versailles Road, Frankfort, Kentucky 40601, Attn: Colleen Keefe.
- (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(s) 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 Financial Institutions at the address listed above.
- (7) Information relating to the proposed administrative regulation(s):
  - (a) The statutory authority for the promulgation of the proposed administrative regulation(s) is KRS 292.500(3).
  - (b) The proposed administrative regulation(s) will not amend an existing administrative regulation. The regulation will address Internet use by securities professionals in certain circumstances.
  - (c) The necessity and function of the proposed administrative regulation(s) is as follows: This regulation adopts model language and is intended to allow dissemination of information on the Internet without constituting a violation of Kentucky law.
  - (d) The benefits expected from the proposed administrative regulation(s) are: Will allow the use of Internet technology but also subject the information conveyed over the Internet to antifraud regulation.
  - (e) The proposed administrative regulation(s) will be implemented as follows: They will be implemented by publishing the regulation(s) in securities law publications available to the general public. They will be applied to all matters before the Department of Financial Institutions immediately after becoming effective.

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Public Protection and Regulation Cabinet

Department of Financial Institutions

- (1) New Regulation(s): **808 KAR 10:360**, Safe harbor for limited liability company membership interests.
- (2) The Department of Financial Institutions intends to promulgate administrative regulation(s) governing the subject matter listed above.
- (3) A public hearing to receive oral and written comments on the proposed administrative regulation(s) has been scheduled for January 22, 1998 at 10 a.m. at the Department of Financial Institutions, 477 Versailles Road, Frankfort, Kentucky.
- (4)(a) The public hearing will be held if:
1. It is requested, in writing, by at least 5 persons, or an administrative body, or an association having at least 5 members; and
  2. A minimum of 5 persons, or the administrative body or association, agree, in writing, to be present at the hearing.
- (b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 10 days prior to January 22, 1998, 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 Financial Institutions, 477 Versailles Road, Frankfort, Kentucky 40601, Attn: Colleen Keefe.
- (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(s) 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 Financial Institutions at the address listed above.
- (7) Information relating to the proposed administrative regulation(s):
- (a) The statutory authority for the promulgation of the proposed administrative regulation(s) is KRS 292.500(3).
- (b) The proposed administrative regulation(s) will not amend an existing administrative regulation. The regulation will incorporate a no action position of the department with respect to membership interests in limited liability companies.
- (c) The necessity and function of the proposed administrative regulation(s) is as follows: To clearly state the department's position with respect to membership interests in limited liability companies.
- (d) The benefits expected from the proposed administrative regulation(s) are: Will eliminate the need to request a no action position from the department with respect to sale of membership interests in limited liability companies.
- (e) The proposed administrative regulation(s) will be implemented as follows: They will be implemented by publishing the regulation(s) in securities law publications available to the general public. They will be applied to all matters before the Department of Financial Institutions immediately after becoming effective.

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Public Protection and Regulation Cabinet

Department of Financial Institutions

- (1) New Regulation(s): **808 KAR 10:370**, Securities offered on the Internet but not sold in Kentucky.
- (2) The Department of Financial Institutions intends to promulgate administrative regulation(s) governing the subject matter listed above.
- (3) A public hearing to receive oral and written comments on the proposed administrative regulation(s) has been scheduled for January 22, 1998 at 10 a.m. at the Department of Financial Institutions, 477 Versailles Road, Frankfort, Kentucky.
- (4)(a) The public hearing will be held if:
1. It is requested, in writing, by at least 5 persons, or an administrative body, or an association having at least 5 members; and
  2. A minimum of 5 persons, or the administrative body or association, agree, in writing, to be present at the hearing.
- (b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 10 days prior to January 22, 1998, 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 Financial Institutions, 477 Versailles Road, Frankfort, Kentucky 40601, Attn: Colleen Keefe.
- (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(s) 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 Financial Institutions at the address listed above.
- (7) Information relating to the proposed administrative regulation(s):
- (a) The statutory authority for the promulgation of the proposed administrative regulation(s) is KRS 292.500(3).
- (b) The proposed administrative regulation(s) will not amend an existing administrative regulation. The regulation will exempt from registration securities offered on the Internet but not sold in Kentucky.
- (c) The necessity and function of the proposed administrative regulation(s) is as follows: To recognize that because of Internet technology, information about securities offerings may enter Kentucky through the Internet even though no intent to offer the security for sale in this state exists.
- (d) The benefits expected from the proposed administrative regulation(s) are: Will clarify when an Internet offering triggers the registration requirements.
- (e) The proposed administrative regulation(s) will be implemented as follows: They will be implemented by publishing the regulation(s) in securities law publications available to the general public. They will be applied to all matters before the Department of Financial Institutions immediately after becoming effective.

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Public Protection and Regulation Cabinet

Department of Financial Institutions

- (1) New Regulation(s): **808 KAR 10:380**, Solicitations of interest prior to the filing of a registration statement.
- (2) The Department of Financial Institutions intends to promulgate administrative regulation(s) governing the subject matter listed above.
- (3) A public hearing to receive oral and written comments on the proposed administrative regulation(s) has been scheduled for January 22, 1998 at 10 a.m. at the Department of Financial Institutions, 477 Versailles Road, Frankfort, Kentucky.
- (4)(a) The public hearing will be held if:
  1. It is requested, in writing, by at least 5 persons, or an administrative body, or an association having at least 5 members; and
  2. A minimum of 5 persons, or the administrative body or association, agree, in writing, to be present at the hearing.
- (b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 10 days prior to January 22, 1998, 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 Financial Institutions, 477 Versailles Road, Frankfort, Kentucky 40601, Attn: Colleen Keefe.
- (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(s) 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 Financial Institutions at the address listed above.
- (7) Information relating to the proposed administrative regulation(s):
  - (a) The statutory authority for the promulgation of the proposed administrative regulation(s) is KRS 292.500(3).
  - (b) The proposed administrative regulation(s) will not amend an existing administrative regulation. The regulation will allow issuers to "test the waters" for interest in a contemplated offering before filing for registration or an exemption from registration.
  - (c) The necessity and function of the proposed administrative regulation(s) is as follows: To allow issuers to "test the waters" without violating the registration requirements.
  - (d) The benefits expected from the proposed administrative regulation(s) are: Will allow issuers to "test the waters" without having to invest the time and expense of registration before knowing whether an offering will be profitable.
  - (e) The proposed administrative regulation(s) will be implemented as follows: They will be implemented by publishing the regulation(s) in securities law publications available to the general public. They will be applied to all matters before the Department of Financial Institutions immediately after becoming effective.

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Public Protection and Regulation Cabinet

Department of Financial Institutions

- (1) New Regulation(s): **808 KAR 10:390**, Confidentially disclosed documents.
- (2) The Department of Financial Institutions intends to promulgate administrative regulation(s) governing the subject matter listed above.
- (3) A public hearing to receive oral and written comments on the proposed administrative regulation(s) has been scheduled for January 22, 1998 at 10 a.m. at the Department of Financial Institutions, 477 Versailles Road, Frankfort, Kentucky.
- (4)(a) The public hearing will be held if:
  1. It is requested, in writing, by at least 5 persons, or an administrative body, or an association having at least 5 members; and
  2. A minimum of 5 persons, or the administrative body or association, agree, in writing, to be present at the hearing.
- (b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 10 days prior to January 22, 1998, 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 Financial Institutions, 477 Versailles Road, Frankfort, Kentucky 40601, Attn: Colleen Keefe.
- (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(s) 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 Financial Institutions at the address listed above.
- (7) Information relating to the proposed administrative regulation(s):
  - (a) The statutory authority for the promulgation of the proposed administrative regulation(s) is KRS 292.500(3).
  - (b) The proposed administrative regulation(s) will not amend an existing administrative regulation. The regulation will address circumstances when the department may disclose otherwise confidential information in the performance of its official functions.
  - (c) The necessity and function of the proposed administrative regulation(s) is as follows: To allow the department to disclose information that it believes will serve a legitimate government interest.
  - (d) The benefits expected from the proposed administrative regulation(s) are: Will assist the department to take part in joint enforcement actions with other regulatory or prosecutorial bodies.
  - (e) The proposed administrative regulation(s) will be implemented as follows: They will be implemented by publishing the regulation(s) in securities law publications available to the general public. They will be applied to all matters before the Department of Financial Institutions immediately after becoming effective.

## ADMINISTRATIVE REGISTER - 1476

### CABINET FOR HEALTH SERVICES Office of Inspector General

December 1, 1997  
Cabinet for Health Services  
Office of Inspector General

(1) **902 KAR 20:026** - Operations and services; skilled nursing facilities; **902 KAR 20:048** - Operation and services; nursing homes; **902 KAR 20:051** - Operation and services; intermediate care.

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

(3) A public hearing to receive oral and written comments on the proposed administrative regulations has been scheduled for January 30, 1998, at 9 a.m. in the Cabinet for Health Services Auditorium, Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky.

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

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

(b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 10 days prior to January 30, 1998, 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 General Counsel, 275 East Main Street, 4W-C, Frankfort, Kentucky 40621, Telephone: (502) 564-7905, Fax: (502) 564-7573.

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

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

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

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

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

(7) Information relating to the proposed administrative regulations:

(a) The statutory authority for the promulgation of all of the administrative regulations relating to health facilities and health services is KRS 216B.042 and 216B.105. The prescription of drugs and medicine by advanced registered nurse practitioners is pursuant to KRS 314.011(8) and 314.042(8). The prescription of drugs by therapeutically-certified optometrists is pursuant to KRS 320.210(2) and 320.240(14).

(b) The cabinet intends to amend 902 KAR 20:026 at Sections 3(10)(a), 4(3)(a), (5)(f), and (10)(a) to address the prescriptive authority of advanced registered nurse practitioners and therapeutically-certified optometrists. Section 3(7) will be amended to refer to the requirements of 902 KAR 2:050 regarding the transfer or discharge of residents. Section 4(5)(f)4 will be amended regarding the use of restraints or protective devices. The cabinet intends to amend 902 KAR 20:048 at Sections 3(11), 4(5)(f)1, (6), and (11)(a)4b to address the prescriptive authority of advanced registered nurse practitioners and therapeutically-certified optometrists. Section 3(8) will be amended to refer to the requirements of 900 KAR 2:050 regarding the transfer or discharge of residents. Section 4(5)(f)5 will be amended regarding the use of restraints or protective devices. Section 4(5)(f)4 will be amended to update the requirements regarding the destruction of controlled substances. The cabinet intends to amend 902 KAR 20:051 at Sections 3(11)(a), 4(4)(e)1, and (10)(c)4b to address the prescriptive authority of advanced registered nurse practitioners and therapeutically-certified optometrists. Section 3(8) will be amended to refer to the requirements of 900 KAR 2:050 regarding the transfer or discharge of residents. Section 4(1)(c) will be amended regarding the use of restraints or protective devices. Section 4(4)(e)5 will be amended to update the requirements regarding the destruction of controlled substances. Other amendments to these regulations will delete references to the Cabinet for Human Resources and will refer to the Cabinet for Health Services in accordance with Executive Order 96-862, and will comply with drafting requirements of KRS Chapter 13A.

(c) The necessity, function, and conformity of the proposed administrative regulation is as follows: To comply with the mandate of KRS 216B.042 and 216B.105 in the establishment of licensure requirements for the operation of intermediate care facilities.

(d) The benefits expected from these proposed amendments are that they will permit other categories of health professionals to perform tasks presently restricted to physicians and dentists by the existing regulations. Other amendments will update regulatory requirements regarding the use of restraints or protective devices, and requirements for the destruction of controlled substances.

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

December 4, 1997  
Cabinet for Health Services  
Office of Inspector General

(1) **902 KAR 20:058** - Operation and services; primary care center.

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

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for January 30, 1998, at 9 a.m. in the Cabinet for Health Services Auditorium, Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky.

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

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

(b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 10 days prior to January 30, 1998, the public hearing will be canceled.

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

## ADMINISTRATIVE REGISTER - 1477

(502) 564-7905, Fax: (502) 564-7573.

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

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

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

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

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

(7) Information relating to the proposed administrative regulation:

(a) The statutory authority for the promulgation of all administrative regulations relating to health facilities and health services is KRS 216B.042 and 216B.105.

(b) The cabinet intends to amend 902 KAR 20:058 to permit the physician to engage in outreach activities to provide medical services within the primary care center's service area. Other amendments will delete references to the Cabinet for Human Resources and will refer to the Cabinet for Health Services in accordance with Executive Order 96-862, and will comply with drafting requirements of KRS Chapter 13A.

(c) The necessity, function, and conformity of the proposed administrative regulation is as follows: To comply with the mandate of KRS 216B.042 and 216B.105 in the establishment of licensure requirements for the operation of primary care centers.

(d) The benefits expected from the proposed amendment is that it will permit the primary care center's physician to provide medical services on a temporary basis at locations such as health fairs or schools located within the primary care center's service area.

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

December 1, 1997

Cabinet for Health Services

Office of Inspector General

(1) **902 KAR 20:180** - Psychiatric hospitals; operation and services.

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

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for January 30, 1998, at 9 a.m. in the Cabinet for Health Services Auditorium, Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky.

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

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

(b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 10 days prior to January 30, 1998, the public hearing will be canceled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Mae B. Lewis, Cabinet Regulation Coordinator, Office of the Counsel, Cabinet for Health Services, 275 East Main Street, 4W-C, Frankfort, Kentucky 40621, Telephone: (502) 564-7905, Fax: (502) 564-7573.

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

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

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

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

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

(7) Information relating to the proposed administrative regulation:

(a) The statutory authority for the promulgation of all administrative regulations relating to health facilities and health services is KRS 216B.042 and 216B.105.

(b) The cabinet intends to amend 902 KAR 20:180 to delete Section 5(3)(c)8, which prohibits use of a locking restraint. A new Section 5(3)(d) will set forth requirements for the use of locking restraints.

(c) The necessity, function, and conformity of the proposed administrative regulation is as follows: To comply with the mandate of KRS 216B.042 and 216B.105 in the establishment of licensure requirements for the operation of psychiatric hospitals.

(d) The benefits expected are that the amendments will permit the use of locking restraints under specified circumstances and in accordance with specified requirements.

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

December 1, 1997

Cabinet for Health Services

Office of Inspector General

(1) **902 KAR 20:320** - Psychiatric residential treatment facility operation and services; **902 KAR 20:330** - Psychiatric residential treatment facilities.

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

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(3) A public hearing to receive oral and written comments on the proposed administrative regulations has been scheduled for January 30, 1998, at 9 a.m. in the Cabinet for Health Services Auditorium, Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky.

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

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

(b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 10 days prior to January 30, 1998, 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 General Counsel, 275 East Main Street, 4W-C, Frankfort, Kentucky 40621, Telephone: (502) 564-7905, Fax: (502) 564-7573.

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

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

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

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

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

(7) Information relating to the proposed administrative regulations:

(a) The statutory authority for the promulgation of all administrative regulations relating to health facilities and health services is KRS 216B.042 and 216B.105.

(b) The cabinet intends to amend all staffing requirements of 902 KAR 20:320, including qualifications and job responsibilities of direct care staff, mental health associates, mental health professionals, clinical director and program director. The Section 4(5) requirement for a written description of the governing body's responsibilities, and the Section 6(1)(d) requirement of the governing body's written description of the PRTF programs, will be amended. Weekly visits by the psychiatrist, the location where mental health services are provided, physical examinations, treatment planning, quality assurance plans, and admission criteria will be the subject of amendments. The requirement for a written agreement for educational services will be amended. Other amendments will address scope of a living unit, colocation of PRTFs, sharing of direct care staff between a PRTF and another licensed facility, and clinical directors of more than one PRTF. The cabinet intends to amend 902 KAR 20:330 to be consistent with 902 KAR 20:320 requirements. It will clarify that a living unit must be located within a single building. Other amendments will address compliance with the principles of the Americans with Disabilities Act of 1990, and will amend the Section 14(3) requirement for antiscald thermostatic mixing valves to permit use of other temperature control devices. Other amendments to these regulations will delete references to the Cabinet for Human Resources and will refer to the Cabinet for Health Services in accordance with Executive Order 96-862, and will comply with drafting requirements of KRS Chapter 13A.

(c) The necessity, function, and conformity of the proposed administrative regulations is as follows: To comply with the mandate of KRS 216B.042 and 216B.105 in the establishment of licensure requirements for the physical plant and operation of psychiatric residential treatment facilities.

(d) The benefits expected are that the amendments should make it easier for psychiatric residential treatment services to be provided in a cost effective manner. This should increase the accessibility of these services to the adolescent population of the Commonwealth.

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

### CABINET FOR HEALTH SERVICES Department for Medicaid Services

December 15, 1997

Cabinet for Health Services

Department for Medicaid Services

(1) **907 KAR 1:470**, Durable medical equipment.

(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 January 30, 1998, 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 January 30, 1998, 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.



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(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 durable medical equipment are KRS 194.050 and EO 96-862.

(b) The administrative regulation that the Department for Medicaid Services intends to promulgate will amend 907 KAR 1:470, to revise and clarify conditions of participation; covered services; revise, update and implement the durable medical equipment manual; to make drafting and formatting changes in order to comply with KRS Chapter 13A, and make minor clarifications to current policy.

(c) The necessity, function and conformity of the proposed administrative regulation is as follows: This administrative regulation sets forth the provision relating to the delivery of durable medical equipment, orthotics, prosthetics and supplies for which payment shall be made by the Medicaid Program on behalf of both the categorically needy and medically needy.

(d) The benefits expected from administrative regulation are: Revise, clarify and update policy for coverage of durable medical equipment.

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

December 15, 1997

Cabinet for Health Services

Department for Medicaid Services

(1) **907 KAR 1:472**, Payments for durable medical equipment.

(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 January 30, 1998, 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 January 30, 1998, 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 payments for durable medical equipment are KRS 194.050 and EO 96-862

(b) The administrative regulation that the Department for Medicaid Services intends to promulgate will amend 907 KAR 1:472, to revise and clarify payment methodology, to make drafting and formatting changes in order to comply with KRS Chapter 13A, and make minor clarifications to current policy.

(c) The necessity, function and conformity of the proposed administrative regulation is as follows: This administrative regulation sets forth the method for determining amounts payable by the Department for Medicaid Services for durable medical equipment.

(d) The benefits expected from administrative regulation are: revise and clarify policy related to payment.

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

December 15, 1997

Cabinet for Health Services

Department for Medicaid Services

(1) **907 KAR 1:475**, Repeal of 907 KAR 1:474, Incorporation by reference of the Durable Medical Equipment Manual.

(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 January 30, 1998, at 9 a.m., in the Department for Health Services Auditorium, Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky, 40621.

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

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

(b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 10 days prior to January 30, 1998, 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 incorporation by reference of the durable medical equipment manual are KRS 194.050 and EO 96-862.

(b) The administrative regulation that the Department for Medicaid Services intends to promulgate will repeal 907 KAR 1:474, incorporation by reference of the durable medical equipment manual.

(c) The necessity, function and conformity of the proposed administrative regulation is as follows: This administrative regulation acts to repeal 907 KAR 1:474.

(d) The benefits expected from administrative regulation are: to eliminate any conflict between obsolete and current material.

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

December 15, 1997

Cabinet for Health Services

Department for Medicaid Services

(1) **907 KAR 1:595**, Model waiver II services.

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

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for January 30, 1998 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 January 30, 1998, 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 Model Waiver II Services are KRS 194.050 and EO 96-862.

(b) The administrative regulation that the Department for Medicaid Services intends to promulgate will enact 907 KAR 1:595, which combines ventilator services for adult and children recipients into one ventilator program.

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

(d) The benefits expected from administrative regulation are: The recipients will be ventilator treated in the home as opposed to a nursing facility.

(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  
201 KAR 20:370E

This emergency administrative regulation deals with the ability of applicants with certain criminal convictions to become licensed as nurses. The amendment removes misdemeanors as automatic disqualifications from licensure. The administrative regulation is scheduled to take effect on January 1, 1998. An ordinary administrative regulation would not become effective until after that date. Thus, an emergency administrative regulation is needed so that applicants with misdemeanor convictions will not be automatically disqualified from licensure. This emergency administrative regulation shall be replaced by an ordinary administrative regulation. The Notice of Intent for 201 KAR 20:370 was filed with the Regulations Compiler on December 9, 1997.

PAUL E. PATTON, Governor  
MARCIA STANHOPE, President

GENERAL GOVERNMENT CABINET  
Kentucky Board of Nursing

201 KAR 20:370E. Applications for licensure and registration.

RELATES TO: KRS 314.041, 314.051, 314.071

STATUTORY AUTHORITY: KRS 314.131(1)

EFFECTIVE: December 9, 1997

NECESSITY, FUNCTION, AND CONFORMITY: KRS 314.041, 314.051, and 314.071 require the board to review applications for licensure and licensees for conformity with KRS Chapter 314. KRS 314.091 requires the board to deny limit, revoke, probate, suspend, or take other action against an applicant or licensee who is guilty of the offenses or conduct specified in KRS 314.091. This administrative regulation establishes requirements and procedures for licensure and registration.

Section 1. To be eligible for licensure by examination, endorsement, renewal, reinstatement, or change of status, or for advanced registered nurse practitioner registration, renewal or reinstatement an applicant shall:

- (1) Submit completed application to board office on original form supplied by the board;
- (2) Submit current application fee, as applicable;
- (3) Submit official copy of court records of any misdemeanor and/or felony conviction with a letter of explanation;
- (4) Submit certified copies of any disciplinary action taken in other jurisdictions with a letter of explanation or report any disciplinary action pending on nurse licensure applications or license in other jurisdictions;
- (5) Have no disciplinary action pending by the board or an agreed order or decision presently in effect for violation of KRS Chapter 314;
- (6) Have paid all monies due to the board;
- (7) Submit copy of an official name change document (court order, marriage certificate, divorce decree), if applicable;
- (8) Submit additional information as requested by the board; and
- (9) Meet additional requirements for:
  - (a) Licensure by examination established by 201 KAR 20:070;
  - (b) Licensure by endorsement established by 201 KAR 20:110;
  - (c) Licensure by reinstatement established by 201 KAR 20:225;
  - (d) Licensure by renewal established by 201 KAR 20:230;

- (e) Inactive licensure status established by 201 KAR 20:095; or
- (f) Advanced registered nurse practitioner registration, renewal or reinstatement established by 201 KAR 20:056.

(10) If not a citizen of the United States, submit proof of legal permanent or temporary residency under the laws and regulations of the United States.

Section 2. A completed application form and all information needed to determine that an applicant meets requirements for licensure or registration shall be postmarked or received by the board no later than the last day for renewal of license or registration.

Section 3. Except as provided in 201 KAR 20:070, Section 1(12), an application which is not completed within one (1) year from the date the application form is filed with the board office shall lapse and the fee shall be forfeited.

Section 4. Beginning January 1, 1998, in addition to the requirements imposed by Section 1 of this administrative regulation, an applicant for licensure by examination or endorsement shall comply with the requirements of this section.

(1) An applicant shall not be eligible for the NCLEX examination or licensure, if the applicant has been convicted:

- (a) Of a felony under one (1) of the KRS chapters specified in subsection (2) of this section, within five (5) years of the date of filing an application; or
- (b) ~~Of a misdemeanor under one (1) of the KRS chapters specified in subsection (2) of this section, within two (2) years of the date of filing an application; or~~
- (e) For violation of a comparable law in another jurisdiction.
  - (2)(a) KRS Chapter 189A (driving under the influence);
  - (b) KRS Chapter 218A (controlled substances);
  - (c) KRS Chapter 507 (criminal homicide);
  - (d) KRS Chapter 508 (assault and related offenses);
  - (e) KRS Chapter 509 (kidnapping and related offenses);
  - (f) KRS Chapter 510 (sexual offenses);
  - (g) KRS Chapter 511 (burglary and related offenses);
  - (h) KRS Chapter 512 (criminal damage to property);
  - (i) KRS Chapter 513 (arson and related offenses);
  - (j) KRS Chapter 514 (theft and related offenses);
  - (k) KRS Chapter 515 (robbery);
  - (l) KRS Chapter 516 (forgery and related offenses);
  - (m) KRS Chapter 521 (bribery and corrupt influences);
  - (n) KRS Chapter 523 (perjury and related offenses);
  - (o) KRS Chapter 525 (riot, disorderly conduct and related offenses);
  - (p) KRS Chapter 527 (offenses related to firearms and weapons);
  - (q) KRS Chapter 528 (gambling);
  - (r) KRS Chapter 529 (prostitution offenses);
  - (s) KRS Chapter 531 (pornography); and
  - (t) KRS Chapter 506 (offenses of attempts, conspiracy, or complicity to commit the offenses specified in this section).
- (3)(a) A notice to deny licensure shall be issued to an applicant for licensure who has been convicted of an offense specified by subsection (1) or (2) of this section.
- (b) An applicant who has been issued a notice to deny licensure may request a hearing before a hearing panel. The request shall be postmarked within thirty (30) days of receipt of the notice.
- (4)(a) An applicant for licensure by examination or endorsement shall report:

1. Convictions for crimes specified in subsections (1) and (2) of this section for which the applicant was convicted prior to the time periods specified in subsection (1) of this section; and
2. Convictions for crimes that are not specified in subsection (1) or (2) of this section.

(b) The board shall review convictions reported pursuant to paragraph (a) of this subsection on an individual basis.

MARCIA STANHOPE, President

NATHAN GOLDMAN, General Counsel

APPROVED BY AGENCY: October 10, 1997

FILED WITH LRC: December 9, 1997 at 8 a.m.

#### REGULATORY IMPACT ANALYSIS

Contact person: Nathan Goldman

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

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

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: 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: N/A

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

1. First year following implementation: N/A

2. Second and subsequent years: N/A

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: Unknown

2. Continuing costs or savings: Unknown

3. Additional factors increasing or decreasing costs: N/A

(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: General operating 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: N/A

(b) Kentucky: N/A

(7) Assessment of alternative methods; reasons why alternatives were rejected: N/A

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: Misdemeanor convictions of applicants will be individually reviewed.

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

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

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

(a) Necessity of proposed regulation if in conflict:

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

(10) Any additional information or comments:

(11) TIERING: Is tiering applied? Tiering was not applied as the amendments apply equally to all applicants.

#### STATEMENT OF EMERGENCY

301 KAR 2:290E

Deer populations at Dale Hollow State Resort Park have reached levels where they pose an immediate threat to the ecological integrity of the park. Population counts conducted this fall after the leaves were off the trees, indicate a population of one (1) deer per two and five-tenths (2.5) acres (the maximum density should be one (1) deer per ten (10) acres). The Department of Parks and the Department of Fish and Wildlife Resources agree that approximately 150 deer should be removed from the park this winter. Failure to remove these deer will result in further damage to native plants and other wildlife in the park, and may subject the deer population to a die-off caused by starvation and disease. A controlled hunt is the most efficient and cost-effective method of reducing the deer population to acceptable levels. This emergency administrative regulation will not be replaced by an ordinary administrative regulation because the hunt will have been completed before an ordinary administrative regulation could become effective.

PAUL E. PATTON, Governor

C. THOMAS BENNETT, Commissioner

#### TOURISM DEVELOPMENT CABINET

Department of Fish and Wildlife Resources

#### 301 KAR 2:290E. Quota deer hunt at Dale Hollow State Park.

RELATES TO: KRS 148.029(5), 150.025(2), 150.105, 150.360, 150.390, 150.640(1), 150.710

STATUTORY AUTHORITY: KRS 148.029(5), 150.025(1), 150.105

EFFECTIVE: December 5, 1997

NECESSITY, FUNCTION, AND CONFORMITY: KRS 148.029(5) authorizes the Department of Parks, in cooperation with the Department of Fish and Wildlife Resources, to remove, destroy, or disturb wildlife on state parks. KRS 150.105 authorizes the Department of Fish and Wildlife Resources to authorize the destruction of animals that are causing damage to property or spreading disease. KRS 150.025(1) authorizes the Department of Fish and Wildlife to open seasons and make those seasons apply to a limited area of the state. This emergency administrative regulation is necessary to allow controlled deer hunting at Dale Hollow State Park to relieve a serious overpopulation of white-tailed deer which is damaging the ecological integrity of the park.

Section 1. Dale Hollow State Resort Park shall be open to deer hunting:

(1) On the following dates:

(a) January 3 and 4, 1998; and

(b) January 10 and 11, 1998.

(2) To hunters selected by a drawing as stipulated in Section 2 of this administrative regulation.

Section 2. A person wishing to participate in the hunt shall apply by letter:

(1) Postmarked no later than midnight, December 19, 1997; and

(2) Containing a self-addressed, stamped postcard, upon which shall be written the applicant's:

(a) Name;

(b) Driver's license, state ID or Social Security number;

(c) Number of hunters in his party, up to a maximum of four (4), including the applicant;

(d) Choice of hunt (January 3 and 4 or January 10 and 11); and

(e) If the applicant will accept either available hunt.

Section 3. The department shall:

(1) Disqualify an applicant who does not follow the application

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procedures stipulated in Section 2 of this administrative regulation.

(2) Select participants for the hunt by a random drawing from the applications received.

(3) Limit the number of hunters to 100 per hunt.

(4) Notify applicants of the results of the drawing by returning the postcard with an indication of whether the card was successfully drawn, and the hunt date.

Section 4. The successful applicant shall:

(1) Check in:

(a) After 4 p.m. on the day before the hunt; or

(b) After 5 a.m. on the day of the hunt.

(2) When checking in, show:

(a) His returned application indicating that he was drawn for the hunt;

(b) Personal identification;

(c) The receipt portion of a 1997-98 deer permit; and

(d) Except for a person exempt from licensing requirements by KRS 150.170, a valid Kentucky resident or annual nonresident hunting license.

Section 5. Members of the successful applicant's party shall:

(1) Check in with the applicant; and

(2) When checking in, show:

(a) The receipt portion of a 1997-98 deer permit; and

(b) Except for a person exempt from licensing requirements by KRS 150.170, a valid Kentucky resident or annual nonresident hunting license.

Section 6. A person participating in the hunt:

(1) Shall:

(a) Wear hunter orange as required by 301 KAR 2:172(12);

(b) Tag deer with the carcass tag provided at check in;

(c) Check deer taken at the designated park check station;

(d) Check out before leaving the park; and

(e) Obey the provisions of 301 KAR 2:172(10) and (13).

(2) Shall not:

(a) Hunt except on the days specified on his returned application;

(b) Use a firearm, archery equipment or crossbow prohibited by

301 KAR 2:172;

(c) Take more than:

1. Two (2) deer; or

2. One (1) antlered deer as defined by 301 KAR 2:172;

(d) Take a white deer;

(e) Tag an antlered deer with an "antlerless only" tag;

(f) Injure a tree by using:

1. A tree stand except a portable stand;

2. Climbing devices which nail or screw to the tree; or

3. Climbing spikes.

(g) Discharge a firearm within 100 feet of a maintained road;

(h) Hunt:

1. In an area posted as closed by signs; or

2. Outside the park boundaries.

Section 7. Deer taken during these hunts shall:

(1) Be bonus deer; and

(2) Not count against season limits.

Pursuant to KRS 13A.1120(3), the Department of Parks and the Department of Fish and Wildlife Resources have reviewed and approved this administrative regulation to implement the provisions of KRS 148.029(5) for the removal of deer from Dale Hollow State Resort Park.

Kenny Rapier, Commissioner  
Department of Parks

C. Thomas Bennett, Commissioner  
Department of Fish and Wildlife Resources

C. THOMAS BENNETT, Commissioner

MIKE BOATWRIGHT, Chairman

DOUGLAS SCOTT PORTER, Assistant Attorney General

APPROVED BY AGENCY: December 5, 1997

FILED WITH LRC: December 5, 1997 at 3 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on January 26, 1998, 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 January 16, 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: Approximately 200 hunters will be selected for these two deer hunts.

(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. No impact on cost of living or employment.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: No public comments received. 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: Applicants must mail a self-addressed postcard and be selected by a random drawing.

2. Second and subsequent years: No second year.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: Cost of personnel time to conduct drawing and monitor hunt.

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: None

(4) Assessment of anticipated effect on state and local revenues: No effect on revenue.

(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: Two weekends of deer hunting will increase travel and tourism to the region, increase visitation to the state park lodge and area motels, restaurants, and other businesses.

(b) Kentucky: No impact.

(7) Assessment of alternative methods; reasons why alternatives were rejected: Not reducing deer numbers was rejected because allowing deer populations to increase beyond their present levels

would cause serious environmental problems throughout the park. Waiting until next fall's hunting seasons was rejected because it was discovered late this fall that deer populations were at critical levels and an immediate reduction was necessary. Trapping and relocating was rejected as an alternative because not enough deer could be removed to alleviate the problem. Hiring marksmen to remove the deer was rejected because of the cost and loss of recreational opportunity. The technology for effective wildlife birth control does not exist.

(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 in deer numbers will allow ecological conditions to recover and the health of the deer herd to improve.

(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: Not removing deer from Dale Hollow State Resort Park will result in serious damage to the plant communities in the park, and ultimately a mass die-off of deer from starvation and disease, with deer diseases possibly spreading to deer outside the park.

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

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

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

(10) Any additional information or comments:

(11) TIERING: Is tiering applied? Tiering is not appropriate because the administrative regulation applies equally to all individuals or entities it regulates.

#### STATEMENT OF EMERGENCY 704 KAR 20:015E

This emergency administrative regulation defines the approved procedures for the continuing education program that a teacher may follow to advance from Rank II to Rank I on the state teacher salary schedule. The continuing education program may include a combination of graduate courses, field-experience, research, and professional development activities. It is necessary to amend this administrative regulation as an emergency in order to meet an effective date established by KRS 161.095. This emergency administrative regulation shall be replaced by an ordinary administrative regulation. The Notice of Intent for the ordinary administrative regulation will be filed with the Regulations Compiler on December 15, 1997.

PAUL E. PATTON, Governor  
SUSAN LEIB, Interim Associate Commissioner

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

#### 704 KAR 20:015E. Rank I classification.

RELATES TO: KRS 157.390, 161.010, 161.095

STATUTORY AUTHORITY: KRS 156.070, 157.390, 161.095, 161.028, 161.030

EFFECTIVE: December 12, 1997

NECESSITY, FUNCTION, AND CONFORMITY: KRS 157.390 authorizes the State Board of Education to adopt an administrative regulation [regulations] to determine the salary rank [ranks] of a certified teacher [teachers] and to determine the equivalent qualification [qualifications] for the salary rank [ranks]. 704 KAR 3:470, promulgated by the State Board of Education, gives authority to the Education Professional Standards Board to establish the standards

and procedures for the classification of teachers in rank for purposes of the state teacher salary schedule. KRS 161.095 authorizes the Education Professional Standards Board to establish procedures for a teacher to maintain his certificate by successfully completing meaningful continuing education. This administrative regulation defines approved graduate work for the Rank I classification and defines [an] equivalent programs for Rank I.

Section 1. [Effective until June 30, 1989, the preparation program for a Rank I classification shall be planned as outlined in 704 KAR 20:010 and shall require the completion of either:

(1) Plan I. Thirty (30) semester hours approved graduate level credit or approved equivalent in addition to the requirements for a Rank II classification; or

(2) Plan II. Sixty (60) semester hours approved graduate level credit or approved equivalent including a master's degree.

Section 2. Effective July 1, 1989, The preparation program for a Rank I classification [under the Foundation Law] shall require the completion of the following:

(1) [Documentation that the preparation program was planned in advance as required in 704 KAR 20:010.

(2) Completion of the requirements for a Rank II classification as identified in 704 KAR 20:021; and

(2) [20:020.

(3) The completion of one (1) of the plans [as] described in this subsection:

(a) Plan I. Thirty (30) semester hours of approved graduate level credit or approved equivalent in addition to the requirements for a Rank II classification; [or]

(b) Plan II. Sixty (60) semester hours of approved graduate level credit or approved equivalent including a master's degree and the requirements for a Rank II classification;

(c) Plan III. National Board Certification in addition to the requirements for a Rank II classification; or

(d) Plan IV. Equivalent continuing education with evidence of continuous progress as identified in Section 5 of this administrative regulation in addition to the requirements for a Rank II classification.

Section 2. [3:] The Plan I and II equivalent preparation shall be approved by the Education Professional Standards Board [Superintendent of Public Instruction] on the basis of the following criteria:

(1) Approved equivalent credit shall be offered in the form of teacher institutes designed for the purpose of upgrading classroom teaching personnel in their teaching specialties;

(2) The teacher institutes shall be offered only by the institutions that are approved by the Education Professional Standards Board [State Board of Education] for offering Rank I programs. Teacher education institutions shall make application to the Education Professional Standards Board for the advanced approval of teacher institutes; [on forms provided by the Superintendent of Public Instruction:]

(3) Operation of the teacher institutes shall meet the standards for accreditation of teacher preparation programs;

(4) Equivalency credit toward a Rank I classification may be earned only by professional personnel who have already attained a Rank II classification;

(5) Equivalency credit toward a Rank I classification shall be limited to a maximum of fifteen (15) semester hours of the requirements for Rank I. Equivalency credit shall be the amount of contact time required for graduate credit at the teacher education institution; and

(6) Approved equivalency credit shall be an integrated part of an individualized Rank I program as planned with a graduate curriculum adviser. Approved equivalency credit earned through approved teacher institutes may be applied for teacher certification purposes as described in 704 KAR 20:030.

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Section 3. [4:] The appropriate official designated by the teacher education institution shall certify to the Education Professional Standards Board [State Department of Education] when the curriculum requirements have been completed for the Rank I program at the institution.

Section 4. [5:] Of the thirty (30) semester hour program, at least fifteen (15) semester hours shall be taken at the college making the recommendation. The remaining fifteen (15) semester hours credit may be taken at the same institution or, upon approval of the college adviser, at another institution. [other institutions:]

Section 5. The Plan IV equivalent continuing education program shall be approved by the Division of Certification on the basis of the following criteria:

(1) An individualized professional development plan shall be designed by the teacher. The plan shall focus on the teacher's needs with consideration given to how the needs relate to the school transformation plan;

(2) The plan shall include goals related to continuing growth on each of the nine (9) experienced teacher standards identified in 704 KAR 20:021 and may be developed in collaboration with a team of colleagues whom the teacher chooses;

(3) The plan shall be submitted for review to a three (3) member state review team;

(4) The teacher shall participate in professional development experiences that will assist in the accomplishment of the goals established. The professional development experiences shall include any combination of graduate college credit, individual research, field-experience, and professional development activities or workshops. The professional development experiences chosen shall be listed within the professional development plan;

(5) The professional development experiences may be a part of the approved school professional development plan or may be experiences specifically needed by the individual teacher.

(6) The evidence of accomplishment of the goals identified in the plan, including the impact upon student learning, shall be documented and presented for review and scoring by a state team. The documentation shall provide evidence that the teacher has demonstrated continuing growth on each of the experienced teacher standards; and

(7) The evidence shall be presented:

(a) In a portfolio using a variety of mediums including, but not limited to, videotape, research, data, and instructional logs; and

(b) To the state team at least one (1) year in advance of the expiration date of the certificate.

Section 6. (1) The state team used to review and score the continuing education portfolio shall be selected by the Education Professional Standards Board from a pool of educators representing teachers, principals, central office instructional personnel, higher education faculty, professional organization representatives, and Department of Education staff.

(2) The state team shall:

(a) Review and provide feedback to the teacher regarding the quality of the plan, including the planned professional development experiences;

(b) Use the experienced teacher standards and indicators to review and score the portfolios;

(c) Provide timely feedback to the teacher regarding additional evidence that may be needed to show that the professional development plan was accomplished and that growth on each of the experienced teacher standards was evident;

(d) Recommend the teacher for Rank I classification and certificate renewal to the Education Professional Standards Board; and

(e) Be trained to score the portfolios in a consistent and reliable manner.

Section 7. An assessment fee not to exceed \$1200 shall be assessed to a teacher who chooses to follow the Plan IV option for advancement in rank classification and certificate renewal. The fee shall be used to pay the expenses related to the administration of the continuing education option, including the cost of the review and scoring of portfolios.

ROSA WEAVER, Chair

ROBERT S. SHERMAN, Attorney

APPROVED BY AGENCY: December 8, 1997

FILED WITH LRC: December 12, 1997 at 3 p.m.

### REGULATORY IMPACT ANALYSIS

Contact Person: Rita Osborne

(1) Type and number of entities affected: All Rank II certified teachers in Kentucky are affected by this amendment to the 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: The certified teachers who choose and successfully complete the continuing education option for salary rank change from Rank II to Rank I will be given a salary increase. In addition, there will be a savings in cost in comparison to the traditional route to rank change, which includes only graduate course work at a college or university.

(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: Possibly less paperwork than the traditional route for salary rank change.

2. Second and subsequent years: Possibly less paperwork than the traditional route for salary rank change.

(3) Effects on promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: None

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: The Division of Certification must disseminate and process applications for the continuing education option and assign review committee members.

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

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

(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

(b) Assessment of alternative methods; reasons why alternatives were rejected: The continuing education option must provide flexibility along with quality assurance. This amendment describes procedures which allow for flexibility while including measures of quality assurance.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical areas in which implemented and on Kentucky: None

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

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



- (9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: 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. Certification requirements and options are available to all certified teachers.

**STATEMENT OF EMERGENCY**  
**704 KAR 20:021E**

This emergency administrative regulation establishes the standards for the fifth-year program for certificate renewal. Amendments to this administrative regulation allow renewal of a certificate through the continuing education alternative plan. Additionally, this administrative regulation relates the new teacher standards to an initial certification program at the masters degree level. It is necessary to amend this administrative regulation as an emergency in order to meet an effective date established by KRS 161.095. This emergency administrative regulation shall be replaced by an ordinary administrative regulation. The Notice of Intent for the ordinary administrative regulation will be filed with the Regulations Compiler on December 15, 1997.

PAUL E. PATTON, Governor  
SUSAN LEIB, Interim Associate Commissioner

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

**704 KAR 20:021E. Planned Fifth-year Program.**

RELATES TO: KRS 157.390, 161.020, 161.028, 161.030

STATUTORY AUTHORITY: KRS 161.028, 161.030

EFFECTIVE: December 12, 1997

NECESSITY, FUNCTION, AND CONFORMITY: KRS 161.028 and 161.030 vests authority for the issuance and renewal of certification for all school personnel in the Education Professional Standards Board. This administrative regulation establishes the standards for the Fifth-year Program for certificate renewal.

Section 1. (1) The standards required for the renewal of a teaching certificate [certificates] shall require completion of:

(a) The continuing education alternative plan as defined in 704 KAR 20:022; or

(b) Plan I or Plan II described in this administrative regulation and in keeping with one (1) or more of the following purposes:

1. [(a)] To improve the professional competency for the position covered by the initial teaching certificate;
2. [(b)] To extend the scope of professional competency to some certification area not covered by the initial certificate; and
3. [(c)] To obtain preparation-certification required for professional advancement to a higher position.

(2) Upon application by the candidate, the teacher education institution shall verify the completion of the Fifth-year Program to the Division of Certification.

Section 2. (1) Plan I Fifth-year Program shall require the completion of a masters degree from a college or university which meets the standards established by the Education Professional Standards Board:

(a) In a professional education specialty for which certification is issued;

(b) In an academic subject for which teacher certification is issued; or

(c) In professional education with emphasis in an academic subject for which certification is issued.

(2) The masters degree shall be consistent with the experienced teacher standards established by the Education Professional Standards Board in Section 4 of this administrative regulation or with standards adopted by the Education Professional Standards Board in 704 KAR Chapter 20 for a particular professional education specialty.

Section 3. Plan II Fifth-year Program shall require thirty-two (32) semester hours of graduate level coursework earned beyond the bachelor's degree and the four (4) year program of teacher preparation in accordance with the following guidelines:

(1) The Fifth-year Program shall be planned individually with each candidate by a teacher education institution approved for offering graduate programs of teacher preparation.

(2) The Fifth-year Program shall be a major component of the candidate's professional growth plan and shall be consistent with the experienced teacher standards established by the Education Professional Standards Board in Section 4 of this administrative regulation or with standards adopted by the Education Professional Standards Board for a professional education specialty.

(3) The Fifth-year Program shall relate to the initial classroom teaching certificate or to an additional classroom teaching certificate.

(4) The grade point standing for the thirty-two (32) semester hour program shall be no less than is required at the planning institution for teacher education graduates.

(5) Professional development in lieu of up to twelve (12) semester hours of college credit shall be approved as part of Plan II Fifth-year Program if requested by the applicant using the following guidelines:

(a) Twenty-four (24) clock hours of professional development shall equal one (1) semester hour.

(b) The candidate shall seek and obtain prior approval of the institution for the professional development activities.

(c) The application for approval shall identify the specific professional development activities, and the action plan to achieve one (1) or more goals of the professional growth plan identified in subsection (2) of this section.

(d) Upon completion of the professional development activities the candidate shall submit to the institution a report of the activities which shall include an evaluation of the experiences and a follow-up plan for implementing the professional development.

(e) The institution shall keep a record of the professional development completed by each candidate for the Fifth-year Program.

Section 4. New Teacher Standards. Approved preparation programs for initial certification to be completed at the masters degree level shall be consistent with the new teacher standards as defined in 704 KAR 20:670.

Section 5. Experienced Teacher Standards. All Fifth-year Program plans other than those in a professional education specialty for which the Education Professional Standards Board has adopted specific standards shall be consistent with the following experienced teacher standards:

(1) Experienced Teacher Standard I. Demonstrates professional leadership. The teacher provides professional leadership within the school, community, and education profession to improve student learning and well-being.

(2) Experienced Teacher Standard II. Demonstrates knowledge of content. The teacher demonstrates content knowledge within own area of certification and application to other areas, content areas, and certification areas.

(3) Experienced Teacher Standard III. Designs and plans instruction. The teacher designs and plans instruction that develops student abilities to use communication skills, apply core concepts, become self-sufficient individuals, become responsible team members, think and solve problems, and integrate knowledge.



(4) Experienced Teacher Standard IV. Creates and maintains learning climate. The teacher creates a learning climate that supports the development of student abilities to use communication skills, apply core concepts, become self-sufficient individuals, become responsible team members, think and solve problems, and integrate knowledge.

(5) Experienced Teacher Standard V. Implements and manages instruction. The teacher introduces, implements, and manages instruction that develops student abilities to use communication skills, apply core concepts, become self-sufficient individuals, become responsible team members, think and solve problems, and integrate knowledge.

(6) Experienced Teacher Standard VI. Assesses and communicates learning results. The teacher assesses learning and communicates results to students and others with respect to student abilities to use communication skills, apply core concepts, become self-sufficient individuals, become responsible team members, think and solve problems, and integrate knowledge.

(7) Experienced Teacher Standard VII. Reflects and evaluates teaching and learning. The teacher reflects on and evaluates teaching and learning.

(8) Experienced Teacher Standard VIII. Collaborates with colleagues, parents, and others. The teacher collaborates with colleagues, parents, and other agencies to design, implement, and support learning programs that develop student abilities to use communication skills, apply core concepts, become self-sufficient individuals, become responsible team members, think and solve problems, and integrate knowledge.

(9) Experienced Teacher Standard IX. Engages in professional development. The teacher evaluates own overall performance in relation to Kentucky's learner goals as established in KRS 158.6451 and implements a professional development plan.

ROSA WEAVER, Chair

ROBERT S. SHERMAN, Attorney

APPROVED BY AGENCY: December 8, 1997

FILED WITH LRC: December 12, 1997 at 3 p.m.

#### REGULATORY IMPACT ANALYSIS

Contact Person: Ronda Tamme

(1) Type and number of entities affected: 176 school districts and all certificate holders.

(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: Candidates for issuance, and renewal of certificates will incur certification costs.

2. Second and subsequent years: Same as above.

(3) Effects on promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: Costs associated with processing applications and issuing certificates.

2. Continuing costs or savings: Same as above.

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: The Division of Certification must maintain records and issue certificates.

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

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

(6) To the extent available from the public comments received, the economic impact, including effects of economic activities arising from administrative regulation, on: None. No comments received.

(a) Geographical area in which administrative regulation will be implemented:

(b) Kentucky:

(7) Assessment of alternative methods; reasons why alternatives were rejected: By law, the Education Professional Standards Board can establish teacher certification requirements only by regulation.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical areas in which implemented and on Kentucky: None

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

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

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

(a) Necessity of proposed regulation if in conflict:

(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. Certification requirements are uniformly applicable to all individuals.

#### STATEMENT OF EMERGENCY

704 KAR 20:022E

This emergency administrative regulation allows teachers to renew their teaching certificate for the first and second time by following an continuing education alternative to the Planned Fifth-year Program. The continuing education program requires the teacher to complete an individualized professional development program which may include a combination of graduate courses, field-experience, research, and professional development activities. It is necessary to promulgate this administrative regulation as an emergency in order to meet an effective date established by KRS 161.095. This emergency administrative regulation shall be replaced by an ordinary administrative regulation. The Notice of Intent for the ordinary administrative regulation will be filed with the Regulations Compiler on December 15, 1997.

PAUL E. PATTON, Governor

SUSAN LEIB, Interim Associate Commissioner

#### EDUCATION, ARTS AND HUMANITIES CABINET

Education Professional Standards Board

704 KAR 20:022E. Continuing education alternative to Planned Fifth-year Program.

RELATES TO: KRS 157.390(1)(a), 161.095

STATUTORY AUTHORITY: KRS 161.095, 161.028 (1)(a), 161.030(1)

EFFECTIVE: December 12, 1997

NECESSITY, FUNCTION, AND CONFORMITY: KRS 161.095 requires the Education Professional Standards Board, with the advice of the State Board of Education, to establish an administrative regulation identifying procedures for a teacher to maintain a certificate by successfully completing meaningful continuing education. KRS 161.028 and 161.030 vest authority for the issuance and renewal of certification for all school personnel in the Education Professional Standards Board. This administrative regulation establishes the procedures for a continuing education alternative to the Planned Fifth-year Program for certificate renewal.

Section 1. Procedures for the first and second renewal of a teaching certificate shall require completion of the continuing education alternative identified in this administrative regulation or completion of a planned fifth-year program identified in 704 KAR 20:021.

Section 2. The continuing education alternative to the Planned Fifth-year Program for certificate renewal of a teaching certificate shall require completion of the following procedures:

(1) An individual professional development plan shall be designed by the teacher. The plan shall:

(a) Focus on the teacher needs with consideration given to how the needs relate to the school transformation plan;

(b) Include goals related to each of the nine (9) experienced teacher standards identified in 704 KAR 20:021;

(c) Developed in collaboration with a team of colleagues chosen by the teacher; and

(d) Be submitted for review by a three (3) member state team.

(2) The teacher shall participate in professional development experiences that will assist in the accomplishment of the established goals. The professional development experiences may include any combination of graduate college credit, individual research, field-experience, and professional development activities. The experiences shall be identified in the professional development plan.

(3) The professional development experiences may be a part of an approved school professional development plan or may be experiences specifically needed by the teacher.

(4) The evidence of accomplishment of the goals identified in the plan, including the impact upon student learning, shall be documented and presented for review and scoring by a state team. The documentation shall provide evidence that all experienced teacher standards have been met.

(5) The evidence shall be presented:

(a) In a portfolio using a variety of mediums including, but not limited to, videotape, research data, and instructional logs; and

(b) To the state team at least one (1) year in advance of the expiration date of the certificate.

Section 3. (1) The three (3) member state team used to review and score the continuing education portfolio shall be selected by the Education Professional Standards Board from a pool of educators representing teacher, principals, central office instructional personnel, higher education faculty, professional organization representatives, and the Department of Education staff.

(2) The state team shall:

(a) Review and provide feedback to the teacher regarding the quality of the plan, including the planned professional development experiences;

(b) Use the experienced teacher standards and indicators to review and score the portfolios;

(c) Provide timely feedback to the teacher regarding additional evidence that may be needed to show that goals were accomplished and that all experienced teacher standards were met;

(d) Recommend the teacher for certificate renewal to the Education Professional Standards Board prior to the expiration date of the certificate; and

(e) Be trained to score the portfolios in a consistent and reliable manner.

Section 4. (1) A teacher following the continuing education alternative to the fifth-year program for certificate renewal shall complete the program by the end of the second certificate renewal period.

(2) For the first renewal the teacher shall show evidence of the development of a professional development plan and evidence of meeting a minimum of four (4) experienced teacher standards.

(3) The continuing education alternative to the fifth-year program

may be completed by end of the first certificate renewal period.

Section 5. An assessment fee not to exceed \$1200 shall be charged to a teacher following the continuing education alternative for certificate renewal. This fee shall be used to pay expenses related to administration of the continuing education alternative program including the cost of scoring portfolios and training for the state scoring team members.

ROSA WEAVER, Chair

ROBERT S. SHERMAN, Attorney

APPROVED BY AGENCY: December 8, 1997

FILED WITH LRC: December 12, 1997 at 3 p.m.

#### REGULATORY IMPACT ANALYSIS

Contact Person: Rita Osborne

(1) Type and number of entities affected: All certified teachers in Kentucky are affected by this amendment to the 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: The certified teachers who choose and successfully the continuing education option for salary rank change from Rank III to Rank II will be given a salary increase. In addition, there will be a savings in cost in comparison to the traditional route to rank change, which includes only masters degree course work at a college or university.

(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: Possibly less paperwork than the traditional route for salary rank change.

2. Second and subsequent years: Possibly less paperwork than the traditional route for salary rank change.

(3) Effects on promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: None

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: The Division of Certification must disseminate and process applications for the continuing education option and assign review committee members.

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

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

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

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

(b) Kentucky: None

(7) Assessment of alternative methods; reasons why alternatives were rejected: The continuing education option for moving to Rank II must provide flexibility along with quality assurance. This amendment describes procedures which all for flexibility while including measures of quality assurance.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical areas in which implemented and on Kentucky: None

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

- (c) If detrimental effect would result, explain detrimental effect: None
- (9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: 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:
- (10) Any additional information or comments: None
- (11) TIERING: Is tiering applied? No. Certification requirements and options are available to all certified teachers.

**STATEMENT OF EMERGENCY**  
**704 KAR 20:045E**

This emergency administrative regulation provides for the issuance of initial certificates, certificate renewal, and establishes fees to be charged for the issuance, reissuance and renewal of certificates. Amendments to this administrative regulation allow renewal of a certificate through the continuing education alternative plan. It is necessary to amend this administrative regulation as an emergency in order to meet an effective date established by KRS 161.095. This emergency administrative regulation shall be replaced by an ordinary administrative regulation. The Notice of Intent for the ordinary administrative regulation will be filed with the Regulations Compiler on December 15, 1997.

PAUL E. PATTON, Governor  
SUSAN LEIB, Interim Associate Commissioner

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

**704 KAR 20:045E. Recency and certification fees.**

RELATES TO: KRS 161.020, 161.028, 161.030  
STATUTORY AUTHORITY: KRS 161.028, 161.030  
EFFECTIVE: December 12, 1997

NECESSITY, FUNCTION, AND CONFORMITY: KRS 161.020, 161.028, and 161.030 require that a teacher and other professional school personnel hold a certificate of legal qualification for his or her respective position to be issued upon completion of a program of preparation prescribed by the Education Professional Standards Board; furthermore, a teacher education institution is required to be approved for offering a preparation program corresponding to a particular certificate on the basis of standards and procedures established by the Education Professional Standards Board. KRS 161.030 establishes additional testing and internship requirements for certification. This administrative regulation provides for the issuance of the limited initial certificate; the beginning teacher internship program; provides for certificate renewal requirements; and for filing a certificate application. This administrative regulation addresses fees to be charged for the issuance, reissuance, and renewal of certificate.

Section 1. (1) Application for teacher certification shall be made to the Division of Certification.

(2) The application shall be accompanied by an official transcript showing all college credits necessary for the requested certification.

Section 2. Recency. Teacher certification issued initially under the provisions of 704 KAR 20:065, 20:070, 20:080, 20:085, 20:090, 20:145, 20:150, 20:159, 20:222, 20:230, 20:235, 20:240, 20:245, 20:670, 20:270, and 20:290 shall comply with the provisions of KRS 161.030 and the following requirements and procedures:

- (1) There shall be a recency of preparation prerequisite for the issuance of a certificate covered by this section, as follows:
- (a) An out-of-state applicant for initial Kentucky certification shall

have prepared as a teacher or completed six (6) semester hours of graduate credit within the five (5) years preceding the application.

(b) An out-of-state applicant for initial Kentucky certification who has completed a Planned Fifth-year Program is exempt from taking the six (6) additional hours, provided the applicant has completed two (2) years of successful teaching experience within the last ten (10) years.

(c) When an applicant does not meet the recency of preparation prerequisite, and has not previously held a regular Kentucky teaching certificate, but otherwise qualifies for certification, a certificate shall be issued for a one (1) year period ending June 30 of the next calendar year with the condition that six (6) semester hours of credit applicable toward the usual renewal requirement shall be completed by September 1 of the year of expiration. Thereafter the further renewal of the certificate shall be in compliance with the usual renewal requirement specified in subsection (2) of this section.

(2)(a) Teaching certificates described in this section shall be issued for a duration period of five (5) years and with provisions for subsequent five (5) year renewals, as provided in 704 KAR 20:060.

(b) Semester hour credit for certificate renewal shall be earned after the issuance of the certificate, and any credit earned in excess of the minimum requirement for any renewal period shall accumulate and be carried forward to apply toward subsequent renewal.

Section 3. (1) Reissuance. Whenever there is a lapse in a certificate identified in this section due to expiration for lack of meeting the renewal requirement, a certificate may be reissued at a later date for a one (1) year period by first completing at least six (6) semester hours of graduate credit applicable toward the Planned Fifth-year Program. An applicant shall complete another nine (9) semester hours of credit applicable toward the Planned Fifth-year Program by September 1 of the year of expiration to qualify for extending the certificate for the remaining four (4) years of the usual five (5) year renewal period. At the end of this renewal period the applicant shall have completed the Planned Fifth-year Program to qualify for the next five (5) year renewal. Thereafter, the regular renewal schedule of three (3) years of successful teaching experience with evidence of continuing growth documented in a portfolio as defined in 704 KAR 20:060 or six (6) semester hours of additional graduate credit [or the equivalent in professional staff development units or continuing education units] each five (5) year period shall apply.

(2) An applicant who has already completed the Planned Fifth-year Program and whose certificate lapses may have the certificate reissued after first completing another six (6) semester hours of graduate credit. The certificate shall be issued for a five (5) year period and subject to the renewal schedule of three (3) years of successful teaching experience or completion by September 1 of the year of expiration of at least six (6) semester hours of additional credit [or the equivalent in PSDU's or CEU's] for each five (5) year period.

(3) An applicant who has held a regular Kentucky teaching certificate which has lapsed for failure to meet renewal requirements, but who otherwise qualifies for the reissuance of a Kentucky teaching certificate, shall not be required to take the written tests or to participate in the beginning teacher internship program.

(4)(a) An out-of-state applicant having completed two (2) or more years of successful teaching experience within the last ten (10) years, who otherwise qualifies for certification, shall not be required to take the written tests.

(b) Successful experience shall be in a position directly corresponding to the type of teaching certificate for which the application is being made and shall be defined as follows:

1. Employment shall be at least on a half-time basis.
2. A full year of experience shall include at least 140 days of employment performed within the academic year.
3. A half year of experience shall include at least seventy (70) days of employment performed within an academic semester.

REGULATORY IMPACT ANALYSIS

(5) Prerequisites for the issuance of a one (1) year certificate for the beginning teacher internship shall include:

(a) The completion of an approved program of preparation which corresponds to the certificate desired;

(b) The successful completion of the written tests designated by the Education Professional Standards Board for:

1. General knowledge;
2. Communications skills;
3. Professional education concepts; and

4. Knowledge in the specific teaching field of the applicant, with minimum scores in each test as identified in 704 KAR 20:305 and as established by the Education Professional Standards Board; and

(c) Evidence of employment in a Kentucky school as identified in KRS 156.160.

(6) Upon successful completion of an approved program of preparation and upon completion of the designated tests with acceptable scores, the Education Professional Standards Board shall issue a statement of eligibility for employment which shall serve as evidence of eligibility for the one (1) year certificate once a teaching position is secured. The statement of eligibility shall be issued in accordance with 704 KAR 20:055 and shall be valid for a five (5) year period. If the teacher internship is not completed within the five (5) year period, the individual shall requalify for another statement of eligibility by retaking and passing the designated written tests with acceptable scores. The individual may requalify for a statement of eligibility by presenting six (6) new semester hours of graduate credit from a Planned Fifth-year Program. This option may only be used on the first requalification for a statement of eligibility.

(7) For a person who attains the statement of eligibility, but who is not appropriately employed, the Certificate for Substitute Teaching may be issued as provided in 704 KAR 20:210, Section 1.

(8)(a) The employment of a teacher intern shall not begin earlier than the effective date shown on the statement of eligibility.

(b) The one (1) year certificate for the beginning teacher internship shall be issued in accordance with 704 KAR 20:055, "Dating of Certificates." If the teacher's first year performance is judged to be less than satisfactory, the teacher shall be provided with an opportunity to repeat the internship one (1) time through the reissuance of another one (1) year certificate if the teacher is employed by a school district.

Section 4. Fees. (1) The following fees for teaching certificates shall apply:

(a) Statement of eligibility for internship - no charge;

(b) Limited one (1) year certificate - no charge;

(c) Issuance, reissuance, or renewal of a regular certificate - fifty (50) dollars, this shall include all previously approved certifications and endorsements;

(d) Issuance of a five (5) year substitute certificate - fifteen (15) dollars;

(e) Reissuance of limited four (4) year certification - thirty-five (35) dollars;

(f) A duplicate copy of the certificate - twenty-five (25) dollars.

(2) A refund of the certification fee shall be provided to an unsuccessful certification applicant, less a ten (10) dollar processing fee.

(3) Appropriate fees shall accompany the application. Fees shall be received in the form of a certified check or money order made payable to the Kentucky State Treasurer.

ROSA WEAVER, Chair

ROBERT S. SHERMAN, Attorney

APPROVED BY AGENCY: December 5, 1997

FILED WITH LRC: December 12, 1997 at 3 p.m.

Contact Person: Ronda Tamme

(1) Type and number of entities affected: 176 school districts and all certificate holders.

(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: Candidates for issuance, reissuance and renewal of certificates will incur certification costs.

2. Second and subsequent years: Same as above.

(3) Effects on promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: Costs associated with processing applications and issuing certificates.

2. Continuing costs or savings: Same as above.

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: The Division of Certification must maintain records and issue certificates.

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

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

(6) To the extent available from the public comments received, the economic impact, including effects of economic activities arising from administrative regulation, on: None. No comments received.

(a) Geographical area in which administrative regulation will be implemented:

(b) Kentucky:

(7) Assessment of alternative methods; reasons why alternatives were rejected: By law, the Education Professional Standards Board can establish teacher certification requirements only by regulation.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical areas in which implemented and on Kentucky: None

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

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

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

(a) Necessity of proposed regulation if in conflict:

(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. Certification requirements are uniformly applicable to all individuals.

STATEMENT OF EMERGENCY  
704 KAR 20:060E

This emergency administrative regulation establishes certificate renewal provisions for certain circumstances. Amendments to this administrative regulation allow renewal of a certificate through the continuing education alternative plan. It is necessary to amend this administrative regulation as an emergency in order to meet an effective date established by KRS 161.095. This emergency administrative regulation shall be replaced by an ordinary administrative regulation. The Notice of Intent for the ordinary administrative

regulation will be filed with the Regulations Compiler on December 15, 1997.

PAUL E. PATTON, Governor  
SUSAN LEIB, Interim Associate Commissioner

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

**704 KAR 20:060E. Renewals.**

RELATES TO: KRS 161.020, 161.028, 161.030  
STATUTORY AUTHORITY: KRS 161.028, 161.030  
EFFECTIVE: December 12, 1997

NECESSITY, FUNCTION, AND CONFORMITY: KRS 161.020, 161.028, and 161.030 require that a teacher and other professional school personnel hold a certificate of legal qualification for his or her respective position to be issued upon completion of a program of preparation prescribed by the Education Professional Standards Board; furthermore, a teacher education institution is required to be approved for offering a preparation program corresponding to a particular certificate on the basis of standards and procedures established by the Education Professional Standards Board, and KRS 161.020 safeguards the validity of a certificate previously issued from any impairment arising from later changes in certification provisions. This administrative regulation establishes certificate renewal provisions for certain unusual circumstances.

Section 1. The validity of a certificate for professional school personnel which has been issued under the authority of the Education Professional Standards Board shall not be impaired by the repeal or revision of the certification requirements and the certificate may continue to be renewed in accordance with the provisions in effect at the date of the issuance of the certificate.

Section 2. When the renewal of a provisional teaching certificate requires the completion of additional academic course work in lieu of teaching experience, the credits shall be selected from the Planned Fifth-Year Program.

Section 3. (1) A teaching certificate shall be issued for a duration period of five (5) years, with provision for subsequent five (5) year renewals. The exceptions to this five (5) year certificate shall be the beginning teacher internship and the initial certificate for an applicant who does not meet the recency of preparation prerequisite, both of which shall be issued for one (1) year.

(2) The one (1) year beginning teacher internship certificate shall be extended for the remainder of the five (5) year period upon the successful completion of the beginning teacher internship, as judged by a majority vote of the beginning teacher committee.

(3) A certificate shall be renewed for subsequent five (5) year periods upon the completion of three (3) years of successful teaching experience or at least six (6) semester hours of credit or the equivalent in professional staff development units or continuing education units as defined in 704 KAR 20:020. The renewal requirements shall be completed by September 1 of the year of expiration of the certificate.

Section 4. To provide evidence of continuing growth, a teacher shall complete the following procedures:

(1) An individual professional development plan shall be designed by the teacher around his/her needs with consideration given to how the needs relate to the school transformation plan;

(2) The plan shall include goals related to a minimum of two (2) of the experienced teacher standards listed in 704 KAR 20:021;

(3) The teacher shall participate in professional development experiences that will assist in the accomplishment of the goals

established. The professional development experiences shall include any combination of graduate college credit, individual research, field-experience, and professional development activities and workshops. The experiences shall be listed with the professional development plan;

(4) The activities and experiences may be a part of the approved school professional development plan or may be experiences specifically needed by the teacher;

(5) The teacher shall document evidence of the accomplishment of the goals of the plan, including the impact upon student learning, and present the evidence to be reviewed; and

(6) The evidence shall be presented:

(a) In a portfolio using a variety of mediums including, but not limited to, videotape, research data, and instruction logs; and

(b) At least one (1) year in advance of the expiration date of the certificate.

Section 5. The portfolio shall be reviewed by a three (3) member school team chosen by the teacher. At least one (1) of the members of the team shall be a building administrator. This team shall also provide assistance in the development of the professional plan. The school team shall:

(1) Use a scoring instrument that includes the experienced teacher standards and indicators as performance criteria when reviewing the portfolio;

(2) Provide timely feedback to the teacher regarding any additional evidence that may be needed to show accomplishment of the professional development plan; and

(3) Recommend the teacher for certificate renewal to the Division of Certification prior to the expiration date of the certificate.

Section 6. Upon expiration regular certificates may be extended for one (1) time only for the one (1) year period immediately following the expiration date upon completion of at least one-third (1/3) of the renewal requirements and upon recommendation by the employing school superintendent. The remainder of the renewal requirements shall be completed within the one (1) year period of reinstatement.

Section 7. [5:] (1) Experience in the armed forces of the United States of America may be accepted toward the renewal of a teaching certificate in lieu of required teaching experience, provided the applicant held a valid certificate prior to entering military service.

(2) The validity period of a certificate held by a person at the time of entry into the armed forces of the United States of America shall be extended for the same period of time for which it was valid at the time of entry, beginning from the date of discharge.

Section 8. [6:] For certificates requiring teaching experience for renewal, experience as a substitute teacher may be accepted if the holder of the certificate was employed officially by the local board of education, was paid through the board of education, and substituted in his or her certification area no less than thirty (30) teaching days per semester.

Section 9. [7:] The executive secretary shall approve the types of experiences which may be accepted under the law and administrative regulations of the Education Professional Standards Board in renewing certificates.

ROSA WEAVER, Chair

ROBERT S. SHERMAN, Attorney

APPROVED BY AGENCY: December 10, 1997

FILED WITH LRC: December 12, 1997 at 3 p.m.

REGULATORY IMPACT ANALYSIS

Contact Person: Ronda Tamme

(1) Type and number of entities affected: 176 school districts and all certificate holders.

(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: Routine reporting.

2. Second and subsequent years: Same as above.

(3) Effects on promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: None additional.

2. Continuing costs or savings: Same as above.

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: Routine reporting.

(4) Assessment of anticipated effect on state and local revenues:

None

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

(6) To the extent available from the public comments received, the economic impact, including effects of economic activities arising from administrative regulation, on: None. No comments received.

(a) Geographical area in which administrative regulation will be implemented:

(b) Kentucky:

(7) Assessment of alternative methods; reasons why alternatives were rejected: The Education Professional Standards Board can establish teacher certificate standards only by administrative regulation.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical areas in which implemented and on Kentucky: None

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

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

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

(a) Necessity of proposed regulation if in conflict:

(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. Certification requirements are uniformly applicable to all individuals.

STATEMENT OF EMERGENCY

806 KAR 17:110E

This emergency administrative regulation sets forth the Kentucky Risk Assessment and Risk Adjustment System. The department is required, pursuant to KRS 304.17A-130, to implement the administrative regulation promulgated by the Kentucky Health Policy Board for the establishment of a risk adjustment process. Subsequent to the promulgation of the administrative regulation by the Kentucky Health Policy Board, amendments were made regarding the factors on which insurers are permitted to base rates developed under a modified community rating methodology. The department needs an emergency administrative regulation to proceed with the calculation of the risk

assessment and adjustment in a continuous manner and in accordance with the new amendments. There has been no risk assessment or adjustment within the past four (4) quarters. It is necessary for the department to proceed with the risk assessment and risk adjustment system in order to avoid further delays and to comply with statutory mandates. Due to the time constraints inherent in promulgating an ordinary administrative regulation, an emergency administrative regulation is necessary in order to avoid further accumulation of the risk assessment against insurers. This emergency administrative regulation shall be replaced by an ordinary administrative regulation which will be filed at a later date. The Notice of Intent for the ordinary administrative regulation was filed contemporaneously with this emergency administrative regulation.

PAUL E. PATTON, Governor

LAURA M. DOUGLAS, Secretary

GEORGE NICHOLS III, Commissioner

PUBLIC PROTECTION & REGULATION CABINET

Department of Insurance

806 KAR 17:110E. Establishment of the Kentucky Risk Assessment and Risk Adjustment System.

RELATES TO: KRS 304.17A-130

STATUTORY AUTHORITY: KRS 304.17A-130

EFFECTIVE: December 12, 1997

NECESSITY, FUNCTION, AND CONFORMITY: KRS 304.17A-130 requires the Department of Insurance to promulgate administrative regulations for the establishment of a risk adjustment process to be used in equalizing risk between insurers which participate within and outside of the Kentucky Health Purchasing Alliance.

Section 1. Definitions. (1) "Age" means a policyholder's attained age for the purpose of attributing age to a family unit.

(2) "Department" shall be governed by KRS 304.1-050(2).

(3) "Continuation coverage" means continuation coverage provided by the Consolidated Omnibus Budget Reconciliation Act of 1987 or provided through the Kentucky Health Purchasing Alliance.

(4) "Demographic Risk Adjustment Fund" means the risk adjustment fund established under Section 7 of this administrative regulation, including any amount owed to the fund by an insurer plus any interest accrued on the amount paid by the insurer prior to the payout of any amount due from the fund in accordance with Section 7 of this administrative regulation.

(5) "Diagnosis" means any diagnosis listed in the high cost case in Table 2 and Table 2A of this administrative regulation.

(6) "Eligible insurer" means an insurer eligible for a payment from the High Cost Case Fund as defined in Section 12 of this administrative regulation.

(7) "Family composition category" means one (1) of the four (4) categories of family types (single, couple, single parent family and dual parent families) distinguished in the modified community rating structure established pursuant to KRS 304.17A-120.

(8) "Health benefit plan" shall be governed by KRS 304.17A-100(4).

(9) "High Cost Case Fund" means the risk adjustment fund referred to under Section 10 of this administrative regulation, including the contributions required under Section 12 of this administrative regulation plus any accrued interest.

(10) "Insurer" shall be governed by KRS 304.17A-100(5) but, for the purpose of this administrative regulation, shall be limited to an insurer which issues or renews a health benefit plan for the following:

(a) An employer with fifty (50) or less employees;

(b) An individual; and

(c) A member of the Kentucky Health Purchasing Alliance.

(11) "MCRC" means modified community rating cell which is a

premium rating cell classification based on:

- (a) Age;
- (b) Family composition category;
- (c) Geographic area;
- (d) Benefit plan;
- (e) Alliance status;
- (f) Group versus nongroup.

(12) "Member of months of enrollment" means the number of policyholders enrolled in a health benefit plan subject to this administrative regulation multiplied by the number of months of such enrollment over the reporting periods defined in Section 7 of this administrative regulation for demographic risk adjustment and Section 11 of this administrative regulation for high cost case adjustment.

(13) "Months of exposure" means the date of diagnosis or the performance of a procedure listed in Table 2 and Table 2A of this administrative regulation through the end of the reporting period or episode of illness, whichever comes first. Except in the case of transplantation, the episode of illness shall be considered to begin with the provision of preoperative care and end with immediate postoperative follow-up care.

(14) "Policyholder" means:

- (a) For individual policy health insurance of a commercial insurance company - the policyholder;
- (b) For a health maintenance organization - a subscriber;
- (c) For small group health insurance other than that provided by a health maintenance organization - the certificate holder.

(15) "PRAF" means the prospective risk adjustment factor which is the factor in Table 1 of this administrative regulation associated with a demographic and coverage status category or cell which include gender, age, COBRA status, and retiree status.

(16) "Procedure" means any procedure listed in the high cost case Table 2 and Table 2A of this administrative regulation.

(17) "Retiree" means a former employee covered under a group insurance policy sponsored by the employer, excluding a former employee receiving continuation coverage. Retirement status shall be determined for an individual by the group sponsor.

(18) "Risk adjustment administrator" or "administrator" means the contractor retained by the department pursuant to Section 13 of this administrative regulation.

(19) "Risk assessment cell" means the classification base referred to in Table 1 of this administrative regulation.

(20) "Standardized health benefit plan" means a health benefit plan established pursuant to KRS 304.17A-160.

Section 2. Applicability. (1) This administrative regulation shall apply to:

(a) A health benefit plan, enrollment for which is either within or outside the Kentucky Health Purchasing Alliance, that is subject to KRS 304.17A-120(1); and

(b) Each insurer as defined in Section 1(10) of this administrative regulation.

(2) The risk adjustment system established pursuant to this administrative regulation shall be applied on an insurer-by-insurer basis.

(3) Each risk covered by a health benefit plan and offered by a single insurer shall be cumulated across the plan for the purpose of determining the insurer's relative risk and adjusting the insurer's premium income accordingly.

Section 3. Demographic Risk Assessment. The first stage of the risk adjustment system is demographic risk assessment which represents the development stage of the system. In demographic risk assessment, the variation in health care costs among a specified population group is analyzed and weighted to adjust for these differences.

(1) To calculate an insurer's composite PRAF the insurer shall:

- (a) Determine the number of policyholders in each risk assess-

ment cell (Table 1) for all health benefit plans.

(b) Multiply the sum of policyholders for each risk assessment cell determined in paragraph (a) of this subsection by the PRAF associated with each cell in Table 1, or in a schedule of factors subsequently developed as provided for in Section 4 of this administrative regulation;

(c) Sum the products of paragraph (b) of this subsection for all cells and divide by the total number of policyholders to get the composite PRAF.

(2) Each insurer shall calculate their composite PRAF using the PRAF provided in Table 1 of this administrative regulation.

(3) On or before the 15th day of the final month of each calendar quarter, each insurer shall file with the administrator:

- (a) Its current composite PRAF;
- (b) The total number of policyholders included in calculating the composite PRAF as specified in Section 7(3) of this administrative regulation; and
- (c) Its member months of enrollment for that calendar quarter.

(4) Based on the quarterly filing by the insurer as required by subsection (3) of this section, the administrator shall calculate a statewide composite PRAF, weighted by the number of policyholders, to be used in calculating the quarterly adjustment amounts required by Section 7(1) of this administrative regulation.

Section 4. Schedule of PRAFs and Updates. The administrator shall, on an annual basis, generate a revised PRAF table for each family composition category based on information about the actual distribution of policyholders across risk adjustment cells and available data on the relative benefit cost for that population.

Section 5. Reference Premium. (1) On a quarterly basis, the administrator shall determine a reference premium to be used in calculating the quarterly adjustment amounts in Section 7(1) of this administrative regulation.

(2) On or before the 15th day of the final month of each calendar quarter, each insurer shall file with the administrator its total annualized premium for all policyholders enrolled in the month specified in Section 7(2) of this administrative regulation.

(3) The reference premium shall equal the statewide average annualized premium per policyholder.

Section 6. Insurer-specific Rated Risk Ratio. (1) No later than March 1 and September 1 of each year, the administrator shall estimate the enrollment weighted average monthly premium of each MCRC cell.

(2) The administrator shall calculate the average rated risk factor for all insurers as a whole. This factor shall represent the average premium across all MCRC weighted by the enrollment in each cell.

(3) To calculate the average rated risk factor, the administrator shall multiply the number of policyholders enrolled in each MCRC by the value calculated in subsection (1) of this section and divide the sum of the product by the total number of policyholders insured by all insurers.

(4) To calculate each insurer's specific rated risk factor, the administrator shall multiply the number of policyholders in each MCRC by the value calculated in subsection (1) of this section and divide the sum of the product by the total number of policyholders insured by the insurer.

