

ADMINISTRATIVE REGISTER OF KENTUCKY



LEGISLATIVE RESEARCH COMMISSION
FRANKFORT, KENTUCKY

VOLUME 24, NUMBER 12
MONDAY, JUNE 1, 1998

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MEETING NOTICE: The Administrative Regulation Review Subcommittee is scheduled to meet on Tuesday, June 9, 1998. See tentative agenda beginning on page 2505 of this Register.

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

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

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

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

ADMINISTRATIVE REGISTER OF KENTUCKY

(ISBN 0096-1493)

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

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

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ADMINISTRATIVE REGISTER - 2505

**ADMINISTRATIVE REGULATION REVIEW SUBCOMMITTEE
TENTATIVE AGENDA - June 9, 1998 at 10:00 a.m. in Room 149, Capitol Annex**

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

**UNIVERSITY OF KENTUCKY
Agricultural Experiment Station**

Fertilizer

12 KAR 4:170E. Maximum chlorine guarantee for tobacco fertilizers. (Will Not Be Replaced by an Ordinary Administrative Regulation)

COUNCIL ON POSTSECONDARY EDUCATION

Public Educational Institutions

13 KAR 2:045. Determination of residency status for admission and tuition assessment purposes. (Amended After Hearing)

**FINANCE AND ADMINISTRATION CABINET
Office of Financial Management and Economic Analysis**

Kentucky Private Activity Bond Allocation Committee

200 KAR 15:010E. Formula for allocation of private activity bonds.

GENERAL GOVERNMENT CABINET

Board of Accountancy

201 KAR 1:300. Rules of professional conduct.

Board of Dentistry

201 KAR 8:400. Complaint procedure.

Real Estate Commission

201 KAR 11:011. Definitions for 201 KAR Chapter 11.

201 KAR 11:147. Procedure for license retention when salesman released by broker.

201 KAR 11:170. Private school approval.

201 KAR 11:175. Instructor approval procedures and guidelines.

201 KAR 11:230. Mandatory continuing education.

201 KAR 11:350. Seller's disclosure of conditions form.

Board of Nursing

201 KAR 20:056. Advanced registered nurse practitioner registration, program requirements, recognition of a national certifying organization.

**TOURISM CABINET
Department of Fish and Wildlife Resources**

Hunting and Fishing

301 KAR 3:010. Public use of wildlife management areas.

**DEPARTMENT OF AGRICULTURE
Division of Animal Health**

Livestock Sanitation

302 KAR 20:040E. Entry into Kentucky.

Pesticides

302 KAR 31:040. Storage and handling of pesticides and bulk fertilizer. (Deferred from May)

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

Asbestos

401 KAR 58:005. Accreditation of asbestos professionals. (Amended After Hearing)

401 KAR 58:025. National emission standard for asbestos. (Amended After Hearing)

Department for Surface Mining Reclamation and Enforcement

Performance Standards for Surface Mining Activities

405 KAR 16:060. General hydrologic requirements. (Amended After Hearing) (Deferred from December)

Performance Standards for Underground Mining Activities

405 KAR 18:060. General hydrologic requirements. (Amended After Hearing) (Deferred from December)

JUSTICE CABINET

Kentucky Parole Board

501 KAR 1:030&E. Determining parole eligibility. (Deferred from May)

Division of Adult Institutions

Office of the Secretary

501 KAR 6:020&E. Corrections policies and procedures. (Deferred from May)

501 KAR 6:080&E. Department of Corrections manuals. (Deferred from May)

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Department of State Police

Sex Offender Registration System

502 KAR 31:010E. Sex Offender Registration System. (Deferred from May)

TRANSPORTATION CABINET Department of Vehicle Regulation Division of Motor Vehicle Enforcement

Administration

601 KAR 2:020E. Drivers' privacy protection. (Deferred from April)

EDUCATION, ARTS AND HUMANITIES CABINET Board of Education

Office of Chief State School Officer

701 KAR 5:110. Use of local monies to reduce unmet technology need.

Office of Learning Programs Development

Education Professional Standards Board

704 KAR 20:082. Probationary certificate for teachers of children, birth to primary.

704 KAR 20:670. Kentucky teaching certificates.

Department of Libraries and Archives

Libraries

725 KAR 2:080. Interstate library compact.

WORKFORCE DEVELOPMENT CABINET Department of Vocational Rehabilitation

Administration

781 KAR 1:020. General provisions for operation of the Department of Vocational Rehabilitation.

781 KAR 1:040. Rehabilitation technology services.

Department for Employment Services

Unemployment Insurance

787 KAR 1:210E. Employer contribution rates.

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 (Deferred from May)

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

803 KAR 2:320. Air contaminants.

803 KAR 2:500. Maritime employment.

Office of Labor Management Relations and Mediation

Collective Bargaining and Arbitration

803 KAR 3:050. Arbitration. (Deferred from May)

Office of Labor Management Relations and Mediation

Kentucky Labor Management Matching Grant Program

803 KAR 6:010E. Kentucky Labor Management Matching Grant Program.

Department of Workers' Claims

803 KAR 25:010. Procedure for adjustments of claims.

PUBLIC PROTECTION AND REGULATION CABINET Department of Insurance

Assets and Liabilities

806 KAR 6:100&E. Actuarial opinion and memorandum. (Amended After Hearing)

Department of Financial Institutions

Securities (Deferred from May)

808 KAR 10:010. Forms for application, registration; notice filing; reporting and compliance.

808 KAR 10:020. Capital, records and reporting requirements of broker-dealers.

808 KAR 10:030. Conduct of broker-dealers and employees; investment advisers and representatives.

808 KAR 10:040. Dishonest or unethical practice defined.

808 KAR 10:080. Guidelines for issuers.

808 KAR 10:090. Issuer's reports.

808 KAR 10:110. Records of investment advisers. (Amended After Hearing)

808 KAR 10:130. Amendments to registration statement.

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.

808 KAR 10:150. Registration exemptions.

808 KAR 10:160. Definitions.

808 KAR 10:170. Exemption claims from securities registration; form.

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808 KAR 10:200. Investment advisers' minimum liquid capitalization
808 KAR 10:210. Registration exemptions - Federal Regulation D.
808 KAR 10:225. Administrative hearing procedures.
808 KAR 10:240. Registration exemptions - sale of business.
808 KAR 10:260. Examination requirements for individuals advising the public on securities.
808 KAR 10:300. Registration exemptions - pension plans.
808 KAR 10:310. Broker-dealer agent de minimis rules
808 KAR 10:320. Broker-dealer books and records requirements.
808 KAR 10:330. Notice filing requirements for covered advisers.
808 KAR 10:340. Registration exemption for certain limited offerings made exclusively to accredited investors.
808 KAR 10:350. Internet advertising.
808 KAR 10:360. Safe harbor for limited liability company membership interests.
808 KAR 10:370. Securities offered on the internet but not sold in Kentucky.
808 KAR 10:380. Solicitations of interest prior to the filing of a registration statement.
808 KAR 10:390. Confidentially disclosed documents.

Kentucky Racing Commission

Thoroughbred Racing

810 KAR 1:001. Definitions.
810 KAR 1:009. Jockeys and apprentices.
810 KAR 1:015. Claiming races.
810 KAR 1:016. Running of the race.

Harness Racing

811 KAR 1:090. Stimulants and drugs.
811 KAR 1:215. Kentucky Standardbred Development Fund.

Department of Housing, Buildings and Construction

Heating, Ventilation, and Air Conditioning Licensing Requirements

815 KAR 8:045 & E. "Limited" licenses for journeyman HVAC mechanics.

Division of Plumbing

Plumbing

815 KAR 20:020. Parts or materials list.
815 KAR 20:055. Water heater devices.
815 KAR 20:120. Water supply and distribution.

CABINET FOR HEALTH SERVICES

Department for Public Health

Division of Local Health Department Operations

Local Health Departments (Public Hearing in April)

902 KAR 8:040. Definition of terms applicable for the personnel program for local health departments.
902 KAR 8:060. Classification and compensation plans for local health departments of Kentucky.
902 KAR 8:070. Recruitment, examination, and certification of eligibles for local health departments of Kentucky.
902 KAR 8:080. Initial appointment, probationary period, layoffs, performance evaluation, and the resignation of employees of local health departments.
902 KAR 8:090. Promotion, transfer, and demotion of local health department employees.
902 KAR 8:100. Disciplinary procedures applicable for local health department employees.
902 KAR 8:110. Disciplinary appeal process applicable for local health department employees.
902 KAR 8:120. Leave provisions applicable to employees of local health departments.
902 KAR 8:130. Participation of local health department employees in political activities.
902 KAR 8:140. Appointment of a health officer or a health department director of a local health department.

Office of Inspector General

Health Services and Facilities (Deferred from May)

902 KAR 20:026. Operations and services; skilled nursing facilities. (Not Amended After Hearing)
902 KAR 20:048. Operations and services; nursing homes. (Not Amended After Hearing)
902 KAR 20:051. Operation and services; intermediate care. (Not Amended After Hearing)
902 KAR 20:180. Psychiatric hospitals; operation and services. (Amended After Hearing)

Division for Public Health Protection and Safety

Milk and Milk Products (Deferred from February)

902 KAR 50:031. Standards for producer eligibility for manufacturing grade milk.
902 KAR 50:032. Standards for farm requirements for manufacturing grade milk.
902 KAR 50:033. Standards for enforcement procedures for manufacturing grade milk.

CABINET FOR FAMILIES AND CHILDREN

Department for Social Insurance

Division of Management and Development

Public Assistance

904 KAR 2:015 & E. Supplemental programs for persons who are aged, blind, or have a disability.

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Department for Social Services Division of Family Services

Child Welfare

905 KAR 1:360 & E. Private child care levels of care. (Emergency Expired 5/18/98)

CABINET FOR HEALTH SERVICES Department for Medicaid Services Division of Administration and Development

Medicaid Services

- 907 KAR 1:006E. Coverage for persons eligible for Title XVIII benefits.
- 907 KAR 1:011E. Technical eligibility requirements.
- 907 KAR 1:022E. Nursing facility and intermediate facility for the mentally retarded services. (Deferred from May)
- 907 KAR 1:025E. Payment for nursing facility and intermediate facility for the mentally retarded services. (Deferred from May)
- 907 KAR 1:560E. Medicaid hearing and appeals regarding eligibility. (Deferred from May)
- 907 KAR 1:563E. Medicaid covered services hearing appeals process for recipients. (Deferred from May)
- 907 KAR 1:605E. Medicaid procedures for determining initial and continuing eligibility.
- 907 KAR 1:640E. Income standards for Medicaid.
- 907 KAR 1:645E. Resource standards for Medicaid.
- 907 KAR 1:755E. Preadmission screening and resident review (PASRR) program. (Deferred from May)

Payment and Services

- 907 KAR 3:030E. Coverage and payments for Impact Plus services. (Deferred from March)

Department for Mental Health and Mental Retardation Services

Substance Abuse

- 908 KAR 1:311. Repeal of 908 KAR 1:010, 908 KAR 1:020, 908 KAR 1:030, 908 KAR 1:040, 908 KAR 1:050, 908 KAR 1:060, 908 KAR 1:070, 908 KAR 1:080, 908 KAR 1:090, 908 KAR 1:100, 908 KAR 1:110, 908 KAR 1:120, 908 KAR 1:130, 908 KAR 1:140, 908 KAR 1:150, 908 KAR 1:160, 908 KAR 1:170, 908 KAR 1:180, 908 KAR 1:190, 908 KAR 1:200, 908 KAR 1:210, 908 KAR 1:220, 908 KAR 1:230, 908 KAR 1:240, 908 KAR 1:250, and 908 KAR 1:260
- 908 KAR 1:370. Licensing procedures and standards for persons and agencies operating alcohol and other drug abuse treatment programs.