(5) The insurer-specific rated risk ratio to be used to calculate the quarterly adjustment amount in Section 7(1) of this administrative regulation shall be determined by the administrator according to the formula: insurer-specific rated risk ratio = insurer-specific rated risk factor/average rated risk factor.

(6) The insurer-specific rated risk ratio based on the March 1 MCRC annual premium estimate shall be used to determine the quarterly adjustment amount in Section 7 of this administrative regulation for the March 20 and June 20 calculation for that year.



(7) Each ratio based on the September 1 MCRC annual cell premium estimate shall be used to determine the quarterly adjustment amount for the September 20 and December 20 calculation for that year.

Section 7. Demographic Risk Adjustment. (1) On a quarterly basis, the administrator shall calculate and inform each insurer of the amount owed to the demographic risk adjustment fund (-) or the amount due from the fund (+) for each insurer no later than ten (10) days following the dates specified in subsection (2) of this section by applying the following formula in which "i" represents a unique value for each insurer participating in the risk adjustment system: quarterly adjustment amount<sub>i</sub> = (composite PRAF<sub>i</sub> - statewide average composite PRAF)\* reference premium \* rated risk ratio,\* member months of enrollment<sub>i</sub> .0833

(2) The quarterly calculation dates shall be:

- (a) First quarter - March 20;
- (b) Second quarter - June 20;
- (c) Third quarter - September 20; and
- (d) Fourth quarter - December 20.

(3) For each quarterly calculation date through June 20, 1996, composite PRAF and reference premium information shall be based on enrollment in the final month of the calendar quarter. Subsequently, composite PRAF and reference premium information shall be based on enrollment in the final month of the immediately preceding calendar quarter. The member months of enrollment shall always be based on enrollment with the insurer over the current calendar quarter.

(4) In the case of an insurer for which the adjustment amount is negative, the insurer shall make the full payment to the administrator within twenty (20) days following the date provided in subsection (2) of this section and subject to Section 8 of this administrative regulation. Any insurer which fails to make a payment will be subject to decertification by the department, or such intermediate sanction as allowed by law.

(5) In the case of an insurer for which the adjustment amount is positive, the insurer is entitled to receive a payment for that amount from the administrator subject to Section 8 of this administrative regulation. This amount shall be paid on a quarterly basis, subsequent to the collection of a payment owed to the Demographic Risk Adjustment Fund pursuant to subsection (4) of this section.

Section 8. Fund Equalization. (1) In the event that the Demographic Risk Adjustment Fund is in deficit because the amount of money due an insurer exceeds the amount of payment an insurer owes, the payment due an eligible insurer shall be reduced proportionately.

(2) In the event that the Demographic Risk Adjustment Fund is in surplus because the amount due an insurer is less than the amount of money an insurer owes, a payment owed by an insurer shall be reduced proportionately.

Section 9. Reporting Requirements. (1) Each insurer shall collect such information from an enrollee and group sponsor as may be necessary to classify a risk in accordance with Section 3 of this administrative regulation including, but not limited to, the active/retiree status of each policyholder.

(2) Each insurer shall provide the administrator with any information required by the administrator in a form and content determined by the administrator, to:

- (a) Verify the calculation of the composite PRAF as described in Section 3 of this administrative regulation;
- (b) Calculate the average weighted premium as described in Section 5 of this administrative regulation;
- (c) Calculate the rated risk factor as required by Section 6 of this administrative regulation;
- (d) Manage the Demographic Risk Adjustment Fund pursuant to

this section and Section 8 of this administrative regulation; and

(e) Perform any other duty specified in Section 13 of this administrative regulation.

Section 10. High Cost Case Fund. Each insurer shall be eligible for a payment from the High Cost Case Fund on the basis of the number of months of exposure during a year for enrollees having a diagnosis or receiving a procedure listed in Table 2 and Table 2A of this administrative regulation. Payment shall be subject to any additional condition established in Section 12(10) of this administrative regulation.

Section 11. High Cost Reports. (1) Each insurer shall file with the administrator detailed information about each enrollee with a procedure/diagnosis on the high cost case list. Initial information regarding a case shall be filed by an insurer as soon as it is available in order for the administrator to confirm its probable eligibility as a high cost case.

(2) The initial filing shall include:

- (a) The number assigned to the insurer by the National Association of Insurance Commissioners (NAIC) or an insurer identification number assigned by the department;
- (b) The name of the enrollee (patient) and policyholder;
- (c) The effective date of the case;
- (d) The procedure/diagnosis classification; and
- (e) Any medical record which would support confirmation of the case's eligibility.

(3) The administrator shall assign a claim number to the case for future reference after the initial review for determination as to possible eligibility as a high cost case. Subsequently, the insurer shall file with the administrator, on a quarterly basis, detail information relative to each case which shall include:

- (a) The claim number;
- (b) The patient's name;
- (c) The effective date of the case;
- (d) The termination date of the case (if terminated); and
- (e) An abstract of the patient's record which shall include:
  - 1. Medical record;
  - 2. Case management record;
  - 3. Utilization record;
  - 4. Any itemized bill;
  - 5. Date of service; and
  - 6. Proof of each payment.

(2) On an annual basis, each insurer shall file a high cost case annual summary report with the administrator. For each procedure/diagnosis on the high cost case list the report shall indicate:

- (a) The claim number;
- (b) The patient's name;
- (c) The effective date of the case;
- (d) The termination date of the case (if terminated);
- (e) The number of months of exposure during year; and
- (f) The total payments made by the insurer during the year for health care services on the case.

(3) The months of exposure referenced in subsection (2)(e) section and the total payments referenced in subsection (2)(f) of this section shall be totaled for each procedure/diagnosis.

(4) An insurer certification in accordance with Section 12(10) of this administrative regulation shall be filed with each annual report required by subsection (2) of this section.

(5) The annual summary report required by subsection (2) of this section shall:

- (a) Cover each high cost case treated during the period of January 1 through December 31 each year; and
- (b) Be due on or before March 1 immediately following the end of the calendar year for which the information is being reported.
- (6) Each health maintenance organization shall impute costs



based on a standard accounting methodology established by the administrator if such plans are unable to identify the cost of services for an individual with a high cost case in a manner otherwise consistent with the requirements of this section.

Section 12. Payment Adjustment for High Cost Cases. (1) On a quarterly basis, each insurer shall remit to the administrator an amount equal to one (1) percent of the total premium received during a calendar quarter for each health benefit plan subject to this administrative regulation. This payment shall be received by the administrator no later than the 15th day of the month immediately following the end of the calendar quarter.

(2) Any payment to an insurer from the High Cost Case Fund shall be based on the amount that each insurer's per enrollee payment for high cost cases, adjusted for statewide average payments per month of exposure, exceeds the statewide average per enrollee payments for high cost cases, subject to subsection (9) of this section.

(3) Based on the high cost case information reported by an insurer for the reporting period, the administrator shall compute the statewide average payment per month of exposure for each procedure/diagnosis described in Table 2 and Table 2A of this administrative regulation. This calculation will determine the value for each procedure/diagnosis category that shall be used to calculate the statewide average high cost case score described in subsection (4) of this section and each insurer-specific high cost case score described in subsection (5) of this section.

(4) The administrator shall calculate a "statewide average high cost case score" as follows:

(a) Multiply the statewide average payment per month of exposure derived in subsection (3) of this section for each procedure/diagnosis on the high cost case list by the total number of months of exposure reported for each respective procedure/diagnosis over the reporting period by all insurers;

(b) Divide the sum of the product generated in paragraph (a) of this subsection by the total number of member months of enrollment over the reporting period in all health benefit plans subject to this administrative regulation.

(5) The administrator shall calculate an "insurer-specific high cost case score" for each insurer as follows:

(a) Multiply the statewide average cost per month of exposure derived in subsection (3) of this section for each procedure/diagnosis on the high cost case list by the number of months of exposure reported for each respective procedure/diagnosis by the insurer over the reporting period;

(b) Divide the sum of the product in paragraph (a) of this subsection by the number of member months of enrollment over the reporting period in all health benefit plans in effect with the insurer. Each of these calculations is expressed below, where " $p_i$ " represents medical procedure/diagnosis specific values and " $i$ " represents insurer-specific values:

1. Average payment per month of exposure<sub>p</sub> = total high cost case payments<sub>p</sub>/months of exposure<sub>p</sub>;

2. Statewide average high cost case score =  $\Sigma_p$  (average payment per month of exposure<sub>p</sub> \* months of exposure<sub>p</sub>)/total member months of enrollment;

3. Insurer-specific high cost case score<sub>i</sub> =  $\Sigma_p$  (average payment per month of exposure<sub>p</sub> \* months of exposure<sub>p</sub>)/member months of enrollment.

(6) Each insurer with a high cost case score in excess of the statewide average high cost case score shall be eligible for payment from the High Cost Case Fund, and shall be deemed an eligible insurer for the purposes of this section.

(7) Each eligible insurer shall receive a payment from the High Cost Case Fund equal to the unadjusted payment amount described in subsection (8) of this section multiplied by the fund equalization factor described in subsection (9) of this section. This amount shall be

calculated by the administrator and remitted to each eligible insurer not later than May 1 of each year.

(8) The unadjusted payment amount of each eligible insurer is equal to the product of:

(a) The insurer-specific high cost case score described in subsection (5) of this section minus the statewide average high cost case score described in subsection (4) of this section;

(b) The insurer's total member months of enrollment over the reporting period; and

(c) .75;

(9) The fund equalization factor is equal to the lesser of:

(a) One (1); and

(b) The result of the total amount of payments remitted to the High Cost Fund by insurers over the reporting period divided by the sum of unadjusted payment amounts for the reporting period for all insurers.

(10) The equation used by the administrator to make the calculation described in this section shall be as follows, where " $x$ " designates eligible insurer-specific values:

(a) Amount of payment<sub>x</sub> = unadjusted payment amount<sub>x</sub> \* pool equalization factor;

(b) Unadjusted payment amount<sub>x</sub> = (high cost case score<sub>x</sub> - statewide average high cost case score) \* member months of enrollment<sub>x</sub> \* .75; and

(c) Fund equalization factor = (High Cost Case Fund contributions + fund interest)/ $\Sigma_x$  unadjusted payment amount.

(11) In order to receive a payment, an insurer shall certify that:

(a) Every service for a procedure/diagnosis reported under this section is a service that is covered by the insurer in accordance with the coverage requirements for a standardized health benefit plan;

(b) Each patient for whom payment is being sought:

1. Is enrolled in an applicable health benefit plan during the applicable reporting period;

2. Has received a primary diagnosis or procedure on the high cost case list, as reported by the insurer;

3. Is not covered by another insurer or third-party payor for the course of treatment related to the reported medical procedure/diagnosis for the episode of illness period reported.

(12) In the event that the High Cost Case Fund is in surplus because the fund equalization factor is determined to be one (1) in accordance with subsection (9) of this section, the surplus shall be rebated to each insurer proportionate to the amount of the insurer's contribution, and the department shall approve any reduction in the contribution rate for each subsequent quarter.

(13) The administrator shall notify each insurer of its estimated payment amount by May 1 of each year.

(14) In the event that the administrator disqualifies a high cost case claim, the insurer may appeal to the department.

Section 13. Administrator. (1) The department will contract with an administrator to manage the day-to-day operations of the risk adjustment system in accordance with this administrative regulation. Each insurer subject to this administrative regulation, and any parent company or subsidiary of any insurer, shall be disqualified from being selected as the administrator.

(2) The administrator shall:

(a) Perform and publish each calculation required under this administrative regulation except for a calculation to be performed by an insurer in accordance with the appropriate section of this administrative regulation;

(b) Collect data from each insurer or other party necessary to administer the risk adjustment system;

(c) Collect payment from each insurer for the Demographic Risk Adjustment Fund and the High Cost Case Fund and make an applicable risk adjustment payment to each insurer eligible for such a payment;

(d) Audit an insurers' submission of the high cost claim report;

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(e) On or before August 1 of each year, report to the department information regarding trends in enrollment and experience overall, in addition to experience regarding the Demographic Risk Adjustment Fund and the High Cost Case Fund; and

(f) Perform any other duty delegated to the administrator pursuant to this administrative regulation or by the department subsequent to the issuance of this administrative regulation.

(3) The cost of administering the risk adjustment system, exclusive of the cost of making a risk adjustment payment, shall be financed through a surcharge imposed on each health benefit plan subject to this administrative regulation. The amount of the surcharge shall be ten (10) cents per policyholder per month and adjusted annually in accordance with KRS 304.17A-130 and this administrative regulation.

TABLE 1  
DEMOGRAPHIC RISK ASSESSMENT CELL FACTOR MATRIX  
Adjusted for "50%" Regulation

SINGLE COVERAGE			POLICYHOLDER AND SPOUSE COVERAGE		SINGLE PARENT FAMILY COVERAGE		TWO PARENT FAMILY COVERAGE		
Attained Age	Active Policyholders		Active Policyholders		Active Policyholders		Active Policyholders		Attained Age
	Male	Female	Male	Female	Male	Female	Male	Female	
<30	0.724	1.274	1.000	1.000	0.892	1.052	1.000	1.000	<30
30-39	0.815	1.187	1.000	1.000	0.953	1.025	1.000	1.000	30-39
40-49	0.919	1.057	1.000	1.000	1.000	1.000	1.000	1.000	40-49
50-54	1.000	1.000	1.000	1.000	1.000	1.000	1.000	1.000	50-54
55-59	1.000	1.000	1.000	1.000	1.000	1.000	1.000	1.000	55-59
60-64	1.000	1.000	1.000	1.000	1.000	1.000	1.000	1.000	60-64
65+	1.000	1.000	1.000	1.000	1.000	1.000	1.000	1.000	65+
COBRA Policyholders			COBRA Policyholders		COBRA Policyholders		COBRA Policyholders		
Under 30	1.500	1.500	1.500	1.500	1.500	1.500	1.500	1.500	Under 30
30-39	1.500	1.500	1.500	1.500	1.500	1.500	1.500	1.500	30-39
40-49	1.500	1.500	1.500	1.500	1.500	1.500	1.500	1.500	40-49
50-54	1.500	1.500	1.500	1.500	1.500	1.500	1.500	1.500	50-54
55-59	1.500	1.500	1.500	1.500	1.500	1.500	1.500	1.500	55-59
60-64	1.500	1.500	1.500	1.500	1.500	1.500	1.500	1.500	60-64
65+	1.500	1.500	1.500	1.500	1.500	1.500	1.500	1.500	65+
Early Retiree Policyholders			Early Retiree Policyholders		Early Retiree Policyholders		Early Retiree Policyholders		
Under 50	1.247	1.247	1.076	1.076	1.155	1.155	1.053	1.053	Under 30
50-54	1.119	1.119	1.073	1.073	1.080	1.080	1.035	1.035	50-54
55-59	1.132	1.132	1.075	1.075	1.085	1.085	1.039	1.039	55-59
60-64	1.171	1.171	1.075	1.075	1.097	1.097	1.049	1.049	60-64

PRAF.XLS  
Revised 10/28/97

TABLE 2: HIGH COST CASE LIST

\*The administrator will identify code number annually

Procedure/Diagnosis	Payment Conditions & Limitations
Liver transplantation	Payment limited to the cost of pre-operative care, transplantation and immediate follow-up care.
Heart transplantation	
Bone marrow transplantation	
Kidney transplantation	
End Stage Renal Disease with dialysis	
Ventilator support for at least 30 days	
Neonates with a birth weight of less than 1,500 grams or respiratory distress syndrome requiring at least thirty (30) days of ICU care	
HIV/AIDS	With specified opportunistic infections and disease designated in Table 2A of this administrative regulation
Leukemia	

TABLE 2A: SPECIFIC OPPORTUNISTIC INFECTIONS AND OTHER DISEASES FOR HIV/AIDS

HIV/AIDS with the following specified conditions:

Candidiasis of lung; coccidiosis; cryptosporidiosis; isosporiasis; pneumocystosis; progressive multifocal leukoencephalopathy; toxoplasmosis, malignant neoplasms including only: Kaposi's sarcoma, lymphosarcoma and reticulosarcoma, primary lymphoma of the brain.

The following specified conditions when due to HIV/AIDS:

Specified infections including only: candidiasis: disseminated, of the mouth, of the skin and nails, other and unspecified sites; coccidioidomycosis; cytomegalic inclusion disease; acute or subacute endocarditis; herpes simplex; herpes zoster; histoplasmosis; microsporidiosis, mycobacteriosis, other and unspecified; acute or subacute myocarditis; Nocardia infection; opportunistic mycoses; pneumonia NOS, other bacterial pneumonia, pneumococcal, viral NES and NOS; Salmonella infections; septicemia; strongyloidiasis; tuberculosis; specified diseases of the central nervous system including only: demylenating disease NOS disorders NOS, other and unspecified nonarthropod-borne viral

disease, other and unspecified slow virus infections, dementia NOS, organic dementia, presenile dementia, encephalitis, encephalopathy myelopathy, nonpsychotic or psychotic organic brain syndrome NOS: other specified conditions including only: abnormal weight loss; abnormality, respiratory; agranulocytosis, anemia: NOS, aplastic, other and unspecified, deficiency, hemolytic, acquired; arthritis, pyogenic, infective; blindness or low vision; blood and blood-forming organs, unspecified disease; cachexia; dermatomycosis, dermatophytosis; diarrhea (noninfectious), infectious; disease or disorder NOS: blood and blood-forming organs, salivary gland, skin and subcutaneous tissue; fever; gastroenteritis (infectious); hepatomegaly; hyperhidrosis; hypersplenism; infection: intestinal, ill-defined; lack of expected physiological development in infant; leukoplakia of oral mucosa (tongue); malabsorption, intestinal; malaise; nephritis & nephropathy; neuralgia NOS; neuritis NOS; pneumonitis, lymphoid, interstitial; polyneuropathy pyrexia; radiculitis NOS; retinal vascular changes; retinopathy, background; secondary cardiomyopathy; splenomegaly; thrombocytopenia, secondary and unspecified.

HIV/AIDS with other conditions which evidence severe immune system compromise subject to case-by-case review and approval.

LAURA M. DOUGLAS, Secretary  
GEORGE NICHOLS III, Commissioner  
SUETTA W. DICKINSON, General Counsel

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#### REGULATORY IMPACT ANALYSIS

Contact Person: Sharron S. Burton

(1) Type and number of entities affected: This administrative regulation applies to all insurers defined by KRS 304.17A-100(5) which issue or renew health benefit plans for employers with 50 employees or less, for individuals, or for members of the Kentucky Health Purchasing Alliance. There are approximately 27 insurers to which this administrative regulation applies.

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

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: The department has not received public comments regarding this issue.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: The department has not received public comments regarding this issue.

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

1. First year following implementation: Health insurers are required to pay into the Risk Assessment and Adjustment System in accordance with the formula established by the administrative regulation. Health insurers also must report various information regarding policyholders who are considered high risk.

2. Second and subsequent years: The assessment and reporting requirements for the first year will continue for the second and subsequent years.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: The department will bear the cost of monitoring the Kentucky Risk Assessment and Adjustment System.

2. Continuing costs or savings: For subsequent years, the department will continue to bear the cost of monitoring the Kentucky

Risk Assessment and Adjustment System.

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: The department is required to contract with an administrator to manage the day-to-day operations of the risk adjustment system in accordance with the administrative regulation. On an annual basis, the administrator will be required to report specified information to the department regarding the Demographic Risk Adjustment Fund, the High Cost Case Fund, and trends in enrollment and experience overall.

(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 and monitor the Risk Adjustment System. The cost of administering the Risk Adjustment System will be financed through a surcharge imposed on each health benefit plan subject to the administrative regulation.

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

(a) Geographical area in which administrative regulation will be implemented: The department has not received public comments regarding this issue.

(b) Kentucky: The department has not received public comments regarding this issue.

(7) Assessment of alternative methods; reasons why alternatives were rejected: KRS 304.17A-130 establishes specific guidelines regarding the implementation of the risk adjustment process. This administrative regulation incorporates these guidelines into the administrative regulation in a manner in which the department is able to implement the statutory mandates.

(8) Assessment of expected benefits: The department expects that this administrative regulation will equalize risk between insurers which participate in the modified community rated market, both within and outside of the Kentucky Health Purchasing Alliance.

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: None

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

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

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: No conflict.

(a) Necessity of proposed regulation if in conflict:

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

(10) Any additional information or comments: None

(11) TIERING: Is tiering applied? Tiering is applied for the purposes of this administrative regulation. This administrative regulation does not require insurers who issue or renew health benefit plans to large groups or to eligible trusts and associations that meet the requirements of KRS 304.17A-120(5) to contribute to the Kentucky Risk Assessment and Adjustment System. Such insurers are excluded from an assessment because the assessment only applies to those carriers participating in the modified community rated market. Large groups and eligible trusts and associations are not included in the modified community rated market.

ADMINISTRATIVE REGULATIONS AS AMENDED BY PROMULGATING AGENCY  
AND REVIEWING SUBCOMMITTEE

ARRS - Administrative Regulation Review Subcommittee  
IJC - Interim Joint Committee

COUNCIL ON POSTSECONDARY EDUCATION  
(As Amended at ARRS, December 9, 1997)

13 KAR 2:060. Degree program approval; equal opportunity goals.

RELATES TO: KRS 164.001, 164.020 [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 **establishes** [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" is defined by KRS 164.001(7). [means the Council on Postsecondary Education.]

(3) "Goal" or "objective" means a flexible target in enrollment, retention, graduation or employment developed by the Council on Postsecondary Education and the state-supported postsecondary education institutions and included in the Kentucky Plan.

(4) "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 an institution within the postsecondary education system as defined by KRS 164.001(15). [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 shall maintain [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 each state-supported postsecondary education institution [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 and in Section 3 of this administrative regulation 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.

(a) Objectives are [with objectives] established and measured for three (3) of those categories in the Kentucky Plan and in Section 4 of this administrative regulation:

1. [(a)] Executive, administrative and managerial;
2. [(b)] Faculty; and
3. [(c)] Professional nonfaculty.

(b) The four (4) categories of African-American employment included in the Kentucky Plan that are not measured are:

1. Secretarial/clerical;
2. Technical/paraprofessional;
3. Skilled crafts; and
4. Service/maintenance.

(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 may substitute objectives contained in subsection (4) of this section for objectives contained in Sections 3 and 4 of this administrative regulation based on a plan submitted by Kentucky State University, reviewed by the Committee on Equal Opportunities, and approved by the council.

(6) The Council on Postsecondary Education shall evaluate [evaluates] institutional progress in implementing the flexible objectives established in the Kentucky Plan in order to determine:

- (a) An institution's automatic eligibility for a new academic program [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) Except as provided in paragraph (b) of this subsection, 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 the [this] requirement established in paragraph (a) of this subsection.

(3)(a) Except as provided in paragraph (b) of this subsection, 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 the [this] requirement established in paragraph (a) of this subsection.

(4)(a) Except as provided in paragraphs (b) and (c) of this subsection, 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 institution's objective shall be that 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 the [this] requirements established in paragraphs (a) and (b) of this subsection. [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) Except as provided in paragraph (b) of this subsection, 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 the requirement established in paragraph (a) of this subsection. [this objective.]

Section 4. Employment Objectives. (1) Pursuant to Section 2(3) of this administrative regulation, 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) [(6) 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 a request [requests] for a new academic program [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 if [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 =  $100 \frac{(6.0 - 5.0)}{(8.0 - 5.0)}$   
 =  $100 \frac{1.0}{3.0}$   
 =  $100 (0.333)$   
 = 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 =  $100 \left( \frac{4.0/5.0}{1} - 1 \right)$   
 =  $100 (0.8 - 1)$   
 =  $100 (-0.2)$   
 = -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 a new academic program [degree programs] [shall exist] if:

(a) For Kentucky State University, the institution exhibits continuous progress:

1. In five (5) of seven (7) annual plan implementation objectives established in Sections [2(4);] 3 and 4 of this administrative regulation; or

2. As required by Section 2(4) of this administrative regulation, if substituted by the council in accordance with Section 2(5) 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 a new academic program [programs] shall be for the calendar year immediately following the certification of eligibility.

(3) Certification of automatic eligibility and for a quantitative or [and] qualitative waiver [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 is 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:

1. In four (4) of seven (7) annual plan implementation objectives established in Sections 3 and 4 of this administrative regulation; or

2. As required by Section 2(4) of this administrative regulation, if substituted by the council in accordance with Section 2(5) 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 an institution other than Kentucky State University or a community college [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.

(4) [(5)] A qualitative waiver may be approved for the [an] institution failing to meet annual objectives if an institution can demonstrate:

(a) 1. 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

2. 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.

(5) [(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 a position [positions];

(g) [b.] Offers of employment made that are accepted or rejected;

(h) [c.] Utilization of funds to stimulate a unit [units] to improve its [their] employment data;

(i) [d.] Special actions for a unit [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.

(6) [(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 to grant a qualitative waiver ~~[should be granted]~~.

(7) ~~[(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:

(a) Following submission of the information by the institution in support of its [their] request; and

(b) After a recommendation is forwarded from the Committee on Equal Opportunities.

(8) ~~[(9)]~~ An institution shall not be eligible for a waiver ~~[(3) Receiv-~~ing 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.

(9) ~~(a) Except as provided in paragraph (b) of this subsection, [(10)]~~ an institution that has received a quantitative or qualitative waiver shall ~~[only]~~ submit a new academic program [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.

(b) If ~~[Except that, when]~~ the council postpones or delays action on an academic program approval, it may extend the period of consideration of a new academic program.

**Section 8. Incorporation by Reference.** (1) "The 1997-2002 Kentucky Plan for Equal Opportunities in Postsecondary Education", Council on Postsecondary Education, is incorporated by reference.

(2) It may be inspected, copied, or obtained at the Council on Postsecondary Education, 1024 Capital Center Drive, Suite 320, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

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.

**GENERAL GOVERNMENT CABINET**  
**Kentucky Board of Nursing**  
**(As Amended at ARRS, December 9, 1997)**

**201 KAR 20:390. Nursing Incentive Scholarship Fund.**

RELATES TO: KRS 314.011, 314.025, 314.026, 314.027

STATUTORY AUTHORITY: KRS 314.026(1), 314.131(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 314.025 through 314.027 create the Kentucky Nursing Incentive Scholarship Fund for Kentucky residents. KRS 314.026 requires the Board of Nursing to promulgate administrative regulations to implement and administer the scholarship fund. This administrative regulation implements the Kentucky Nursing Incentive Scholarship Fund Program and establishes the requirements relating to the program. [The Nursing Incentive Scholarship Fund Program was created by the General Assembly. This administrative regulation implements the administration of the program.]

Section 1. Definitions. (1) "Academic year" means, for a registered nursing program, a minimum of two (2) semesters or its equivalent; and for a practical nursing program, the completion of the required program.

(2) "Board" is defined by KRS 314.011(1). ~~[means the Kentucky~~

Board of Nursing.]

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

(4) "Kentucky resident" is defined by 13 KAR 2:045, Section 1(15).

(5) "Program of nursing" means either a prelicensure, BSN completion or graduate nursing program.

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

(6) "Successful academic progression" means:

(a) For a prelicensure or [and] BSN completion nursing program [programs], the completion of a minimum of eight (8) credit hours per semester of published requirements for the program of nursing and maintenance of a minimum grade point average which would allow continuation in a program of nursing; or

(b) For a graduate nursing program [programs], the completion of a minimum of six (6) credit hours per semester of published requirements for the program of nursing and maintenance of a minimum grade point average which would allow continuation in the graduate program.

Section 2. Application. (1) To be eligible for a nursing incentive scholarship, an applicant shall:

(a) Be a Kentucky resident; and

(b) Have been accepted for admission to a program of nursing.

(2) An applicant shall submit a completed "Nursing Incentive Scholarship Application" by June 1 to apply for a scholarship for the following academic year. ~~[the date specified on the application.]~~

(3) An applicant shall attach to the application a copy of the Student Aid Report from the Free Application for Federal Student Aid (FAFSA) for the current year.

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

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

(3) A member of the committee shall:

(a) Serve without compensation; and

(b) ~~[but may]~~ Be reimbursed for actual and necessary expenses related to serving on the committee.

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

(1) Preference categories as specified in KRS 314.025(2):

(a) Licensed practical nurses, twenty-five (25) points;

(b) Registered nurses pursuing graduate nursing education, twenty-five (25) points; and

(c) Financially needy Kentucky residents, twenty-five (25) points. Financial need shall be determined by the annual FAFSA Pell Grant Indicator of Eligibility for Financial Aid.

(2) Potential for academic success, as follows:

(a) High school, vocational school, college or university grade point average for whichever institution the applicant most recently attended:

1. ~~[of]~~ Three and five-tenths (3.5) to four (4.0), twenty-five (25) points;

2. Three (3) to three and four-tenths (3.4), twenty (20) points; and

3. Two and five-tenths (2.5) to two and nine-tenths (2.9), fifteen (15) points.

(b) Successful progression in a program of nursing shall be equal to five (5) points for each semester or quarter, to a maximum of ten (10) points.

(3) Previous health care experience, either paid or volunteer, shall be equal to five (5) points for each year in which service is validated, to a maximum of ten (10) points.



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

(2)(a) The committee shall first make awards to those recipients who:

1. Received an award [awards] in the previous year; and
2. Remain eligible to receive an award [awards] pursuant to Section 7 of this administrative regulation in the current year.

(b) If funds remain available after the awards are made pursuant to paragraph (a) of this subsection, the committee shall make an award to other eligible applicants.

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

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

(3) Each educational institution in which a student receiving a nursing incentive scholarship award is enrolled shall certify to the board no later than thirty (30) days from the beginning of each semester, that the recipient:

(a) Has enrolled; and

(b) Is in good standing in the nursing program. [The educational institution shall send the certification to the board on the "Certification of Enrollment" form.]

Section 7. Continuing Eligibility Criteria. (1) A recipient of a nursing incentive scholarship shall be eligible to continue to receive an award if the recipient:

(a) Maintains successful academic progression through the program;

(b) Has continued maintenance of a preference category; and

(c) Submits to the board a completed "Nursing Incentive Scholarship Fund Request for Continuation" form by June 1.

(2) The educational institution shall immediately notify the board of a change in a recipient's enrollment status. [A recipient of a nursing incentive scholarship shall be eligible to continue to receive an award provided successful academic progression through the program is maintained and there is continued maintenance of any preference categories. The recipient shall submit to the board by the date specified on the "Nursing Incentive Scholarship Fund Continuance" form. The educational institution shall immediately notify the board of any change in a recipient's enrollment status.]

(3) An award recipient in a practical nursing program shall not be eligible for a continued award while enrolled in that program.

[{(2) Award recipients in practical nursing programs are not eligible for continued awards while enrolled in such programs.}]

Section 8. Disbursement Contract. (1) Prior to disbursement of initial funds, the recipient shall sign a "Nursing Incentive Scholarship Fund Contract".

(2) The recipient shall sign a "Nursing Incentive Scholarship Fund Promissory Note" for each year in which funds are disbursed.

Section 9. Repayment and Deferral. (1) A recipient shall immediately become liable to the board to pay the sum of all scholarships received and the accrued interest on the scholarships if the recipient fails to complete the:

(a) Nursing program in which he is enrolled within the time specified by the program of nursing; or

(b) Required employment as specified in the contract. [If a recipient fails to complete the nursing program in which he is enrolled within the time specified by the program of nursing or if he fails to

~~complete the required employment as specified in the contract, he shall immediately become liable to the board to pay the sum of all scholarships received and accrued interest thereon.~~]

(2) Written notification of demand for repayment shall be sent by the board to the scholarship recipient's last known address and shall be effective upon mailing. The board may agree, in its sole discretion, to accept repayment in installments in accordance with a schedule established by the board. Payments shall first be applied to interest and then to principal on the earliest unpaid contracts.

(3) Repayment may be deferred in the case of disability, major illness or accident which prevents a recipient from completing a program of nursing or being employed as a nurse in Kentucky.

(4) A student enrolled in a program of nursing may defer repayment if the student fails to achieve successful academic progression. This deferment [deferral] shall [only] apply for one (1) academic year. If the student fails to achieve successful academic progression after that time, repayment shall be due. If the student achieves successful academic progression within the allotted time, he may apply for a continuation award pursuant to Section 7 of this administrative regulation.

(5)(a) If a deferment [deferral] is requested, the recipient shall submit the request to the committee on a "Nursing Incentive Scholarship Fund Request for Deferment [Deferral]" form.

(b) If the request for deferment is submitted pursuant to subsection (3) of this section, the form shall be accompanied by a physician's statement.

(6) If a recipient fails to pass the licensure examination within two (2) years of graduation, the sum of all nursing incentive scholarships received by the recipient, and the accrued interest [thereon], shall become due and payable.

Section 10. Verification. (1) Verification of employment as a nurse in Kentucky pursuant to the contract shall be submitted to the board when the recipient's employment commitment begins and when it is completed. A [Any] termination of employment prior to completion shall be reported to the board within thirty (30) days by the employer and the recipient.

(2) A recipient [Recipients] shall notify the board immediately of a [any] change of name or address or enrollment status in school.

Section 11. Incorporation by Reference. (1) The following forms are incorporated by reference:

(a) "Nursing Incentive Scholarship Fund Application (10/96)";

(b) "Nursing Incentive Scholarship Fund Request for Continuance (10/96)";

(c) ["Nursing Incentive Scholarship Fund Verification of Academic Progression (8/94)";

(d)] "Nursing Incentive Scholarship Fund Request for Deferral (10/96)";

(d) [(e)] "Nursing Incentive Scholarship Fund Contract (10/96)";

(e) [(f)] "Nursing Incentive Scholarship Fund Promissory Note (10/96)"; and

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

(2) These forms may be inspected, copied, or obtained at the Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, Kentucky 40222, 8:30 a.m. to 4:30 p.m., Monday through Friday.

MARCIA STANHOPE, President

NATHAN GOLDMAN, General Counsel

APPROVED BY AGENCY: October 10, 1997

FILED WITH LRC: October 14, 1997 at 10 a.m.



## ADMINISTRATIVE REGISTER - 1503

**NATURAL RESOURCES AND  
ENVIRONMENTAL PROTECTION CABINET  
Department for Environmental Protection  
Division for Air Quality  
(As Amended at ARRS, December 9, 1997)**

**401 KAR 59:174. Stage II controls at gasoline dispensing facilities.**

RELATESTO:KRS224.01-010,224.10-100,224.20-100,224.20-110, 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 in which the entire county, as of the effective date of this administrative regulation, is [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

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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 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;

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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 25,000 [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 [10,000] gallons or less. This exemption shall cease to apply if, for any month, the average monthly throughput exceeds 25,000 [10,000] 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.

(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,

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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.

### JUSTICE CABINET

Department of Corrections

Division of Adult Institutions

(As Amended at ARRS, December 9, 1997)

#### 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, October 14 [April 14], 1997, is incorporated by reference.

(b) It may be inspected, copied, or obtained at the Office of the General Counsel, Department of Corrections, State Office Building, 501 High Street, Frankfort, Kentucky 40601, Monday through Friday 8 a.m. to 4:30 p.m.

(2) Green River Correctional Complex Policies and Procedures include:

GRCC 02-06-01 Inmate Canteen

GRCC 02-07-01 Inmate Personal Funds

GRCC 08-03-01 Escape Plan

GRCC 08-05-01 Emergency Squad: Selection, Training and Evaluation

GRCC 08-06-01 Response Units

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

GRCC 09-04-01 Inmate Death

GRCC 09-06-01 Entry and Exit Procedures

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 (Deleted 4/29/97)]~~

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 [~~(Amended 4/14/97)~~]

GRCC 18-02-02 Meritorious Visitation Program

GRCC 19-01-01 Inmate Work Programs

GRCC 19-01-02 Unassigned Status [~~(Added 4/14/97)~~]

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) [~~Program~~]

GRCC 25-02-01 Parole Hearing Procedure

DOUG SAPP, Commissioner

JACK T. DAMRON, Staff Attorney

APPROVED BY AGENCY: October 6, 1997

FILED WITH LRC: October 15, 1997 at 9 a.m.

## ADMINISTRATIVE REGISTER - 1507

### EDUCATION, ARTS, AND HUMANITIES CABINET Education Professional Standards Board (As Amended at ARRS, December 9, 1997)

#### **704 KAR 20:210. Substitute teachers and emergency school personnel.**

RELATES TO: KRS 161.020, 161.028(1)(a), (c), 161.030(1), (9), 161.100

STATUTORY AUTHORITY: KRS 161.020, 161.028(1)(a), (c), 161.030(1), (9), 161.100

NECESSITY, FUNCTION, AND CONFORMITY: KRS 161.020 requires that a teacher [teachers] and other professional school personnel hold a certificate [certificates] of legal qualification [qualifications] for the [their] respective position [positions]. KRS 161.100 provides for the issuance of an emergency certificate [certificates]. This administrative regulation establishes a Certificate for Substitute Teaching and establishes the priority status of this certificate in comparison with a [other] regular certificate [certificates] and an [in comparison with] emergency certificate [certificates].

Section 1. (1) The Certificate for Substitute Teaching shall be issued in accordance with the pertinent Kentucky statutes and administrative regulations of the Education Professional Standards Board to an applicant [applicants] who:

(a) Holds [Hold] a valid statement of eligibility for a Kentucky teaching certificate; or

(b) Has [Have] previously held a [any type of] Kentucky certificate for classroom teaching for which the completion of a four (4) year program of teacher preparation and a bachelor's degree were required.

(2) The Certificate for Substitute Teaching shall be issued initially for a duration period of five (5) years and may be reissued or renewed upon recommendation of the employing school district superintendent.

(3) The Certificate for Substitute Teaching shall:

(a) Be valid [only] for substitute teaching; and

(b) ~~[-The Certificate for Substitute Teaching shall]~~ Not be valid for:

1. Continuous part-time employment for classroom teaching; or
2. As a permanent replacement for a teacher of record for the remainder of the school year.

Section 2. **To employ a substitute teacher during the absence of the teacher of record for a position** [Whenever a substitute teacher [teachers] must be employed to serve during the absence of the teacher of record for a [the] position], priority in selection and employment shall be given in accordance with the following order:

(1) A teacher [Teachers] who holds [hold] appropriate regular certification corresponding to the grade level of the teaching assignment;

(2) A teacher [Teachers] who holds [hold] regular certification for classroom teaching at any grade level;

(3) A teacher [Teachers] who holds [hold] the Certificate for Substitute Teaching;

(4) Except as provided in subsection (5) of this section, a person [persons] certified on an emergency basis for substitute teaching pursuant to 704 KAR 20:120, who shall be called according to the following descending order relating to the amount of college hours completed:

- (a) A Bachelor's degree;
- (b) At least ninety-six (96) semester hours of college credit;
- (c) From sixty-four (64) to ninety-five (95) semester hours of college credit;

(5) A person [Persons] certified on an emergency basis for substitute teaching in a [any] health, technical, or industrial occupation with a minimum of four (4) years of occupational experience in the

area to be taught and a high school diploma or its equivalent as determined by evidence of an acceptable score on the General Education Development Test.

**Section 3. If a district is unable to employ a substitute teacher using the priority selection process established in Section 2 of this administrative regulation** [Whenever a substitute teacher, identified through the priority selection found in Section 2 of this administrative regulation, cannot be employed], a district may utilize a person through an approved Education Professional Standards Board one (1) year approval for emergency school personnel. The one (1) year approval [one (1) year Pilot Plan for emergency personnel: The one (1) year Pilot Plan] for emergency school personnel shall be available to no more than five (5) districts during the pilot year of the plan, 1998-99. A district participating in the pilot year may be approved for participation in a subsequent year. [1997-98 school year.]

(1) The one (1) year approval [Pilot Program] for emergency school personnel shall be reviewed for approval by the Education Professional Standards Board based upon the following documented components:

(a) The number of teaching days not filled with an appropriately certified teacher or appropriately certified emergency substitute in the preceding year;

(b) The extent and anticipated usage of emergency school personnel;

(c) A plan to eliminate the need for emergency school personnel in the future;

(d) The steps taken by the district to recruit and retain emergency certified personnel;

(e) The recruitment of persons with a high school diploma, age twenty-five (25) or over, except [excluding] an individual enrolled in an approved teacher education program who may be less than twenty-five (25) years old;

(f) Recruitment of instructional assistants, parents or other paraprofessionals assigned to the school;

(g) A detailed outline of a minimum [the] eighteen (18) [to twenty-one (21)] clock hour orientation program including emphasis on student safety, [required of emergency personnel, emphasizing student safety and a review of] district policies, and procedures; and

(h) An outline of the district screening process, including the required criminal record and reference check.

(2) Upon Education Professional Standards Board approval of the one (1) year approval [pilot] plan, the district shall:

(a) Submit a list, by name, Social Security number, and school, of personnel meeting the requirements established in [this] subsection (1) of this section;

(b) Utilize personnel [only] in the school for which approval has been granted;

(c) Submit a quarterly report [reports] to the Education Professional Standards Board identifying the number of days personnel were utilized under this one (1) year approval [pilot] plan; and

(d) Submit a year-end evaluation of the one (1) year approval [Pilot] plan for emergency school personnel.

ROSA WEAVER, Chair

ROBERT SHERMAN, Attorney

APPROVED BY AGENCY: June 23, 1997

FILED WITH LRC: October 8, 1997 at 1 p.m.

## ADMINISTRATIVE REGISTER - 1508

### EDUCATION, ARTS, AND HUMANITIES CABINET Education Professional Standards Board (As Amended at ARRS, December 9, 1997)

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

RELATES TO: KRS 161.028(1)(a), (k), 161.030(3), (4)

STATUTORY AUTHORITY: KRS 161.028(1)(a), (k), 161.030(3), (4)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 161.030(3) requires that a new teacher, including an out-of-state teacher with less than two (2) years experience, successfully complete appropriate assessments prior to initial certification in Kentucky. KRS 161.030(3) and (4) require the Education Professional Standards Board to select the tests, determine the passing scores, establish a reasonable fee for the assessments, and establish a procedure for a person to repeat a test and be informed of his strengths and weaknesses in each area. This administrative regulation establishes the written examination prerequisites for teacher certification, including the required tests, the minimum acceptable level of achievement on each test, the fee for each test, and the procedure for retaking the test. [KRS 161.030 requires that all new teachers, including out-of-state teachers with less than two (2) years' experience, successfully complete appropriate written tests prior to initial certification in Kentucky. The tests are required to measure communication skills, general knowledge, professional education concepts, and knowledge in the specific teaching field of the applicant. The Education Professional Standards Board is required to select the tests; determine the minimum acceptable level of achievement on each test; establish a reasonable fee related to the cost of administration of the tests, with the fees to be paid by the teacher applicants; and establish procedures for persons having less than minimum levels of performance on a test to repeat that test and be informed of strengths and weaknesses in performance areas. This administrative regulation implements these duties relative to teacher testing.]

Section 1. A [All] teacher applicant [applicants] [A new teacher applicant and an out-of-state applicant] for certification [with less than two (2) years of teaching experience as defined in 704 KAR 20:045] shall successfully complete the appropriate written tests identified in this administrative regulation prior to initial Kentucky certification. A score on a test [Scores on tests] completed [five (5) or] more than five (5) years prior to application for certification shall not be acceptable.

Section 2. The following NTE Core Battery Tests and passing scores shall be required of each new teacher applicant and an out-of-state applicant with less than two (2) years of teaching experience as defined in 704 KAR 20:045:

- (1) Communication skills - 646;
- (2) General knowledge - 643;
- (3) Professional knowledge - 644.

Section 3. Specialty tests and passing scores shall be required of each new teacher applicant and a [any] teacher seeking an additional certificate [certificates] as identified in this section.

(1) An applicant for interdisciplinary early childhood education, birth to primary, certification shall take an Education Professional Standards Board test for interdisciplinary early childhood, with a passing score of 150.

(2) An applicant for elementary certification shall take the NTE Early Childhood Education Test (10020) with a passing score of 480 through September 30, 1997. After this date, an applicant for elementary certification shall take Elementary Education: Curriculum and Instruction (10011) with a passing score of 143.

(3) An applicant for middle school certification shall take Education in the Elementary School Test (20010) with a passing score of 510.

(4) An applicant for certification for teacher of exceptional children (except for communication disorders) shall take the Special Education Test (10350) with a passing score of 500 through September 30, 1997. After this date, an applicant for certification for teacher of exceptional children shall take each specialty test based on the applicant's specialty with the corresponding passing score as identified in this subsection:

(a) Communication disorders:

1. Application for Core Principal Across Categories of Disabilities (10352) - 127; and

2. Speech Language Pathology (10330) - 450;

(b) Learning behavior disorder:

1. Application of Core Principles Across Categories of Disabilities (10352) - 127; and

2. Teaching Student with Behavioral Disorders/Emotional Disturbances (20371) - 147;

(c) Moderate and severe disabilities:

1. Application of Core Principles Across Categories of Disabilities (10352) - 127; and

2. Teaching Students with Mental Retardation (20321) - 139;

(d) Hearing impaired: Special Education Test (10350) - 500;

(e) Visually impaired: Special Education Test (10350) - 500.

(5) An applicant for certification at the secondary level shall take each specialty test corresponding to the teaching area or major with the passing score identified in this subsection. An applicant whose teaching specialty is in a major for which no appropriate specialty test is available shall take the specialty test corresponding to the minor teaching specialty.

(a) Biology:

1. Biology: Content Knowledge Part 1 (20231) - 139; and

2. Biology: Content Essays (30233) - no passing score;

(b) Chemistry:

1. General Science: Content Knowledge Part 2 (10432) - 150; and

2. Either:

a. Chemistry: Content Knowledge (20241) - 144; or

b. Physics: Content Knowledge (10261) - 141;

(c) Dramatics:

1. English Language and Literature: Content Knowledge (10041) - 138; and

2. English Language, Literature and Composition Essays (20042) - no passing score;

(d) Dramatics-speech:

1. English Language and Literature: Content Knowledge (10041) - 138; and

2. English Language, Literature and Composition Essays (20042) - no passing score;

(e) English:

1. English Language and Literature: Content Knowledge (10041) - 138; and

2. English Language, Literature and Composition Essays (20042) - no passing score;

(f) History:

1. Social Studies: Content Knowledge (10081) - 146; and

2. Social Studies: Interpretation of Materials (20083) - no passing score;

(g) History - political science:

1. Social Studies: Content Knowledge (10081) - 146; and

2. Social Studies: Interpretation of Materials (20083) - no passing score;

(h) Mathematics:

1. Mathematics: Content Knowledge (10061) - 141; and

2. Mathematics: Proofs, Models, and Problems (20063) - no passing score;

(i) Mathematics - physical science: select from either:

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1. Mathematics Test (10060) 500; or
2. Chemistry, Physics, and General Science Test (10070) - 510;
- (j) Physics:
  1. General Science: Content Knowledge, Part 2 (10432) - 150; and
  2. Either:
    - a. Chemistry: Content Knowledge (20241) - 144; or
    - b. Physics: Content Knowledge (10261) - 141;
  - (k) Physical science:
    1. General Science: Content Knowledge Part 2 (10432) - 150; and
    2. Either:
      - a. Chemistry: Content Knowledge (20241) - 144; or
      - b. Physics: Content Knowledge (10261) - 141;
    - (l) Political science:
      1. Social Studies: Content Knowledge (10081) - 146; and
      2. Social Studies: Interpretation of Materials (20083) - no passing score;
    - (m) Science: select from either:
      1. Biology and General Science Test (10030) - 550; or
      2. Chemistry, Physics and General Science Test (10070) - 510;
    - (n) Speech:
      1. English Language and Literature: Content Knowledge (10041) - 138; and
      2. English Language, Literature and Composition Essays (20042) - no passing score.
  - (6) Effective October 1, 1997, **a test [tests]** designated with no passing **score [scores]** in subsection (5) of this section shall have the following passing scores:
    - (a) English Language, Literature, and Composition: Essays (20042) with a passing score of 135;
    - (b) Biology: Content Essays (30233) with a passing score of 139;
    - (c) Mathematics Proofs, Models and Problems, Part I (20063) with a passing score of 141;
    - (d) Social Studies: Interpretation of Materials (20083) with a passing score of 150.
  - (7) An applicant for certification in all grades shall take the specialty **test or tests [test(s)]** with the passing score as identified in this subsection.
    - (a) Art - Art Education Test (10130) - 510;
    - (b) French - French (10170) - 510;
    - (c) German - German (20180) - 490;
    - (d) Health - Educational Professional Standards Board Test for Health Education - 67;
    - (e) Music (Vocal and Instrumental) - Music Education (10110) - 510;
    - (f) Physical education:
      1. Physical Education: Content Knowledge (10091) - 152; and
      2. Physical Education: Movement Forms-Analysis and Design (30092) - no passing score;
    - (g) Spanish:
      1. Spanish Content Knowledge (10191) - 145; and
      2. Spanish: Productive Language Skills (20192) - no passing score;
    - (h) School Media Librarian: Library Media Specialist (10310) - 590.
  - (8) Effective October 1, 1997, an applicant for certification in all grades in the following specialty areas shall take the specialty **test or tests [test(s)]** with the passing score as identified in this subsection.
    - (a) Art:
      1. Content Knowledge (10133) - 139; and
      2. Art Making (20131) - no passing score;
    - (b) French:
      1. French: Content Knowledge (10173) - 144; **and**
      2. French: Productive Language Skills (20171) - no passing score;
    - (c) German: German: Content Knowledge (20181) - 143;
    - (d) Health: Health Education (10550) - 550;
    - (e) Music:

1. Music: Content Knowledge (10113) - 137; and
2. Music: Concepts and Processes (30111) - 140.
- (9) Effective October 1, 1997 tests designated with no passing scores in subsection (7) of this section shall have the following passing scores:
  - (a) Physical Education: Movement Forms - Analysis and Design (30092) - 135;
  - (b) Spanish: Productive Language Skills (20192) - 156.
- (10) An applicant for certification to teach in grades five (5) through twelve (12) with one (1) or more of the following specializations shall take the specialty tests with the passing scores as identified in this subsection:
  - (a) Agriculture: Agriculture (10700) - 530;
  - (b) Business and Marketing Education - Business Education (10100) - 540;
  - (c) Comprehensive Business - Business Education (10100) - 540;
  - (d) Distributive Education - Business Education - 540;
  - (e) Family and Consumer Sciences [Home-Economics] - Home Economics Education (10120) - 540;
  - (f) Industrial Education - Technology Education (10050) - 550.
- (11) Effective October 1, 1997, an applicant for certification to teach in grades five (5) through twelve (12) with one (1) or more of the following specializations shall take the specialty test with passing score as identified in this subsection:
  - (a) Business and Marketing Education - Business Education (10100) - 570;
  - (b) Comprehensive Business - Business Education (10100) - 570;
  - (c) Distributive Education - Business Education (10100) - 570;
  - (d) Industrial Education - Technology Education (10050) - 570.
- (12)(a) If an applicant successfully completes a test identified in subsections (2), (4), (6), (8), (9), or (11) of this section prior to October 1, 1997, the specialty test shall be accepted for the issuance of the corresponding certification.**
- (b) A specialty test required prior to October 1, 1997, shall be accepted for the issuance of the corresponding certification for a teacher applicant who:**
  - 1. Has successfully completed the test prior to that date; and**
  - 2. Applies for certification by September 30, 1998.** [Specialty tests for an applicant who successfully completes the new test(s) identified in subsections (2), (4), (8), and (9) of this section prior to October 1, 1997, shall be accepted for the issuance of the corresponding certification. Specialty tests required prior to October 1, 1997, shall be accepted for the issuance of the corresponding certification for a teacher applicant who successfully completed the tests prior to that date and apply for certification no later than September 30, 1998.]

Section 4. (1) An applicant for initial certification may take the NTE Core Battery Tests and Prax II: Subject Assessments and Specialty Area Tests on **a date [any of the dates]** established by the Educational Testing Service for national administration or on **a [any]** date established by the Education Professional Standards Board for special administration.

(2) An applicant shall authorize test results to be forwarded by the Educational Testing Service to the Kentucky Department of Education and to the appropriate teacher preparation institution.

(3) Public announcement of testing dates and locations shall be issued sufficiently in advance of testing dates to permit advance registration as required by the Educational Testing Service. **An applicant shall** [It shall be the responsibility of each applicant to] seek information regarding the dates and location of the tests and [to] make application for the appropriate **examination [examinations]** prior to the **deadline [deadlines]** established and sufficiently in advance of anticipated employment to permit test results to be received by the Department of Education and processed in the normal certification cycle.



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Section 5. An applicant shall pay the appropriate examination fee for each relevant test required to be taken, to the Educational Testing Service, publisher of the National Teacher Examinations, unless a lesser fee has been negotiated by the Department of Education. The fee [Fees] for a specialty test [tests] developed by the Department of Education shall be equivalent to the current fee [fees] for the test [tests] administered by the Educational Testing Service.

Section 6. An applicant who fail to achieve at least the minimum score on one (1) or more of the core battery examinations (communication skills, general knowledge, professional knowledge) or on the specialty examination appropriate to the teaching field may [shall be permitted to] retake the test or tests during one (1) of the scheduled test administrations.

Section 7. The Education Professional Standards Board shall collect data and conduct analyses of the score and institutional reports provided by the Educational Testing Service to determine the impact of these tests and permit a review of this administrative regulation on an annual or biennial basis.

ROSA WEAVER, Chair

ROBERT SHERMAN, Attorney

APPROVED BY AGENCY: September 29, 1997

FILED WITH LRC: October 3, 1997 at 4 p.m.

**WORKFORCE DEVELOPMENT CABINET**  
**Department for Employment Services**  
**Division of Unemployment Insurance**  
**(As Amended at ARRS, December 9, 1997)**

**787 KAR 1:200. Maximum weekly benefit rate.**

RELATES TO: KRS 341.380

STATUTORY AUTHORITY: KRS 151B.020, 341.115

NECESSITY, FUNCTION, AND CONFORMITY: KRS 341.380(3) requires the Secretary for Workforce Development to determine the average weekly wage for insured employment. Fifty-five (55) percent of this amount adjusted to the nearest multiple of one (1) dollar constitutes the maximum weekly unemployment insurance benefit rate for those workers whose benefit year commences on or after July 1, 1997 [1996], and prior to July 1, 1998 [1997]. This administrative regulation applies the mathematical computation required by statute and contains the determination of the maximum weekly benefit rate.

Section 1. The secretary finds the following to exist:

(1) The "total monthly employment" reported by subject employers for the calendar year of 1996 [1995] was 18,934,441 [18,593,452];

(2) The "average monthly employment," obtained by dividing the total monthly employment by twelve (12), was 1,577,870 [1,549,454];

(3) The "total wages" reported by subject employers for the calendar year of 1996 [1995] was \$38,182,050,349 [36,017,761,705];

(4) The "average weekly wage" for the calendar year of 1996 [1995] for insured employment, obtained by dividing the average monthly employment into the total wages for the [such] year and dividing by fifty-two (52), was \$465.36 [447.03];

(5) Fifty-five (55) percent of the average weekly wage of \$465.36 [447.03] for the calendar year of 1996 [1995] was \$255.95 [245.87].

Section 2. On the basis of the above findings, and in accordance with KRS 341.380(3), the maximum weekly benefit rate for those workers whose benefit year commences on or after the first day of July 1997 [1996], and prior to the first day of July 1998 [1997], shall be \$256 [246].

RODNEY S. CAIN, Secretary

MARGARET WHITTET, Commissioner

BEVERLY HAVERSTOCK, General Counsel

APPROVED BY AGENCY: August 29, 1997

FILED WITH LRC: September 17, 1997 at 3 p.m.

**LABOR CABINET**  
**Department of Workplace Standards**  
**Division of Occupational Safety and Health Compliance**  
**Division of Occupational Safety**  
**and Health Education and Training**  
**(As Amended at ARRS, December 9, 1997)**

**803 KAR 2:060. Employers' responsibilities.**

RELATES TO: KRS 338.051, [Chapter 13A,] 29 CFR Part 1903 [338]

STATUTORY AUTHORITY: KRS 338.051 [Chapter 13A]

NECESSITY, FUNCTION, AND CONFORMITY: Pursuant to the authority granted the Kentucky Occupational Safety and Health Standards Board [Labor Cabinet] [Occupational Safety and Health Standards Board] by KRS 338.051 [13A.120] to adopt administrative regulations required by federal law, [338.051,] this administrative regulation identifies the responsibility place upon the employer to post notices furnished by the Occupational Safety and Health Program, Department of Workplace Standards, verify abatement of cited hazards to the department, and also to furnish certain information to employees for their safety and protection. Necessary for effective enforcement of the purposes and policies of the Occupational Safety and Health Act which is to insure so far as is possible, safe and healthful working conditions of Kentucky workers (KRS 338.011).

Section 1. Definitions. (1) "Abatement" means action by an employer to comply with a cited standard or regulation or to eliminate a recognized hazard identified by Department of Workplace Standards during an inspection.

(2) "Abatement date" means:

(a) For an uncontested citation item, the later of:

1. The date in the citation for abatement of the violation;

2. The date approved by Department of Workplace Standards or established in litigation as a result of a petition for modification of the abatement date (PMA); or

3. The date established in a citation by an informal settlement agreement.

(b) For a contested citation item for which the Kentucky Occupational Safety and Health Review Commission (KOSHRC) has issued a final order affirming the violation, the later of:

1. The date identified in the final order for abatement; or

2. The date computed by adding the period allowed in the citation for abatement to the final order date;

3. The date established by a formal settlement agreement.

(3) "Affected employees" means those employees who are exposed to the hazard(s) identified as violation(s) in a citation.

(4) "Final order date" means:

(a) For an uncontested citation item, the 15th working day after the employer's receipt of the citation;

(b) For a contested citation item:

1. The 30th day after the date on which a decision or order of a commission hearing officer has been docketed with the commission, unless a member of the commission has directed review; or

2. Where review has been directed, the 30th day after the date on which the commission issues its decision or order disposing of all or pertinent part of a case; or

3. The date on which an appeals court issues a decision affirming the violation in a case in which a final order of KOSHRC has been stayed.

(5) "Movable equipment" means a hand-held or nonhand-held



machine or device, powered or unpowered, that is used to do work and is moved within or between worksites.

(6) "Establishment" means a single physical location where business is conducted or where services or industrial operations are performed, (for example: A factory, mill, store, hotel, restaurant, movie theater, farm, ranch, bank, sales office, warehouse, or central administrative office.) Where distinctly separate activities are performed at a single physical location (such as contract construction activities from the same physical location as a lumber yard), each activity shall be treated as a separate physical establishment, and a separate notice or notices shall be posted in each such establishment, to the extent that such notices have been furnished by the Department of Workplace Standards. Where employers are engaged in activities which are physically dispersed, such as agriculture, construction, transportation, communications, and electric, gas and sanitary services, the notice or notices required by this section shall be posted at the location to which employees report each day. Where employees do not usually work at, or report to, a single establishment, such as traveling salesmen, technicians, engineers, etc., such notice or notices shall be posted at the location from which the employees operate to carry out their activities. In all cases, such notice or notices shall be posted in accordance with the requirements of Section 2 of this administrative regulation.

Section 2. Purpose and Scope. (1) KRS Chapter 338 requires, in part, that every employer shall furnish to his employees employment and a place of employment which are free from recognized hazards that are causing or are likely to cause death or serious physical harm to his employees. Covered employers shall comply with the occupational safety and health standards promulgated pursuant to KRS Chapter 338. Employees shall comply with standards, rules, administrative regulations and orders issued under KRS Chapter 338 which are applicable to their own actions and conduct.

(2) The Department of Workplace Standards is authorized to conduct inspections and issue citations and proposed penalties for alleged violations.

Section 3. [2:] Posting of Notice, Availability of Act, Administrative Regulations, and Applicable Standards. (1) Each employer shall post and keep posted a notice or notices to be furnished by the Occupational Safety and Health Program, Department of Workplace Standards, Labor Cabinet, informing employees of the protections and obligations provided for in KRS Chapter 338, and that for assistance and information, including health standards, employees should contact the employer or the Department of Workplace Standards. Such notice or notices shall be posted by the employer in each establishment in a conspicuous place or places where notices to employees are customarily posted. Each employer shall take steps to ensure that such notices are not altered, defaced or covered by other material that obscures the poster.

(2) ["Establishment" means a single physical location where business is conducted or where services or industrial operations are performed, (For example: A factory, mill, store, hotel, restaurant, movie theater, farm, ranch, bank, sales office, warehouse, or central administrative office.) Where distinctly separate activities are performed at a single physical location (such as contract construction activities from the same physical location as a lumber yard), each activity shall be treated as a separate physical establishment, and a separate notice or notices shall be posted in each such establishment, to the extent that such notices have been furnished by the Department of Workplace Standards. Where employers are engaged in activities which are physically dispersed, such as agriculture, construction, transportation, communications, and electric, gas and sanitary services, the notice or notices required by this section shall be posted at the location to which employees report each day. Where employees do not usually work at, or report to, a single establishment, such as traveling salesmen, technicians, engineers, etc., such notice

or notices shall be posted at the location from which the employees operate to carry out their activities. In all cases, such notice or notices shall be posted in accordance with the requirements of subsection (1) of this section of this administrative regulation.

(3) Copies of KRS Chapter 338, all administrative regulations filed pursuant thereto, and all applicable standards will be available at the Department of Workplace Standards. If an employer has obtained copies of these materials, he shall make them available upon request to any employee or his authorized representative for review in the establishment where the employee is employed on the same day the request is made or at the earliest time mutually convenient to the employee or his authorized representative and the employer.

(3) [(4)] Any employer failing to comply with the provisions of this section shall be subject to citation and penalty in accordance with the provisions of KRS 338.991.

Section 4. Abatement Verification. (1) Purpose. Inspections by the Department of Workplace Standards are intended to result in the abatement of violations of KRS Chapter 338. This section sets forth the procedures the Department of Workplace Standards will use to ensure abatement. These procedures are tailored to the nature of the violation and the employer's abatement actions.

(2) Scope and application. This section applies to employers who receive a citation for a violation of KRS Chapter 338.

(3) Abatement certification.

(a) Within ten (10) calendar days after the abatement date, the employer must certify to the Department of Workplace Standards (the agency) that each cited violation has been abated, except as provided in paragraph (b) of this subsection.

(b) The employer is not required to certify abatement if the compliance officer, during the on-site portion of the inspection:

1. Observes, within twenty-four (24) hours after a violation is identified, that abatement has occurred; and

2. Notes in the citation that abatement has occurred.

(c) The employer's certification that abatement is complete must include, for each cited violation, in addition to the information required by subsection (8) of this section, the date and method of abatement and a statement that affected employees and their representatives have been informed of the abatement. Note to this subsection: Appendix A (incorporated by reference in Section 5 of this administrative regulation) contains a sample abatement certification letter.

(4) Abatement documentation.

(a) The employer must submit to the agency, along with the information on abatement certification required by subsection (3)(c) of this section, documents demonstrating that abatement is complete for each willful or repeat violation and for any serious violation for which the agency indicates in the citation that such abatement documentation is required.

(b) Documents demonstrating that abatement is complete may include, but are not limited to, evidence of the purchase or repair of equipment, photographic or video evidence of abatement, or other written records.

(5) Abatement plans.

(a) The agency may require an employer to submit an abatement plan for each cited violation (except an other-than-serious violation) when the time permitted for abatement is more than ninety (90) calendar days. If an abatement plan is required, the citation must so indicate.

(b) The employer must submit an abatement plan for each cited violation within twenty-five (25) calendar days from the final order date when the citation indicates that such a plan is required. The abatement plan must identify the violation and the steps to be taken to achieve abatement, including a schedule for completing abatement and, where necessary, how employees will be protected from exposure to the violative condition in the interim until abatement is complete. Note to this subsection: Appendix B (incorporated by

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reference in Section 5 of this administrative regulation) contains a sample abatement plan form.

### (6) Progress reports.

(a) An employer who is required to submit an abatement plan may also be required to submit periodic progress reports for each cited violation. The citation must indicate:

1. That periodic progress reports are required and the citation items for which they are required;
2. The date on which an initial progress report must be submitted, which may be no sooner than thirty (30) calendar days after submission of an abatement plan;
3. Whether additional progress reports are required; and
4. The date(s) on which additional progress reports must be submitted.

(b) For each violation, the progress report must identify, in a single sentence if possible, the action taken to achieve abatement and the date the action was taken. Note to this subsection: Appendix B (incorporated reference by Section 5 of this administrative regulation) contains a sample progress report form.

### (7) Employee notification.

(a) The employer must inform affected employees and their representative(s) about abatement activities covered by this section by posting a copy of each document submitted to the agency or a summary of the document near the place where the violation occurred.

(b) Where such posting does not effectively inform employees and their representatives about abatement activities (for example, for employers who have mobile work operations), the employer must:

1. Post each document or a summary of the document in a location where it will be readily observable by affected employees and their representatives; or
2. Take other steps to communicate fully to affected employees and their representatives about abatement activities.

(c) The employer must inform employees and their representatives of their right to examine and copy all abatement documents submitted to the agency.

1. An employee or an employee representative must submit a request to examine and copy abatement documents within three (3) working days of receiving notice that the documents have been submitted.

2. The employer must comply with an employee's or employee representative's request to examine and copy abatement documents within five (5) working days of receiving the request.

(d) The employer must ensure that notice to employees and employee representatives is provided at the same time or before the information is provided to the agency and that abatement documents are:

1. Not altered, defaced, or covered by other material; and
2. Remain posted for three (3) working days after submission to the agency.

### (8) Transmitting abatement documents.

(a) The employer must include, in each submission required by this section, the following information:

1. The employer's name and address;
2. The inspection number to which the submission relates;
3. The citation and item numbers to which the submission relates;
4. A statement that the information submitted is accurate; and
5. The signature of the employer or the employer's authorized representative.

(b) The date of postmark is the date of submission for mailed documents. For documents transmitted by other means, the date the agency receives the document is the date of submission.

### (9) Movable equipment.

(a) For serious, repeat, and willful violations involving movable equipment, the employer must attach a warning tag or a copy of the citation to the operating controls or to the cited component of equipment that is moved within the worksite or between worksites.

Note to this paragraph: Attaching a copy of the citation to the equipment is deemed by Department of Workplace Standards to meet the tagging requirement of paragraph (a) of this subsection as well as the posting requirement of 803 KAR 2:125.

(b) The employer must use a warning tag that properly warns employees about the nature of the violation involving the equipment and identifies the location of the citation issued. Note to this paragraph: Nonmandatory Appendix C in the material incorporated by reference in Section 5 of this administrative regulation contains a sample tag that employers may use to meet this requirement.

(c) If the violation has not already been abated, a warning tag or copy of the citation must be attached to the equipment:

1. For hand-held equipment, immediately after the employer receives the citation; or
2. For nonhand-held equipment, prior to moving the equipment within or between worksites.

(d) For the construction industry, a tag that is designed and used in accordance with 29 CFR 1926.20(b)(3) (incorporated by 803 KAR 2:402) and 29 CFR 1926.200(h) (incorporated by 803 KAR 2:406) is deemed to meet the requirements of this section when the information required by paragraph (b) of this subsection is included on the tag.

(e) The employer must assure that the tag or copy of the citation attached to movable equipment is not altered, defaced, or covered by other material.

(f) The employer must assure that the tag or copy of the citation attached to movable equipment remains attached until:

1. The violation has been abated and all abatement verification documents required by this administrative regulation have been submitted to the agency;
2. The cited equipment has been permanently removed from service or is no longer within the employer's control; or
3. The commission issues a final order vacating the citation.

Section 5. Incorporation by Reference. (1) The appendices to 29 CFR 1903.19, as published in the Federal Register, Volume 62, pages 15324-15340, March 31, 1997 are incorporated by reference.

(2) This material may be inspected, obtained, and copied at the Kentucky Labor Cabinet, Division of OSH Education and Training, U.S. 127 South, Frankfort, Kentucky 40601. Office hours are 8 a.m. - 4:30 p.m. (ET), Monday through Friday.

JOE NORSWORTHY, Chairman

KEMBRA SEXTON TAYLOR, Attorney

APPROVED BY AGENCY: October 9, 1997

FILED WITH LRC: October 13, 1997 at 3 p.m.

## LABOR CABINET

Department of Workplace Standards  
Division of Occupational Safety and Health Compliance  
Division of Occupational Safety  
and Health Education and Training  
(As Amended at ARRS, December 9, 1997)

### 803 KAR 2:320. Air contaminants.

RELATES TO: KRS 338.051, 338.061, 29 CFR 1910.1000-.1500  
STATUTORY AUTHORITY: KRS 338.051(3), 338.061, 29 CFR 1910.1000-.1500

NECESSITY, FUNCTION, AND CONFORMITY: KRS 338.051(3) [and 338.061] authorize the Kentucky Occupational Safety and Health Standards Board to adopt and promulgate occupational safety and health administrative regulations. KRS 338.061(2) provides that the board may [Express authority to] incorporate by reference established federal standards and national consensus standards [is also given to the board]. The following administrative regulation contains those standards to be enforced by the Division of Occupational Safety and

Health Compliance in the area of general industry.

Section 1. Definitions. (1) Definitions applicable to this part:

- (a) "Act" means KRS Chapter 338.
- (b) "Assistant Secretary of Labor" means the Secretary of Labor, Commonwealth of Kentucky.
- (c) "Employee" means any person employed except those employees excluded in KRS 338.021.
- (d) "Employer" means any entity for whom a person is employed except those employers excluded in KRS 338.021.
- (e) "Established federal standard" means any operative occupational safety and health standard established by any agency of the United States Government.
- (f) "National consensus standard" means any occupational safety and health standard or modification thereof which has been adopted and promulgated by a nationally recognized standards-producing organization.
- (g) "Standard" means the same as regulation or federal rule [a standard] which requires conditions or the adoption or use of one (1) or more practices, means, methods, operations, or processes, reasonably necessary or appropriate to provide safe and healthful employment. ["Standard" has the same meaning as and includes the words "regulation" and "rule".]
- (h) "U.S. Department of Labor" means Kentucky Labor Cabinet, U.S. 127 South, Frankfort, Kentucky 40601, or U.S. Department of Labor.
- (2) Definitions for Section 2 of this administrative regulation.
  - (a) "Absolute filter" means a filter capable of retaining 99.97 percent of a mono disperse aerosol of three-tenths (0.3)  $\mu$  particles.
  - (b) "Authorized employee" means an employee whose duties require him to be in the regulated area and who has been specifically assigned by the employer.
  - (c) "Clean change room" means a room where employees put on clean clothing and/or protective equipment in an environment free of 4,4'-Methylene bis (2-chloroaniline). The clean change room shall be contiguous to and have an entry from a shower room, when the shower room facilities are otherwise required in this section.
  - (d) "Closed system" means an operation involving 4,4'-Methylene bis (2-chloroaniline) where containment prevents the release of 4,4'-Methylene bis (2-chloroaniline) into regulated areas, nonregulated areas, or the external environment.
  - (e) "Decontamination" means the inactivation of 4,4'-Methylene bis (2-chloroaniline) or its safe disposal.
  - (f) "Director" means the Director, National Institute for Occupational Safety and Health, or any person directed by him or the Secretary of Health, Education and Welfare to act for the Director.
  - (g) "Disposal" means the safe removal of 4,4'-Methylene bis (2-chloroaniline) from the work environment.
  - (h) "Emergency" means an unforeseen circumstance or set of circumstances resulting in the release of 4,4'-Methylene bis (2-chloroaniline) which may result in exposure to or contact with 4,4'-Methylene bis (2-chloroaniline).
  - (i) "External environment" means any environment external to regulated and nonregulated areas.
  - (j) "Isolated system" means a fully enclosed structure other than the vessel= of containment, of 4,4'-Methylene bis (2-chloroaniline), which is impervious to the passage of entry of 4,4'-Methylene bis (2-chloroaniline), and which would prevent the entry of 4,4'-Methylene bis (2-chloroaniline) into regulated areas, or the external environment, should leakage or spillage from the vessel of containment occur.
  - (k) "Laboratory type hood" means a device enclosed on three sides and the top and bottom designed and maintained so as to draw air inward at an average linear face velocity of 150 feet per minute with a minimum of 125 feet per minute; designed, constructed, and maintained in such a way that an operation involving 4,4'-Methylene bis (2-chloroaniline) within the hood does not require the insertion of any portion of any employee's body other than his hands and arms.

(l) "Nonregulated area" means any area under the control of the employer where entry and exit is neither restricted nor controlled.

(m) "Open-vessel system" means an operation involving 4,4'-Methylene bis (2-chloroaniline) in an open vessel, which is not in an isolated system, a laboratory type hood, nor in any other system affording equivalent protection against the entry of 4,4'-Methylene bis (2-chloroaniline) into regulated areas, nonregulated areas or the external environment.

(n) "Protective clothing" means clothing designed to protect an employee against contact with or exposure to 4,4'-Methylene bis (2-chloroaniline).

(o) "Regulated area" means an area where entry and exit is restricted and controlled.

(3) Definitions for Section 5 of this administrative regulation.

(a) "Area director" means Director, Division of Occupational Safety and Health, Kentucky Labor Cabinet.

(b) "Assistant secretary" means Secretary of Labor, Kentucky Labor Cabinet.

(c) "U.S. Department of Labor" means Kentucky Labor Cabinet.

Section 2. 4,4'-Methylene bis (2-Chloroaniline). (1) Scope and application.

(a) This section applies to any area in which, 4,4'-Methylene bis (2-chloroaniline), Chemical Abstracts Service Registry Number 101144 is manufactured, processed, repackaged, released, handled, or stored, but shall not apply to trans-shipment in sealed containers, except for the labeling requirements under subsection (5)(b), (c), and (d) of this section.

(b) This section shall not apply to solid or liquid mixtures containing less than 1.0 (one) percent by weight of 4,4'-Methylene bis (2-chloroaniline).

(2) Requirements for areas containing 4,4'-Methylene bis (2-chloroaniline). A regulated area shall be established by an employer where 4,4'-Methylene bis (2-chloroaniline) is manufactured, processed, used, repackaged, released, handled, and stored. All such areas shall be controlled in accordance with the requirements for the following category or categories describing the operations involved:

(a) Isolated systems. Employees working with 4,4'-Methylene bis (2-chloroaniline) within an isolated system such as a "glove box" shall wash their hands and arms upon completion of the assigned task and before engaging in other activities not associated with the isolated system.

(b) Closed system operation. Within regulated areas where 4,4'-Methylene bis (2-chloroaniline) is stored in sealed container, or contained in a closed system including piping systems, with any sample ports or openings closed while 4,4'-Methylene bis (2-chloroaniline) is contained within:

1. Access shall be restricted to authorized employees only;
2. Employees shall be required to wash hands, forearms, face and neck upon each exit from the regulated areas, close to the point of exit and before engaging in other activities.

(c) Open vessel system operations. Open vessel system operations as defined in Section 1(1)(m) of this administrative regulation [paragraph (b)13 of this subsection] are prohibited.

(d) Transfer from a closed system, charging or discharging point operations, or otherwise opening a closed system. In operations involving "laboratory type hood," or in locations where 4,4'-Methylene bis (2-chloroaniline) is contained in an otherwise "closed system," but is transferred, charge, or discharged into other normally closed containers, the provisions of this subparagraph shall apply.

1. Access shall be restricted to authorized employees only;
2. Each operation shall be provided with continuous local exhaust ventilation so that air movement is always from ordinary work areas to the operation. Exhaust air shall not be discharged to regulated areas, nonregulated areas or the external environment unless decontaminated. Clean make-up air shall be introduced in sufficient volume to maintain the correct operation of the local exhaust system.

3. Employees shall be provided with, and required to wear, clean, full body protective clothing (smocks, coveralls, or long-sleeved shirt and pants), shoe covers and gloves prior to entering the regulated area.

4. Employees engaged in 4,4'-Methylene bis (2-chloroaniline) handling operations shall be provided with and required to wear and use a half-face, filter-type respirator for dusts, mists, and fumes, in accordance with 1910.134. A respirator affording higher level of protection may be substituted.

5. Prior to each exit from a regulated area, employees shall be required to remove and leave protective clothing and equipment at the point of exit and at the last exit of the day, to place used clothing and equipment in impervious containers at the point of exit for purposes of decontamination or disposal. The contents of such impervious containers shall be identified, as required under subsection (5)(b), (c), and (d) of this section.

6. Employees shall be required to wash hands, forearms, face and neck on each exit from the regulated area, close to the point of exit, and before engaging in other activities.

7. Employees shall be required to shower after the last exit of the day.

8. Drinking fountains are prohibited in the regulated area.

(e) Maintenance and decontamination activities. In cleanup of leaks or spills, maintenance or repair operations on contaminated systems or equipment, or any operations involving work in an area where direct contact with 4,4'-Methylene bis (2-chloroaniline) could result, each authorized employee entering that area shall:

1. Be provided with and required to wear clean, impervious garments, including gloves, boots and continuous-air supplied hood in accordance with 1910.134;

2. Be decontaminated before removing the protective garments and hood;

3. Be required to shower upon removing the protective garments and hood.

(f) Laboratory activities. The requirements of this subparagraph shall apply to research and quality control activities involving the use of 4,4'-Methylene bis (2-chloroaniline).

1. Mechanical pipetting aids shall be used for all pipetting procedures.

2. Experiments, procedures and equipment which could produce aerosols shall be confined to laboratory-type hoods or glove boxes.

3. Surfaces on which 4,4'-Methylene bis (2-chloroaniline) is handled shall be protected from contamination.

4. Contaminated wastes and animal carcasses shall be collected in impervious containers which are closed and decontaminated prior to removal from the work area. Such wastes and carcasses shall be incinerated in such a manner that no carcinogenic products are release.