Mental Health

- 908 KAR 2:210E. Domestic violence offender treatment certification standards.
- 908 KAR 2:190. Supported living services. (Amended After Hearing)

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 HIGHER EDUCATION ASSISTANCE AUTHORITY

May 15, 1998

(1) The subject matter of the administrative regulation is **11 KAR 3:100**, Administrative wage garnishment.

(2) The Kentucky Higher Education Assistance Authority intends to amend the administrative regulation governing the subject matter listed above. This amendment is necessary in order to comply with the recent requirements of the U.S. Department of Education regarding the administrative wage garnishment process. In particular, it is necessary to prescribe procedures for conducting administrative hearings to determine whether it would constitute an extreme financial hardship to garnish a defaulted borrower's wages. In addition, the current administrative regulation pertaining to the hearing procedure, which is exempt from KRS Chapter 13A will be modified to delete the cross reference to the hearing process set forth in 11 KAR 4:020 and to specify particular elements of the hearing process for administrative wage garnishment.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for Monday, June 22, 1998, at 10 a.m., at 1050 U.S. 127 South, Frankfort, Kentucky 40601.

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

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

(b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 10 days prior to Monday, June 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: Richard F. Casey, General Counsel, Kentucky Higher Education Assistance Authority, 1050 U.S. 127 South, Frankfort, Kentucky 40601, (800) 693-8211, FAX 696-7293.

(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 Higher Education Assistance Authority 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 administrative wage garnishment process is KRS 164.748(4), 164.753(2), 20 USC 1095(a) and 34 CFR 682.410.

(b) The administrative regulation that the Kentucky Higher Education Assistance Authority intends to amend will provide guidelines for a hearing officer to follow in conducting the administrative wage garnishment hearings and presumptions and criteria for determining whether an extreme financial hardship would result from withholding of a debtor's wages under the administrative wage garnishment.

(c) The necessity and function of the proposed administrative regulation is as follows: KRS 164.748(4) requires KHEAA to promulgate administrative regulations pertaining to the awarding of grants, scholarships, and honorary scholarships as provided in KRS 164.740 to 164.785. KRS 164.748(19) authorizes the authority to conduct hearings related to administrative wage garnishment, exempt from the procedures set forth in KRS Chapter 13B. KRS 164.753(2) authorizes the authority to promulgate administrative regulations pertaining to insured student loans. 20 USC 1095(a) authorizes issuance of an administrative order of wage garnishment under certain conditions to recover a defaulted insured student loan. 34 CFR 682.410 authorizes the authority and other loan guarantors to conduct administrative hearings pertaining to the existence, amount and repayment of the debt. This administrative regulation specifies the process for initiating an administrative wage garnishment process and for conducting a hearing on the existence, amount or repayment of the debt.

(d) The benefits expected from the amendments to the administrative regulation are: A borrower is entitled to request a hearing on the existence, amount and repayment of the debt. The U.S. Department of Education has determined that a student loan debtor is entitled to have a determination made whether withholding under an administrative wage garnishment order would constitute an extreme financial hardship. The hearing process for administrative wage garnishment is exempt from procedures of KRS Chapter 13B. The current administrative regulation will be amended to specify certain prehearing procedures and hearing procedures, including presumptions to guide a hearing officer in considering disputes over the existence, amount and repayment of the debt, including the existence of extreme financial hardship. This will enable the authority to continue to use this tool in collection efforts, to conform with new federal policies and procedures, and to protect the process from legal challenge.

(e) The amendment to the administrative regulation will be implemented as follows: In conformity with 34 CFR 682.410(b)(10), a hearing officer's decision is a final decision. However, the final decision may be appealed to and reviewed by the authority board on request of either party, instead of automatic review pursuant to 11 KAR 4:030. An appeal from the hearing officer's decision shall follow the new guidelines and shall no longer follow 11 KAR 4:030. The new guidelines include, for instance, the standard for review by the board of the hearing officer's decision. This standard is that the board shall uphold the hearing officer's decision unless it is clearly unsupported by the evidence. This administrative regulation further shall provide that if the debtor does not submit required documentation in a timely fashion, then he has not met a burden of substantiating his case. Additionally, if a defense has previously been raised and refuted by the guaranty agency, then the hearing officer must give deference to a prior decision of the agency. Also, if the debtor is raising for the first time in the administrative wage garnishment hearing a defense that should have been raised at the point of default or some prior action, then the debtor shall be deemed to have not exhausted his administrative remedies, and the hearing officer may stay the hearing pending consideration of the dispute through the appropriate remedy. Finally, the hearing officer will have guidelines to follow which allow him to narrowly construe and apply the concept of "extreme financial hardship." In order to show "extreme financial hardship," a debtor must show, if he is above the poverty level, that his expenses are necessary to the health, safety, or continued employment of the debtor. If the necessary expenses of the debtor exceed the standards derived from data put out by the Bureau of Labor Statistics, then the debtor must show that his expenses are necessitated as the result of extraordinary

circumstances, such as the cost of unreimbursed medical care.

May 15, 1998

(1) The subject matter of the administrative regulation is **11 KAR 4:050**. Set off of authority claims.

(2) The Kentucky Higher Education Assistance Authority intends to amend the administrative regulation governing the subject matter listed above. In particular the Kentucky Higher Education Assistance Authority will amend Section 2 of the administrative regulation pertaining to the submission of documentation related to the petitioner's dispute and providing that issues already raised and considered at a previous administrative hearing or review shall not be addressed at a hearing requested pursuant to this administrative regulation. Section 3 of the administrative regulation will be amended by adding criteria for establishing an acceptable written repayment agreement for purposes of avoiding federal income tax refund setoff. Finally, Section 4(3) of the administrative regulation will be amended to correct a reference to 11 KAR 4:030 that has become erroneous due to amendment of 11 KAR 4:030 and to remove language that indicates that a hearing officer's decision is final rather than recommended in accordance with KRS Chapter 13B.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for Monday, June 22, 1998, at 10 a.m., at 1050 U.S. 127 South, Frankfort, Kentucky 40601.

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

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

(b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 10 days prior to Monday, June 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: Richard F. Casey, General Counsel, Kentucky Higher Education Assistance Authority, 1050 U.S. 127 South, Frankfort, Kentucky 40601, (800) 693-8211, FAX 696-7293.

(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 Higher Education Assistance Authority 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 setoff of authority claims is KRS 164.748(4), (10), (14), and (19), 164.753(2), 34 CFR 30.33, 31 USC 3718 and 3720A.

(b) The administrative regulation that the Kentucky Higher Education Assistance Authority intends to amend will add a subsection to Section 2 of the administrative regulation pertaining to the submission of documentation related to the petitioner's dispute. The provision will require that a petitioner disputing the authority's claim shall submit to the authority with the written statement of appeal documentation that supports the petitioner's position. The amendment to that section will also provide that issues already raised and considered at a previous administrative hearing or review shall not be addressed at a hearing requested pursuant to this administrative regulation. Section 3 of the administrative regulation will be amended by adding criteria for establishing an acceptable written repayment agreement for purposes of avoiding federal income tax refund setoff. For this purpose, an acceptable repayment agreement must be in writing; be submitted with a \$250 down payment; provide for monthly payments at least equal to the monthly accrual of interest and based upon the borrower's financial ability to pay and the balance owed. The written repayment agreement, required down payment and first month payment shall be submitted by a date agreed to in order to avoid certification of the account for federal income tax refund setoff. Finally, Section 4(3) of the administrative regulation will be amended to correct a reference to 11 KAR 4:030 that has become erroneous due to amendment of 11 KAR 4:030 and to remove language that indicates that a hearing officer's decision is final rather than recommended in accordance with KRS Chapter 13B.

(c) The necessity and function of the proposed administrative regulation is as follows: KRS 164.748(4) requires the authority to promulgate administrative regulations pertaining to the awarding of grants, scholarships, and honorary scholarships as provided in KRS 164.740 to 164.785. KRS 164.748(10) authorizes the authority to collect from individual borrowers loans made by the authority and insured student loans on which the authority has been compelled to meet its loan guarantee obligations following the inability of the participating lender involved to collect the insured student loans. KRS 164.748(14) authorizes the authority to perform other acts necessary or appropriate to carry out effectively the purposes of the authority as provided by KRS 164.740 to 164.785. KRS 164.748(19) authorizes the authority to conduct hearings subject to KRS Chapter 13B, including hearings pertaining to federal income tax refund setoff which are exempt from the procedures set forth in KRS Chapter 13B. KRS 164.753(2) authorizes the authority to promulgate administrative regulations pertaining to insured student loans. 31 USC 3718 and 3720A and 34 CFR 30.33 authorize the authority to participate in the federal income tax refund setoff process and require that the authority provide an opportunity for a debtor to establish repayment terms to avoid the setoff or dispute the claim. This administrative regulation sets forth the process for notification and appeal afforded to individuals in implementing a set off of authority claims through the Kentucky Revenue Cabinet, the State Treasurer, or the Internal Revenue Service.

(d) The benefits expected from the amendments to the administrative regulation are: A borrower is entitled to request a hearing on the existence, amount and repayment of the debt. The current administrative regulation will be amended to specify certain conditions for establishing an acceptable repayment agreement to avoid the federal income tax refund setoff, establish a time frame for submission of supporting documentation, and correct a now erroneous cross-reference due to amendment of another administrative regulation. This will enable the authority to continue to use offset of state and federal payments as a tool in collection efforts.

(e) The amendment to the administrative regulation will be implemented as follows: A debtor shall be notified prior to setoff of an authority claim against state or federal payments to a student loan borrower. The notice provides the debtor an opportunity to establish a repayment agreement or to dispute the debt. If the debtor disputes the claim of the authority for setoff of payments by the Kentucky Revenue Cabinet or State Treasurer, the dispute will be reviewed in accordance with procedures set forth in 11 KAR 4:030 and may ultimately result in a hearing, if requested by the debtor, that conforms to KRS Chapter 13B. The debtor shall submit documentation that supports his position at the time that he disputes the claim. If the debtor disputes the claim of the authority for setoff against federal payments to the debtor, the dispute is reviewed in accordance with federal regulations and may ultimately be reviewed by the U.S. Department of Education, if the debtor requests

that review. If the debtor desires to establish a repayment agreement to avoid setoff of the authority's claim against federal payments, the administrative regulation establishes criteria for an acceptable payment agreement.

May 15, 1998

- (1) The subject matter of the administrative regulation is **11 KAR 4:070**, Reports by postsecondary educational institutions.
- (2) The Kentucky Higher Education Assistance Authority intends to promulgate an administrative regulation governing the subject matter listed above, particularly, certification by institutions of compliance with Section 2 of Senate Bill 202 enacted by the 1998 Regular Session of the General Assembly and reports by institutions in lieu of compliance.
- (3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for Monday, June 22, 1998, at 10 a.m., at 1050 U.S. 127 South, Frankfort, Kentucky 40601.
- (4)(a) The public hearing will be held if:
 1. It is requested, in writing, by at least 5 persons, or an administrative body, or an association having at least 5 members; and
 2. A minimum of 5 persons, or the administrative body or association, agree, in writing, to be present at the public hearing.
- (b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 10 days prior to June 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: Richard F. Casey, General Counsel, Kentucky Higher Education Assistance Authority, 1050 U.S. 127 South, Frankfort, Kentucky 40601, (800) 693-8211, FAX 696-7293.
- (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 Higher Education Assistance Authority 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 the administrative regulation is KRS 164.748(4), 1998 Ky. Acts ch. 256, sec. 1(9) and 1998 Ky. Acts ch. 575, sec. 6(7).
 - (b) The administrative regulation that the Kentucky Higher Education Assistance Authority intends to promulgate will provide that the president of a school of osteopathic medicine or a college, business school, school of nursing, or vocational school shall submit to the authority by August 1 of each year a certification of compliance if it awards student financial assistance from institutional funds in compliance with 1998 Ky. Acts ch. 256, sec. 2(2). If the institution does not award student financial assistance from institutional funds in compliance with 1998 Ky. Acts ch. 256, sec. 2(2), the president of the school of osteopathic medicine or a college, business school, school of nursing, or vocational school shall submit to the authority by August 1 of each year the report specified in 1998 Ky. Acts ch. 256, sec. 2(2). Additionally, a participating institution, for purposes of the Commonwealth Merit Scholarship Program, shall submit to the authority by August 1 of each year a certification of compliance if it commits financial resources to student financial assistance in compliance with 1998 Ky. Acts ch. 575, sec. 2(15)(b). Organizations and agencies responsible for disbursement of funds appropriated by the General Assembly for the purposes of student financial assistance may confirm with the authority after August 1 each year whether a school of osteopathic medicine or a college, business school, school of nursing, or vocational school has submitted evidence of compliance with 1998 Ky. Acts ch. 256, sec. 2(2). The authority shall not be held liable to any other agency responsible for administration of programs and disbursement of funds appropriated by the General Assembly for purposes of student financial assistance if an institution submits a certification of compliance to the authority and is subsequently found to have falsely or erroneously certified compliance.
 - (c) The necessity and function of the proposed administrative regulation is as follows: 1998 Ky. Acts ch. 256, sec. 2 prohibits disbursement of funds appropriated by the General Assembly for the purposes of student financial assistance to students enrolled in a program of study at a school of osteopathic medicine or a college, business school, school of nursing, or vocational school, as defined in KRS 164.740, located within the Commonwealth, unless the educational institution awards at least as much student financial assistance from institutional funds to residents of the Commonwealth as the institution awards from institutional funds to nonresidents of the Commonwealth for undergraduate programs of study, excluding reciprocal tuition agreements and athletic scholarships or the institution provides a report to the Kentucky Higher Education Assistance Authority on its head count enrollment, both resident and nonresident, and the amount of student financial assistance awarded from institutional funds to residents and nonresidents. Similarly, 1998 Ky. Acts ch. 575, sec. 2(15)(b) requires as a condition of participation in the Commonwealth Merit Scholarship Program that an institution continue to commit financial resources to student financial assistance and provide annual documentation to the authority of compliance. This proposed administrative regulation is needed to ensure that evidence of compliance with these requirements in the form of a certification or a report from the institution is available in a central location to all agencies responsible for disbursement of funds appropriated by the General Assembly for the purposes of student financial assistance prior to disbursement of those funds.
 - (d) The benefits expected from the administrative regulation are: The administrative regulation is intended to provide evidence of compliance with a minimum of burden to postsecondary institutions by providing annual certification of compliance or reporting to a central location by a date expected to not interfere with the normal processing of student financial aid funds.
 - (e) The administrative regulation will be implemented as follows: Postsecondary institutions shall provide by August 1 each year a simple certification, signed by the president of the institution, that the institution continues to commit resources to student financial assistance in compliance with 1998 Ky. Acts, ch. 575, Sec. 2(15)(b) and awards its institutional funds for student financial assistance in compliance with 1998 Ky. Acts ch. 256, sec. 2(2) or alternatively comply by submitting the report specified in that section. Agencies responsible for disbursement of funds appropriated by the General Assembly for the purposes of student financial assistance may check with the authority after August 1 to determine if an institution has submitted either the certification or the report permitting disbursement of the funds.

May 15, 1998

- (1) The subject matter of the administrative regulation is **11 KAR 5:001**. Definitions pertaining to 11 KAR Chapter 5.
- (2) The Kentucky Higher Education Assistance Authority intends to promulgate an administrative regulation governing the subject matter

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listed above, particularly, definition of terms pertaining to administration of the KHEAA Grant Programs used in one or more administrative regulations in 11 KAR Chapter 5 of the Kentucky Administrative Regulations.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for Monday, June 22, 1998, at 10 a.m., at 1050 U.S. 127 South, Frankfort, Kentucky 40601.

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

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

(b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 10 days prior to Monday, June 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: Richard F. Casey, General Counsel, Kentucky Higher Education Assistance Authority, 1050 U.S. 127 South, Frankfort, Kentucky 40601, (800) 693-8211, FAX 696-7293.

(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 Higher Education Assistance Authority at the address listed above.

(7) Information relating to the proposed administrative regulation:

(a) The statutory authority for the promulgation of an administrative regulation relating to the subject matter of this administrative regulation is KRS 164.748(4) and 164.753(4).

(b) The administrative regulation that the Kentucky Higher Education Assistance Authority intends to promulgate will define or reference statutory definitions of terms. Particularly, the amendment will delete the term "nonprofit" from the definition of "educational institution" in Section 1(7)(d) pertaining to the Kentucky Tuition Grant Program.

(c) The necessity and function of the proposed administrative regulation is as follows: KRS 164.748(4) requires the authority to promulgate administrative regulations pertaining to the awarding of grants, scholarships, and honorary scholarships as provided in KRS 164.740 to 164.785. KRS 164.753(2) authorizes the authority to promulgate administrative regulations pertaining to grants. 1998 Ky. Acts ch. 317, sec. 1 amended KRS 164.785 by deleting the requirement that a college be nonprofit to participate in the Kentucky Tuition Grant Program. This regulation defines or references certain statutory definitions of terms commonly used in the administration of the KHEAA Grant program.

(d) The benefits expected from the administrative regulation are: Establishment of uniform meaning of commonly used terms in the administration of the KHEAA Grant program. The amendment is intended to conform the definition of educational institution to the amendment to KRS 164.785 by 1998 Ky. Acts ch. 317, sec. 1.

(e) The administrative regulation will be implemented as follows: Commonly used terminology will be prescribed with uniform meaning.

May 15, 1998

(1) The subject matter of the administrative regulation is **11 KAR 12:010**, Kentucky Educational Savings Plan Trust definitions.

(2) The Kentucky Higher Education Assistance Authority intends to promulgate an amendment to Section 1 of the administrative regulation governing the subject matter listed above, particularly, definitions for 11 KAR Chapter 12, Kentucky Educational Savings Plan Trust.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for Monday, June 22, 1998, at 10 a.m., at 1050 U.S. 127 South, Frankfort, Kentucky 40601.

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

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

(b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 10 days prior to Monday, June 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: Richard F. Casey, General Counsel, Kentucky Higher Education Assistance Authority, 1050 U.S. 127 South, Frankfort, Kentucky 40601, (800) 693-8211, FAX (502) 696-7293.

(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 Higher Education Assistance Authority 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 164A.325(9).

(b) The administrative regulation that the Kentucky Higher Education Assistance Authority intends to promulgate will amend 11 KAR 12:010, as follows: Section 1 of the above cited administrative regulation currently provides the definition of terms and words which shall be interpreted and applied in a uniform manner when used in 11 KAR Chapter 12. The Kentucky Higher Education Assistance Authority intends to amend that section of the administrative regulation to delete the definitions for the terms "administrative fee" and "hardship." Section 1 is further amended by adding definitions for "dependent," "domicile," "independent," and "parent" currently contained in 11 KAR 12:040 and being deleted from that administrative regulation. The necessity, function, and conformity paragraph of 11 KAR 12:010 will also be amended to bring it into conformity with the provisions of KRS Chapter 13A.

(c) The necessity and function of the proposed administrative regulation is as follows: KRS 164A.300 through 164A.380 establish the Kentucky Educational Savings Plan Trust and prescribe the operation of the trust. 1998 Ky. Acts ch. 132 amended certain of the above statutes

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to conform operation of the trust to 26 USC 529 and to qualify the Kentucky Educational Savings Plan Trust as a "qualified state tuition program," under the Taxpayer Relief Act of 1997 (PL 105-34). This administrative regulation prescribes definition of terms and words which shall be interpreted and applied in a uniform manner when used in 11 KAR Chapter 12.

(d) The benefits expected from the administrative regulation are: The administrative regulation is intended to provide definitions for words and terms used throughout 11 KAR Chapter 12. This amendment will aid in The Kentucky Educational Savings Plan Trust being qualified as a "qualified state tuition program," under 26 USC 529 as amended by the Taxpayer Relief Act of 1997 (PL 105-34).

(e) The administrative regulation will be implemented as follows: The administrative regulation provides definition of terms and words which shall be interpreted and applied in a uniform manner when used in 11 KAR Chapter 12. The proposed amendment will delete the definitions for the terms "administrative fee" and "hardship" and amend the necessity, function, and conformity paragraph to conform with the provisions of KRS Chapter 13A.

May 15, 1998

(1) The subject matter of the administrative regulation is **11 KAR 12:040**. Residency classification for Kentucky Educational Savings Plan Trust vested participation agreements.

(2) The Kentucky Higher Education Assistance Authority intends to promulgate an amendment to Section 1 of the administrative regulation governing the subject matter listed above, particularly, residency classification for Kentucky Educational Savings Plan Trust vested participation agreements.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for Monday June 22, 1998, at 10 a.m., at 1050 U.S. 127 South, Suite 102, 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 June 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: Richard F. Casey, General Counsel, Kentucky Higher Education Assistance Authority, 1050 U.S. 127 South, Frankfort, Kentucky 40601, (800) 693-8211, FAX (502) 696-7293.

(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 Higher Education Assistance Authority 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 164A.325(9).