5. All other forms of 4,4'-Methylene bis (2-chloroaniline) shall be inactivated prior to disposal.

6. Employees engaged in animal support activities shall be:

a. Provided with, and required to wear, a complete protective clothing change, clean each day, including coveralls or pants and shirt, foot covers, head covers, gloves, and appropriate respiratory protective equipment or devices; and

b. Prior to each exit from a regulated area employees shall be required to remove and leave protective clothing and equipment at the point of exit and at the last exit of the day, to place used clothing and equipment in impervious containers at the point of exit for purposes of decontamination or disposal. The contents of such impervious containers shall be identified as required under subsection (5)(b), (c), and (d) of this section.

c. Required to wash hands, forearms, face and neck upon each exit from the regulated area close to the point of exit and before engaging in other activities; and

d. Required to shower after the last exit of the day.

7. Employees, other than those engaged in animal support

activities, each day shall be:

a. Provided with and required to wear a clean change of appropriate laboratory clothing, such as a solid front gown, surgical scrub suit, or fully buttoned laboratory coat.

b. Prior to each exit from a regulated area, employees shall be required to remove and leave protective clothing and equipment at the point of exit and at the last exit of the day, to place used clothing and equipment in impervious containers at the point of exit for purposes of decontamination or disposal. The contents of such impervious containers shall be identified as required under paragraphs (e)2, 3, and 4 of this subsection.

c. Required to wash hands, forearms, face and neck upon each exit from the regulated area close to the point of exit and before engaging in other activities.

8. Air pressure in laboratory areas and animal rooms where 4,4'-Methylene bis (2-chloroaniline) is handled and bioassay studies are performed shall be negative in relation to the pressure in surrounding area. Exhaust air shall not be discharged to regulated areas, nonregulated areas or the external environment unless decontaminated.

9. There shall be no connection between regulated areas and any other areas through the ventilation system.

10. A current inventory of 4,4'-Methylene bis (2-chloroaniline) shall be maintained.

11. Ventilated apparatus such as laboratory type hoods, shall be tested at least semi-annually or immediately after ventilation modification of maintenance operations, by personnel fully qualified to certify correct containment and operation.

(g) Premixed solutions. Where 4,4'-Methylene bis (2-chloroaniline) is present only in a single solution at a temperature not exceeding 120 degrees Celsius, the establishment of a regulated area is not required; however,

1. Only authorized employees shall be permitted to handle such materials;

2. Each day employees shall be provided with and required to wear a clean change of protective clothing (smocks, coveralls, or long-sleeved shirts and pants), gloves, and other protective garments and equipment necessary to prevent contact with the solution in the process used;

3. Employees shall be required to remove and leave protective clothing and equipment when leaving the work area at the end of the work day or at any time solution is spilled on such clothing or equipment. Used clothing and equipment shall be placed in impervious containers for purposes of decontamination or disposal. The contents of such impervious containers shall be identified, as required under paragraphs (e)2, 3, and 4 of this section.

4. Employees shall be required to wash hand and face after removing such clothing and equipment and before engaging in other activities.

5. Employees assigned to work covered by the subparagraph shall be deemed to be working in regulated areas for the purposes of subsection (4)(a), (b), (c)1 and 2, and (d)3 and 4, 5, 6, and 7 of this section;

6. Work areas where solution may be spilled shall be:

a. Covered daily or after any spill with a clean covering;

b. Cleaned thoroughly daily and after any spill.

(3) General regulated area requirements.

(a) Employee identification. A daily roster of employees entering regulated areas shall be established and maintained. The rosters or a summary of the rosters shall be retained for a period of twenty (20) years. The rosters and/or summaries shall be provided upon request to authorized representatives of the assistant secretary and the director. In the event that the employer ceases business without a successor, rosters shall be forwarded by registered mail to the director.

(b) Emergencies. In an emergency, immediate measures including, but not limited to the requirements of subparagraphs 1, 2,

3, 4, and 5 of this paragraph shall be implemented.

1. The potentially affected area shall be evacuated as soon as the emergency has been determined.

2. Hazardous conditions created by the emergency shall be eliminated and the potentially affected area shall be decontaminated prior to the resumption of normal operations.

3. Special medical surveillance by a physician shall be instituted within twenty-four (24) hours for employees present in the potentially affected area at the time of the emergency. A report of the medical surveillance and any treatment shall be included in the incident report, in accordance with subsection (6)(b) of this section.

4. Where an employee has a known contact with 4,4'-Methylene bis (2-chloroaniline) such employee shall be required to shower as soon as possible, unless contraindicated by physical injuries.

5. An incident report on the emergency shall be reported as provided in subsection (6)(b) of this section.

(c) Hygiene facilities and practices.

1. Storage or consumption of food, storage or use of containers of beverages, storage or application of beverages, storage or application of cosmetics, smoking, storage of smoking materials, tobacco products or other products for chewing, or the chewing of such products, are prohibited in regulated areas.

2. Where employees are required by this section to wash, washing facilities shall be provided in accordance with 1910.141.

3. Where employees are required by this section to shower, facilities shall be provided in accordance with 1910.141(d)(3).

4. Where employees wear protective clothing and equipment, clean change rooms shall be provided, in accordance with 1910.141(e), for the number of such employees required to change clothes.

5. If [Where] toilets are located in regulated areas, the [such] toilets shall be in a separate room.

(d) Contamination control.

1. Regulated areas, except for outdoor systems, shall be maintained under pressure negative with respect to nonregulated areas. Local exhaust ventilation may be used to satisfy this requirement. Clean make-up air in equal volume shall replace air removed.

2. Any equipment, material, or other item taken or removed from a regulated area shall be done so in a manner that does not cause contamination in nonregulated areas or the external environment.

3. Decontamination procedures shall be established and implemented to remove 4,4'-Methylene bis (2-chloroaniline) from the surface of materials, equipment and the decontamination facility.

4. Dry sweeping and dry mopping are prohibited.

(4) Signs, information and training.

(a) Signs.

1. Entrance to regulated areas shall be posted with signs bearing the legend:

CANCER-SUSPECT AGENT  
Authorized Personnel Only

2. Entrances to regulated areas containing operations covered in subsection (3)(e) of this section shall be posted with signs bearing the legend:

Cancer-Suspect Agent Exposed  
In this Area  
Impervious Suit Including Gloves,  
Boots, and Air-Supplied Hood  
Required At All Times  
Authorized Personnel Only

3. Appropriate signs and instructions shall be posted at the entrance to, and exit from, regulated areas, informing employees of the procedures that must be followed in entering and leaving a regulated area.

(b) Container contents identification.

1. Containers of 4,4'-Methylene bis (2-chloroaniline) and containers required under subsection (2)(d)5 and (f)7b, and (f)7b, and (g)3 of this section which are accessible only to, and handled only by authorized employees, or by other employees trained in accordance with paragraph (e) of this subsection, may have contents identification limited to a generic or proprietary name, or other proprietary identification, or the carcinogen and percent.

2. Containers of 4,4'-Methylene bis (2-chloroaniline) and containers required under subsection (2)(d)5, (f)7b, and (f)7b, and (g)3 of this section which are accessible to, or handled by employees other than authorized employees or employees trained in accordance with subparagraph of this paragraph shall have contents identification which includes the full chemical name and Chemical Abstracts Service Registry number as listed in subsection (1)(a) of this section.

3. Containers shall have the warning words "CANCER-SUSPECT AGENT" displayed immediately under or adjacent to the contents identification.

4. Containers which have 4,4'-Methylene bis (2-chloroaniline) contents with corrosive or irritating properties shall have label statements warning of such hazards, noting, if appropriate, particularly sensitive of affected portions of the body.

(c) Lettering. Lettering on signs and instructions required by paragraph (a) of this subsection shall be a minimum letter height of two (2) inches. Labels on containers required under this section shall not be less than one-half (1/2) the size of the largest lettering on the package, and not less than eight (8) point type in any instance; provided that no such required lettering need be more than one (1) inch in height.

(d) Prohibited statements. No statement shall appear on or near any required sign, label, or instruction which contradicts or detracts from the effect of any required warning, information or instruction.

(e) Training and indoctrination.

1. Each employee prior to being authorized to enter regulated area, shall receive a training and indoctrination program including, but not necessarily limited to:

a. The nature of the carcinogenic hazards of 4,4'-Methylene bis (2-chloroaniline), including local and systemic toxicity;

b. The specific nature of the operation involving 4,4'-Methylene bis (2-chloroaniline) which could result in exposure;

c. The purpose for and application of the medical surveillance program, including, as appropriate, methods of self-examination;

d. The purpose for and application for decontamination practices and purposes;

e. The purpose for and significance of emergency practices and procedures;

f. The employees specific role in emergency procedures;

g. Specific information to aid the employee in recognition and evaluation of conditions and situations which may result in the release of 4,4'-Methylene bis (2-chloroaniline);

h. The purpose for and application of specific first-aid procedures and practices.

(i) A review of this section at the employees first raining and indoctrination program and annually thereafter.

(ii) Specific emergency procedures shall be prescribed, and posted, and employees shall be familiarized with their terms, and rehearsed in their application.

(iii) All materials relating to the program shall be provided upon request to authorized representatives of assistant secretary and the director.

(5) Reports.

(a) Operations. Not later than March 1, 1974, the information required in subparagraphs 1, 2, 3, and 4 of this paragraph shall be reported in writing to the nearest OSHA Area director. Any changes in such information shall be similarly reported in writing within fifteen (15) calendar days of such change.

1. A brief description and inplant location of the area(s) regulated

and the address of each regulated area:

2. The name(s) and other identifying information as to the presence of 4,4'-Methylene bis (2-chloroaniline) in each regulated area.

3. The number of employees in each regulated area, during normal operations including maintenance activities; and

4. The manner in which 4,4'-Methylene bis (2-chloroaniline) is present in each regulated area; e.g., whether it is manufactured, processed, used, repackaged, release, stored, or otherwise handled.

(b) Incidents. Incidents which result in the release of 4,4'-Methylene bis (2-chloroaniline) into any area where employees may be potentially exposed shall be reported in accordance with this subparagraph.

1. A report of the occurrence of the incident and the facts obtainable at that time including a report on any medical treatment of affected employees shall be made within twenty-four (24) hours to the nearest OSHA Area Director.

2. A written report shall be filed with the nearest OSHA Area Director within fifteen (15) calendar days thereafter and shall include:

a. A specification of the amount of material released, the amount of time involved, and an explanation of the procedure used in determining this figure:

b. A description of the area involved, and the extent of known and possible employee and area contamination; and

c. A report of any medical treatment of affected employees and any medical surveillance program implemented; and

d. An analysis of the circumstances to be taken, with specific completions dates, to avoid further similar release.

(6) Medical surveillance. At no cost to the employee, a program of medical surveillance shall be established and implemented for employees considered for assignment to enter regulated areas, and for authorized employees.

(a) Examinations.

1. Before an employee is assigned to enter a regulated area, a preassignment physical examination by a physician shall be provided. The examination shall include the personal history of the employee, family and occupational background, including genetic and environmental factors.

2. Authorized employees shall be provided periodic physical examination, not less often than annually, following the preassignment examination.

3. In all physical examinations, the examining physician shall consider whether there exist conditions of increased risk, including reduced immunological competence, those undergoing treatment with steroids of cytotoxic agents, pregnancy and cigarette smoking.

(b) Records.

1. Employers or employees examined pursuant to this paragraph shall cause to be maintained complete and accurate record of all such medical examinations. Records shall be maintained for the duration of the employee's employment. Upon termination of the employee's employment, including retirement or death, or in the event that the employer ceases business without a successor, records, or notarized true copies thereof, shall be forwarded by registered mail to the director.

2. Records required by this paragraph shall be provided upon request to authorized representatives of the assistant secretary or the director: and upon request of an employee or former employee, to a physician designated by the employee or to a new employer.

3. Any physician who conducts a medical examination required by this paragraph shall furnish to the employer a statement of the employees suitability for employment in the specific exposure.

Section 3. Laboratory Activities. (1) The requirements of this subsection shall apply to research and quality control activities involving the use of chemicals covered by 1910.1003-.1016.

(a) Mechanical pipetting aids shall be used for all pipetting procedures.

(b) Experiments, procedures and equipment which could produce aerosols shall be confined to laboratory-type hoods or glove boxes.

(c) Surfaces on which chemicals covered by .1103-.1016 are handled shall be protected from contamination.

(d) Contaminated wastes and animal carcasses shall be collected in impervious containers which are closed and decontaminated prior to removal from the work area. Such wastes and carcasses shall be incinerated in such a manner that no carcinogenic products are released.

(e) All other forms of chemicals covered by .1003-.1016 shall be inactivated prior to disposal.

(f) Laboratory vacuum systems shall be protected with high-efficiency scrubbers or with disposal absolute filters.

(g) Employees engaged in animal support activities shall be:

1. Provided with and required to wear, a complete protective clothing change, clean each day, including coveralls, or pants and shirt, foot covers, head covers, gloves, and appropriate respiratory protective equipment or devices; and

2. Prior to each exit from a regulated area, employees shall be required to remove and leave protective clothing and equipment at the point of exit and at the last exit of the day, to place used clothing and equipment in impervious containers at the point of exit for purposes of decontamination or disposal. The contents of such impervious containers shall be identified as required under subsection (5)(b), (c), and (d) of this section.

3. Required to wash hands, forearms, face and neck upon each exit from the regulated area close to the point of exit, and before engaging in other activities; and

4. Required to shower after the last exit of the day.

(h) Employees, other than those engaged only in animal support activities, each day shall be:

1. Provided with and required to wear a clean change of appropriate laboratory clothing, such as a solid front gown, surgical scrub suit, or fully buttoned laboratory coat;

2. Prior to each exit from a regulated area, employees shall be required to remove and leave protective clothing and equipment at the point of exit and at the last exit of the day, to place used clothing and equipment in impervious containers at the point of exit for purposes of decontamination or disposal. The contents of such impervious containers shall be identified under subsection (5)(b), (c), and (d) of this section.

3. Required to wash hands, forearms, face and neck upon each exit from the regulated area close to the point of exit, and before engaging in other activities.

(i) Air pressure in laboratory areas and animal rooms where chemicals covered by .1003-.1016 are handled and bioassay studies are performed shall be negative in relation to the pressure in surrounding areas. Exhaust air shall not be discharged to regulated areas, nonregulated areas or the external environment unless decontaminated.

(j) There shall be no connection between regulated areas and any other areas through the ventilation system.

(k) A current inventory of chemicals covered by .1003-.1016 shall be maintained.

(l) Ventilated apparatus such as laboratory-type hoods, shall be tested at least semi-annually or immediately after ventilation modification or maintenance operations, by personnel fully qualified to certify correct containment and operation.

Section 4. Access to Exposure or Medical Records. (1) The language relating to the access to exposure or medical records in subsection (2) of this section shall apply in lieu of 29 CFR 1910.1020(e)(1)(i);

(2) 29 CFR 1910.1020(e)(1)(i) is amended to read: "Whenever an employee or designated representative requests access to an exposure or medical record, the employer shall assure that access is provided in a reasonable time, place, and manner, but not longer than



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fifteen (15) days after the request for access is made unless sufficient reason is given why such a time is unreasonable or impractical."

(3) The language relating to the access to exposure or medical records in subsection (4) of this section shall apply in lieu of 29 CFR 1910.1020(e)(1)(iii);

(4) 29 CFR 1910.1020(e)(1)(iii) is amended to read: "Whenever an employee or designated representative requests a copy of a record, the employer shall, except as specified in (v) of this section, within the period of time previously specified assure that either:"

Section 5. The language relating to gloves in paragraph (2) of this subsection shall apply in lieu of 29 CFR 1910.1030(d)(3)(ix);

(2) Gloves shall be worn when it can be reasonably anticipated that the employees may have hand contact with blood, other potentially infectious materials, mucous membranes, and nonintact skin when performing vascular access procedures and when handling or touching contaminated items or surfaces.

Section 6. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) The material in subparagraph 1 through 2 of this paragraph, published by the Office of the Federal Register, National Archives and Records Services, General Services Administration, revised as of July 1, 1995, is incorporated by reference:

1. 29 CFR 1910.1000 to 29 CFR 1910.1030(d)(3)(viii); and
2. 29 CFR 1910.1030(d)(3)(x) through 29 CFR 1910.1500.

(b) The revisions to 29 CFR 1910.1000, "Air Contaminants", as published in the Federal Register, Volume 63, Number 7, January 10, 1997, are incorporated by reference.

(c) The revisions to 29 CFR 1910.1001, "Occupational Exposure to Asbestos", as published in the Federal Register, Volume 61, Number 165, August 23, 1996, are incorporated by reference.

(d) [(e)] The revisions to 29 CFR 1910.1003, "13 Carcinogens", as published in the Federal Register, Volume 61, Number 46, March 7, 1996, are incorporated by reference.

(e) [(d)] The revisions to 29 CFR 1910.1003, "13 Carcinogens (4-Nitrobiphenyl, etc.)", as published in the Federal Register, Volume 61, Number 120, June 20, 1996, are incorporated by reference.

(f) [(e)] The revisions to 29 CFR 1910.1004, "alpha-Naphthylamine", as published in the Federal Register, Volume 61, Number 46, March 7, 1996, are incorporated by reference.

(g) [(f)] The revisions to 29 CFR 1910.1006, "Methyl chloromethyl ether", as published in the Federal Register, Volume 61, Number 46, March 7, 1996, are incorporated by reference.

(h) [(g)] The revisions to 29 CFR 1910.1007, "3,3'-Dichlorobenzidine (and its salts)", as published in the Federal Register, Volume 61, Number 46, March 7, 1996, are incorporated by reference.

(i) [(h)] The revisions to 29 CFR 1910.1008, "bis-Chloromethyl ether", as published in the Federal Register, Volume 61, Number 46, March 7, 1996, are incorporated by reference.

(j) [(i)] The revisions to 29 CFR 1910.1009, "beta-Naphthylamine", as published in the Federal Register, Volume 61, Number 46, March 7, 1996, are incorporated by reference.

(k) [(j)] The revisions to 29 CFR 1910.1010, "Benzidine", as published in the Federal Register, Volume 61, Number 46, March 7, 1996, are incorporated by reference.

(l) [(k)] The revisions to 29 CFR 1910.1011, "4-Aminodiphenyl", as published in the Federal Register, Volume 61, Number 46, March 7, 1996, are incorporated by reference.

(m) [(l)] The revisions to 29 CFR 1910.1012, "Ethyleneimine", as published in the Federal Register, Volume 61, Number 46, March 7, 1996, are incorporated by reference.

(n) [(m)] The revisions to 29 CFR 1910.1013, "beta-Propiolactone", as published in the Federal Register, Volume 61, Number 46, March 7, 1996, are incorporated by reference.

(o) [(n)] The revisions to 29 CFR 1910.1014, "2-Acetylaminofluorene", as published in the Federal Register, Volume 61, Number 46,

March 7, 1996, are incorporated by reference.

(p) [(o)] The revisions to 29 CFR 1910.1015, "4-Dimethylaminoazobenzene", as published in the Federal Register, Volume 61, Number 46, March 7, 1996, are incorporated by reference.

(q) [(p)] The revisions to 29 CFR 1910.1016, "N-Nitrosodimethylamine", as published in the Federal Register, Volume 61, Number 46, March 7, 1996, are incorporated by reference.

(r) [(q)] The revisions to 29 CFR 1910.1018, "Inorganic arsenic", as published in the Federal Register, Volume 61, Number 46, March 7, 1996, are incorporated by reference.

(s) [(r)] The renumbering of 29 CFR 1910.20, "Access to Employee and Medical Records", to 29 CFR 1910.1020, as published in the Federal Register, Volume 61, Number 46, June 20, 1996, is incorporated by reference, as follows:

1. 29 CFR 1910.1020 through 29 CFR 1910.1020(e)(1);

2. 29 CFR 1910.1020(e)(1)(ii); and

3. 29 CFR 1910.1020(e)(3)(iii)(a) through Appendix B to 1910.1020.

(t) [(s)] The revisions to 29 CFR 1910.1025, "Occupational Exposure to Lead", as published in the Federal Register, Volume 60, Number 196, October 11, 1995, are incorporated by reference.

(u) [(t)] 29 CFR 1910.1051, "Occupational Exposure to 1,3-Butadiene", as published in the Federal Register, Volume 61, Number 214, November 4, 1996, is incorporated by reference.

(v) 29 CFR 1910.1051, "Occupational Exposure to Methylene Chloride", as published in the Federal Register, Volume 61, Number 7, January 10, 1997, is incorporated by reference.

(w) [(u)] The renumbering of 29 CFR 1910.96, "Ionizing Radiation", to 29 CFR 1910.1096, as published in the Federal Register, Volume 61, Number 46, June 20, 1996, is incorporated by reference.

(x) [(v)] The revisions to 29 CFR 1910.1200, "Hazard Communication", as published in the Federal Register, Volume 61, Number 46, March 7, 1996, are incorporated by reference.

(y) [(w)] The removal of 29 CFR 1910.1499, "Source of Standards", as published in the Federal Register, Volume 61, Number 46, March 7, 1996, is incorporated by reference.

(z) [(x)] The removal of 29 CFR 1910.1500, "Standards Organizations", as published in the Federal Register, Volume 61, Number 46, March 7, 1996, is incorporated by reference.

(2) The language relating to the access of exposure and medical records in Section 4(2) of this administrative regulation shall apply in lieu of 29 CFR 1910.1020(e)(1)(i).

(3) The language relating to the access of exposure and medical records in Section 4(4) of this administrative regulation shall apply in lieu of 29 CFR 1910.1020(e)(1)(iii).

(4) The language relating to gloves in Section 5(2) of this administrative regulation shall apply in lieu of 29 CFR 1910.1030(d)(3)(ix).

(5) This material may be inspected, copied or obtained at Kentucky Labor Cabinet, Division of Education and Training, 1047 U.S. 127 South, Frankfort, Kentucky 40601. Office hours are 8 a.m. - 4:30 p.m. (ET), Monday through Friday.

JOE NORSWORTHY, Chairman

KEMBRA SEXTON TAYLOR, Attorney

APPROVED BY AGENCY: October 9, 1997

FILED WITH LRC: October 13, 1997 at 3 p.m.



## ADMINISTRATIVE REGISTER - 1518

**LABOR CABINET**  
**Department of Workplace Standards**  
**Division of Occupational Safety and Health Compliance**  
**Division of Occupational Safety and Health**  
**Education and Training**  
**(As Amended at ARRS, December 9, 1997)**

**803 KAR 2:411. Scaffolds.**

RELATES TO: KRS 338.051, 338.061, 29 CFR 1926  
STATUTORY AUTHORITY: KRS 338.051(3), 338.061, 29 CFR 1926

NECESSITY, FUNCTION, AND PURPOSE: KRS 338.051(3) ~~[and 338.061]~~ authorizes the Kentucky Occupational Safety and Health Standards Board to adopt and promulgate occupational safety and health administrative regulations. KRS 338.061(2) provides that the board may [Express authority to] incorporate by reference established federal standards and national consensus standards [is also given to the board]. The following administrative regulation contains those standards to be enforced by the Division of Occupational Safety and Health Compliance in the area of construction.

Section 1. The requirements relating to scaffolds shall be governed by 29 CFR Part 1926, as published in the Code of Federal Regulations, July 1, 1996.

**Section 2.** Incorporation by Reference. (1) The following material is incorporated by reference:

(a) 29 CFR Part 1926.450-.453, revised as of July 1, 1996, published by the Office of the Federal Register, National Archives and Records Services, General Services Administration.

(b) The revisions to 29 CFR 1926, Subpart L, "Scaffolds", as published in the Federal Register, Volume 61, Number 170, August 30, 1996, are incorporated by reference.

(c) The revisions to 29 CFR 1926, Subpart L, "Scaffolds", as published in the Federal Register, Volume 61, Number 228, November 25, 1997, are incorporated by reference.

(2) This material may be inspected and copied at: Kentucky Labor Cabinet, Division of Education and Training, U.S. 127 South, Frankfort, Kentucky 40601. Office hours are 8 a.m. - 4:30 p.m. (ET), Monday through Friday.

Section 3. This administrative regulation shall expire on adjournment of the next regular session of the General Assembly.

JOE NORSWORTHY, Chairman  
KEMBRA SEXTON TAYLOR, Attorney  
APPROVED BY AGENCY: October 9, 1997  
FILED WITH LRC: October 13, 1997 at 3 p.m.

**LABOR CABINET**  
**Department of Workers' Claims**  
**(As Amended at ARRS, December 9, 1997)**

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

RELATES TO: KRS 342.395

STATUTORY AUTHORITY: KRS 342.260(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 342.260(1) requires the commissioner to promulgate administrative regulations necessary to carry out the work of the department. KRS 342.395 requires an employer to file an employee's notice of rejection of workers' compensation with the department. ~~[Employers whose employees reject the Workers' Compensation Act shall file written notice with the commissioner pursuant to KRS 342.395.]~~ This

administrative regulation **establishes** ~~[sets forth]~~ the procedures ~~for~~ ~~[concerning the]~~ filing ~~[of]~~ the rejection notice, the form of the rejection notice, and the withdrawal of the rejection notice.

Section 1. (1) If an employee chooses to reject the provisions of KRS Chapter 342, ~~[then]~~ the employee shall file a Form No. 4, Employee's Notice of Rejection of Workers' Compensation Act ~~[(July, 1997 Edition)]~~ with his employer.

(2) The notice shall:

(a) Be on an original form obtained from the Department of Workers' Claims;

(b) Contain the following information:

1. Employer data;

2. Employee data;

3. **Employer's** ~~[Employers']~~ Workers' Compensation Insurance data;

4. Employee's notarized signature; and

5. Employer's acknowledgment of receipt and filing with the Department of Workers' Claims; **and**

(c) Be effective when the department has received the fully completed Form No. 4.

(3) The employer shall file each Form No. 4 with the department immediately upon receipt **of the form** from the employee.

(4) Each employer shall:

(a) Keep on file **a copy** ~~[copies]~~ of each Form No. 4 signed by **a current employee** ~~[employees]~~; and

(b) Make those records available for inspection upon request by **a representative** ~~[representatives]~~ of the department.

(5) The department shall reject **a filing which is** ~~[filings which are]~~:

(a) **A photocopy;** ~~[Photocopies;]~~

(b) **A facsimile;** ~~[Facsimiles;]~~

(c) Not on an original Form No. 4 obtained from the department.

Section 2. (1) If an employee chooses to withdraw his rejection of the Workers' Compensation Act, ~~[then]~~ the employee shall file that withdrawal on Form No. 5, Written Notice of Withdrawal of Form No. 4 Rejection Notice ~~[(July, 1997 Edition)]~~ with his employer.

(2) The withdrawal notice shall:

(a) Be on an original form obtained from the department;

(b) Contain the following information:

1. Employer data;

2. Employee data;

3. Employee's notarized signature; **and**

4. Employer's acknowledgment of receipt and filing with the department; **and**

**5. Pursuant to KRS 342.395(3), the date when the withdrawal is to become effective; and**

(c) Be effective **pursuant to KRS 342.395(3)** upon:

**1. Filing with the employer, if the employee did not designate an effective date; or**

**2. The date designated by the employee.**

(3) The employer shall file each Form No. 5 with the department immediately upon receipt from the employee.

Section 3. If an employer or employee wants an acknowledgment from the department of a Form No. 4 filing or Form No. 5 filing, ~~[then]~~ the employer or employee shall provide the following with the original Form No. 4 or Form No. 5:

(1) Photostatic copy of the filing; and

(2) Self-addressed stamped envelope.

Section 4. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) Form No. 4, Employee's Notice of Rejection of Workers' Compensation Act (July 1997 Edition), **Department of Workers' Claims;** and

(b) Form No. 5, Written Notice of Withdrawal of Form 4 Rejection (July 1997 Edition), **Department of Workers' Claims**.

(2) The material may be inspected, copied or obtained at the Department of Workers' Claims, Monday through Friday, 9 a.m. to 4 p.m. at **Perimeter Park West, Building C, 1270 Louisville Road, Frankfort, Kentucky 40601**. [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 13, 1997

FILED WITH LRC: October 14, 1997 at 11 a.m.

**CABINET FOR FAMILIES AND CHILDREN**  
**Department for Social Insurance**  
**Division of Management and Development**  
**(As Amended at ARRS, December 9, 1997)**

**904 KAR 2:035. Right to apply and reapply.**

RELATES TO: KRS 194.060, 205.175, 205.177, 205.200(1), 205.245, 45 CFR 206.10 [(a)(1)], 42 USC 601 et seq., 1973gg-5 [40] STATUTORY AUTHORITY: KRS [13A.120;] 116.048(1), 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 [Human Resources] shall administer public assistance programs including Kentucky Transitional Assistance Program (K-TAP) [Aid to Families with Dependent Children (AFDC)] and the state Supplementation Program (SSP) of the aged, blind and persons with disabilities. This administrative regulation establishes the procedure for applying for assistance. [sets forth the procedure by which an application for assistance under these programs shall be made.] KRS 116.048 designates the cabinet to have responsibility for the administration of public assistance programs as a voter registration agency in accordance with 42 USC 1973gg-10. [Therefore,] This administrative regulation establishes [sets forth] policy and procedures necessary to provide an eligible public assistance participant the opportunity to register, or to decline from registering, to vote.

Section 1. Right to Apply or Reapply. (1) An individual may [Each individual wishing to do so shall have the opportunity to] apply or reapply for Kentucky Transitional Assistance Program (K-TAP) [AFDC] or State Supplementation Program (SSP) through the Department for Social Insurance (DSI).

(2) An application shall have been made:

(a) On the date:

1. An individual or his representative signs the DSI application form, incorporated by reference in 904 KAR 3:030; and

2. The application is received at the DSI office; or

(b) On the date the agency is contacted, if the person:

1. Has a physical or mental disability; and

2. Needs special accommodation due to the impairment. [An application shall be considered to have been made:

(a) The date the individual or his representative has signed, under penalty of perjury:

1. The DSI application form, incorporated by reference in 904 KAR 3:030; and

2. The application has been received at the DSI office; or

(b) The date of contact with the agency by a person with a

physical or mental disability who needs special accommodation due to the impairment.]

(3) If the client is physically unable to come to the office to apply, he may:

(a) Designate an authorized representative to apply for him; or

(b) Request a home visit to complete the application process.

(4) The applicant may be:

(a) Assisted by an individual of his choice in the application process; and

(b) Accompanied by this individual in a contact with the agency. [The applicant may be assisted by any individual of his choice in the application process and may be accompanied by this individual in all contacts with the agency.]

(5) In accordance with the procedures described in 900 KAR 1:070, interpreter services shall be provided for persons who are:

(a) Deaf; or

(b) Hard of hearing.

(6) Interpreter services shall be provided for a non-English speaking individual, utilizing procedures and forms specified by 900 KAR 1:070.

(7) The cabinet shall not discriminate against an applicant based on [any applicant or participant in any aspect of program administration for reasons of] age, race, color, sex, disability, religious creed, national origin or political beliefs.

Section 2. Who May Sign an Application. (1) Except for a case based on incapacity, an application for Kentucky Transitional Assistance Program (K-TAP) [AFDC] shall be signed by:

(a) The relative with whom a needy child lives;

(b) The legally appointed guardian [committee] of the relative; or

(c) A representative authorized in writing to act on behalf of the relative.

(2) An application for Kentucky Transitional Assistance Program (K-TAP) [AFDC] based on incapacity shall be signed by:

(a) An [Any] individual listed in subsection (1) of this section; or

(b) An interested party acting on behalf of the applicant.

(3) An application for state supplementation shall be signed by:

(a) The individual who is aged, blind or has a disability;

(b) An interested party;

(c) His legally appointed guardian [committee]; or

(d) The representative payee receiving the Supplemental Security Income (SSI) benefit.

Section 3. Where Applications are Filed and Processed. (1) The application:

(a) May be made at a DSI office; and

(b) Shall be processed in the county of residence. [The application may be made at any DSI office, and shall be processed in the county of residence.]

(2) If the client is applying in a county other than the county of residence and the client is hospitalized:

(a) The DSI office in the county of hospitalization shall take the application and transfer the pending application to the county of residence; and

(b) The DSI office in the county of residence shall process the application using the original application date.

(3) If the client is applying in a county other than the county of residence and the client is not hospitalized:

(a) The DSI office in the receiving county shall:

1. Partially complete the application;

2. Transfer it to the county of residence on the same day the application is taken; and

3. Explain to the client that the application will be processed in the county of residence;

(b) The DSI office in the county of residence shall schedule a face-to-face interview. The application shall be [is] processed using the original application date.

## ADMINISTRATIVE REGISTER - 1520

(4) Application by mail.

(a) A Kentucky resident who is temporarily out-of-state, or someone acting on his behalf may initiate the application process by mail if:

1. An emergency arises from accident or sudden illness;
2. Care and services are needed immediately; and
3. Health would be endangered by returning to the state.

(b) Upon notification of the emergency an application form shall [will] be forwarded to the initiating party.

Section 4. Action on Applications. (1) A decision shall be made on an [each] application and payment made within:

(a) Forty-five (45) days for Kentucky Transitional Assistance Program (K-TAP) [AFDG] or State Supplementation Program (SSP); or

(b) Ninety (90) days for State Supplementation Program (SSP) determinations in which permanent and total disability shall be established.

(2) Exception to this time standard may be made [if]:

(a) If the applicant is unable to obtain necessary verification for a determination of eligibility; or

(b) For failure or delay, that cannot be controlled by the department, on the part of the applicant or examining physician.

(3) The case record shall document the cause for the delay when the time standards are not met.

(4) Failure to process an application within the time frame shall not be used as the basis for denial.

Section 5. Voter Registration. (1) In accordance with KRS 116.048 and 42 USC 1973gg-5(10), an applicant or recipient meeting all of the following criteria shall be provided the opportunity to complete an application to register to vote or update his current voter registration:

(a) Be age eighteen (18) or over; and

(b) Be present in the office at the time of the interview or when a change of address is reported; and

(c) Not be:

1. Registered to vote; or

2. Registered to vote at his current address. [Not be registered to vote or not registered to vote at his current address.]

(2) An individual not included in the assistance application shall not be registered to vote in this process, including a:

(a) Payee only;

(b) An authorized representative; or

(c) An individual acting as a responsible party.

(3) [An individual providing voter registration services who seeks to unlawfully influence an applicant's political preference or party registration as prohibited by KRS 116.048(4) could be fined or imprisoned, not to exceed five (5) years, or both.

(4) Forms and information utilized in the voter registration process shall remain confidential and be used [only] for voter registration purposes.

(4) A person other than a Board of Elections official shall not view a form or information utilized directly in the voter registration process.

[(5) Only Board of Elections officials may view forms and information utilized directly in the voter registration process.

(6) Completion of the Voter Registration Form is only an application to apply to register to vote. The State Board of Elections shall approve the application to register to vote and send a confirmation or denial notice to the applicant.]

(5) [(7)] Forms necessary to apply for assistance or to register A K-TAP [an AFDG] or state supplementation (SSP) participant to vote are incorporated by reference in 904 KAR 3:030, Section 10.

Section 6. Disclosure of Information. Use or disclosure of information obtained from applicant households, exclusively for the

program, shall be restricted pursuant to KRS 194.060, 205.175, and 205.177. [to the following individuals:

(1) Public employees including any duly identified representative of the Department of Health and Human Services in the performance of his duties in connection with the administration of the assistance program;

(2) Law enforcement agencies and representatives including county and commonwealth attorneys, county and circuit court judges and grand juries in discovering and prosecuting cases involving fraud;

(3) State and local law enforcement officials who, in the proper exercise of their duties, provide the name and Social Security number of an AFDG recipient, and satisfactorily demonstrate that the recipient is a fugitive felon. Release of information in this situation is limited to address of the AFDG recipient only.

(4) Members of Congress and the General Assembly, limited to cases of individual constituents who have requested information regarding their application or payment status.

(5) Any interested party that has requested a hearing before an agency hearing officer, to the extent necessary for the proper presentation of the case. Information in this situation is limited to that which is applicable to the hearing request.

(6) Officials administering any Federal or federally assisted program which provides assistance in cash or in kind, or services directly to individuals on the basis of need. Disclosure in this situation is limited to AFDG and benefits programs other than Medical Assistance.

(7) Any audit or similar activity conducted in connection with the administration of any federal or federally assisted program.

(8) Any employer to certify receipt of AFDG for purposes of claiming a tax credit under Public Law 94-12.

(9) Any individual or agency agreeing to Departmental standards of confidentiality for the purpose of the provision of social services, employment or training to recipients of AFDG and benefit programs other than Medical Assistance.

(10) Any service providers attempting to provide assistance to JOBS or self-initiated participants. Disclosure of information in this situation is limited to purposes directly connected with providing services or issuing supportive services payments.

(11) Officials administering any federally funded foster care and adoption assistance programs.

(12) Local law enforcement agency, The Kentucky State Police, commonwealth or county attorney to report known or suspected instances of child abuse and neglect of a child receiving assistance.

(13) Attorneys or absent parents who appear in the local office with a court order carrying a signature of a judge.]

JOHN L. CLAYTON, Commissioner

VIOLA P. MILLER, Secretary

CHARLES P. LAWRENCE, Attorney

APPROVED BY AGENCY: September 11, 1997

FILED WITH LRC: September 12, 1997 at 11 a.m.

### CABINET FOR FAMILIES AND CHILDREN

Department for Social Insurance  
Division of Management and Development  
(As Amended at ARRS, December 9, 1997)

904 KAR 2:060. Delegation of power for oaths and affirmations.

RELATES TO: KRS 205.170(1), 45 CFR 205.32, 42 USC 601 et seq.

STATUTORY AUTHORITY: KRS 194.050(1), 205.170(1), 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

## ADMINISTRATIVE REGISTER - 1521

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 administer a money payment program under 42 USC 601 et seq., Kentucky Transitional Assistance Program (K-TAP) [Aid to Families with Dependent Children], and provide supplemental payments to persons who are aged, blind or have a disability. KRS 205.170(1) authorizes [empowers] the Secretary for Human Resources or his duly authorized representative to administer oaths and affirmations to obtain information from an applicant or recipient in the administration of the Aid to Families with Dependent Children now called Kentucky Transitional Assistance Program (K-TAP) and state supplementation programs. This administrative regulation sets forth the designation of certain employees by the secretary of the cabinet to administer oaths and affirmations to an applicant or a recipient of a money grant in limited situations.

Section 1. Specific Worker Designation. The following classifications of employees shall be designated as duly authorized representatives of the Secretary of the Cabinet for Families and Children [Human Resources] to administer an oath or affirmation to an applicant or recipient:

- (1) A field services supervisor;
- (2) A field services manager; and
- (3) A regional administrator.

Section 2. An oath or affirmation shall be administered by a designated representative to an applicant or recipient to:

(1) Obtain a sworn statement regarding a claim that a check issued through a cabinet program has been:

- (a) Lost;
- (b) Misplaced; or
- (c) Stolen;
- (2) Request a replacement check; or
- (3) View a check endorsement.

~~[Purpose. (1) An oath or affirmation shall be administered by a designated representative to an applicant or recipient for the purpose of obtaining his sworn statement:~~

~~(1) regarding a claim that a check issued from a money payment program of the cabinet has been:~~

- ~~(a) Lost;~~
- ~~(b) Misplaced; or~~
- ~~(c) Stolen;~~
- ~~(2) To request a replacement check; or~~
- ~~(3) When a check endorsement is viewed.]~~

Section 3. Process. (1) An affidavit shall be used if [when]:

(a) A check is reported lost or stolen to request a replacement check within six (6) months of intended receipt; or

(b) [When] A check endorsement is viewed.

(2) If the payee reports nonreceipt, loss or theft of a check, the payee shall come into the office to complete an affidavit within four (4) work days of reporting nonreceipt of the check. This process shall [will] place a stop payment on the check.

(3) If the original check has been cashed, a photocopy of the cashed check shall be forwarded to the local office.

(a) The payee shall view the endorsement; and

(b) If the signature is not that of the payee, the payee shall sign the affidavit stating:

1. The signature on the photocopy is not his signature; and
2. He received no benefit from the cashing of the check.

~~[stating the signature on the photocopy is not his signature and he received no benefit from the cashing of the check.]~~

(4) The affidavit shall also be used to request reissuance of the check in question.

(5) The time limitation that a lost or stolen check may be replaced shall not exceed six (6) months from the date of intended receipt.

Section 4. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "PA-60 Affidavit", (5/97 Edition), Department for Social Insurance; and

(b) "PA-61 Notice of Returned Check and Authorization for Disposition", (7/94 Edition), Department for Social Insurance.

(2) This material may be inspected, copied, or obtained at the Department for Social Insurance, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m. [Material incorporated by Reference. (1) Forms necessary for the administration of an oath or affirmation for the Kentucky Transitional Assistance Program (K-TAP) [Aid to Families with Dependent Children] and state supplementation programs are being incorporated [effective November, 1993]. These forms include:

(a) "PA-60", "Affidavit", edition 5/97 [revised 4/95];

(b) "PA-61", "Notice of Returned Check and Authorization for Disposition", edition [revised] 7/94.

(2) Material incorporated by reference may be inspected and copied at the Department for Social Insurance, 275 East Main Street, Frankfort, Kentucky 40621. Office hours are 8 a.m. to 4:30 p.m.]

JOHN L. CLAYTON, Commissioner

VIOLA P. MILLER, Secretary

CHARLES P. LAWRENCE, Attorney

APPROVED BY AGENCY: September 11, 1997

FILED WITH LRC: September 12, 1997 at 11 a.m.

ADMINISTRATIVE REGULATIONS AMENDED AFTER PUBLIC HEARING  
OR RECEIPT OF WRITTEN COMMENTS

KENTUCKY REVENUE CABINET  
Office of General Counsel  
Division of Tax Policy  
(Amended After Hearing)

103 KAR 31:030. Direct pay authorization.

RELATES TO: KRS 139.400, 139.710

STATUTORY AUTHORITY: KRS ~~131.130, 139.260~~ [Chapter 13A]

NECESSITY, FUNCTION, AND CONFORMITY: To establish a procedure to facilitate payment of sales and use tax that will be mutually beneficial to the cabinet, the applicant, and retailers dealing with the applicant and will not result in a tax loss either in total or on a cash flow basis. [~~when the proper tax application cannot be determined at the time of purchase.~~]

Section 1. Definitions. (1) "Direct pay authorization" means an authorization issued by the Revenue Cabinet that permits an eligible taxpayer to report Kentucky sales and use tax directly to the cabinet on all purchases of tangible personal property, excluding energy and energy-producing fuels.

(2) "Distribution facility" means a specific location which is used to receive, hold, and ship business inventory.

(3) "Eligible taxpayer" means a person engaged in:

(a) Manufacturing;

(b) Extracting minerals, ores, clay, stone, coal, or natural gas;

(c) Operating a transportation company; or

(d) Operating a distribution facility.

(4) "Manufacturing" means a process that transforms tangible personal property having no commercial value for its intended use before processing into tangible personal property having appreciable value for its intended use after processing where upon the product is transferred from the producing plant for sale or distribution to customers or for further processing at another plant site and subsequent sale. [~~Where the Revenue Cabinet finds that it is impossible at the time of purchase of tangible personal property for a manufacturer, transportation company or persons engaged in the business of mining, quarrying, compounding or processing tangible personal property, or their vendors, to determine with any degree of certainty the applicability of the sales or use tax upon such transactions and, where the cabinet finds that it would facilitate and expedite the collection of such taxes by the cabinet to authorize such manufacturer, transportation company, or persons engaged in the business of mining, quarrying, compounding or processing to purchase tangible personal property without the payment by their vendors of the sales or use tax with respect to such property, then such manufacturer, transportation company or persons engaged in the business of mining, quarrying, compounding or processing may be authorized by the cabinet, to purchase tangible personal property without payment of the use tax to his vendors or reimbursing his vendors for the sales tax provided all of the following conditions are met:~~

(1) ~~The applicant is both engaged in business and has property (other than inventory held for purposes of sale and office furniture and equipment) located in more than one (1) state;~~

(2) ~~The applicant must hold a valid Kentucky retail sales and use tax permit;~~

(3) ~~Written application shall be made to the cabinet for a direct pay authorization. Such application must be made upon a form provided by the cabinet;~~

(4) ~~The applicant for the direct pay authorization agrees that, in consideration for issuance of a direct pay authorization, he will directly report and pay to the Revenue Cabinet both the sales and use tax~~

~~that would have been remitted to the cabinet by the applicant's retailer and the applicant had the direct pay authorization not been made. Upon granting of authorization by the cabinet, such person shall report purchases made under the authorization on the retailer's sales and use tax return and shall pay the tax to the Revenue Cabinet on or before the 20th day of the month following the month during which such tangible personal property was used for a taxable purpose.~~

(5) ~~Such person shall keep such books and records as the cabinet deems necessary to determine the tax liability.~~

(6) ~~Upon demand of the cabinet, such person shall execute bond or indemnity agreement securing the payment of such taxes to the cabinet in an amount not less than one (1) month's estimated sales and use tax liability.~~

(7) ~~Said authorization shall not be transferable and may be terminated upon notice by registered mail to the holder thereof at his last known address.]~~

Section 2. Qualifications. The applicant shall meet all of the following conditions:

(1) The applicant shall be an eligible taxpayer who is:

(a) Engaged in business in Kentucky and owns property, other than office furniture and equipment, located in more than one (1) state; or

(b) Has been in operation in Kentucky in excess of twenty-four (24) months and makes purchases of tangible personal property, excluding energy and energy-producing fuels, of at least \$10 [\$15] million annually for use in the applicant's Kentucky operations.

(2) The applicant shall hold a valid Kentucky retail sales and use tax permit.

(3) The applicant has a record of timely payment of all taxes administered by the cabinet. [A holder of a direct pay authorization making a purchase pursuant to such authorization must furnish the vendor with a copy of the written authorization issued by the cabinet. Receipt of such copy accepted in good faith will relieve the vendor of the duty of reporting and paying the tax provided he retains the document in his records.]

Section 3. Application. (1) The applicant shall make written application to the cabinet for a direct pay authorization upon "Application for Direct Pay Authorization", Revenue Form, 51A112, (9-97).

(2) The application shall include:

(a) The most recent year's [certified] financial statement certified by the applicant's chief financial officer or a certified public accountant; and

(b) A detailed description of the records maintained to document that the amount of taxable purchases is properly reported.

Section 4. Requirements. The holder of a direct pay authorization shall:

(1) Furnish all of his vendors, excluding vendors of energy and energy-producing fuels, with a copy of the "Direct Pay Authorization", Revenue Form 51A110, (8-97), issued by the cabinet;

(2) Report and remit the sales or use tax on all taxable purchases of tangible personal property, excluding energy and energy-producing fuels, that would have been remitted by the applicant's retailer if the direct pay authorization had not been granted; and

(3) Report all taxable purchases in accordance with KRS 139.540, 139.550, 139.560 and 139.590.

Section 5. Vendor Responsibility. The vendor shall be relieved of the duty of collecting and paying the sales or use tax provided he accepts a copy of the company's "Direct Pay Authorization", Revenue

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Form 51A110 (8-97), in good faith and retains the copy in his records pursuant to KRS 139.720. The vendor shall include sales for which a direct pay authorization has been accepted in Line 1, Gross Receipts, of the sales and use tax return. A corresponding deduction shall be taken on Line 19, and properly labeled DPA Sales.

**Section 6. Limitations.** The direct pay holder shall not issue the direct pay authorization to a construction contractor nor allow a contractor to use the holder's direct pay authorization to purchase, lease, or rent tangible personal property or purchase taxable services.

**Section 7. Records.** The holder of the direct pay authorization shall maintain records as the cabinet deems necessary pursuant to KRS 139.720.

**Section 8. Bond Requirement.** Upon demand of the cabinet, the applicant or holder of a direct pay authorization shall execute pursuant to KRS 139.660, a bond or an indemnity agreement securing the payment of the sales or use taxes to the cabinet in an amount not less than \$75,000 and not greater than three (3) times the estimated monthly liability.

**Section 9. Transfer of Authorization.** (1) In the event of the sale, lease, or other transfer of the business, the direct pay authorization shall not be transferable.

(2) The holder of the direct pay authorization shall notify the cabinet within ten (10) days of the effective date of the sale, lease, or other transfer of the business.

**Section 10. Termination.** (1) The cabinet shall terminate a DPA if the DPA holder [direct pay authorization when]:

(a) [The cabinet determines that the continuation of the direct pay authorization is not in the best interest of the Commonwealth; or

(b) The holder of the direct pay authorization:

1.] Fails or ceases to be an eligible taxpayer;

(b) [2.] Fails to timely file its sales and use tax returns and timely pay any tax due; or

(c) [3.] Fails to comply with any of the provisions of this administrative regulation.

(2) The cabinet shall notify the holder of a direct pay authorization of the termination by certified mail at his last known address. Upon receipt of the notification of termination, the direct pay holder shall notify all vendors within thirty (30) days of the date of termination.

(3) The effective date of the termination shall be the date of the mailing of the termination notice.

**Section 11. Protests.** The denial or termination of a direct pay authorization is protestable pursuant to KRS 131.110.

**Section 12. Incorporation by Reference.** (1) "Application for Direct Pay Authorization", Form 51A112, (9-97) is incorporated by reference.

(2) "Direct Pay Authorization", Form 51A110, (8-97) is incorporated by reference.

(3) The incorporated forms may be inspected, copied, or obtained at the Kentucky Revenue Cabinet, 200 Fair Oaks, Frankfort, Kentucky 40620, or at any Kentucky Revenue Cabinet Taxpayer Service Center, Monday through Friday, 8 a.m. to 4:30 p.m.

VINCE LANGE, Acting Secretary

ALEX W. ROSE, Commissioner, Department of Law

APPROVED BY AGENCY: December 4, 1997

FILED WITH LRC: December 8, 1997 at 11 a.m.

### REGULATORY IMPACT ANALYSIS

Contact person: Charlotte T. Quarles

(1) Type and number of entities affected: Any taxpayer meeting

the requirements and conditions of this regulation may be affected by this administrative regulation.

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

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: This administrative regulation will have no effect on the cost of living and employment within Kentucky.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: This administrative regulation will have no effect on the cost of doing business within Kentucky.

(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 administrative regulation adds distribution facilities to the list of taxpayers eligible to obtain a direct pay authorization and explains the requirements and conditions of a taxpayer seeking a direct pay authorization. The compliance, reporting, and paperwork requirements will not change in the first year following implementation. Costs will be neither increased or decreased.

2. Second and subsequent years: The compliance, reporting, and paperwork requirements have not changed for the second and subsequent years. Costs will be neither increased or decreased.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: The administrative regulation adds distribution facilities to the list of taxpayers eligible to obtain a direct pay authorization and explains the requirements and conditions of a taxpayer seeking a direct pay authorization. There will be a slight increase in administrative costs due to an increase in the number of taxpayers qualifying for a direct pay authorization.

2. Continuing costs or savings: Additional costs will be minimal after the first year of implementation.

3. Additional factors increasing or decreasing costs: There are no additional factors which either increase or decrease costs.

(b) Reporting and paperwork requirements: Paperwork requirements will be increased to allow for the processing of additional applications for direct pay authorizations.

(4) Assessment of anticipated effect on state and local revenues: No effect.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: None required.

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

(a) Geographical area in which administrative regulation will be implemented: No impact.

(b) Kentucky: No impact.

(7) Assessment of alternative methods; reasons why alternatives were rejected: No alternative methods have been suggested.

(8) Assessment of expected benefits:

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

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

(c) If detrimental effect would result, explain detrimental effect: Not applicable.

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

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

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

(10) Any additional information or comments: None

(11) TIERING: Is tiering applied? No. The provisions of this

administrative regulation will be applied equally to all taxpayers who qualify for a direct pay authorization.

**TRANSPORTATION CABINET**  
**Department of Vehicle Regulation**  
**Division of Motor Carriers**  
**Department of Fiscal Management**  
**Division of Audit Review**  
**(Amended After Hearing)**

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

RELATES TO: KRS 138.462, 138.463, 138.4631, 281.615 through 281.670

STATUTORY AUTHORITY: KRS 138.463(9)

NECESSITY, FUNCTION, and CONFORMITY: KRS 138.463(9) requires the fair market rental or lease value of a motor vehicle to be based on standards established by administrative regulation promulgated by the Transportation Cabinet. The standards set forth in this administrative regulation are to be used in establishing the minimum amount of usage tax to be reported and paid on a rental or lease vehicle.

Section 1. Definitions. (1) "Lease" means as defined in KRS 138.462(3).

(2) "Regularly engaged in the business of renting or leasing to retail customers" means a U-drive-it permit holder who:

(a) Rents or leases vehicles as part of an established business to anyone who wishes to rent or lease a vehicle;

(b) Executes, at a minimum, ninety (90) percent of its rental and lease transactions at fair market value [~~established by arm's-length transactions~~]; and

(c) Maintains the records required pursuant to 601 KAR 1:147.

(3) "Rental" means as defined in KRS 138.462(2).

(4) "Vehicle type classification" means the motor vehicle classification system established by the National Automobile Dealers Association and set forth in their "Official Used Car Guide".

Section 2. Fair Market Value (FMV) Rental Amount of a Permit Holder. (1) If a U-drive-it permit holder is regularly engaged in the business of renting vehicles to retail customers, the Transportation Cabinet Division of Audit Review shall audit the records of the permit holder to determine an average rental amount per day and per agreement to establish the FMV rental amount per day and per agreement for this permit holder.

(2) The FMV rental amount shall be used to assess the usage tax imposed pursuant to KRS 138.463 on an individual transaction of a U-drive-it permit holder who is regularly engaged in the business of renting or leasing vehicles to retail customers under the following conditions:

(a) The transaction is **for less than the fair market value of the rental of the motor vehicle** [~~less than arms-length~~]; or

(b) The information required to be maintained by 601 KAR 1:147 for the transaction is missing or incomplete.

Section 3. Fair Market Value (FMV) Transportation Cabinet Established Rental Amount. (1) The Transportation Cabinet Division of Audit Review shall establish based on monthly remittance of usage tax pursuant to KRS 138.463 to the Transportation Cabinet which of the U-drive-it permit holders are the six (6) largest volume permit holders who are regularly engaged in the business of renting motor vehicles to retail customers.

(2)(a) The Transportation Cabinet Division of Audit Review shall survey the six (6) permit holders to determine the average FMV rental amount for each specific vehicle type classification.

(b) The value for each specific vehicle classification established by paragraph (a) of this subsection shall be the FMV Transportation Cabinet established rental amount for the specific vehicle classification.

(3) The FMV Transportation Cabinet established rental amount for a specific vehicle type classification shall be used to assess the tax imposed under KRS 138.463 for the following:

(a) Every transaction of a permit holder who is not regularly engaged in the business of renting vehicles to retail customers; or

(b) A vehicle being used for which the permit holder regularly engaged in the business of renting or leasing vehicles to retail customers is not reporting any U-drive-it usage tax on his monthly tax return;

(4) The current FMV Transportation Cabinet established rental amount for each specific vehicle classification is listed in the August 1997 edition of the Kentucky Transportation Cabinet's "Fair Market Value Transportation Cabinet Established Rental and Lease Amount Calculations".

Section 4. [3:] Fair Market Value (FMV) Lease Amount. (1) If a U-drive-it permit holder is regularly engaged in the business of leasing vehicles to retail customers, the Transportation Cabinet Division of Audit Review shall audit the records of the permit holder to determine an average lease amount per \$1000 value of the manufacturer's suggested retail price (MSRP) of the permit holder's lease vehicles.

(2) The FMV lease amount shall be used to assess the KRS 138.463 U-drive-it usage tax on an individual transaction of a U-drive-it permit holder who is regularly engaged in the business of leasing vehicles to retail customers under the following conditions:

(a) The transaction is **for less than the fair market value of the lease of the motor vehicle** [~~less than arms-length~~]; or

(b) The information required to be maintained by 601 KAR 1:147 for the transaction is missing or incomplete.

Section 5. [4:] Fair Market Value (FMV) Transportation Cabinet Established Lease Amount. (1)(a) The Transportation Cabinet Division of Audit Review shall survey the executed lease agreements of five (5) randomly selected U-drive-it permit holders who are regularly engaged in the business of leasing vehicles to retail customers to determine the average dollar lease amount per \$1000 value of the manufacturer's suggested retail price (MSRP) of a vehicle.

(b) The value established as the average dollar lease per \$1000 of the MSRP by paragraph (a) of this subsection shall be the FMV Transportation Cabinet lease amount per \$1000 of the MSRP.

(2) The usage tax assessed under KRS 138.463 for a lease vehicle of a permit holder who is not regularly engaged in the business of leasing vehicles to retail customers shall be the greater of the following:

(a) The FMV lease amount per \$1000 value of the MSRP of the vehicle established in subsection (1) of this section; or

(b) The monthly lease amount assessed by the permit holder.

(3) The average dollar lease amount per \$1000 value of the MSRP is listed in the August 1997 edition of the Kentucky Transportation Cabinet's "Fair Market Value Transportation Cabinet Established Rental and Lease Amount Calculations".

Section 6. [5:] Material Incorporated by Reference. (1) The following material is incorporated by reference in this administrative regulation:

(a) The August 1997 edition of the Transportation Cabinet's "Fair Market Value Transportation Cabinet Established Rental and Lease Amount Calculations"; and

(b) The October 1997 edition of the National Automobile Dealers Association "Official Used Car Guide".

(2) The material incorporated by reference in this administrative regulation may be viewed, copied, or obtained from the Transportation Cabinet, Division of Audit Review, 641 Teton Trail, Frankfort,



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Kentucky 40622. The office hours are 8 a.m. through 4:30 p.m. eastern time on week days. The telephone number is (502)564-6760.

ED LOGSDON, Commissioner  
GLENN B. MITCHELL, Commissioner  
JAMES C. CODELL, III, Secretary  
TODD SHIPP, Office of General Counsel  
APPROVED BY AGENCY: December 1, 1997  
FILED WITH LRC: December 4, 1997 at 11 a.m.

### REGULATORY IMPACT ANALYSIS

Contact person: Sandra Pullen Davis, Staff Assistant

(1) Type and number of entities affected: There are currently 596 active U-drive-it permit holders in Kentucky. All of these entities will be affected by this administrative regulation. There are an additional 478 permit holders which are not active at this time. This administrative regulation will affect them if they activate the permit.

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

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: There will be no impact on the cost of living or employment as a result of 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: There will be no impact on the cost of living or employment as a result of 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: All U-drive-it permit holders are being informed of the basic format their record keeping must follow in order that their records be the ones used in establishing the fair market value for the permit holders. Further, the permit holders are now informed what the fair market value will be for a rental or lease for a permit holder who does not maintain records in a manner consistent with this administrative regulation.

2. Second and subsequent years: Same as above.

(3) Effects on the promulgating administrative body: None. The administrative regulation is being promulgated to provide advance public notice to the U-drive-it permit holders of how the Transportation Cabinet will respond to the records being maintained by the permit holder.

(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: The Transportation Cabinet will have to publish any changes in its fair market value determinations.

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

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Road Fund appropriation to the Department of Fiscal Management, Division of Audit Review.

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

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

(b) Kentucky: None

(7) Assessment of alternative methods; reasons why alternatives were rejected: The Transportation Cabinet was requested by the Kentucky Auto Dealers Association to not base the fair market value of a leased or rented motor vehicle on the rental or lease value from

the permit holders located close to the airports. They felt that these permit holders charge more than would be the true fair market value elsewhere in the state. The Transportation Cabinet added to the composite fair market value the records from several additional permit holders. However, when the composite fair market value was higher with these additional records than just using the records of the largest permit holders, the Transportation Cabinet decided not to include the records from the additional permit holders.

(8) Assessment of expected benefits: The expected benefits are allowing all permit holders to know in advance how much usage tax will be assessed by the Transportation Cabinet for those rental or lease transactions for which the permit holder does not have adequate records. In this way, the permit holders should transmit the expected amount to the Transportation Cabinet each month rather than being hit with a large assessment at the time of audit.

(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:

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

(10) Any additional information or comments:

(11) TIERING: Is tiering applied? Yes. Tiering is applied in that a permit holder with adequate records will be not be forced to use the Transportation Cabinet computed fair market value to determine the amount of usage tax owed on a motor vehicle rental or lease transaction.

### TRANSPORTATION CABINET Department of Vehicle Regulation Division of Motor Carriers Department of Fiscal Management Division of Audit Review (Amended After Hearing)

#### 601 KAR 1:147. Auditing of U-drive-it permit holders.

RELATES TO: KRS 138.462, 138.463, 138.4631, 186.005, 186.281, 281.615 through 281.670

STATUTORY AUTHORITY: KRS 138.463, 138.4631

NECESSITY, FUNCTION, and CONFORMITY: KRS 138.463 and 138.4631 require the Transportation Cabinet to assess, collect, and audit the monthly U-drive-it usage tax. This administrative regulation sets forth the recordkeeping requirements to which the permit holders will be held and the audit procedures of the Transportation Cabinet.

Section 1. Definitions. (1) "Rental" means as defined in KRS 138.462(2).

(2) "Lease" means as defined in KRS 138.462(3).

Section 2. Recordkeeping. (1) Rental records.

(a) A holder of a U-drive-it permit who rents vehicles shall:

1. Develop a consecutive, preprinted numbering system for its rental agreements; [and]

2. For each motor vehicle included in the permit holder's rental fleet, retain a copy of the original invoice from the manufacturer or some other document which shows the manufacturer's suggested retail price of the motor vehicle plus the cost of all options included on the motor vehicle; and

3. Retain a copy of each rental agreement in consecutive order, including a voided or damaged agreement.

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(b) The following information shall be included on a rental agreement:

1. Rental agreement number;
2. Beginning date of the rental;
3. Ending date of the rental;
4. Identification of the specific rental vehicle which includes the following:
  - a. Vehicle identification number;
  - b. Make;
  - c. Model; and
  - d. Year.
5. Odometer reading of the rental vehicle at the beginning of the rental agreement;
6. Odometer reading of the rental vehicle at the end of the rental agreement;
7. Amount charged for the rental agreement;
8. Method of calculation of the rental amount charged which includes mileage charges and number of days used; and
9. Identification of the person renting the vehicle.

(c) The record of a rental transaction shall be maintained for a period not less than six (6) years after the due date of the U-drive-it tax return.

**(2) [(3)] Lease records.**

(a) A lease agreement shall include the following information:

1. Complete name and address of the lessee;
2. Beginning date of the lease;
3. Ending date or term of the lease;
4. Identification of the lease vehicle which includes the following:
  - a. Vehicle identification number;
  - b. Make;
  - c. Model;
  - d. Year; and
  - e. Manufacturer's suggested retail price.
5. Final lease termination calculation and date;
6. Monthly payment amount subject to the tax imposed by KRS 138.463;
7. Down payment or trade-in information;
8. Dated signature of the lessee and the lessor.

(b) The following, where applicable, shall be attached to the lease agreement:

1. Certificate of title of the leased vehicle;
2. A lease amount calculation worksheet;
3. A lease extension agreement;
4. Documentation of a lease early termination;
5. Other information which would alter the original lease agreement.

(c) The record of a lease transaction shall be maintained for a period not less than six (6) years after the due date of the U-drive-it tax return.

**Section 3. Audits of Permit Holders.** (1) The Division of Audit Review shall notify the permit holder of the date, time, and location of the audit. At least fifteen (15) days' advance notice shall be given to the permit holder.

(2) Pursuant to the guidelines set forth in KRS 138.463(6), the audit period shall **not exceed [be]** either four (4) years or six (6) years.

(3) Failure of the permit holder to make available the requested records required to be kept by the permit holder pursuant to Section 2 of this administrative regulation may result in an assessment of tax based on KRS 138.460 or cancellation of the permit.

(4)(a) Missing or incomplete records shall result in an assessment based on 601 KAR 1:146 or KRS 138.460 whichever is appropriate as determined by the audit.

(b) In computing the assessment for a specific transaction, the permit holder shall be given credit for any tax previously remitted to the Transportation Cabinet for that transaction.

(5) If an audit is being conducted on site, the auditor shall conduct and document a preaudit conference with the permit holder outlining the operation, audit procedures, records to be examined, sample period (if any), and sampling procedures. The permit holder and auditor shall determine at the preaudit conference who has the responsibility for the final acceptance of audit findings and who should be involved in the close-out conference.

(6) If the audit is being conducted on site, the auditor shall conduct and document a close-out conference with the permit holder outlining preliminary findings to include applicable penalty and interest, recommendations, rights of appeal, and to whom the audit report should be addressed.

(7) The Transportation Cabinet shall furnish the permit holder a letter of audit findings and recap schedules. If requested, the cabinet shall supply any other work papers to the permit holder.

(8) If an audit indicates that additional tax is owed, the Transportation Cabinet shall issue a Notice of Tax Due statement.

(9) The permit holder shall within forty-five (45) days of the date of the notice of tax due statement pay the tax due or protest in writing pursuant to Section 4 of this administrative regulation.

**Section 4. Protest or Appeal of Audit Results.** (1) The permit holder may within forty-five (45) days of the date of the letter of transmittal of the audit findings, protest in writing to the Transportation Cabinet, Division of Audit Review any portion of the audit.

(2) If the permit holder does not protest, the audit and the notice of tax due statement shall be final on the beginning of the 46th day.

(3)(a) If a permit holder protests pursuant to this section, the protest shall include a supporting statement and documents which identify:

1. The specific adjustments requested;
2. The portions of the audit being protested; and
3. The reasons the protest is being made.

(b) If the supporting statement and documents are not sufficient to cause the Transportation Cabinet to change the audit or notice of tax due statement as requested by the permit holder in its protest, the permit holder shall be notified to attend an information gathering/protest conference with the Division of Audit Review. The information gathering/protest conference shall be scheduled to be held within thirty (30) days of the issuance of the written protest. It may be rescheduled only one (1) time by either party.

(4) The permit holder may within thirty (30) days of the date of the final audit or final notice of tax due statement appeal to the Kentucky Board of Tax Appeals pursuant to KRS 131.340.

ED LOGSDON, Commissioner  
GLENN B. MITCHELL, Commissioner  
JAMES C. CODELL, III, Secretary  
TODD SHIPP, Office of General Counsel

APPROVED BY AGENCY: December 1, 1997

FILED WITH LRC: December 4, 1997 at 11 a.m.

### REGULATORY IMPACT ANALYSIS

Contact person: Sandra Pullen Davis, Staff Assistant

(1) Type and number of entities affected: There are currently 596 U-drive-it permit holders in Kentucky. All of these entities will be affected by this administrative regulation, but the Transportation Cabinet will only audit the records of about 40 of the permit holders each year. There are an additional 478 permit holders which are not active at this time. This administrative regulation will affect them if they activate the permit.

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

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: There will be no impact on the cost of living or employment as a result of 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: There will be no impact on the cost of living or employment as a result of 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: All U-drive-it permit holders are being informed of the basic format their record keeping must follow in order that their records be the ones used in establishing the fair market value for the permit holders. Further, the permit holders are now informed what the fair market value will be for a rental or lease for a permit holder who does not maintain records in a manner consistent with this administrative regulation.

2. Second and subsequent years: Same as above.

(3) Effects on the promulgating administrative body: None. The administrative regulation is being promulgated to provide advance public notice to the U-drive-it permit holders of how the Transportation Cabinet will respond to the records being maintained by the permit holder.

(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: The Transportation Cabinet will have to publish any changes in its fair market value determinations.

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

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Road Fund appropriation to the Department of Fiscal Management, Division of Audit Review.

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

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

(b) Kentucky: None

(7) Assessment of alternative methods; reasons why alternatives were rejected: The Transportation Cabinet was requested by the Kentucky Auto Dealers Association to not base the fair market value of a leased or rented motor vehicle on the rental or lease value from the permit holders located close to the airports. They felt that these permit holders charge more than would be the true fair market value elsewhere in the state. The Transportation Cabinet added to the composite fair market value the records from several additional permit holders. However, when the composite fair market value was higher with these additional records than just using the records of the largest permit holders, the Transportation Cabinet decided not to include the records from the additional permit holders.

(8) Assessment of expected benefits: The expected benefits are allowing all permit holders to know in advance how much usage tax will be assessed by the Transportation Cabinet for those rental or lease transactions for which the permit holder does not have adequate records. In this way, the permit holders should transmit the expected amount to the Transportation Cabinet each month rather than being hit with a large assessment at the time of audit.

(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:

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

(10) Any additional information or comments:

(11) TIERING: Is tiering applied? Yes. Tiering is applied in that a permit holder with adequate records will be not be forced to use the Transportation Cabinet computed fair market value to determine the amount of usage tax owed on a motor vehicle rental or lease transaction.

**TRANSPORTATION CABINET  
Department of Highways  
Division of Transportation Planning  
Division of Operations  
(Amended After Hearing)**

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

RELATES TO: KRS 177.9771, 189.230

STATUTORY AUTHORITY: KRS 177.9771(10)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 177.9771(2) requires the Secretary of the Transportation Cabinet to certify those public highways which meet certain criteria as the extended weight coal or coal by-products haul road system. KRS 177.9771(1) requires that roads which are currently, or have been in the past, state-maintained toll roads always be included on the extended weight coal or coal by-products haul road system. KRS 189.230 provides that the Department of Highways may prescribe gross vehicle weight limits for bridges lower than the limits prescribed in KRS 177.9771 on any bridge which may be damaged or destroyed to the point of catastrophic failure if gross vehicle weights exceed certain limits. This administrative regulation identifies in an official order which is incorporated by reference the extended weight coal or coal by-products haul road system and the bridges on the system which the Department of Highways has judged may be so damaged and prescribes the maximum weight limit for each of these bridges. Further, KRS 177.9771(9) requires the Transportation Secretary to meet with certain local governing bodies and give consideration to their concerns before adding to or deleting from the extended weight coal or coal by-products haul road system and establishes procedures to be followed by local governing bodies requesting this consideration. The official order incorporated by reference sets forth the road segments which were reported to the Transportation Cabinet as having had 50,000 tons or more of coal or coal by-products transported over them during calendar year 1996 [1995], the toll roads, and the bridges which are posted for lower weight limits.

Section 1. Definitions. The following terms when used in this administrative regulation or the material incorporated by reference in the administrative regulation shall have the following meanings:

(1) "AASHTO" means the American Association of State Highway and Transportation Officials.

(2) "Catastrophic failure" means a failure that is marked by sudden or unpredictable damage ranging from extreme misfortune to utter ruin.

(3) "CO" means county.

(4) "Coal by-products" means any of the following: fly ash, bottom ash, wet bottom boiler slag, scrubber sludge, burned coal waste (red dog), coal slag, and coal cinders.

(5) "CR" means a public highway, road, or street not maintained by the Kentucky Department of Highways.

(6) "FROM" means the beginning milepoint and terminus of a road segment on the extended weight coal or coal by-product haul road system.

(7) "I" means an interstate and defense highway maintained by

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the Kentucky Department of Highways.

(8) "KY" means a state numbered highway maintained by the Kentucky Department of Highways.

(9) "LN" means line.

(10) "Local governing body" means the fiscal court of any county, the city council or commission of a city of the first through fourth classes or the council of an urban county government.

(11) "P" means parallel bridge.

(12) "PKWY" means parkway.

(13) "TO" means the ending milepoint and terminus of a road segment on the extended weight coal or coal by-product haul road system.

(14) "TY I" means a single unit truck consisting of two (2) single axles.

(15) "TY II" means a single unit truck consisting of one (1) steering axle and two (2) axles in tandem arrangement.

(16) "TY III" means a single unit truck consisting of one (1) steering axle and three (3) axles in tridem arrangement.

(17) "TY IV" means a tractor-semitrailer combination with five (5) or more axles.

(18) "US" means a United States numbered highway maintained by the Kentucky Department of Highways.

Section 2. Evaluation of Bridges. (1) The department shall determine which bridges on the extended weight coal or coal by-products haul road system may be damaged or destroyed to the point of catastrophic failure by a vehicle operating at the weight authorized by KRS 177.9771 by using the AASHTO Manual for Maintenance Inspection of Bridges, 1983 edition and 1984 and 1985 interim revisions.

(2) The load factor method of analysis shall be used if a bridge is known to have been designed by this method.

(3) If the allowable stress method of analysis is used, the maximum allowable stress in steel members shall not exceed sixty-nine (69) percent of the yield strength of the steel.

(4) If neither the load factor or allowable stress method of analysis can be used, the Department of Highways shall conduct an on-site inspection to determine if the bridge shows appreciable signs of deterioration or distress or otherwise poses a significant hazard to the traveling public.

Section 3. Limiting Weight on Bridges. The department shall use the guidelines in the AASHTO Manual for Maintenance Inspection Bridges to set a weight limit for a bridge deemed at risk of catastrophic failure pursuant to KRS 189.230(2).

Section 4. Dimension Limits on the Extended Weight Coal Haul Road System. A motor vehicle displaying a valid extended weight coal haul decal or cooperative license plate issued pursuant to KRS 177.9771 and being operated on a road segment set forth in Transportation Cabinet Official Order 98113 [97984] [97+81], Official Order 97246, or Official Order 97311, shall not exceed, the dimension limits set forth in 603 KAR 5:070, Section 4.

Section 5. The Extended Weight Coal and Coal By-product Highway System and Limited Bridges. (1) ~~Except as amended by Official Order 97246 and Official Order 97311,~~ The highways or portions of highways listed in Transportation Cabinet Official Order 98113 [97984] [97+81] are designated as the extended weight coal and coal by-products haul road system.

(2) The bridges listed in Transportation Cabinet Official Order 98113 [97984] [97+81] have been determined by the department to be at risk of damage or destruction to the point of catastrophic failure and a weight limit has been established.

Section 6. Restricted Bridge Use. A person shall not operate, or knowingly cause to be operated, on a bridge listed in Official Order

98113 [97984] [97+81] a vehicle whose gross vehicle weight exceeds the weight limits specified for that bridge.

Section 7. Bridge Posted Weight Limits. In accordance with KRS 189.230(3), the Department of Highways shall post the gross vehicle weight limits for each bridge listed in Official Order 98113 [97984] [97+81].

Section 8. Additional Bridge Restrictions. A person shall not operate, or knowingly cause to be operated, on a bridge on the extended weight coal or coal by-products haul road system a vehicle whose gross vehicle weight exceeds the limits specified by a notice posted pursuant to KRS 189.230(3).

Section 9. (1) A resolution of a local governing body making a recommendation to the secretary, pursuant to KRS 177.9771(9), shall be submitted to Secretary of Transportation, Transportation Cabinet, State Office Building, 501 High Street, Frankfort, Kentucky 40622.

(2) The resolution shall set forth:

(a) A specific description of the road or road segment under consideration; and

(b) A specific description of the inherent and definite hazardous condition; or

(c) The factors which may create a special condition.

Section 10. Incorporation by Reference. (1) The following material is incorporated by reference in this administrative regulation:

(a) AASHTO Manual for Maintenance Inspection of Bridges, 1983 edition an 1984 and 1985 Interim Revisions; and

(b) Transportation Cabinet Official Order 98113 [97984] [97+81] adopted by the Transportation Cabinet on September 30, 1997 ~~August, 1996~~;

~~(c) Transportation Cabinet Official Order 97246 issued by the Transportation Cabinet on August 30, 1996;~~

~~(d) Transportation Cabinet Official Order 97311 issued by the Transportation Cabinet on October 7, 1996.~~

(2) A copy of the AASHTO Manual for Maintenance Inspection of Bridges, 1983 edition and 1984 and 1985 Interim Revisions may be viewed at the Transportation Cabinet, Department of Highways, Division of Operations, 7th Floor, State Office Building, 501 High Street, Frankfort, Kentucky. Office hours are 8 a.m. until 4:30 p.m., eastern time on weekdays. Copies of the AASHTO Manual for Maintenance Inspection of Bridges, 1983 edition and 1984 and 1985 Interim Revisions may be obtained from the American Association of State Highway and Transportation Officials, 444 North Capitol Street, N.W., Suite 225, Washington, D.C. 20001.

(3) All of the official orders incorporated by reference in this administrative regulation may be viewed, copied, or obtained from the Office of the General Counsel [Secretary], 501 High Street, Frankfort, Kentucky 40622. The telephone number is (502) 564-7650 [4890]. The business hours are 8 a.m. until 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: December 2, 1997

FILED WITH LRC: December 4, 1997 at 11 a.m.

### REGULATORY IMPACT ANALYSIS

Contact person: Sandra Pullen Davis

(1) Type and number of entities affected: The 6,000 coal transporters operating in Kentucky as well as all other persons using the highways included in the Extended Weight Coal Haul Road System.

(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 administrative regulation is to be implemented state-wide but the largest concentration of roads are located in the coal fields of eastern and western Kentucky. The general perception of the public is that if there are more highways in the Extended Weight Coal Haul Road System, there will be more mining jobs created and therefore an improvement in the economy. This hypothesis has neither been proven nor disproven. However, it is quite true that the more roads there are in the system, the fewer trucks that will be needed to transport the coal which is mined. This means fewer jobs for the coal transporters and a down-turn in their economy.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: It will cost less for the coal owners to have the coal transported in those areas with road segments in the system. However, there is insufficient Road Fund money to maintain the extended weight roads at what is generally considered to be an acceptable level of service. Therefore, more maintenance is required on all of the vehicles routinely using the roads in the Extended Weight Coal Haul Road System, thus increasing the price 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: Savings incurred as a result of being allowed to transport coal at extended weights over additional roads. At the same time a number of roads are being deleted from the system causing an additional cost for the coal transporters who have been operating on those routes. The savings and cost to the industry as a whole should balance. However, individual companies can see a large swing in their cost/savings.

2. Second and subsequent years: Same as 1.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings: The road segments added to the extended weight system will require more maintenance.

1. First year: The cost of additional maintenance for roads added to the system will be thousands of dollars. Almost all the highways which are being deleted from the system will still have to have additional maintenance or reconstruction because of the earlier transportation of coal at extended weights. Therefore, there will be no off-setting savings for the Transportation Cabinet.

2. Continuing costs or savings: Same as 1.

3. Additional factors increasing or decreasing costs: The lifespan of bridges which are used at these extended weights is considerably shortened. Therefore, the cost to the Transportation Cabinet over the life of the extended weight coal haul road system will be additional millions of dollars.