(b) The administrative regulation that the Kentucky Higher Education Assistance Authority intends to promulgate will amend 11 KAR 12:040, as follows: Section 1 of the administrative regulation currently provides definitions of terms used only in this administrative regulation. That section is being deleted and the definitions are being moved to 11 KAR 12:010. Current Section 2, redesignated as Section 1 will be amended to clarify that a "vested participation agreement" shall be considered in "full force and effect" if: a total of \$2400 has been contributed to the account during the eight year period; the amount remains in the account at the end of the eight (8) year period establishing the vested participation agreement; and the participation agreement shall not have been cancelled at the time the beneficiary first enrolls in an institution of higher education. The necessity, function, and conformity paragraph of 11 KAR 12:040 will also be amended to bring it into compliance with the drafting provisions of KRS Chapter 13A.

(c) The necessity and function of the proposed administrative regulation is as follows: KRS 164A.325(9) provides that the board shall have the power to promulgate rules and administrative regulations to carry out and effectuate the purposes and objectives of the Kentucky Educational Savings Plan Trust. This administrative regulation is necessary to clarify, interpret, and establish the standards for proof of residency of a beneficiary for tuition purposes, who would not otherwise be classified as a resident except for participating in the trust.

(d) The benefits expected from the administrative regulation are: This administrative regulation sets forth uniform standards for documentation and proof of residency to establish a vested participation agreement.

(e) The administrative regulation will be implemented as follows: A person designated as a beneficiary under a participation agreement with the trust and who demonstrates to the authority through various facts that he was a resident of the Commonwealth during eight (8) consecutive years as a beneficiary of the participation agreement may have the participation agreement designated as vested for purposes of entitlement to resident tuition rates upon enrollment in a Kentucky public postsecondary institution.

May 15, 1998

(1) The subject matter of the administrative regulation is **11 KAR 12:060**, Cancellation and payment of refund.

(2) The Kentucky Higher Education Assistance Authority intends to promulgate an amendment to Section 1 of the administrative regulation governing the subject matter listed above, particularly, cancellation and payment of refunds under the Kentucky Educational Savings Plan Trust.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for Monday, June 22, 1998, at 10 a.m., at 1050 U.S. 127 South, Frankfort, Kentucky 40601.

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

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

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

at least 10 days prior to June 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: Richard F. Casey, General Counsel, Kentucky Higher Education Assistance Authority, 1050 U.S. 127 South, Frankfort, Kentucky 40601, (800) 693-8211, FAX (502) 696-7293.

(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 Higher Education Assistance Authority 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 164A.325(9).

(b) The administrative regulation that the Kentucky Higher Education Assistance Authority intends to promulgate will amend 11 KAR 12:060, as follows: References to KRS 164A.345, which was repealed by 1998 Ky. Acts ch. 132, and replaced by a reference to KRS 164A.350 and any reference to an "administrative fee" will be changed to a "penalty." The Kentucky Higher Education Assistance Authority intends to amend the administrative regulation to delete subsection (3) of Section 1, which provides for the cancellation of a participation agreement under the conditions of hardship or emergency, and to add a provision that the penalty amount shall be 10 percent of the earnings accrued to the account.

(c) The necessity and function of the proposed administrative regulation is as follows: KRS 164A.300 through 164A.380 establish the Kentucky Educational Savings Plan Trust and prescribe the operation of the trust. 1998 Ky. Acts ch. 132 amended certain of the above statutes to conform operation of the trust to 26 USC 529 and to qualify the Kentucky Educational Savings Plan Trust as a "qualified state tuition program," under the Taxpayer Relief Act of 1997 (PL 105-34). This administrative regulation is necessary to establish the procedures for cancellation of a participation agreement and refund of the account balance.

(d) The benefits expected from the administrative regulation are: The amendment to this regulation is intended to qualify the Kentucky Educational Saving Plan Trust as a "qualified state tuition program" as defined in The Taxpayer Relief Act of 1997. This will give the participants in the trust federal tax benefits that were previously unavailable.

(e) The administrative regulation will be implemented as follows: A participant may cancel a participation agreement at any time. A penalty of 10 percent of the earnings accrued to the account shall be deducted from the amount refunded to the participant. The amount to be refunded, less the penalty, shall be mailed or otherwise sent to the participant within 60 days after receipt by the program administrator of notice to terminate the participation agreement.

May 15, 1998

(1) The subject matter of the administrative regulation is **11 KAR 12:070**, Benefits payable from the Kentucky Educational Savings Plan Trust Program fund.

(2) The Kentucky Higher Education Assistance Authority intends to promulgate an amendment to Sections 1 and 4 of the administrative regulation governing the subject matter listed above, particularly, benefits payable from the Kentucky Educational Savings Plan Trust program fund.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for Monday, June 22, 1998, at 10 a.m., at 1050 U.S. 127 South, Frankfort, Kentucky 40601.

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

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

(b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 10 days prior to June 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: Richard F. Casey, General Counsel, Kentucky Higher Education Assistance Authority, 1050 U.S. 127 South, Frankfort, Kentucky 40601, (800) 693-8211, FAX (502) 696-7293.

(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 Higher Education Assistance Authority 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 164A.325(9).

(b) The administrative regulation that the Kentucky Higher Education Assistance Authority intends to promulgate will amend 11 KAR 12:070, as follows: Section 1(4) currently provides that each distribution of benefits paid under the participation agreement shall be paid directly to the beneficiary's institution of higher education. The Kentucky Higher Education Assistance Authority intends to amend that section of the administrative regulation to delete Section 1(4). Section 4(1) of the above cited administrative regulation provides that the unused benefits plus the beneficiary's entitlement in the program fund in any academic period not exceeding the higher education costs may be paid to the institution for the beneficiary in the next succeeding academic period. The Kentucky Higher Education Assistance Authority intends to promulgate an amendment to this section to delete the reference "to the institution." Section 4(2) of the above cited administrative regulation currently provides that if the beneficiary graduate from an institution of higher education, and a balance remains in the beneficiary's account, then the program

administrator shall pay the balance of the payments and the earnings from the investments in the program fund remaining in the investment to the participant. The Kentucky Higher Education Assistance authority intends to amend that section of the administrative regulation to provide that payments shall be made pursuant to KRS 164A.350 and to delete the statement "The program administrator shall make the payment from the program fund within 60 days from the date of the beneficiary's graduation."

(c) The necessity and function of the proposed administrative regulation is as follows: KRS 164A.300 through 164A.380 establish the Kentucky Educational Savings Plan Trust and prescribe the operation of the trust. 1998 Ky. Acts ch. 132 amended certain of the above statutes to conform operation of the trust to 26 USC 529 and to qualify the Kentucky Educational Savings Plan Trust as a "qualified state tuition program," under the Taxpayer Relief Act of 1997 (PL 105-34). This administrative regulation is necessary to establish the maximum benefits payable in any academic period, the duration of the payments, the payment of benefits for a beneficiary residing off campus and the notice provisions in the event of a refund of the payments for nonuse or unused benefits from the program fund.

(d) The benefits expected from the administrative regulation are: The Kentucky Higher Education Assistance Authority is promulgating an amendment to this administrative regulation to qualify the Kentucky Educational Savings Plan Trust as a "qualified state tuition program" as provided in the Taxpayer Relief Act of 1997. This will give participants in the trust program federal tax benefits they previously did not have.

(e) The administrative regulation will be implemented as follows: Distribution of benefits under the Kentucky Educational Savings Plan Trust begins when the participant submits a notice to use trust benefits and specifies the level of benefits to be paid. Distribution of benefits shall continue throughout the beneficiary's period of enrollment at an institution of higher learning or until the account balance has been exhausted, whichever occurs first. If the trust does not receive a completed notice to use trust benefits or a notice to delay trust benefits by the first academic period of the academic year that begins after the beneficiary attains the age of 18, or if the beneficiary interrupts enrollment and the trust does not receive a notice to delay benefits, then the program administrator shall refund the balance of payments and the earnings from the investments in the program fund remaining in the account. If a balance remains in the beneficiary's account at the time of the beneficiary's graduation from an institution of higher education, the program administrator shall refund the balance of the payments and the earnings from the investments in the program fund in the account to the participant. If the beneficiary's higher education costs are less than the benefits due for any academic period, then that portion of the unused benefits shall accumulate to the beneficiary's account.

May 15, 1998

(1) The subject matter of the administrative regulation is **11 KAR 14:010**, Osteopathic Medicine Scholarship Program application process.

(2) The Kentucky Higher Education Assistance Authority intends to promulgate an administrative regulation governing the subject matter listed above, particularly, deadlines and procedures for applying for the Osteopathic Medicine Scholarship.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for Monday, June 22, 1998, at 10 a.m., at 1050 U.S. 127 South, Frankfort, Kentucky 40601.

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

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

(b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 10 days prior to Monday, June 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: Richard F. Casey, General Counsel, Kentucky Higher Education Assistance Authority, 1050 U.S. 127 South, Frankfort, Kentucky 40601, (800) 693-8211, FAX (502) 696-7293.

(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 Higher Education Assistance Authority 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 the administrative regulation is KRS 164.748(4) and 1998 Ky. Act. ch. 256, sec. 1(9)

(b) The administrative regulation that the Kentucky Higher Education Assistance Authority intends to promulgate will provide that an accredited osteopathic school of medicine in the Commonwealth shall notify Kentucky Higher Education Assistance Authority by July 1 of each year of all students eligible to receive monies under the Osteopathic Medicine Scholarship Program for the academic year beginning July 1. An accredited osteopathic school of medicine in the Commonwealth shall also submit to Kentucky Higher Education Assistance Authority a list containing at least the student's name, Social Security number, and current address. After receipt of the data sheet, Kentucky Higher Education Assistance Authority shall send each student's promissory note to the school. The student shall sign his promissory note in the presence of a representative of the school. The student shall retain a copy of the promissory note for his records, and the original promissory note shall be returned to Kentucky Higher Education Assistance Authority.

(c) The necessity and function of the proposed administrative regulation is as follows: 1998 Ky. Acts ch. 256 establishes the Osteopathic Medicine Scholarship Program and requires the authority to promulgate administrative regulations for administration of the program. This proposed administrative regulation is necessary to establish procedures for application process for the Osteopathic Medicine Scholarship Program.

(d) The benefits expected from the administrative regulation are: The administrative regulation is intended to provide guidelines for the submission of a list of eligible students at an accredited osteopathic school of medicine to receive an award under the Osteopathic Medicine Scholarship Program with minimal paperwork burden to the institution and the students.

(e) The administrative regulation will be implemented as follows: An accredited osteopathic school of medicine located in the Commonwealth shall submit to Kentucky Higher Education Assistance Authority by July 1 of each year a list of students eligible to receive monies under the Osteopathic Medicine Scholarship Program. After receipt of this list, a promissory note for each student shall be prepared and

submitted to the school for each student's signature.

May 15, 1998

(1) The subject matter of the administrative regulation is **11 KAR 14:020**, Osteopathic Medicine Scholarship Program Award determination.

(2) The Kentucky Higher Education Assistance Authority intends to promulgate an administrative regulation governing the subject matter listed above, particularly, procedures for the priority of awarding scholarships under this program if funds are insufficient to honor all requests.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for Monday, June 22, 1998, at 10 a.m., at 1050 U.S. 127 South, Frankfort, Kentucky 40601.

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

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

(b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 10 days prior to Monday, June 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: Richard F. Casey, General Counsel, Kentucky Higher Education Assistance Authority, 1050 U.S. 127 South, Frankfort, Kentucky 40601, (800) 693-8211, FAX (502) 696-7293.

(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 Higher Education Assistance Authority 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 the administrative regulation is KRS 164.748(4) and 1998 Ky. Act. ch. 256, sec. 1(9).

(b) The administrative regulation that the Kentucky Higher Education Assistance Authority intends to promulgate will provide that if funds are insufficient to award full scholarships to all applicants, the scholarship awards shall be based on the student's proximity to graduation. The full scholarship will be awarded first to those students closest to completing the osteopathic medicine program. The statute specifies that the scholarship amount shall be the difference in tuition and therefore does not provide for prorated reduction of the scholarship amount.

(c) The necessity and function of the proposed administrative regulation is as follows: 1998 Ky. Acts ch. 256 establishes the Osteopathic Medicine Scholarship Program and requires the authority to administer the program and to promulgate administrative regulations for administration of the program. This administrative regulation provides procedures for the priority of awarding scholarships if funds under the program are insufficient to honor all requests.

(d) The benefits expected from the administrative regulation are: The administrative regulation is intended to provide guidelines for awarding scholarships under the Osteopathic Medicine Scholarship Program if funds are insufficient to meet all requests.

(e) The administrative regulation will be implemented as follows: If funds under the Osteopathic Medicine Scholarship Program are insufficient to award full scholarships to all applicants, a ranking system will be used to award the scholarships. The scholarships shall be awarded first to those students who are closest to completing the osteopathic medicine program.

May 15, 1998

(1) The subject matter of the administrative regulation is **11 KAR 14:030**, Osteopathic Medicine Scholarship Program disbursement process.

(2) The Kentucky Higher Education Assistance Authority intends to promulgate an administrative regulation governing the subject matter listed above, particularly, procedures for the disbursement of monies awarded under the Osteopathic Medicine Scholarship Program.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for Monday, June 22, 1998, at 10 a.m., at 1050 U.S. 127 South, Frankfort, Kentucky 40601.

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

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

(b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 10 days prior to Monday, June 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: Richard F. Casey, General Counsel, Kentucky Higher Education Assistance Authority, 1050 U.S. 127 South, Frankfort, Kentucky 40601, (800) 693-8211, FAX (502) 696-7293.

(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 Higher Education Assistance Authority 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 the administrative regulation is KRS 164.748(4) and 1998 Ky. Act. ch. 256, sec. 1(9).

(b) The administrative regulation that the Kentucky Higher Education Assistance Authority intends to promulgate will provide that

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monies awarded under the Osteopathic Medicine Scholarship Program shall be disbursed to the recipient annually within 30 days of receipt by the authority of the signed original promissory note. The sum of all Osteopathic Medicine Scholarship Program funds awarded to eligible students shall be transmitted directly to the school in the form of a check made payable to the school of osteopathic medicine or by electronic funds transfer. The school shall be responsible for delivering the funds to the eligible student or applying the scholarship funds to the eligible student's tuition and fees owed to the school. The school shall also receive a check register containing each recipient's name and Social Security number. The recipient shall sign the check register in the presence of an official of the school to verify receipt of the check or application of the funds to tuition and fees owed to the school. The school shall retain a copy of the check register for its records and shall return the original to Kentucky Higher Education Assistance Authority.

(c) The necessity and function of the proposed administrative regulation is as follows: 1998 Ky. Acts ch. 256 establishes the Osteopathic Medicine Scholarship Program and requires the authority to administer the program and to promulgate administrative regulations for administration of the program. This administrative regulation provides procedures for disbursement of the monies awarded under the Osteopathic Medicine Scholarship Program.

(d) The benefits expected from the administrative regulation are: The administrative regulation is intended to provide guidelines for the disbursement of monies awarded under the Osteopathic Medicine Scholarship Program with minimum burden to the promulgating agency, the institution and the students, while ensuring the integrity of the program.

(e) The administrative regulation will be implemented as follows: The monies awarded under the Osteopathic Medicine Scholarship Program will be transmitted directly to the school in the form of a check made payable to the school of osteopathic medicine or by electronic funds transfer. Along with the checks, the school will receive a check register containing each recipient's name and Social Security number. The recipient shall sign the check register to verify receipt of the check. The monies awarded under the Osteopathic Medicine Scholarship Program shall be disbursed annually to the recipient annually within 30 days of receipt by the authority of the signed original promissory note.

May 15, 1998

(1) The subject matter of the administrative regulation is **11 KAR 14:040, Osteopathic Medicine Scholarship Program overawards and refunds.**

(2) The Kentucky Higher Education Assistance Authority intends to promulgate an administrative regulation governing the subject matter listed above, particularly, the procedures for refunding to Kentucky Higher Education Assistance Authority any monies paid under the Osteopathic Medicine Scholarship Program if a recipient fails to enroll in the osteopathic medicine program or officially withdraws from the osteopathic medicine program.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for Monday, June 22, 1998, at 10 a.m., at 1050 U.S. 127 South, Frankfort, Kentucky 40601.

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

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

(b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 10 days prior to Monday, June 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: Richard F. Casey, General Counsel, Kentucky Higher Education Assistance Authority, 1050 U.S. 127 South, Frankfort, Kentucky 40601, (800) 693-8211, FAX (502) 696-7293.

(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 Higher Education Assistance Authority 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 the administrative regulation is KRS 164.748(4) and 1998 Ky. Act. ch. 256, sec. 1(9).

(b) The administrative regulation that the Kentucky Higher Education Assistance Authority intends to promulgate will provide that if a recipient of an Osteopathic Medicine Scholarship fails to enroll in or officially withdraws from an accredited osteopathic medicine program, the Kentucky Higher Education Assistance Authority shall be due a refund of monies paid to the school under the scholarship program. If a recipient fails to enroll in or officially withdraws from an accredited osteopathic medicine program prior to the first day of classes, the scholarship award will be deemed an overaward and a full refund of the monies to the Kentucky Higher Education Assistance Authority shall be required, notwithstanding any policy of the school to the contrary. If a recipient officially withdraws from an accredited osteopathic medicine program after the first day of classes, the amount of the refund shall be determined in accordance with the school's refund policies relative to financial aid funds. If a recipient unofficially withdraws from an accredited osteopathic medicine program at any time, the Kentucky Higher Education Assistance Authority shall not seek a refund of the monies paid under the scholarship program from the school. The recipient shall be responsible for immediate repayment of the full amount of the scholarship award as well as any interest that may be applicable.

(c) The necessity and function of the proposed administrative regulation is as follows: 1998 Ky. Acts ch. 256 establishes the Osteopathic Medicine Scholarship Program and requires the authority to administer the program and to promulgate administrative regulations for administration of the program. This administrative regulation provides procedures for the refund of monies paid under the Osteopathic Medicine Scholarship Program if a recipient fails to enroll in or withdraws from an osteopathic medicine program.

(d) The benefits expected from the administrative regulation are: The administrative regulation provides guidelines for the refund to the Kentucky Higher Education Assistance Authority of monies awarded under the Osteopathic Medicine Scholarship Program if a recipient fails to enroll in or officially withdraws from an accredited osteopathic medicine program.

(e) The administrative regulation will be implemented as follows: If a recipient of an Osteopathic Medicine Scholarship fails to enroll in or officially withdraws from an accredited osteopathic medicine program, the Kentucky Higher Education Assistance Authority shall be due

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a refund of monies paid under the program to the school. If a recipient fails to enroll in or officially withdraws from the program prior to the beginning of classes, a full refund of monies paid under the program to the Kentucky Higher Education Assistance Authority shall be required. If a recipient officially withdraws from an accredited osteopathic medicine program after the beginning of classes, the amount of the refund shall be determined in accordance with the school's refund policy relative to financial aid funds. If a recipient unofficially withdraws from an accredited osteopathic medicine program at any time, the Kentucky Higher Education Assistance Authority shall not seek a refund of the monies from the school. The recipient shall be responsible for immediate repayment of the entire amount of the monies awarded as well as any interest that may be applicable.

May 15, 1998

(1) The subject matter of the administrative regulation is **11 KAR 14:050**, Osteopathic Medicine Scholarship Program records and reports.

(2) The Kentucky Higher Education Assistance Authority intends to promulgate an administrative regulation governing the subject matter listed above, particularly, maintenance of complete and accurate records pertaining to the Osteopathic Medicine Scholarship Program by the school of osteopathic medicine.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for Monday, June 22, 1998, at 10 a.m., at 1050 U.S. 127 South, Frankfort, Kentucky 40601.

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

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

(b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 10 days prior to June 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: Richard F. Casey, General Counsel, Kentucky Higher Education Assistance Authority, 1050 U.S. 127 South, Frankfort, Kentucky 40601, (800) 693-8211, FAX (502) 696-7293.

(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 Higher Education Assistance Authority 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 the administrative regulation is KRS 164.748(4) and 1998 Ky. Act. ch. 256, sec. 1(9)

(b) The administrative regulation that the Kentucky Higher Education Assistance Authority intends to promulgate will provide that an accredited osteopathic school of medicine in the Commonwealth shall maintain complete and accurate records pertaining to the eligibility, enrollment, and progress of students receiving aid under the Osteopathic Medicine Scholarship Program and the disbursement of funds and institutional charges as may be necessary to audit the disposition of these funds. The school of osteopathic medicine shall maintain these records for at least 3 years after the student ceases to be enrolled in the osteopathic medicine program.

(c) The necessity and function of the proposed administrative regulation is as follows: 1998 Ky. Acts ch. 256 establishes the Osteopathic Medicine Scholarship Program and requires the authority to promulgate administrative regulations for administration of the program. This proposed administrative regulation is necessary to establish procedures for the maintenance of records for students receiving aid under the Osteopathic Medicine Scholarship Program.

(d) The benefits expected from the administrative regulation are: The administrative regulation is intended to provide guidelines for the maintenance of records pertaining to the students receiving aid under the Osteopathic Medicine Scholarship Program allowing Kentucky Higher Education Assistance Authority to keep track of students receiving aid under this program.

(e) The administrative regulation will be implemented as follows: An accredited osteopathic school of medicine located in the Commonwealth shall maintain records pertaining to students receiving aid under the Osteopathic Medicine Scholarship Program for at least 3 years after the student ceases to be enrolled at the school of osteopathic medicine.

May 15, 1998

(1) The subject matter of the administrative regulation is **11 KAR 14:060**, Osteopathic Medicine Scholarship Program application of payments.

(2) The Kentucky Higher Education Assistance Authority intends to promulgate an administrative regulation governing the subject matter listed above, particularly, the procedure for application of payments made by recipients under the Osteopathic Medicine Scholarship Program.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for Monday, June 22, 1998, at 10 a.m., at 1050 U.S. 127 South, Frankfort, Kentucky 40601.