(b) Reporting and paperwork requirements: None

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

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Road Fund - Department of Vehicle Regulation, Division of Motor Vehicle Enforcement and Department of Highways.

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

(a) Geographical area in which administrative regulation will be implemented: It is generally perceived that including roads in the Extended Weight Coal Haul Road System has a positive effect on the economy of a coal producing region, and a neutral to negative effect elsewhere. Conversely, removing roads from the Extended Weight Coal haul Road System (unless all mines in the area are permanently closed) is generally perceived as having a negative impact on the economy in a coal producing region.

(b) Kentucky: See (a).

(7) Assessment of alternative methods; reasons why alternatives were rejected: KRS 177.9771 mandates the annual update of the extended weight coal haul road system listing. Therefore, legally there was no alternative to the annual update. However, KY 205 was removed from the Extended Weight Coal Haul Road System because of the extremely unsafe condition of the highway. The Transportation Cabinet chose to remove the road from the Extended Weight Coal Haul Road System rather than having to close the road to all traffic.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: The roads on the Extended Weight Coal Haul Road System will suffer much more damage than the other state-maintained highways. A road which is not in good condition is much unsafer than one in good condition.

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

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

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

(a) Necessity of proposed regulation if in conflict:

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

(10) Any additional information or comments: Most of the impacts of the administrative regulation, both positive and negative are mandated by KRS 177.9771. Unless there is a change in state law, there are very few effects generated by the implementation of the administrative regulation.

(11) TIERING: Is tiering applied? Yes. The entire administrative regulation is a tiering of weight and axles allowed on certain roads.

**CABINET FOR FAMILIES AND CHILDREN**  
**Department for Social Insurance**  
**Division of Management and Development**  
**(Amended After Hearing)**

**904 KAR 2:040. Procedures for determining initial and continuing eligibility.**

RELATES TO: KRS 205.200(2), 205.245, 42 USC 601 et seq. [45 CFR 206.10(a)(2)(ii), 206.10(a)(9)(iii), 206.10(a)(9)(iv)42]

STATUTORY AUTHORITY: KRS [13A.120.] 194.050(1), 205.200, EO 96-862, 42 USC 601 et seq.

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 administer the following public assistance programs: Kentucky Transitional Assistance Program (K-TAP) [Aid to Families with Dependent Children (AFDC)] and State Supplementation Program (SSP). This administrative regulation sets forth the procedures used to determine initial and continuing eligibility for assistance under these programs.

Section 1. Eligibility Determination Process. (1) Eligibility shall be determined prospectively. To receive or continue to receive assistance, a household shall meet all of the eligibility criteria for the month payment is intended to cover.

(2) Each decision regarding eligibility or ineligibility for assistance shall be supported by facts recorded in the applicant's or recipient's case record.

(a) The applicant or recipient shall be the primary source of information and shall be required to:

1. Furnish verification of:

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- (a) Income;
- (b) Resources; and
- (c) Technical eligibility; and

2. Give written consent to those contacts necessary to verify or clarify any factor pertinent to the decision of eligibility.

(b) When informed in writing of the appointment or necessary information to be provided, failure of the applicant or recipient to appear for a scheduled interview or present required information at the time requested shall be considered a failure by the applicant or recipient to present adequate proof of eligibility.

Section 2. Continuing Eligibility. (1) The recipient shall be responsible for reporting within ten (10) days any change in circumstances which may affect eligibility or the amount of payment.

(2) Eligibility shall be redetermined:

(a) When a report is received or information is obtained about changes in circumstances;

(b) [At least] Every ~~twenty-four (24)~~ [twelve (12)] months for State Supplemental Program (SSP) cases in which Supplemental Security Income (SSI) is not received; and

(c) ~~[Except for cases identified in the alternate redetermination plan, at least every six (6) months for AFDC cases; and~~

(d) [At least] Every twelve (12) months for Kentucky Transitional Assistance Program (K-TAP) [AFDC] cases, ~~[identified in the alternate redetermination plan:~~

~~(3) An AFDC case shall be identified in the alternate redetermination plan if:~~

~~(a) The case is not based on a deprivation of unemployment of one (1) of the parents, as specified in 904 KAR 2:006, Section 9; and~~

~~(b) The case does not include a recipient who has earned income; or~~

~~(c) The application of exclusions and deductions from income, set forth in 904 KAR 2:016, Section 4, permit the case to qualify for the maximum payment for the household size, as specified in 904 KAR 2:016, Section 7; and~~

~~(d) At least one (1) of the following conditions shall be met:~~

~~1. The household contains a recipient of Supplemental Security Income (SSI) benefits;~~

~~2. The case has been active for three (3) or more years; or~~

~~3. The case does not contain an adult member. However, if the household contains an otherwise eligible adult who was excluded from the case for failure to comply with a technical requirement, as specified in 904 KAR 2:006 or 904 KAR 2:370, the agency may retain the case in the standard six (6) month redetermination schedule.]~~

Section 3. Material Incorporated by Reference. (1) The form used for recertification to determine continuing eligibility for Kentucky Transitional Assistance Program (K-TAP), if the Kentucky Automated Management and Eligibility System (KAMES) is unavailable for use, is the "PR-1", "Program Recertification", edition October 1997.

(2) Material incorporated by reference may be inspected and copied at the Department for Social Insurance, 275 East Main Street, Frankfort, Kentucky, 40621. Office hours are 8 a.m. to 4:30 p.m. [Reviews of SSP Cases: (1) SSP cases containing SSI income shall be reviewed every six (6) months to:

(a) Determine that the special need for which supplementation is granted continues to exist;

(b) Verify living situation and income; and

(c) Adjust the SSP payment, if appropriate.

(2) SSP cases not containing SSI income shall be reviewed six (6) months following the yearly redetermination to:

(a) Review all items subject to change; and

(b) Adjust the SSP payment, if appropriate.]

JOHN L. CLAYTON, Commissioner  
VIOLA P. MILLER, Secretary  
CHARLES P. LAWRENCE, Attorney

APPROVED BY AGENCY: December 2, 1997  
FILED WITH LRC: December 4, 1997 at 3 p.m.

### REGULATORY IMPACT ANALYSIS

Agency Contact Person: Marty Mason, Director

(1) The affected entities are families who apply for or receive benefits under the Kentucky Transitional Assistance Program (K-TAP). The AFDC program was replaced by the Temporary Assistance for Needy Families (TANF) block grant program called Kentucky Transitional Assistance Program (K-TAP) as the result of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996. There are approximately 62,034 families in Kentucky (monthly average) who are currently 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 scheduled on October 21, 1997, as a result of the publication of the administrative regulation was not held since no requests were received. 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 scheduled on October 21, 1997, as a result of the publication of the administrative regulation was not held since no requests were received. 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. Also, we developed a recertification form to be used during recertification interviews when the Kentucky Automated Management and Eligibility System (KAMES) is down.

2. Second and subsequent years: Same

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: Increasing recertification periods for K-TAP recipients from six (6) months to twelve (12) months and State Supplemental cases from twelve (12) months to twenty-four (24) months will be cost neutral to the agency. The six (6) month reviews for State Supplemental cases are eliminated. The time the agency saves in doing recertifications and reviews for recipients will enable current departmental staff to have more time to devote to additional required activities as a result of welfare reform changes such as assisting recipients in obtaining employment.

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 scheduled on October 21, 1997, as a result of the publication of the administrative regulation was not held since no requests were received. No written or oral comments were received regarding direct or indirect costs or savings on the economic



impact, including effects of economic activities arising from the administrative regulation in the geographic area in which the regulation will be implemented.

(b) Kentucky: A public hearing scheduled on October 21, 1997, as a result of the publication of the administrative regulation was not held since no requests were received. No written or oral comments were received regarding the indirect costs or savings on the economic impact 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 the Kentucky Transitional Assistance Program (K-TAP) that replaces the Aid to Families with Dependent Children Program.

(b) State whether a harmful effect on environment and public health would result if not implemented: A detrimental effect on public welfare would result if this amendment is not implemented.

(c) If detrimental effect would result, explain detrimental effect: Public assistance benefits received by needy Kentuckians may be jeopardized if Kentucky does not meet the mandates delineated in our Title IV-A State Plan as required by the Personal Responsibility and Work Opportunity Reconciliation Act of 1996. If public assistance benefits received by needy Kentuckians are jeopardized, these individuals would lose a source of support for their family including assistance for supportive services such as transportation and child care which enables the parent to remain employed.

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

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

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

(10) Any additional information or comments: References to Aid to Families with Dependent Children (AFDC) have been changed to Kentucky Transitional Assistance Program (K-TAP) to conform with the provisions in 904 KAR 2:006E and 2:016E. A public hearing scheduled on October 21, 1997, as a result of the publication of the administrative regulation was not held since no requests were received. Written comments were received regarding the twelve (12) month reinvestigation and the regulation has been amended as a result of these written comments received on October 21, 1997.

(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 (Amended After Hearing)

#### 904 KAR 2:046. Adverse action; conditions.

RELATES TO: KRS 205.200(2), 205.245, 45 CFR 205.10(a)(4), 206.10(a)(4), 42 USC 601 et seq.

STATUTORY AUTHORITY: KRS 13A.120, 194.050(1), EO 96-862, 42 USC 601 et seq.

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 administer public assistance programs including Kentucky Transitional Assistance Program (K-TAP) [Aid to Families with Dependent Children (AFDC)] and mandatory and optional supplementation of persons who are aged, blind and have a disability. This administrative regulation sets forth the conditions under which an application is denied or assistance is decreased or discontinued and advance notice requirements.

Section 1. Definitions. (1) "Applicant" means an individual applying for:

(a) State supplementation benefits; or

(b) Kentucky Transitional Assistance Program (K-TAP) [AFDC] benefits.

(2) "Application" means the process set forth in 904 KAR 2:035.

(3) "Recipient" means:

(a) A person who is aged, blind, or has a disability receiving state supplementation benefits; or

(b) A member of a Kentucky Transitional Assistance Program (K-TAP) [an AFDC] assistance group as defined in 904 KAR 2:016.

Section 2. Reasons for Adverse Action. (1) An application shall be denied if:

(a) Income or resources exceed the standards for the specific assistance program as set forth in 904 KAR 2:016 and 904 KAR 2:015;

(b) The applicant does not meet technical eligibility criteria or fails to comply with a technical requirement as set forth in 904 KAR 2:006, 904 KAR 2:015 and 904 KAR 2:370;

(c) Despite receipt of written notice detailing the additional information needed for a determination, the applicant fails to provide sufficient information or clarify conflicting information necessary for a determination of eligibility;

(d) The applicant fails to keep the appointment for an interview;

(e) The applicant requests in writing voluntary withdrawal of application;

(f) Department staff is unable to locate the applicant; or

(g) The applicant is no longer domiciled in Kentucky.

(2) Assistance shall be discontinued or decreased if:

(a) Income or resources of the recipient increase or deductions decrease resulting in reduced or discontinued benefits as set forth in 904 KAR 2:016 or 904 KAR 2:015;

(b) The recipient does not meet technical eligibility criteria or fails to comply with a technical requirement as set forth in 904 KAR 2:006, 904 KAR 2:015 or 904 KAR 2:370;

(c) Despite receipt of written notice detailing the additional information needed for a redetermination, the recipient fails to provide sufficient information or clarify conflicting information necessary for a redetermination of eligibility;

(d) The recipient fails to keep the appointment for an interview;

(e) The cabinet is recovering Kentucky Transitional Assistance Program (K-TAP) [AFDC] overpayments through recoupment;

(f) Department staff is unable to locate recipient;



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- (g) The recipient is no longer domiciled in Kentucky;
- (h) Change in program policy adversely affects the recipient; or
- (i) For Kentucky Transitional Assistance Program (K-TAP) [AFDC] only, the grant amount is less than ten (10) dollars.

Section 3. Notification of Denial of Applications. If an application is denied, the applicant shall be given:

- (1) Written notification of the denial which shall include:
  - (a) The reason for the denial; and
  - (b) The cites of the applicable state administrative regulation.
- (2) The right to a fair hearing as provided by 904 KAR 2:055.

Section 4. Advance Notice of a Decrease or Discontinuance. (1) The recipient shall be given ten (10) days advance notice of the proposed action if a change in circumstances indicates:

- (a) A money payment shall be:
  - 1. Reduced;
  - 2. Suspended; or
  - 3. Discontinued; or
- (b) An individual shall be removed from the Kentucky Transitional Assistance Program (K-TAP) [AFDC] grant, even if the grant increases.
- (2) The ten (10) days advance notice of the proposed action shall:
  - (a) Be in writing;
  - (b) Explain the reason for the proposed action;
  - (c) Cite the applicable state administrative regulation;
  - (d) Extend the opportunity to confer with the worker or to request a fair hearing.
- (3) A hearing request received during the advance notice period may result in delay of the decrease or discontinuance pending the hearing officer's decision, as provided in 904 KAR 2:055, Section 4.

Section 5. Exceptions to the Advance Notice Requirement. An advance notice of proposed action shall not be required, but written notice of action taken shall be given, if the decrease or discontinuance results from:

- (1) Information reported by the recipient if the recipient signs a waiver of the notice requirement indicating understanding of the consequences;
- (2) A clear written statement, signed by the recipient, that he no longer wishes assistance is received by the department;
- (3) Factual information that the recipient, or a Kentucky Transitional Assistance Program (K-TAP) [an AFDC] payee when there is no relative who can serve as a new payee, has died is received by the department;
- (4) Whereabouts of the recipient are unknown and mail addressed to him is returned indicating no known forwarding address; however, a returned check shall be made available to him if his whereabouts become known during the payment period covered by the returned check;
- (5) Establishment by the agency that assistance has been accepted in another state;
- (6) Removal from the home of a Kentucky Transitional Assistance Program (K-TAP) [an AFDC] child by judicial order or voluntary placement in foster care by his legal guardian;
- (7) The person who is aged, blind or has a disability and is a supplementation recipient, enters a nursing facility resulting in vendor payment status;
- (8) The recipient enters:
  - (a) A penal institution; or
  - (b) If under sixty-five (65), a tuberculosis hospital; or
  - (c) If between twenty-one (21) and sixty-five (65), a mental hospital;
- (9) The granting of a special allowance, or time limited assistance, which:
  - (a) Shall be terminated at the end of a specified period or under specific conditions; and

- (b) The recipient shall be informed in writing at the time the allowance or assistance is granted of the automatic termination; and
- (c) The notice may be provided at the time of approval, or subsequently.

Section 6. Material Incorporated by Reference. (1) The form necessary for adverse action in the Kentucky Transitional Assistance Program (K-TAP) [AFDC] and Mandatory and Optional Supplementation Programs is being incorporated [effective December 1, 1993]. This form is the "KIM-105", "General Notice of Action", edition 2/98 [8/97] [revised 9/94].

(2) Material incorporated by reference may be inspected and copied at the Department for Social Insurance, 275 East Main Street, Frankfort, Kentucky 40621. Office hours are 8 a.m. to 4:30 p.m.

JOHN L. CLAYTON, Commissioner  
VIOLA P. MILLER, Secretary  
CHARLES P. LAWRENCE, Attorney

APPROVED BY AGENCY: December 2, 1997  
FILED WITH LRC: December 4, 1997 at 3 p.m.

### REGULATORY IMPACT ANALYSIS

Agency Contact Person: Marty Mason, Director

(1) Type and number of entities affected: The affected entities are families who apply for or receive benefits under the Kentucky Transitional Assistance Program (K-TAP). The AFDC program was replaced by the Temporary Assistance for Needy Families (TANF) block grant program called Kentucky Transitional Assistance Program (K-TAP) as the result of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996. There are approximately 62,034 families in Kentucky (monthly average) who are currently 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 scheduled on October 21, 1997, as a result of the publication of the administrative regulation was not held since no requests were received. 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 scheduled on October 21, 1997, as a result of the publication of the administrative regulation was not held since no requests were received. 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: There are no additional costs or savings to the agency as a result of the amendments to this regulation. Written comments were received regarding the KIM-105 and the form will be changed as a result of these comments. However, since the form will be changed on the next scheduled revision of the form, there is no additional fiscal impact to the agency.

2. Second and subsequent years: Same

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: None

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

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Federal 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 scheduled on October 21, 1997, as a result of the publication of the administrative regulation was not held since no requests were received. No written or oral comments were received regarding direct or indirect costs or savings on the economic impact, including effects of economic activities arising from the administrative regulation in the geographic area in which the regulation will be implemented.

(b) Kentucky: A public hearing scheduled on October 21, 1997, as a result of the publication of the administrative regulation was not held since no requests were received. No written or oral comments were received regarding the indirect costs or savings on the economic impact 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 904 KAR 2:006E and 2:016E. The Aid to Families with Dependent Children (AFDC) program no longer exists and has been replaced with Kentucky Transitional Assistance Program (K-TAP), the Temporary Assistance for Needy Families (TANF) block grant program. References to Aid to Families with Dependent Children (AFDC) have been changed to Kentucky Transitional Assistance Program (K-TAP) to conform with the provisions in 904 KAR 2:006E and 2:016E and the approved Title IV-A State Plan.

(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 conform to the mandated requirements delineated in 904 KAR 2:006E and 2:016E pursuant to Kentucky's Title IV-A State Plan as required by the Personal Responsibility and Work Opportunity Reconciliation Act of 1996.

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

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

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

(10) Any additional information or comments: References to Aid to Families with Dependent Children (AFDC) have been changed to Kentucky Transitional Assistance Program (K-TAP) to conform with the provisions in 904 KAR 2:006E and 2:016E. A public hearing scheduled on October 21, 1997, as a result of the publication of the administrative regulation was not held since no requests were received. Written comments were received regarding the KIM-105. Changes will be made to the form as a result of these written comments received on October 21, 1997.

(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 (Amended After Hearing)

#### 904 KAR 2:055. Hearings and appeals.

RELATES TO: KRS 205.231, 45 CFR 205.10, 255.2, 42 USC 601 et seq.

STATUTORY AUTHORITY: KRS Chapter 13B, 194.050(1), 205.231, 205.237, 45 CFR 205.10, 251.5, EO 96-862, 42 USC 601 et seq.

NECESSITY, FUNCTION, AND CONFORMITY: Executive Order 96-862, effective July 2, 1996, reorganized the Cabinet for Human Resources and placed the Department for Social Insurance and its programs under the Cabinet for Families and Children. The Cabinet for Families and Children shall provide for a system of hearings to be available to any applicant for or recipient of an assistance program who is dissatisfied with any action or inaction on the part of the cabinet. This administrative regulation sets forth the methods by which the hearing requirement is fulfilled for Aid to Families with Dependent Children now called the Kentucky Transitional Assistance Program (K-TAP), the Home Energy Assistance Program, and the State Supplementation Program.

Section 1. Informing the Applicant or Recipient of His Rights. (1) Each applicant or recipient shall be informed of his right to a hearing:

(a) Orally and in writing when application is made; and

(b) In writing when an action is taken affecting his claim in accordance with KRS 13B.050.

(2) Each applicant or recipient shall be informed of:

(a) The method by which he may obtain a hearing; and

(b) That he may be represented by:

1. An authorized representative who may be:

a. Legal counsel;

b. A relative;

c. A friend; or

d. Other spokesperson; or

2. Himself.

Section 2. Request for a Hearing. (1) An applicant or recipient or an authorized representative acting on his behalf, may request a hearing by filing a request with the Department for Social Insurance at either:

(a) The local office; or

(b) The central office.

(2) The applicant or recipient shall clearly indicate a desire for a hearing by submitting a statement:

(a) In written form; or

(b) Orally, later submitted in writing by the applicant or recipient.

(3) A written request for a hearing may be sent to the Cabinet for Families and Children, Division of Administrative Review, Hearing Branch, 275 East Main, Frankfort, Kentucky 40621.

Section 3. Time Limitation for Hearing Request Regarding Assistance Payments. (1) To be considered timely, a written or oral request from an applicant or recipient shall be received by the depart-

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ment within:

(a) Forty (40) days of the date of the advance notice of adverse action; or

(b) Thirty (30) days of the notice of:

1. Denial of an application; or
2. Decrease or discontinuance of an active case; or

(c) The time period the action is pending if the hearing issue is delay in action.

(2) Up to an additional thirty (30) days for requesting a hearing may be granted if it is determined by the hearing officer that the delay was for good cause in accordance with the following criteria:

(a) The applicant or recipient was away from home during the entire filing period; or

(b) The applicant or recipient is unable to read or to comprehend the right to request a hearing on the:

1. Notice of adverse action; or
2. Notice of decrease or discontinuance; or

(c) The applicant or recipient moved resulting in delay in receiving or failure to receive the:

1. Notice of adverse action; or
2. Notice of decrease or discontinuance; or

(d) Serious illness of the applicant or recipient; or

(e) The reason for the delay was no fault of the applicant or recipient, as determined by the hearing officer.

Section 4. Continuation of Assistance Program Benefits. (1) Assistance shall be continued through the month in which the hearing officer's decision is rendered if the request:

(a) Results from dissatisfaction regarding a proposed discontinuance, suspension or decrease; and

(b) Is received within ten (10) days of the date on the:

1. Advance notice of adverse action; or
2. Notice of decrease or discontinuance.

(2) Assistance shall be reinstated and continued through the month in which the hearing officer's decision is rendered if the request is:

(a) Received within twenty (20) days of the date on the:

1. Advance notice of adverse action; or
2. Notice of decrease or discontinuance; and

(b) The reason for delay meets the good cause criteria contained in Section 3 of this administrative regulation.

(3) Subsections (1) and (2) of this section shall not apply if the program benefit has been reduced or discontinued as a result of a change in law, regulation, or policy of the cabinet.

(4) Continued or reinstated benefits are considered overpayments if the agency decision is upheld.

(5) If the applicant or recipient requests the discontinuance, suspension or decrease in assistance be in effect pending the hearing officer's decision, assistance shall not be continued or reinstated through the month in which the hearing officer's decision is rendered.

~~[(6) Continuation or reinstatement of benefits pending a hearing decision shall not apply to child care and supportive services payments for job opportunities and basic skills participants.]~~

Section 5. Acknowledgment of the Request. (1) A hearing request shall be acknowledged by the hearing branch.

(2) The acknowledgment letter shall contain information regarding:

(a) The hearing process, including the right to case record review prior to the hearing;

(b) The right to representation; and

(c) A statement that the local office can provide information regarding the availability of free representation by legal aid or a welfare rights organization within the community.

(3) Subsequent notification shall comply with the requirements of KRS 13B.050.

(a) All parties to the hearing shall be provided at least twenty (20) days timely notice of the date of the hearing to permit adequate

preparation of the case.

(b) The applicant or recipient may request less timely notice of the date set for the hearing to expedite the scheduling of the hearing.

(4) A hearing complying with the requirements of KRS Chapter 13B shall be scheduled on a timely basis to assure that no more than ninety (90) days shall elapse from the date of the request to the date of the decision.

Section 6. Withdrawal or Abandonment of Request. (1) The applicant or recipient may withdraw his request for a hearing prior to release of the hearing officer's decision, but he shall be granted the opportunity to discuss withdrawal with his legal counsel or representative, if any, prior to finalizing the action.

(2) A hearing request shall be considered abandoned if the applicant or recipient fails without prior notification to report for the hearing.

(3) A hearing request shall not be considered as abandoned without extending to the applicant or recipient, and, if applicable, his legal counsel or representative, a period of ten (10) days to establish that the failure was for good cause in accordance with good cause criteria contained in Section 3 of this administrative regulation.

Section 7. Applicant's or Recipient's Rights Prior to a Hearing. (1) An applicant or recipient shall receive notice consistent with KRS 13B.050, including:

(a) His right to legal counsel or other representation;

(b) The right to review the case record relating to the issue; and

(c) The right to submit additional information in support of the claim.

(2) When the hearing involves medical issues, a medical assessment by other than the person or persons involved in the original decision shall be obtained at cabinet expense if the hearing officer considers it necessary.

(3) If a medical assessment at cabinet expense is requested by the applicant or recipient and denied by the hearing officer, the reason for denial shall be set forth in writing.

Section 8. Postponement of a Hearing. (1) The applicant or recipient shall be entitled to a postponement of a hearing if:

(a) The request for the delay is made prior to the hearing; and

(b) The need for the delay is due to an essential reason beyond the control of the applicant or recipient in accordance with good cause criteria contained in Section 3 of this administrative regulation.

(2) The decision to grant the postponement shall be made by the hearing officer.

(3) The postponement of the hearing shall not exceed thirty (30) days from the date of the request.

Section 9. Corrective Action for Assistance Program Benefits. (1) If after a review of the case record, but prior to scheduling a hearing, the hearing officer determines that action taken or proposed to be taken is incorrect, he shall authorize corrective action in the form of:

(a) Assistance to which the applicant or recipient would have been entitled but for the incorrect decision; or

(b) If the issue was a proposed action, continuing assistance.

(2) The applicant or recipient then shall be given the opportunity to withdraw the hearing request, but the hearing shall be scheduled if the applicant or recipient wishes to pursue the request.

Section 10. Conduct of a Hearing. (1) The hearing shall be conducted in accordance with the requirements of KRS 13B.080 and 13B.090.

(a) The hearing officer shall:

1. Be impartial; and

2. Disqualify himself for any reason set forth in KRS 13B.040.

(b) The applicant or recipient may challenge the hearing officer by presentation of factual evidence that the impartiality criteria are not

met.

(2) The hearing shall be conducted in-state where the applicant or recipient may attend without undue inconvenience.

(3) If necessary to secure full information on the issue, the hearing officer may examine each party who appears and his witnesses.

(4) The hearing officer may schedule a hearing and take additional evidence as is deemed necessary.

(5)(a) Parties to a telephonic hearing who wish to introduce documents or written materials not yet supplied to the opposing parties into the record at the hearing shall immediately mail copies of the documents to the hearing officer and to the opposing party.

(b) All parties to the telephonic hearing shall submit all available documentary evidence to be used during the hearing to the hearing officer and the opposing party prior to convening of the hearing.

(c) Failure to provide both the hearing officer and the opposing party with copies of evidence referenced in paragraphs (a) and (b) of this subsection may result in its being excluded from the record.

Section 11. The Decision. (1) After the hearing is concluded, the hearing officer shall set forth in writing his finding of facts and conclusions of law:

(a) Specifying the reasons for the decision; and

(b) Identifying the supporting evidence and regulations.

(2) A copy of the decision shall be mailed to:

(a) The applicant or recipient and his representative; and

(b) The local office of the Department for Social Insurance.

(3) The decision, with respect to the issues considered, shall be final unless further appeal is initiated within twenty (20) days from the date of mailing of the decision.

Section 12. Appeal from Decision of Hearing Officer. (1) Any applicant or recipient or his authorized representative wishing to appeal the decision of a hearing officer may do so by filing an appeal to an appeal board appointed in accordance with KRS 205.231(3).

(2) The appeal request shall be considered timely, when an oral or written request is received in a local office or the hearing branch of the Department for Social Insurance within twenty (20) days of the date on which the hearing officer's decision was mailed; or

(3) If the good cause criteria in Section 3 of this administrative regulation is met, an appeal request received within thirty (30) days of the hearing officer's decision shall be considered timely.

(4) The request shall be:

(a) Filed in writing or orally, later reduced to writing; and

(b) Considered filed on the day it is received.

Section 13. Applicant's or Recipient's Rights Prior to Appeal Board Consideration. (1) An appeal to the appeal board shall be acknowledged in writing to the applicant or recipient and his authorized representative.

(2) The acknowledgment shall:

(a) Offer the opportunity to file a brief or submit new and additional proof; and

(b) State the tentative date on which the board will consider the appeal.

Section 14. Appeal Board Review. (1) An appeal to the appeal board shall be considered upon:

(a) The records of the department; and

(b) The evidence or exhibits introduced before the hearing officer unless the applicant or recipient specifically requests permission to file additional proof.

(2) When an appeal is being considered on the record, the parties may:

(a) Present written arguments; and

(b) At the board's discretion, be allowed to present oral arguments.

(3) If needed, the appeal board may direct the taking of additional evidence to resolve the appeal.

(4) Evidence shall be taken by the board after seven (7) days notice to the parties, giving them the opportunity:

(a) To object to introduction of additional evidence; or

(b) To rebut or refute any additional evidence.

Section 15. The Appeal Board Decision. (1) The decision of the appeal board, duly signed by members of the board, shall:

(a) Set forth in writing the facts on which the decision is based; and

(b) Except as provided in subsection (2) of this section, be irrevocable in respect to the issues in the individual case unless set aside through the judicial review process pursuant to KRS 13B.140 and 13B.150.

(2) The appeal board shall be allowed to reverse the decision in subsection (1) of this section if the following criteria are met:

(a) The correct determination of eligibility based on incapacity or disability is the only issue being considered in the appeal board decision; and

(b) Within twenty (20) days of the appeal board decision, the applicant or recipient, whose incapacity or disability is the issue of the hearing, receives and provides to the appeal board an award letter for benefits based on disability including:

1. Supplemental security income;

2. Retirement, survivors and disability insurance;

3. Federal black lung benefits;

4. Railroad retirement benefits; or

5. Veterans Administration benefits based on 100 percent disability.

Section 16. Payments of Assistance. (1) Payments of assistance to carry out decisions of hearing officers or the appeal board shall be made promptly and shall include:

(a) The month of application; or

(b) Providing it is established that the applicant or recipient was eligible during the entire period in which assistance was withheld, the month in which incorrect action of the cabinet adversely affected the applicant or recipient.

(2) For reversals involving reduction of benefits, action shall be taken to restore benefits within ten (10) days of the receipt of the hearing decision.

Section 17. Limitation of Fees. (1) Although the cabinet and its officers and employees, either in their official or personal capacity, are not liable for payment of any attorneys fees, the cabinet shall, in accordance with KRS 205.237, set the maximum fee that an attorney may charge the applicant or recipient for representation in all categories of public assistance as follows:

(a) Seventy-five (75) dollars for preparation and appearance at hearing before a hearing officer;

(b) Seventy-five (75) dollars for preparation and presentation, including any briefs, of appeals to the appeal board;

(c) \$175 for preparation and presentation, including pleadings and appearance in court, of appeals to the circuit court;

(d) \$300 for preparatory work and briefs and all other matters incident to appeals to the Court of Appeals.

(2) The fee agreed to by the representative and his client within the above maximums shall be deemed to have the approval of the cabinet.

(3) Enforcement of payment of the fee shall be a matter entirely between the counsel or agent and the applicant or recipient. The fee shall not be deducted, either in whole or in part, from the benefit checks otherwise due and payable to the applicant or recipient.

Section 18. [Special Provisions Relating to Participants in a Work-related Program under the Kentucky Works Job Opportunities and

Basic Skills] Program. (1) A participant in a work-related program under the Kentucky Works [Job Opportunities and Basic Skills] Program may request a hearing for the resolution of a complaint with respect to:

- (a) On-the-job working conditions; and
- (b) Workers' compensation coverage; and
- (c) Wage rates used in calculating the hours of participation

required of individuals in community work experience programs of the Job Opportunities and Basic Skills Program].

(2) A participant in a work-related program under the Kentucky Works [Job Opportunities and Basic Skills] Program may appeal a hearing decision regarding an issue listed in subsection (1) of this section within twenty (20) days of the receipt of the state's written decision:

(a) The appeal shall be sent to the Office of Administrative Law Judges, U.S. Department of Labor, Vanguard Building, Room 600, 1111 20th Street, NW, Washington, DC 20036.

(b) Copies of the appeal, and any brief in support thereof, shall be sent to:

1. The Assistant Secretary for Employment and Training, U.S. Department of Labor, 200 Constitution Avenue, NW, Washington, DC 20210; and

2. The Assistant Secretary for Family Support, Department of Health and Human Services, 370 L'Enfant Promenade, SW, Sixth Floor, Washington, DC 20447.

(c) The appeal shall contain the following information:

- 1. The full name, address and telephone number of the Kentucky Works [Job Opportunities and Basic Skills] Program participant;
- 2. The provisions of the Social Security Act or federal regulations believed to have been violated;
- 3. A copy of the original complaint filed with the state; and
- 4. A copy of the state's findings and decision regarding the complaint.

Section 19.] Material Incorporated by Reference. (1) The form necessary for requesting a hearing, appeal, or withdrawal is being incorporated. [effective June 1, 1996.] This form is the "PAFS-78", "Request for Hearing, Appeal, or Withdrawal", edition June 1997, [revised May 1, 1996.]

(2) Material incorporated by reference may be inspected and copied at the Department for Social Insurance, 275 East Main Street, Frankfort, Kentucky, 40621. Office hours are 8 a.m. to 4:30 p.m.

JOHN L. CLAYTON, Commissioner  
VIOLA P. MILLER, Secretary  
CHARLES P. LAWRENCE, Attorney

APPROVED BY AGENCY: December 1, 1997

FILED WITH LRC: December 4, 1997 at 3 p.m.

#### REGULATORY IMPACT ANALYSIS

Agency Contact Person: Marty Mason, Director

(1) The affected entities are families who apply for or receive benefits under the Kentucky Transitional Assistance Program (K-TAP). The AFDC program was replaced by the Temporary Assistance for Needy Families (TANF) block grant program called Kentucky Transitional Assistance Program (K-TAP) as Reconciliation Act of 1996. There are approximately 62,034 families in Kentucky (monthly average) who are currently 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 scheduled on October 21, 1997, as a result of the publication of the administrative regulation was not held since no requests were received. 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 scheduled on October 21, 1997, as a result of the publication of the administrative regulation was not held since no requests were received. 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: Continuation of child care and supportive services payments pending a hearing decision is \$234,000 per year for child care costs and \$80,600 in transportation costs to the agency.

2. Second and subsequent years: Same

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: None

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

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Federal funds and state funds.

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

(a) Geographical area in which administrative regulation will be implemented: A public hearing scheduled on October 21, 1997, as a result of the publication of the administrative regulation was not held since no requests were received. No written or oral comments were received regarding direct or indirect costs or savings on the economic impact, including effects of economic activities arising from the administrative regulation in the geographic area in which the regulation will be implemented.

(b) Kentucky: A public hearing scheduled on October 21, 1997, as a result of the publication of the administrative regulation was not held since no requests were received. No written or oral comments were received regarding the indirect costs or savings on the economic impact 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)(a) Assessment of expected benefits: This administrative regulation is needed to conform with the mandates found in 904 KAR 2:006E and 2:016E. Continuation of child care and supportive services payments pending a hearing decision will be additional benefits to recipients while the hearing decision is pending. This change conforms with changes made in 904 KAR 2:016E.

(b) State whether a harmful effect on environment and public welfare would result if not implemented: A detrimental effect on public welfare would result if this amendment is not implemented.

(c) If detrimental effect would result, explain detrimental effect: Public assistance benefits received by needy Kentuckians may be jeopardized if Kentucky does not conform with provisions in 904 KAR 2:006E and 2:016E as delineated in Kentucky's Title IV-A State Plan as required by the Personal Responsibility and Work Opportunity Reconciliation Act of 1996. The continuation of supportive services while a recipient is waiting a hearing decision is an additional benefit which will help the recipient who is in a Kentucky Works component to continue to participate in the component or remain employed if working.

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

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

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

(10) Any additional information or comments: References to Aid to Families with Dependent Children (AFDC) have been changed to Kentucky Transitional Assistance Program (K-TAP), and references to the Job Opportunities and Basic Skills (JOBS) Program have been changed to the Kentucky Works Program to conform with the provisions in 904 KAR 2:006E and 2:016E. A public hearing scheduled on October 21, 1997, as a result of the publication of the administrative regulation was not held since no requests were received. Written comments were received by close of business on October 21, 1997, and changes were made to the administrative regulation as a result of these written 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.  
42 USC 601 et seq.

2. State compliance standards. KRS 205.200, 205.231, 205.237.

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

## PROPOSED AMENDMENTS RECEIVED THROUGH NOON, DECEMBER 15, 1997

**KENTUCKY HIGHER EDUCATION  
ASSISTANCE AUTHORITY  
(Amendment)**

**11 KAR 5:130. Student application.**

RELATES TO: KRS 164.744(2) to 164.753(4), 164.7535, 164.780, 164.785

STATUTORY AUTHORITY: KRS 164.746(6), [~~13A-100;~~] 164.748(4), 164.7535

NECESSITY, FUNCTION, AND CONFORMITY: The Kentucky Higher Education Assistance Authority administers grant programs to provide financial assistance to students to attend Kentucky educational institutions. This administrative regulation prescribes the form to be used by students to apply for and establish financial need for KHEAA grant programs. This amendment is necessary to incorporate by reference the application form for KHEAA grants for use in 1998-99 [~~1996-97~~].

Section 1. (1) In order to receive KHEAA grants, the 1998-99 [~~1996-97~~] Free Application for Federal Student Aid (FAFSA) shall be completed and submitted in accordance with the instructions provided on the FAFSA.

(2) An applicant shall indicate the choice of an educational institution on the application to be considered for the KHEAA grant. The educational institution listed first shall be used in the determination of a KHEAA grant program award.

(3) An individual who completes and files a FAFSA shall not have applied for a KHEAA grant for an academic year in which he indicates on the application a choice of educational institutions, none of which participate in the KHEAA grant programs; or that he is not a United States citizen, eligible noncitizen, or resident of Kentucky; or that he is a graduate student or will obtain a first baccalaureate degree before July 1 of the academic year for which he is seeking student financial assistance.

Section 2. (1) If the student provides written notification of a change of the first choice educational institution, on or before August 1 or December 1, prior to the commencement of the respective fall or spring semester for which a KHEAA grant is sought, grant program eligibility shall be redetermined and award determination shall be recomputed by the authority based upon the new choice of educational institution.

(2) If the student changes his [~~or her~~] choice of educational institution after August 1 [~~these dates~~], any KHEAA grant award for the fall [~~succeeding~~] academic term shall be revoked, and grant program award amount for the spring academic term [~~eligibility~~] shall be recomputed, based upon the new choice of educational institution [~~and depend upon the availability of funds~~]. If the student changes his choice of educational institution after December 1, any KHEAA Grant Program Award for the spring academic term shall be revoked.

Section 3. Incorporation by Reference. (1) The 1998-99 [~~1996-97~~] Free Application for Federal Student Aid (FAFSA) and its instructions are incorporated by reference.

(2) This material may be inspected, copied, or obtained at the Kentucky Higher Education Assistance Authority, 1050 U.S. 127 South, Suite 102, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

GARY ABNEY, Chairman

RICHARD F. CASEY, General Counsel

APPROVED BY AGENCY: September 26, 1997

FILED WITH LRC: December 15, 1997 noon

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on Friday, January 30, 1998 at 10 a.m. at 1050 U.S. 127 South, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by Friday, January 23, 1998, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: Mr. Paul P. Borden, Executive Director, Kentucky Higher Education Assistance Authority, 1050 U.S. 127 South, Frankfort, Kentucky 40601, (502) 696-7499.

## REGULATORY IMPACT ANALYSIS

Agency Contact: Paul P. Borden

(1) Type and number of entities affected: A total of 78 Kentucky schools are eligible for attendance by recipients of KHEAA grants. In the school year ending June 30, 1997, there were 178,551 applicants and 27,905 students received KHEAA grants.

(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: Neither cost of living nor employment will be affected. The Free Application for Federal Student Aid (FAFSA) is processed free of charge.

(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: Cost of doing business will not be affected.

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

1. First year following implementation: There will be no increase in reporting or paperwork, nor any increase or decrease in cost. There is no effect upon competition.

2. Second and subsequent years: Same as (2)(c)(1) above.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: There will be no significant direct or indirect costs or savings.

2. Continuing costs or savings: Same as (3)(a)(1) above.

3. Additional factors increasing or decreasing costs: None. The application is processed free of charge for the student, and the information is provided to the promulgating administrative body free of charge, electronically from the central processor.

(b) Reporting and paperwork requirements: There will be no change in reporting and paperwork requirements.

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

(5) Source of revenue to be used for implementation and enforcement of administrative regulation. N/A

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

(a) Geographical area in which administrative regulation will be implemented. No economic impact is anticipated. No comments were



received.

(b) Kentucky. Same as (6)(a) above.

(7) Assessment of alternative methods; reasons why alternatives were rejected: No alternative method was considered. This amendment to the administrative regulation 11 KAR 5:130 would identify the appropriate application form that is revised merely to reflect the 1998-99 academic year.

(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 the environment or public health would result if not implemented: N/A

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

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

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

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

(10) Any additional information or comments: KHEAA uses the Free Application for Federal Student Assistance (FAFSA) as the application for KHEAA grants. Use of that form provides a uniform application process for students at no cost and makes administration of student aid more efficient for KHEAA and participating schools. The form is therefore incorporated by reference into this administrative regulation. Each year the form is revised to reflect the new academic year. Amendment of the administrative regulation is necessary to incorporate the revised form. There are no substantive changes in the new form.

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

#### KENTUCKY REAL ESTATE COMMISSION (Amendment)

##### 201 KAR 11:011. Definitions.

RELATES TO: KRS 324.010, 324.046, 324.111, 324.160

STATUTORY AUTHORITY: KRS 324.281(5), 324.282

NECESSITY, FUNCTION, AND CONFORMITY: To inform and set certain standards for the licensees and to protect the public.

Section 1. "Regular employee" shall mean an employee whose compensation is fixed in advance in writing, who does not receive commission who works exclusively for the owner, and whose total compensation is subject to withholding and FICA taxes.

Section 2. As used in KRS 324.010(1)(a), the term "broker" shall not include office or clerical employees of a broker, so long as such employees are limited to the duties normally attributed to such positions, and such employees do not solicit or accept listings or offers, do not show property, do not negotiate real estate transactions, do not disclose information which is available only to the broker and not to the public, and do not otherwise hold themselves out to the

public as engaged in the business of brokering real estate.

Section 3. As used in KRS 324.160(1)(j), the term "prizes" shall mean any thing of value which is offered to a prospective purchaser on a condition set forth in the offer to said prospective purchaser. However, this section, KRS 324(1)(j) shall not prohibit a licensee from giving or offering complimentary refreshments, i.e., snacks, sodas, etc., to the general public or giving a complimentary gift whose value is less than fifty (50) dollars to a purchaser at or after a closing where the purchaser's purchase of real estate is consummated and where said gift was not offered at any time prior to said closing.

Section 4. As used in KRS 324.046 and in these administrative regulations, the term "academic credit hour" shall mean one (1) college semester hour or sixteen (16), fifty (50) minute hours of actual classroom attendance.

Section 5. "Contract deposits" means money delivered to a licensed agent as part of an offer to enter a contract for the sale of real property, once the offer or any counteroffer is accepted and an executory contract exists.

Section 6. "Without unreasonable delay" as used in KRS 324.111(1) means within two (2) working days of the creation of the executory contract for the sale of real property.

Section 7. "Fraud" or "fraudulent dealing" as used in KRS 324.160(1)(r), 324.400, 324.410, and 324.420 means:

(1) A material misrepresentation;

(2) Which is false;

(3) Known to be false or made recklessly;

(4) Made with inducement to be acted upon;

(5) Acted in reliance thereon; and

(6) Causing injury.

ROBERT D. MASSEY, Chairman

JEFFREY C. BLAIR, General Counsel

APPROVED BY AGENCY: November 19, 1997

FILED WITH LRC: December 3, 1997 at 2 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on January 28, 1998, at 10 a.m., at the Kentucky Real Estate Commission, Hearing Room, 10200 Linn Station Road, Suite 201, Louisville, Kentucky 40223. Individuals interested in being heard at this hearing shall notify this agency in writing by January 21, 1998, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Jeffrey C. Blair, General Counsel, Kentucky Real Estate Commission, 10200 Linn Station Road, Suite 201, Louisville, Kentucky 40223, Phone: (502) 425-4273, Facsimile: (502) 426-2717.

#### REGULATORY IMPACT ANALYSIS

Contact person: Jeffrey Blair

(1) Type and number of entities affected: Effects all real estate licensees in Kentucky.

(2) Direct and in direct costs or savings on the:

(a) Cost of living and employment in the geographical area in

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which the administrative regulation will be implemented, to the extent available from the public comments received: No effect on cost of living and employment.

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

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

1. First year following implementation: No effect.

2. Second and subsequent years: No effect.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: No cost reduction.

2. Continuing costs or savings: No cost reduction.

3. Additional factors increasing or decreasing costs:

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

(4) Assessment of anticipated effect on state and local revenues: No effect.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: No extra funds needed to implement this amendment.

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

(a) Geographical area in which administrative regulation will be implemented: No impact expected.

(b) Kentucky: Same as 6(a).

(7) Assessment of alternative methods; reasons why alternatives were rejected: No alternative methods considered.

(8) Assessment of expected benefits:

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

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

(c) If detrimental effect would result, explain detrimental effect: No 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: 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: No further comment.

(11) TIERING: Tiering is not necessary because all commission disciplinary hearings will utilize the definition of fraud. No disproportionate impact on any class of regulated entities will result. None of the methods listed in KRS 13A.210(2) are applicable to this regulation. The size and nonsize variables listed in KRS 13A.210(3) are also not applicable to this regulation. As no tier modification is utilized in this regulation, the variables to be monitored in KRS 13A.210(4) are not applicable. This regulation does not effect small business concerns mentioned in KRS 13A.210(5).

### GENERAL GOVERNMENT CABINET State Board of Registration for Professional Engineers and Land Surveyors (Amendment)

#### 201 KAR 18:150. Standards of practice.

RELATES TO: KRS [322.020,] 322.290(1)(a), (2)(f)  
STATUTORY AUTHORITY: KRS 322.290(2)(f)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 322.290(1)(a) authorizes the board to administer KRS Chapter 322. KRS 322.290(2)(f) requires the board to establish standards of practice. This administrative regulation establishes standards of practice for professional land surveyors in Kentucky. [To promulgate standards of practice for land surveyors in Kentucky.]

Section 1. Definitions. (1) "Boundary survey" means a survey for which the primary purpose includes the:

(a) Determining of the perimeter of a parcel or tract of land; or

(b) Establishing or reestablishing of parcel corners and monuments; or

(c) Describing, platting, and locating each fixed improvement on the parcel surveyed; or

(d) Dividing or consolidating the parcels surveyed.

(2) "Plat of survey" means a drawing of a parcel or tract of real property used to depict the final results of a field survey.

(3) "Corner" means a point on a land boundary that designates a change in direction.

(4) "Monument" means an artificial manmade or natural object that is used as, or presumed to occupy, a:

(a) Real property corner;

(b) Point on a boundary line; or

(c) Reference point.

(5) "Witness monument" means a monument:

(a) That does not occupy the same defined position as a corner; and

(b) Whose relationship to the corner is established.

(6) "Meander point" means a survey point or station marking a change in direction along a linear feature such as a watercourse, ridge, road, or cliff.

(7) "Reference point" means the defined position of a point that is, or can be, established in relation to the position of another defined point or points.

Section 2. No provision of this administrative regulation shall limit or prohibit more stringent specifications or requirements:

(1) Required by:

(a) Another agency;

(b) Owner;

(c) Contract; or

(2) Deemed appropriate by the professional land surveyor upon review of specific survey requirements.

Section 3. (1)(a) Boundary surveying in the Commonwealth of Kentucky, and any document purporting to represent a boundary survey, shall comply with the provisions of this administrative regulation.

(b) Failure to comply with this administrative regulation shall constitute misconduct, or gross negligence, or incompetence, or any combination thereof, in the practice of professional land surveying.

(2) A professional land surveyor shall not represent that:

(a) A boundary survey determines land ownership; or

(b) A boundary survey provides more than evidence of rights in land; or

(c) Land ownership can be established by any means other than an action in a court of this Commonwealth.

Section 4. The marks on the ground of a professional land surveyor shall constitute the actual boundary survey.

Section 5. Record Research. (1)(a) To determine the proper description of the land to be surveyed, a professional land surveyor shall:

(b) Conduct research to obtain record description of:

1. Each parcel to be surveyed; and

2. Each adjoining parcel.

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(2) A professional land surveyor shall evaluate:

- (a) Historical records of the subject and any adjoining parcel; and
- (b) Records of:

1. Previous pertinent surveys;
2. Tax maps;
3. Topographic maps;
4. Aerial photographs; and
5. Public agency records.

(c) Other available data pertinent to the boundary survey.

(3) A professional land surveyor shall analyze the data and make a determination of the record boundary of any parcels to be surveyed.

(4) Research required by the provisions of this administrative regulation:

(a) Shall be used by a professional land surveyor to determine the location of the parcel boundary; and

(b) Shall not be used by a professional land surveyor to determine title.

Section 6. Field Research. A professional land surveyor shall thoroughly:

- (1) Search for physical monuments that represent parcel corners;
- (2) Analyze evidence of occupation;
- (3) Investigate possible parole evidence supporting the position of monuments or corners;
- (4) Compare evidence discovered by the field survey with the record research to establish the boundary of the land being surveyed.

Section 7. Measurement Specifications. (1) Every measurement made as a part of a boundary survey shall comply with:

- (a) The standards for accuracy and precision established by the provisions of this section; or
- (b) At the request of the client, with standards for accuracy and precision that exceed the standards established by the provisions of this section.

(2) A professional land surveyor shall conduct measurements with instruments and equipment that are properly:

- (a) Adjusted;
  - (b) Maintained; and
  - (c) Calibrated to meet the appropriate tolerance required for the classification of survey as specified in subsection (6) of this section.
- (3) A boundary survey shall be conducted utilizing a method of closed traverse and the measurement of angles and distances that achieve the appropriate tolerance specified in subsection (6) of this section.

(4) A boundary survey for platting or describing a land parcel shall be classified as follows:

(a) Class A. Urban or suburban land shall include any parcel lying within, or adjacent to:

1. A city or town limit;
2. A commercial business area;
3. An industrial area;
4. A residential area; and
5. A developing area.

(b) Class B. Rural land, such as:

1. A farm; or
2. A woodland;
3. Any land not included in Class A.

(5) The accuracy and precision of a boundary survey shall not be less than the appropriate requirements established in subsection (6) of this section.

(6) Table of Specifications by Class: Classification of Surveys.

	Class A Urban & Suburban	Class B Rural	Remarks
Unadjusted Closure (Minimum)	1:10,000	1:5,000	Loop or Between Control Monuments
Angular Closure (Maximum)	15" N	30" N	N = Number of Angles in Traverse
Accuracy of Distances	0.05' +100 PPM	0.10' +200 PPM	100 PPM = 1:10,000

Section 8. Monumentation. (1) In a boundary survey, a professional land surveyor shall make a determination of the boundary and corners of the parcel being surveyed.

(2) A professional land surveyor shall set a monument or a witness monument at each corner of a parcel as provided in this section, unless an adequate monument exists at each parcel corner.

(3) A monument or witness monument, set by a professional land surveyor shall:

- (a) Be made of, or contain, a ferrous material;
- (b) Be not less than two (2) inch in diameter and eighteen (18) inches in length;
- (c) If pipe is utilized, be a minimum of schedule forty (40) weight; and
- (d) Be identified with a cap bearing the registration number of the professional land surveyor in responsible charge of the survey.

(4) A monument or witness monument shall be required at each corner of a boundary survey.

(5) A parcel corner shall be identified by a witness monument if a monument cannot be set because the corner:

- (a) Falls upon rock, concrete, or other like material; or
  - (b) Is likely to be disturbed; or
  - (c) Is inaccessible.
- (6) A witness monument shall be set:
- (a) On the boundary line, if practicable; and
  - (b) As close as practicable to the corner location.

(7) A professional land surveyor shall set each monument in a manner to avoid their destruction.

(8)(a) A trees may not be established as a corner monument except on a rural boundary survey.

(b) A tree that a professional land surveyor establishes as a corner monument shall be:

1. At least ten (10) inches in diameter at breast height;
2. In sound condition;
3. Marked in a conspicuous manner; and
4. Clearly described by size, species, and method of marking on the plat, and in the written description.

(c) Trees shall not constitute more than fifty (50) percent of the established monuments for a boundary survey in a rural land classification.

(d) For an urban or suburban survey in which a tree is found to be the monument of record, the tree shall be witness-monumented.

(9) A corner monument that a professional land surveyor has determined is not of sound condition or which fails to meet the standards set out in this regulation shall be witness-monumented to perpetuate the corner location.

(10) Linear monuments.

(a) The following distinct physical features may be utilized as a monument:

1. A watercourse;
2. A ridge;
3. A road; and
4. A cliff.

(b) The point at which a boundary line intersects a physical feature shall be monumented or witness-monumented.

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(c) A physical feature that represents a linear monument shall be witness-monumented at a minimum of every 1,000 feet.

(d) A professional land surveyor shall obtain sufficient field survey data to define the position of each physical monument in order to accurately plat, describe, and calculate the area of the land being surveyed.

Section 9. Documentation. (1) The corner monuments established or reestablished by a professional land surveyor shall constitute the actual boundary survey.

(2) A professional land surveyor shall provide a plat of survey to the client upon the completion of a boundary survey in which he has:

- (a) Retraced previously established boundary lines; or
- (b) Established new boundary lines.

(3) A professional land surveyor shall retain as permanent record the following items pertaining to a boundary survey:

- (a) Plats;
- (b) Written descriptions;
- (c) Research documents;
- (d) Field and office notes;
- (e) Electronic and magnetically stored field data; and
- (f) Documents of calculations stating the:

- 1. Closure;
- 2. Adjustment method;
- 3. Bearing reference datum; and
- 4. Determination of corners.

(4) A written description prepared by a professional land surveyor for the purpose of defining a parcel boundary shall:

- (a) Be complete;
  - (b) Accurately describe the actual boundary survey; and
  - (c) Contain the information specified in this paragraph.
- 1. Captions sufficient to identify the:
    - a. General location of the land surveyed;
    - b. Specific location of the land in reference to a major physical feature, or primary control network; and
    - c. Reference of at least one (1) corner to a corner of the parent tract;
  - 2. The direction and length of each line, as follows:
    - a. Each bearing shall be shown in degrees, minutes, seconds; and
    - b. Each distance shall be shown to hundredths of a foot; or
    - c. A geometrically-curved line shall be identified with a beginning point, terminus point, and sufficient curve data to define the curve.
  - 3. A description of each monument marking or witnessing a corner, including:
    - a. A notation as to whether found or set;
    - b. Dimensions;
    - c. Type of material; and
    - d. Identification cap.
  - 4. The names and record sources of adjoining property owners.
  - 5. A notation describing any prominent feature of terrain which the boundary follows.
  - 6. Calculated area of the land surveyed, computed either to the nearest hundredth of an acre or square foot;
  - 7. Reference to the record source of the land surveyed;
  - 8. Name and registration number of the professional land surveyor who performed the survey, and name of the land surveying firm, if any; and
  - 9. Date of the field survey.

(5) A final plat of a boundary survey shall be drawn to scale on durable, dimensionally-stable media, and clearly contain the following information:

- (a) Direction and length of each line as follows:
  - 1. Each bearing shown in degrees, minutes and seconds; and
  - 2. Each distance shown to hundredths of a foot; or
  - 3. A geometrically-curved line shall be identified with a beginning point, terminus point, and with sufficient curve data to define the

curve;

(b) Calculated area of the land surveyed computed either to the nearest hundredth of an acre or nearest square foot;

(c) A description of each monument, which marks or witnesses a corner, including:

- 1. A notation as to whether found or set;
  - 2. Dimension;
  - 3. Type of material; and
  - 4. Identification cap.
- (d) Reference of at least one (1) corner to a:

- 1. Corner of the parent tract; or
  - 2. Durable physical object; or
  - 3. Primary control network, such as state plane coordinates;
- (e) The name of any road, the name and record sources of each adjoiner or name and record sources of each adjoining subdivision;
- (f) Any apparent encroachment discovered in the course of the survey;

(g) The reference meridian and whether its basis is:

- 1. True; or
- 2. Grid; or
- 3. Record, including the source of the record meridian; or
- 4. State plane; or
- 5. Magnetic, including the date of the observation;

(h) Vicinity map of sufficient detail to locate the land being surveyed, unless the location of the property is clearly shown by the plat itself;

(i) A statement disclosing the unadjusted error of closure;

(j) A statement identifying the land classification of the parcel surveyed;

(k) A statement as to whether the directions and distances shown on the plat is based on an adjusted traverse;

(l) A cemetery or grave site, if discernible or of notice during the performance of the field survey or the required research;

(m) A dated signature and the seal of the professional land surveyor in responsible charge of the survey;

(n) A written and graphic scale;

(o) A title block containing the following:

- 1. Name and address of client and parcel owner;
- 2. Title of the survey;
- 3. Location of each parcel surveyed;
- 4. Name and address of the professional land surveyor and, if applicable, the firm that performed the survey.

Section 10. Marking of Working Drawings And Unfinished Plats.

(1) A working drawing or unfinished plat:

- (a) Shall be marked as to its intended use; and
- (b) Shall not be sealed.

(2) A marking may be made in a manner similar to:

- (a) "PRELIMINARY - NOT FOR RECORDING OR LAND TRANSFER"; or
- (b) "EXHIBIT".

Section 11. Partial Boundary Survey. (1) This administrative regulation shall apply only to that portion of the property being surveyed if:

(a) That portion can be clearly isolated from the remainder of the property; and

(b) The interest of any adjoining owner is not affected.

(2) A plat of a partial survey shall:

- (a) Comply with this administrative regulation; and
- (b) Graphically delineate that portion of the boundary covered by the current survey from the remainder of the property.

[Section 1-. (1) "Boundary survey" means a survey for which the primary purpose includes, but is not limited to, the determination of the perimeter of a parcel or tract of land.

(2) "Witness monumentation" means the setting of an offset

monument.

Section 2. (1) The perimeter of a parcel or tract of land shall be accomplished by the establishment or reestablishment of the property corners and monuments in order to describe and locate fixed improvements thereon, or to plat the property and either a division or a consolidation thereof, or to prepare a physical description of the property.

(2) The land surveyor's marks on the ground shall constitute the actual survey. While not constituting the actual survey, field notes, drawings and descriptions shall constitute the written record of the land surveyor's work.

(3) Any document purporting to represent a boundary survey shall conform to the minimum standard of practice in boundary surveying established by this administrative regulation. Failure to comply may constitute misconduct, gross negligence or incompetence in the practice of land surveying.

Section 3. Research. The land surveyor shall obtain the necessary land records including adjoining's deeds, to insure that the proper description of the land to be surveyed has been obtained. The land surveyor shall evaluate all other available data pertinent to the survey. Evidence discovered by the field survey shall be carefully compared with the completed research in order to establish the boundaries of the land being surveyed. Research as required herein is solely intended for the location of land boundaries and does not include the determination of title or encumbrances.

Section 4. Measurement Specifications. Based upon consultation with the client and their knowledge of local regulations, requirements and conditions, the land surveyor shall determine the appropriate precision required for the subject survey.

Section 5. In no case shall the unadjusted linear error of closure of the actual field traverse be less than a minimum ratio of 1:5,000.

Section 6. (1) Monumentation. All corners of the boundary survey shall be monumented or witness monumented. Every monument set shall be of a type or character having a degree of permanency consistent with that of the local terrain and physical features. Wherever possible monuments shall be made of a permanent material that makes it possible for the monument to be detected by a device capable of finding ferrous or magnetic objects. Types of acceptable monuments include, but are not limited to, iron pipes, iron pins, iron rods, re-bars, chiseled crosses, railroad spikes, mine spikes, P.K. nails and drill holes. Wooden stakes shall not be used as monuments. Each iron pipe, iron rod, iron pin or re-bar monument set by a land surveyor shall bear his registration number on a manufactured cap or identifier.

(2) Existing permanent manmade or natural features are acceptable monuments. Where manmade or natural features are subject to change, realignment or misinterpretation, such monuments or features shall be "witness monumented."

(3) "Witness monumentation" shall be used when it is not possible or practicable to set the actual corner. Whenever witness monumentation is used, it shall be placed "on-line" if possible and shall be shown on plats and called for in descriptions.

Section 7. (1) Documentation. The monuments noted and left by the land surveyor shall constitute the actual boundary survey, although descriptions and plats of boundary surveys are the most frequently written records of the survey.

(2) Descriptions. Any description written by a land surveyor for the purpose of defining land boundaries shall be complete and shall accurately describe the actual boundary survey. All descriptions shall contain the following details:

(a) Location in reference to a major physical feature or primary

control network;

(b) Reference to its record source;

(c) Metes and bounds of the tract in order;

(d) Description of the monuments marking the corners; if any boundary follows some prominent feature of the terrain, that fact shall be stated;

(e) Calculated area of the tract;

(f) Name of land surveyor or firm performing survey; and

(g) Date of survey.

(3) Plats of survey. All final plats of boundary surveys prepared in the Commonwealth of Kentucky shall be drawn to scale on durable, dimensionally stable media and clearly contain the following information:

(a) Direction and length of each line; geometrically curved lines shall be identified with sufficient curve data to define the curve;

(b) Area of the land surveyed;

(c) Description of all monuments including a notation as to whether found, existing or set;

(d) Reference of at least one (1) corner to a corner of the parent tract, or durable physical object, or a primary control network, i.e., state plane coordinates;

(e) Names or roads, names of adjoining, subdivision lot designations and record sources as discovered in the course of performing the survey;

(f) Encroachments discovered in the course of the survey;

(g) North point or reference meridian and its basis, i.e., true; magnetic; grid; compass; record; state plane. If a magnetic meridian is used, this meridian shall be related to objects not affected by this survey;

(h) Vicinity map of sufficient detail to find the land being surveyed, unless the location of the subject property is definitely shown by the plat itself;

(i) Statement as to whether the directions and distances as shown on the plat have been adjusted for closure;

(j) Statement that the unadjusted error of closure meets or exceeds the minimum linear error of closure ratio established herein;

(k) Statement indicating method of survey used, i.e., parallel offsets, direct on-line, radial, random traverse;

(l) Any cemetery that is discernible or of notice during the performance of the field survey or the required research;

(m) Dated signature and seal of the land surveyor responsible for the survey;

(n) Written and graphic scale;

(o) Title block containing the following:

1. Title of the survey;

2. Location of the land surveyed;

3. Name and address of the land surveyor or the surveying firm.

An example of an acceptable plat of survey is incorporated by reference hereto.

Section 8. (1) Miscellaneous. Working drawings and unfinished plats—All working drawings or unfinished plats shall be marked as to their intended use. These documents should not be sealed; example markings would be "PRELIMINARY—NOT FOR RECORDING OR LAND TRANSFER."

(2) Partial boundary surveys—When a client desires only a portion of his property to be surveyed, and this portion can be clearly isolated from the remainder of the property without affecting the interests of adjoining owners, these standards shall apply to the survey of only the desired portion. The remainder of a tract, out of which a portion has been surveyed, may be shown on the plat with the portion surveyed out for identification purposes only. Any subsequent metes and bounds description of that remainder requires a separate survey of that remainder in order to prepare such description.]

JOSEPH F. SISLER, PE, PLS, Chairman

## ADMINISTRATIVE REGISTER - 1544

B. R. SALYER, Board Counsel

APPROVED BY AGENCY: December 11, 1997

FILED WITH LRC: December 15, 1997 at 11 a.m.

**PUBLIC HEARING:** a public hearing on this administrative regulation shall be held the 21st day of January, 1998, at 1 p.m. in the State Board's office, 160 Democrat Drive, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by the 13th day of January, 1998, five working days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: Larry Perkins, Executive Director, Kentucky State Board of Registration for Professional Engineers and Land Surveyors, 160 Democrat Drive, Frankfort, KY 40601, (502) 573-2680.

### REGULATORY IMPACT ANALYSIS

Agency Contact: Larry Perkins

(1) Type and number of entities affected: There are approximately 1650 registered professional land surveyors.

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

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: No direct and indirect cost or savings on the 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, to the extent available from the public comments received: No direct and indirect cost or savings on the 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: No direct and indirect cost or savings on the compliance, reporting, and paperwork requirements for the first year following implementation. This is a revision and clarification of existing regulations.

2. Second and subsequent years: No direct and indirect cost or savings on the compliance, reporting, and paperwork requirements for the second and subsequent years following implementation. This is a revision and clarification of existing regulations.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: No direct and indirect cost or savings for the first year.

2. Continuing costs or savings: No continuing cost or savings

3. Additional factors increasing or decreasing costs: No additional factors increasing or decreasing costs.

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

(4) Assessment of anticipated effect on state and local revenues: No anticipated effect on state and local revenues.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: The source of revenue to be used for implementation and enforcement of this administrative regulation will be licensing fees.

(6) 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 economic impact is anticipated in the geographical area in which administrative regulation will be implemented.

(b) Kentucky: No economic impact is anticipated in Kentucky.

(7) Assessment of alternative methods; reasons why alternatives were rejected: This regulation is a revision and clarification of existing regulations.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: No effects are anticipated 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: No detrimental effect on environment and public health would result if this administrative regulation was not implemented.

(c) If detrimental effect would result, explain detrimental effect: No detrimental effect would result.

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication:

(a) Necessity of proposed regulation if in conflict: No such statute, administrative regulation or government policy exists.

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

(10) Any additional information or comments: There is no information and are no comments.

(11) TIERING: Is tiering applied? Tiering was not applied because all registrants are treated uniformly under the law.

### GENERAL GOVERNMENT CABINET

Department of Veterans Affairs

(Amendment)

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

RELATES TO: KRS 40.460(2)(b), 141.444

STATUTORY AUTHORITY: KRS 40.450(3)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 40.460(2)(b) establishes the Veterans' Program Trust Fund and authorizes the Kentucky Department of Veterans Affairs to administer the fund and programs financed by the proceeds and interest derived from the fund. This administrative regulation establishes a Board of Directors to administer the fund and establishes criteria for programs financed by the fund.

Section 1. Definitions. (1) "Fund" means the Kentucky Veterans' Program Trust Fund.

(2) "Commissioner" means the Commissioner of the Kentucky Department of Veterans Affairs.

Section 2. Criteria for Programs. (1) Monies derived from the fund may be expended for approved programs that:

(a) Provide items for recreational use or service centers or for organizations providing services to veterans if the items are not provided by programs, centers, or organizations established by federal or state law or appropriation;

(b) Organize and foster programs that assist veterans including assistance in the use of existing resources that do not duplicate assistance available from programs established by federal or state law or appropriation;

(c) Encourage and assist veterans to volunteer for programs or services dealing with problems encountered by veterans;

(d) Work with the public and private sectors to honor and recognize the service and sacrifice of veterans;

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(e) Provide services, supplies, programs, equipment or other expenditures deemed essential to the operation of the Kentucky Veterans Center and other Kentucky veterans nursing homes that would otherwise not be available; and

(f) Provide financial support to the construction or operation of state veterans cemeteries when such support would not otherwise be available.

(2) Fundraising.

(a) The fund may accept gifts, donations, and grants from an individual, a corporation, or government entity.

(b) Solicitations of funds or fundraising on behalf of the fund shall not be made unless approved by the commissioner [Adjutant General].

Section 3. Board of Directors. (1) Board of Directors shall be appointed by the Governor [Adjutant General].

(2) The Board of Directors shall consist of:

(a) The commissioner [Adjutant General], who shall serve as its chairman;

(b) The board of directors shall hold an election to fill the position of vice-chairman; [~~Deputy Adjutant General, who shall serve as its vice-chairman;~~]

(c) The Deputy Commissioner of the Kentucky Department of [~~Director, Kentucky Center for~~] Veterans Affairs;

(d) [~~The executive director of the fund appointed by the Adjutant General;~~]

(e)] A member of each of the following:

1. Joint Executive Council of Veterans Organizations of Kentucky;
2. Governor's Advisory Board for Veterans Affairs;

3. A representative of:

- a. The American Legion, Department of Kentucky;
- b. The Veterans of Foreign Wars, Department of Kentucky;
- c. The Disabled American Veterans, Department of Kentucky;
- d. AMVETS, Department of Kentucky; and
- e. Two (2) at-large members.

(3) Board members.

(a) The organizations specified in subsection (2)(d)(e)] of this section shall recommend two (2) members of their organizations to the Governor [Adjutant General] for his final selection for appointment to the Board of Directors.

(b) The Governor shall appoint the two (2) at-large members.

(c) A member of the Board of Directors shall be an honorably separated veteran, as defined by the provisions of KRS 36.310.

(4) Term of members.

(a) The members appointed pursuant to subsection (2)(d)1 and 2 of this section shall serve for a period of three (3) years.

(b) The members appointed pursuant to subsection (2)(d)3a through d of this section shall serve for a period of two (2) years.

(c) The members appointed pursuant to subsection (2)(d)3e shall serve for a period of one (1) year and members appointed pursuant to subsection (2)(d)1, 2, and 3 shall serve until their successors are appointed.

(d) All appointments after the initial appointments under this administrative regulation shall be for a period of three (3) years. [(3)(e) of this section shall serve for a period of three (3) years:]

(5) The Board of Directors shall:

- (a) Meet at the call of the chairman;
- (b) Inform organizations represented on the board of actions considered and taken by the board;
- (c) Review projects and recommend approval or disapproval [~~of projects to the Adjutant General~~];
- (d) Prioritize projects [~~for the Adjutant General's approval~~];
- (e) Investigate the need for specific projects or programs; [~~At the request of the Adjutant General, investigate the need for specific projects or programs;~~]

(f) Establish [~~Recommend~~] guidelines for projects [~~to the Adjutant General~~];

(g) Make recommendations to the commissioner [Adjutant General] for the utilization and control of funds in the Veterans' Program Trust Fund; and

(h) Prepare an annual report providing an accounting of the Veterans' Program Trust Fund assets and financial activity for each fiscal [~~calendar~~] year.

(6) The chairman [~~executive director~~] of the fund shall assign duties as appropriate to his staff or members of the board for the conduct of business by the board such as maintaining the records of the fund that are required for the administration of the Veterans' Program Trust Fund and projects approved under the provisions of this administrative regulation. [:

(a) ~~Administer approved projects;~~

(b) ~~Maintain records of the fund that are required for the administration of the Veterans' Program Trust Fund and projects approved under the provisions of this administrative regulation; and~~

(c) ~~Attend meeting as the representative of the fund as directed by the chairman;~~

JOHN R. GROVES, JR., Adjutant General, Acting Commissioner  
RICHARD C. CARROLL, Assistant Attorney General

APPROVED BY AGENCY: December 1, 1997

FILED WITH LRC: December 12, 1997 at 9 a.m.

PUBLIC HEARING: A public hearing on this proposed administrative regulation shall be held on January 21, 1998, at 9 a.m., at the Kentucky Department of Veterans Affairs, 545 South Third Street, Louisville, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by January 13, 1998, 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 to: James N. Halvatgis, Deputy Commissioner, Kentucky Department of Veterans Affairs, 545 S. Third Street, Louisville, Kentucky 40202, phone: (502) 595-4447; Fax: (502) 595-4448.

### REGULATORY IMPACT ANALYSIS

Contact person: James N. Halvatgis

(1) Type and number of entities affected: Kentucky veterans.

(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:

2. Second and subsequent years:

(3) Effects on the promulgating administrative body:

(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:

(5) Source of revenue to be used for implementation and



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enforcement of 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:

(b) Kentucky:

(7) Assessment of alternative methods; reasons why alternatives were rejected:

(8) Assessment of expected benefits:

(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:

(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. All entities affected by this administrative regulation are treated equally.

## DEPARTMENT OF AGRICULTURE Division of Regulation and Inspections (Amendment)

### 302 KAR 10:060. Consumer grades.

RELATES TO: KRS 260.620

STATUTORY AUTHORITY: KRS 260.620

NECESSITY, FUNCTION, AND CONFORMITY: This administrative regulation defines consumer grades.

Section 1. The specifications for Kentucky consumer grades for marketing shell eggs, as prescribed in KRS 260.620, are as follows, bringing them into conformity with federal specifications in accordance with KRS 260.620.

(1) Kentucky consumer grade AA shall consist of eggs which are seventy-two (72) [eighty (80)] percent AA quality. The maximum tolerance of up to twenty-eight (28) [twenty (20)] percent which may be below AA quality may consist of A or B quality in any combination with not more than seven (7) checks [five (5) percent C quality or checks] in any combination and not more than [one-half (0.5) of] one (1) percent leakers or dirties in any combination.

(2) Kentucky consumer grade A shall consist of eggs which are eighty-two (82) [eighty (80)] percent A quality or better. Within the maximum tolerance of eighteen (18) [twenty (20)] percent which may be below A quality, not over seven (7) [more than five (5) percent may be C quality or] checks in any combination, and not more than [one-half (0.5) of] one (1) percent leakers or dirties in any combination.

(3) Kentucky consumer grade B shall consist of eggs which are ninety (90) [eighty (80)] percent B quality or better. Within the maximum tolerance of not over ten (10) checks [twenty (20) percent which may be below B quality], not more than [ten (10) percent may be checks and not more than one-half (0.5) of] one (1) percent leakers or dirties in any combination.

Section 2. (1) The weight classes for Kentucky consumer grades for shell eggs shall be as follows:

Size or weight class	Minimum net weight per dozen	Minimum net weight per 30 dozen	Minimum weight for individual eggs at rate per dozen
	Ounces	Pounds	Ounces
Jumbo	30	56	29
Extra large	27	50 1/2	26
Large	24	45	23
Medium	21	39 1/2	20
Small	18	34	20
Peewee	<u>15</u> [14]	28	-

(2) A lot average tolerance of three and three-tenths (3.3) percent for individual eggs in the next lower weight class is permitted as long as no individual case within the lot exceeds five (5) percent.

BILLY RAY SMITH, Commissioner

MARK FARROW, General Counsel

APPROVED BY AGENCY: December 15, 1997

FILED WITH LRC: December 15, 1997 at noon

PUBLIC HEARING: A public hearing on this administrative regulation will be held on Wednesday, January 21, 1998, at 10 a.m. at the Department of Agriculture, 7th Floor Conference Room, Capital Plaza Tower, 500 Mero Street, Frankfort, Kentucky 40601. Individuals interested in attending this hearing shall notify this agency in writing by Tuesday, January 13, 1998, five (5) days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: Mark Farrow, General Counsel, Department of Agriculture, Capital Plaza Tower, 7th Floor, 500 Mero Street, Frankfort, Kentucky 40601, (502) 564-4696.

## REGULATORY IMPACT ANALYSIS

Contact Person: Larry Hatfield, Director

(1) Type and number of entities affected: Egg producers, processors and wholesalers.

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

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: No public comments received.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: N/A

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

1. First year following implementation: N/A

2. Second and subsequent years: N/A

(3) Effects on the promulgating administrative body: N/A

(a) Direct and indirect costs or savings:

1. First year: N/A

2. Continuing costs or savings: N/A

(b) Additional factors increasing or decreasing costs: N/A

(b) Reporting and paperwork requirements: None

(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: Existing personnel will be used for implementation.

(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.

(b) Kentucky: Same as (a).

(7) Assessment of alternative methods; reasons why alternatives were rejected: N/A

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: N/A

(b) State whether a detrimental effect on environment and public health would result if not implemented: N/A

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

(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:

(10) Any additional information or comments: The specifications for Kentucky consumer grades for marketing shell eggs, as prescribed in KRS 260.620, will be brought into conformity with federal specifications in accordance with KRS 260.620.

(11) TIERING: Is tiering applied? No. All producers of eggs will be treated the same.

**NATURAL RESOURCES AND  
ENVIRONMENTAL PROTECTION CABINET  
Department of Environmental Protection  
Division of Water  
(Amendment)**

**401 KAR 5:001. Definitions of terms used in 401 KAR Chapter 5.**

RELATESTO: KRS 224.01-010, 224.10-100, 224.10-110, 224.16-050, 224.16-060, 224.70-100, 224.70-110, 33 USC 1288, 1313(e), 1314(b), 1342, 40 CFR Parts 35, 116, 130, 136, 401-471

STATUTORY AUTHORITY: KRS 224.10-100, 224.10-110, 224.16-060, 224.70-100, 224.70-110, 224A.111, 224A.112, 224A.113, 33 USC 1288, 1313(e), 1314(b), 1342, 40 CFR Parts 116, 130, 136, 401-471

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.10-100 authorizes the Natural Resources and Environmental Protection Cabinet to promulgate administrative regulations for the prevention, abatement, and control of all water pollution. This chapter establishes administrative regulations for the issuance of permits to construct, modify, and operate facilities which discharge pollutants to waters of the Commonwealth. This administrative regulation establishes definitions for terms and acronyms, abbreviations, and symbols used in 401 KAR Chapter 5, relating to the issuance of those permits. Where applicable, these definitions are the same as definitions used for the federal National Pollutant Discharge Elimination System program in 40 CFR Parts 116, 136, 401 - 471, and the planning requirements in 40 CFR Part 130; there are no definitions that are more stringent than federal requirements.

Section 1. Definitions. The definitions established in this administrative regulation govern the subject matter of this chapter. Terms not defined in this administrative regulation shall have the meanings given them by KRS 224.01-010.

(1) "Act" means the Federal Water Pollution Control Act, also known as the Clean Water Act, as amended, 33 USC 1251 et seq.

(2) "Activity" means, for purposes of 401 KAR 5:050 to 5:080 and when used in conjunction with facility, any KPDES point source, or any other activity, including land or appurtenances thereto, that is subject to regulation under the KPDES program.

(3) "Administrator" means the administrator of the United States Environmental Protection Agency, or the administrator's authorized representative.

(4) "Agricultural wastes handling system" means a no-discharge structure or equipment that conveys, stores, or treats manure from an animal feeding operation prior to land application, but does not include a swine feeding operation.

(5) "Alternative effluent limitations" means all effluent limitations or standards of performance for the control of the thermal component of any discharge which are established under 401 KAR 5:055.

(6) "Animal feeding operation" means, for purposes of 401 KAR 5:005 and 5:050 to 5:080, a lot or facility, other than an aquatic animal production facility, where the following conditions are met:

(a) 1. Animals other than aquatic animals, have been, are, or will be stabled or confined and fed or maintained for a total of forty-five (45) days or more in any twelve (12) month period; and

2. Crops, vegetation forage growth, or postharvest residues are not sustained in the normal growing season over any portion of the lot or facility.