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

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

(b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 10 days prior to Monday, June 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: Richard F. Casey, General Counsel, Kentucky Higher Education Assistance Authority, 1050 U.S. 127 South, Frankfort, Kentucky 40601, (800) 693-8211, FAX (502) 696-7293.

(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 Higher Education Assistance Authority 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 the administrative regulation is KRS 164.748(4) and 1998 Ky. Act. ch. 256, sec. 1(9).

(b) The administrative regulation that the Kentucky Higher Education Assistance Authority intends to promulgate will provide that written notification of demand for payment of all outstanding promissory notes, including unpaid principal and accrued interest, shall be sent by the authority to the student obligated for repayment at the student's last known permanent address. If the student remits only a partial payment, the payment shall first be applied to accrued interest and then to unpaid principal on the earliest unpaid promissory note and shall continue in that order until all promissory notes are paid in full.

(c) The necessity and function of the proposed administrative regulation is as follows: 1998 Ky. Acts ch. 256 establishes the Osteopathic Medicine Scholarship Program and requires the authority to administer the program and to promulgate administrative regulations for administration of the program. This administrative regulation provides procedures for the application of payments made by a student obligated for repayment under the Osteopathic Medicine Scholarship Program.

(d) The benefits expected from the administrative regulation are: The administrative regulation is intended to provide guidelines for the application of payments made by the recipient under the Osteopathic Medicine Scholarship Program. The order of applying the payment to accrued interest first and then to unpaid principal of promissory notes in the order of disbursement is intended to repay the earliest promissory notes and avoid any problem that might arise involving a statute of limitation as well as provide for the capability to subsequently cancel later promissory notes by qualified service if that circumstance arises.

(e) The administrative regulation will be implemented as follows: Written notification of demand for payment shall be sent by the Kentucky Higher Education Assistance Authority to the scholarship recipient's last known permanent address. Payments shall first be applied to interest and then to principal on each unpaid promissory note in the order in which the promissory notes were executed.

May 15, 1998

(1) The subject matter of the administrative regulation is **11 KAR 14:070**, Osteopathic Medicine Scholarship Program notification.

(2) The Kentucky Higher Education Assistance Authority intends to promulgate an administrative regulation governing the subject matter listed above, particularly, the responsibility of the recipient to notify the Kentucky Higher Education Assistance Authority of changes in enrollment status, name or address, and employment in a qualified service position.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for Monday, June 22, 1998, at 10 a.m., at 1050 U.S. 127 South, Frankfort, Kentucky 40601.

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

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

(b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 10 days prior to June 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: Richard F. Casey, General Counsel, Kentucky Higher Education Assistance Authority, 1050 U.S. 127 South, Frankfort, Kentucky 40601, (800) 693-8211, FAX (502) 696-7293.

(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 Higher Education Assistance Authority 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 the administrative regulation is KRS 164.748(4) and 1998 Ky. Act. ch. 256, sec. 1(9).

(b) The administrative regulation that the Kentucky Higher Education Assistance Authority intends to promulgate will provide that the scholarship recipient shall notify the Kentucky Higher Education Assistance Authority within 30 days of change in enrollment status, employment in a qualified service position, and change of name or address. Similarly, the school of osteopathic medicine shall notify the authority in writing within 30 days of learning that a scholarship recipient has ceased full-time enrollment status.

(c) The necessity and function of the proposed administrative regulation is as follows: 1998 Ky. Acts ch. 256 establishes the Osteopathic Medicine Scholarship Program and requires the authority to administer the program and to promulgate administrative regulations for administration of the program. This administrative regulation sets forth the obligation of the scholarship recipient and the school of osteopathic medicine to notify the Kentucky Higher Education Assistance Authority of a change in enrollment status, employment in a qualified service position, and change of name or address.

(d) The benefits expected from the administrative regulation are: The administrative regulation is intended to provide for the responsibility of the recipient to notify the Kentucky Higher Education Assistance Authority of changes in enrollment status, employment in a qualified service position, and change of name or address.

(e) The administrative regulation will be implemented as follows: The scholarship recipient shall notify the Kentucky Higher Education Assistance Authority within 30 days of change in enrollment status, employment in a qualified service position, and change of name or address. Similarly, the school of osteopathic medicine shall notify the authority in writing within 30 days of learning that a scholarship recipient has ceased full-time enrollment status.

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(1) The subject matter of the administrative regulation is **11 KAR 14:080**, Deferment Osteopathic Medicine Scholarship Program repayment.

(2) The Kentucky Higher Education Assistance Authority intends to promulgate an administrative regulation governing the subject matter listed above, particularly, the conditions under which a recipient may obtain a deferment of his repayment obligation under the Osteopathic Medicine Scholarship Program.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for Monday, June 22, 1998, at 10 a.m., at 1050 U.S. 127 South, Frankfort, Kentucky 40601.

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

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

(b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 10 days prior to June 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: Richard F. Casey, General Counsel, Kentucky Higher Education Assistance Authority, 1050 U.S. 127 South, Frankfort, Kentucky 40601, (800) 693-8211, FAX (502) 696-7293.

(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 Higher Education Assistance Authority 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 the administrative regulation is KRS 164.748(4) and 1998 Ky. Act. ch. 256, sec. 1(9).

(b) The administrative regulation that the Kentucky Higher Education Assistance Authority intends to promulgate will provide that the Kentucky Higher Education may, in its discretion, grant deferment of repayment for periods not to exceed an aggregate of 36 months for disability, hardship, or completion of residency, or any combination thereof. To qualify for a disability deferment, the recipient, or the recipient's spouse, shall be temporarily totally disabled if he suffers an injury or illness which necessitates an extended or indefinite period of recovery which can be expected to preclude school attendance and, in the case of the recipient's spouse, he is not confined to a hospital, nursing home, intermediate care facility, or similar institution. The recipient shall provide to the authority a statement from a licensed physician (other than the recipient) certifying that the recipient or the recipient's spouse is temporarily totally disabled in accordance with the prescribed terms and conditions. A recipient may qualify for a hardship deferment if enrollment in an accredited osteopathic medicine program located in the Commonwealth is temporarily interrupted due to circumstances beyond the recipient's control, including, but not limited to, natural disaster or death in the family, after which the recipient intends to resume enrollment in an accredited osteopathic medicine program. A recipient may receive a deferment during enrollment in a 3 year residency in family practice, internal medicine or pediatrics prior to beginning practice.

(c) The necessity and function of the proposed administrative regulation is as follows: 1998 Ky. Acts ch. 256 establishes the Osteopathic Medicine Scholarship Program and requires the authority to administer the program and to promulgate administrative regulations for administration of the program. This administrative regulation prescribes the conditions under which a recipient may qualify for a deferment of his payment obligation under the Osteopathic Medicine Scholarship Program.

(d) The benefits expected from the administrative regulation are: The administrative regulation is intended to prescribe conditions beyond the control of the Osteopathic Medicine Scholarship recipient for deferment of repayment obligation. During the specified conditions, it is reasonable to presume that the recipient would not have the means to either repay the scholarship or render the qualified service that would enable cancellation of the repayment obligation according to the terms of the promissory note. If a recipient meets the prescribed conditions, he may receive a temporary waiver of his repayment obligation.

(e) The administrative regulation will be implemented as follows: The Osteopathic Medicine Scholarship recipient shall request a deferment in writing by submitting complete and accurate information to the authority. The Osteopathic Medicine Scholarship recipient shall meet the specified conditions to receive a deferment of payment for a temporary period. The deferment shall not suspend the accrual of interest.

May 15, 1998

(1) The subject matter of the administrative regulation is **11 KAR 15:010**, Definitions.

(2) The Kentucky Higher Education Assistance Authority intends to promulgate an administrative regulation governing the subject matter listed above, particularly, definition of terms pertaining to administration of the Commonwealth Merit Scholarship Program used in one or more administrative regulations in 11 KAR Chapter 15 of the Kentucky Administrative Regulations.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for Monday, June 22, 1998, at 10 a.m., at 1050 U.S. 127 South, Frankfort, Kentucky 40601.

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

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

(b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 10 days prior to Monday, June 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: Richard F. Casey, General Counsel, Kentucky Higher Education Assistance Authority, 1050 U.S. 127 South, Frankfort, Kentucky 40601, (800) 693-8211, FAX 696-7293.

(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."

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(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 Higher Education Assistance Authority at the address listed above.

(7) Information relating to the proposed administrative regulation:

(a) The statutory authority for the promulgation of an administrative regulation relating to the subject matter of this administrative regulation is KRS 164.748(4) and 1998 Ky. Acts ch. 575, sec. 6(7).

(b) The administrative regulation that the Kentucky Higher Education Assistance Authority intends to promulgate will define or reference statutory definitions of terms including: "Academic term," "Academic year," "ACT score," "Authority," "Award period," "Commonwealth merit scholarship," "Commonwealth merit scholarship curriculum," "Cost of education," "Council," "Eligible program of study," "Eligible student," "Full-time student," "Grade point average," "High school," "Kentucky resident," "Maximum award amount," "Participating institution," "Part-time student," "Supplemental award".

(c) The necessity and function of the proposed administrative regulation is as follows: 1998 Ky. Acts ch. 575 requires the authority to administer certain aspects of the Commonwealth Merit Scholarship Program and to promulgate administrative regulations for the administration of the program. This regulation defines or references certain statutory definitions of terms commonly used in the administration of the program.

(d) The benefits expected from the administrative regulation are: Establishment of uniform meaning of commonly used terms in the administration of the Commonwealth Merit Scholarship Program.

(e) The administrative regulation will be implemented as follows: Commonly used terminology will be prescribed with uniform meaning.

May 15, 1998

(1) The subject matter of the administrative regulation is **11 KAR 15:020**, Student eligibility requirements.

(2) The Kentucky Higher Education Assistance Authority intends to promulgate an administrative regulation governing the subject matter listed above, particularly, prescribing procedures for verifying continuing eligibility of an eligible student pursuant to 1998 Ky. Acts ch. 575, sec. 6(4).

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for Monday, June 22, 1998, at 10 a.m., at 1050 U.S. 127 South, Frankfort, Kentucky 40601.

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

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

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

at least 10 days prior to June 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: Richard F. Casey, General Counsel, Kentucky Higher Education Assistance Authority, 1050 U.S. 127 South, Frankfort, Kentucky 40601, (800) 693-8211, FAX 696-7293.

(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 Higher Education Assistance Authority 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 scholarship programs in general and the Commonwealth Merit Scholarship in particular is KRS 164.748(4) and 1998 Ky. Acts ch. 575, sec. 6(7).

(b) The administrative regulation that the Kentucky Higher Education Assistance Authority intends to promulgate will provide that the participating institutions shall certify to the authority, within 30 days after the end of the award period, the cumulative GPA of students being considered for renewal eligibility for the Commonwealth Merit Scholarships under the provision of 1998 Ky. Acts ch. 575 sec. 6(4).