(b) Two (2) or more animal feeding operations under common ownership are considered to be a single animal feeding operation if they adjoin each other or if they use a common area or system for the disposal of wastes.

(7) "Animal unit" means, for purposes of 401 KAR 5:005 and 5:050 to 5:080, the unit of measurement for any animal feeding operation, calculated according to the following equation:

$$\text{Animal Unit} = (N_1 \times 1.0) + (N_2 \times 1.4) + (N_3 \times 0.4) + (N_4 \times 0.1) + (N_5 \times 2.0)$$

Where:

$N_1$  = Number of slaughter and feeder cattle;

$N_2$  = Number of mature dairy cattle;

$N_3$  = Number of swine weighing over twenty-five (25) kg;

$N_4$  = Number of sheep; and

$N_5$  = Number of horses.

(8) "Applicable standards and limitations" means all standards and limitations to which a discharge or a related activity is subject under KRS Chapter 224, and administrative regulations promulgated pursuant thereto, including but not limited to effluent limitations, water quality standards, standards of performance, and toxic effluent standards.

(9) "Application" means the document submitted by an applicant to the cabinet which provides information used by the cabinet in the issuance of a permit or approval. The application may have several different forms, depending on the type of permit which is requested. The specific forms are required in the applicable administrative regulation.

(10) "Approved POTW pretreatment program", "POTW pretreatment program", "pretreatment program", or "program" means a program administered by a POTW that meets the criteria established in 401 KAR 5:057 and which has been approved by the cabinet.

(11) "Aquaculture project" means a defined managed water area which uses discharges of pollutants into that designated area for the maintenance or production of harvestable freshwater plants and animals.

(12) "Area of review" means a fixed radius around a facility of not less than one-fourth (1/4) mile.

(13) "Arithmetic mean for seven (7) consecutive days" means the average of a minimum of two (2) samples taken on separate days in a seven (7) day period.

(14) "Arithmetic mean for thirty (30) consecutive days" means the

average of a minimum of three (3) samples collected in separate calendar weeks during a period of thirty (30) consecutive days with a minimum of twenty (20) days occurring between the first and last sample days.

(15) "Association of Boards of Certification" or "ABC" means that organization which serves as an information center for certification activities, recommends minimum standards and guidelines for classification of water supply and wastewater systems, and assists authorities in establishing new certification programs and upgrading existing programs.

(16) "Available" means located within the planning area and:

(a) Located within one and zero-tenths (1.0) mile of a regional facility for WWTPs with an average daily design capacity larger than 1,000 gpd. The distance shall be measured along the most feasible route of connection to a point where the downstream sewer has capacity to carry the additional flow; or

(b) For new construction if the distance is one and zero-tenths (1.0) mile or more, where it is cost-effective to connect as determined by a twenty (20) year present worth cost analysis.

(17) "Average monthly discharge limitation" means the highest allowable average of daily discharges over a calendar month, calculated as the sum of all daily discharges measured during a calendar month divided by the number of daily discharges measured during that month.

(18) "Average weekly discharge limitation" means the highest allowable average of daily discharges over a calendar week, calculated as the sum of all daily discharges measured during a calendar week divided by the number of daily discharges measured during that week.

(19) "Balanced indigenous community" means a biotic community typically characterized by diversity, the capacity to sustain itself through cyclic seasonal changes, presence of necessary food chain species, and a lack of domination by pollution tolerant species. Such a community may include historically nonnative species introduced in connection with a program of wildlife management and species whose presence or abundance results from substantial, irreversible environmental modification. Normally, however, such a community does not include species whose presence or abundance is attributable to the introduction of pollutants that will be eliminated by compliance of all sources with 401 KAR 5:065, and may not include species whose presence or abundance is attributable to alternative effluent limitations imposed pursuant to 401 KAR 5:055.

(20) "Barrel" means forty-two (42) U.S. gallons.

(21) "BAT" means best available technology economically achievable.

(22) "BCT" means best conventional pollutant control technology.

(23) "Best management practices" or "BMPs" means, for purposes other than agriculture operations, schedules of activities, prohibitions of practices, maintenance procedures, and other management practices to prevent or reduce the pollution of waters of the Commonwealth. BMPs also include treatment requirements, operating procedures, practices to control site run-off, pollution of surface water and groundwater from nonpoint sources, spillage or leaks, sludge or waste disposal, or drainage from raw material storage.

(24) "Biochemical oxygen demand", "BOD", or "BOD<sub>5</sub>" means the amount of oxygen required to stabilize biodegradable organic matter under aerobic conditions within a five (5) day period. Other time periods may be measured, and if so, are indicated where the term is used.

(25) "BMPs" means best management practices.

(26) "Board" means the Kentucky Board of Certification of Wastewater System Operators, as established by KRS 224.73-110.

(27) "BOD" or "BOD<sub>5</sub>" means biochemical oxygen demand.

(28) "BPT" means best practicable technology currently available.

(29) "Building drain" means that part of the lowest piping of the drainage system which receives the discharge from plumbing fixtures and other interior drainage pipes and conveys its discharge to the

building sewer which begins two (2) feet outside the building wall.

(30) "Building sewer" means that part of the drainage system which extends from the end of the building drain, beginning two (2) feet outside the building wall, and conveys its discharge to a downstream manhole, sewer line, pump station, or sewage disposal system.

(31) "Bypass" means the intentional diversion of sewage or waste streams from a portion of a facility or industrial user's treatment facility.

(32) "°C" means degrees Celsius.

(33) "CAH" means cold water aquatic habitat.

(34) "Carbonaceous biochemical oxygen demand" or "CBOD" means BOD, not including the nitrogenous oxygen demand of the wastewater.

(35) "Cation exchange capacity" or "CEC" means the measure of the ability of a soil to retain cations in a form available for uptake by plants. CEC is expressed in milliequivalents per 100 grams of soil.

(36) "CBOD" means carbonaceous biochemical oxygen demand.

(37) "CEC" means cation exchange capacity.

(38) [(36)] "CERCLA" means the Comprehensive Environmental Response, Compensation, and Liability Act, as amended (42 USC 9601 et seq.).

(39) [(37)] "Certificate" means the certificate of competency issued by the secretary or the secretary's designated agent stating that the operator has met the requirements for the specified operator classification as set by 401 KAR 5:010.

(40) [(38)] "Certified operator" means a wastewater operator employed at a wastewater system who has primary responsibility for the system or a portion thereof which may affect the performance of the system and who holds a certificate of competency meeting the requirements of 401 KAR 5:010.

(41) [(39)] "cfm" means cubic feet per minute.

(42) [(40)] "CFR" means Code of Federal Regulations.

(43) [(41)] "Clean Water Act" or "CWA" means the Clean Water Act as subsequently amended (33 USC Section 1251 et seq.), otherwise known as the Federal Water Pollution Control Act.

(44) [(42)] "Coal remining operation" means a surface coal mining operation which begins after July 11, 1990, at a site on which a coal mining operation was conducted before August 3, 1977. It also means a surface coal mining operation existing on July 11, 1990, which receives a permit revision from the Department for Surface Mining Reclamation and Enforcement (DSMRE) in accordance with 405 KAR 8:010, Section 20 for a site on which a coal mining operation was conducted before August 3, 1977.

(45) [(43)] "COD" means chemical oxygen demand.

(46) [(44)] "Cold water aquatic habitat" or "CAH" means surface waters and associated substrate that will support indigenous aquatic life or self-sustaining or reproducing trout populations on a year-round basis.

(47) [(45)] "Combined sewer" or "combined sewer line" means a sewer or sewer line designed to carry storm water run-off as well as sanitary wastewater.

(48) [(46)] "Combined sewer overflow" or "CSO" means the flow from a combined sewer in excess of the interceptor or regulator capacity that is discharged into a receiving water without going to a POTW.

(49) [(47)] "Composite sample" means:

(a) Not less than four (4) effluent portions collected at regular intervals over a period of eight (8) hours and combined in proportion to flow:

(b) Not less than four (4) combined equal volume effluent portions collected over a period of eight (8) hours at intervals proportional to flow:

(c) An effluent portion collected continuously over a period of twenty-four (24) hours at a rate proportional to the flow; or

(d) An effluent portion consisting of a minimum of four (4) combined equal volume grab samples taken approximately two (2)

hours apart.

(50) [(48)] "Concentrated animal feeding operation" means, for purposes of 401 KAR 5:005, 5:008, and 5:050 to 5:080, an animal feeding operation where:

(a) More than the following numbers of indicated animals are confined:

1. 1,000 slaughter and feeder cattle;
2. 700 mature dairy cattle, whether milked or dry cows;
3. 2,500 swine each weighing over twenty-five (25) kilograms (approximately fifty-five (55) pounds);
4. 500 horses;
5. 10,000 sheep or lambs;
6. 55,000 turkeys;
7. 100,000 laying hens or broilers if the facility has continuous

overflow watering;

8. 30,000 laying hens or broilers if the facility has a liquid manure system;

9. 5,000 ducks; or

10. 1,000 animal units; or

(b)1. More than the following number and types of animals are confined:

- a. 300 slaughter or feeder cattle;
- b. 200 mature dairy cattle, whether milked or dry cows;
- c. 750 swine each weighing over twenty-five (25) kilograms (approximately fifty-five (55) pounds);

d. 150 horses;

e. 3,000 sheep or lambs;

f. 16,500 turkeys;

g. 30,000 laying hens or broilers if the facility has continuous overflow watering;

h. 9,000 laying hens or broilers if the facility has a liquid manure system;

i. 1,500 ducks; or

j. 300 animal units; and

2. Either pollutants are discharged into navigable waters through a manmade ditch, flushing system or other similar manmade device; or pollutants are discharged directly into waters of the Commonwealth which originate outside of and pass over, across, or through the facility or otherwise come into direct contact with the animals confined in the operation.

(c) If an animal feeding operation discharges only during a twenty-five (25) year, twenty-four (24) hour storm event or greater, the animal feeding operation shall not be considered to be a concentrated animal feeding operation.

(51) [(49)] "Concentrated aquatic animal production facility" means a hatchery, fish farm, or other facility which meets the criteria in 401 KAR 5:060 or which the cabinet designates under 401 KAR 5:060.

(52) [(50)] "Consolidation sewer" means a conduit, without direct sanitary connections, which intercepts and transports combined sewer storm overflows to a treatment facility or a single combined sewer overflow point.

(53) [(51)] "Continuous discharge" means a discharge which occurs without interruption throughout the operating hours of the facility, except for infrequent shutdowns for maintenance, process changes, or other similar activities.

(54) [(52)] "Control authority" means the POTW if the POTW has an approved pretreatment program or the cabinet if the POTW does not have an approved pretreatment program.

(55) [(53)] "Conventional domestic water supply treatment" means or includes coagulation, sedimentation, filtration, and chlorination.

(56) [(54)] "Conventional pollutant" means biochemical oxygen demand (BOD), chemical oxygen demand (COD), total organic carbon (TOC), total suspended solids (TSS), ammonia (as N), bromide, chlorine (total residual), color, fecal coliform, fluoride, nitrate, kjeldahl nitrogen, oil and grease, and phosphorus.

(57) [(55)] "Copermittee" means a permittee to a KPDES permit that is only responsible for the permit conditions relating to the

discharge for which it is the operator.

(58) [(56)] "Criteria" means specific concentrations or ranges of values, or narrative statements of water constituents which represent a quality of water expected to result in an aquatic ecosystem protective of designated uses of surface waters. Criteria are derived to protect legitimate uses such as aquatic life, domestic water supply, and recreation and to protect human health.

(59) [(57)] "CSO" means combined sewer overflow.

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

(61) [(59)] "Daily discharge" means the discharge of a pollutant measured during a calendar day or any twenty-four (24) hour period that reasonably represents the calendar day for purposes of sampling. For pollutants with limitations expressed in units of mass, the daily discharge is calculated as the total mass of the pollutant discharged over the day. For pollutants with limitations expressed in other units of measurement, the daily discharge is calculated as the average measurement of the pollutant over the day.

(62) [(60)] "Date of program approval" means September 30, 1983, the effective date of the administrator's approval of Kentucky's KPDES regulatory program under CWA Section 402 (33 USC Section 1342).

(63) [(61)] "Day" means a twenty-four (24) hour period.

(64) [(62)] "Designated project area" means the portions of the waters of the Commonwealth within which the permittee or permit applicant plans to confine the cultivated species, using a method or plan of operation, including, but not limited to, physical confinement, which, on the basis of reliable scientific evidence, is expected to ensure that specific individual organisms comprising an aquaculture crop will enjoy increased growth attributable to the discharge of pollutants, and be harvested within a defined geographic area.

(65) [(63)] "Direct discharge" means the discharge of a pollutant into waters of the Commonwealth if the discharge is not included under the definition of indirect discharger, but does not include a discharge of animal waste onto land by land application if the discharge does not reach the waters of the Commonwealth.

(66) [(64)] "Discharge" or "discharge of a pollutant" means any addition of any pollutant or combination of pollutants to waters of the Commonwealth from any point source. This definition includes, but is not limited to, additions of pollutants into waters of the Commonwealth from surface run-off which is collected or channelled by human effort; discharges through pipes, sewers or other conveyances whether publicly or privately owned which do not lead to a treatment works; and discharges through pipes, sewers, or other conveyances leading into privately owned treatment works.

(67) [(65)] "Discharge monitoring report" or "DMR" means the report including any subsequent additions, revisions, or modifications, for the reporting of self-monitoring results by KPDES permittees.

(68) [(66)] "Disappearing stream" means an intermittent or perennial surface stream that terminates and drains underground through caves, fractures, or swallets in the stream bed.

(69) [(67)] "Disposal well" means a borehole drilled or proposed to be drilled, or a well converted to be used, for the sole purpose of disposing of any water, gas, produced water, or other fluid by injection or other method into a subsurface zone.

(70) [(68)] "Division" means the Kentucky Division of Water, within the Department for Environmental Protection, Natural Resources and Environmental Protection Cabinet.

(71) [(69)] "DMR" means discharge monitoring report.

(72) [(70)] "Domestic" means relating to household wastes or other similar wastes. It is used to distinguish municipal, household, or commercial water or wastewater services from industrial water or wastewater services.

(73) [(71)] "Domestic sewage" means sewage devoid of industrial or other wastes and which is typical of waste received from residential facilities. It may include wastes from commercial developments, schools, restaurants, and other similar developments.

(74) [(72)] "Domestic water supply" or "DWS" means surface

waters that with conventional treatment are suitable for human consumption through a public water system as defined in 401 KAR 8:010, culinary purposes, or for use in any food or beverage processing industry; and meet state and federal regulations under the Safe Drinking Water Act, as amended, 42 USC 300f - 300j.

(75) [(73)] "Draft permit" means a document prepared under 401 KAR 5:008 or 5:075 indicating the cabinet's preliminary decision to issue or deny, modify, revoke and reissue, revoke, or reissue a permit. It includes a notice of intent to revoke a permit and a notice of intent to deny a permit as provided in 401 KAR 5:008 or 5:075. It does not include a proposed permit; a denial of a request for modification, revocation, and reissuance; or a denial of a request for revocation.

(76) [(74)] "Drilling pit" means an earthen excavation for the collection of fluids associated with the drilling, construction, completion, acidizing, or fracturing of an oil or gas well.

(77) [(75)] "Dry gas well" means a gas well producing one (1) barrel or less of produced water at maximum production conditions during a given twenty-four (24) hour period.

(78) [(76)] "DWS" means domestic water supply.

(79) [(77)] "Effluent ditch" means that portion of a treatment system which is a discrete, person-made conveyance, either totally owned, leased or under valid easement by the discharger, which transports a discharge to surface waters of the Commonwealth.

(80) [(78)] "Effluent lagoon" means a treatment lagoon.

(81) [(79)] "Effluent limitation" means any restriction imposed by the cabinet on quantities, discharge rates, and concentrations of pollutants which are discharged from point sources into waters of the Commonwealth.

(82) [(80)] "Effluent limitations guideline" means a federal regulation published by the administrator under CWA Section 304(b) (33 USC Section 1314(b)) to adopt or revise technology-based effluent limitations.

(83) [(81)] "Engineer" means a professional engineer.

(84) [(82)] "Enhanced recovery well" means a well used for the injection of fluids to improve or maintain reservoir productivity.

(85) [(83)] "Environmental Protection Agency" or "EPA" means the United States Environmental Protection Agency.

(86) [(84)] "Establishment" means a manufacturing or industrial works or facility in the operation of which sewage, industrial wastes, or other wastes are generated or stored including but not limited to an industrial plant, mill, factory, tannery, paper or pulp mill, mine or mineral processing or producing facility, quarry, or oil refinery.

(87) [(85)] "Excessive infiltration" means a high groundwater period induced peak infiltration rate which results in operational problems and permit violations at the WWTP or results in recurring overflows from the sewer system or the WWTP. It does not include overflows which result from blockages, power failures or other temporary mechanical failures, or flood waters entering the sewer system directly. For combined sewer systems, infiltration shall not be considered to be excessive if an overflow occurs at a KPDES permitted overflow point that is in compliance with its permit requirements.

(88) [(86)] "Excessive inflow" means a rainfall induced peak inflow rate which results in operational problems and permit violations at the WWTP or results in recurring overflows from the sewer system or the WWTP. For combined sewer systems, inflow shall not be considered to be excessive if an overflow occurs at a KPDES permitted overflow point that is in compliance with its permit requirements. It does not include overflows which result from blockages, power failures or other temporary mechanical failures, or flood waters entering the sewer system directly.

(89) [(87)] "Existing source" means, for purposes of 401 KAR 5:080, any source which is not a new source or a new discharger.

(90) [(88)] "°F" means degrees Fahrenheit.

(91) [(89)] "Facility" means:

(a) For purposes of 401 KAR 5:005, [or] 5:006, or 5:008, a

sewage system as defined in KRS 224.01-010 except for septic tanks, pretreatment facilities regulated by an approved pretreatment program or intermunicipal agreement, and disposal wells as used in 401 KAR 5:090;

(b) For purposes of 401 KAR 5:050 to 5:080 and when used in conjunction with activity, any KPDES point source, or any other facility, including land or appurtenances thereto, that is subject to regulation under the KPDES program; or

(c) For purposes of 401 KAR 5:090, any well, tank, pit, structure, appurtenance or improvement used in the exploration, drilling, or production of oil or gas or used for treating, storing, or disposing of produced water.

(92) [(90)] "Facilities or equipment" means buildings, structures, process or production equipment, or machinery which form a permanent part of the new source and which will be used in its operation, if these facilities or equipment are of such value as to represent a substantial commitment to construct. It excludes facilities or equipment used in connection with feasibility, engineering, and design studies regarding the source or water pollution treatment for the source.

(93) [(91)] "Fecal coliform" means the portion of the coliform group of bacteria which are present in the intestinal tract or the feces of warm-blooded animals. It generally includes organisms which are capable of producing gas from lactose broth in a suitable culture medium within twenty-four (24) hours at forty-four and five-tenths (44.5) degrees plus or minus two-tenths (0.2) degrees C.

(94) "Filter strip" means a strip or area of vegetation for removing sediment, organic material, and other pollutants from runoff and wastewater.

(95) [(92)] "Flood relief sewer" means a conduit, without direct sanitary connections, that is used to transport sewage when a flood control structure or overflow detention basin is in operation.

(96) [(93)] "Force main" means a conduit used to transport sewage from a pump discharge to a sewer line, pump station, or WWTP.

(97) [(94)] "Gas" means, for purposes of 401 KAR 5:090, all natural gas, including casinghead gas, and all other hydrocarbons not defined as oil.

(98) [(95)] "General permit" means any KPDES permit authorizing a category of discharges under KRS Chapter 224 within a geographical area, issued under 401 KAR 5:055.

(99) [(96)] "Geologically isolated" means a zone separated from drinking water aquifers and free of known open faults or fractures and free of any unprotected wells within the area of review.

(100) [(97)] "GPD" or "gpd" means gallons per day.

(101) [(98)] "Grab sample" means:

(a) For purposes of 401 KAR 5:045, a single instantaneous portion of the effluent; or

(b) For purposes of 401 KAR 5:050 to 5:080, a single effluent portion which is not a twenty-four (24) hour composite sample.

(102) [(99)] "Groundwater" means the subsurface water occurring in the zone of saturation beneath the water table and perched water zones below the B soil horizon including water circulating through fractures, bedding planes, and solution conduits.

(103) [(100)] "Harmonic mean flow" means the reciprocal of the mean of the reciprocal daily flow values.

(104) [(101)] "Hazardous substance" means, for purposes of 401 KAR 5:050 to 5:080, any pollutant designated under 40 CFR Part 116.

(105) [(102)] "Holding pit" means an earthen excavated depression which receives and stores produced water at a facility.

(106) "Hydraulic gradient" means the vertical distance measured from the surface of the swine waste in the lagoon, one (1) foot below the spillway, to the bottom of the liner, divided by the thickness of the liner.

(107) [(103)] "Illicit discharge" means any discharge to a municipal separate storm sewer that is not composed entirely of storm water

except discharges pursuant to a KPDES permit, other than the KPDES permit for discharges from the municipal separate storm sewer, and discharges resulting from fire fighting activities.

(108) [(+04)] "Inactive mining operations" means mining sites that are not being actively mined, but which have an identifiable owner or operator. Inactive mining operations do not include sites where mining claims are being maintained prior to disturbances associated with the extraction, beneficiation, or processing of mined materials, nor sites where minimal activities are undertaken for the sole purpose of maintaining a mining claim.

(109) [(+05)] "Incorporated place" means a city, town, township, or village that is created under the Kentucky Revised Statutes.

(110) [(+06)] "Indirect discharge" or "discharge" means, for purposes of 401 KAR 5:057, the introduction of pollutants into a POTW from a nondomestic industrial source regulated by the program.

(111) [(+07)] "Indirect discharger" means a nondomestic discharger introducing pollutants to a publicly owned treatment works.

(112) [(+08)] "Industrial user" or "user" means a source of indirect discharge.

(113) [(+09)] "Industrial wastes" means any liquid or other waste resulting from a process of industry, manufacture, trade, or business; or from the depletion of a natural resource.

(114) [(+10)] "Industrial wastewater treatment plant" or "IWWTP" means a privately owned WWTP with more than ninety (90) percent of the influent flow from sources of industrial waste.

(115) [(+11)] "Infiltration" means water other than wastewater that enters a sewer system from the ground through means such as defective pipes, pipe joints, connections, or manholes.

(116) [(+12)] "Inflow" means water other than wastewater that enters a sewer system from means such as roof leaders, yard drains, area drains, drains from springs or swampy areas, openings in manhole covers, cross connections with storm sewers, catch basins, cooling towers, storm waters, source runoff, street wash waters, drainage, or any other source which directs rainwater into the sewer system.

(117) "Injection" means, for purposes of 401 KAR 5:008, a type of land application in which the waste is placed directly beneath the land surface.

(118) [(+13)] "Intended use plan" means that document developed by the cabinet annually or biennially, as necessary, which contains a project priority list that prioritizes the cabinet's projects qualifying for federally assisted wastewater revolving fund monies pursuant to KRS Chapter 224A.

(119) [(+14)] "Interference" means a discharge which, alone or in conjunction with discharges from other sources:

(a) Inhibits or disrupts the POTW, its treatment processes or operations, or its sludge processes, use, or disposal; and

(b) Therefore, is a cause of a violation of a requirement of the POTW's KPDES permit, including an increase in the magnitude or duration of a violation, or of the prevention of sewage sludge use or disposal in compliance with the following statutory provisions and administrative regulations or permits issued thereunder or under more stringent local administrative regulations: Section 405 of the Clean Water Act, as amended, the Solid Waste Disposal Act as amended (SWDA), including RCRA, and including any administrative regulations contained in a sludge management plan prepared pursuant to Subtitle D of the SWDA as amended, the Clean Air Act as amended, and the Toxic Substances Control Act as amended.

(120) [(+15)] "Intermediate facility" means a WWTP with an average daily design capacity of 10,000 to 49,999 gallons per day (GPD) or sewer lines of 2,500 feet to 5,000 feet in length including appurtenances.

(121) [(+16)] "Intermediate nonpublicly owned treatment works" means a facility which has a design flow rate of between 10,000 gpd and 49,999 gpd of wastewater containing only conventional pollutants and which is not a POTW.

(122) [(+17)] "Intermediate WWTP" means:

(a) A WWTP with an average daily design capacity of 10,000 to 49,999 gpd; or

(b) For coal washing facilities, a WWTP which serves a permanent coal processing facility that processes less than or equal to 500 tons per hour of raw coal.

(123) [(+18)] "Interstate agency" means an agency of which Kentucky and one (1) or more states is a member established by or under an agreement or compact, or any other agency, of which Kentucky and one (1) or more other states are members, having substantial powers or duties pertaining to the control of pollution as determined and approved by the secretary or administrator under the CWA or KRS Chapter 224.

(124) [(+19)] "IWWTP" means an industrial WWTP.

(125) [(+20)] "KAR" means Kentucky administrative regulations.

(126) [(+21)] "Karst" means the type of geologic terrain underlain by carbonate rocks where significant solution of rock has occurred due to flowing groundwater.

(127) "Karst feature" means a naturally occurring feature formed by the dissolution of carbonate rock including but not limited to a sinkhole drain, karst window, swallet, spring, sinking stream, or cave.

(128) [(+22)] "Kentucky Pollutant Discharge Elimination System" or "KPDES" means the Kentucky program for issuing, modifying, revoking and reissuing, revoking, monitoring and enforcing permits to discharge, and imposing and enforcing pretreatment requirements. The KPDES administrative regulations are 401 KAR 5:050 to 5:080.

(129) [(+23)] "Kentucky intermunicipal operational permit" or "KIMOP" means a permit issued pursuant to 401 KAR 5:005 for operating a publicly owned sewer system which has more than 5,000 linear feet of sewer line which discharges to a sewer system, or a WWTP which is owned by another person.

(130) [(+24)] "Kentucky no discharge operational permit" or "KNDOP" means a permit issued pursuant to 401 KAR 5:005 for operating a WWTP which does not have a discharge to a stream, including agricultural waste handling systems and spray irrigation systems.

(131) [(+25)] "kg" means kilograms.

(132) [(+26)] "KPDES" means the Kentucky Pollutant Discharge Elimination System.

(133) [(+27)] "KPDES permit" means a Kentucky Pollutant Discharge Elimination System permit issued to a facility, including a POTW, or activity pursuant to KRS Chapter 224 for the purpose of operating the facility or activity.

(134) [(+28)] "KRS" means Kentucky revised statutes.

(135) "Land application" means the uniform placement of animal waste on or in the soil by spraying or spreading on the surface, incorporation into the soil, or injection directly beneath the surface.

(136) [(+29)] "Land treatment" or "land disposal" means the application or incorporation of a pollutant onto or into the soil.

(137) [(+30)] "Large facility" means a WWTP with an average daily design capacity of 50,000 GPD or more, or sewer lines of more than 5,000 feet in length including appurtenances.

(138) [(+31)] "Large municipal separate storm sewer system" means all municipal separate storm sewers that are either:

(a) Located in an incorporated place with a population of 250,000 or more as determined by the latest census of the Bureau of Census;

(b) Owned or operated by a municipality other than that described in paragraph (a) of this subsection, and that are designated by the cabinet as part of the large or medium municipal separate storm sewer system due to the interrelationship between the discharges of the designated storm sewer and the discharges from municipal separate storm sewers described under paragraph (a) of this subsection. In making this determination the cabinet may consider the following factors:

1. Physical interconnections between the municipal separate storm sewers;

2. The location of discharges from the designated municipal



separate storm sewer relative to discharges from municipal separate storm sewers described in paragraph (a) of this subsection;

3. The quantity and nature of pollutants discharged to waters of the Commonwealth;

4. The nature of the receiving waters; and

5. Other relevant factors; or

(c) The cabinet may, upon petition, designate as a large municipal separate storm sewer system, those municipal separate storm sewers located within the boundaries of a region defined by a storm water management regional authority based on a jurisdictional, watershed, or other appropriate basis that includes one (1) or more of the systems described in paragraph (a) or (b) of this subsection.

(139) [(132)] "Large nonpublicly owned treatment works" means a facility which has a design flow rate of greater than or equal to 50,000 gpd of wastewater containing only conventional pollutants and which is not a POTW.

(140) [(139)] "Large WWTP" means:

(a) A WWTP with an average daily design capacity of 50,000 GPD or more; or

(b) For coal washing facilities, a WWTP which serves a permanent coal processing facility that processes more than 500 tons per hour of raw coal.

(141) [(134)] "Log sorting and log storage facilities" means, for purposes of 401 KAR 5:050 to 5:080, facilities whose discharges result from the holding of unprocessed wood, for example, logs or roundwood with bark or after removal of bark held in self-contained bodies of water or stored on land where water is applied intentionally on the logs.

(142) [(135)] "Long-term CSO control plan" means a control plan which complies with the "Combined Sewer Overflow Control Policy" issued by the U.S. EPA in the "Federal Register" on April 19, 1994 (59 FR 18688).

(143) [(136)] "Maintenance replacement" means replacement of:

(a) Existing component parts with component parts that have similar characteristics and capacity; or

(b) A section of sewer or force main with the same size, alignment, and slope;

(c) The term does not include replacement of an entire WWTP with a new WWTP.

(144) [(137)] "Major facility" means any KPDES facility or activity classified as such by the cabinet in cooperation with the regional administrator. Designation as a major industry as used in KRS 224.70-120, does not indicate automatic classification as a major facility.

(145) [(138)] "Major industry" means an industry that generates and discharges process-related wastewater while engaged in commercial activities including, but not limited to, resource recovery, manufacturing, products distribution, and wholesale and retail trade. Each industry has a design flow rate of greater than or equal to 50,000 gpd of process wastewater containing conventional, nonconventional, or thermal pollutants. A major industry designation is not a criteria for classification as a major facility.

(146) [(139)] "Major municipal separate storm sewer outfall" or "major outfall" means:

(a) A municipal separate storm sewer outfall that discharges from a single pipe with an inside diameter of thirty-six (36) inches or more or its equivalent of a discharge from a single conveyance other than a circular pipe which is associated with a drainage area of more than fifty (50) acres; or

(b) For municipal separate storm sewers that receive storm water from lands zoned for industrial activity based on comprehensive zoning plans or the equivalent, an outfall that discharges from a single pipe with an inside diameter of twelve (12) inches or more or from its equivalent of a discharge from other than a circular pipe associated with a drainage area of two (2) acres or more.

(147) [(140)] "Major outfall" means a major municipal separate storm sewer outfall.

(148) [(141)] "Manmade" means constructed by humans.

(149) [(142)] "Maximum daily discharge limitation" means the highest allowable daily discharge.

(150) [(143)] "Measurement" means the ability of the analytical method or protocol to quantify as well as identify the presence of the substance in question.

(151) [(144)] "Medium municipal separate storm sewer system" means all municipal separate storm sewers that are either:

(a) Located in an incorporated place with a population of 100,000 or more but less than 250,000, as determined by the latest census by the Bureau of Census;

(b) Owned or operated by a municipality other than that described in paragraph (a) of this subsection, and that are designated by the cabinet as part of the large or medium municipal separate storm sewer system due to the interrelationship between the discharges of the designated storm sewer and the discharges from municipal separate storm sewers described under paragraph (a) of this subsection. In making this determination the cabinet may consider the following factors:

1. Physical interconnections between the municipal separate storm sewers;

2. The location of discharges from the designated municipal separate storm sewer relative to discharges from municipal separate storm sewers described in paragraph (a) of this subsection;

3. The quantity and nature of pollutants discharged to waters of the Commonwealth;

4. The nature of the receiving waters; and

5. Other relevant factors; or

(c) The cabinet, may, upon petition, designate as a medium municipal separate storm sewer system, municipal separate storm sewers located within the boundaries of a region defined by a storm water management regional authority based on a jurisdictional, watershed, or other appropriate basis that includes one (1) or more of the systems described in paragraph (a) or (b) of this subsection.

(152) [(145)] "µg/l" means micrograms per liter, same as ppb, assuming unit density.

(153) [(146)] "mgd" or "MGD" means million gallons per day.

(154) [(147)] "mg/l" means milligrams per liter, same as ppm, assuming unit density.

(155) [(148)] "Milligrams per liter" or "mg/l" means the milligrams of substance per liter of solution, and is equivalent to parts per million in water, assuming unit density.

(156) "Minimum design volume" means the treatment volume in the lagoon necessary to maintain an anaerobic condition in the lagoon.

(157) [(149)] "Minor industry" means an industry that generates and discharges process-related wastewater while engaged in commercial activities including, but not limited to, resource recovery, manufacturing, products distribution, and wholesale and retail trade. Each industry has a design flow rate of less than 50,000 gpd of process wastewater containing conventional, nonconventional, or thermal pollutants. If a facility discharges process-related wastewater and does not qualify under this definition, then the facility shall be considered to be a major industry.

(158) [(150)] "Minor modification to a WWTP" means, for purposes of construction approvals required by 401 KAR 5:005, a modification which does not change the WWTP average daily design hydraulic or organic treatment capacity of the WWTP or discharge location.

(159) [(151)] "Municipal separate storm sewer" means a conveyance or system of conveyances, including roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, manmade channels, or storm drains:

(a) Owned or operated by a state, city, town, county, district association, or other public body created by or pursuant to law, having jurisdiction over disposal of sewage, industrial wastes, storm water, or other wastes, including special districts under state law such as a



sewer district, flood control district, or drainage district, or similar entity, or a designated and approved management agency under Section 208 of the CWA that discharges to waters of the Commonwealth;

- (b) Designed or used for collecting or conveying storm water;
- (c) Which is not a combined sewer; and
- (d) Which is not part of a POTW.

(160) [(+52)] "Municipality" means a city, district, or other public body created by or under the Kentucky revised statutes and having jurisdiction over disposal of sewage, industrial wastes, or other wastes, or a designated and approved management agency under CWA Section 208 (33 USC 1288).

(161) [(+53)] "National Pollutant Discharge Elimination System" or "NPDES" means the national program for issuing, modifying, revoking and reissuing, terminating, monitoring and enforcing permits, and imposing and enforcing pretreatment requirements.

(162) [(+54)] "National pretreatment standard", "pretreatment standard", or "standard" means a federal regulation containing pollutant discharge limits promulgated by the U.S. EPA in accordance with Section 307(b) and (c) of the Act, which applies to industrial users. This term includes prohibitive discharge limits established pursuant to 401 KAR 5:057.

(163) "Natural Resources Conservation Service" or "NRCS" means the organization created pursuant to 7 USC 6962 in the United States Department of Agriculture. The NRCS was formerly called the Soil Conservation Service.

(164) [(+55)] "New discharger" means, for purposes of 401 KAR 5:050 to 5:080, any building, structure, facility or installation:

- (a) 1. From which there is or may be a discharge of pollutants;
- 2. That did not commence the discharge of pollutants at a particular site prior to August 13, 1979;
- 3. Which has never received a finally effective NPDES or KPDES permit for discharges at that site; and
- 4. Which is not a new source.

(b) This definition includes an indirect discharger which commences discharging into the waters of the Commonwealth after August 13, 1979. It also includes any existing mobile point source that begins discharging at a site for which it does not have a permit.

(165) [(+56)] "New source" means:

(a) For purposes of 401 KAR 5:050 to 5:080, any building, structure, facility, or installation from which there is or may be a direct or indirect discharge of pollutants, the construction of which commenced:

- 1. After promulgation of EPA's standards of performance or pretreatment standards which are applicable to such source; or
- 2. After proposal of EPA's standards of performance or pretreatment standards which are applicable to such source, but only if the federal standards are promulgated within 120 days of their proposal; or

(b) 1. For purposes of 401 KAR 5:057, a building, structure, facility, or installation from which there is or may be a discharge of pollutants, the construction of which commenced after the publication of proposed pretreatment standards which will be applicable to the source if the standards are thereafter promulgated if:

- a. The building, structure, facility or installation is constructed at a site at which no other source is located;
- b. The building, structure, facility or installation totally replaces the process of production equipment that causes the discharge of pollutants at an existing source; or
- c. The production or wastewater generating processes of the building, structure, facility, or installation are substantially independent of an existing source at the same site. In determining if these are substantially independent, factors such as the extent to which the new facility is integrated with the existing plant, and the extent to which the new facility is engaged in the same general type of activity as the existing source shall be considered.

2. Construction on a site at which an existing source is located

results in a modification rather than a new source if the construction does not create a new building, structure, facility, or installation meeting the criteria of subparagraph 1b or c of this paragraph but otherwise alters, replaces, or adds to existing process or production equipment.

3. Construction of a new source has commenced if the owner or operator has:

a. Begun, or caused to begin as part of a continuous on-site construction program:

(i) A placement, assembly, or installation of facilities or equipment;

(ii) Significant site preparation work including clearing, excavation, or removal of existing buildings, structures, or facilities which is necessary for the placement, assembly, or installation of new source facilities or equipment; or

b. Entered into a binding contractual obligation for the purchase of facilities or equipment which are intended to be used in its operation within a reasonable time. Options to purchase or contracts which may be terminated or modified without substantial loss, and contracts for feasibility, engineering, and design studies do not constitute a contractual obligation under this clause.

(166) [(+57)] "Nonconventional pollutant" means a pollutant not considered to be a conventional pollutant, including priority pollutants identified in 401 KAR 5:060.

(167) [(+58)] "Nonpoint" means any source of pollutants not defined by a point source, as used in this chapter.

(168) [(+59)] "Nonprocess industry" means an industry that generates and discharges only nonprocess wastewater while engaged in commercial activities including manufacturing, resource recovery, products distribution, and wholesale and retail trade. Each industry discharges nonprocess wastewater, for example, noncontact cooling or stockpile run-off, and discharges wastewater that neither contains nor is likely to contain toxic pollutants in concentrations equal to or greater than the ninety-six (96) hour lethal concentration for fifty (50) percent mortality (ninety-six (96) LC<sub>50</sub>) for a representative indigenous aquatic organism. If any of the above conditions is not met, then the discharge is considered to be from a minor industry.

(169) [(+60)] "NPDES" means National Pollutant Discharge Elimination System.

(170) "NRCS" means the Natural Resources Conservation Service.

(171) "Nutrient management plan" means the plan for an individual operation developed for the purpose of recycling nutrients from animal waste onto cropland or pasture in a manner that does not cause environmental harm.

(172) [(+61)] "Oil" means, for purposes of 401 KAR 5:090, natural crude oil or petroleum and other hydrocarbons, regardless of specific gravity, which are produced at the well in liquid form and which are not the result of condensation of gas after it leaves the underground reservoir.

(173) [(+62)] "O&M" means operation and maintenance.

(174) [(+63)] "Operate" means, for purposes of 401 KAR 5:090, any act relating to the construction, operation, or maintenance of any facility.

(175) [(+64)] "Operator" means:

- (a) Any person involved in the operation of a facility or activity;
- (b) For purposes of 401 KAR 5:010, any person involved in the operation of a wastewater system; or
- (c) For purposes of 401 KAR 5:090, any person who operates a facility.

(176) [(+65)] "Other wastes" means sawdust, bark or other wood debris, garbage, refuse, ashes, offal, tar, oil, chemicals, acid drainage, wastes from agricultural enterprises, and other foreign substances not included within the definitions of industrial wastes and sewage which may cause or contribute to the pollution of any waters of the Commonwealth.

(177) [(+66)] "Outfall" means a point source at the point where a

municipal separate storm sewer discharges to waters of the Commonwealth, but does not include open conveyances connecting two (2) municipal separate storm sewers, or pipes, tunnels, or other conveyances which connect segments of the same stream or other waters of the Commonwealth and are used to convey waters of the Commonwealth.

(178) [(+67)] "Overburden" means any material of any nature, consolidated or unconsolidated, that overlies a mineral deposit, excluding topsoil or similar naturally-occurring surface materials that are not disturbed by mining operations.

(179) [(+68)] "Overflow" means:

(a) Any intentional or unintentional diversion of flow from a facility; or

(b) For purposes of 401 KAR 5:057, the intentional or unintentional diversion of flow from the POTW before the POTW treatment plant.

(180) [(+69)] "Owner" means any person who possesses any interest in:

(a) The right to develop, operate, or produce oil or gas; or

(b) Any facility or activity.

(181) [(+70)] "Package WWTP" means a factory-built WWTP which is transported to and assembled or set in place at the site.

(182) [(+71)] "Pass through" means a discharge which exits the POTW into waters of the Commonwealth in quantities or concentrations which, alone or in conjunction with discharges from other sources, is a cause of violation of a requirement of the POTW's KPDES permit, including an increase in the magnitude or duration of a violation.

(183) [(+72)] "pCi/l" means picocuries per liter.

(184) [(+73)] "PCR" means primary contact recreation.

(185) [(+74)] "Permit" means:

(a) For purposes of 401 KAR 5:005 or 5:006, a document issued by the cabinet which authorizes the permittee to construct, modify, or operate a facility; [er]

(b) For purposes of 401 KAR 5:008, a swine waste management permit; or

(c) For purposes of 401 KAR 5:050 to 5:080, a KPDES permit.

(186) [(+75)] "Plan of study" means a report that contains the following information required for a regional facility plan by 401 KAR 5:006, Section 4: planning area maps; a discussion of the need for sewer service in the area; population projections; and an estimation of the twenty (20) year cost by category.

(187) [(+76)] "Planning area" means the geographic area proposed to be served by a regional planning agency in a projected twenty (20) year period.

(188) [(+77)] "Point source" means any discernible, confined, and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, or concentrated animal feeding operation, from which pollutants are or may be discharged. The term does not include agricultural storm water run-off or return flows from irrigated agriculture.

(189) [(+78)] "POTW" means publicly owned treatment works as defined in KRS 224.01-010.

(190) [(+79)] "POTW treatment plant" means that portion of the POTW which is designed to provide treatment, including recycling and reclamation, of municipal sewage and industrial waste.

(191) [(+80)] "ppb" means parts per billion; assuming unit density, same as µg/l.

(192) [(+81)] "ppm" means parts per million; assuming unit density, same as mg/l.

(193) [(+82)] "Preexisting discharge" means any discharge that is occurring when applying for a KPDES permit under 401 KAR 5:029 or 5:040.

(194) [(+83)] "Pretreatment" means the reduction of the amount of pollutants, the elimination of pollutants, or the alteration of the nature of pollutant properties in wastewater prior to or in lieu of discharging or otherwise introducing the pollutants into a POTW. The reduction or alteration may be obtained by physical, chemical, or

biological processes, process changes or by other means, except as prohibited by 401 KAR 5:057. Appropriate pretreatment technology includes control equipment, such as equalization tanks or facilities, for protection against surges or slug loadings that may interfere with or otherwise be incompatible with the POTW. However, if wastewater from a regulated process is mixed in an equalization facility with unregulated wastewater or with wastewater from another regulated process, the effluent from the equalization facility shall meet an adjusted pretreatment limit, calculated in accordance with 401 KAR 5:057.

(195) [(+84)] "Pretreatment requirement" means a substantive or procedural requirement related to pretreatment, other than a pretreatment standard, imposed on an industrial user.

(196) [(+85)] "Pretreatment standard" means a national pretreatment standard.

(197) [(+86)] "Primary contact recreation water" means those waters suitable for full body contact recreation during the recreation season of May 1 through October 31.

(198) [(+87)] "Primary industry category" means any industry category listed as being a primary industry in 401 KAR 5:060.

(199) [(+88)] "Primary responsibility" means having the authority to conduct the procedures and practices necessary to ensure that the wastewater system or any portion thereof is operated in accordance with accepted practices, laws, and administrative regulations of the Commonwealth, or to supervise others in conducting these practices.

(200) [(+89)] "Privately-owned treatment works" means any device or system which is used to treat wastes from any facility or source of sewage whose owner or operator is not the owner or operator of the treatment works and which is not a POTW.

(201) [(+90)] "Process wastewater" means any water which, during manufacturing or processing, comes into direct contact with or results from the production or use of any raw material, intermediate product, finished product, by-product, or waste product.

(202) [(+91)] "Produced water" means all water, pollutants, and combinations thereof resulting, obtained, or produced from the exploration, drilling, or production of oil or gas.

(203) [(+92)] "Professional engineer" or "engineer" means a person registered to practice engineering pursuant to KRS Chapter 322.

(204) [(+93)] "Project priority list" means the list developed by the cabinet pursuant to KRS Chapter 224A which includes a priority ranking of applicants for the construction of wastewater treatment works under 33 USC 1313(e)(3)(H).

(205) [(+94)] "Proposed permit" means a KPDES permit prepared after the close of the public comment period and, when applicable, any public hearing and administrative appeals, which is sent to EPA for review before final issuance by the cabinet. A proposed permit is not a draft permit.

(206) "Public water" shall have the meaning given it in 401 KAR 8:010.

(207) [(+95)] "RCRA" means the Resource Conservation Recovery Act as amended (42 USC 6901 et seq.).

(208) [(+96)] "Reclamation area" means the surface area of a coal mine which has been returned to required contour and on which revegetation (seeding or planting) work has commenced.

(209) [(+97)] "Recommencing discharger" means a source which recommences discharge after terminating operations.

(210) [(+98)] "Regional administrator" means the regional administrator of the Region IV office of the U.S. EPA or the authorized representative of the regional administrator.

(211) [(+99)] "Regional facility" means a facility designated by a regional facility plan or water quality management plan to provide wastewater collection, transportation, or treatment services for a specific area. This facility shall be owned by a city, county, or other public body that was created by KRS Chapter 67, 67A, 74, 76, 96, 108, or 220.

(212) [(200)] "Regional facility plan" means a type of water quality

management plan addressing point sources of pollution for the purpose of areawide waste treatment management planning prepared by the designated regional planning agency pursuant to Section 201, 205, and 208 of the CWA to control point sources of pollution within a planning area.

(213) [(201)] "Regional planning agency" means a governmental agency, such as a city, county, or other public body created by KRS Chapter 67, 67A, 74, 76, 96, 108, or 220, that has been designated pursuant to 33 USC 1288 of the CWA and 40 CFR Part 130 to provide planning for the treatment of wastewater and for controls and recommendations relating to wastewater for a particular area. Those existing agencies that have developed plans pursuant to Section 201, 205, 208, and 303(e) of the CWA shall be considered the regional planning agency for the area.

(214) [(202)] "Regional sewage collection system" means a sewage collection system designated by a regional planning agency which is owned by a city, county, or other public body that was created by KRS Chapter 67, 67A, 74, 76, 96, 108, or 220.

(215) [(203)] "Register" means to file forms with the division which contain information as to oil and gas well geographic location, production, produced water production, methods used for treating, storing, or disposing of produced water, and other information deemed necessary by the division.

(216) [(204)] "Remined area" means only that area of any coal remining operation on which a coal mining operation was conducted before August 3, 1977.

(217) [(205)] "Removal" means, for purposes of 401 KAR 5:057, a reduction in the amount of a pollutant in the POTW's effluent or alteration of the nature of a pollutant during treatment at the POTW. The reduction or alteration may be obtained by physical, chemical, or biological means and may be the result of specifically designed POTW capabilities or may be incidental to the operation of the treatment system. Removal shall not mean dilution of a pollutant in the POTW.

(218) [(206)] "Representative important species" means species which are representative, in terms of their biological needs, of a balanced, indigenous community of shellfish, fish, and wildlife in the body of water into which a discharge of heat is made.

(219) [(207)] "Requester" means any industrial user or a POTW or other interested person seeking a variance from the limits specified in a categorical pretreatment standard.

(220) "Residual solids" means the accumulated solid waste in the lower portion of a lagoon that contains greater than two and zero-tenths (2.0) percent total solids by dry weight analysis.

(221) [(208)] "Rock crushing and gravel washing facilities" means facilities which process crushed and broken stone, gravel, and riprap.

(222) [(209)] "Run-off coefficient" means the fraction of total rainfall that will appear at a conveyance as run-off.

(223) [(210)] "SARA" means the Superfund Amendments and Reauthorization Act, as amended.

(224) [(211)] "Schedule of compliance" means a schedule of remedial measures included in a permit, including an enforceable sequence of interim requirements leading to compliance with KRS Chapter 224 and administrative regulations promulgated pursuant thereto.

(225) [(212)] "SCR" means secondary contact recreation.

(226) [(213)] "Secondary contact recreation waters" means those waters that are suitable for partial body contact recreation, with minimal threat to public health due to water quality.

(227) [(214)] "Secondary industry category" means any industry category which is not a primary industry category.

(228) [(215)] "Secondary treatment" means that degree of treatment which results in an effluent quality which meets the minimum requirements of 401 KAR 5:045.

(229) [(216)] "Service area" means that geographic area currently being served by a regional facility.

(230) [(217)] "Seven-Q-ten" or "7Q<sub>10</sub>" means that minimum

average flow which occurs for seven (7) consecutive days with a recurrence interval of ten (10) years.

(231) [(218)] "Severe property damage" means substantial physical damage to property, damage to the treatment facilities which causes them to become inoperable, or substantial and permanent loss of natural resources which can reasonably be expected to occur in the absence of a bypass. Severe property damage shall not mean economic loss caused by delays in production.

(232) [(219)] "Sewage" means the water-carried human or animal wastes from residences, buildings, or other places together with industrial wastes or underground, surface, storm or other water, as may be present.

(233) [(220)] "Sewage sludge" means the solids, residues, and precipitate separated from or created in sewage by the unit processes of a wastewater treatment plant. Sewage as used in this definition means any wastes, including wastes from humans, households, commercial establishments, industries, and storm water run-off, that are discharged to or otherwise enter a wastewater treatment plant.

(234) [(221)] "Sewer line" means those devices used for collecting, transporting, pumping, or disposing of sewage, but not a building sewer which serves an individual building. A sewer line begins at the junction of two (2) building sewers which serve different buildings. Sewer lines include gravity sewer lines, pump stations, and force mains.

(235) [(222)] "Sewer line extension" means a proposed construction project which extends a sewer system; it includes gravity sewer lines, pump stations, and force mains.

(236) [(223)] "Sewer system" means the network of sewer lines, pump stations, and force mains that discharge to a common WWTP.

(237) [(224)] "SIC" means Standard Industrial Classification.

(238) [(225)] "Significant industrial user" means:

(a) Except as provided in paragraph (b) of this subsection:

1. Industrial users subject to categorical pretreatment standards promulgated by EPA and codified in 40 CFR Chapter I, Subchapter N (Parts 401 through 471); and

2. Any other industrial user that:

a. Discharges an average of 25,000 gallons per day or more of process wastewater to the POTW, excluding sanitary, noncontact cooling and boiler blowdown wastewater;

b. Contributes a process waste stream which makes up five (5) percent or more of the average dry weather hydraulic or organic capacity of the POTW treatment plant; or

c. Is designated as such by the control authority on the basis that the industrial user has a reasonable potential for adversely affecting the POTW's operation or for violating a pretreatment standard or requirement.

(b) Upon a finding that an industrial user meeting the criteria for a significant industrial user has no reasonable potential for adversely affecting the POTW's operation or for violating a pretreatment standard or requirement, the control authority may, on its own initiative or in response to a petition received from an industrial user or a POTW, and in accordance with 401 KAR 5:057, determine that the industrial user is not a significant industrial user.

(239) [(226)] "Significant materials" means, but is not limited to, and for purposes of 401 KAR 5:050 to 5:080: raw materials; fuels; materials such as solvents, detergents, and plastic pellets; finished materials such as metallic products; raw materials used in food processing or production; hazardous substances designated under Section 101(14) of CERCLA; any chemical the facility is required to report pursuant to Section 313 of Title III of SARA; fertilizers; pesticides; and waste products such as ashes, slag, and sludge that have the potential to be released with storm water discharges.

(240) [(227)] "Silvicultural point source" means, for purposes of 401 KAR 5:050 to 5:080, any discernible, confined, and discrete conveyance related to rock crushing, gravel washing, log sorting, or log storage facilities which are operated in connection with silvicultural activities and from which pollutants are discharged into waters of the

Commonwealth. The term does not include nonpoint source silvicultural activities such as nursery operations, site preparation, reforestation and subsequent cultural treatment, thinning, prescribed burning, pest and fire control, harvesting operations, surface drainage, or road construction and maintenance from which there is natural run-off.

(241) [(228)] "Sinkhole" means a naturally occurring topographic depression in a karst area. Its drainage is subterranean and serves as a recharge source for groundwater and it is formed by the collapse of a conduit or the solution of bedrock.

(242) [(229)] "Site" means, for purposes of 401 KAR 5:050 to 5:080, the land or water area where any facility or activity is physically located or conducted, including adjacent land used in connection with the facility or activity.

(243) [(230)] "Sludge requirements" means the following statutory provisions and administrative regulations or permits issued thereunder, or under more stringent local administrative regulations: Section 405 of the Clean Water Act, as amended; the Solid Waste Disposal Act (SWDA), as amended, including Title II, more commonly referred to as the Resource Conservation Recovery Act (RCRA) and administrative regulations contained in any sludge management plan prepared pursuant to Subtitle D of SWDA, as amended; the Clean Air Act, as amended; and the Toxic Substances Control Act, as amended.

(244) [(231)] "SMCRA" means the Surface Mining Control and Reclamation Act, as amended (33 USC 1201 et seq.).

(245) [(232)] "Small facility" means a WWTP with an average daily design capacity less than 10,000 GPD or sewer lines of less than 2,500 feet in length including appurtenances.

(246) [(233)] "Small nonpublicly owned treatment works" means a facility which has a design flow rate of less than 10,000 gpd of wastewater containing only conventional pollutants and which is not a POTW.

(247) [(234)] "Small WWTP" means:

(a) A WWTP with an average daily design capacity of less than 10,000 gpd; or

(b) For coal washing facilities, a WWTP which serves a portable coal processing facility.

(248) [(235)] "Source" means any building, structure, facility, or installation from which there is or may be a discharge of pollutants.

(249) [(236)] "SPCC" means spill prevention control and countermeasure.

(250) [(237)] "Standard" means:

(a) For purposes of 401 KAR 5:026, 5:029 or 5:031, a water quality standard; or

(b) For purposes of 401 KAR 5:057, a pretreatment standard.

(251) [(238)] "Storm water" means storm water run-off, snow melt run-off, and surface run-off and drainage.

(252) [(239)] "Storm water discharge associated with industrial activity" means the discharge from any conveyance which is used for collecting and conveying storm water and which is directly related to manufacturing, processing, or raw material storage areas at an industrial plant. The term does not include discharges from facilities or activities excluded from the KPDES program under 401 KAR 5:055. For the categories of industries identified in paragraphs (a) to (j) of this subsection, the term includes, but is not limited to, storm water discharges from industrial plant yards; immediate access roads and rail lines used or traveled by carriers of raw materials, manufactured products, waste material, or byproducts used or created by the facility; material handling sites; refuse sites; sites used for the application or disposal of process waste waters; sites used for the storage and maintenance of material handling equipment; sites used for residual treatment, storage, or disposal; shipping and receiving areas; manufacturing buildings; storage areas including tank farms for raw materials, and intermediate and finished products; and areas where industrial activity has taken place in the past and significant materials remain and are exposed to storm water. For the categories of industries identified in paragraph (k) of this subsection, the term

includes only storm water discharges from all the areas except access roads and rail lines, that are listed in the previous sentence where material handling equipment or activities, raw materials, intermediate products, final products, waste materials, by-products, or industrial machinery are exposed to storm water. For the purposes of this subsection, material handling activities include the storage, loading and unloading, transportation, or conveyance of any raw material, intermediate product, finished product, byproduct, or waste product. The term excludes areas located on plant lands separate from the plant's industrial activities, such as office buildings and accompanying parking lots as long as the drainage from the excluded areas is not mixed with storm water drained from the above described areas. Industrial facilities including industrial facilities that are federally, state, or municipally owned or operated that meet the description of the facilities listed in this subsection, include those facilities designated under 401 KAR 5:060, Section 12(1)(a). The following categories of facilities are considered to be engaging in an industrial activity for purposes of this subsection:

(a) Facilities subject to storm water effluent limitations guidelines, new source performance standards, or toxic pollutant effluent standards under 401 KAR 5:065, Section 4, except facilities with toxic pollutant effluent standards which are exempted under paragraph (k) of this subsection;

(b) Facilities classified as Standard Industrial Classifications 24 except 2434; 26 except 265 and 267; 28 except 283; 29; 311; 32 except 323; 33; 3441; and 373;

(c) Facilities classified as Standard Industrial Classifications 10 through 14 (mineral industry) including active or inactive mining operations, except for areas of coal mining operations that are no longer reclamation areas because the performance bond issued to the facility by the appropriate SMCRA authority has been released, or except for areas of noncoal mining operations which have been released from applicable state or federal reclamation requirement after December 17, 1990, and oil and gas exploration production processing, or treatment operations, or transmission facilities that discharge storm water contaminated by contact with or that has come into contact with, any overburden, raw material, intermediate products, finished products, by-products, or waste products located on the site of these operations;

(d) Hazardous waste treatment, storage, or disposal facilities, including those that are operating under interim status or a permit under Subtitle C of RCRA;

(e) Landfills, land application sites, and open dumps that receive or have received any industrial wastes, that is waste that is received from any of the facilities described under this subsection, including those that are subject to regulation under Subtitle D of RCRA;

(f) Facilities involved in the recycling of materials, including metal scrapyards, battery reclaimers, salvage yards, and automobile junkyards, including but limited to those classified as Standard Industrial Classification 5015 and 5093;

(g) Steam electric power generating facilities, including coal handling sites;

(h) Transportation facilities classified as Standard Industrial Classifications 40, 41, 42 except 4221-4225, 43, 44, 45, and 5171 which have vehicle maintenance shops, equipment cleaning operations, or airport deicing operations. Only those portions of the facility that are either involved in vehicle maintenance, including vehicle rehabilitation, mechanical repairs, painting, fueling, and lubrication, equipment cleaning operations, airport deicing operations, or which are otherwise identified under paragraphs (a) to (g) and (i) to (k) of this subsection are associated with industrial activity;

(i) Treatment works treating domestic sewage or any other sewage sludge or wastewater treatment device or system, used in the storage, treatment, recycling, and reclamation of municipal domestic sewage, including lands dedicated to the disposal of sewage sludge that are located within the confines of the facility, with a design flow of one (1.0) mgd or more, or required to have an approved

pretreatment program under 401 KAR 5:057. Not included are farm lands, domestic gardens or lands used for sludge management where sludge is beneficially reused and which are not physically located in the confines of the facility, or areas that are in compliance with Section 405 of the CWA;

(j) Construction activity including clearing, grading and excavation activities except operations that result in the disturbance of less than five (5) acres of total land area which are not part of a larger common plan of development or sale;

(k) Facilities under Standard Industrial Classifications 20, 21, 22, 23, 2434, 25, 265, 267, 27, 283, 285, 30, 31 except 311, 323, 34 except 3441, 35, 36, 37 except 373, 38, 39, 4221-4225, and which are not otherwise included within categories of paragraphs (b) to (j) of this subsection.

(253) [(240)] "Stripper well" means any oil well producing ten (10) barrels or less per day of oil.

(254) [(241)] "Submission" means, for purposes of 401 KAR 5:057:

(a) A request by a POTW to the cabinet for approval of a pretreatment program; and

(b) A request by a POTW to the cabinet for authority to revise the discharge limits in categorical pretreatment standards to reflect POTW pollutant removals.

(255) "Supernatant" means the water that accumulates in the upper portion of a lagoon and contains no greater than two and zero-tenths (2.0) percent total solids by dry weight analysis.

(256) [(242)] "Surface mining operation" means only those facilities required to have a permit by 405 KAR Chapters 7 through 26.

(257) [(243)] "Surface waters" means those waters having well-defined banks and beds, either constantly or intermittently flowing; lakes and impounded waters; marshes and wetlands; and any subterranean waters flowing in well-defined channels and having a demonstrable hydrologic connection with the surface. Effluent ditches and lagoons used for waste treatment which are situated on property owned, leased, or under valid easement by a permitted discharger are not considered to be surface waters of the Commonwealth.

(258) [(244)] "SWDA" means the Solid Waste Disposal Act, as amended (42 USC 6901 et seq.).

(259) "Swine feeding operation" means an operation that:

(a) Confines 1,000 or more swine units at a given time; and

(b) Is not a concentrated animal feeding operation.

(260) "Swine units" means the units of measurement used to determine the applicability of 401 KAR 5:008. The number of units shall be determined using the formula in 401 KAR 5:008.

(261) "Swine waste" means the waste from a swine feeding operation, including manure, bedding, soil, wasted water and feed, and flushing water from swine confinement.

(262) "Swine waste lagoon" means a structure constructed pursuant to 401 KAR 5:008 for the purpose of collecting, storing, and treating the waste from a swine feeding operation.

(263) "Swine waste management permit" or "SWMP" means the permit issued pursuant to 401 KAR 5:008 that authorizes the construction or operation of one (1) or more swine waste lagoons and all related appurtenances and the implementation of a nutrient management plan at the swine feeding operation.

(264) "SWMP" means a swine waste management permit.

(265) [(245)] "Tank battery" means an installation where oil is collected from wellheads and is separated from produced water.

(266) [(246)] "TDS" means total dissolved solids.

(267) [(247)] "Total dissolved solids" or "TDS" means the total dissolved solids (filterable residue) as determined by use of the method specified in 40 CFR Part 136.

(268) [(248)] "Total suspended solids" or "TSS" means the total suspended solids (nonfilterable residue) as determined by use of the method specified in 40 CFR Part 136.

(269) [(249)] "Toxic pollutant" means, for purposes of 401 KAR

5:050 to 5:080, any pollutant listed as being toxic in 401 KAR 5:080.

(270) [(250)] "Treatment lagoon" or "effluent lagoon" means, as used in 401 KAR 5:029 and as applied to facilities subject to 401 KAR 5:090, a secondary recovery or water-flood impoundment on which on-site construction commenced before May 19, 1980; owned or operated by a person eligible to receive a KPDES permit for a discharge from that impoundment, if used for the purpose of diluting produced water, and if the owner or operator received approval from the cabinet of its request for designation as such on or before September 4, 1986.

(271) [(251)] "TSS" means total suspended solids.

(272) [(252)] "Twenty-four (24) hour composite sample" means not less than twelve (12) effluent portions collected at regular intervals over a period of twenty-four (24) hours which are composited in proportion to flow.

(273) "Twenty-five (25) year, twenty-four (24) hour rainfall event" means a twenty-four (24) hour rainfall event with a probable recurrence interval of once in twenty-five (25) years, as determined by "Rainfall Frequency Values for Kentucky, Engineering Memorandum No. 2, April 30, 1971, Revised July 1, 1979", incorporated by reference in Section 3 of this administrative regulation.

(274) [(253)] "Underground injection" means a well injection.

(275) [(254)] "Upset" means an exceptional incident in which there is unintentional and temporary noncompliance with categorical pretreatment standards or technology-based effluent limitations because of factors beyond the reasonable control of the industrial user or permittee. An upset shall not include noncompliance to the extent caused by operational error, improperly designed treatment facilities, inadequate treatment facilities, lack of preventive maintenance, or careless or improper operation.

(276) [(255)] "USC" means United States Code.

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

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

(279) [(258)] "Variance" means:

(a) For purposes of 401 KAR 5:050 through 5:080, any mechanism or provision under the KPDES administrative regulations which allows modification to or waiver of the generally applicable effluent limitation requirements or time deadlines; or

(b) For purposes of 401 KAR 5:008, a mechanism or provision that allows a modification or waiver of specified requirements.

(280) [(259)] "WAH" means warm water aquatic habitat.

(281) [(260)] "Warm water aquatic habitat" or "WAH" means any surface water and associated substrate capable of supporting indigenous warm water aquatic life.

(282) [(261)] "Wastewater system" means a sewage system as defined in KRS 224.01-010.

(283) [(262)] "Wastewater treatment plant" or "WWTP" means a facility used for the treatment and disposal of sewage.

(284) [(263)] "Water quality management plan" or "WQM plan" means:

(a) A plan consisting of initial plans produced in accordance with Sections 208 and 303(e) of the CWA and certified and approved updates to those plans; or

(b) A state or areawide waste treatment management plan developed and updated in accordance with Sections 201, 205(j), 208, and 303(e) of the CWA and 40 CFR Part 130.

(285) [(264)] "Water quality standard" means an administrative regulation promulgated by the cabinet establishing the designated use of a surface water and the water quality criteria necessary to maintain and protect that designated use.

(286) [(265)] "Well" or "water well" means:

(a) For purposes of 401 KAR 5:005, any excavation or opening in the surface of the earth that is drilled, cored, bored, washed, driven, jetted, or otherwise constructed when the actual or intended use in whole or in part of an excavation is the removal of water for any purpose, including but not limited to culinary household purposes,

animal consumption, food manufacture, use of geothermal resources for domestic heating purposes, and industrial, irrigation, and dewatering purposes;

(b) For purposes of 401 KAR 5:050 to 5:080, a bored, drilled, or driven shaft, or a dug hole, whose depth is greater than the largest surface dimension; or

(c) For purposes of 401 KAR 5:090, a borehole drilled, or proposed to be drilled for the purpose of producing gas or oil or one through which gas or oil is being produced, or a borehole drilled or proposed to be drilled for the purpose of injecting any water, gas, produced water, or other fluid therein or one into which any water, gas, produced water, or other fluid is being injected.

(287) [(266)] "Wellhead protection area" means:

(a) The surface and subsurface area surrounding a water well, well field, or spring, supplying a public water system, through which pollutants are reasonably likely to move toward and reach the water well, well field, or spring; or

(b) An area defined as a wellhead protection area in a county water supply plan.

(288) [(267)] "Well injection" means the subsurface emplacement of fluids through a bored, drilled or driven well; or through a dug well, where the depth of the dug well is greater than the largest surface dimension.

(289) [(268)] "Wetlands" means land that has a predominance of hydric soils and that is inundated or saturated by surface or ground-water at a frequency and duration sufficient to support, and that under normal circumstances does support, a prevalence of hydrophytic vegetation typically adapted for life in saturated soil conditions.

(290) [(269)] "Whole effluent toxicity" means the aggregate toxic effect of an effluent measured directly by a toxicity test.

(291) [(270)] "WWTP" means wastewater treatment plant.

(292) [(271)] "Zone" means a subsurface layer or stratum capable of producing or receiving fluids.

(293) [(272)] "Zone of saturation" means the zone in which all the subsurface voids in the rock or soil are filled with water.

(294) "100-year, twenty-four (24) hour rainfall event" means a twenty-four (24) hour rainfall event with a probable recurrence interval of once in 100 years, as determined by "Rainfall Frequency Values for Kentucky, Engineering Memorandum No. 2, April 30, 1971, Revised July 1, 1979", incorporated by reference in Section 3 of this administrative regulation.

Section 2. Federal Regulations Adopted Without Change. The following federal regulations govern the subject matter of this administrative regulation and are hereby adopted without change. The federal regulations are available for inspection and copying, subject to copyright laws, during normal business hours of 8 a.m. to 4:30 p.m., eastern time, excluding state holidays, at the Division of Water, 14 Reilly Road, Frankfort, Kentucky, or may be purchased from the U.S. Superintendent of Documents, Washington, D.C.:

(1) 40 CFR Part 116, "Designation of Hazardous Substances under the Federal Water Pollution Control Act", U.S. Environmental Protection Agency, as of August 25, 1993;

(2) 40 CFR Part 136, "Test Procedures for the Analysis of Pollutants", U.S. Environmental Protection Agency, as of September 11, 1992; and

(3) 40 CFR Chapter I, Subchapter N, Parts 401 through 471, "Effluent Guidelines and Standards", U.S. Environmental Protection Agency, as of July 1, 1993.

Section 3. Document Incorporated by Reference. The following document governs the subject matter of this administrative regulation and is hereby incorporated by reference. The document is available for inspection and copying, subject to copyright laws, during normal business hours of 8 a.m. to 4:30 p.m., eastern time, excluding state holidays, at the Division of Water, 14 Reilly Road, Frankfort, Kentucky: "Rainfall Frequency Values for Kentucky, Engineering Memorandum No. 2, April 30, 1971; Revised June 1, 1979"; Commonwealth of Kentucky, Department for Natural Resources and Environmental Protection, Bureau of Natural Resources, Division of Water Resources.

dum No. 2, April 30, 1971; Revised June 1, 1979"; Commonwealth of Kentucky, Department for Natural Resources and Environmental Protection, Bureau of Natural Resources, Division of Water Resources.

JAMES E. BICKFORD, Secretary

GLENN JO CURRY, General Counsel

APPROVED BY AGENCY: December 15, 1997

FILED WITH LRC: December 15, 1997 at 11 a.m.

PUBLIC HEARINGS: Public hearings to receive comments on this proposed amended regulation are scheduled for January 22, 1998, at 6 p.m. (central time), in two locations: Julian B. Carroll Convention Center, One Executive Boulevard, Paducah, Kentucky, and Western Kentucky University, South Campus, 2355 Nashville Road, Bowling Green, Kentucky. Individuals interested in attending either hearing shall notify Jack A. Wilson in writing at the address noted below by January 14, 1998, of their intent to attend either hearing and be heard. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. Both hearings are open to the public. Any person who attends either hearing will be given an opportunity to comment on the proposed amended regulation. Persons testifying at either hearing are asked to provide the Cabinet with a written copy of their testimony, if available. A transcript of the public hearings will not be made unless a written request for a transcript is made. If you do not wish to be heard at either public hearing, you may submit written comments on the proposed amended regulation. Written comments must be received by Jack A. Wilson at the address below no later than 4:30 p.m. (eastern time) on January 22, 1998. Written comments will also be accepted at the public hearings. The Natural Resources and Environmental Protection Cabinet does not discriminate on the basis of race, color, national origin, sex, religion, age, or disability. Each meeting facility is accessible to people with disabilities. The cabinet will provide, upon request, reasonable accommodations including auxiliary aids and services necessary to afford individuals with a disability an equal opportunity to participate in all services, programs, and activities. If an interpreter or other auxiliary aid or service is needed, contact Mr. Wilson at the address below before January 14, 1998 between 8 a.m. and 4:30 p.m.

CONTACT PERSON: Jack A. Wilson, Director, Division of Water, Frankfort Office Park, 14 Reilly Road, Frankfort, Kentucky 40601, (502) 564-3410 (Voice), (502) 564-4245 (Fax).

## REGULATORY IMPACT ANALYSIS

Contact Person: Jack A. Wilson, Director

(1) Type and number of entities affected: This regulation defines the terms used by regulations in 401 KAR Chapter 5. It is being amended to add the terms that are used in 401 KAR 5:008, relating to requirements for swine feeding operations. 401 KAR 5:008 is being proposed as a new regulation, and it appears elsewhere in this issue of the Administrative Register of Kentucky. Some terms are being added, other terms already in 401 KAR 5:001 are being amended to accommodate their use in the new regulation. Any impact of these regulations on the entities affected would occur in the specific regulation where the term is actually used. This regulation is being amended to comply with KRS 13A.222(4)(e) and to provide one central location where terms used in Chapter 5 are defined.

(2) Direct and indirect costs or savings on the affected entities: There are no direct or indirect costs or savings on the affected entities due to the amendment of this regulation; any direct or indirect costs or savings would occur in the regulation where the term is used.

(a) Effect on the cost of living and employment in the geographical area in which the administrative regulation will be implemented to the extent available from the public comments received: No known or expected impacts; no public comments were received on the cost of the definitions.



(b) Effect on the cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: No known or expected impacts; no public comments were received on the cost of the definitions.

(c) Effect on the compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition), to the extent available from the public comments received, for the:

1. First year following implementation: No public comments were received on the cost of definitions.

2. Second and subsequent years: No public comments were received on the cost of definitions.

(3) Effects on the promulgating administrative body: There are no effects on this agency from defining these terms. Any impact would occur when the terms are used in a particular regulation.

(a) Direct and indirect costs or savings: None

1. First year: None

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: There are no reporting and paperwork requirements imposed by the terms defined in this regulation.

(4) Assessment of anticipated effect on state and local revenues: None. This regulation defines terms used in 401 KAR Chapter 5. It will not impact state and local revenues.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: The source of revenue will be the General Fund, as appropriated by the Kentucky General Assembly.

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

(a) Geographical area in which administration regulation will be implemented: No public comments were received on the economic impacts of the definitions.

(b) Kentucky: No public comments were received on the economic impacts of the definitions.

(7) Assessment of alternative methods; reasons why alternatives were rejected: One alternative method would have been to define all terms in Section 1 of the new regulation, but that would have required that terms be duplicated in both 401 KAR 5:001 and 5:008. That in turn would have generated longer regulations, requiring more printing time, paper, and other resources. Also, if a definition changed, each regulation would have to be amended. Therefore to save time and expenses of amending and printing each regulation, and so the public will know that all the definitions are in one location, the Division of Water is amending this regulation to include the terms that are used in 401 KAR 5:008.

(8) Assessment of expected benefits of the administrative regulation: None

(9)(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: None; any effect on public health and environmental welfare would occur where the term is used in a regulation.

(b) State whether a detrimental effect on environment and public health would result if not implemented: There would be no detrimental effect on environment and public health if the regulations were not implemented.

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

(10) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: No known statute, regulation, or government policy is in conflict, overlapping, or duplication.

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

(b) If in conflict, was effort made to harmonize the proposed

administration regulation with conflicting provisions: Not in conflict.

(11) Any additional information or comments: None

(12) TIERING: Is tiering applied? No. Tiering is not applicable to definitions. However, the individual regulation where the terms are used is tiered.

#### FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? Yes

2. State what unit, part or division of local government this administrative regulation will affect. This regulation applies to city, county, or other municipal governments, including special districts, sanitation districts, etc.

3. State the aspect or service of local government to which this administrative regulation relates. Although portions of this entire regulation apply to city, county, or other municipal governments which construct, modify, or operate wastewater facilities, the portions that are being amended apply only to swine feeding operation, and do not apply to city, county, or other municipal governments.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a local government for the first full year the regulation is to be in effect. If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation. None. Since this regulation merely defines terms, it does not impact the expenditures or revenues of a local government.

Revenues (+/-): None

Expenditures (+/-): None

Other explanation: None

#### FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. There is no federal statute or regulation that applies to the portions of this regulation that are being amended.

2. State compliance standards. None

3. Minimum or uniform standards contained in the federal mandate. There is no federal mandate.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements than those required by the federal mandate? No

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Not applicable.

#### TRANSPORTATION CABINET

Office of Minority Affairs

(Amendment)

**600 KAR 4:010. Certification of disadvantaged, minority and women business enterprises.**

RELATES TO: KRS Chapters 96A, 174, 176, 177, 183, 13 CFR 121, 49 CFR 23, 15 USC 637

STATUTORY AUTHORITY: KRS 174.080, 49 CFR 23

NECESSITY, FUNCTION, AND CONFORMITY: 49 CFR Part 23 requires that most recipients of funds from the United States Department of Transportation (USDOT) implement a program to support the fullest possible participation of firms or business enterprises owned and controlled by minorities, women and socially and economically disadvantaged individuals in USDOT programs. The Kentucky Transportation Cabinet as a recipient of USDOT funds is required by the federal regulation to have a program of certification of disadvantaged, minority and women business enterprises. This administrative regulation establishes the procedures and criteria for the



Transportation Cabinet's certification program. This administrative regulation conforms to the federal mandate. It is identical to the certification criteria of the federal mandate spelled out in 49 CFR 23. However, each state is required to establish its own certification procedures. It also sets forth the requirement that certified and prequalified DBE firms attend an orientation program and management development course to increase the probability of the firm remaining certified.

Section 1. Definitions. (1) "Applicant" or "firm" means any corporation, partnership, sole proprietorship, or joint venture applying with the Transportation Cabinet for certification as a disadvantaged, minority or women business enterprise.

(2) "Approval" means that the applicant meets disadvantaged, minority or women business enterprise or joint venture eligibility criteria as outlined in 49 CFR Part 23 and as required by this administrative regulation.

(3) "Certification" means the process whereby the Transportation Cabinet determines if an applicant meets disadvantaged, minority or women business enterprise or joint venture criteria.

(4) "Challenge" means an action of a third party which takes issue with the socially and economically disadvantaged status of certified disadvantaged business enterprise program participants or applicants for DBE certification.

(5) "Decertified" means that a firm or business enterprise which has been certified by the Transportation Cabinet which certification has not expired, as a disadvantaged, minority or women business enterprise or joint venture has been determined to be ineligible and is, therefore, no longer entitled to the rights and privileges accorded to those who are certified by the Transportation Cabinet as a disadvantaged, minority or women business enterprise or joint venture.

(6) "Denial" means that the applicant does not meet disadvantaged, minority or women business enterprise or joint venture eligibility criteria as outlined in 49 CFR Part 23 and as required by this administrative regulation.

(7) "Disadvantaged business enterprise" or "DBE" means a small business concern as defined pursuant to Section 3 of the Small Business Act (15 USC 637(a)) and implementing regulations:

(a) Which is at least fifty-one (51) percent owned by one (1) or more socially and economically disadvantaged persons; or, in the case of any publicly owned business, at least fifty-one (51) percent of the stock of which is owned by one (1) or more socially and economically disadvantaged individuals; and

(b) Whose management and daily business operations are controlled by one (1) or more of the socially and economically disadvantaged individuals who own it.

(8) "Joint venture" means an association of two (2) or more businesses to perform a specified business contract for profit for which purpose the businesses combined their property, capital, efforts, skills and knowledge.

(9) "Minority" means a person who is a citizen or lawful permanent resident of the United States and who is:

(a) Black (a person having origins in any of the black racial groups of Africa);

(b) Hispanic (a person of Mexican, Puerto Rican, Cuban, Central or South American, or other Spanish culture or origin, regardless of race);

(c) Portuguese (a person of Portuguese, Brazilian, or other Portuguese culture or origin, regardless of race);

(d) Asian American (a person having origins in any of the original peoples of the Far East, Southeast Asia, the Indian subcontinent, or the Pacific Islands);

(e) American Indian and Alaskan native (a person having origins in any of the original peoples of North America); or

(f) Members of other groups, or other individuals, found to be economically and socially disadvantaged by the Small Business

Administration under Section 8(a) of the Small Business Act, as amended (15 USC 637(a)).