(c) The necessity and function of the proposed administrative regulation is as follows: 1998 Ky. Acts ch. 575, sec. 6(4) states that the participating institution shall verify to the authority the eligible student's cumulative grade point average after completion of each award period. This proposed administrative regulation is needed to ensure that the authority can calculate the amount of the award, and disburse in a timely fashion, the funds that the student shall receive in a subsequent award period.

(d) The benefits expected from the administrative regulation are: The administrative regulation is intended to provide administrative assistance in complying with a minimum of burden to postsecondary institutions in distributing funds to students.

(e) The administrative regulations will be implemented as follows: The participating institutions shall provide to the authority, within 30 days after the end of an award period each year, certification to the authority of the cumulative GPA of all enrolled students, in order to determine renewal eligibility.

May 15, 1998

(1) The subject matter of the administrative regulation is **11 KAR 15:030**, Dual enrollment under consortium agreement.

(2) The Kentucky Higher Education Assistance Authority intends to promulgate an administrative regulation governing the subject matter listed above, particularly, setting the conditions for Commonwealth Merit Scholarship eligibility of a student simultaneously enrolled in 2 or more participating institutions.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for Monday, June 22, 1998, at 10 a.m., at 1050 U.S. 127 South, Frankfort, Kentucky 40601.

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

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

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

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at least 10 days prior to Monday, June 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: Richard F. Casey, General Counsel, Kentucky Higher Education Assistance Authority, 1050 U.S. 127 South, Frankfort, Kentucky 40601, (800) 693-8211, FAX (502) 696-7293.

(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 Higher Education Assistance Authority 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 scholarship programs in general and the Commonwealth Merit Scholarship in particular is KRS 164.748(4) and 1998 Ky. Acts ch. 575, sec. 6(7).

(b) The administrative regulation that the Kentucky Higher Education Assistance Authority intends to promulgate will provide that an otherwise eligible student who is enrolled simultaneously in 2 or more participating institutions, is eligible under this section if the program of study is covered by a consortium agreement between the participating institutions.

(c) The necessity and function of the proposed administrative regulation is as follows: KRS 164.748(4) requires KHEAA to promulgate administrative regulations pertaining to the awarding of grants, scholarships, and honorary scholarships as provided in KRS 164.740 to 164.785. 1998 Ky. Acts ch. 575, sec. 6(7) allows the authority to establish by administrative regulation procedures for the administration of the Commonwealth Merit Scholarship Program. This administrative regulation sets the conditions for Commonwealth Merit Scholarship eligibility for a student simultaneously enrolled in 2 or more participating institutions.

(d) The benefits expected from the administrative regulation are: The administrative regulation is intended to provide the conditions under which a consortium agreement shall be considered valid for purposes of the Commonwealth Merit Scholarship program to permit eligible students to receive scholarship funds while taking classes at different institutions.

(e) The administrative regulations will be implemented as follows: The participating institutions shall execute a consortium agreement according to the terms and conditions that generally designate a primary institution to coordinate and be responsible for performing the duties required by law, administrative regulation, and agreement as if the eligible student is enrolled only at that primary institution.

May 15, 1998

(1) The subject matter of the administrative regulation is **11 KAR 15:040**, Award determination procedure.

(2) The Kentucky Higher Education Assistance Authority intends to promulgate an administrative regulation governing the subject matter listed above, particularly, setting the conditions for Commonwealth Merit Scholarship eligibility of a student enrolled less than full time.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for Monday, June 22, 1998, at 10 a.m., at 1050 U.S. 127 South, Frankfort, Kentucky 40601.

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

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

(b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 10 days prior to Monday, June 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: Richard F. Casey, General Counsel, Kentucky Higher Education Assistance Authority, 1050 U.S. 127 South, Frankfort, Kentucky 40601, (800) 693-8211, FAX 696-7293.

(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 Higher Education Assistance Authority 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 scholarship programs in general and the Commonwealth Merit Scholarship in particular is KRS 164.748(4) and 1998 Ky. Acts ch. 575 sec. 5(4)(b) and 6(7).

(b) The administrative regulation that the Kentucky Higher Education Assistance Authority intends to promulgate will provide that an eligible student who is enrolled less than full time shall receive a reduced award amount of 50% for enrollment for 6 to 8 credit hours and 75% for enrollment for 9 to 11 credit hours.

(c) The necessity and function of the proposed administrative regulation is as follows: KRS 164.748(4) requires KHEAA to promulgate administrative regulations pertaining to the awarding of grants, scholarships, and honorary scholarships as provided in KRS 164.740 to 164.785. 1998 Ky. Acts ch. 575 sec. 6(7) allows the authority to establish by administrative regulation procedures for the administration of the Commonwealth Merit Scholarship Program. This administrative regulation sets the conditions for Commonwealth Merit Scholarship eligibility for eligible students enrolled on a part-time basis.

(d) The benefits expected from the administrative regulation are: The administrative regulation is intended to provide for proportionate reduction of the maximum Commonwealth Merit Scholarship Program award amount.

(e) The administrative regulations will be implemented as follows: The participating institutions shall certify to the authority, according to the terms and conditions set forth in 11 KAR 15:050, as to whether an eligible student is considered to be enrolled full-time or part-time. The amount disbursed shall be adjusted to correspond to a proportionate reduction of either 50% or 75% of the maximum award amount for an eligible student enrolled part-time.

May 15, 1998

- (1) The subject matter of the administrative regulation is **11 KAR 15:050**, Disbursement.
- (2) The Kentucky Higher Education Assistance Authority intends to promulgate an administrative regulation governing the subject matter listed above, particularly, disbursement of funds to eligible students under the Commonwealth Merit Scholarship Program.
- (3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for Monday, June 22, 1998, at 10 a.m., at 1050 U.S. 127 South, Frankfort, Kentucky 40601.
- (4)(a) The public hearing will be held if:
 1. It is requested, in writing, by at least 5 persons, or an administrative body, or an association having at least 5 members; and
 2. A minimum of 5 persons, or the administrative body or association, agree, in writing, to be present at the public hearing.
- (b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 10 days prior to Monday, June 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: Richard F. Casey, General Counsel, Kentucky Higher Education Assistance Authority, 1050 U.S. 127 South, Frankfort, Kentucky 40601, (800) 693-8211, FAX 696-7293.
- (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 Higher Education Assistance Authority at the address listed above.
- (7) Information relating to the proposed administrative regulation:
 - (a) The statutory authority for the promulgation of an administrative regulation relating to the subject matter of this administrative regulation is KRS 164.748(4) and 1998 Ky. Acts ch. 575, sec. 6(7).
 - (b) The administrative regulation that the Kentucky Higher Education Assistance Authority intends to promulgate will provide for completion of an eligibility verification roster by the participating institution each academic term to reflect the enrollment status and continued eligibility of each eligible student. The completed roster shall be returned by the institution prior to disbursement of funds. Funds shall be disbursed by a check payable to the institution or by electronic funds transfer. The scholarship funds shall then be delivered by the institution to the eligible student or applied to the student's account. The participating institution shall be liable for improper delivery of funds, including delivery of the wrong amount or delivery of funds to the wrong individual or to an ineligible student.
 - (c) The necessity and function of the proposed administrative regulation is as follows: 1998 Ky. Acts ch. 575 requires the authority to administer certain aspects of the Commonwealth Merit Scholarship Program and to promulgate administrative regulations for the administration of the program. This regulation sets forth the disbursement procedures for Commonwealth Merit Scholarships.
 - (d) The benefits expected from the administrative regulation are: Timely disbursement of funds following verification of continued eligibility by the participating institution, using the most economical and efficient method of delivery of funds to each eligible student in accordance with 1998 Ky. Acts ch. 575, sec. 6(5). The administrative regulation also provides for liability of the participating institution for improper disbursement to the wrong person or ineligible students as protection of the trust fund.
 - (e) The administrative regulation will be implemented as follows: An eligibility verification roster shall be completed by the participating institution each academic term to reflect the enrollment status and continued eligibility of each eligible student. The completed roster shall be returned to the authority by the institution prior to disbursement of funds. Funds shall be disbursed by a check payable to the institution or by electronic fund transfer. The scholarship funds shall then be delivered by the institution to the eligible student or applied to the student's account. The participating institution shall be liable for improper delivery of funds, including delivery of the wrong amount or delivery of funds to the wrong individual or to an ineligible student.

May 15, 1998

- (1) The subject matter of the administrative regulation is **11 KAR 15:060**, Overawards, refunds and repayments.
- (2) The Kentucky Higher Education Assistance Authority intends to promulgate an administrative regulation governing the subject matter listed above, particularly, setting forth the procedures for Commonwealth Merit Scholarship refunds from participating institutions and repayment from eligible students under the program when the eligible student receives an overaward.
- (3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for Monday, June 22, 1998, at 10 a.m., at 1050 U.S. 127 South, Frankfort, Kentucky 40601.
- (4)(a) The public hearing will be held if:
 1. It is requested, in writing, by at least 5 persons, or an administrative body, or an association having at least 5 members; and
 2. A minimum of 5 persons, or the administrative body or association, agree, in writing, to be present at the public hearing.
- (b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 10 days prior to Monday, June 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: Richard F. Casey, General Counsel, Kentucky Higher Education Assistance Authority, 1050 U.S. 127 South, Frankfort, Kentucky 40601, (800) 693-8211, FAX 696-7293.
- (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 Higher Education Assistance Authority at the address listed above.
- (7) Information relating to the proposed administrative regulation:
 - (a) The statutory authority for the promulgation of an administrative regulation relating to the subject matter of this administrative regulation is: KRS 164.748(4) and 1998 Ky. Acts ch. 575, sec. 6(7).

(b) The administrative regulation that the Kentucky Higher Education Assistance Authority intends to promulgate will provide that the participating institution shall refund to the authority the full amount of a Commonwealth Merit Scholarship award paid to the participating institution and the eligible student shall repay to the authority the full amount of a Commonwealth Merit Scholarship award disbursed to an eligible student if the eligible student fails to enroll for the academic period, withdraws, or is expelled without assessment of tuition and fees or unofficially withdraws and the participating institution is unable to document the last date of attendance. The administrative regulation further provides that the participating institution shall refund to the authority and the eligible student shall repay to the authority a portion of the Commonwealth Merit Scholarship award if the eligible student withdraws after the commencement of the academic term and a refund or repayment is due in accordance with the participating institution's refund and repayment policy.

(c) The necessity and function of the proposed administrative regulation is as follows: KRS 164.748(4) requires the authority to promulgate administrative regulations pertaining to the awarding of grants, scholarships, and honorary scholarships as provided in KRS 164.740 to 164.785. 1998 Ky. Acts ch. 575, sec. 6(7) requires the authority to establish by administrative regulation procedures for the administration of the Commonwealth Merit Scholarship Program. This administrative regulation sets forth the conditions and procedures for refund or repayment of Commonwealth Merit Scholarship funds.