(10) "Minority business enterprise" or "MBE" means a small business concern, as defined pursuant to Section 3 of the Small Business Act and implementing regulations (15 USC 637(a)), which is owned and controlled by one (1) or more minorities or women. This definition applies only to financial assistance programs. For the purposes of this part, owned and controlled means a business:

(a) Which is at least fifty-one (51) percent owned by one (1) or more minorities or women or, in the case of a publicly owned business, at least fifty-one (51) percent of the stock of which is owned by one (1) or more minorities or women; and

(b) Whose management and daily business operations are controlled by one (1) or more such individuals.

(11) "Notice" means written notice from the Transportation Cabinet or Office of Minority Affairs delivered certified mail to the business address listed on the application form.

(12) "On-site inspection" means conducting an interview with principals of the firm at its primary place of business, reviewing business-related documents, and inspecting business facilities or equipment.

(13) "Prequalified" means that the Transportation Cabinet has approved the firm or business enterprise to perform certain functions on behalf of the cabinet in accordance with KRS Chapter 45A, 600 KAR Chapter 6, or 603 KAR 2:015.

(14) "Socially and economically disadvantaged individuals" means those individuals who are citizens of the United States (or lawfully admitted permanent residents) and who are black Americans, Hispanic Americans, native Americans, Asian-Pacific Americans, Asian-Indian Americans, or women and any other minorities or individuals found to be disadvantaged by the Small Business Administration pursuant to Section 8(a) of the Small Business Act, United States Code Title 15 Section 637. The Transportation Cabinet shall have a rebuttable presumption that individuals listed in paragraphs (a) through (f) of this subsection are socially and economically disadvantaged.

(a) "Black Americans," which includes persons having origins in any of the black racial groups of Africa;

(b) "Hispanic Americans," which includes persons of Mexican, Puerto Rican, Cuban, Central or South American, or other Spanish or Portuguese culture or origin, regardless of race;

(c) "Native Americans," which includes persons who are American Indians, Eskimos, Aleuts, or native Hawaiians;

(d) "Asian-Pacific Americans," which includes persons whose origins are from Japan, China, Taiwan, Korea, Vietnam, Laos, Cambodia, the Philippines, Samoa, Guam, the U.S. Trust Territories of the Pacific, and the Northern Marianas;

(e) "Asian-Indian Americans," which includes persons whose origins are from India, Pakistan, and Bangladesh; and

(f) "Women."

(15) "Women business enterprise" or "WBE" means a disadvantaged or minority business enterprise which is owned and controlled by one (1) or more women.

Section 2. Adoption of Governing Federal Material. (1) 49 CFR 23, effective June 1, 1992, is adopted without change. This federal regulation governs the federal Department of Transportation's and the Kentucky Transportation Cabinet's relationship with and responsibility to each other in the DBE/MBE/WBE Program. It further sets forth the basic requirements which the Transportation Cabinet shall impose on firms desiring certification.

(2) "The Disadvantaged Business Enterprise Program Administration Participants Manual", Chapters I - VI, US Department of Transportation's Publication No. FHWA FHWA-CR-90-003 dated April, 1991 [is incorporated by reference in Section 16 of this administrative regulation. This manual] shall be used by the Transportation Cabinet for guidance and direction in administering the DBE program.

## ADMINISTRATIVE REGISTER - 1561

Section 3. Application Process. (1)(a) Application for certification or recertification as set forth in Section 6 of this administrative regulation as a DBE, MBE, or WBE shall be made to the Transportation Cabinet's Office of Minority Affairs on form TC 10-3, Application for Certification Schedule A.

(b) Each application form shall be completed in full.

(c) All documentation required by the application shall be attached to the completed application.

(d) The person signing the application shall be one (1) of the persons on whom the DBE, MBE, or WBE status is based and shall identify his position with the firm or business enterprise applying for certification.

(e) The completed application shall be submitted to the Transportation Cabinet, Office of Minority Affairs.

(2) If the application is not complete, the Office of Minority Affairs shall return the application to the applicant firm requesting that the omitted information be included. An incomplete application shall not be considered by the Transportation Cabinet, Office of Minority Affairs.

(3)(a) The Transportation Cabinet shall perform an on-site inspection of each new applicant which is located within the boundary of Kentucky or, if in another jurisdiction, within seventy-five (75) miles (120.7 kilometers) of the boundary of Kentucky.

(b) The Transportation Cabinet may perform an on-site inspection of any firm previously certified which is applying for recertification pursuant to Section 7 [6] of this administrative regulation.

(c) Failure of the applicant firm to participate in the on-site inspection shall be sufficient cause for the Transportation Cabinet to deny the application.

(4) An out-of-state applicant as a prerequisite to consideration of certification by the Transportation Cabinet shall be certified as a DBE, MBE, or WBE by the state transportation agency responsible for certifying firms under 49 CFR Part 23 in the state in which the firm has residence.

(5) The Transportation Cabinet may request additional information in order to determine if an applicant firm should be certified. Failure of the applicant firm to provide the requested information shall be cause for the Transportation Cabinet to deny the application.

(6) During the period prior to the formal submittal of the application, the Transportation Cabinet or its supportive services contractor shall:

(a) When requested by the applicant, provide technical advice needed by the applicant in completing the application form and the supporting documentation;

(b) When requested by the applicant, advise the applicant firm of any apparent existing structural, organizational, or financial impediments to the firm's certification; or

(c) Allow the applicant to make any structural, organizational, or financial changes to its organization necessary to bring the applicant into compliance with the requirements of this administrative regulation.

Section 4. Evaluation of Application. (1)(a) The Transportation Cabinet shall use the eligibility standards set forth in 49 CFR Part 23.53 to determine the eligibility of a firm to be certified or recertified as a MBE.

(2) (b) The Transportation Cabinet shall use the eligibility standards set forth in 49 CFR Part 23.53; 49 CFR Part 23.62; 49 CFR Part 23, Subpart D, Appendix A, Appendix B and Appendix C to determine the eligibility of a firm to be certified or recertified as a DBE or WBE.

(3) (e) To be certified a firm shall:

(a) [1-] Be operated with the intention of making a profit; and

(b) [2-] Submit evidence of the firm's operational status prior to the date of the application which includes, but is not limited to the following:

1. [a-] A copy of a bid or quotation on a publicly or privately funded project;

2. [b-] A copy of an invoice, purchase order, or bill of lading;

3. [c-] Proof of gross receipts or receivables due; or

4. [d-] A copy of the current certificate of existence or authorization issued by the Kentucky Secretary of State pursuant to KRS 271B.1-280.

Section 5. DBE Certification Committee. (2) There is a DBE Certification Committee established in the Transportation Cabinet to:

(1) Approve or deny each application [review and evaluate the applications] submitted pursuant to:

(a) Section 3 of this administrative regulation; or [and]

(b) Section 7 [6] of this administrative regulation [except notices of "No Change"].

(2) Approve or deny a Transportation Cabinet initiated decertification proceeding; and

(3) Participate in a predetermination hearing pursuant to Section 12 of this administrative regulation.

(4) [(3)] The DBE Certification Committee shall be composed of the following members:

(a) Executive Director, Office of Minority Affairs or his designee, Chair, nonvoting member;

(b) State Highway Engineer or his designee;

(c) Deputy Secretary of the Transportation Cabinet or his designee;

(d) Director, Division of Construction or his designee;

(e) Director, Division of Highway Design or his designee;

(f) Audit Manager, Internal Audit Branch or his designee;

(g) Director, Division of Contract Procurement, or his designee;

(h) Directly, Division of Professional Services, or his designee;

(i) Executive Director, Office of General Counsel or his designee, nonvoting member; and

(j) [(h)] Kentucky Administrator of the Federal Highway Administration or his designee, ex officio, nonvoting member.

(5) [(4)] The Chairman of the Certification Committee shall schedule meetings as needed.

(6) [(5)] Four (4) of the voting members of the Certification Committee shall constitute a quorum.

(7) [(6)](a) A simple majority of the voting members present at a meeting with a quorum shall be required to approve or deny an application or decertification submitted to the committee.

(b) A summary record of each meeting shall be maintained by the Office of Minority Affairs and presented for review and approval at the next meeting of the committee which has a quorum present.

(8) [(7-)] At least seven (7) working days [two (2) weeks] prior to the meeting of the committee when an application or decertification is to be considered, the Office of Minority Affairs shall provide a complete copy of the application and staff summary and recommendation to each member of the committee.

(9) [(8)] The DBE Liaison Officer shall be present at the committee meeting to answer questions and provide technical information.

(10) When requested by a committee member, the Executive Director of the Office of Minority Affairs shall have the technical staff member available to answer questions regarding an application or decertification.

(11) Consistent with the decision of the Certification Committee, [(9)] the Transportation Cabinet shall issue a written determination of eligibility for certification within ninety (90) days of receipt of a completed original application provided that a challenge as set forth in Section 10 [9] of this administrative regulation has not been received.

(12) [(10)] The Transportation Cabinet's Certification Committee also may determine, on a case-by-case basis, that an individual who is [individuals who are] not a member of one (1) of the groups listed in Section 1(11) of this administrative regulation are socially and economically disadvantaged.

Section 6. [5-] Certification of Applicant Firm. (1) If an application

## ADMINISTRATIVE REGISTER - 1562

for certification as a DBE, MBE, or WBE is approved by the Transportation Cabinet and a challenge to the status of a firm from a third party as set forth in Section 10 [9] of this administrative regulation is not received during the time the Transportation Cabinet is evaluating the application, the written notification required by Section 5(11) [4(2)] of this administrative regulation shall be the notice to the applicant firm of certification as a DBE, MBE, or WBE.

(2) Certification as a DBE, MBE, or WBE is valid for one (1) year from the date of notice of certification.

(3) Records of a certified firm shall be retained by the Office of Minority Affairs for a period of not less than five (5) years from the date of notice of certification.

(4)(a) Except as set forth in paragraph (c) of this subsection, certification of a firm or business enterprise shall expire immediately upon any change in ownership or control of the firm or business enterprise.

(b) The firm or business enterprise may submit a new application to the Office of Minority Affairs to be considered for certification under the new ownership or control.

(c) If, within seven (7) days of the change in ownership or control, the firm notifies the Office of Minority Affairs of the change, the office may extend the expired certification for a brief period of time and with reasonable conditions placed on the firm.

Section 7, [6:] Recertification. (1) At least thirty (30) days prior to its certification expiration, a certified DBE, MBE, or WBE, that intends to continue its certification shall submit an application to the Transportation Cabinet, Office of Minority Affairs.

(a) Every other year the application shall be in the same form and require the same information as in Section 3 of this administrative regulation.

(b) In the alternate year, if there have been no changes since the last application was filed and the application form and attachments would be identical to the last one filed, the applicant may submit a statement of "no change" to the Transportation Cabinet on form TC 10-16 [~~adopted in June 1995. That form is incorporated by reference in Section 16 of this administrative regulation.~~].

(c) Beginning with the application for recertification for the third year of certification, certified firms prequalified to engage in highway construction, design, or right-of-way activities, shall also submit evidence of participation in at least one (1) management development course as set forth in Section 15 [4] of this administrative regulation.

(2)(a) Certification of a DBE, MBE, or WBE which has requested recertification at least thirty (30) days prior to the date of certification expiration shall not expire unless the Transportation Cabinet denies the request for recertification as set forth in this section.

(b) Until notified otherwise by the Transportation Cabinet, a certification for which a recertification application has been timely filed shall continue in force as though the recertification had been approved.

(3) If a firm is notified that its request for recertification is denied and the reasons therefore, the firm may request a predetermination meeting within ten (10) days of the date of the notice. If the firm fails to request a predetermination meeting within the ten (10) days, its request for recertification shall be denied effective thirty (30) days from the date of notification.

(4) The predetermination meeting, if requested, shall be held in accordance with the procedures specified in Section 11 [40] of this administrative regulation.

(5) If the Transportation Cabinet's decision after the predetermination meeting is that the request for recertification shall be denied, the denial shall be effective on the latter of the following dates:

(a) Immediately upon the issuance of written notice by the Transportation Cabinet to the firm; or

(b) Thirty (30) days from the date of notification set forth in subsection (3) of this section.

(6) The firm may appeal that decision in accordance with Section 12 [44] of this administrative regulation.

Section 8, [7:] Denial of Certification. (1) If an application for certification as a DBE, MBE, or WBE is denied by the Transportation Cabinet, the notification required by Section 5(11) [4(2)] of this administrative regulation shall set forth the reasons for denial.

(2) A denial may be appealed to the Transportation Cabinet within thirty (30) days of the notice. The appeal shall be filed in accordance with Section 12 [44] of this administrative regulation.

(3) An applicant firm shall not reapply for certification for one (1) year from the effective date of denial.

(4) The effective date of denial shall be one (1) of the following dates:

(a) If the denial is not appealed, the date the notice is received or delivery is attempted;

(b) If the denial is appealed and the denial is upheld, the date of the notice of final action on behalf of the Transportation Cabinet; or

(c) If the denial is appealed and the appellant withdraws, cancels, or otherwise suspends the appeal, the date of the withdrawal, cancellation, or suspension of the appeal.

Section 9, [8:] Decertification. (1)(a) The Transportation Cabinet may perform periodic reviews or on-site inspections of a certified DBE, MBE, or WBE during its certification period to verify continued eligibility of the firm.

(b) If the Transportation Cabinet finds noncompliance with the eligibility criteria or the certified firm fails to provide reasonable information requested by the Transportation Cabinet as a part of the periodic review, the cabinet may initiate a decertification proceeding.

(2)(a) The Transportation Cabinet shall notify the certified firm of the pending decertification.

(b) The notice shall specify the reasons for the pending decertification.

(3)(a) The firm may request a predetermination meeting within ten (10) days of the date the notice is received or delivery is attempted.

(b) If the firm fails to request a predetermination meeting within the ten (10) days, it shall be decertified.

(4) [(3)] The predetermination meeting, if requested, shall be held in accordance with the procedures specified in Section 11 [40] of this administrative regulation.

(5) [(4)] If the Transportation Cabinet's decision after the predetermination meeting is that the firm shall be decertified, the firm may appeal that decision in accordance with Section 12 [44] of this administrative regulation.

(6)(a) [(5)] The effective date of the decertification shall be thirty (30) days after the date the notice of decertification is mailed to the firm providing the firm does not appeal the decertification to the Transportation Cabinet.

(b) If a firm appeals the decertification, the effective date of the decertification shall be the date of the final ruling of the Secretary of the Transportation Cabinet as set forth in Section 12 [44] of this administrative regulation.

(7) Decertification shall be for a specific period of time but not less than one (1) year.

Section 10, [9:] Challenge of DBE Certification. (1)(a) A [Any] third party may challenge the socially and economically disadvantaged status of an [any] individual, except an individual who has a current certification from the Small Business Administration issued pursuant to 15 USC Section 637, rebuttably presumed to be socially and economically disadvantaged if that individual is an owner of a firm certified by or seeking certification from the Transportation Cabinet Office of Minority Affairs as a DBE.

(b) The challenge shall be made in writing to the Office of Minority Affairs.

(2) With its letter, the challenging third party shall include all

information available to it which is relevant to a determination of whether the challenged party is in fact socially and economically disadvantaged.

(3) The Transportation Cabinet shall determine, on the basis of the information provided by the challenging party, if there is reason to believe that the challenged party is in fact not socially and economically disadvantaged.

(4) If the Transportation Cabinet determines that there is not reason to believe that the challenged party is not socially and economically disadvantaged, the office shall so inform the challenging party in writing. This shall terminate the proceeding.

(5)(a) If the Transportation Cabinet determines that there is reason to believe that the challenged party is not socially and economically disadvantaged, the office shall notify the challenged party that his status as a socially and economically and disadvantaged individual has been challenged. The notice shall:

1. Identify the challenging party;
2. ~~[and]~~ Summarize the grounds for the challenge; and
3. ~~[-The notice shall also]~~ Require the challenged party to provide to the Office of Minority Affairs, within a specified reasonable time, information sufficient to evaluate his status as a socially and economically disadvantaged individual.

(b) Failure to provide the requested information within the time limit shall be cause for the DBE to be decertified or to be denied certification.

(6) If the social and economic disadvantaged status of a new applicant is challenged, the challenge proceedings shall be completed prior to completion of the certification.

(7) The Transportation Cabinet shall evaluate the information available and make a proposed determination of the social and economic disadvantage of the challenged party. The office shall notify both parties of this proposed determination, setting forth the reasons for its proposal.

(8) Either party may request a predetermination meeting within ten (10) days of the date of the notice. If neither party requests a predetermination meeting within the ten (10) days, the proposed determination of the Transportation Cabinet shall become the final determination, i.e., the challenged party shall either be decertified or continue to be certified.

(9) The predetermination meeting, if requested, shall be held in accordance with Section 11 [40] of this administrative regulation. However, both parties shall be allowed to attend the meeting or respond in writing to the proposed determination.

(10) In making the determinations called for in subsections (3) and (7) of this section and Section 11 [40] of this administrative regulation as it relates to challenge, the Transportation Cabinet shall use the standards set forth in 49 CFR Part 23, Subpart D, Appendix C.

(11) During the pendency of a challenge under this section, the presumption that the challenged party is a socially and economically disadvantaged individual shall remain in effect.

(12) The decision of the Transportation Cabinet in subsection (4) of this section or after an appeal and hearing before the Secretary of the Transportation Cabinet as set forth in Section 12 [44] of this administrative regulation may be appealed to the United States Department of Transportation, by the adversely affected party to the proceeding under the procedures of 49 CFR Part 23.55.

Section 11. [40:] Predetermination Meeting. (1) A predetermination meeting with the Transportation Cabinet may be requested by any party as set forth in Sections 7, 9, and 10 [6, 8, and 9] of this administrative regulation. The request shall be made in writing, signed and dated.

(2) The Transportation Cabinet, Office of Minority Affairs shall schedule the date for the predetermination meeting to be between five (5) and ten (10) days after receipt of the request for the predetermination meeting. Upon agreement between the Office of Minority

Affairs and all affected parties the meeting may be scheduled later than the ten (10) days.

(3) The Transportation Cabinet shall notify all affected parties in writing of the date, time and location of the predetermination meeting.

(4) The predetermination meeting shall be an informal proceeding. The predetermination meeting shall provide the opportunity for the affected parties to present evidence or arguments, either written or oral, on the matter being considered by the Transportation Cabinet. The affected parties may be represented by legal counsel.

(5) The Transportation Cabinet shall render a written decision within seven (7) days of completion of the predetermination meeting. In making this decision, the Transportation Cabinet shall use the standards set forth in Section 4 of this administrative regulation. The affected parties shall be notified of the decision of the Transportation Cabinet.

Section 12. [44:] Appeal and Hearing. (1) Any party in Section 7(2), 9(4), or 10(10) [6(2), 8(4) and 9(10)] of this regulation adversely affected by a decision of the Transportation Cabinet may appeal that decision within thirty (30) days of the notice of determination. The appeal shall be filed in writing with the Transportation Cabinet.

(2)(a) The Transportation Cabinet shall schedule the date for the hearing on the appeal to be between fifteen (15) and thirty (30) days after the appeal is received unless otherwise agreed to by all parties.

(b) If an appeal hearing is rescheduled beyond the thirty (30) days from the date of the notification to deny certification at the request of the applicant firm and the firm is not currently certified, the firm's annual certification has expired, or the firm's request for recertification has been denied, the Office of Minority Affairs shall not approve as part of an established DBE goal any of the work contracted by the applicant.

(3) The Transportation Cabinet shall conduct the administrative hearing pursuant to the provisions of KRS Chapter 13B.

(4) The hearing officer's findings of fact shall be based on conditions existing at the time the on-site inspection or owner interview was conducted by the Transportation Cabinet. Changes made in an applicant's firm since the on-site inspection or owner interview shall not be considered by the Transportation Cabinet or a hearing examiner in determining the eligibility of the firm.

(5) An appeal from the Transportation Cabinet's final decision may be made to the United States Department of Transportation in accordance with the provisions of 49 CFR 23.55 and 49 CFR 23 Subpart D, Appendix A, Decertification Procedures.

Section 13. [42:] Joint Ventures. (1) Any joint venture which includes a certified DBE, MBE, or WBE may apply to be certified as a joint venture eligible to participate in the DBE, MBE, or WBE program. Application for certification shall be on Transportation Cabinet Form TC 10-5 DBE/WBE Joint-venture Eligibility Application, Schedule B. The application procedure, eligibility standards, and certification procedure followed shall be as set forth in this administrative regulation.

(2) Application from a joint venture which includes a disadvantaged, minority or women business enterprise which has not been certified shall not be considered by the Transportation Cabinet as a joint venture eligible to participate in the DBE, MBE, or WBE program.

(3) If all firms involved in the joint venture are certified DBEs, MBEs, or WBEs, there shall not be a need for the joint venture to request certification as a joint venture eligible to participate in the DBE, MBE, or WBE program.

~~[(4) The form TC 10-5, DBE/WBE Joint-Venture Eligibility Application, Schedule B, last revised in February, 1992 is incorporated by reference in Section 16 of this administrative regulation.]~~

Section 14. [43:] Additional Program Guidelines. 13 CFR 121 as effective on March 1, 1997 [1996], is adopted without change. The federal regulation sets standards for the size of small businesses as

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established by the Small Business Administration. These size standards, when less than \$16.6 million, are required by 49 CFR Part 23 Subpart D, Appendix A to be used to determine when a firm has graduated from the certification program, i.e., it is no longer considered to be a small business.

Section 15. [14:] Management Development Course. (1) Each owner of a Kentucky-based certified firm which is also prequalified by the Transportation Cabinet under the provisions of KRS 45A.825, 600 KAR Chapter 6, or 603 KAR 2:015 to engage in highway construction, design or right-of-way activities shall attend at least one (1), one (1) week management development course prior to being recertified for its third year as a DBE.

(2) DBE certified firms not based in Kentucky [~~but which are within a seventy-five (75) mile (120.7 kilometer) proximity;~~] may be required by the Office of Minority Affairs to attend at least one (1) management development course. [~~This attendance requirement shall be based on an assessment of the firm's managerial and operational capability in relationship to the regulatory requirements determined during the conduct of the on-site inspection, personnel interviews, and evaluation of the firm's prequalification status.~~]

(3) DBE certified firms which have previously attended a management development course and which have been cited for a violation of this administrative regulation or 600 KAR 4:020 may be required to attend an additional management development course.

(4) The management development course shall be offered free of charge by the Entrepreneurial Development Institute.

(5) All owners of firms required to attend a management development course shall attend the course.

(6) The owners of certified firms which are not required to attend the management development course may apply to attend. The Transportation Cabinet shall accommodate them on a space-available basis.

Section 16. [15:] Disadvantaged Business Enterprise Orientation Program. (1) The Transportation Cabinet shall offer a one (1) day orientation program for any certified DBE firm. The orientation program shall acquaint owners of DBE firms with the following:

(a) The organization, structure and expectations of the Transportation Cabinet;

(b) The requirements of the DBE program and with the provisions of the "Standard Specifications for Road and Bridge Construction" and "Standard Drawings"; and

(c) The supportive services and technical assistance available to the DBE.

(2) Each owner of a certified DBE firm which is also prequalified under KRS 45A.825, 600 KAR Chapter 6, or 603 KAR 2:015 to engage in highway construction, design or right-of-way activities shall attend an orientation program prior to competing for a U.S. Department of Transportation assisted project.

(3) If the certified DBE firm is based out of Kentucky, the orientation program may be completed by telephone and mail.

(4) The owners of certified firms which are not required to attend the orientation program may apply to attend. The Transportation Cabinet shall accommodate them on a space-available basis.

Section 17. [16:] Material Incorporated by Reference. (1) The following material is incorporated by reference unless designated as being adopted without change:

(a) 49 CFR 23, effective June 1, 1992, is adopted without change;

(b) "The Disadvantaged Business Enterprise Program Administration Participants Manual", Chapters I-VI, U.S. Department of Transportation's Publication No. FHWA FHWA-CR-90-003, April 1990 edition [dated April 1990];

(c) Form TC 10-3, "Application for Certification Schedule A", January 1992 edition;

(d) Form TC 10-16, June 1995 edition;

(e) Form TC 10-5, "DBE/WBE Joint Venture Application, Schedule B", February 1992 edition; and

(f) 13 CFR 121, effective March 1, 1997 [1996], adopted without change.

(2) Copies of all of the material incorporated by reference may be obtained, viewed or copied at the Transportation Cabinet, Office of Minority Affairs, 501 High Street, Frankfort, Kentucky 40622. The business hours of the Office of Minority Affairs are 8 a.m. to 4:30 p.m. eastern time, Monday through Friday, except state holidays. The telephone number is (502) 564-3601.

NORRIS BECKLEY, Executive Director  
J.M. YOWELL, P.E., State Highway Engineer  
JAMES C. CODELL, III, Secretary  
TODD SHIPP, Office of General Counsel

APPROVED BY AGENCY: December 5, 1997

FILED WITH LRC: December 9, 1997 at 11 a.m.

PUBLIC HEARING: A public comment hearing on this administrative regulation will be held on January 23, 1998 at 10 a.m. local prevailing time in the Transportation Cabinet, 501 High Street, 4th Floor Hearing Room/Conference Room, State Office Building, Frankfort, Kentucky 40622. Any person who intends to attend this meeting must in writing by January 15, 1998, so notify this agency. If no notification of intent to attend the hearing is received by this date, the hearing may be canceled. This hearing is open to the public. Any person who attends will be given the opportunity to comment on the administrative regulation. A transcript of the public comment hearing will not be made unless a written request for a transcript is made and then only at the requestor's expense. If you have a disability for which the Transportation Cabinet needs to provide accommodations, please notify us of your requirements by January 15, 1998. This request does not have to be in writing. If you do not wish to attend the public hearing, you may submit written comments on the administrative regulation. Written comments will be accepted until the close of business on January 23, 1998. 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, 1016 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 firms applying to be certified or recertified as a DBE, MBE, or WBE. Currently, there are 180 firms certified by the Transportation Cabinet. Of these 75 are prequalified under 603 KAR 2:015.

(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 change as a result of the changes to the administrative regulation.

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

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

1. First year following implementation: No effect as a result of the changes to this administrative regulation.

2. Second and subsequent years: No effect as a result of the changes to this administrative regulation.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings: The addition of a committee to review and approve the applications will cost more

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manpower and paperwork for the Transportation Cabinet. However, the resultant scrutiny of the applicants will make the extra effort worthwhile.

1. First year: Same as above.

2. Continuing costs or savings: Same as above.

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements: The meeting minutes for the committee will have to be maintained. Copies of all applications will have to be provided to the committee members.

(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.

(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: N/A

(b) Kentucky: None

(7) Assessment of alternative methods; reasons why alternatives were rejected: The do-nothing alternative was rejected because the program has been criticized for not providing an outside, objective review of the applications for certification as a DBE. Creation of the committee with its broad range of expertise should relieve any concerns about partiality in review of the applications.

(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: N/A

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

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

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

(10) Any additional information or comments:

(11) TIERING: Is tiering applied? Yes. Tiering was applied in that the firms to be prequalified are required to meet different standards if they are prequalifying for different classifications.

### FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 49 Code of Federal Regulations Part 23 contains the federal mandate for this certification program. The authorities for the federal regulation are Section 905 of the Railroad Revitalization and Regulatory Reform Act of 1978; Section 30 of the Airport and Airway Act of 1970, as amended; Section 19 of the Urban Mass Transportation Act of 1964, as amended; Title 23 of the U.S. Code and Title VI of the Federal Rights Act of 1964.

2. State compliance standards. The same as the federal mandate on the certification of DBE, MBE or WBE firms.

3. Minimum or uniform standards contained in the federal mandate. The federal mandate imposes on the state the requirement of setting the process of certification and managing the program. The Transportation Cabinet through this administrative regulation and 600 KAR 4:020 has set reasonable procedures for certification and managing the program including due process hearings. U.S. Department of Transportation has found the procedures to be consistent with the federal mandate.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? The federal mandate does not address how the state is to manage the certification program. Rather, it requires the state to get federal approval of its management

program. The change in the management program has received federal approval and brought Kentucky Transportation Cabinet back into compliance with the mandate.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Not applicable.

### EDUCATION, ARTS, AND HUMANITIES CABINET Kentucky Board of Education Department of Education Bureau for District Support Services (Amendment)

#### 702 KAR 3:110. Document filing dates.

RELATES TO: KRS [156.031;] 156.160, 157.060

STATUTORY AUTHORITY: KRS 156.160

NECESSITY, FUNCTION, AND CONFORMITY: [~~KRS 156.031 requires that administrative regulations relating to statutes amended by the 1990 Kentucky Education Reform Act be reviewed, amended if necessary and resubmitted to the Legislative Research Commission prior to December 30, 1990;~~] KRS 156.160 requires the Kentucky [State] Board of [for Elementary and Secondary] Education to establish a uniform series of financial forms for local school districts, and KRS 157.060 requires local districts to submit annual financial reports. This administrative regulation is necessary to establish forms and dates of filing for Kentucky [State] Board of [for Elementary and Secondary] Education financial archives.

Section 1. The documents which become a part of Kentucky [State] Board of [for Elementary and Secondary] Education archives shall be submitted to the Division of [School District] Finance electronically in the following adopted formats prescribed by the Municipal Information System (MUNIS) and by the following dates annually:

(a) Annual Financial Report (MUNIS Annual Financial Report, dated August, 1997) [(F-55, dated June 30, 1990, and hereby incorporated by reference)], July 25;

(b) Balance Sheet (MUNIS Group Code Balance Sheet, dated August, 1997), July 25; and

(c) Working Budget (MUNIS Working Budget, dated August, 1997) [(F-10, dated July 1, 1990, and hereby incorporated by reference)], September 15.

Section 2. Incorporation by Reference. These forms are incorporated by reference and may be copied or obtained [viewed] at the Department of Education, Capital Plaza Tower, 15th Floor, Monday through Friday, [from] 8 a.m. to 4:30 p.m.

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

Wilmer S. Cody, Commissioner  
Kentucky Department of Education

JOSEPH W. KELLY, Chairman

KEVIN M. NOLAND, Department of Legal Services

APPROVED BY AGENCY: December 10, 1997

FILED WITH LRC: December 11, 1997 at 1 p.m.

PUBLIC HEARING: A public hearing on this proposed administrative regulation shall be held on January 23, 1998, at 10 a.m. in the State Board Room, First Floor, Capital Plaza Tower, 500 Mero Street, Frankfort, Kentucky. Individuals interested in being heard at this meeting shall notify this agency in writing by January 15, 1998, five working days prior to the hearing, of their intent to attend. If no



notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to Mr. Kevin M. Noland, Associate Commissioner, Office of Legal Services, Kentucky Department of Education, First Floor, Capital Plaza Tower, 500 Mero Street, Frankfort, Kentucky 40601, phone (502) 564-4474, fax (502) 564-9321.

#### REGULATORY IMPACT ANALYSIS

Agency Contact: Kyna Koch

- (1) Type and number of entities affected: 176 school districts.
- (2) Direct and indirect costs or saving 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 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: 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 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 occur, explain detrimental effect: This regulation does not relate to the environment or public health.
- (9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping or duplicative: None
  - (a) Necessity of proposed regulation, if in conflict:
  - (b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:
- (10) Any additional information or comments:
- (11) Tiering: Was tiering applied? No. Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it.

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

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

RELATES TO: KRS 158.645, 158.6451, 158.6453, 158.6455, 160.160

STATUTORY AUTHORITY: KRS 156.070, 158.6455

NECESSITY, FUNCTION, AND CONFORMITY: KRS 158.6455 requires the Kentucky Board of Education to promulgate administrative regulations to establish a system of determining successful schools and a system of rewards and sanctions for certified staff in schools and for certified staff who are not assigned to a particular A1 school in a local school district but who are certified staff assigned to the district central office or an A2-A6 school. This administrative regulation establishes procedures for determining school and district rewards, levels of assistance, and sanctions.

Section 1. Definitions. (1) "Accountability cycle 1" means that baseline data come from the 1991-92 data year, and that growth data come from the 1992-93 and 1993-94 years.

(2) "Accountability cycle 2" means that baseline data come from the 1992-93 and 1993-94 years, and that growth data come from the 1994-95 and 1995-96 years.

(3) "Accountability cycle 3" means that baseline data come from the 1994-95 and 1995-96 years, and that growth data come from the 1996-97 and 1997-98 years.

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

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

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

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

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

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

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

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

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

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



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

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

(16) "Performance judgment" is defined in 703 KAR 4:090, Section 1(3).

(17) "School" means an A1 school as defined in 703 KAR 4:080, Section 1(1).

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

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

(20) "Year two (2) accountability index" means the accountability index a school or school district obtains in the last year of an accountability cycle.

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

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

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

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

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

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

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

Section 7. Certified staff in a school or school district shall earn the minimum reward amount if the school or school district's growth accountability index for the accountability cycle exceeds its threshold by one (1) point and if at least ten (10) percent of its novices, on average across the cognitive areas, move to apprentice or higher. Unless the school or district has ten (10) percent or less of its students scoring in the novice range on average during the first two (2) years of the accountability cycle and maintains or reduces this percent in the last two (2) years of the accountability cycle, the novice reduction shall be required in order to receive rewards.

Section 8. Certified staff in a school or school district shall earn the maximum reward amount if the school or school district's growth accountability index for the accountability cycle exceeds its threshold by one (1) point plus the difference between the threshold and the baseline and if at least ten (10) percent of its novices, on average across the cognitive areas, move to apprentice or higher. Unless the school or district has ten (10) percent or less of its students scoring in the novice range on average during the first two (2) years of the accountability cycle and maintains or reduces this percent in the last two (2) years of the accountability cycle, the novice reduction shall be required in order to receive rewards.

Section 9. Fifty-one (51) reward levels are established as follows:

### REWARD LEVELS ONE (1) TO FIFTY-ONE (51)

Reward Level	Reward Criteria	Reward Index Example	Amount
One	One point above threshold	38.00	50% of maximum
Two	One point above threshold plus 2% of difference between threshold and baseline	38.14	51% of maximum
Three	One point above threshold plus 4% of difference between threshold and baseline	38.28	52% of maximum
Four	One point above threshold plus 6% of difference between threshold and baseline	38.42	53% of maximum
Five	One point above threshold plus 8% of difference between threshold and baseline	38.56	54% of maximum
Six	One point above threshold plus 10% of difference between threshold and baseline	38.70	55% of maximum
Seven	One point above threshold plus 12% of difference between threshold and baseline	38.84	56% of maximum
Eight	One point above threshold plus 14% of difference between threshold and baseline	38.98	57% of maximum
Nine	One point above threshold plus 16% of difference between threshold and baseline	39.12	58% of maximum
Ten	One point above threshold plus 18% of	39.26	59% of maximum

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	difference between threshold and baseline		
Eleven	One point above threshold plus 20% of difference between threshold and baseline	39.40	60% of maximum
Twelve	One point above threshold plus 22% of difference between threshold and baseline	39.54	61% of maximum
Thirteen	One point above threshold plus 24% of difference between threshold and baseline	39.68	62% of maximum
Fourteen	One point above threshold plus 26% of difference between threshold and baseline	39.82	63% of maximum
Fifteen	One point above threshold plus 28% of difference between threshold and baseline	39.96	64% of maximum
Sixteen	One point above threshold plus 30% of difference between threshold and baseline	40.10	65% of maximum
Seventeen	One point above threshold plus 32% of difference between threshold and baseline	40.24	66% of maximum
Eighteen	One point above threshold plus 34% of difference between threshold and baseline	40.38	67% of maximum
Nineteen	One point above threshold plus 36% of difference between threshold and baseline	40.52	68% of maximum
Twenty	One point above threshold plus 38% of difference between threshold and baseline	40.66	69% of maximum
Twenty-one	One point above threshold plus 40% of difference between threshold and baseline	40.80	70% of maximum
Twenty-two	One point above threshold plus 42% of difference between threshold and baseline	40.94	71% of maximum
Twenty-three	One point above threshold plus 44% of difference between threshold and baseline	41.08	72% of maximum
Twenty-four	One point above threshold plus 46% of difference between threshold and baseline	41.22	73% of maximum
Twenty-five	One point above threshold plus 48% of difference between threshold and baseline	41.36	74% of maximum
Twenty-six	One point above threshold plus 50% of difference between threshold and baseline	41.50	75% of maximum
Twenty-seven	One point above threshold plus 52% of difference between threshold and baseline	41.64	76% of maximum
Twenty-eight	One point above threshold plus 54% of difference between threshold and baseline	41.78	77% of maximum
Twenty-nine	One point above threshold plus 56% of difference between threshold and baseline	41.92	78% of maximum
Thirty	One point above threshold plus 58% of difference between threshold and baseline	42.06	79% of maximum
Thirty-one	One point above threshold plus 60% of difference between threshold and baseline	42.20	80% of maximum
Thirty-two	One point above threshold plus 62% of difference between threshold and baseline	42.34	81% of maximum
Thirty-three	One point above threshold plus 64% of difference between threshold and baseline	42.48	82% of maximum
Thirty-four	One point above threshold plus 66% of difference between threshold and baseline	42.62	83% of maximum
Thirty-five	One point above threshold plus 68% of difference between threshold and baseline	42.76	84% of maximum
Thirty-six	One point above threshold plus 70% of difference between threshold and baseline	42.90	85% of maximum
Thirty-seven	One point above threshold plus 72% of difference between threshold and baseline	43.04	86% of maximum
Thirty-eight	One point above threshold plus 74% of difference between threshold and baseline	43.18	87% of maximum
Thirty-nine	One point above threshold plus 76% of difference between threshold and baseline	43.32	88% of maximum
Forty	One point above threshold plus 78% of difference between threshold and baseline	43.46	89% of maximum
Forty-one	One point above threshold plus 80% of difference between threshold and baseline	43.60	90% of maximum
Forty-two	One point above threshold plus 82% of difference between threshold and baseline	43.74	91% of maximum
Forty-three	One point above threshold plus 84% of difference between threshold and baseline	43.88	92% of maximum

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Forty-four	One point above threshold plus 86% of difference between threshold and baseline	44.02	93% of maximum
Forty-five	One point above threshold plus 88% of difference between threshold and baseline	44.16	94% of maximum
Forty-six	One point above threshold plus 90% of difference between threshold and baseline	44.30	95% of maximum
Forty-seven	One point above threshold plus 92% of difference between threshold and baseline	44.44	96% of maximum
Forty-eight	One point above threshold plus 94% of difference between threshold and baseline	44.58	97% of maximum
Forty-nine	One point above threshold plus 96% of difference between threshold and baseline	44.72	98% of maximum
Fifty	One point above threshold plus 98% of difference between threshold and baseline	44.86	99% of maximum
Fifty-one	One point above threshold plus 100% of difference between threshold and baseline	45.00	100% of maximum

Section 10. Sanctions shall be applied to schools and school districts pursuant to KRS 158.6455(3)-(7) and this administrative regulation.

Section 11. Reward Amounts. (1) The maximum reward amount shall be ten (10) percent of the average (mean) salary of the certified personnel in the five (5) highest paying public school districts in Kentucky. This average shall be weighted by the number of certified personnel in each of these five (5) districts. The total amount of rewards to be distributed to schools and school districts earning rewards shall not exceed 1.75 percent of the total amount of total funds paid to certificated personnel within Kentucky's public schools during the last year of the accountability cycle. If the reward levels described in this section will result in the allocation of funds that exceed this amount, the reward for each school or school district shall be reduced proportionately.

(2) For accountability cycle II, an additional amount of rewards shall be distributed to accommodate data corrections identified after June 1, 1997. These additional reward amounts shall be calculated in accordance with this administrative regulation.

Section 12. If as a result of a change in service area boundaries or local policies affecting student population served by a school, less than eighty (80) percent of a school's student population at its accountability grades is stable, the school shall be considered a reconfigured school. To determine if eighty (80) percent of the population is stable, the number of students in the stable population shall be divided by the sum of that number, plus the lost population, plus the gained population. If the result is less than eight-tenths (.8), the school shall be considered a reconfigured school.

Section 13. A school that is considered a reconfigured school in the first year of an accountability cycle shall be treated as if not reconfigured, with the exception that the noncognitive index for the district from the previous year at the corresponding level (elementary, middle, or high school) shall be substituted for that school's noncognitive data, beginning with accountability cycle 3.

Section 14. (1) A school that is considered a reconfigured school in the second year of the accountability cycle shall be offered the option of having its baseline calculated from the second year of the accountability cycle, as opposed to the normal weighted average of the first two (2) years of the cycle, with the noncognitive index for the district from the previous year at the corresponding level (elementary, middle, or high school) substituted for that school's noncognitive data beginning with accountability cycle 3.

(2) A school that is considered a reconfigured school in the second year of an accountability cycle shall have the option of applying to itself the performance judgment that would have applied to the district at that level (elementary, middle, or high school), if

separate decisions were to be applied at the district level.

Section 15. A school that is considered a reconfigured school in the third or fourth year of an accountability cycle shall have the performance judgment that would have applied to the district at that level (elementary, middle, or high school), if separate decisions were to be applied at the district level.

Section 16. A reconfigured school that has contained more than one (1) level (elementary, middle, and high school) and is reconfigured by removing an entire level of accountability grades may request that the portion of the school remaining stable be considered normally within the accountability system using its established historical data.

Section 17. A school in transition because of a new building being built or a new policy affecting population served and being phased in may request that the Department of Education establish data to maintain the continuity of accountability data if the request does not require the tracking of individual student data. This request shall require the approval of each affected school council (or the principal, if a school is not required to have a council) and the superintendent of the district.

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

Wilmer S. Cody, Commissioner  
Kentucky Department of Education

JOSEPH W. KELLY, Chairman  
KEVIN M. NOLAND, Department of Legal Services  
APPROVED BY AGENCY: December 10, 1997  
FILED WITH LRC: December 11, 1997 at 1 p.m.

PUBLIC HEARING: A public hearing on this proposed administrative regulation shall be held on January 23, 1998, at 10 a.m. in the State Board Room, First Floor, Capital Plaza Tower, 500 Mero Street, Frankfort, Kentucky. Individuals interested in being heard at this meeting shall notify this agency in writing by January 15, 1998, five working days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to be heard

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at the public hearing or written comments on the proposed administrative regulation to Mr. Kevin M. Noland, Associate Commissioner, Office of Legal Services, Kentucky Department of Education, First Floor, Capital Plaza Tower, 500 Mero Street, Frankfort, Kentucky 40601, phone (502) 564-4474, fax (502) 564-9321.

### REGULATORY IMPACT ANALYSIS

Agency Contact: C. Scott Trimble

- (1) Type and number of entities affected: 176 school districts.
- (2) Direct and indirect costs or savings on the:
  - (a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: None
  - (b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: None
  - (c) Compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition) for the:
    1. First year following implementation: None
    2. Second and subsequent years: None
  - (3) Effects promulgating administrative body:
    - (a) Direct and indirect costs or savings:
      1. First year: None
      2. Continuing costs or savings: None
    3. Additional factors increasing or decreasing costs: None
    - (b) Reporting and paperwork requirements: None
  - (4) Assessment of anticipated effect on state and local revenues: None
  - (5) Source of revenue to be used for implementation and enforcement of administrative regulation: None
  - (6) To the extent available from the public comments received, the economic impact, including effects of economic activities arising from administrative regulation, on:
    - (a) Geographical area in which administrative regulation will be implemented: None
    - (b) Kentucky: None
  - (7) Assessment of alternative methods; reasons why alternatives were rejected: None
  - (8) Assessment of expected benefits:
    - (a) Identify effects on public health and environmental welfare of the geographical areas in which implemented and on Kentucky: None
    - (b) State whether a detrimental effect on environment and public health would result if not implemented: None
    - (c) If detrimental effect would result, explain detrimental effect: None
  - (9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication:
    - (a) Necessity of proposed regulation if in conflict: None
    - (b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: None
  - (10) Any additional information or comments: None
  - (11) TIERING: Is tiering applied? No. Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all entities regulated by it.

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

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

RELATES TO: KRS 158.645, 158.6451, 158.6453, 158.6455  
STATUTORY AUTHORITY: KRS 156.070, 158.6455  
NECESSITY, FUNCTION, AND CONFORMITY: KRS 158.6455 requires the Kentucky Board of Education to promulgate administrative regulations to establish a system of determining successful schools and a system of rewards and sanctions for certified staff in schools and districts. This administrative regulation establishes a Code of Ethics for appropriate testing practices for state required tests.

Section 1. The "Code of Ethics for Appropriate Testing Practices for School and District Personnel", dated October, 1997 [August, 1996], is hereby incorporated by reference, and may be inspected and copied at the Department of Education, Office of Curriculum, Assessment, and Accountability, 18th Floor, Capital Plaza Tower, 500 Mero Street, Frankfort, Kentucky, Monday through Friday, 8 a.m. through 4:30 p.m.

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

Wilmer S. Cody, Commissioner  
Kentucky Department of Education

JOSEPH W. KELLY, Chairman  
KEVIN M. NOLAND, Department of Legal Services  
APPROVED BY AGENCY: December 10, 1997  
FILED WITH LRC: December 11, 1997 at 1 p.m.

PUBLIC HEARING: A public hearing on this proposed administrative regulation shall be held on January 23, 1998, at 10 a.m. in the State Board Room, First Floor, Capital Plaza Tower, 500 Mero Street, Frankfort, Kentucky. Individuals interested in being heard at this meeting shall notify this agency in writing by January 15, 1998, five working days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to Mr. Kevin M. Noland, Associate Commissioner, Office of Legal Services, Kentucky Department of Education, First Floor, Capital Plaza Tower, 500 Mero Street, Frankfort, Kentucky 40601, phone (502) 564-4474, fax (502) 564-9321.

### REGULATORY IMPACT ANALYSIS

Agency Contact: C. Scott Trimble

- (1) Type and number of entities affected: 176 school districts.
- (2) Direct and indirect costs or savings on the:
  - (a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: None
  - (b) Cost of doing business in the geographical area in which the

administrative regulation will be implemented, to the extent available from the public comments received: None

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

1. First year following implementation: None

2. Second and subsequent years: None

(3) Effects promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: None

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: None

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

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: None

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

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

(b) Kentucky: None

(7) Assessment of alternative methods; reasons why alternatives were rejected: None

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical areas in which implemented and on Kentucky: None

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

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

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication:

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

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

(10) Any additional information or comments: None

(11) TIERING: Is tiering applied? No. Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all entities regulated by it.

#### LABOR CABINET

#### Department of Workers' Claims (Amendment)

#### 803 KAR 25.015 Issuance of citations and procedure in workers' compensation enforcement hearings.

RELATES TO: KRS Chapter [Chapters] 13B, 342.990

STATUTORY AUTHORITY: KRS 13B.090(3), 13B.170, 342.260, 342.990(5)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 13B.170 authorizes administrative agencies to promulgate administrative regulations necessary to carry out the provisions of KRS Chapter 13B governing [concerning] administrative hearings. KRS 342.260 requires the commissioner of the Department of Workers' Claims to promulgate administrative regulations necessary to carry on the work of the department and administrative law judges. KRS 13B.070(3) requires administrative agencies to promulgate administrative regulations to set forth specific procedures to facilitate informal settlement of matters. KRS 342.260(3) requires processes and procedures to be as summary and simple as reasonably possible. [Although hearings conducted under KRS Chapter 342 for the purposes of determining workers' compensation benefits and the adjustment of claims have been exempted from the application of KRS Chapter 13B pursuant to

KRS 13B.020(3)(e)1a, enforcement hearings have not been exempted.] This administrative regulation establishes procedures for enforcement hearings under KRS Chapter 342.

Section 1. Definitions. (1) "Administrative law judge" means an individual appointed pursuant to KRS 342.230(3).

(2) The definition of "hearing officer" shall be governed by KRS 13B.010(7).

(3) "Working day" means a day that falls on a Monday through Friday, with the exception of a state or federal holiday, or other day on which the Department of Workers' Claims is officially closed for business.

Section 2. (1) Prior to issuing a notice of citation and penalty, the commissioner may issue a show cause order to a person who has allegedly violated KRS Chapter 342 to appear at an informal conference to show cause why a citation should not be issued.

(2) The show cause order shall include the following:

(a) Detailed explanation of alleged violations;

(b) Statutes that were allegedly violated; and

(c) Date, time and place of show cause informal conference.

(d) If the commissioner is not presiding over the informal conference, the name of the presiding hearing officer.

(3) The person issued a show cause order shall be present on the specified date, time and place and show cause why a citation should not be issued.

(4) The commissioner or hearing officer shall gather relevant evidence concerning the alleged violations of KRS Chapter 342 from a representative of the Department of Workers' Claims and the person to whom the show cause order was issued.

(5) If the commissioner is presiding over the informal conference and the parties wish to resolve the matter informally without the necessity of a citation and a formal hearing, an agreement may be entered.

(6) If a hearing officer is presiding over the informal conference and the parties wish to resolve the matter informally without the necessity of a citation and formal hearing, a recommended agreed order shall be submitted to the commissioner for approval.

(7) If the parties do not resolve the matter by agreement and a hearing officer presides over the informal conference, the hearing officer shall issue a recommended order which includes his findings of fact, conclusions of law, and recommended disposition to the commissioner as to whether a citation should be issued.

(8) The commissioner shall review the evidence and if applicable the recommended order and either:

(a) Issue a citation for a violation of KRS Chapter 342;

(b) Issue a statement that no citation is warranted; or

(c) Request additional evidence for further review.

Section 3. Issuance of Citation and Notice of Contest. (1) If the commissioner initiates enforcement of a civil penalty pursuant to KRS 342.990, the "notice of citation and penalty" shall be delivered to the appropriate party by certified mail or hand-delivered by authorized personnel of the Department of Workers' Claims.

(2) The party to whom a notice of citation and penalty has been delivered may contest the citation and penalty by filing a written "notice of contest" with the commissioner within fifteen (15) working days of the receipt of the notice of citation and penalty.

(3) A notice of contest shall state the following:

(a) Grounds of the contest; and

(b) Whether the fact of a violation or level of the civil penalty, or both, is being contested.

(4) If a notice of contest is not timely filed, the citation shall be deemed final and the penalty due for payment.

Section 4. [3:] Assignment to Administrative Law Judge; Prehearing Procedure. (1) As soon as practicable upon receipt of a notice of

contest, the commissioner shall direct the chief administrative law judge to assign the matter to an administrative law judge for a hearing [in accordance with KRS Chapter 13B].

(2) In accordance with KRS 342.990(5), ~~[a joint stipulation of uncontested facts and issues shall be filed by the parties with]~~ the administrative law judge may require parties to file a stipulation of uncontested facts not later than five (5) working days prior to the scheduled hearing date.

(3) The administrative law judge may require each party to [shall also] file a [the] witness and exhibit list described in KRS 13B.090(3) [with the administrative law judge] not later than five (5) working days prior to the scheduled hearing date with the administrative law judge and all other parties [; and shall serve copies upon the other parties].

Section 5. [4:] Formal Hearing. (1) An administrative law judge shall preside over the conduct of the formal hearing and shall regulate the course of the proceeding in accordance with KRS Chapter 13B and any prehearing order issued by the administrative law judge.

(2) A party may submit proof at the formal hearing through the use of depositions, if the other parties received timely notice and had the opportunity to attend.

Section 6. [5:] Orders. (1) The administrative law judge shall determine if the commissioner's citation was properly assessed and issue a final order in accordance with KRS 342.990(5) and 13B.120. [submit a recommended order in accordance with KRS 13B.110.]

(2) The administrative law judge's final order shall be appealable to the Franklin Circuit Court in accordance with KRS 342.990(6) and 13B.140. [commissioner shall issue a final order in accordance with KRS 13B.120:]

Section 7. [6:] Appeal/Payment of Fine. (1) If a party does not file a petition of appeal pursuant to KRS 342.990 and 13B.140, the order shall be deemed final and the civil penalty assessed in the order shall be due.

(2) A civil penalty that is not appealed to the Franklin Circuit Court shall be paid by certified check or money order payable to the Kentucky State Treasurer. The fine shall be mailed to the Department of Workers' Claims, 1270 Louisville Road, Frankfort, Kentucky 40601 ATTN: Enforcement Docket.

WALTER W. TURNER, Commissioner  
STEPHEN B. COX, General Counsel

APPROVED BY AGENCY: December 15, 1997

FILED WITH LRC: December 15, 1997 at 11 a.m.

PUBLIC HEARING: A public hearing on the administrative regulation shall be held on January 21, 1998, 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 January 13, 1998, 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 January 21, 1998, 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: Any employer or insurance carrier in Kentucky in violation of the provisions of KRS Chapter 342 that are subject to citation.

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

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: No public comments were received. The department does not anticipate an effect on cost of living and employment.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: No public comments were received. The department does not anticipate an effect on cost of doing business.

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

1. First year following implementation: All of the requirements of the regulation are currently being done at the department; therefore, costs should not be affected.

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: Same as above.

3. Additional factors increasing or decreasing costs: None

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

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

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: The department's normal budget.

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

(a) Geographical area in which administrative regulation will be implemented: No public comments were received, but the department does not anticipate an economic impact.

(b) Kentucky: No public comments were received, but the department doesn't anticipate an economic impact.

(7) Assessment of alternative methods; reasons why alternatives were rejected: The department has begun show cause proceedings, and the informal conference to show cause has proven to be an effective tool to issue citations or resolve disputes. Also, the department must amend the regulation to reflect the statutory duty of the administrative law judge in an enforcement proceeding.

(8) Assessment of expected benefits: Procedures for show cause hearing will be set out in a regulation. Regulation will now be consistent with statutory authority given to administrative law judges.

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: None

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

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

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

(a) Necessity of proposed regulation if in conflict:

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

(10) Any additional information or comments: None

(11) Tiering: Tiering is not applied because this regulation is applied equally to all those issued citations or show cause orders.

**CABINET FOR HEALTH SERVICES**  
**Department for Public Health**  
**Division for Public Health Protection and Safety**  
**(Amendment)**

**902 KAR 50:031. Standards for producer eligibility for manufacturing grade milk.**

RELATES TO: KRS 217.005 to 217.215, 217C.010 to 217C.990  
 STATUTORY AUTHORITY: KRS 194.050, 211.090, 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 places the Department for Public Health and its programs under the Cabinet for Health Services. KRS 217C.040 authorizes the Cabinet for Health Services [Human Resources] to regulate milk for manufacturing purposes. This administrative regulation sets uniform standards for the production, handling, examination, grading, and sale of manufacturing milk and milk products.

**Section 1. Manufacturing Milk Producer Permits and Inspections.**

(1) Prior to the issuance of any permit to a manufacturing milk producer, the cabinet shall conduct an inspection of the producer's facilities. If the producer is not in substantial compliance with 902 KAR 50:032, a permit shall not be issued, the violation shall be given in writing, and the violation shall be posted in a visible place at the dairy farm. A permit may be issued if the inspection reveals substantial compliance with 902 KAR 50:032.

(2) All producers shall possess a valid permit prior to beginning shipment of milk.

(3) Permits shall not be transferable with respect to persons or locations and shall remain valid unless suspended or revoked by the cabinet.

**Section 2. Producer Eligibility Requirements.** (1) New producers. A test for bacterial quality and sediment shall be made on the first shipment of milk or after a period of nonshipment for more than ten (10) days. Subsequent tests of milk shall meet the requirements for frequency of testing and producer compliance outlined in Section 3(2)(a) of this administrative regulation.

(2) Transfer producers. Prior to collection and acceptance of milk from a transfer producer, the receiving company shall review the official status of the producer with the cabinet. The existing status of a transfer producer with regard to his farm sanitation and milk quality record shall be in effect with the receiving company. A producer whose permit has been suspended by the cabinet is not eligible to transfer until the permit has been reinstated, unless approved by the cabinet. The receiving company shall sample each transfer producer's milk within ten (10) days after receipt of the producer's first shipment of milk. Subsequent sample results shall be in accordance with the provisions of Section 3 of this administrative regulation.

(3) Any Grade A producer whose permit has been suspended shall be allowed to sell milk as a degraded producer to a manufacturing milk company if the Grade A violative sample is within manufacturing standards set forth in this administrative regulation. A degraded producer shall not sell milk to a manufacturing milk company for a period in excess of ten (10) days without applying for and obtaining a milk for manufacturing producer permit.

(4) Grade A surplus milk shall be tested or screened by the manufacturing milk company upon arrival to assure that the milk is in compliance with this administrative regulation.

**Section 3. Quality Requirements for Raw Milk.** (1) Basis. Classification of raw milk for manufacturing purposes shall be based on organoleptic examination (sight and odor), bacterial estimate,

quality test for sediment content, abnormal milk, and drug residue testing.

(a) Sight and odor. Flavor and odor of acceptable raw milk shall be fresh and sweet. Milk shall be free from feed and other off-flavors and off-odors that would adversely affect the finished product. Milk shall be observed and shall not show an abnormal condition (ropy, bloody, or mastitic).

(b) Bacterial classification. Bacterial limit shall be 500,000/ml [1,000,000/ml] by standard plate count, plate loop method, or direct microscopic bacterial determination methods.

Bacterial Estimate Classification	Direct Microscopic Clump Count, Standard Plate Count, or Plate Loop Method
No. 1 Satisfactory	Not Over 500,000/ml.
No. 2 Satisfactory	Not Over 1,000,000/ml.
Undergrade	Over 1,000,000/ml.

**(c) Sediment content classification.**

Sediment Content Classification	Milk in Cans (off-the-bottom method) 1 1/8 inch diameter disc	Milk in Farm Bulk Tanks sample 0.40 inch diameter disc
No. 1 Acceptable equivalent	Not to exceed 0.50 mg.	Not to exceed 0.50 mg.
No. 2 Acceptable equivalent	Not to exceed 1.50 mg.	Not to exceed 1.50 mg.
No. 3 Probational equivalent	Not to exceed 2.50 mg.	Not to exceed 2.50 mg.
No. 4 Reject equivalent	Over 2.50 mg.	Over 2.50 mg.

(d) Abnormal milk. Somatic cell count limit shall not exceed 750,000/ml [1,000,000/ml].

(e) Drug residue classification. Test results shall be negative on commingled load or individual producer test as determined in 902 KAR 50:033, Section 1(5).

(2) Examinations and tests. Examinations and tests to detect excessive water, chemical contaminants, or other adulterants shall be conducted by the cabinet as deemed necessary.

**(a) Frequency of tests.**

1. Bacterial estimate: monthly.

2. Sediment content: monthly.

3. Abnormal milk: four (4) times each six (6) months.

4. Drug residues: all marketed manufacturing grade milk shall be sampled and tested for drug residues prior to processing.

5. Excessive water, chemical contaminants, or other adulterants: as deemed necessary by the cabinet.

(b) Methods of testing. Methods for determining quality test shall be those described in the "Standard Methods for the Examination of Dairy Products", 16th Edition, 1992, published by the American Public Health Association, and the "Official Methods of Analysis", 15th Edition, 1990, Volumes I and II, published by the Association of Official Analytical Chemists, Inc., unless otherwise approved by the cabinet, and shall be performed in an official laboratory or an officially designated laboratory. Copies of the "Standard Methods for the Examination of Dairy Products", revised 1992, incorporated by reference, and the "Official Methods of Analysis", revised 1990, are



incorporated by reference, are available for inspection and copying, 8 a.m. until 4:30 p.m., Monday through Friday, at the Office of the Commissioner, Department for Public Health [Services,] 275 East Main Street, Frankfort, Kentucky 40621.

Section 4. Personnel Health and Cleanliness. No person affected with any disease in a communicable form, or while a carrier of a communicable disease, shall work at any dairy farm in any capacity which brings him in contact with the production, handling, storage, and transportation of milk for manufacturing purposes, containers, equipment, and utensils. No milk producer shall employ in any capacity any person suspected of having any disease in a communicable form, or of being a carrier of a communicable disease. Any milk producer upon whose dairy farm any communicable disease occurs or who suspects that any employee has contacted any disease in a communicable form, or has become a carrier of a disease in a communicable form, shall notify the cabinet immediately. All persons engaged in the milking operation shall wear clean outer garments. The milker's hands shall be kept clean.

Section 5. Procedure If Infection is Suspected. If reasonable cause exists to suspect the possibility of transmission of infection from any person concerned with the handling of milk for manufacturing purposes, the cabinet shall require the following measures:

- (1) Immediate exclusion of that person from milk handling;
- (2) Immediate exclusion of the milk supply concerned; and
- (3) Medical and bacteriological examination of the person and body discharges.

Section 6. Prohibited Acts Relating to Manufacturing Milk Producers. The following acts are prohibited:

- (1) No person shall produce, sell, or offer for sale any manufacturing milk or milk products without a permit as provided in 902 KAR 50:032, 902 KAR 50:033, and this administrative regulation.
- (2) No person shall produce, provide, sell, offer, or expose for sale, or have in possession with intent to sell, any manufacturing milk or milk product which is adulterated, misbranded, or in violation of 902 KAR 50:032, 902 KAR 50:033, or this administrative regulation.
- (3) No person shall prohibit entry of inspection, taking of a sample, or access to records or evidence to a duly authorized agent of the cabinet.
- (4) No person shall remove, destroy, alter, forge, or falsely represent, without proper authority, any tag, stamp, mark, or label used by the cabinet.
- (5) No person shall remove or dispose of a detained or quarantined article without proper authority from the cabinet.

Section 7. Survey Procedures. A survey shall be conducted at least one (1) time every two (2) years on all groups of producers assigned to milk companies, producer associations, or producer groups. If the survey indicates an unsatisfactory rating, the company, association, or group shall be notified and given a reasonable period of time, not to exceed six (6) months, to attain a satisfactory rating. If upon resurvey, the producer's rating is not an acceptable level, the producer shipping milk to the company shall be inspected by the cabinet to determine individual compliance. A producer in violation may have his permit suspended in accordance with 902 KAR 50:032, 902 KAR 50:033, and this administrative regulation. No producer shall be allowed to transfer to another company during the resurvey period unless authorized by the cabinet.

RICE C. LEACH, MD, Commissioner  
JOHN H. MORSE, Secretary  
JOHN H. WALKER, Attorney

APPROVED BY AGENCY: November 25, 1997

FILED WITH LRC: November 26, 1997 at 11 a.m.

PUBLIC HEARING: A public hearing on this regulation will be

held January 30, 1998, at 9 a.m., in the Cabinet for Health Services Auditorium, 1st floor, Department for Health Services Building, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending shall notify this agency in writing by January 23, 1998. If no notice of intent to attend the hearing is received by that date the hearing may be canceled. The hearing is open to the public. Any person who attends will be given 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, Office of the General Counsel, Cabinet for Health Services, 275 East Main Street - 4 West, Frankfort, Kentucky 40621, (502) 564-7905, FAX: (502) 564-7543.

#### REGULATORY IMPACT ANALYSIS

Agency Contact Person:

(1) Type and number of entities affected: All manufacturing grade producers.

(2) Direct and indirect costs or savings to those affected: NA

(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: NA

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comment received: NA

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

1. First year following implementation: NA

2. Second and subsequent years: NA

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: NA

2. Continuing costs or savings: NA

3. Additional factors increasing or decreasing costs: NA

(b) Reporting and paperwork requirements:

(4) Assessment of anticipated effect on state and local revenues:

NA

(5) Source if revenue to be used for implementation and enforcement of administrative regulation: NA

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

(a) Geographical area in which administrative regulation will be implemented: NA

(b) Kentucky: NA

(7) Assessment of alternative methods; reasons why alternatives were rejected: NA

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: Safer milk supply for the citizens of the Commonwealth.

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

(c) If detrimental effect would result, explain detrimental effect: NA

(9) Identify any statute, administrative regulation or governmental policy which may be in conflict, overlapping, or duplication:

(a) Necessity of proposed regulation if in conflict: NA

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

(10) Any additional information or comments:

(11) TIERING: Is tiering applied? Yes. Affects only manufacturing grade milk producers.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. Sub Part A, Federal Register, Sampling State Enabling Act.
2. State compliance standards. 902 KAR 50:031, 902 KAR 50:032 and 902 KAR 50:033.
3. Minimum or uniform standards contained in the federal mandate. Bacterial counts lowered from 1 million/ml to 500,000/ml; and somatic cell counts lowered from 1 million/ml to 750,000/ml.
4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? Brings milk safety regulations into compliance with USDA requirements.
5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements: NA

**CABINET FOR HEALTH SERVICES**  
**Department for Public Health**  
**Division for Public Health Protection and Safety**  
**(Amendment)**

**902 KAR 50:032. Standards for farm requirements for manufacturing grade milk.**

RELATES TO: KRS 217.005 to 217.215, 217C.010 to 217C.990  
 STATUTORY AUTHORITY: KRS 194.050, 211.090

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 places the Department for Public Health and its programs under the Cabinet for Health Services. KRS 217C.040 authorizes the Cabinet for Health Services [Human Resources] to regulate milk for manufacturing purposes. This administrative regulation sets uniform standards for herd health; the production, handling, and sale of manufacturing milk and milk products; and, construction and inspection of dairy farms.

Section 1. Farm Requirements for Milk for Manufacturing. (1) Health of herd.

(a) General health. All animals in the herd shall be maintained in a healthy condition.

(b) Tuberculin test. The herd shall be located in an area within the state which meets the requirements of a modified accredited area in which not more than one-half (1/2) of one (1) percent of the cattle have been found to be infected with tuberculosis. This requirement is in accordance with the provisions of the "Bovine Tuberculosis Eradication, Uniform Methods and Rules", February 3, 1989, incorporated by reference, for establishing and maintaining tuberculosis-free herds of cattle and modified accredited areas approved by the Animal and Plant Health Inspection Service, Veterinary Services, U.S. Department of Agriculture. If the herd is not located in a modified accredited area, it shall be tested annually under the jurisdiction of the program. Additions to the herd shall be from a modified accredited area or from herds meeting the requirements of this administrative regulation. Copies of the "Bovine Tuberculosis Eradication, Uniform Methods and Rules" are available for inspection and copying, 8 a.m. until 4:30 p.m., Monday through Friday, at the Office of the Commissioner for Public Health [Health Services], 275 East Main Street, Frankfort, Kentucky 40621. This publication may also be obtained from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C., 20402.

(c) Brucellosis test. The herd shall be located in an area within the state in which the percentage of cattle affected with brucellosis does not exceed one (1) percent, and the percentage of herds in which brucellosis is present does not exceed five (5) percent. This

requirement is in accordance with provisions of the "Brucellosis Eradication, Uniform Methods and Rules", May 6, 1992, incorporated by reference, for establishing and maintaining certified brucellosis-free areas approved by the Animal and Plant Health Inspection Service, Veterinary Services, U.S. Department of Agriculture. If the herd is located in an area that does not meet these requirements, the herd shall be blood-tested annually or milk-ring-tested semiannually. Additions to the herd shall be from herds meeting the requirements of this administrative regulation. Copies of the "Brucellosis Eradication, Uniform Methods and Rules" are available for inspection and copying, 8 a.m. until 4:30 p.m., Monday through Friday, at the Office of the Commissioner for Public Health [Health Services], 275 East Main Street, Frankfort, Kentucky 40621. This publication may also be obtained from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C., 20402.

(2) Milking procedures. Milking shall be done in an approved milking barn, stable, or parlor under relatively dust free conditions.

(a) The udders, flanks, and teats of all milking cows shall be free of dirt and dust at time of milking as far as is practicable.

(b) Cows which secrete abnormal milk shall be milked last or with separate equipment. This milk shall be excluded from the supply, and shall be prohibited from sale under this administrative regulation.

(3) Milking barn or milking area. An approved milking area shall be provided to permit normal sanitary milking operations.

(a) Work areas shall have a minimum of ten (10) foot candles of light properly distributed for both day and night milking.

(b) The milking area shall be well ventilated to minimize odors and prevent excessive condensation.

(c) Floors and gutters shall be kept clean, in good repair, graded to drain, and constructed of concrete or other impervious materials.

(d) No swine or fowl shall be permitted in the milking area.

(e) Bedding shall be permitted in the milking area if kept clean and manure is removed daily. Bedding shall be relatively dust free.

(f) The milk area ceiling shall be dust tight to prevent the entry of dust from feed stored overhead.

(g) Walls and ceilings shall be kept clean and in good repair. It is recommended that the milking area be completely enclosed. If clean, orderly, dust free milking operations can be conducted, the requirements of the walls may be waived.

(h) Feed shall be stored in a manner not to increase the dust content of the air or attract flies in the milking area.

(i) The milking area floor shall be kept clean and the manure removed daily.

(j) Outside surfaces of pipeline systems located in the milking area shall be kept clean.

(k) Milk stools, surcingles, and antikickers shall be kept clean and stored above the floor.

(4) Cowyard and cattle housing area. The cowyard and cattle housing area shall be constructed to be well drained and relatively free of organic waste.

(a) The cowyard shall be graded to drain as well as local conditions will permit.

(b) Cowyards which are muddy due to recent rains shall not be considered in violation of this section.

(c) The cattle housing area shall be free of excessive manure, soiled bedding, and waste material to prevent the soiling of cows' udders.

(d) All manure removed from the milking area shall be stored to prevent access of cows to the accumulation. Manure shall be stored to minimize fly breeding.

(5) Milkhouse or milkroom. There shall be a conveniently located milkhouse or milkroom in which the cooling, handling, and storing of milk; and the washing, sanitizing, and storing of equipment and utensils shall be done. Milking areas with milkhouse and milkroom facilities combined in an operation that have been given approval prior to the effective date of this administrative regulation, will be acceptable for as long as the combined facility is operated in a sanitary

manner.

(a) The floor shall be constructed of concrete and well drained.

(b) The walls and ceilings shall be constructed of relatively smooth, easily cleanable material. A light colored material is recommended.

(c) A drain through the floor or wall shall be provided. The drain shall not be located under the can cooler or bulk tank. The drain may discharge to the surface of the ground if waste from the drain does not pool or cause an insect breeding problem.

(d) The milkhous space shall be large enough to meet the following requirements:

1. Walkways and working areas shall be a minimum of thirty (30) inches wide;

2. The bulk tank shall be kept a minimum of eighteen (18) inches from the walls on all sides, except tanks that extend through the wall; and

3. There shall be a minimum of six (6) inches between the lowest point of the bulk tank and the floor.

(e) Artificial light shall be provided with a minimum 100 watts capacity. The light fixture shall not be located over the bulk tank. Flood lights are recommended near the ends of the bulk tank.

(f) Ventilation shall be sufficient to prevent odors and condensation.

(g) The milkhous shall be kept clean and free from unnecessary articles and used only for purposes permitted by the cabinet. Only insecticides and rodenticides approved for use in the milkhous shall be stored in the milkhous. Insecticides and rodenticides shall be stored to prevent contamination of milk, milking equipment, sinks, or cleaning supplies.

(h) All outer openings shall be screened or protected against the entrance of insects and rodents. Outer doors shall open outward and be self-closing, except doors between the milkhous and milking area may open either way or both ways and shall be self-closing. If during the winter months a screen door is taken down, the milkhous door may open inward if it is self-closing. Bulk tank installations shall have an approved hose port properly constructed through the outer wall for milk pickup operations.

(i) Running water under pressure shall be provided. Water heating facilities conveniently available to supply hot water to the milkhous shall be provided for all bulk tank installations. A supply of water shall be available to the milkhous for all can shippers.

(j) A two (2) compartment wash and rinse vat shall be provided; if milking equipment is cleaned in place, a single compartment wash vat will be acceptable.

(k) A concrete slab at least four (4) feet by four (4) feet shall be located outside the milkhous under the hose port.

(l) The milkhous shall be supplied with approved brushes, cleaners, and sanitizers to properly clean and sanitize equipment and utensils.

(m) If approval is given by the cabinet, the can cooler may be stored in a suitable place away from the milkhous in order to be easily accessible to the can hauler.

(6) Utensils and equipment. Utensils, milk cans, milking machines (including pipeline systems), and other equipment used in the handling of milk shall be maintained in good condition. Milk equipment shall be free from rust, open seams, milkstone, or any unsanitary condition. Milk equipment shall be washed, rinsed, and drained after each milking, stored in suitable facilities, and sanitized immediately before use. All farm bulk tanks installed after the effective date of this administrative regulation shall meet "3-A Sanitary Standards", for construction and shall be installed in accordance with this administrative regulation. Single service articles shall be properly stored and shall not be reused. "3-A Sanitary Standards", revised May 1993, is incorporated by reference, and a copy is available for inspection and copying, 8 a.m. until 4:30 p.m., Monday through Friday, at the Office of the Commissioner, Department for Health Services, 275 East Main Street, Frankfort, Kentucky 40621.

(a) Utensil - construction.

1. All multiuse containers, utensils, pails, and pipelines shall be constructed of smooth, heavy-gauge material, with a noncorrodible surface which is nonabsorbent and nontoxic (the use of cadmium is prohibited), and shall be constructed to be easily cleaned. All joints and seams shall be flush with solid welds or use "3-A Sanitary Standards" approved gaskets.

2. All containers, utensils, and other equipment shall be in good repair and free of breaks and corrosion.

3. Strainers, if used, shall be constructed to use single-service strainer pads only, and strainer pads shall not be reused. Woven-wire cloth strainers shall not be used.

4. All milking machines, including pails, milker heads, milk claws, milk tubing, and other milk contact parts shall be constructed to be easily cleaned.

5. New or replacement milk cans shall have an umbrella-type cover.

6. All cleaned-in-place milk pipelines installed after the effective date of this administrative regulation shall be installed to be rigid and self-draining. All connections shall provide a smooth, flush interior surface.

7. Pipelines installed prior to the effective date of this administrative regulation may be accepted if joined with tygon or other material approved by the cabinet, and if joints are hand cleaned or sufficiently cleaned by C-I-P methods. Each joint shall have a tight, rigid hanger next to the joint.

(b) Utensils - cleaning. All multiuse containers, equipment, and other utensils used in handling, storage, or transportation of milk and milk products shall be thoroughly cleaned after each usage. All multiuse containers, equipment, and other utensils shall be stored in the milkhous unless approved by the cabinet.

(c) Utensils - bacterial treatment. Prior to use, all multiuse containers, equipment, and other utensils used in handling, storage or transportation of milk or milk products shall be subjected to bactericidal process approved by the cabinet. Steam, hot-water, or hot-air treatment shall not be accepted unless the equipment or containers are completely immersed or exposed for the required time, or longer, and at the required temperature, or higher, throughout the period of exposure. Pouring hot or boiling water from vessel to vessel shall not be acceptable. All milk containers, utensils, and other equipment, with the exception of milking machine pulsators and air hoses, shall be immersed for at least one (1) minute in, or exposure for at least one (1) minute to a flow of, an approved chemical bactericide containing at least fifty (50) p.p.m. chlorine or other approved sanitizer of proper strength. All milk contact surfaces shall be wetted by the bactericidal solutions. Bactericidal sprays may be used for large equipment. Chemical solutions, once used, shall not be reused for bactericidal treatment on any subsequent day, but may be reused for other purposes.

(d) Utensils - storage. All containers and other utensils used in the handling, storage, or transportation of milk or milk products, unless stored in bactericidal solutions, shall be stored to drain dry, and to prevent contamination before being used. All equipment and utensils shall be accessible for inspection. All milking equipment containers and other utensils used shall be stored in the milkhous unless otherwise approved by the cabinet.

1. Milk utensils and equipment shall be left in the bactericidal solution or stored in the milkhous on racks to protect them from contamination, inverting articles that can be inverted. Pipeline milkers which are cleaned in place may be stored in place. Storage racks shall be constructed of metal protected against rusting, with the lowest shelf not less than twenty-four (24) inches above the floor.

2. Strainer pads, parchment papers, and gaskets shall be stored in the original package or in a suitable container or cabinet to protect them from contamination.

3. All equipment and utensils shall be accessible for inspection.

(e) Utensils - handling. After bactericidal treatment, containers and

other milk and milk product utensils shall be handled to prevent contamination of any surface that milk or milk products come into contact. Sanitized product-contact surfaces, including farm bulk tank openings and outlets, shall be protected against contact with unsanitized equipment, utensils, hands, clothing, splash, condensation, and other sources of contamination. Any sanitized product-contact surface which has been exposed to contamination, shall be cleaned and sanitized before being used.

(7) Surroundings shall be relatively neat and clean to prevent insect breeding and rodent harborage.

Section 2. Cooling. (1) All milk shall be cooled within two (2) hours after milking to fifty (50) degrees Fahrenheit or lower and maintained at a maximum of fifty (50) degrees Fahrenheit until transferred to the transport truck, unless delivered to the plant within two (2) hours after milking. Milk in bulk tanks shall be cooled to a maximum of forty (40) degrees Fahrenheit within two (2) hours after milking and maintained at a maximum of fifty (50) degrees Fahrenheit until transferred to the transport truck. If the first milking does not reach the bulk tank agitators, cooling shall be considered in violation.

(2) Cooling facilities shall be available to cool and store a full supply of milk between pickup at a maximum of fifty (50) degrees Fahrenheit. Can milk shall be collected at least every twenty-four (24) hours.

(3) Bulk tanks shall be designed and sized for everyday or every other day pickup and be capable of cooling the milk to forty (40) degrees Fahrenheit after each milking and maintaining the milk to a maximum of fifty (50) degrees Fahrenheit. No bulk tank milk shall be picked up after three (3) days except in case of emergency. Paper towels shall be available for wiping the bulk tank measuring stick during milk pickup.

(4) Milk shall not be transferred from one (1) producer to another or received by one (1) producer from another.

Section 3. Water supply. (1) Each producer shall have a properly located and protected water supply.

(2) The supply shall meet the needs of the producer to properly clean equipment, milkhous, and milking area.

(3) The supply shall be protected against surface water and, in the case of cisterns, have a filter or roof wash barrel approved by the cabinet.

(4) The supply shall not be within 100 feet of any cesspool, privy, or lateral field unless approved by the cabinet.

(5) If the cabinet is in doubt to the physical protection of the supply, a water sample shall be collected and analyzed by the cabinet. Samples that do not meet the requirements of this administrative regulation shall be retested within thirty (30) days after notification is given to the producer in writing by the cabinet. If two (2) consecutive samples are found to be in excess of the coliform standard, a notice of intent to suspend permit shall be issued by the cabinet and a follow-up sample collected within thirty (30) days. If the follow-up sample is in excess of the standard, the producer may be suspended until a negative sample is obtained.

(6) All new producers shall have a negative water sample analysis prior to the issuance of a permit. A negative water sample shall be taken after any repair or alteration of the water supply has been made and at least every thirty-six (36) months.

Section 4. Waste Disposal. (1) Manure, discarded milk, and toilet waste shall be properly disposed in a manner approved by the cabinet.

(2) Waste discharging to the ground surface shall not pool or promote fly breeding.

(3) Waste from flush type toilets shall be properly disposed underground.

(4) Pit privies shall be properly constructed to prevent fly breeding.

Section 5. Hearing Procedures. Upon notification of intent to suspend or upon suspension, the producer may request a hearing.

(1) The request for a hearing shall be made in writing on Form DFS-8, "Request for Hearing", revised January 1989, incorporated by reference. Form DFS-8, "Request for Hearing", may be viewed or obtained, 8 a.m. until 4:30 p.m., Monday through Friday, at the Office of the Commissioner of Public Health [Health Services], 275 East Main Street, Frankfort, Kentucky 40621.

(2) The cabinet shall notify the requesting party in writing of the:

(a) Name of the hearing officer; and

(b) Time and place of the hearing.

(3) All parties shall be allowed a reasonable time to prepare for the hearing, including the right to:

(a) Be represented by counsel;

(b) Present evidence on his behalf; and

(c) Cross-examine witnesses.

(4) A transcript of the hearing shall not be made unless requested. The expense of transcribing the hearing shall be the responsibility of the requesting party.

(5) The hearing officer shall make written findings of fact and conclusions of law, and render a decision based upon the evidence presented. The decision of the hearing officer shall be the final decision of the cabinet.

RICE C. LEACH, MD, Commissioner

JOHN H. MORSE, Secretary

JOHN H. WALKER, Attorney

APPROVED BY AGENCY: November 25, 1997

FILED WITH LRC: November 26, 1997 at 11 a.m.

PUBLIC HEARING: A public hearing on this regulation will be held January 30, 1998, at 9 a.m., in the Cabinet for Health Services Auditorium, 1st floor, Department for Health Services Building, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending shall notify this agency in writing by January 23, 1998. If no notice of intent to attend the hearing is received by that date the hearing may be canceled. The hearing is open to the public. Any person who attends will be given 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, Office of the General Counsel, Cabinet for Health Services, 275 East Main Street - 4 West, Frankfort, Kentucky 40621, (502) 564-7905, FAX: (502) 564-7543.

#### REGULATORY IMPACT ANALYSIS

Agency Contact Person:

(1) Type and number of entities affected: All manufacturing grade producers.

(2) Direct and indirect costs or savings to those affected: NA

(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: NA

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comment received: NA

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

1. First year following implementation: NA

2. Second and subsequent years: NA

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: NA

2. Continuing costs or savings: NA

3. Additional factors increasing or decreasing costs: NA

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(b) Reporting and paperwork requirements:

(4) Assessment of anticipated effect on state and local revenues:

NA

(5) Source if revenue to be used for implementation and enforcement of administrative regulation: NA

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

(a) Geographical area in which administrative regulation will be implemented: NA

(b) Kentucky: NA

(7) Assessment of alternative methods; reasons why alternatives were rejected: NA

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: Safer milk supply for the citizens of the Commonwealth.

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

(c) If detrimental effect would result, explain detrimental effect: NA

(9) Identify any statute, administrative regulation or governmental policy which may be in conflict, overlapping, or duplication:

(a) Necessity of proposed regulation if in conflict: NA

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

(10) Any additional information or comments:

(11) TIERING: Is tiering applied? Yes. Affects only manufacturing grade milk producers.

### FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. Sub Part A, Federal Register, Sampling State Enabling Act.

2. State compliance standards. 902 KAR 50:031, 902 KAR 50:032 and 902 KAR 50:033.

3. Minimum or uniform standards contained in the federal mandate. Bacterial counts lowered from 1 million/ml to 500,000/ml; and somatic cell counts lowered from 1 million/ml to 750,000/ml.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? Brings milk safety regulations into compliance with USDA requirements.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements: NA

### CABINET FOR HEALTH SERVICES

#### Department for Public Health

#### Division for Public Health Protection and Safety

#### (Amendment)

**902 KAR 50:033. Standards for enforcement procedures for manufacturing grade milk.**

RELATES TO: KRS 217.005 to 217.215, 217C.010 to 217C.990

STATUTORY AUTHORITY: KRS 194.050, 211.090

NECESSITY, FUNCTION, AND CONFORMITY: Executive Order 96-862, effective July 2, 1996, reorganizes the Cabinet for Health Services, establishes and creates the Cabinet for Health Services, changes the name of the Department for Health Services to Department for Public Health, and places the Department for Public Health and its programs under the Cabinet for Health Services. KRS 217C.040 authorizes the Cabinet for Health Services [Human Resources] to regulate milk for manufacturing purposes. This administrative regulation sets uniform standards for the enforcement of 902 KAR 50:031 and 902 KAR 50:032 pertaining to the production, transportation, handling, sampling, examination, grading, and sale of manufacturing milk and milk products; inspection of dairy farms; and,

provides for the revocation and reinstatement of producer permits.

Section 1. Enforcement Procedures for Raw Milk. (1) Sight and odor. Bulk tank loads or individual producer milk received shall be examined on an organoleptic basis by the hauler or by the milk grader. Milk shall not be received if any off odors or abnormal conditions are found which will adversely affect the finished product. Producer milk rejected for sight and odor by a hauler or milk grader shall be identified by coloring if in a can or tagged with a reject tag if in a bulk tank.

(2) Bacterial estimates. At least one (1) time each month at irregular intervals, a representative mixed sample of each producer's milk shall be tested. Producers shall be notified of the results of all tests performed.

(a) A producer shall be given a notice of intent to suspend permit by the cabinet if two (2) of the last four (4) counts exceed bacterial standards specified in 902 KAR 50:031. An additional sample shall be taken within twenty-one (21) days of sending the notice, but not before the lapse of three (3) days. A producer shall remain under notice of intent to suspend permit if two (2) of the last four (4) samples exceed the standards.

(b) A producer's permit shall be suspended by the cabinet if three (3) of the last five (5) samples exceed the standard.

(c) A producer may be issued a temporary permit by the cabinet upon receipt from the producer of a satisfactory farm inspection and Form DFS-7A, "Application for Reinstatement of Permit", incorporated by reference. If the sample from the first milk offered for sale is in compliance, the permit is reinstated. If the sample is not in compliance, the temporary permit shall be withdrawn. A copy of Form DFS-7A, "Application for Reinstatement of Permit", revised October 1986, is available for inspection and copying, 8 a.m. until 4:30 p.m., Monday through Friday, at the Office of the Commissioner for Public Health [Health Services], 275 East Main Street, Frankfort, Kentucky 40621.

(d) Upon issuance of the temporary permit, the producer shall have no milk in the bulk tank produced during the period the permit was suspended unless specified by the cabinet. Three (3) samples shall then be taken at the rate of not more than two (2) per week on separate days within a three (3) week period.

(e) The cabinet may reinstate the producer's permit upon receipt of a bacteria sample in compliance with standards set in 902 KAR 50:031.

(3) Sediment.

(a) Bulk tank producers.

1. If the sediment disc is classified as #1 or #2, the producer's milk may be accepted.

2. If the sediment disc is classified #3, the producer's milk may be accepted. The producer shall be notified by the cabinet in writing and a second milk sample shall be collected by a certified sampler and retested on the next milk pickup. If the second sample is classified #3, the producer shall be issued a notice of intent to suspend permit and an additional sample shall be collected and tested. If the additional sample fails to obtain a #1 or #2 sediment sample result, the producer's permit shall be suspended. If the second sample is classified #4, the producer's permit shall be suspended.

3. If the sediment disc is classified as #4, the producer shall be notified by the cabinet in writing and the producer's milk sample shall be collected by a certified sampler and retested on the next milk pickup. If the retest of this sample fails to obtain a #1 or #2 sediment sample result, the producer's permit shall be suspended.

4. The permit suspension shall be in effect until a #1 or #2 sediment test is obtained and upon receipt by the cabinet of an "Application for Reinstatement of Permit".

(b) Can producers.

1. If the sediment disc is classified as #1 or #2, the producer's milk may be accepted.

2. If the sediment disc is classified #3, the producer's milk may be

accepted. The producer shall be notified by the cabinet in writing and a second milk sample shall be collected by a certified sampler and retested on the next milk pickup. If the second sample is classified #3, the producer shall be notified and additional samples shall be collected and tested. If the additional samples fail to obtain a #1 or #2 sediment sample result on two (2) consecutive samples, the producer's permit shall be suspended. If the second sample is classified #4, the producer's permit shall be suspended.

3. If the sediment disc is classified as #4 the milk shall be rejected and an approved color added to the milk. The producer shall be notified by the cabinet in writing and the producer's milk sample shall be collected by a certified sampler and retested on the next milk pickup. If the retest of this sample fails to obtain a #1 or #2 sediment sample result, the producer's permit shall be suspended.

4. The permit suspension shall be in effect until a #1 or #2 sediment test is obtained and upon receipt by the cabinet of an "Application for Reinstatement of Permit".

(4) Abnormal milk. Each producer shall be tested at least four (4) times each six (6) months and those tests showing a somatic cell count in excess of 750,000/ml [1,000,000/ml] shall be notified in writing by the cabinet. If two (2) of the last four (4) somatic cell counts exceed 750,000/ml [1,000,000/ml], the producer shall be given a notice of intent to suspend permit by the cabinet. The producer shall remain under notice if two (2) of the last four (4) samples exceed the limit. An additional sample shall be collected within twenty-one (21) days after issuance of the notice of intent to suspend permit, but not before the lapse of three (3) days. A producer's permit shall be suspended by the cabinet if three (3) of the last five (5) somatic cell counts exceed the limit. Upon receipt of an "Application for Reinstatement of Permit", a sample shall be analyzed. If the sample is in compliance, the permit is reinstated. Three (3) samples shall be taken at the rate of not more than two (2) per week on separate days within a three (3) week period.

(5) Drug residues.

(a) All marketed milk shall be sampled prior to processing using approved screening procedures defined in 902 KAR 50:031. If the presence of drug residue is detected, a confirmatory test approved by the cabinet shall be performed. If the confirmatory test result is positive for drug residue, the milk shall be disposed of either in a manner that removes it from the human and animal food chain or acceptably reconditioned for animal food as determined by the cabinet. If a commingled sample is positive, each producer represented in the sample shall be tested immediately.

(b) All positive drug residue sample results shall be reported to the Cabinet for Human Resources, Milk Safety [Control] Branch, 275 East Main Street, Frankfort, Kentucky 40621.

(c) Milk for manufacturing permit shall be suspended upon confirmed positive drug residue sample.

1. First suspension within a twelve (12) month period shall require a two (2) day minimum loss of milk or equivalent as determined by the cabinet.

2. Second suspension within a twelve (12) month period shall require a four (4) day minimum loss of milk or equivalent as determined by the cabinet.

3. Third suspension within a twelve (12) month period shall require a four (4) day minimum loss of milk or equivalent as determined by the cabinet. The cabinet shall initiate administrative procedures to revoke the producer's permit by proceeding to an informal hearing.

(d) The milk for manufacturing permit shall be temporarily reinstated for fourteen (14) days if a negative drug residue sample of raw milk is reported to the cabinet, and the cabinet is in receipt of an "Application for Reinstatement of Permit".

1. The milk for manufacturing permit shall be reinstated after the cabinet receives a copy of the "Milk and Dairy Beef Residue Prevention Protocol" Completion Certificate signed by the producer and his veterinarian. The "Milk and Dairy Beef Residue Prevention Protocol",

1993 Producer Manual, is published by Agri-Education, Inc., 801 Shakespeare Avenue, Stratford, Iowa 50249. The "Milk and Dairy Beef Residue Prevention Protocol", revised October 1, 1992, is incorporated by reference, and a copy is available for inspection and copying, 8 a.m. until 4:30 p.m., Monday through Friday, at the Office of the Commissioner for Public Health [Health Services], 275 East Main Street, Frankfort, Kentucky 40621.

2. Failure to return the completion certificate within fourteen (14) days of the temporary reinstatement shall result in a minimum one (1) day temporary permit suspension.

(6) Excessive water.

(a) Milk producers with supplies found to contain at least ten (10) percent excessive water shall be issued a permit suspension requiring the supply to be withheld from sale immediately. Milk from this supply shall not be sold and the permit shall not be reinstated until a sample is negative for excessive water, and the cabinet is in receipt of an "Application for Reinstatement of Permit".

(b) Milk producers with supplies found to contain at least two (2) percent and less than ten (10) percent excessive water shall be notified of adulteration and retested after the lapse of three (3) days. If the retested sample continues to show at least two (2) percent and less than ten (10) percent excessive water, the producer's permit shall be suspended. Milk shall not be sold from this supply and the permit shall not be reinstated until a sample is negative for excessive water, and the cabinet is in receipt of an "Application for Reinstatement of Permit".

(c) Milk producers with supplies found to contain at least five-tenths (.5) percent but less than two (2) percent excessive water shall be notified. If the following sample shows at least five-tenths (.5) percent and less than two (2) percent excessive water, a supervised sample shall be collected. The supervised sample shall be used as a future reference for the accurate freezing point for the supply.

(7) Chemical contaminants.

(a) If laboratory results of an individual producer sample show a violation of an established tolerance level for a particular chemical contaminant, the supply shall be withheld from the market channels. The producer shall be notified immediately and confirmed in writing by the cabinet.

(b) Continued sampling of an excluded milk producer's supply shall be maintained until an acceptable level of the contaminant is attained. The frequency of additional sampling may be at seven (7), fifteen (15), thirty (30), or sixty (60) day intervals, depending on the laboratory workload and the previous contaminant level. Higher chemical contaminant levels shall be sampled at lesser frequencies.

(c) If levels based on an official sample fall below acceptable tolerance levels, the producer shall be notified immediately and confirmed in writing by the cabinet that the supply is again acceptable for sale.

(d) Producer assistance in testing individual cows, feeds, and water supplies may be obtained on an unofficial basis from the Kentucky Diagnostic Laboratories and commercial laboratories.

Section 2. Manufacturing Milk Producer Permit Suspension and Reinstatement. (1) An individual producer's permit shall be suspended if the cabinet has reason to believe that a public health hazard exists; the producer has violated any of the requirements of 902 KAR 50:031, 902 KAR 50:032, or this administrative regulation; or the producer has interfered with the cabinet in the performance of its duties. The cabinet shall in all cases, except if the milk involved creates, or appears to create, an imminent hazard to the public health; or in any case of willful refusal to permit authorized inspection, serve upon the producer a written notice of intent to suspend the permit. This notice shall specify the violation in question and afford the permit holder reasonable opportunity to correct the violation. Suspension of a permit shall remain in effect until the violation has been corrected to the satisfaction of the cabinet.

(2) If the producer's permit has been suspended three (3) times



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within a twelve (12) month period for a violation of any type in accordance with 902 KAR 50:031, 902 KAR 50:032, or this administrative regulation, the producer shall be issued a notice that upon the fourth suspension within a twelve (12) month period the producer shall appear at the cabinet for a conference to show cause why the permit should be reinstated. Upon the fourth suspension within a twelve (12) month period, the producer shall appear before the cabinet to show cause why the permit should be reinstated. At this conference the cabinet may set conditions under which the permit may be reinstated. This permit suspension shall remain in effect until the conditions of the conference have been met. If a fifth suspension occurs within a twelve (12) month period, the cabinet shall proceed to a hearing. At this hearing the producer shall have the opportunity to show cause why the permit should not be permanently revoked, and the cabinet shall affirm, modify, or rescind the producer's permit.

(3) Upon written application of any person whose permit has been suspended, or upon application within forty-eight (48) hours of any person who has been served with a notice of intention to suspend, and in the latter case before suspension; the cabinet shall, within a reasonable time, proceed to hearing to ascertain the facts of the violation or interference.

(a) The request for a hearing shall be made in writing on Form DFS-8, "Request for Hearing", revised January 1989, incorporated by reference. Form DFS-8, "Request for Hearing", may be viewed or obtained, 8 a.m. until 4:30 p.m., Monday through Friday, at the Office of the Commissioner of Public Health [Health Services], 275 East Main Street, Frankfort, Kentucky 40621.

(b) The cabinet shall notify the requesting party in writing of the:

1. Name of the hearing officer; and
2. Time and place of the hearing.

(c) All parties shall be allowed a reasonable time to prepare for the hearing, including the right to:

1. Be represented by counsel;
2. Present evidence on his behalf; and
3. Cross-examine witnesses.

(d) A transcript of the hearing shall not be made unless requested. The expense of transcribing the hearing shall be the responsibility of the requesting party.

(e) The hearing officer shall make written findings of fact and conclusions of law, and render a decision based upon the evidence presented. The decision of the hearing officer shall be the final decision of the cabinet.

(4) Any permit suspended under the provisions of 902 KAR 50:031, 902 KAR 50:032, or this administrative regulation may be reinstated by submission of satisfactory evidence to the cabinet that the violation has been corrected.

RICE C. LEACH, MD, Commissioner

JOHN H. MORSE, Secretary

JOHN H. WALKER, Attorney

APPROVED BY AGENCY: November 25, 1997

FILED WITH LRC: November 26, 1997 at 11 a.m.

PUBLIC HEARING: A public hearing on this regulation will be held January 30, 1998, at 9 a.m., in the Cabinet for Health Services Auditorium, 1st floor, Department for Health Services Building, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending shall notify this agency in writing by January 23, 1998. If no notice of intent to attend the hearing is received by that date the hearing may be canceled. The hearing is open to the public. Any person who attends will be given 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, Office of the General Counsel, Cabinet for Health Services, 275 East Main Street - 4 West, Frankfort, Kentucky 40621, (502) 564-7905, FAX: (502) 564-7543.

## REGULATORY IMPACT ANALYSIS

Agency Contact Person:

(1) Type and number of entities affected: All manufacturing grade producers.

(2) Direct and indirect costs or savings to those affected: NA

(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: NA

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comment received: NA

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

1. First year following implementation: NA

2. Second and subsequent years: NA

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: NA

2. Continuing costs or savings: NA

3. Additional factors increasing or decreasing costs: NA

(b) Reporting and paperwork requirements:

(4) Assessment of anticipated effect on state and local revenues: NA

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: NA

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

(a) Geographical area in which administrative regulation will be implemented: NA

(b) Kentucky: NA

(7) Assessment of alternative methods; reasons why alternatives were rejected: NA

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: Safer milk supply for the citizens of the Commonwealth.

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

(c) If detrimental effect would result, explain detrimental effect: NA

(9) Identify any statute, administrative regulation or governmental policy which may be in conflict, overlapping, or duplication:

(a) Necessity of proposed regulation if in conflict: NA

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

(10) Any additional information or comments:

(11) TIERING: Is tiering applied? Yes. Affects only manufacturing grade milk producers.

## FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. Sub Part A, Federal Register, Sampling State Enabling Act.

2. State compliance standards. 902 KAR 50:031, 902 KAR 50:032 and 902 KAR 50:033.

3. Minimum or uniform standards contained in the federal mandate. Bacterial counts lowered from 1 million/ml to 500,000/ml; and somatic cell counts lowered from 1 million/ml to 750,000/ml.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? Brings milk safety regulations into compliance with USDA requirements.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements: NA



NEW ADMINISTRATIVE REGULATIONS RECEIVED AS OF NOON, DECEMBER 15, 1997

**GENERAL GOVERNMENT CABINET  
STATE BOARD OF REGISTRATION FOR PROFESSIONAL  
ENGINEERS AND LAND SURVEYORS  
(New Administrative Regulation)**

**201 KAR 18:132. Repeal of 201 KAR 18:130.**

RELATES TO: KRS 322.180, 322.190, 322.200, 322.210, 322.220, 322.250, 322.320

STATUTORY AUTHORITY: KRS 322.180, 322.190, 322.200, 322.290, 322.430

NECESSITY, FUNCTION, AND CONFORMITY: 201 KAR 18:130 is being repealed because administrative adjudication procedures are set forth in 201 KAR 18:131, an administrative regulation promulgated after 201 KAR 18:130.

Section 1. 201 KAR 18:130, Administrative adjudication procedure, is hereby repealed.

JOSEPH F. SISLER, Chair

CHERYL LALONDE-MOONEY, Assistant Attorney General

APPROVED: December 11, 1997

FILED WITH LRC: December 15, 1997 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on January 21, 1998, at 2 p.m., at the State Board's office, 160 Democrat Drive, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by January 13, 1998, five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: Larry Perkins, Executive Director, Kentucky State Board of Registration for Professional Engineers and Land Surveyors, 160 Democrat Drive, Frankfort, Kentucky 40601, (502) 573-2680.

**REGULATORY IMPACT ANALYSIS**

Agency Contact: Larry Perkins

(1) Type and number of entities affected: Approximately 12,000 registered professional engineers and land surveyors in Kentucky.

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

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented: No direct or indirect costs or savings on the cost of living and employment.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented: No direct or indirect costs or savings on the cost of doing business.

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

1. First year following implementation: No direct or indirect costs or savings on the compliance, reporting, and paperwork requirements for the first year following implementation.

2. Second and subsequent years: No direct or indirect costs or savings on the compliance, reporting, and paperwork requirements for the second and subsequent years.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: No direct or indirect costs or savings for the first year.

2. Continuing costs or savings: No continuing costs or savings.

3. Additional factors increasing or decreasing costs: No additional factors increasing or decreasing costs.

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

(4) Assessment of anticipated effect on state and local revenues: No anticipated effect on state and local revenues.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: The source of revenue to be used for implementation and enforcement of this administrative regulation will be licensing fees.

(6) Economic impact, including effects of economic activities arising from administrative regulation, on:

(a) Geographical area in which administrative regulation will be implemented: No economic impact is anticipated in the geographical area.

(b) Kentucky: No economic impact is anticipated in Kentucky.

(7) Assessment of alternative methods; reasons why alternatives were rejected: This regulation is being repealed because administrative adjudication procedures are set forth in 201 KAR 18:131, a regulation promulgated after 201 KAR 18:130. No other alternatives were deemed appropriate.

(8) Assessment of expected benefits:

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

(b) State whether a detrimental effect on environment and public health would result if not implemented: No detrimental effects on environment and public health would result if this administrative regulation were not implemented.

(c) If detrimental effect would result, explain detrimental effect: No detrimental effect would result.

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication:

(a) Necessity of proposed regulation if in conflict: 201 KAR 18:131 was promulgated after 201 KAR 18:130 and 201 KAR 18:130 was not repealed. Since there is duplication between these regulations, the earlier regulation needs to be repealed.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: Yes, but the differences have been confusing during administrative proceedings.

(10) Any additional information or comments: There is no additional information or comments.

(11) TIERING: Is tiering applied? Tiering was not applied because all registered professional engineers and land surveyors are treated uniformly under the law.

**GENERAL GOVERNMENT CABINET  
STATE BOARD OF REGISTRATION FOR PROFESSIONAL  
ENGINEERS AND LAND SURVEYORS  
(New Administrative Regulation)**

**201 KAR 18:162. Repeal of 201 KAR 18:160.**

RELATES TO: KRS 322.020, 322.290

STATUTORY AUTHORITY: KRS 322.290(2)(f)

NECESSITY, FUNCTION, AND CONFORMITY: 201 KAR 18:160 is being repealed because 201 KAR 18:200, which was promulgated after 201 KAR 18:160, establishes minimum standards of practice for

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mortgage inspections eliminating the need for 201 KAR 18:160.

Section 1. 201 KAR 18:160, Waiver for mortgage inspections, is hereby repealed.

JOSEPH F. SISLER, Chair

CHERYL LALONDE-MOONEY, Assistant Attorney General

APPROVED BY AGENCY: December 11, 1997

FILED WITH LRC: December 15, 1997 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on January 21, 1998, at 3 p.m., at the State Board's office, 160 Democrat Drive, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by January 13, 1998, five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: Larry Perkins, Executive Director, Kentucky State Board of Registration for Professional Engineers and Land Surveyors, 160 Democrat Drive, Frankfort, Kentucky 40601, (502) 573-2680.

### REGULATORY IMPACT ANALYSIS

Agency Contact: Larry Perkins

(1) Type and number of entities affected: Approximately 1700 registered land surveyors in Kentucky.

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

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented: No direct or indirect costs or savings on the cost of living and employment.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented: No direct or indirect costs or savings on the cost of doing business.

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

1. First year following implementation: No direct or indirect costs or savings on the compliance, reporting, and paperwork requirements for the first year following implementation.

2. Second and subsequent years: No direct or indirect costs or savings on the compliance, reporting, and paperwork requirements for the second and subsequent years.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: No direct or indirect costs or savings for the first year.

2. Continuing costs or savings: No continuing costs or savings.

3. Additional factors increasing or decreasing costs: No additional factors increasing or decreasing costs.

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

(4) Assessment of anticipated effect on state and local revenues: No anticipated effect on state and local revenues.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: The source of revenue to be used for implementation and enforcement of this administrative regulation will be licensing fees.

(6) Economic impact, including effects of economic activities arising from administrative regulation, on:

(a) Geographical area in which administrative regulation will be implemented: No economic impact is anticipated in the geographical

area.

(b) Kentucky: No economic impact is anticipated in Kentucky.

(7) Assessment of alternative methods; reasons why alternatives were rejected: This regulation is being repealed because 201 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. No other alternatives were deemed appropriate.

(8) Assessment of expected benefits:

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

(b) State whether a detrimental effect on environment and public health would result if not implemented: No detrimental effects on environment and public health would result if this administrative regulation were not implemented.

(c) If detrimental effect would result, explain detrimental effect: No detrimental effect would result.

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication:

(a) Necessity of proposed regulation if in conflict: 201 KAR 18:200 was promulgated after 201 KAR 18:160. 201 KAR 18:200 eliminates the need for the language in 201 KAR 18:160, thus 201 KAR 18:160 needs to be repealed.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: Yes, but 201 KAR 18:160 creates excess verbiage which is confusing.

(10) Any additional information or comments: There is no additional information or comments.

(11) TIERING: Is tiering applied? Tiering was not applied because all registered land surveyors are treated uniformly under the law.

### GENERAL GOVERNMENT CABINET Kentucky Board of Examiners of Psychology (New Administrative Regulation)

#### 201 KAR 26:260. Status of persons credentialed by the board.

RELATES TO: KRS 319.010, 319.050, 319.056, 319.064

STATUTORY AUTHORITY: KRS 319.032

NECESSITY, FUNCTION, AND CONFORMITY: Because of the different titles used to designate those persons regulated by the State Board of Psychology, there has been confusion on the part of the general public and payors for psychological services. The purpose of this administrative regulation is to clarify the status of persons regulated by the board. The board is authorized by KRS 13A.130(3) and 13A.010(2)(b) as the agency authorized by the Kentucky General Assembly with jurisdiction to regulate the practice of psychology and to interpret the statutes and administrative regulations governing the practice of psychology in the Commonwealth of Kentucky. KRS 319.010(3) defines the term "practice of psychology" and KRS 319.010(5) defines the term "psychologist". KRS 319.005 prohibits persons from either holding themselves out by title or from practicing psychology unless they hold a valid license or certificate issued by the board. These two (2) elements in combination create a licensure law.

Section 1. (1) KRS Chapter 319 is a licensure law, as the definition and scope of practice of psychology is clearly defined and governed. Because of the statutory provisions of KRS 319.005 and 319.010(3) and (5), KRS Chapter 319 is deemed to be a licensure law.

(2) All persons regulated by this board under KRS Chapter 319 are deemed to be licensed by this board.

Section 2. (1) Pursuant to KRS 319.050, persons authorized by the board to use the title "licensed psychologist" shall continue to use

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that title.

(2) Pursuant to KRS 319.056 and 319.064, persons authorized by the board to use the title "certified psychologist with autonomous functioning" or "certified psychologist" or "psychological associate" shall continue to use those designated titles.

DONALD E. RALPH, Ph.D., Chairman

MARK BRENGELMAN, Legal Counsel

APPROVED BY AGENCY: October 3, 1997

FILED WITH LRC: December 15, 1997 at 9 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on January 22, 1998 at 9:30 a.m. at the offices of the Division of Occupations and Professions located at Berry Hill Annex, 700 Louisville Road, Frankfort, Kentucky 40601. Individuals interested in attending this hearing shall notify this agency in writing by January 14, 1998, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: Mr. David L. Nicholas, Director, Division of Occupations and Professions, P.O. Box 456, Frankfort, Kentucky 40602, (502) 564-3296.

### REGULATORY IMPACT ANALYSIS

Contact Person: David L. Nicholas

(1) Type and number of entities affected: Persons credentialed as licensed psychologists, certified psychological associates, certified psychologists, and certified psychologists with autonomous functioning.

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

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

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

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

1. First year following implementation: None

2. Second and subsequent years: None

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: None

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: None

(4) Assessment of anticipated effect on state and local revenues:

None

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Trust and agency funds ordinarily used by the board.

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

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

(b) Kentucky: None

(7) Assessment of alternative methods; reasons why alternatives were rejected: This regulation will clarify the status of all persons credentialed by the board.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: The credentialing of psychologists provides protection to the public.

(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 would be more difficult for the board to provide the necessary protection to the public without this regulation.

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

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

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

(10) Any additional information or comments: None

(11) TIERING: Was tiering applied: No. If no, please explain why tiering was not applied: Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals desiring to obtain a or continue to hold a credential. Provisions contained in these administrative regulations provide avenues by which the applicant may appeal actions of the board.

### TOURISM DEVELOPMENT CABINET Department of Fish and Wildlife Resources (New Administrative Regulation)

#### 301 KAR 1:300 Reciprocal waters on Dale Hollow Lake.

RELATES TO: KRS 150.170(1), (10), 150.235(1)

STATUTORY AUTHORITY: KRS 150.170(10)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 150.170(10) authorizes the department by administrative regulation to enter into reciprocal licensing agreements with adjoining states. This administrative regulation defines the Kentucky portion of Dale Hollow Lake where a Tennessee fishing license shall be valid.

Section 1. Pursuant to a reciprocal agreement between the department and the Tennessee Wildlife Resources Agency, a valid sport fishing license issued by the State of Tennessee shall be valid in the Kentucky portions of the Wolfe River Embayment of Dale Hollow Lake:

(1) Beginning where Wolfe River joins the main part of the lake at the Obey River; and

(2) Including the Illwill Creek Embayment.

Section 2. A person fishing in the waters delineated in Section 1 of this administrative regulation shall observe the size and creel limits of the state in which he is licensed.

Section 3. The Reciprocal Fishing License Agreement on Portions of Dale Hollow Lake, dated 11-21-97, is incorporated by reference. It may be copied or inspected at the Department of Fish and Wildlife Resources, #1 Game Farm Road, Frankfort, Kentucky 40601 from 8 a.m. through 4:30 p.m. eastern time on normal business days.

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: December 11, 1997 at 1 p.m.

PUBLIC HEARING: A public hearing on this administrative

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regulation shall be held on January 30, 1998, 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 January 23, 1998, 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 estimated 5,200 anglers fish Dale Hollow Lake annually. It is not known how many of this number fish in the waters impacted 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. No impact on cost of living or employment.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: No public comments received. 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: No additional compliance, reporting or paperwork requirements.

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

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: 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 impact.

(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: By allowing Tennessee residents to fish in a portion of Kentucky, some slight increase in tourism activity may be anticipated.

(b) Kentucky: No impact.

(7) Assessment of alternative methods; reasons why alternatives were rejected: The only alternative to a reciprocal agreement is requiring a nonresident license to fish any portion of Dale Hollow Lake that lies in Kentucky. This alternative was rejected because the state line is not clearly marked, and anglers find it impossible to tell in what state they are fishing.

(8) Assessment of expected benefits: Elimination of a source of confusion.

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

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

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

(10) Any additional information or comments:

(11) TIERING: Is tiering applied? Tiering is not appropriate because the administrative regulation applies equally to all individuals or entities it regulates.

### TOURISM DEVELOPMENT CABINET Department of Fish and Wildlife Resources (New Administrative Regulation)

#### 301 KAR 1:310 Reciprocal waters on the Big South Fork.

RELATES TO: KRS 150.170(1), (10), 150.235(1)

STATUTORY AUTHORITY: KRS 150.170(10)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 150.170(10) authorizes the department to enter into reciprocal licensing agreements with adjoining states. This administrative regulation defines the Kentucky portion of the Big South Fork of the Cumberland River where a Tennessee fishing license shall be valid.

Section 1. Pursuant to a reciprocal agreement between the department and the Tennessee Wildlife Resources Agency, a valid sport fishing license issued by the state of Tennessee shall be valid in the portion of the Big South Fork of the Cumberland River from the state line to the Highway 92 Bridge at Yamacraw, Kentucky.

Section 2. A person fishing in the reciprocal waters delineated in Section 1 of this administrative regulation shall observe the size and creel limits of the state in which he is licensed.

Section 3. The Reciprocal Fishing License Agreement on Portions of the Big South Fork of the Cumberland River, dated 11-21-97, is incorporated by reference. It may be copied or inspected at the Department of Fish and Wildlife Resources, #1 Game Farm Road, Frankfort, Kentucky 40601 from 8 a.m. through 4:30 p.m. eastern time on normal business days.

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: December 11, 1997 at 1 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on January 30, 1998, 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 January 23, 1998, 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

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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 estimated 450 anglers annually fish the 17 miles of the Big South Fork affected by this administrative regulation.

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

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

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: No public comments received. 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: No additional compliance, reporting or paperwork requirements.

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

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: 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 impact.

(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: By allowing Tennessee residents to fish in a portion of Kentucky, some slight increase in tourism activity may be anticipated.

(b) Kentucky: No impact.

(7) Assessment of alternative methods; reasons why alternatives were rejected: The only alternative to a reciprocal agreement is requiring a nonresident license to fish any portion of the Big South Fork in Kentucky. This alternative was rejected because the state line is not clearly marked, and anglers find it impossible to tell in what state they are fishing.

(8) Assessment of expected benefits: Elimination of a source of confusion.

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

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

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

(10) Any additional information or comments:

(11) TIERING: Is tiering applied? Tiering is not appropriate because the administrative regulation applies equally to all individuals or entities it regulates.

### NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET Department for Environmental Protection Division of Water (New Administrative Regulation)

#### 401 KAR 5:008. Swine feeding operations.

RELATES TO: KRS 224.10, 224.70, 224.73

STATUTORY AUTHORITY: KRS 224.10-100, 224.70-100, 224.70-110

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.10-100 requires the Natural Resources and Environmental Protection Cabinet to develop and conduct a comprehensive program for the management of water resources and to provide for the prevention, abatement, and control of water pollution. This administrative regulation provides administrative procedures for the issuance of permits for swine feeding operations and for the operation of these facilities authorized under KRS Chapter 224 and establishes conditions for the construction and operation of swine feeding operations. There is no federal regulation relating to the subject matter of this administrative regulation, therefore this administrative regulation is not more stringent than federal requirements.

Section 1. Applicability. The number of swine units used to determine the applicability of this administrative regulation shall be calculated according to the formula in subsection (3) of this section.

(1) This administrative regulation shall apply to the owner and operator of:

(a) A new swine feeding operation;

(b) An existing agricultural wastes handling system if, after September 18, 1997, the agricultural wastes handling system increases the number of swine units at the system to 1,000 or more swine units; and

(c) An existing swine feeding operation, permitted or unpermitted, that increases the number of swine units at the operation by more than ten (10) percent after September 18, 1997.

(2) This administrative regulation shall not apply to the owner and operator of an existing swine feeding operation that does not increase the number of swine units by more than ten (10) percent if:

(a) The swine feeding operation was permitted before July 25, 1997, for the construction or operation of an agricultural wastes handling system pursuant to 401 KAR 5:005 for 1,000 or more swine units;

(b) The swine feeding operation submitted to the cabinet before July 25, 1997, for 1,000 or more swine units, either the Kentucky No Discharge Operational Permit Application for Agricultural Wastes Handling Systems, Short Form B, or the Site Survey Request, both required in 401 KAR 5:005, Section 2(1)(e); or

(c) The swine feeding operation demonstrates by substantial evidence that:

1. On July 25, 1997, it had an operating lagoon in place for the treatment of swine waste, otherwise conformed to the requirements of 401 KAR Chapter 5, and would have received a construction or operational permit for the swine feeding operation if it had applied for the permit;

2. On July 25, 1997, it had 1,000 or more swine units on the immediate property;

3. On July 25, 1997, it was engaged in the current daily operation of a swine feeding operation; and

4. The owner and operator:

a. Before January 1, 1998, notifies the cabinet in writing that he intends to comply with 401 KAR 5:005. The notification shall include the number of swine units that are confined at the swine feeding operation; and

b. Before July 25, 1999, applies for and receives a KNDOP pursuant to 401 KAR 5:005. This provision shall not exempt the

owner or operator of an unpermitted facility from complying with 401 KAR 5:005 before that date.

(3) The number of swine units shall be determined by the following formula. The worksheet "Worksheet for Calculating Swine Units", incorporated by reference in Section 18 of this administrative regulation, may be used to assist the owner or operator in calculating the number of swine units at the operation.

$$\text{Swine units} = (0.1 \times N_n) + (0.4 \times N_f) + (0.45 \times N_b) + (3.55 \times N_{ff}) + (1.33 \times N_{ffe}) + (0.42 \times N_{fw}) + (0.35 \times N_{wf})$$

Where:

$N_n$  = Number of nursery pigs;

$N_f$  = Number of finishing pigs;

$N_b$  = Number of boars;

$N_{ff}$  = Number of sows, farrow to finish;

$N_{ffe}$  = Number of sows, farrow to feeder;

$N_{fw}$  = Number of sows, farrow to wean; and

$N_{wf}$  = Number of pigs, wean to finish.

Section 2. Swine Waste Management Permit. (1) No person shall construct, modify, or operate a swine feeding operation without having received a permit to do so from the cabinet. The permitted area shall include:

- (a) The area where the swine are confined;
- (b) The swine waste lagoon; and
- (c) The land application areas.

(2) The owner and operator of a swine feeding operation shall obtain a swine waste management permit (SWMP) from the cabinet before:

- (a) Beginning construction of a swine waste lagoon or its related appurtenances;
  - (b) Beginning operation of a swine waste lagoon; or
  - (c) Beginning land application of the swine waste.
- (3) The SWMP shall be effective immediately upon issuance by the cabinet unless otherwise conditioned.

(4) The owner and operator of a swine feeding operation shall apply for a permit pursuant to this administrative regulation before the operation commences construction, or for a permit renewal, ninety (90) days before the permit expires. The owner and operator shall not begin construction or operation at the operation until he receives the permit from the cabinet.

(5) The SWMP shall be valid for five (5) years from the date of issuance.

(6) Failure to obtain a SWMP shall not relieve the owner or operator of a swine feeding operation subject to this administrative regulation from complying with the applicable requirements of this administrative regulation.

(7) The owner and operator of the swine feeding operation shall submit to the cabinet a complete application for a SWMP. A complete application shall consist of two (2) copies of the following:

(a) A completed permit application form, "Kentucky Swine Waste Management Permit for Swine Feeding Operations Permit Application, DEP-7033-SFO (12/97)", incorporated by reference in Section 18 of this administrative regulation. The application shall include general facility information regarding its location, and owner and operator information;

(b) A set of detailed plans and specifications describing the design of the proposed swine waste lagoon, that has been prepared, stamped, signed, and dated by a professional engineer or the NRCS;

(c) Documentation of public notification as required in Section 4(1) of this administrative regulation;

(d) A USGS seven and one-half (7 1/2) minute topographic quadrangle map with the swine feeding operation location clearly marked;

(e) A site map with a scale of no less than 1" = 660' including a north arrow and legend, clearly showing the swine waste lagoon

location, roads, setback features in Section 5 of this administrative regulation and their setbacks, easements if applicable, locations of buildings on the site, field number and acres of land application areas, filter strips, and existing and proposed monitoring wells;

(f) A monitoring plan as required by Section 7 of this administrative regulation, designed to monitor the integrity of the swine waste lagoon;

(g) An operation-specific nutrient management plan as required by Section 9 of this administrative regulation;

(h) A certified copy of a legal deed, easement, or contract if required by Section 5 or 9 of this administrative regulation;

(i) A demonstration that the lagoon complies with the siting requirements of Section 5 of this administrative regulation; and

(j) The results of the baseline soil analyses required by Section 10 of this administrative regulation for each field that will receive the swine waste.

(k) The cabinet may request additional information concerning the swine feeding operation necessary to determine the ability of the swine feeding operation to comply with this administrative regulation, maintain water quality standards, and protect the waters of the Commonwealth.

(l) If the applicant becomes aware that he failed to submit a relevant fact in a permit application, or submitted to the cabinet incorrect information in a permit application or in a report, he shall promptly submit to the cabinet these facts or information.

(8) Permit modification.

(a) The permittee shall submit to the cabinet a complete application for modifying a SWMP and shall receive prior approval from the cabinet to make changes to the swine feeding operation if:

1. The swine waste lagoon design changes during construction or if an existing permitted swine waste lagoon is to be modified unless the repairs or changes are made pursuant to Section 8 of this administrative regulation;

2. The permittee intends to change the swine feeding operation, including a change in the maximum design capacity of the swine waste lagoon; or

3. There is a change in the permitted land application area that was not previously included in the permit application and approved by the cabinet.

(b) A complete application for modifying a SWMP shall consist of two (2) copies of:

1. An updated application form cited in subsection (7)(a) of this section;

2. A set of updated attachments that show the modifications to the original application;

3. The public notice required by Section 4(1) of this administrative regulation; and

4. For a new land application area:

a. The results of the baseline soil analyses required in Section 10 of this administrative regulation; and

b. The legal documents required by Section 5 or 9 of this administrative regulation.

(9) Permit renewal. For renewals of the SWMP, a complete application shall consist of two (2) copies of:

(a) A set of updated attachments that show the modifications to the original application, including the updated application form cited in subsection (7)(a) of this section;

(b) The most recent five (5) years of the sampling and analytical data and the land application rates, as required by Section 11 of this administrative regulation, unless the operation has had its permit for less than five (5) years. If the operation has had its permit for less than five (5) years, all required data shall be submitted; and

(c) The public notice required by Section 4(1) of this administrative regulation.

(10) Permit transfer. The permit is not transferable to a person except after notice to the cabinet. The notice of transfer shall be submitted on the "Change in Ownership Certification for Swine Waste

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Management Permit", incorporated by reference in Section 18 of this administrative regulation. The cabinet may require modification or reissuance of the permit to change the name of the permittee and incorporate other requirements as required by KRS Chapter 224.

(11) Signatures. The permit application shall be signed and certified by the owner and operator of the swine feeding operation according to the certification in Section 15 of this administrative regulation.

Section 3. Related Agricultural Wastes Handling Systems. (1) If two (2) or more agricultural wastes handling systems are related, the number of swine units used to determine the applicability of this administrative regulation shall be the sum of the swine units at all related facilities.

(2) Facilities are related if:

- (a) They share common swine waste lagoons;
- (b) They share common land application areas; or
- (c) They are physically related and under common ownership and control.

1. Physically related. Facilities are physically related if a portion of one (1) facility is located within one (1) mile of a portion of another.

2. Common ownership and control.

a. Facilities are under common ownership and control if:

- (i) They are owned by the same person or are subsidiaries of the same corporation;
- (ii) The same person has the right to direct how operations will be conducted on the site; or
- (iii) More than fifty (50) percent of each facility is owned by the same person or corporation.

b. Facilities are presumed to be under common ownership and control if any of the following relationships exists. This presumption may be rebutted if the applicant demonstrates that there is no direct or indirect business relationship among the facilities.

- (i) Facilities are under the same ownership or control of members of the same family;
- (ii) Facilities have common partners, investors, officers, or directors;
- (iii) Facilities have the same landowner, tenant, or operator; or
- (iv) Facilities have common owners owning ten (10) to fifty (50) percent of each facility.

Section 4. Public Notification Requirements. (1) Applicant notification.

(a) At least fifteen (15) days before filing with the cabinet in Frankfort an application for a new SWMP, or a renewal or modification of a SWMP, the applicant shall provide the following notification:

1. The applicant shall cause to be published a legal notice of its intent to apply for a permit. The notice shall be published pursuant to KRS Chapter 424.

2. The applicant shall also notify landowners of property adjacent to or directly across the road from, the proposed swine feeding operation and the land application areas. The notice shall be sent by certified mail to the address on the record at the property valuation administrator's office in the county in which the land is located.

(b) The notification shall contain the following information:

1. Name and address of the owner and operator and physical location of the operation, if different than the mailing address;

2. Number of swine that will be confined at the swine feeding operation; and

3. Address where a person may submit comments on the application to the applicant.

(c) A copy of the notice, proof of its publication, and proof of the mailings shall be included with the permit application.

(2) Cabinet notification. Before the issuance of a final permit action, the cabinet shall, pursuant to KRS Chapter 424, publish a notice of its intent to issue or deny the permit. A copy of the draft permit shall be available for review in the appropriate regional office.

(3) A person shall have up to thirty (30) days from the date of the publication of the cabinet's intended action to submit comments about the permit to the cabinet. A person who submits comments shall include the commentor's name and address. The cabinet shall notify each person who submitted comments to the cabinet on the draft permit of the cabinet's final action on the permit.

Section 5. Siting Requirements. (1) Siting restrictions.

(a) The barn, lagoon, or land application area shall not be located in:

- 1. A state or national park, state or national forest, or nature preserve; or
- 2. A wellhead protection area approved by the cabinet pursuant to 401 KAR 4:220.

(b) The barn or lagoon shall not be located in:

- 1. A 100-year floodplain unless permitted pursuant to 401 KAR 4:060;
- 2. A jurisdictional wetland as determined by the NRCS; or
- 3. A sinkhole or other enclosed depression where subsidence is evident.

(c) Swine waste shall not be land applied on:

- 1. Land with a slope greater than twelve (12) percent; or
  - 2. Land that has less than eighteen (18) inches of soil to bedrock.
- (d) A swine waste lagoon shall be located so that there is at least:
- 1. Three (3) feet of soil between the bottom of the lagoon liner and bedrock. This distance may be reduced with the use of an approved synthetic liner; and

2. Five (5) feet separation distance between the bottom of the lagoon liner and the zone of saturation. This distance may be reduced with the use of an approved synthetic liner.

(2) Setbacks.

(a) Each swine feeding operation shall be designed and constructed so that the barns and swine waste lagoons are located at least the minimum distance in paragraph (c) of this subsection from each existing setback feature; and

(b) Each swine feeding operation shall be operated so that the land application of the swine waste is at least the minimum distance in paragraph (c) of this subsection from each existing setback feature, for the applicable method of land application.

(c) Minimum distance. Distance shall be the shortest distance measured from the nearest edge of the barn, lagoon, or land application area to the nearest edge of the setback feature. An existing setback feature shall be existing as of the date that the applicant notifies the public pursuant to Section 4(1) of this administrative regulation.



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Existing Setback Feature	Barn and Lagoon	Land Application Area	
		Injection	Other Method
Dwelling not owned by applicant, church, school and school yard, business, other structure to which the general public has access, park	1,500 feet	500 feet	750 feet
Incorporated city limit	3,000 feet	1,000 feet	1,500 feet
Lake, river, blue-line stream, karst feature	150 feet	75 feet	150 feet
Water well not owned by applicant	300 feet	150 feet	150 feet
Property line	150 feet	50 feet	100 feet
Downstream* water listed in 401 KAR 5:030 as other than use protected, outstanding resource water**	1 mile	750 feet	1,500 feet
Downstream* public water supply surface water intake	5 miles	1 mile	1 mile

\* Measured along gradient

\*\* Designated outstanding resource waters are listed in 401 KAR 5:026

(d) The cabinet may grant a variance from the setbacks in paragraph (c) of this subsection for a dwelling not owned by the applicant, church, or property line if the applicant obtains from the owner of the property in question an easement, properly filed of record, granting the applicant a permanent exemption from the distance requirements in this administrative regulation. A certified copy of this easement shall be submitted to the cabinet with the permit application.

Section 6. Requirements for a Swine Waste Lagoon. Each swine feeding operation shall have at least one (1) anaerobic or aerobic lagoon, sized in accordance with this administrative regulation. No swine feeding operation shall have as its only means of treatment a holding pond or deep pit.

(1) Design and construction. Each swine waste lagoon shall be designed and constructed to meet the following:

(a) The lagoon shall have a maximum single-structure surface area of five (5) acres;

(b) The swine waste lagoon shall be able to hold a maximum design volume that is the sum of the volumes representing:

1. At least one (1) year's production of residual solids;
2. The minimum design volume for an anaerobic lagoon;
3. At least 120 days of swine waste production;
4. Twelve (12) inches of excess precipitation; and
5. Precipitation from one (1) twenty-five (25) year, twenty-four (24) hour rainfall event;

(c) The swine waste lagoon shall have an emergency spillway above the maximum design volume, with one (1) foot of freeboard above the spillway. The spillway shall have a slope with a vertical to horizontal ratio of no steeper than one to three (1:3) and shall be:

1. Designed to carry the flow from one (1) 100-year, twenty-four (24) hour storm event; and
2. At least ten (10) feet wide at the crest;

(d) The swine waste lagoon shall have a clearly marked staff gauge that shows the elevations of:

1. The maximum design volume;
2. The minimum design volume for an anaerobic lagoon; and
3. The crest of the spillway;

(e) Each swine waste lagoon shall be designed by a professional engineer or the NRCS;

(f) Each swine waste lagoon shall have either:

1. A compacted soil liner:
  - a. Of at least twelve (12) inches, deposited and compacted in at least two (2) six (6) inch lifts, with a maximum permeability of  $1 \times 10^{-7}$  cm/sec; and
  - b. So that the lagoon has a hydraulic gradient of no greater than eight and zero-tenths (8.0); or

2. A synthetic liner that provides at least equivalent protection;

(g) Swine waste shall not be placed directly in or be allowed to come in contact with groundwater;

(h) The inside and outside slopes shall have a vertical to horizontal ratio of no steeper than one to three (1:3), unless the cabinet approves a steeper slope;

(i) The discharge from the inlet pipes to the swine waste lagoon shall not erode the berm or the sides of the swine waste lagoon;

(j) The swine waste lagoon shall have a continuous berm of at least two (2) feet above grade to prevent surface water from entering the lagoon; and

(k) The berm shall have a vegetative cover.

(2) The swine waste lagoon shall also be permitted pursuant to KRS 151.250 before construction begins if:

(a) The lagoon is more than twenty-five (25) feet in height, measured from the downstream toe of the dam to the crest of the dam;

(b) The lagoon impounds more than fifty (50) acre-feet at the crest of the dam; or

(c) The lagoon is classified as a high-hazard water-impounding structure pursuant to 401 KAR Chapter 4.

(3) Operation and maintenance. The permittee shall follow these procedures in operating and maintaining the swine waste lagoon.

(a) After construction of the lagoon and before beginning lagoon operation, the as-built construction of the lagoon shall be certified by a professional engineer or the NRCS as meeting the requirements of subsection (1) of this section and shall be submitted to the cabinet pursuant to Section 15 of this administrative regulation;

(b)1. Before introducing swine waste into an anaerobic lagoon, the lagoon shall be filled with water to at least one-half (1/2) of the minimum design volume; and

2. After the initial filling of an anaerobic lagoon, the lagoon level shall be maintained above the minimum design volume by adding water;

(c) Only swine waste and water required by paragraph (b) of this subsection shall be discharged to or disposed of in the swine waste lagoon;

(d) No other waste shall be disposed of in the swine waste lagoon, including dead animals;

(e) The contents of an anaerobic lagoon shall not be agitated, except during the removal of residual solids; and

(f) The swine waste lagoon shall be inspected periodically, the vegetative cover shall be kept mowed, and the embankment and berm shall be kept free of items that may compromise the integrity of the lagoon, such as shrubs, trees, holes, and animal burrows.

(4) Closure. A lagoon that was constructed or operated pursuant to this administrative regulation but that is no longer permitted for

swine waste storage and treatment shall be closed according to this subsection.

(a) The owner and operator shall remove and land apply the entire contents of the lagoon in accordance with the operation's nutrient management plan;

(b) The empty lagoon shall be backfilled, graded, and revegetated unless the cabinet approves an alternative closure to keep the emptied lagoon as a permanent structure; and

(c) The owner and operator shall stabilize the site by using standard erosion control practices, unless the cabinet approves an alternative closure that complies with the environmental standards in Section 12 of this administrative regulation.

Section 7. Swine Waste Lagoon Performance Monitoring. The applicant shall develop a swine waste lagoon liner performance monitoring plan for detection of problems with the swine waste lagoon liner and to provide the opportunity to repair problems with the swine waste lagoon liner before a chronic failure of the lagoon develops or groundwater contamination occurs. The monitoring plan shall address the following items:

(1) The permittee shall conduct groundwater monitoring to measure the performance of the lagoon liner for each lagoon. A minimum of one (1) up-gradient and two (2) down-gradient groundwater monitoring wells shall be constructed for each lagoon. The cabinet may require additional groundwater monitoring wells, based on geological considerations, and the lagoon size, shape, and structure to reasonably ensure that a leak from the liner will be detected.

(2) Location of groundwater monitoring wells.

(a) Each up-gradient monitoring well shall be constructed as close as possible to the lagoon in an area that is not hydrologically affected by the lagoon, land application activities, and animal feeding and storage activities that may contribute monitored constituents to the up-gradient well.

(b) Each down-gradient monitoring well shall be constructed in an area close to and hydrologically down-gradient of the lagoon in a location that maximizes the ability of the monitoring well to detect a lagoon liner failure.

(3) Groundwater monitoring well construction requirements. A groundwater monitoring well shall be constructed in accordance with 401 KAR 6:310 and shall:

(a) Have a minimum diameter of two (2) inches;

(b) Prevent surface contaminants from entering groundwater by way of the monitoring well;

(c) Prevent unauthorized access to the monitoring well;

(d) Be protected from damage occurring from normal activities at the swine feeding operation; and

(e) 1. Extend into the uppermost zone of saturation below the lowest point of the lagoon liner or be constructed to the soil-bedrock interface, if the monitoring well is able to capture groundwater at that depth; or

2. If groundwater is at a depth or of a condition such that monitoring the unsaturated zone would not reflect a contribution from the swine waste lagoon, the applicant may submit an alternative monitoring plan to demonstrate the performance of the lagoon liner.

(4) Analysis parameters. The permittee shall analyze each groundwater sample for the following parameters: chlorides, nitrate nitrogen, total phosphorus, and fecal coliform.

(5) Monitoring well sampling. (a) Each groundwater sample shall be collected and analyzed according to the procedures in Section 11 of this administrative regulation.

(b) Each monitoring well shall be purged three (3) to five (5) well volumes prior to sampling.

(c) Each monitoring well shall be sampled semiannually after beginning lagoon operation. Samples from each monitoring well shall be analyzed for the parameters listed in subsection (4) of this section.

(6) Reporting and recordkeeping. Groundwater sampling results

shall be recorded on the form "Groundwater Sample Analysis for Swine Feeding Operations", incorporated by reference in Section 18 of this administrative regulation and shall be submitted to the cabinet according to the procedures in Section 11 of this administrative regulation.

Section 8. Lagoon Liner Failure Response. (1) If a down-gradient monitoring well sample analysis result exceeds three (3) times the value of the up-gradient monitoring well sample analytical result and for nitrate nitrogen exceeds ten (10) mg/l or for chlorides exceeds 250 mg/l, then the permittee shall notify the cabinet immediately by calling 1-800-928-2380. The permittee shall also develop a plan to repair the swine waste lagoon or to determine the source of contamination.

(2) The permittee shall submit the plan to the cabinet for review and approval within forty-five (45) days of receiving the sampling results that exceed the value in subsection (1) of this section. The plan shall include a timetable for investigating the cause of the exceedances and all lagoon liner performance monitoring data required by this administrative regulation. The plan may include additional monitoring to demonstrate that the lagoon liner is performing as designed. If the lagoon liner is not performing as designed, the plan shall specify the methods for repairing the lagoon liner.

(3) The cabinet shall review the plan and the permittee shall make changes in the plan to conform with the cabinet's comments in accordance with this administrative regulation.

(4) If the cabinet approves a plan to repair the lagoon, the repairs to the liner or other corrections identified in the approved plan shall be completed no later than 120 days after the cabinet's approval of the plan or when requested by the cabinet if the failure is imminent.

(5) Groundwater contamination that occurs as a result of a discharge from the lagoon shall be addressed and corrected so that groundwater contaminant levels do not exceed ten (10) mg/l for nitrate nitrogen or 250 mg/l for chlorides, or ambient background groundwater quality conditions at the property line of the swine feeding operation.

(6) Before restarting lagoon operation, the permittee shall have a professional engineer or the NRCS certify that the repairs have been made in accordance with the approved plan and shall notify the cabinet that the repairs have been made and so certified.

(7) After restarting the lagoon operation following the procedures specified in Section 6 of this administrative regulation or following the procedures in the approved plan, the permittee shall return to the original sampling frequency required in Section 7 of this administrative regulation or the frequency specified in the approved plan.

Section 9. Land Application. (1) The permittee shall dispose of the swine waste in the swine waste lagoon by land application, unless an alternative practice is approved by the cabinet pursuant to Section 13 of this administrative regulation. The permittee shall apply waste only on areas that are included in the SWMP.

(2) Nutrient management plan.

(a) Each swine feeding operation shall develop a nutrient management plan that describes how the swine waste generated by the swine feeding operation will be used for the benefit of the surrounding land, and how and where the swine waste will be land applied.

(b) The nutrient management plan shall contain the following information:

1. The proposed swine waste land application rate per acre, based on crop nitrogen requirements, method of application, expected quantity of nitrogen in the swine waste, residual nitrogen from previous waste application, and other sources of nitrogen applied as fertilizer;

2. Total number of acres needed for land application including the:

a. Number of acres needed to land apply the swine waste based on the land application rate per acre in subparagraph 1 of this

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paragraph, including the acreage necessary to comply with subsection (3)(e) of this section; and

b. Number of acres needed to comply with the siting restrictions for land application in Section 5 of this administrative regulation;

3. A demonstration that the applicant has adequate land available to comply with the land application requirements of subparagraph 2 of this paragraph. The demonstration shall consist of a certified copy, duly filed of record, of at least one (1) of the following that demonstrate legal right to apply waste to the proposed land application area or legal right to the variance on the setback allowed by Section 5 of this administrative regulation:

- a. The deed to the property;
  - b. The lease for the property of at least five (5) years' duration, evidencing the right to use another's property for land application; or
  - c. An easement evidencing the right to use another's property for land application or legal right to the variance in the setback allowed by Section 5 of this administrative regulation; and
4. A swine waste lagoon management plan that describes:
- a. The frequency of the supernatant removal;
  - b. The frequency of residual solids removal;
  - c. The type of equipment that will be used for land application; and

d. The odor control practices;

(c) The nutrient management plan shall be submitted with the permit application for the cabinet's approval. It shall be reviewed and updated as necessary and be maintained on site. The cabinet shall review the initial plan and the applicant shall make changes to conform with the cabinet's comments, in accordance with this administrative regulation.

(3) Land application management.

(a) For every land application event, the permittee shall sample the swine waste to be applied. The sample shall be collected and analyzed for the parameters listed in Section 10(2) of this administrative regulation.

(b) Supernatant shall be land applied using irrigation, surface spreading, or injection techniques. Residual solids shall be land applied using only injection.

(c) Swine waste shall not be land applied:

1. On frozen or saturated soil or during a precipitation event; or
2. In excess of the amount needed to provide the nitrogen requirement of the crop being grown.

(d) Swine waste shall not reach waters of the Commonwealth by runoff, drift, manmade conveyances, direct application, or direct discharge.

(e) Swine waste shall be land applied on the same field only three (3) out of every four (4) years.

(f) The document "Natural Resources Conservation Service, Conservation Practice Standard, Filter Strip (ACRE), Code 393, NRCS-KY-April 1997", incorporated by reference in Section 18 of this administrative regulation, shall be used to determine if a filter strip is required for a field that receives swine waste. If a filter strip is required, it shall be designed, installed, and maintained according to that document. This strip may be included as a part of the setback area.

Section 10. Swine Waste Lagoon and Land Application Sampling Analysis and Recordkeeping. The applicant shall conduct background and annual land application performance soil analysis and annual swine waste lagoon analysis specified in this section and maintain records of those analysis results according to the procedures specified in this section and Section 11 of this administrative regulation.

(1) Soil sample analysis.

(a) Background sample analysis. Before the submittal of a permit application or permit modification and to establish the background conditions of the soil, the applicant shall conduct a baseline soil sample analysis for each field. The applicant shall analyze each soil

sample for available phosphorus, available potassium, pH, and CEC.

(b) Annual sample analysis. The permittee shall perform an annual soil analysis on a composite sample from each field that will receive swine waste that year. The permittee shall analyze each soil sample for available phosphorus, available potassium, soil pH, and buffer pH.

(2) Swine waste analyses. The contents of the swine waste lagoon shall be analyzed for every land application event for the following parameters:

- (a) Total kjeldahl nitrogen, nitrate nitrogen, and ammonia nitrogen;
- (b) Total phosphorus;
- (c) Total potassium;
- (d) pH;
- (e) Chloride; and
- (f) Total solids.

(3) Each swine feeding operation shall maintain records of all swine waste that is land applied. The records shall be entered on the form "Swine Waste Land Application Log", incorporated by reference in Section 18 of this administrative regulation. Copies of the records shall be submitted with the permit renewal application. The records shall contain the following information:

(a) Soil and waste analytical results required in subsections (1) and (2) of this section; and

(b) For each land application event:

1. Field number and acreage;
2. Date applied;
3. Crop;
4. Quantity applied;
5. Method of application;
6. Type of swine waste applied; and
7. Percent of total solids of swine waste applied;

Section 11. General Monitoring, Analysis, and Reporting Requirements. (1) Reports.

(a) Groundwater monitoring, soil sampling, and swine waste analytical results shall be maintained by the swine feeding operation on site. The forms "Groundwater Sample Analysis for Swine Feeding Operations" and "Swine Waste Land Application Log", incorporated by reference in Section 18 of this administrative regulation, shall be used to record the data.

(b) A minimum of five (5) years of data shall be maintained, unless the operation has had its permit for less than five (5) years. If the operation has had its permit for less than five (5) years, all required data shall be maintained. These data shall be made available to the cabinet upon request.

(c) Copies of the analytical and monitoring data for the most recent five (5) years shall be submitted to the cabinet with an application to renew or modify the permit, unless the operation has had its permit for less than five (5) years. If the operation has had its permit for less than five (5) years, all required data shall be submitted.

(2) Monitoring, analysis, and records.

(a) Sampling shall be conducted and the analysis shall be performed according to the procedures in 40 CFR Part 136, "Guidelines Establishing Test Procedures for the Analysis of Pollutants", adopted without change in Section 19 of this administrative regulation, unless other procedures have been specified in the permit.

(b) Samples and measurements shall be representative of the monitored activity.

(c) Monitoring records shall include:

1. The date, exact place, and time of sampling or measurements;
2. The individuals who performed the sampling or measurements;
3. The dates analyses were performed;
4. The laboratories that performed the analyses;
5. The analytical techniques or methods used; and
6. The results of the analyses.

(d) A person who falsifies, tampers with, or knowingly renders inaccurate a monitoring device or method required to be maintained

under the permit shall, upon conviction, be subject to penalties under KRS 224.99.

Section 12. General Environmental Conditions. (1) No permit shall be issued to a swine feeding operation that permits a direct discharge into the waters of the Commonwealth unless that discharge is caused by a rainfall event exceeding a twenty-five (25) year, twenty-four (24) hour rainfall event.

(2) The applicant shall demonstrate to the cabinet that the swine feeding operation will:

(a) Protect those minimum conditions found in 401 KAR 5:031 applicable to all waters of the Commonwealth;

(b) Not cause those waters classified by 401 KAR 5:026 or 5:030 to be of a lesser quality than the criteria applicable to those waters in 401 KAR 5:031 or the requirements of 401 KAR 5:030;

(c) Be in accordance with any of the general or particular swine feeding operation requirements mandated by this administrative regulation.

(d) Not create an environmental or a public health hazard;

(e) Not result in the contamination of public or private drinking water source or supply;

(f) Not result in the destruction of endangered or threatened species or contribute to the taking of a federally endangered or threatened species of fish or wildlife; and

(g) Conform to other handling, treatment, and management and removal requirements deemed necessary by the cabinet to implement this administrative regulation and protect the waters of the Commonwealth.

(3) Dead animals shall be disposed of in accordance with KRS 257.160 and Chapter 263.

Section 13. Variance for Experimental or Alternative Practices. A swine feeding operation may obtain a variance from Sections 5, 6, 7, and 9 of this administrative regulation with the use of an experimental or alternative practice or technology that deviates from the requirements of this administrative regulation. The variance shall be submitted as a new permit, permit modification, or permit renewal.

(1) The applicant shall submit a request for the variance explaining the alternative or experimental practice or technology and documenting how the practice will be implemented.

(2) The cabinet may request additional technical information. The cabinet will review the alternative or experimental practice or technology and may request additional review from the most appropriate technical agency to determine if the practice or technology is appropriate.

(3) The variance may be granted if the applicant demonstrates the practice or technology will comply with the requirements of Section 12 of this administrative regulation, will not pollute the waters of the Commonwealth, will not result in additional problems with odors from the operation, and will not cause additional health or environmental problems.

(4) If the alternative or experimental practice or technology fails to provide adequate environmental protection, the cabinet may revoke the variance and require the owner or operator to comply with the provisions of this administrative regulation.

Section 14. Compliance. If the swine feeding operation is not in compliance with the requirements of this administrative regulation or the conditions of its permit, the cabinet may:

(1) Revoke or modify the permit;

(2) Initiate enforcement action;

(3) Issue a notice of intent to deny a new permit;

(4) Issue a new permit under Section 2 of this administrative regulation with appropriate conditions; or

(5) Take other actions authorized by KRS Chapter 224 and the administrative regulations in 401 KAR Chapter 5.

Section 15. Standard Permit Conditions. The following conditions shall apply to all permits for swine feeding operations.

(1) Duty to comply. The permittee shall comply with all conditions of the permit. A permit noncompliance constitutes a violation of KRS Chapter 224, among which are the following remedies: enforcement action, permit revocation, permit modification, or denial of a permit renewal application. A person who violates a permit condition as set forth in this administrative regulation is subject to penalties under KRS 224.99.

(2) Duty to reapply. If the permittee wishes to continue an activity regulated by the permit after the expiration date of the permit, the permittee shall apply for and obtain a new permit as required by Section 2 of this administrative regulation.

(3) Need to halt or reduce activity not a defense. It shall not be a defense for a permittee in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of the permit. The structural stability of a unit or part of the permitted swine feeding operation is the sole responsibility of the permittee. The failure of a structural unit or part of the swine feeding operation shall not relieve the permittee of the responsibility of complying with each term and condition of the permit.

(4) Duty to mitigate. The permittee shall take all reasonable steps to minimize or prevent a discharge in violation of the permit.

(5) Proper operation and maintenance. The permittee shall at all times properly operate and maintain all facilities and systems of treatment and control and related appurtenances that are installed or used by the permittee to achieve compliance with the conditions of the permit.

(6) The filing of a request by the permittee for a permit modification, renewal, or reissuance or a notification of planned changes or anticipated noncompliance, does not stay any permit condition.

(7) Property rights. The permit does not convey a property right of any kind, or an exclusive privilege.

(8) Duty to provide information. The permittee shall furnish to the cabinet, within a reasonable time, any information which the cabinet may request to determine whether cause exists for modifying, reissuing, or revoking the permit, or to determine compliance with the permit. The permittee shall also furnish to the cabinet, upon request, copies of records required to be kept by the permit.

(9) Inspection and entry. The permittee shall allow the cabinet, or an authorized representative, upon the presentation of credentials and other documents as may be required by law, to:

(a) Enter upon the permittee's premises where a regulated swine feeding operation is located or conducted, or where records pertinent to the permit are or may be kept;

(b) Have access to and copy, at reasonable times, any records that shall be kept under the conditions of the permit;

(c) Inspect at reasonable times a swine feeding operation including monitoring and control equipment, practices, or operations regulated or required under the permit; and

(d) Sample or monitor at reasonable times, for the purposes of assuring compliance with this administrative regulation or as otherwise authorized by KRS Chapter 224, any substances or parameters at any location.

(10) After construction of the swine waste lagoon is completed and before beginning lagoon operation, the permittee shall submit to the cabinet the as-built certification required by Section 6 of this administrative regulation. The cabinet shall notify the permittee within ten (10) days of receipt of the certification of any problems associated with the certification or the construction of the lagoon.

(11) Signatures. Each application, report, or other information submitted to the cabinet shall be signed and certified by the owner or operator of the swine feeding operation. A person who knowingly makes a false statement, representation, or certification in a record or other document submitted or required to be maintained under this administrative regulation, including monitoring reports or reports of

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compliance or noncompliance shall, upon conviction, be subject to penalties under KRS 224.99.

Section 16. Compliance Reporting Requirements. (1) Planned changes. The permittee shall give notice to the cabinet as soon as possible of a planned physical alteration or addition to the permitted swine feeding operation.

(2) Anticipated noncompliance. The permittee shall give advance notice to the appropriate regional office and the Division of Water's central office in Frankfort of a planned change in the permitted swine feeding operation which may result in noncompliance with permit requirements.

(3) Lagoon discharge reporting. If there is a direct discharge from the lagoon, a direct discharge during land application to the waters of the Commonwealth, or a discharge through the spillway or over the berm, the permittee shall immediately notify the cabinet at 1-800-928-2380. The permittee shall provide the following information in the notification:

(a) A description and cause of the discharge, including a description of the flow path to the receiving water body;

(b) An estimate of the flow rate and volume discharged;

(c) The period of discharge, including exact dates and times, and if not already corrected, the anticipated time the discharge is expected to continue; and

(d) Steps taken to reduce, eliminate, and prevent recurrence of the discharge.

(4) Noncompliance endangering human health and environment. The permittee shall orally report any noncompliance which may endanger human health or the environment, immediately when the permittee becomes aware of the circumstances by calling 1-800-928-2380. This report shall be in addition to and not in lieu of another reporting requirement applicable to the noncompliance. A written submission shall also be provided within seven (7) days of when the permittee becomes aware of the circumstances. The written submission shall contain a description of the noncompliance and its cause; the period of noncompliance, including exact dates and times, and if the noncompliance has not been corrected, the anticipated time it is expected to continue; and steps taken or planned to reduce, eliminate, and prevent recurrence of the noncompliance. The cabinet may waive the written report on a case-by-case basis if the oral report has been received within twenty-four (24) hours.

(5) Other noncompliance. The permittee shall report all instances of noncompliance not reported under subsection (4) of this section, with the next permit application.

Section 17. Permit Timetables. This section shall apply to permits issued pursuant to this administrative regulation.

(1) Within thirty (30) calendar days of initial receipt of an application for a SWMP the cabinet shall notify the applicant as to whether the application is administratively complete, or if not complete, of the deficiencies that make the application administratively incomplete. A determination that the application is administratively complete shall not mean that the application is complete in every detail, nor shall it mean that every aspect of the application is technically sufficient or approvable.

(2) If the application is determined to be administratively incomplete, the applicant shall correct identified deficiencies within thirty (30) calendar days of the date of notification. If the applicant does not correct identified deficiencies within the time frame, the cabinet may return the application.

(3) After the notification that the application is administratively complete, if the cabinet determines that the application is technically deficient, the cabinet shall notify the applicant of deficiencies that make the application technically incomplete or unapprovable. The applicant shall correct the technical deficiencies within thirty (30) calendar days of the notification, or other time as agreed upon by the applicant and cabinet. If the technical deficiencies are not corrected

within thirty (30) calendar days or the agreed upon time frame, the cabinet may deny the permit.

(4) The cabinet shall issue its final decision on a complete permit application within ninety (90) calendar days after receipt of an administratively complete permit application. A complete permit application shall contain all the administrative and technical information required by this administrative regulation.

(5) Timetable exclusions. Time periods which shall not be included in the cabinet's consideration of its decision on a SWMP application shall include:

(a) Time waiting for the applicant to respond to a notice of deficiency;

(b) Time during which an opportunity for public comment period on a draft permit is given; and

(c) Other times as agreed to in writing by the applicant and the cabinet.

Section 18. Documents Incorporated by Reference. The following documents and forms are incorporated by reference. Except as noted, the documents may be obtained from the Division of Water, 14 Reilly Road, Frankfort, Kentucky. The material is available for inspection and copying, subject to copyright laws, at the Division of Water. Office hours are 8 a.m. to 4:30 p.m., Monday through Friday, excluding state holidays.

(1) Forms.

(a) "Kentucky Swine Waste Management Permit for Swine Feeding Operations Permit Application, DEP 7033-SFO (12/97)", Kentucky Division of Water;

(b) "Change in Ownership Certification for Swine Waste Management Permit, DEP 7033-CO (12/97)", Kentucky Division of Water;

(c) "Swine Waste Land Application Log, DEP 7033-LOG (12/97)", Kentucky Natural Resources and Environmental Protection Cabinet, Department for Environmental Protection, Division of Water;

(d) "Groundwater Sample Analysis for Swine Feeding Operations, DEP 7033-GW (12/97)", Kentucky Natural Resources and Environmental Protection Cabinet, Department for Environmental Protection, Division of Water; and

(e) "Worksheet for Calculating Swine Units, DEP 7033-W (12/97)", Kentucky Natural Resources and Environmental Protection Cabinet, Department for Environmental Protection, Division of Water.

(2) "Natural Resources Conservation Service, Conservation Practice Standard, Filter Strip (Acre), Code 393, NRCS-KY-April 1997". This document may be obtained from the NRCS, 771 Corporate Drive, Suite 110, Lexington, Kentucky 40503, 606/224-7350.

Section 19. Adoption Without Change. The following federal regulation is adopted without change: "40 CFR Part 136, "Guidelines Establishing Test Procedures for the Analysis of Pollutants", as in effect July 1, 1997".

(a) The federal regulation may be obtained from the U.S. Government Printing Office, Superintendent of Documents, Mail Stop: SSOP, Washington, DC 20402-9328; and

(b) The federal regulation is available for inspection and copying, subject to the copyright laws, at the Division of Water, 14 Reilly Road, Frankfort, Kentucky. Office hours are 8 a.m. to 4:30 p.m., Monday through Friday, excluding state holidays.

JAMES E. BICKFORD, Secretary

GLENNA JO CURRY, General Counsel

APPROVED BY AGENCY: December 15, 1997

FILED WITH LRC: December 15, 1997 at 11 a.m.

PUBLIC HEARINGS: Public hearings to receive comments on this proposed amended regulation are scheduled for January 22, 1998, at 6 p.m. (central time), in two locations: Julian B. Carroll Convention Center, One Executive Boulevard, Paducah, Kentucky, and Western Kentucky University, South Campus, 2355 Nashville Road, Bowling

Green, Kentucky. Individuals interested in attending either hearing shall notify Jack A. Wilson in writing at the address noted below by January 14, 1998, of their intent to attend either hearing and be heard. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. Both hearings are open to the public. Any person who attends either hearing will be given an opportunity to comment on the proposed amended regulation. Persons testifying at either hearing are asked to provide the cabinet with a written copy of their testimony, if available. A transcript of the public hearings will not be made unless a written request for a transcript is made. If you do not wish to be heard at either public hearing, you may submit written comments on the proposed amended regulation. Written comments must be received by Jack A. Wilson at the address below no later than 4:30 p.m. (eastern time) on January 22, 1998. Written comments will also be accepted at the public hearings. The Natural Resources and Environmental Protection Cabinet does not discriminate on the basis of race, color, national origin, sex, religion, age, or disability. Each meeting facility is accessible to people with disabilities. The cabinet will provide, upon request, reasonable accommodations including auxiliary aids and services necessary to afford individuals with a disability an equal opportunity to participate in all services, programs, and activities. If an interpreter or other auxiliary aid or service is needed, contact Mr. Wilson at the address below before January 14, 1998 between 8 a.m. and 4:30 p.m.

CONTACT PERSON: Jack A. Wilson, Director, Division of Water, Frankfort Office Park, 14 Reilly Road, Frankfort, Kentucky 40601, (502) 564-3410 (Voice), (502) 564-4245 (Fax).

#### REGULATORY IMPACT ANALYSIS

Contact Person: Jack A. Wilson, Director

(1) Type and number of entities affected: This administrative regulation applies to a new swine feeding operation. A swine feeding operation is an operation that confines 1,000 swine units or more and is not a concentrated animal feeding operation. This administrative regulation does not apply to existing agricultural waste handling systems, which will be allowed to continue under the Kentucky No Discharge Operational Permit (KNDOP) program pursuant to 401 KAR 5:005, as long as they do not increase up to or beyond the 1,000 swine unit threshold. This administrative regulation does not apply to an existing swine feeding operation that confines 1,000 or more swine units and that obtained a permit under the KNDOP program, or had applied for the permit before July 25, 1997, unless the swine feeding operation expands greater than 10% beyond its current permitted capacity after September 18, 1997. This administrative regulation applies to an existing agricultural waste handling system that confines less than 1,000 swine units and that obtained a permit under the KNDOP program before July 25, 1997, if the agricultural waste handling system increases to 1,000 or more swine units after September 18, 1997. This administrative regulation applies to an existing swine feeding operation that confines more than 1,000 swine units and that failed to obtain a permit under the KNDOP program and failed to apply for the permit before July 25, 1997, unless it notifies the cabinet in writing by January 1, 1998, that it wishes to be governed under the KNDOP program. In this instance, the swine feeding operation must apply for and receive a permit under the KNDOP program by July 25, 1999. Once permitted, expansions to this swine feeding operation would be regulated as if the facility had obtained a permit under the KNDOP program or had applied for the permit before July 25, 1997. The number of new swine feeding operations seeking to locate in Kentucky is unknown. However, some large integrator swine feeding operations have expressed an interest in obtaining a permit to locate in Kentucky. If large integrator swine feeding operations locate in Kentucky and obtain permits, they will require contract growers. Large integrators confine a large number of sows for breeding purposes at a central swine feeding operation

("farrowing"). The sows give birth to an average of 2.3 litters per year with approximately 10 piglets born with each litter. The piglets are often housed at swine nursery facilities until they reach a certain weight (approximately 55 pounds) at which time they are transferred to a "finishing" swine feeding operation where they are raised to market weight. Swine finishing operations are commonly "contract growers" for the large integrators. Nursery facilities may also work under contract with large integrators. With integrators locating in Kentucky, the need for contract growers will likely be addressed to some extent by the expansion of some existing operations permitted under the KNDOP program; however, some new swine feeding operations will likely be established. The cabinet can only estimate the number of existing agricultural waste handling systems currently permitted under the KNDOP program seeking to expand up to or beyond the 1,000 swine unit threshold. The cabinet estimates there are fewer than 200 agricultural waste handling systems that are near or above the 1,000 swine unit threshold. This estimate is corroborated by researchers at the University of Kentucky's Department of Agricultural Economics. The cabinet presently permits 123 agricultural waste handling systems with 1,000 or more swine, all of which are located in the western part of the state (west of Interstate 75). The top four largest swine operations are in Nelson (16,400 swine), Graves (12,000 swine), Allen (11,200 swine), and Butler (11,020 swine) counties, respectively. Most permitted agricultural waste handling systems with 1,000 or more swine are west of Interstate 65. Researchers at the University of Kentucky's Department of Agricultural Economics indicate the number of swine produced has generally declined in Kentucky since 1982; however, eleven counties in the central portion of the state have seen a 25% increase in the number of hogs produced during this period. Over the same period, there has been a 45% decrease in the number of farms producing hogs in these counties. This suggests that swine production facilities have become larger in terms of the number of swine produced at any given site. If this trend continues, the number of affected entities will continue to rise over time, though the total number of swine-producing operations may actually decrease. The cabinet can only estimate the number of existing agricultural waste handling systems with 1,000 or more swine expected to choose to become regulated under the less stringent requirements of 401 KAR 5:005. According to *Kentucky Agricultural Statistics 1996-97* there are approximately 2,500 swine operations in Kentucky. The KNDOP program currently lists 350 permittees. Using these estimates, there are roughly 2,150 unpermitted swine operations within the Commonwealth, though not all of these operations require a permit from the cabinet.

(2) Direct and indirect costs or savings on the affected entities: This administrative regulation will require affected entities to comply with siting, permitting, design, operation, and public notification requirements. All affected entities will be required to have under their control land of suitable acreage to allow for the required setbacks and the proper disposition of swine waste. These costs could be significant depending on the size and location of the operation. This administrative regulation includes siting restrictions for swine feeding operations in wellhead protection areas, jurisdictional wetlands, and 100-year floodplains. Land application of swine waste is prohibited in areas with slopes steeper than 12%, and in areas with less than 18 inches of soil to bedrock. Land application of swine waste is not to exceed the agronomic capacity of the receiving fields. In some instances of existing operations seeking to expand, the land may be unsuitable, or unavailable, for the increased waste to be applied, thus necessitating a greater amount of acreage for land application. Furthermore, setback requirements constrain the acreage of available land for swine waste application. These factors will limit availability of suitable land for swine waste application. With this regulation in effect, certain areas may experience upward pressure on property values (and taxes) if demand for suitable sites increases. Land acquisition costs would increase accordingly. Land acquisition costs will vary depending on the amount of land already under control of the affected



entity, the setbacks applicable to the site, and the agronomic characteristics of the land application areas. The cabinet estimates lagoon waste application areas for a swine feeding operation with 1,000 swine units would require an estimated 100 to 800 acres depending on the cropping system at each site. These estimates do not include the land required to meet all setback and siting requirements. Farm property values average \$1,077 per acre (1992 Census of Agriculture), thus the land acquisition requirements, for entities with no land under their control at startup, could cost between \$100,000 and \$800,000, not including the land required to meet all setback and siting requirements. However, these costs could be reduced, perhaps by half, through a negotiated lease arrangement between the owner or operator of the swine feeding operation and the owner of acreage suitable for land application of the swine waste. Considering the extent of environmentally sensitive areas and other restricted sites, the installation of swine feeding operations in many areas of Kentucky will be prohibited, possibly creating a premium for those lands that are suitable. If large integrator swine feeding operations do not locate in Kentucky, there could be less demand for associated agricultural operations such as grain suppliers and contract growers. However, it is unclear whether the installation of large integrator swine feeding operations in Kentucky will cause a positive or negative economic impact on small-scale swine operators. Anecdotal evidence from Oklahoma indicates large integrators tend to drive up demand for land application acreage to the point that small-scale swine operators cannot purchase land needed for expansion of their operations. Researchers from the University of Kentucky's Department of Agricultural Economics indicate the community and regional economic impacts associated with large integrator swine feeding operations could be significant if these integrators acquire building materials, feed, labor, and other production inputs from the local economy. However, there is anecdotal evidence from the Corn-Belt region indicating large integrators tend to contract building materials, feed, and veterinary services out to larger companies not necessarily located in the community where the feeding operations reside. If so, then the economic benefit to the host community from large integrators would be diminished. Data are insufficient to conclude the economic impacts large swine feeding operations will have on communities. However, even if all construction, feeding and veterinary services are obtained from outside the host community, there will be expenditures. Hence, if large integrator swine feeding operations do not locate in Kentucky, this will have the negative effect of these foregone expenditures in host communities although the scale of this impact is difficult to predict. Compliance standards will require a swine feeding operation to conduct lagoon liner performance testing to adequately determine the integrity of waste lagoons. Lagoon liner performance testing for the first year will require two samples at three points (one up-gradient and two down-gradient of the lagoon(s)). Installation of three wells for lagoon liner performance testing will cost an estimated \$1,200 to \$9,000. Tests conducted for the prescribed parameters will cost an estimated \$67 to \$200 per well per sampling event, including labor costs. With these estimates, lagoon liner performance testing costs, including well installation, are estimated at between \$1,600 and \$10,200 for the first year. Expanding swine feeding operations may be required to modify their existing lagoon if the lagoon fails to conform to the requirements of this administrative regulation. The liner requirements and depth to bedrock requirements for lagoons, along with the setbacks required, may preclude expansion of existing operations in certain circumstances, depending on land availability. Liners must have a minimum of 12 inches of compacted soil or a synthetic liner to meet permeability standards. Liner costs will vary depending on the availability of suitable soils near the lagoon. Estimates for a clay liner for a 5-acre lagoon range from \$20,000-\$30,000 and twice this figure for a synthetic liner. Permeability tests for the liner cost an estimated \$75. For the second and subsequent years, swine feeding operations affected by this regulation will be required to incur a minimal cost (approximately \$400 to

\$1,200 total per year) to test for lagoon liner leaks at three (3) detection points twice per year. If leaks are detected, the permittee must develop a plan for repair or further monitoring. The swine feeding operation may perform additional monitoring to verify that the liner is performing as designed and potentially avoid liner replacement costs for properly performing lagoons. Testing costs will be dependent on the extent of lagoon leakage. A swine feeding operation is also required to develop and implement a nutrient management plan to ensure proper disposition of lagoon waste. Currently a nutrient management plan is a standard part of any large-scale agricultural operation. This requirement is not expected to create significant new costs for the affected entities. Baseline and annual soil testing, as part of the overall nutrient management plan, will be required at each field targeted to receive swine waste. Cost for the affected entities are estimated at \$50 per year per field. Total costs will vary depending on the number of fields to be sampled. Swine waste testing is required prior to each land application event. If a swine feeding operation applies waste 5 times in a year, the testing costs would total an estimated \$50 per event, or \$250 for the year. Costs of compliance will vary dramatically depending on several factors. Land acquisition costs are by the far the most varying. Land acquisition costs are also the driving factors influencing a swine feeding operation's overall cost of compliance. The cabinet has prepared the following general breakdown of costs to the affected entities.

#### First Year

Suitability assessment of lagoon site	\$5,000
Land acquisition costs*	\$0 - \$800,000
Permit application preparation and development of nutrient management plan	\$4,000
Lagoon liner	\$25,000
If synthetic liner is required, add	\$25,000
Lagoon liner permeability test	\$75
Groundwater monitoring well installation	\$5,100
Semiannual groundwater monitoring	\$800
Lagoon waste testing (for 5 land application events)	\$250
Soils testing (per field)	\$50

#### Second and Subsequent Years

Semiannual groundwater monitoring	\$800
Lagoon waste testing (for 5 land application events)	\$250
Soils testing (per field)	\$50

\*Land acquisition costs depend on the amount of suitable land under the control of the swine feeding operation, the cropping system employed on the land application areas, and whether the land is leased or purchased.

(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: The cabinet can only estimate the extent to which this regulation will impact the cost of living and employment for new swine feeding operations. The cabinet received comments from the public concerning the local or regional impacts of this regulation. Comments received focused primarily on the location decisions of large swine feeding operations, and their effects on local communities. It is unclear whether this administrative regulation will deter the installation of large swine feeding operations. Operations of this size (an estimated \$2 million - \$5 million investment) are believed to factor in the costs of environmental compliance into their operations. Furthermore, the limited studies that have been conducted regarding this issue provide mixed reviews as to whether the installation of large swine feeding operations would produce an overall positive or negative effect on the cost of living and employment. Because this regulation does not apply to existing swine feeding operations operating under their current permit, there are no foreseen impacts on the cost of living or employment levels for existing swine feeding



operations. All affected entities will incur costs to come into compliance with this regulation. This cost could have an effect on the employment levels of these operations. Employment levels, however, are dependent on many factors including market demand for swine, and the management practices of the affected entities.

(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: The cabinet can only estimate the extent to which this regulation will impact the cost of doing business. This regulation does not apply to agricultural waste handling systems operating under their currently permitted capacity. Therefore, there are no foreseen impacts on the cost of doing business for existing agricultural waste handling systems, unless they increase up to or beyond the 1,000 swine unit threshold. The cabinet received several comments from the public questioning the impact of this regulation on the viability of small farms. By tying the regulation to apply only to those operations confining 1,000 or more swine units, the cabinet attempts to ensure that those operations generating less swine waste are not required to bear the costs of complying with the regulation.

(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: Reporting and paperwork will be greater for the affected entities under the new SWMP program, compared to the existing KNDOP program. Increased reporting and paperwork result from the requirements for site suitability assessments, monitoring well installation, soil testing, lagoon liner performance testing, lagoon waste testing, and nutrient management plans. For more detailed information on first year costs, see (2) above.

2. Second and subsequent years: Increased reporting and paperwork result from the requirements for soil testing, lagoon liner performance testing, and lagoon waste testing. For more detailed information on costs for the second and subsequent years, see (2) above.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: The cabinet will be required to review applications and process permits for all swine feeding operations that are required to comply with this administrative regulation. If an existing unpermitted operation decides to comply with 401 KAR 5:005, the cabinet will be required to review and process permits to those facilities by July 25, 1999. There are an estimated 21,150 unpermitted swine operations in Kentucky, though not all of these facilities require a permit from the cabinet. The cabinet currently devotes 0.2 person-years to the review and issuance of animal feeding operations covered under the KNDOP program governed by 401 KAR 5:005. Given the added complexity of the reviews required, the cabinet lacks the resources to fully implement the new SWMP program. Additional staff time will be required to conduct a thorough review of the reports submitted by permit applicants. The cabinet estimates the need for two new engineers to adequately process the expected permit load. The cabinet also conducts site visits as part of the permitting process. Site inspections are necessary to determine the overall suitability of the site and verify that construction is commencing in accordance with the issued permit. There is an expected increase in the number of complaints to be investigated, compliance inspections, records reviews, and confirmation sampling. To meet expected demand, the cabinet will require four new field inspectors. Total personnel costs for two additional engineers and four additional inspectors are estimated at \$215,000.

2. Continuing costs or savings: One additional biologist and one additional groundwater hydrologist will be needed to collect surface and groundwater ambient monitoring data to establish conditions and trends in areas associated with swine feeding operations. This information will provide the basis to assess nutrient levels and the presence of pathogenic contamination as it pertains to ecological and

human health, and to determine the overall effectiveness of this administrative regulation. Total additional personnel costs for these two positions are estimated at \$72,000. Additional staff time will be required on a continuing basis to review soil test data, lagoon liner performance data, and nutrient management plans. Staff time will need to be increased by cabinet agronomists, geologists, and engineers. Inspectors' time will need to be increased to verify the operation and compliance of the swine feeding operations, particularly those in the jurisdictions of the cabinet's western regional offices.

3. Additional factors increasing or decreasing costs: If soil data or lagoon liner performance data indicate environmental degradation is occurring, additional testing and lagoon repairs may be required. These events would require further devotion of staff time to conduct a thorough review of the swine feeding operation. However, these testing requirements may prevent a future lagoon breach or environmental degradation, thus preventing significant damages (financial and otherwise) to the affected entities, the promulgating agency, and the environment. North Carolina environmental officials have indicated a 22-million-gallon lagoon breach in North Carolina resulted in a \$62,000 fine for the operator, and a multimillion dollar assessment and cleanup effort.

(b) Reporting and paperwork requirements: There will be an increase in the number of permit applications and reports submitted by swine operations. Applications and reports will require a thorough review by cabinet staff. There will also be an increase in the number of inspection reports that must be completed by cabinet inspectors.

(4) Assessment of anticipated effect on state and local revenues: Permit fees are not required for this administrative regulation. Therefore, state General Fund revenue will be used for implementation and enforcement of this administrative regulation. Swine feeding operations may impact local revenues. New swine feeding operations could impact local tax revenues as provided by local tax ordinances. However, it is unclear whether this administrative regulation will affect the location decisions of swine feeding operations.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: General Fund revenue will be used for implementation and enforcement of this administrative regulation. Existing resources are insufficient to fully implement the new SWMP program.

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

(a) Geographical area in which administration regulation will be implemented: The requirements of this administrative regulation apply throughout Kentucky.

(b) Kentucky: Most swine operations are located in western Kentucky, therefore the economic impacts are expected to be most prevalent in that region. Also, the siting restrictions, setbacks, and land application restrictions will further constrain the number of swine feeding operations locating in eastern Kentucky. Economic impacts are dependent on many factors. One component is property values. A Minnesota study by Taff, Tiffany and, Weisburg (1996) found that if newly locating swine feeding operations increase demand for housing through new hires or transferred labor, property values could increase. However, if swine feeding operations create negative effects on quality of life (odors, increased traffic, etc.) for the surrounding areas, property values could decrease. A Michigan study by Abeles-Allison and Connor found housing values decreased \$.43 for each additional hog within a five mile radius of the study area (or \$430 for each additional 1,000 swine). Palmquist, Roka, and Vukina (1996) studied the impacts on nearby housing prices of new hog operations in southeastern North Carolina. This study shows that the proximity of hog operations has a statistically significant and negative impact on property values. The results also show that monetary damages decrease with the increasing distance from the swine production facility to the house. The results also show that expansion of swine production in areas where swine concentration is already high will

have a smaller negative effect on surrounding property values than when expansion occurs in low swine density areas. This regulation creates safeguards for proper operation and management of swine feeding operations. If implemented correctly by the affected entities, these negative effects can be minimized.

(7) Assessment of alternative methods; reasons why alternatives were rejected: The cabinet considered extending the applicability of this regulation to all swine feeding operations that had more than 750 head of swine. However, the cabinet rejected that approach because the cabinet considers the smaller operations to be adequately addressed under the current KNDOP permitting program. The cabinet also considered continuing the current permitting program for all operations regardless of their size. However that approach was rejected since the volume of waste generated by the larger operations poses a threat to Kentucky's environment, and the potential for environmental damage due to failure of a lagoon is greater for the larger operations. The cabinet may approve an alternative or experimental technology if the applicant demonstrates that the alternative or experimental technology will comply with the general environmental conditions required in this regulation, not pollute the waters of the Commonwealth, will not result in additional problems with odors, and will not cause additional health or environmental problems.

(8) Assessment of expected benefits of the administrative regulation: Benefits take the form of potential damages avoided. Properly operated and maintained operations will result from promulgation of this regulation. For a description of property value losses that could be avoided through this regulation, see (6)(b) above. In western Kentucky, the tourism industry is a major contributor to the regional economy. This regulation creates safeguards to assure the proper operation and maintenance of swine feeding operations. By addressing the impacts of swine odor, the potential for lagoon failure, and the increased traffic from heavy trucks in populated areas, this regulation is expected to protect those factors so critical to a vibrant tourist industry and overall quality of life. This administrative regulation requires adherence to strict construction standards for swine waste lagoons, along with semiannual groundwater monitoring around the lagoons. These, and other, requirements are expected to prevent contamination of groundwater from leaking lagoons. A Pennsylvania study by Abdalla (1990) indicated people undertake substantial averting actions in response to groundwater contamination and that such actions can have significant economic consequences. These averting actions can take the form of expenditures for point-of-use treatment systems, bottled water, and/or modifications to daily routines to avoid exposure to the contaminant. Abdalla found the total costs for the averting actions of households in the study area to be between \$252 and \$383 per household (in 1987 dollars). These figures underestimate the lower bound measure of total welfare loss for this case. Costs are not incurred for behavior modifications alone. Health effects (morbidity/mortality) can be significant, though difficult to quantify. Contamination of groundwater can also increase the level of anxiety and fear in a community (diminished quality of life). Finally, groundwater contamination can also impact surface water quality, particularly in Kentucky where a large portion of the state has underlying karst geology. This administrative regulation is expected to prevent these damages through siting requirements, lagoon construction standards, and semiannual groundwater monitoring. Surface water contamination is expected to be prevented through requirements on lagoon construction. This administrative regulation also establishes setback distances to allow for early warning of downstream areas in the event of a lagoon failure.

(9)(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: Public health and welfare in Kentucky will be safeguarded through this regulation. Potential damages avoided are described in (6)(b) and (8) above.

(b) State whether a detrimental effect on environment and public

health would result if not implemented: This regulation is designed to provide safeguards to protect environmental and public health.

(c) If detrimental effect would result, explain detrimental effect: See discussion of potential damages in (6)(b) and (8) above.

(10) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: There is no statute, administrative regulation, or government policy that may be in conflict, overlapping, or duplication. Any potential conflict or overlapping will be removed with the redefining of an agricultural waste handling system in 401 KAR 5:001. That term will be defined to exclude swine feeding operations, thus removing the potential conflict or overlapping.

(a) Necessity of proposed regulation if in conflict: Not applicable since there is no conflict.

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

(11) Any additional information or comments: On July 25, 1997, Governor Paul E. Patton issued Executive Order 97-926 that ordered an immediate suspension on the acceptance of new applications of permits for agricultural waste handling systems and for Kentucky Pollution Discharge Elimination System permits for all facilities handling swine related waste. Governor Patton also directed the cabinet to develop a balanced regulatory program to maximize the benefits to the Commonwealth. The emergency regulation that the cabinet promulgated on September 18, 1997, represented that balanced regulatory program. When the cabinet filed the emergency regulation with the Legislative Research Commission, it also filed two Notices of Intent to Promulgate (NOIs) on the same subject matter. Those NOIs represented the cabinet's intention to make the emergency regulation become a permanent regulation. The cabinet conducted a public hearing on the NOIs on November 25, 1997, and on December 15, 1997, filed the NOI Statement of Consideration document that responded to the comments received during the public comment period. The proposed regulation that is the subject of this Regulatory Impact Analysis is in response to the comments received on the Notices of Intent. Many suggestions received during the public comment period resulted in changes to the regulation. The cabinet is also proposing amendments to the definitions regulation for 401 KAR Chapter 5, to accommodate the new and amended terms that are used in the proposed regulation. To develop the emergency and subsequent proposed regulation, the cabinet consulted with several agencies, organizations, and individuals in Kentucky and some state officials in Oklahoma and North Carolina. Some of the Kentucky contacts included the Natural Resources Conservation Service, the University of Kentucky, the Kentucky Geological Survey, the Sierra Club, the Kentucky Resources Council, and the Kentucky Pork Producers' Association.

(12) TIERING: Is tiering applied? Yes, tiering was applied in several instances in this regulation. The regulation applies only to those new swine feeding operations that confine 1,000 or more swine units (about 2,500 finishing swine) or more, instead of all swine operations. Existing permitted swine feeding operations that expand more than ten percent above their current permitted level would be subject to this administrative regulation. Existing animal feeding operations that are currently under the 1,000 swine unit threshold would not be affected by this regulation, unless they expand above that threshold. Another example of tiering is in the amount of land needed for land application of the swine waste. Less land is needed in some instances if the owner or operator uses soil injection instead of surface application or other methods. Also, the barns and lagoons and land application areas must be at least a specified distance from given setback features.

#### 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. Not applicable.

3. State the aspect or service of local government to which this administrative regulation relates. Not applicable.

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. There is no effect on the expenditures.

Revenues (+/-): None

Expenditures (+/-): None

Other explanation: None

#### FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. There is no federal mandate.

2. State compliance standards. Not applicable.

3. Minimum or uniform standards contained in the federal mandate. There is no federal mandate.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements than those required by the federal mandate? There is no federal mandate.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Not applicable.

#### JUSTICE CABINET Kentucky Department of Corrections Division of Adult Institutions (New Administrative Regulation)

#### 501 KAR 6:180. Infectious diseases.

RELATES TO: KRS Chapters 196, 197, 439

STATUTORY AUTHORITY: KRS 196.035, 197.020, 197.055, 215.550

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.

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

APPROVED BY AGENCY: December 5, 1997

FILED WITH LRC: December 15, 1997 at 9 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on January 21, 1998 at 9 a.m., in the Fifth Floor Conference Room of the State Office Building. Individuals interested in being heard at this hearing shall notify this agency in writing by January 13, 1998, 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: Jack Damron or Tamela Biggs, Staff Attorneys, Department of Corrections, 2nd Floor, State Office Building, Frankfort, Kentucky 40601, Telephone Number (502) 564-2024, Facsimile Number (502) 564-6494.

#### REGULATORY IMPACT ANALYSIS

Agency Contact Person: Tamela Biggs

(1) Type and number of entities affected: 2,948 employees of the correctional institutions, 8,729 inmates, 14,211 parolees and probationers, and all visitors to state correctional institutions.

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

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented: None

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented: None

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

1. First year following implementation: None

2. Second and subsequent years: None

(3) Effects on the promulgating administrative body:

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(a) Direct and indirect costs or savings:

1. First year: None
2. Continuing costs or savings: None
3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: Policy revisions.

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

(5) Source of revenue to be used for implementation and enforcement of administrative regulation is the funds budgeted for this 1996-1998 biennium.

(6) Economic impact, including effects of economic activities arising from administrative regulation, on:

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

(b) Kentucky: None

(7) Assessment of alternative methods; reasons why alternatives were rejected: None

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: None

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

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

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

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

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

(10) Any additional information or comments: None

(11) TIERING: Is tiering applied? No. Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it. Disparate treatment of any person or entity subject to this administrative regulation could raise questions of arbitrary action on the part of the agency. The "equal protection" and "due process" clauses of the 14th Amendment of the U.S. Constitution may be implicated as well as Sections 2 and 3 of the Kentucky Constitution.

### JUSTICE CABINET

Department of Juvenile Justice  
(New Administrative Regulation)

#### 505 KAR 1:040. Policy and procedures manual.

RELATES TO: KRS 194.060, 199.420 to 199.990, 200.080 to 200.120, 205.201 to 205.204, 205.455 to 205.465, Chapters 208, 209, 600 to 645, *United States of America v. Commonwealth of Kentucky*, et.al., Civil Action No. 3:95 CV-757-S (W.D.KY. 1995), EO 96-1576

STATUTORY AUTHORITY: KRS 194.050, 199.420, 200.080, 209.030, 605.150, 615.50, 620.180, 625.120, 630.140, 635.100, 640.120, 645.250, EO 96-862, EO 96-1576, *United States of America v. Commonwealth of Kentucky*, et.al., Civil Action No. 3:95 CV-757-S (W.D. 1995)

NECESSITY, FUNCTION, AND CONFORMITY: 42 USC 9901-9912 "Block Grants for Social Services - Title XX", authorizes grants to states for social services. KRS 15A.160 authorizes the Justice Cabinet to adopt administrative regulations as are necessary to implement programs mandated by federal law, or to qualify for receipt of federal funds and as are necessary to cooperate with federal agencies for the proper administration of the cabinet and its programs. This administrative regulation is promulgated to incorporate into regulatory form, by reference, materials used by the Department of Juvenile Justice in the implementation of a statewide juvenile services program, and to implement currently required provisions of

a consent decree entered December 4, 1995, by the United States District Court of Kentucky in *United States of America v. Commonwealth of Kentucky*, et.al., Civil Action No. 3:CV-757-S (W.D.KY 1995) and EO 96-1576.

Section 1. Incorporation by Reference. (1) The Justice Cabinet Policy and Procedures Manual is incorporated by reference.

(2) Copies of the Department of Juvenile Justice Policy and Procedures Manual may be inspected, copied or obtained in any department field office or at the Office of the Commissioner, Department of Juvenile Justice, 320 West Main Street, Frankfort, Kentucky, between the hours of 8 a.m. and 4:30 p.m., Monday through Friday.

RALPH E. KELLY, Ed.D., Commissioner

RAYMOND F. DEBOLT, General Counsel

APPROVED BY AGENCY: December 15, 1997

FILED WITH LRC: December 15, 1997 at 10 a.m.

PUBLIC HEARING: A public hearing on this proposed administrative regulation shall be held on January 29, 1998, at 9 a.m., at the Health Services Auditorium in the Cabinet for Families and Children, 275 East Main Street, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by January 22, 1998, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on this proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to: Raymond F. DeBolt, Jr., General Counsel, Juvenile Justice, 320 W. Main Street, Frankfort, Kentucky 40601, (502) 564-2738, Fax: (502) 564-4308.

#### REGULATORY IMPACT ANALYSIS

Agency Contact: Raymond DeBolt, Jr.

(1) Type and number of entities affected: The type and number of entities affected are all families, children and adults who may be benefited by the implementation of a statewide juvenile service program through the current policies and procedures of the Department of Juvenile Justice. The implementation of the policies for compliance with the consent decree entered into with the Department of Justice will affect the thirteen residential facilities, seventeen group homes and eighteen day treatment programs operated or contracted by the Department for Social Services, Division of Youth Services now Department of Juvenile Justice via EO 96-1576 signed November 27, 1996.

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

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comment received. Implementation of these regulations will not affect the cost of living or employment in the areas served. A public hearing has been scheduled during which public comments may be received.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comment received. Implementation of this regulation will not affect the cost of doing business in the areas served. A public hearing has been scheduled during which public comments may be received.

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

1. First year following implementation: The only change in

compliance, reporting and paperwork requirements for the first year is that facilities affected by the policies and procedures will be required to maintain adequate records to document compliance and management staff will be required to monitor compliance and report back as related to meeting the terms of the regulation.

2. Second and subsequent years: The only change in compliance, reporting and paperwork requirements for the second and subsequent years is that facilities affected by the policies and procedures will be required to maintain adequate records to document compliance and management staff will be required to monitor compliance and report back as related to meeting the terms of the regulation.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: There will not be any first year direct or indirect costs to the Department of Juvenile Justice as the proposed regulations only implement some provisions of the voluntary consent decree entered into with the Department of Justice.

2. Continuing costs or savings: There will not be any continuing direct or indirect costs or savings to the Department of Juvenile Justice as the proposed regulations only implement some provisions of the voluntary consent decree entered into with the Department of Justice.

3. Additional factors increasing or decreasing costs: The only other factor that may decrease costs is the decrease in liability from law suits related to youth's constitutional rights as a result of the implementation of some provisions of the voluntary consent decree entered into with the Department of Juvenile Justice.

(b) Reporting and paperwork requirements: The only change in reporting and paperwork requirements is that facilities affected by the policies and procedures will be required to maintain adequate records to document compliance and management staff will be required to monitor compliance and report back as related to meeting the terms of the regulation.

(4) Assessment of anticipated effect on state and local revenues: There will not be any anticipated effect on state and local revenues.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Sources of revenue used to implement this administrative regulation include the Department of Juvenile Justice General Funds.

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

(a) Geographical area in which administrative regulation will be implemented: A public hearing has been scheduled during which public comments may be received.

(b) Kentucky: A public hearing has been scheduled during which public comments may be received.

(7) Assessment of alternative methods; reasons why alternatives were rejected: No other alternative methods were considered because the proposed regulations are currently in effect via EO 96-1576.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: There are no effects on the public health and environmental welfare, but this regulation will improve conditions for youth housed in residential treatment facilities operated or contracted by the Department of Juvenile Justice.

(b) State whether a detrimental effect on environment and public health would result if not implemented: There are no detrimental effects on the public health or environmental welfare, but this regulation will improve conditions for youth housed in residential treatment facilities operated or contracted by the Department of Juvenile Justice.

(c) If detrimental effect would result, explain detrimental effect: There would be no detrimental effect.

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: There is

no statute, administrative regulation, or governmental policy which may be in conflict with, overlap, or duplicate the proposed regulation.

(a) Necessity of proposed regulation if in conflict: There is no statute, administrative regulation, or governmental policy which may be in conflict with, overlap, or duplicate the proposed regulation.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: There is no statute, administrative regulation, or governmental policy which may be in conflict with, overlap, or duplicate the proposed regulation.

(10) Any additional information or comments: There are no additional information or comments of which we are aware.

(11) TIERING: Is tiering applied? No. This administrative regulation sets forth the policies and procedures of all offices of the Department of Juvenile Justice and is effective statewide.

#### FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. Consent decree entered December 4, 1995 by the United States District Court for the Western District of Kentucky in the case of *United States of America v. Commonwealth of Kentucky, et.al.* Civil Action No. 3:95-CV-757-S (W.D.KY 1995) and EO 96-1576 signed November 27, 1996.

2. State compliance standards. The state has issued policies that comply with mandates of the juvenile services consent decree relating to protection and rights of committed juveniles.

3. Minimum or uniform standards contained in the federal mandate. The consent decree contained specific requirements to improve conditions for youth housed in thirteen residential treatment facilities operated or contracted by the Cabinet, now the Department of Juvenile Justice, via EO 96-1576.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. These administrative regulations will not impose stricter standards, or additional or different responsibilities or requirements.

**ADMINISTRATIVE REGULATION REVIEW SUBCOMMITTEE**  
**Minutes of December 9, 1997**

The December meeting of the Administrative Regulation Review Subcommittee was held on Tuesday, December 9, 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 November 11, 1997 meeting were approved.

**Present were:**

**Members:** Representative John Arnold, Chairman; Senators Joey Pendleton, Nick Kafoglis, and Dick Roeding; Representatives Jimmy Lee, and James Bruce.

**LRC Staff:** Greg Karambellas, Donna Little, Stephen Lynn, Susan Wunderlich, Angela Phillips, Donna Valencia, Susan Eastman, Paris Hopkins.

**Guests:** Representative Jim Calahan; John Renn for Senator Saunders; Dennis L. Taulbee, Sherron Jackson, Council on Post-secondary Education; Annette Coffey, Teresa Snapp, Angela Robinson, Rose Caudle, Gail Prewitt, Bonnie Howell, Don Speer, Mike Abell, Finance and Administration Cabinet; Nathan Goldman, Board of Nursing; Dave Gore, Millie Ellis, Bruce Williams, Mark Mangeot, H. D. Uriel Smith, Roy A. Massey, Ken Hines, Bob Logan, John Hornback, Natural Resources and Environmental Protection Cabinet; Doug Sapp, Brenda Priestley, Tamela Biggs, Jack Damron, Steve Durham, Vertner L. Taylor, Maribeth Schmitt, Hazel Combs, Department of Corrections; Barbara W. Jones, Pamela J. Murphy, Linda F. Frank, Justice Cabinet; Kathy Black-Dennis, Department of Juvenile Justice; Rita Osborne, Ronda Tamme, Education Professional Standards Board; Sheila Simon, Linda Graves, Workforce Development Cabinet; Carla H. Montgomery, Department of Workers' Claims; Tim Chancellor, Kembra Taylor, Bill Ralston, Labor Cabinet; Judith G. Walden, Thomas C. Barnes, Jr., Department of Housing, Buildings and Construction; Mark Cornett, Danna Droz, Michael Littlefield, Eric Friedlander, Joyce Lea, Thelma F. Cornett, Ruth Friedheim, Cookie Whitehouse, Cabinets for Health Services and Families and Children; Bill Doll, Kentucky Medical Association; Jim Carlross, Kentucky Association of Realtors; Ronny Pryor, Kentucky Farm Bureau; Carl Sumner, Insurance Institution of Kentucky; Lowell Reese, Kentucky Roll Call; Mike Helton, Kentucky Petroleum Marketers; Gregory C. Copley, Kentucky Business Environmental Assistance Program; Donald Todd, Lexington area plumbers; Kenneth Tubscott, Tubscott Plumbing; Earl Crouch, Crouch Plumbing; Jerry Riley, Riley's Repair Plumbing; Michael Collins, The Kentucky Post; Steven A. Milby; Michael Richardson, John Hayden, Guests of Senator Roeding.

**The Subcommittee determined that the following administrative regulation, as amended by the promulgating agency and the Subcommittee, did not comply with statutory requirements:**

**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 2:411 & E. Scaffolds. Kembra Taylor, General Counsel, William Ralston, and Tim Chancellor, Labor Cabinet, appeared before the Subcommittee.

Subcommittee staff stated that the amendments to this administrative regulation related to the: (1) correction of statutory citations; (2) fillings required for material incorporated by reference; and (3) correction of cross references.

Senator Roeding stated that information he had received from builders: (1) pointed out that all scaffolding used in buildings is not as wide as provided in this administrative regulation; (2) stated that, while the requirement was not opposed, it was hoped that, rather than requiring immediate compliance, some time would be granted before the conversion from 8 and 10 inch scaffolding to 12 inch scaffolding; (3) many would be unaware of the new requirements for some time;

and (4) compliance will give rise to a great deal of expense; and (5) were concerned that sufficient time be granted to obtain the new scaffolding. Senator Roeding stated that the distribution of administrative regulations and notification of their requirements to those regulated was not immediate.

In response to a question by Senator Roeding regarding the initiation of compliance procedures and citations for non-compliance by the Cabinet, Ms. Taylor stated that: (1) this administrative regulations will be effective after having been reviewed by the jurisdictional legislative subcommittee; (2) prior to the effective date of this administrative regulations, the Cabinet's Division of Education and Training would disseminate to the construction industry and others the Subcommittee believed should receive information relating to the requirements; and (3) there would not be a delay in the implementation of this administrative regulation.

Senator Roeding stated that: (1), being an emergency, this administrative regulation is already in effect; and (2) since it was impossible to change all scaffolding immediately, the building and construction industry could not immediately comply with the new requirements.

In response to a question relating to the federal stay on the imposition of the scaffolding requirements, Cabinet personnel stated that: (1) there had been a stay on roof bracket scaffolds; (2) the stay had expired; and (3) the requirements of this administrative regulation did not relate to matters that were the subject a stay.

Representative Lee asked how far in advance the Cabinet was aware of a federal mandate that would require a significant change in the construction industry the Cabinet would be required to impose. Ms. Taylor stated that the Cabinet: (1) was made aware of the requirements through the Federal Register; and (2) would present the proposed federal requirements to the Standards Board, which meets twice a year. In response to questions by Representative Lee, Cabinet personnel stated that: (1) while the proposed federal standard was issued in 1988, adoption of the federal requirement relating to scaffolding occurred in August 30, 1996; and (2) advance notification of the trade associations and individual contractors that OSHA would require these changes in scaffolding was not made.

Representative Lee stated that whenever the Subcommittee reviewed administrative regulations implementing federal requirements, he had pointed out that the while the Cabinet did not provide advance notification of the federal or state imposition of new requirements on the citizens of the state, it imposed the requirements immediately. Ms. Taylor stated that: (1) the citizens received notice through the: (a) Division of Education and Training notices of the Standards Board meeting at which the new requirements will be discussed, and the subject matter of the meeting; and (b) Cabinet's filing of its Notice of Intent to file an administrative regulation and the KRS Chapter 13A required agency public hearing on its Notice of Intent; and (2) information was disseminated, and training given, at population centers throughout the state by the Division of Education and Training.

Representative Lee asked how a small contractor in Hardin County would be informed of the new requirements prior to being cited by an OSHA inspector. Ms. Taylor stated that trade associations, of which a small contractor might be a member, receive and disseminate the information. Representative Lee: (1) asked if, with regard to the scaffolding requirements, Ms. Taylor was aware of a particular newsletter or trade association that informed contractors that the scaffolding requirements would become effective immediately upon being filed; (2) stated that the Cabinet would not be able to provide this information, because there was no informational system in place to provide constituents of Kentucky with any information on the promulgation of administrative regulations that will affect their lives; and (3) stated that government should find a way to do a better



job in notifying constituents of requirements, such as the scaffolding requirements, that will have such an impact on the construction industry. Ms. Taylor stated that the Cabinet: (1) communicated with the industry and trade associations, trade associations maintained that several members; (2) utilized its Division of Education and Training to disseminate the information; and (3) welcomed any suggestions on improving its efforts to communicate requirements.

In response to a question by Representative Lee whether the Cabinet was required to publish in newspapers or other media, Ms. Taylor stated that, while the Cabinet did not communicate with every employer every time: (1) the notice of the Standards Board meeting was published in the newspapers and included notification of the subject matter to be considered; (2) those who wished could, and did, comment at the Standards Board meeting; (3) members of the industry were directly notified of the Notice of Intent to promulgate administrative regulations as required by KRS Chapter 13A; and (4) if very stringent requirements were to be imposed, the Cabinet would do a mass mailing through its Division of Education and Training.

Ms. Taylor stated that: (1) while she agreed that failure to be informed of the requirement would not serve as an excuse, the Cabinet would take a good faith effort to comply into consideration; and (2) if a citation were issued, a good faith effort to comply would be taken into consideration in the Cabinet's penalty assessment.

Representative Lee stated that: (1) his comments concerning the inadequacy of notice to those affected by administrative regulations were not restricted to this administrative regulation, and related generally to the promulgation of administrative regulations that mandate requirements on citizens without offering them an opportunity to comment or receive notice; (2) there was a difference between the practice of administrative bodies in regulation and the intent of the General Assembly in its requirement for wide dissemination of notice to citizens; and (3) his intent as a member of the General Assembly was not to impose a mandate or requirement without providing: (a) adequate notice; (b) an opportunity to comment; and (c) an opportunity for necessary changes to be made before the requirements are imposed and people cited with a notice of violation.

Representative Lee stated that he as glad to see that an effort was being made to notify and give an opportunity to comment prior to being notified of a violation for noncompliance to someone who, in some cases, could be severely affected by Cabinet administrative regulations. In response to a question by Representative Lee, Ms. Taylor stated that the Cabinet administrative regulation considered at this Subcommittee meeting were not more stringent than federal requirements.

The Subcommittee approved a motion by Representative Bruce that 803 KAR 2:411, as amended, be found deficient.

In response to Ms. Taylor's offer to have Cabinet personnel explain misunderstandings that had arisen with regard to scaffolding standards imposed by 803 KAR 2:411, Chairman Arnold requested the Cabinet to submit information relating to scaffold standards to Subcommittee members for their review.

Representative Lee stated that the Subcommittee should adopt a standard for the promulgation of administrative regulations, that imposed mandates or other requirements, that would require a statement in an administrative regulation that, prior to an promulgation of the administrative regulation, the administrative body had made all efforts to notify trade organizations and other people affected by the administrative regulation.

Chairman Arnold stated that: (1) an amendment to KRS Chapter 13A would be required; (2) although additional notification requirements, such as publication in county or regional newspapers might not succeed in notifying everyone, every effort should be made to provide adequate notice, especially because of the cost and consequences of regulatory requirements; and (2) instructed Subcommittee staff to research notification issues raised at the meeting, including notification in county or regional newspapers.

Senator Roeding: (1) stated that: (a) while notification is made

only to a state professional or trade organization, each area has a local association which is sometimes informed, and should be informed; (b) local organizations are effective in informing their members; and (2) suggested that improvements in notification should include notification of local organization.

Chairman Arnold stated that, to be successful, notification should include notification at the local level.

**The Subcommittee determined that the following administrative regulations, as amended by the promulgating agency and the Subcommittee, complied with statutory requirements:**

**Council on Postsecondary Education: Public Educational Institutions**

13 KAR2:060. Degree program approval; equal opportunity goals. Sherron Jackson, Director, Equal Opportunities and Facilities, and Dennis Taulbee, General Counsel, represented the Council.

In response to questions by Senator Roeding, Mr. Jackson stated that: (1) this administrative regulation did not include the recruitment of students from out-of-state areas within the institution's region in an institution's equal opportunity goals; (2) the United States Department of Education Office of Civil Rights had determined that Kentucky needed to remediate equal opportunities for Kentucky residents, rather than nonresidents; (3) the Council: (a) agreed with that determination; and (b) developed goals and objectives for the plan based on the recruitment of Kentucky resident students; (4) because a sufficient number of Kentucky residents graduated from high schools within Northern Kentucky University's service area, the University was able to meet and surpass its recruitment objectives; and (5) Northern Kentucky University had on occasion met its recruitment goal.

In response to questions by Senator Roeding, Mr. Taulbee stated that: (1) the plan would be subject to legal challenge if it was expanded to include nonresident students; (2) Northern Kentucky University or another institution: (a) was not prohibited from recruiting minority students from out-of-state; and (b) would: 1. receive the same amount of state funding; and 2. not receive credit toward meeting the equal opportunity goals; (3) an expansion of the goals to include out-of-state students would hurt the border universities because the expansion would: (a) enlarge the market; and (b) increase the required percentages; and (4) the plan needed to focus on the remediation of Kentucky residents because that was where discrimination had occurred.

This administrative regulation was amended as follows: (1) the RELATES TO paragraph was amended to correct statutory citations; (2) the NECESSITY, FUNCTION, AND CONFORMITY paragraph, and Sections 1 through 7, were amended to comply with the: (a) format requirements of KRS 13A.220(4); and (b) drafting requirements of KRS 13A.222(4); (3) Section 2 was amended to: (a) specify the seven categories of employment that are included in the Kentucky Plan; and (b) correct statutory citations; and (4) a new Section 8 was created to incorporate by reference the Kentucky Plan for Equal Opportunities, as required by KRS 13A.2251.

Senator Roeding voted against approval of this administrative regulation.

**Board of Nursing**

201 KAR 20:390. Nursing Incentive Scholarship Fund. Nathan Goldman, General Counsel, represented the Board. 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 11 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 7 were amended



to clarify the deadline for filing an application or request for continuation; and (5) Section 9 was amended to require that a deferment request for a medical reason be accompanied by a physician's statement.

**Natural Resources and Environmental Protection Cabinet: Department for Environmental Protection: Division for Air Quality: New Source Standards**

401 KAR 59:174. Stage II controls at gasoline dispensing facilities. Bob Logan, Commissioner, Department for Environmental Protection, John Hornback, Director, Division for Air Quality, and Mike Helton, Governmental Affairs Coordinator for the Kentucky Petroleum Marketers Association appeared before the Subcommittee.

The Subcommittee approved an amendment proposed by Senator Kafoglis proposed that: (1) had been agreed to and requested by the Cabinet and industry; and (2) amended Section 2(1) to provide that, except as exempted by this administrative regulation, this administrative regulation shall apply to the owner or operator of a gasoline dispensing facility located in a county in which the entire county, rather than a county or portion of a county, is designated severe, serious, or moderate non attainment for ozone as of the effective date of this administrative regulation.

The Subcommittee approved this administrative regulation as amended.

**Justice Cabinet: Department of Corrections: Division of Adult Institutions: Office of the Secretary**

501 KAR 6:170. Green River Correctional Complex. Jack Damron, Staff Attorney, and Tamela Biggs, Staff Attorney, represented the Department.

Mr. Damron stated that the Department had requested an amendment to delete the mail policy for the Green River Correctional Complex.

Subcommittee staff stated that: (1) the Department: (a) rewrote the existing policy regarding inmate mail; and (b) renumbered the policy with a new number which resulted in two policies on the same subject; and (2) the amendment proposed by the Department at today's Subcommittee meeting would: (a) delete the first inmate mail policy; and (b) retain the second mail policy.

This administrative regulation was amended as follows: (1) GRCC 10-01-01, G.9.c. was amended to clarify that an inmate shall be permitted to purchase one deodorant, pursuant to KRS 13A.222(4)(a); (2) GRCC 13-03-01, B.8. was amended to clarify that one staff person was required to sign the Medication Administration Record, pursuant to KRS 13A.222(4)(a); (3) GRCC 25-01-02, II.A.1.d.4. was amended to require staff to advise a sex offender 3 days prior to release of his duty to register with the Kentucky State Police, pursuant to KRS 13A.222(4)(a); and (4) GRCC 16-02-01 was deleted, because it repeated the provisions of GRCC 16-02-02, in violation of KRS 13A.222(4)(a).

**Education Professional Standards Board**

704 KAR 20:210. Substitute teachers and emergency school personnel. Ronda Tamme, Director of Teacher Certification, and Rita Osborne, Director of Testing and Internship, represented the Board.

In response to questions by Senator Roeding, Ms. Tamme stated that: (1) an emergency certified teacher was required to have: (a) completed at least 64 college credit hours; and (b) a grade point average of at least 2.5; (2) this administrative regulation authorized a district to develop a plan to: (a) handle a situation in which the district was not able to find an appropriately certified substitute; and (b) bring in another person, including a school volunteer; and (3) an emergency substitute person was: (a) required to complete: 1. a specific clock hour training program; and 2. a free application process for certification; and (b) not required to take a teacher education course.

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 and 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 (3) Section 3 was amended to clarify requirements relating to the emergency personnel pilot plan.

704 KAR 20:305 & E. Written examination prerequisites for teacher certification. In response to a question by Chairman Arnold, Ms. Osborne stated that prior to the issuance of certification in a particular content field for a teacher in an elementary or secondary school, the teacher was required to take two tests: (1) the NTE core battery test, which assessed the teacher's abilities in: (a) general knowledge; and (b) communications; and (2) a specific content area test within the teacher's content area.

In response to a question by Chairman Arnold, Ms. Tamme stated that because a substitute was not required to be certified in a specific content area, a substitute could substitute for a class in a content area in which the substitute was not familiar.

In response to a question by Senator Kafoglis, Ms. Tamme stated that: (1) most school districts required a substitute teacher plan to include a lesson plan to be followed by the substitute; and (2) to her knowledge, that requirement was followed throughout the state.

This administrative regulation was amended as follows: (1) the RELATES TO and STATUTORY AUTHORITY paragraphs were amended to correct statutory citations; (2) the NECESSITY, FUNCTION, AND CONFORMITY paragraph was amended to clearly state the necessity for and function served by the administrative regulation, as required by KRS 13A.220(3)(f); and (3) Sections 1, and 3 through 6 were amended to comply with the: (a) format requirements of KRS 13A.220(4); and (b) drafting requirements of KRS 13A.222(4).

**Workforce Development Cabinet: Department for Employment Services: Unemployment Insurance**

787 KAR 1:200(&E). Maximum weekly benefit rate. Linda Graves, Division of Unemployment Insurance, and Sue Simon, General Counsel, represented the Cabinet.

In response to a question by Representative Bruce, Ms. Graves stated that this administrative regulation was amended to increase the unemployment insurance maximum weekly benefit rate paid to an employee by ten dollars.

This administrative regulation was amended as follows: (1) the NECESSITY, FUNCTION, AND CONFORMITY paragraph was amended to correct a statutory citation; and (2) Section 1(4) was amended to comply with the drafting requirements of KRS 13A.222(4).

**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 2:320 & E. Air contaminants.

Kembra Taylor, General Counsel, William Ralston, and Tim Chancellor, Labor Cabinet, appeared before the Subcommittee.

Subcommittee staff stated that the amendments to these two administrative regulations related to the: (1) correction of statutory citations; (2) fillings required for material incorporated by reference; and (3) correction of cross references.

**Department of Workers' Claims: Workers' Claims**

803 KAR 25:130. Notice of rejection of Workers' Compensation Act. Carla Montgomery, Staff Attorney, represented the Department.

In response to a question by Chairman Arnold, Ms. Montgomery stated that this administrative regulation incorporated by reference the form used by an employee to reject the Workers' Compensation Act.

In response to questions by Representative Bruce, Ms. Montgomery stated that: (1) while employees had been able to reject workers' compensation for many years, the required form had not

been incorporated by reference in an administrative regulation; (2) the Department wanted to require the use of a specific form; and (3) the form was amended to clarify the instructions that were printed on the form.

This administrative regulation was amended as follows: (1) the NECESSITY, FUNCTION, AND CONFORMITY paragraph was amended to clearly state the necessity for and function served by the administrative regulation, as required by KRS 13A.220(3)(f); (2) Sections 1 through 4 were amended to comply with the: (a) format requirements of KRS 13A.220(4); and (b) drafting requirements of KRS 13A.222(4); (3) Section 2 was amended to clarify that: (a) the withdrawal notice shall contain the effective date of the withdrawal; and (b) the withdrawal shall become effective upon the date specified; and (4) Section 4 was amended to specify where to obtain the required form.

**Cabinet for Families and Children: Department for Social Insurance: Division of Management and Development: Public Assistance**

904 KAR 2:035 & E. Right to apply and reapply. Ruth Friedheim, Branch Manager, Mark Cornett, internal policy analyst senior, and Joyce Lea, internal policy analyst senior, represented the Department.

In response to a question by Senator Roeding, Subcommittee staff stated that: (1) KRS 13A.120(2)(e) and (f) prohibited repetition of a statute in an administrative regulation; and (2) Subcommittee staff suggested to the Cabinet that Section 5(3) be deleted, because it repeated KRS 116.048(4).

Senator Roeding stated that: (1) complaints often arose in the voter registration process; and (2) while he preferred to have the redundancy in the administrative regulation, he understood that repetition was prohibited by the KRS Chapter 13A.

This administrative regulation was amended as follows: (1) the RELATES TO and STATUTORY AUTHORITY paragraphs were amended to correct statutory citations; (2) Section 5(3) was amended to delete provisions that repeated KRS 116.048(4), as required by KRS 13A.120(2)(e) and (f); (3) Section 5(6) was amended to delete language requiring the Board of Elections to approve voter applications, pursuant to KRS 13A.120(2)(d); and (4) Sections 1, 2, 3, 4, and 5 were amended to comply with the: (a) format requirements of KRS 13A.220(4); and (b) drafting requirements of KRS 13A.222(4).

904 KAR 2:060 & E. Delegation of power for oaths and affirmations. This administrative regulation was amended as follows: (1) the RELATES TO, STATUTORY AUTHORITY, and NECESSITY, FUNCTION, AND CONFORMITY paragraphs were amended to correct statutory citations; and (2) Sections 2, 3, and 4 were amended to comply with the: (a) format requirements of KRS 13A.220(4); and (b) drafting requirements of KRS 13A.222(4).

**The Subcommittee determined that the following administrative regulations complied with statutory requirements:**

**Finance and Administration Cabinet: Purchasing**

200 KAR 5:021. Manual of policies and procedures. Angela Robinson, Cabinet Attorney, Don Speer, Commissioner, Department For Administration, Mike Abel, Director of Purchases represented the Cabinet. Subcommittee stated that: (1) this administrative regulation: (a) defined the adequate notice of the need for services as notice given on the Web, by placement in professional journal, or local newspaper advertisement; and (b) exempted personal service contracts with an estimated amount of less than \$25,000 from the requirement for newspaper publication in newspapers of state-wide circulation; (2) an objection to the \$25,000 exemption had been raised because statutes relevant to personal service contracts did not exempt personal service contracts from the requirement for adequate notice of the need for services; (3) the Cabinet believed that relevant statutes did not require publication in state-wide circulation newspapers; and (4) the ambiguity in statutory requirements should at least

be referred to the General Assembly for resolution of the issues raised by amendment of existing statutes.

In response to a question by Senator Roeding, Cabinet personnel stated that this administrative regulation would not establish additional exemptions from legislative review for personal service contracts. Senator Roeding stated that the raise in the amount for which newspaper publication would not be required, from \$10,000 to \$25,000, appeared to limit public notification in the state of the contracts and services required, especially notification of smaller businesses. Cabinet personnel stated that use of a Web page could provide broader notification than advertisement through two newspapers of general circulation. Senator Roeding stated that the request to refer the issue to standing committees was intended to ensure review of this issue so that: (1) adequate notice and opportunity to bid was communicated throughout the state; (2) notice was not restricted or concentrated in a few areas; and that (3) Kentuckians throughout the state had notice and an opportunity to bid.

The Subcommittee approved a motion to request LRC to refer the issues raised by this administrative regulation to the appropriate standing committees of the 1998 General Assembly for legislative action.

**Natural Resources and Environmental Protection Cabinet: Department for Environmental Protection Cabinet: Division for Air Quality: General Standards of Performance**

401 KAR 63:005. Open burning. In response to a questions by Representative Bruce, Cabinet personnel stated that: (1) this administrative regulation: (a) would apply in areas that were not meeting the ozone standard; (b) was part of a package to reduce emissions in accordance with federal requirements; (c) while permitting burning under the current provisions during other times of the year, in non-attainment areas for ozone, would limit the materials that could be burned during the summer season when ozone was being created the most; (d) would apply modifications made by this administrative regulation only to those areas having ozone problems during the summer season; and (e) would prohibit land clearing burning during the summer months and residential rubbish burning; and (2) arrangements would be made for a Cabinet outreach program to ensure people understand that, during other periods, stockpiling and burning of those materials would be permitted.

**Mobile Source-related Emissions**

401 KAR 65:010. Vehicle emission control programs. Senator Roeding: (1) thanked Cabinet personnel for their work in their efforts with EPA to resolve issues relating to 401 KAR 59:174 and this administrative regulation; (2) while onerous on the citizens of the state in the county in which they are being imposed, the requirements of these administrative regulations were mandated by federal EPA requirements; (3) one of his constituents had written a lengthy letter explaining why these requirements should not be imposed in light of U.S. Supreme Court decisions; (4) even though four Supreme Court decisions held that the federal government could not impose requirements on states and penalize states that do not comply with the loss of federal monies such as federal road money, EPA has imposed these onerous requirements and stated that penalties would be imposed; (5) the state of Virginia, as well as Kentucky, sued EPA over this; (6) the citizens of Kentucky should be made aware that the federal EPA is enforcing regulations that are onerous and contrary to good scientific practice that will result in the expenditure by the people of Kentucky of a great deal of money, in essence a form of federal government taxation without representation; and (7) gave Subcommittee members citations and other information provided by the constituent.

In response to a question by Senator Kafoglis relating to the Supreme Court decisions cited by Senator Roeding, Cabinet personnel stated that: (1) they were aware of the decisions; and (2) the Cabinet had: (a) during the last twelve months, been engaged in a great deal of legal activity against EPA; and (b) a case pending in

the 6th Circuit Court of Appeals.

Senator Kafoglis stated that it would appear the Supreme Court decisions would be controlling and binding on EPA. Cabinet personnel stated that: (1) EPA apparently did not believe that the decision-making process under the rules stated by the court does not directly impact its requirements under the Clean Air Act for non-attainment areas like greater Cincinnati; (2) the Cabinet had challenged EPA's denial of the Cabinet's request to be considered in compliance with the ozone standard; (3) this challenge was the subject of a lawsuit; (4) because EPA interprets the court decisions differently and Kentucky is subject to EPA mandates, the state can challenge EPA in court but must comply with EPA mandates; (5) they were unsure that the Supreme Court decisions were the specific issues currently being argued.

Representative Bruce: (1) complimented the work done by the Cabinet, especially Secretary Bickford and Deputy Secretary Massey; and (2) acknowledged the problems faced by the Cabinet in its dealing with the federal government.

Senator Roeding objected to this administrative regulation.

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

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

803 KAR 2:425 & E. Toxic and hazardous substances. In response to a question by Representative Bruce, Cabinet personnel stated that this administrative regulation: (1) related to the construction industry; (2) established a new standard for the use methylene chloride, which was used in general industry and somewhat in construction, and in paint stripping operations.

803 KAR 2:500 & E. Maritime employment.

**Cabinet for Health Services: 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. Dana Droz, Drug Control Branch, Department For Public Health appeared before the Subcommittee. Ms. Droz stated that this administrative regulation: (1) with regard to Schedule II drugs, the most dangerous and addictive drugs, Kentucky statutes: (a) required an original prescription; and (b) did not permit prescriptions for these drugs to be faxed to a pharmacy; (2) would conform to federal regulatory requirements to ensure quick delivery of drugs for certain types of patients, primarily those in long-term care facilities who have frequent needs for emergency prescriptions for these drugs, by permitting prescriptions for these drugs to be faxed; and (3) would expand the exemption for the faxing of prescriptions to include hospice patients, patients who: (a) are terminally ill; and (b) have frequent needs for immediate delivery of pain killers.

Subcommittee staff stated that: (1) Subcommittee staff, Ms. Droz, and Pharmacy Board personnel planned to meet to review: (a) issues related to the overlapping jurisdictions of the Cabinet for Health Services and the Pharmacy Board; (2) the Pharmacy Board may need to promulgate administrative regulations relating to faxed prescriptions; and (3) if a review of the issues showed a conflict in statutes governing the agencies and prescriptions, a report and recommendations will be transmitted to the Subcommittee before the end of the 1998 Regular Session.

Senator Roeding: (1) stated that he: (a) transmitted proposals for promulgation of administrative regulations and administrative regulations that have been promulgated to local Pharmacy associations; and (b) has learned that this transmission is the first time most of those affected by an administrative regulation are informed of

regulatory action; and (2) suggested that a mailing system be established to ensure that each local association is adequately informed in advance. Ms. Droz stated that her agency: (1) communicated with the licensing boards and associations; (2) on several occasions had communicated with the Pharmacy Board and associations; (3) did not have a mailing list for each local association; and (4) had discussed establishing a Web site if it became available.

Senator Roeding stated that: (1) all administrative bodies should communicate with local associations; and (2) the current practice of dealing only with state associations should be changed to include notification of local associations. Ms. Droz stated that the Cabinet had believed that the state associations had forwarded information to the local associations. Senator Roeding stated that had not been the case, and that the assistance of the agencies was needed to disseminate information adequately and broadly.

**The following administrative regulation was withdrawn by the promulgating agency:**

**Department of Housing, Buildings and Construction: Division of Plumbing**

815 KAR 20:030. License application; qualifications for examination, examination requirements, expiration, renewal, revival or reinstatement of licenses. Judith Walden, General Counsel, and Tom Barnes, Director, Division of Plumbing, represented the Department.

Donald Todd, Lexington area plumbers; Kenneth Tubscott, Tubscott Plumbing; and Earl Crouch, Crouch Plumbing, appeared to speak in opposition to the administrative regulation. Steven A. Milby appeared to speak in favor of the administrative regulation.

Subcommittee staff stated that: (1) the amendment would delete a provision in Section 8 relating to errors and omissions coverage, because that coverage was not readily available; and (2) this administrative regulation required a minimum of \$300,000 in liability insurance for Master plumbers in Kentucky.

In response to a question by Chairman Arnold, Ms. Walden stated that while she had not prepared a written report, she did have an oral report to share with the Subcommittee.

Chairman Arnold stated that in the future, if the Subcommittee requested that an agency report to the Subcommittee, the agency was required to submit the report in writing to each member of the Subcommittee prior to the meeting at which the report would be given.

Representative Lee stated that: (1) he was glad to see members of the industry at the meeting to speak in opposition to the administrative regulation; and (2) proper notification gave people an opportunity to express their opinions before a requirement was imposed.

In response to questions by Representative Bruce, Ms. Walden stated that: (1) at the November 11, 1997, meeting, the Subcommittee deferred this administrative regulation to assure that notice was given to all licensed Master plumbers; (2) on November 12, Director Tom Barnes sent a letter to 2,150 plumbers that: (a) informed them of the insurance requirement; and (b) gave them an opportunity to submit comments or criticisms in writing before today's meeting date; (3) the Department: (a) received: 1. 59 letters in objection to the mandated insurance requirement; 2. 18 letters in support of the requirement; 3. 26 insurance certificates from plumbers; and 4. 150 telephone calls, of which 80 percent of the callers opposed the requirement; and (b) presented this information to the Plumbing Code Committee at its meeting on December 8; (4) the Plumbing Code Committee: (a) was composed of: 1. plumbing, heating, cooling, and contractor representatives; 2. mechanical contractors; 3. general contractors; 4. an architect; 5. home builder; and 6. a journeyman plumber; and (b) advised the Department that the administrative regulation: 1. was a consumer protection issue; and 2. should continue through the administrative process; (5) at the Plumbing Code Committee December 8 meeting, objections to the requirement were made by: (a) several plumbers who attended the meeting; and (b) an attorney

who presented a petition against the administrative regulation signed by 44 people; (6) in total, a little over ten percent of the master plumbers had voiced an objection to the administrative regulation; (7) the Department: (a) received comments that: 1. mandatory insurance requirements would increase the insurance rates; and 2. while plumbers should have insurance, the insurance should not be mandated; and (b) wanted the Subcommittee to consider the: 1. recommendations of the Plumbing Code Committee; 2. lack of opposition from ninety percent of the plumbers; and 3. similar insurance requirements for the other licensed programs under the Department's jurisdiction; (8) while statutes specifically requiring liability insurance had been enacted for the other programs, such statutes had not been enacted for plumbers; (9) the Department had promulgated this administrative regulation under its general authorization to establish licensing requirements; and (10) if the Subcommittee determined that the legislative intent to require liability insurance did not exist, the Department would withdraw this administrative regulation.

The Subcommittee unanimously approved a motion by Senator Pendleton seconded by Senator Roeding, that the agency withdraw this administrative regulation because it did not comply with legislative intent.

The agency agreed to withdraw this administrative regulation.

**The following administrative regulations were deferred to the next Subcommittee meeting upon agreement by the Subcommittee and the promulgating agency:**

**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 Pharmacy**

- 201 KAR 2:030. License transfer.

**Board of Dentistry**

- 201 KAR 8:390. General anesthesia, deep sedation, and conscious sedation by dentists.

**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.

**Natural Resources and Environmental Protection Cabinet: Department for Environmental Protection: Division of Water: Water Quality**

- 401 KAR 5:008E. Swine feeding operations. In response to a question by Representative Bruce, Subcommittee staff stated that: (1) the Cabinet had held a public hearing and was preparing its State-

ment of Consideration on this administrative regulation; (2) upon receipt, Subcommittee members and staff would have an opportunity to review the Cabinet's response and proposed action; (3) Subcommittee staff would report to the Subcommittee; and (4) the Subcommittee could determine when to schedule the administrative regulation for hearing. Representative Bruce stated that the Cabinet should provide the Subcommittee with information relating to: (1) statements made at the hearing; (2) the number of those who attended the public hearing; (3) persons who attended the public hearing; and (3) reaction of those who attended the hearing to Cabinet proposals and the issues raised by the administrative regulation.

**Department for Surface Mining Reclamation and Enforcement: Permits**

- 405 KAR 8:001. Definitions for 405 KAR Chapter 8.
- 405 KAR 8:030. Surface coal mining permits.
- 405 KAR 8:040. Underground coal mining permits.

**Performance Standards for Surface Mining Activities**

- 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**

- 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.

**Department of Juvenile Justice: Child Welfare**

- 505 KAR 1:040E. Policy and procedures manual.

**Transportation Cabinet: Department of Highways: Division of Transportation Planning: Division of Operations: Traffic**

- 603 KAR 5:070E. Motor vehicle dimension limits.

**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.

**Cabinet for Health Services: Department for Public Health: State Health Plan**

- 902 KAR 17:041E. State health plan for facilities and services.

**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 2:050E. Time and manner of payments.

**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.

## ADMINISTRATIVE REGISTER - 1606

### **Department for Medicaid Services: Division of Administration and Development**

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.

Subcommittee could consider the emergency administrative regulations at its January, 1998 meeting, and determine whether they comply or are deficient.

The Subcommittee unanimously approved a motion to approve the proposal.

**The Subcommittee adjourned at 11:30 a.m. until January 14, 1997, at 8:30 a.m. in Room 125 of the Capitol Annex.**

### **OTHER BUSINESS**

#### **Justice Cabinet: Department of Corrections: Kentucky Parole Board**

501 KAR 1:030. Determining parole eligibility.

#### **Department of Corrections: Division of Adult Institutions**

501 KAR 6:020. Corrections Policies and Procedures.

501 KAR 6:080. Department of Corrections manuals.

Linda Frank, Chair, Parole Board, Pamela Murphy, Deputy Secretary, Justice Cabinet, Barbara Jones, General Counsel, Justice Cabinet, Doug Sapp, Commissioner, Department of Corrections, appeared before the Subcommittee.

Subcommittee staff stated that: (1) issues were raised concerning these administrative regulations as they related to: (a) eligibility for early parole, intensive supervision, the boot camp program, and community custody for those who committed a crime that resulted in serious physical injury; and (b) with regard to Department of Corrections administrative regulations, the inclusion or repetition of subject matter governed by the Parole Board; (2) prior to the establishment of the stricter requirements in KRS Chapter 13A, agencies with overlapping jurisdictions, and agencies that worked together in the implementation of statutes, often had overlapping administrative regulations; (3) Parole Board Chairwoman Frank, Corrections Commissioner Sapp, and Justice Cabinet General Counsel Jones: (a) met with LRC staff to resolve the issues raised by these administrative regulations; and (b) proposed that the issues raised by these administrative regulations be resolved as follows: 1. on January 9, 1998, the Department of Corrections and the Parole Board will file emergency administrative regulations; 2. these administrative regulations can be reviewed by the Subcommittee at its January, 1998 meeting; 3. VI. A., Department of Corrections policies and procedures 27-11-01, Intensive Supervision, incorporated by reference in 501 KAR 6:020, will be amended to restrict placement of an offender under intensive supervision; 4. these administrative regulations will be amended to provide that an inmate who had been convicted of a crime that resulted in serious physical injury shall not: a. be eligible for, considered for, or granted early parole; b. be eligible for the boot camp program, intensive supervision, or community custody; 5. Department of Corrections administrative regulation will be amended to delete subject matter governed by the Parole Board; and 6. pursuant to Supreme Court decisions, the amendments relating to eligibility for early parole, boot camp, intensive supervision, and community custody will apply prospectively: a. after the effective date of the proposed amendments, which, as emergency administrative regulations, will be upon filing with LRC; and b. to those who commit offenses after the effective date, and who are convicted of a crime that resulted in serious physical injury after the effective date; (3) if the Subcommittee approved this proposal, the agencies would: (a) file amendments incorporating the proposal on January 9, 1998; and (b) submit them to Subcommittee members and staff for review prior to filing; (4) a report will be made to the Subcommittee; and (5) the

## ADMINISTRATIVE REGISTER - 1607

### 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 LICENSING AND OCCUPATIONS

Meeting of November 14, 1997

The following administrative regulations were available for consideration by the Interim Joint Committee on Licensing and Occupations during its meeting of November 14, 1997, having been referred to the Committee on June 9, 1997 and August 1, 1997, pursuant to KRS 13A.290(6):

201 KAR 10:010  
201 KAR 10:040  
201 KAR 10:070  
201 KAR 10:080  
201 KAR 16:060  
201 KAR 16:071

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 14, 1997 meeting, which are hereby incorporated by reference. Additional committee findings, recommendations, or comments, if any, are attached hereto.

#### INTERIM JOINT COMMITTEE ON HEALTH AND WELFARE Meeting of November 19, 1997

The following administrative regulations were available for consideration by the Interim Joint Committee on Health and Welfare during its meeting of November 19, 1997, having been referred to the Committee on November 13, 1997, pursuant to KRS 13A.290(6):

201 KAR 8:400  
201 KAR 8:411  
902 KAR 13:120  
902 KAR 20:016 & E  
907 KAR 1:710

The following administrative regulations were found to be deficient pursuant to KRS 13A.290(7) and 13A.030(2): 201 KAR 8:400. 201 KAR 8:400 was found deficient because on page one of the regulation it refers to the wrong KRS and there is no definition of who is outside the scope of dentistry.

The Committee rationale for each finding of deficiency is attached to and made a part of this memorandum.

The following administrative regulations were approved:

201 KAR 8:411  
902 KAR 13:120  
902 KAR 20:016 & E

Testimony was heard on 907 KAR 1:710, Managed Behavioral Health Care Initiative, from Margaret Pennington, Director, Division of Mental Health, Department for Mental Health/Mental Retardation, Cabinet for Health Services; Larry McCarthy, Deputy Commissioner, Department for Medicaid Services, Cabinet for Health Services; and William Wells, President, Advocates Taking Action in Kentucky Against Mental Illness. After testimony was given, there was no longer a quorum present; therefore, no action could be taken on this regulation.

Committee activity in regard to review of the above-referenced administrative regulations is reflected in the minutes of the November 19, 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 December 4, 1997

The following administrative regulations were available for consideration by the Interim Joint Committee on Education during its meeting of December 4, 1997, having been referred to the Committee on November 13, 1997, pursuant to KRS 13A.290(6):

11 KAR 6:010  
704 KAR 20:084  
780 KAR 6:060

The following administrative regulations were found to be deficient pursuant to KRS 13A.290(7) and 13A.030(2): none

The Committee rationale for each finding of deficiency is attached to and made a part of this memorandum.

The following administrative regulations were approved as amended at the Committee meeting pursuant to KRS 13A.320: none

The wording of the amendment of each such administrative regulation is attached to and made a part of this memorandum.

The following administrative regulations were deferred pursuant to KRS 13A.300: none

Committee activity in regard to review of the above-referenced administrative regulations is reflected in the minutes of the December 4, 1997 meeting, which are hereby incorporated by reference. Additional committee findings, recommendations, or comments, if any, are attached hereto.





# ADMINISTRATIVE REGISTER - G1

## CUMULATIVE SUPPLEMENT

### Locator Index - Effective Dates ..... G2

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 ..... G8

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 ..... G15

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 - G2

## 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 - G3

## 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
201 KAR 20:370E	1481	12-9-97
301 KAR 2:221E	1219	10-15-97
301 KAR 2:222E	1221	10-15-97
301 KAR 2:225E	842	8-21-97
301 KAR 2:290E	1482	12-5-97
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 20:015E	1484	12-12-97
704 KAR 20:021E	1486	12-12-97
704 KAR 20:022E	1487	12-12-97
704 KAR 20:045E	1489	12-12-97
704 KAR 20:060E	1490	12-12-97
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
806 KAR 17:110E	1492	12-12-97
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
Replaced	1268	11-19-97
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
907 KAR 1:765E	557	8-14-97

### ORDINARY ADMINISTRATIVE REGULATIONS:

11 KAR 5:130		
Amended	1538	
11 KAR 6:010		
Amended	914	
As Amended	1241	12-4-97
13 KAR 2:060		
Amended	916	
Amended	1291	
As Amended	1498	
31 KAR 4:020		
Amended	128	
As Amended	559	9-15-97
101 KAR 1:365		
Amended	387	
As Amended	852	10-13-97
102 KAR 1:175		
Amended	129	
As Amended	559	9-4-97
103 KAR 15:050		
Amended	388	
As Amended	853	9-25-97
103 KAR 31:030		
Amended	920	
Amended	1522	
106 KAR 2:010		
Recodified as 201-37:010		10-20-97
200 KAR 2:006		
Amended	922	11-11-97
200 KAR 5:021		
Amended	926	
Amended	1294	
200 KAR 5:302		
Amended	927	11-11-97
200 KAR 5:306		
Amended	929	11-11-97
200 KAR 14:011		
Amended	1353	
200 KAR 14:081		
Amended	1355	
200 KAR 14:200	1422	
200 KAR 17:070		
As Amended	855	9-25-97
200 KAR 22:040		
Repealed	789	11-14-97
200 KAR 22:041	789	11-14-97
200 KAR 23:010	790	
As Amended	1055	10-22-97
201 KAR 2:030		
Amended	1115	

# ADMINISTRATIVE REGISTER - G4

## LOCATOR INDEX - EFFECTIVE DATES

Regulation Number	24 Ky.R Page No.	Effective Date	Regulation Number	24 Ky.R Page No.	Effective Date
201 KAR 8:390			201 KAR 26:145		
Amended	931		Amended	1117	
201 KAR 8:400			201 KAR 26:155		
Amended	934		Amended	1121	
As Amended	1243		201 KAR 26:160		
Withdrawn		12-3-97	Amended	1123	
201 KAR 8:410			201 KAR 26:171		
Repealed	991	11-19-97	Amended	1124	
201 KAR 8:411	991	11-19-97	201 KAR 26:175		
201 KAR 10:010			Amended	1127	
Amended	131		201 KAR 26:180		
As Amended	561	11-14-97	Amended	1129	
201 KAR 10:040			201 KAR 26:185		
Amended	132		Amended	1130	
As Amended	561	11-14-97	201 KAR 26:215		
201 KAR 10:070			Amended	1131	
Amended	133		201 KAR 26:230		
As Amended	563	11-14-97	Amended	1132	
201 KAR 10:080			201 KAR 26:250	1182	
Amended	134		201 KAR 26:260	1582	
As Amended	563	11-14-97	201 KAR 32:030		
201 KAR 11:011			Amended	642	
Amended	1539		As Amended	1132	11-14-97
201 KAR 12:200			201 KAR 37:010		
Amended	1357		Recodified from 106-2:010		10-20-97
201 KAR 12:210	1423		Amended	1544	
201 KAR 13:080			301 KAR 1:192	1424	
As Amended	858	10-13-97	301 KAR 1:201		
201 KAR 16:060			Amended	392	
Amended	641		As Amended	866	10-8-97
As Amended	1055	11-14-97	301 KAR 1:300	1583	
201 KAR 16:070			301 KAR 1:310	1584	
Repealed	791	11-14-97	301 KAR 2:082	427	
201 KAR 16:071	791	11-14-97	As Amended	869	10-8-97
201 KAR 18:132	1581		301 KAR 2:111		
201 KAR 18:150			Amended	138	
Amended	1540		As Amended	567	9-10-97
201 KAR 18:162	1581		301 KAR 2:125		
201 KAR 20:240			Amended	140	
Amended	391		As Amended	568	9-10-97
As Amended	1057	11-14-97	301 KAR 2:140		
201 KAR 20:411	425		Amended	643	
As Amended	859		As Amended	1058	11-12-97
201 KAR 20:390			301 KAR 2:142	792	
Amended	1116		As Amended	1060	11-12-97
As Amended	1502		301 KAR 2:144	794	
201 KAR 23:010			As Amended	1061	11-12-97
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201 KAR 23:030			Amended	1359	
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201 KAR 23:040			Amended	646	11-12-97
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201 KAR 23:060			Amended	1546	
As Amended	860	10-13-97	302 KAR 31:040	795	
201 KAR 23:070			Withdrawn		11-19-97
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201 KAR 23:080			As Amended	1062	11-12-97
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201 KAR 23:100			Amended	1547	
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Died*		9-12-97	Amended	741	
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Died*		9-12-97	500 KAR 11:025		
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Amended	142		As Amended	873	9-12-97
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Amended	145		As Amended	874	9-12-97
Died*		9-12-97	500 KAR 11:090		
401 KAR 47:150			Amended	155	
Amended	149		As Amended	874	
Died*		9-12-97	501 KAR 6:020		
401 KAR 50:012			As Amended	569	9-15-97
Amended	648	11-12-97	Amended	755	
401 KAR 50:032	1425		Withdrawn		11-10-97
401 KAR 50:066	800		Amended	1361	
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401 KAR 51:010			Amended	1364	
Amended	650	11-12-97	501 KAR 6:040		
401 KAR 59:174	802		Amended	935	
Amended	1295		Amended	1366	12-15-97
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405 KAR 8:001			Amended	1368	
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405 KAR 16:090			As Amended	1076	11-14-97
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Amended	1524		Amended	407	
601 KAR 1:147	1185		As Amended	894	10-2-97
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601 KAR 9:135			Amended	409	
Amended	398		As Amended	895	10-2-97
Amended	909	11-4-97	787 KAR 1:200		
601 KAR 11:040			Amended	1144	
Amended	1387		As Amended	1510	
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603 KAR 5:050			803 KAR 2:320		
Amended	403	10-2-97	Amended	1150	
603 KAR 5:070			As Amended	1512	
Amended	1390		803 KAR 2:403		
603 KAR 5:230			Amended	1156	
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Amended	1527		Amended	1158	
702 KAR 3:110			As Amended	1518	
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702 KAR 7:065			Amended	1159	
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815 KAR 15:027			Amended	1419	
Amended	954	12-15-97	904 KAR 2:055		
815 KAR 15:080			Amended	985	
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902 KAR 20:016			Repealed	848	9-11-97
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### INSPECTOR GENERAL (HEALTH SERVICES)

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### JUSTICE CABINET

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### KENO

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### KENTUCKY ASSET/LIABILITY COMMISSION

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### KENTUCKY EARLY INTERVENTION PROGRAM

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### LAND SURVEYORS

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### LANDSCAPE ARCHITECTS

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### MINORITY AFFAIRS

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### MINORITY TEACHER REQUIREMENTS

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### MOTOR VEHICLE REGISTRATION

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