(d) The benefits expected from the administrative regulation are: The administrative regulation is intended to protect the public interest in the Commonwealth Merit Scholarship Program funds by recovering funds awarded to an eligible student but not used for payment of the cost of education at a participating institution because the student fails to enroll, withdraws, or is expelled without assessment of tuition and fees, or withdraws during the academic term while the participating institution's refund policy provides for a refund by the institution or repayment by the eligible student to a financial aid program of unused and unearned funds.

(e) The administrative regulations will be implemented as follows: The participating institutions shall refund to the authority the full amount of a Commonwealth Merit Scholarship award paid to the participating institution and the eligible student shall repay to the authority the full amount of a Commonwealth Merit Scholarship award disbursed to an eligible student if the eligible student fails to enroll for the academic period, withdraws, or is expelled without assessment of tuition and fees or unofficially withdraws and the participating institution is unable to document the last date of attendance. The administrative regulation further provides that the participating institution shall refund to the authority and the eligible student shall repay to the authority a portion of the Commonwealth Merit Scholarship award if the eligible student withdraws after the commencement of the academic term and a refund or repayment is due in accordance with the participating institution's refund and repayment policy. The participating institution shall certify to the authority the reason for the refund or repayment and the eligible student's last date of attendance.

May 15, 1998

(1) The subject matter of the administrative regulation is **11 KAR 15:070**, Records and reports.

(2) The Kentucky Higher Education Assistance Authority intends to promulgate an administrative regulation governing the subject matter listed above, particularly, setting forth the requirements for participating institutions and the Kentucky Department of Education to provide records and reports to the authority.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for Monday, June 22, 1998, at 10 a.m., at 1050 U.S. 127 South, Frankfort, Kentucky 40601.

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

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

(b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 10 days prior to Monday, June 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: Richard F. Casey, General Counsel, Kentucky Higher Education Assistance Authority, 1050 U.S. 127 South, Frankfort, Kentucky 40601, (800) 693-8211, FAX 696-7293.

(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 Higher Education Assistance Authority 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 scholarship programs in general and the Commonwealth Merit Scholarship in particular is KRS 164.748(4) and 1998 Ky. Acts ch. 575, sec. 6(7).

(b) The administrative regulation that the Kentucky Higher Education Assistance Authority intends to promulgate will provide that participating institutions and the Kentucky Department of Education shall provide certain records and reports to the authority for purposes of the Commonwealth Merit Scholarship.

(c) The necessity and function of the proposed administrative regulation is as follows: KRS 164.748(4) requires KHEAA to promulgate administrative regulations pertaining to the awarding of grants, scholarships, and honorary scholarships as provided in KRS 164.740 to 164.785. 1998 Ky. Acts ch. 575, sec. 6(7) allows the authority to establish by administrative regulation procedures for the administration of the Commonwealth Merit Scholarship Program. This administrative regulation sets the conditions by which records shall be retained and reports shall be made to the authority.

(d) The benefits expected from the administrative regulation are: The administrative regulation is intended to provide for the exchange of necessary information in order to carry out the goals of the Commonwealth Merit Scholarship Program.

(e) The administrative regulations will be implemented as follows: The participating institutions shall maintain an organized system of records on enrolled eligible students and retain these records for a period of not less than 3 years after the award year in which the eligible student ceased enrollment. The Kentucky Department of Education shall transmit to the authority compiled data from the data received from the various Kentucky high schools within 30 days after having received the information from the high schools.

ADMINISTRATIVE REGISTER - 2526

STATE BOARD OF ELECTIONS

April 22, 1998

- (1) **31 KAR 4:120**, Additional precinct officers.
- (2) The State Board of Elections intends to adopt the administrative regulation cited above.
- (3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for June 26, 1998, at 9 a.m. at the State Board of Elections, 140 Walnut Street, Frankfort, Kentucky 40601.
- (4)(a) The public hearing will be held if:
 1. It is requested, in writing, by at least 5 persons, or an 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 June 26, 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: State Board of Elections, 140 Walnut Street, Frankfort, Kentucky 40601.
- (b) On a request for a public hearing, a person shall state:
 1. "I agree to attend the public hearing;" or
 2. "I will not attend the public hearing."
- (6)(a) KRS Chapter 13A provides that persons who desire to be informed of the intent of the 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 State Board of Elections at the address above.
- (7) Information relating to the proposed administrative regulation:
 - (a) The statutory authority for the promulgation of an administrative regulation pertaining to additional precinct officers is KRS 117.045.
 - (b) The new administrative regulation that the State Board of Elections intends to promulgate will set forth the procedures applicable to approving requests for additional precinct officers.
 - (c) The necessity and function of the proposed new administrative regulation is: The 1998 amendment to KRS 117.045 requires the State Board of Elections to adopt this regulation.
 - (d) The benefits expected from the administrative regulation: The State Board of Elections will comply with the legislative mandate to adopt the regulation. County boards of elections will be informed of the procedures applicable to requests to appoint additional precinct officers.
 - (e) The administrative regulation will be implemented as follows: The proposed administrative regulation will be a new administrative regulation.

KENTUCKY BOARD OF LICENSURE FOR NURSING HOME ADMINISTRATORS

May 13, 1998

- (1) **201 KAR 6:011**. Repeal of 201 KAR 6:010.
- (2) The Kentucky Board of Licensure for Nursing Home Administrators 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 June 24, 1998, at 2:30 p.m., at the Division of Occupations and Professions, Berry Hill Annex, 700 Louisville Road, Frankfort, Kentucky 40601.
- (4)(a) The public hearing will be held if:
 1. It is requested, in writing, by at least 5 persons, or an administrative body, or an association having at least 5 members; and
 2. A minimum of 5 persons, or the administrative body or association, agree, in writing, to be present at the public hearing.
- (b) If a request for a public hearing, and agreement to attend the public hearing are not received from the required number of people at least 10 days prior to June 24, 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: David L. Nicholas, Director, Division of Occupations and Professions, P.O. Box 456, Frankfort, Kentucky 40602, (502) 564-3296.
- (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 Licensure for Nursing Home Administrators 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 repeal of 201 KAR 6:010 is KRS 216A.070(3).
 - (b) The administrative regulation that the board intends to promulgate will repeal 201 KAR 6:010, Licensure. It will be replaced by several regulations that will conform to the requirements of KRS Chapter 13A.
 - (c) The necessity and function of the proposed administrative regulation is as follows: This regulation is necessitated by KRS 216A.070(3) and repeals 201 KAR 6:010 which is no longer in conformity with KRS Chapter 13A. This administrative regulation will be replaced by several new administrative regulations.
 - (d) The benefits expected from administrative regulation are: The licensees and applicants will be informed of all requirements for application and practice as a nursing home administrator. The administrative regulations will be brought into conformity with KRS Chapter 13A.
 - (e) The administrative regulation will be implemented as follows: The proposed administrative regulation will be implemented as soon as it becomes effective.

May 13, 1998

(1) **201 KAR 6:020.** Other requirements for licensure.

(2) The Kentucky Board of Licensure for Nursing Home Administrators 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 June 24, 1998, at 2:30 p.m., at the Division of Occupations and Professions, Berry Hill Annex, 700 Louisville Road, Frankfort, Kentucky 40601.

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

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

(b) If a request for a public hearing, and agreement to attend the public hearing are not received from the required number of people at least 10 days prior to June 24, 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: David L. Nicholas, Director, Division of Occupations and Professions, P.O. Box 456, Frankfort, Kentucky 40602, (502) 564-3296.

(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 Licensure for Nursing Home Administrators 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 other requirements for licensure is KRS 216A.070(1)(a) and (3) and 216A.080(1)(f).

(b) The administrative regulation that the board intends to promulgate will not amend an existing administrative regulation. It will set out the requirements for licensure other than those listed in the statute.

(c) The necessity and function of the proposed administrative regulation is as follows: KRS 216A.070(1)(a) authorizes the Kentucky Board of Licensure for Nursing Home Administrators to develop, impose, and enforce standards which must be met by an individual in order to receive a license. KRS 216A.080(1)(f) authorizes the board to set other requirements to be met so long as they are uniform and applied to each applicant for a license. KRS 216A.080(1)(e) requires an applicant to pass an examination administered by the board. This regulation establishes the other requirements for licensure and sets limits on the taking of the examination.

(d) The benefits expected from administrative regulation are: The applicants will be made aware of the other requirements for licensure.

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

May 13, 1998

(1) **201 KAR 6:030.** Temporary permits.

(2) The Kentucky Board of Licensure for Nursing Home Administrators 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 June 24, 1998, at 2:30 p.m., at the Division of Occupations and Professions, Berry Hill Annex, 700 Louisville Road, Frankfort, Kentucky 40601.

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

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

(b) If a request for a public hearing, and agreement to attend the public hearing are not received from the required number of people at least 10 days prior to June 24, 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: David L. Nicholas, Director, Division of Occupations and Professions, P.O. Box 456, Frankfort, Kentucky 40602, (502) 564-3296.

(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 Licensure for Nursing Home Administrators 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 temporary permits is KRS 216A.070 (3) and (4).

(b) The administrative regulation that the board intends to promulgate will not amend an existing administrative regulation. It will set out the requirements for a temporary permit.

(c) The necessity and function of the proposed administrative regulation is as follows: KRS 216A.070(4) authorizes the board to issue a temporary permit to an individual to practice the art of nursing home administration. This regulation establishes the requirements for issuance of a temporary permit.

(d) The benefits expected from administrative regulation are: The applicants will be made aware of the other requirements for a temporary permit.

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

ADMINISTRATIVE REGISTER - 2528

May 13, 1998

(1) **201 KAR 6:040.** Renewal of license.

(2) The Kentucky Board of Licensure for Nursing Home Administrators 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 June 24, 1998, at 2:30 p.m., at the Division of Occupations and Professions, Berry Hill Annex, 700 Louisville Road, Frankfort, Kentucky 40601.

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

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

(b) If a request for a public hearing, and agreement to attend the public hearing are not received from the required number of people at least 10 days prior to June 24, 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: David L. Nicholas, Director, Division of Occupations and Professions, P.O. Box 456, Frankfort, Kentucky 40602, (502) 564-3296.

(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 Licensure for Nursing Home Administrators 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 renewal of license is KRS 216A.070 (3) and 216A.090.

(b) The administrative regulation that the board intends to promulgate will not amend an existing administrative regulation. It will set out the requirements for renewal of a license.

(c) The necessity and function of the proposed administrative regulation is as follows: KRS 216A.090 requires the holder of a license to renew his license biennially. This regulation establishes the requirements for renewal, late renewal, inactive licensure and reinstatement of a license.

(d) The benefits expected from administrative regulation are: The licensees will be made aware of the other requirements for renewal of a license.

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

May 13, 1998

(1) **201 KAR 6:050.** Licensure by endorsement.

(2) The Kentucky Board of Licensure for Nursing Home Administrators 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 June 24, 1998, at 2:30 p.m., at the Division of Occupations and Professions, Berry Hill Annex, 700 Louisville Road, Frankfort, Kentucky 40601.

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

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

(b) If a request for a public hearing, and agreement to attend the public hearing are not received from the required number of people at least 10 days prior to June 24, 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: David L. Nicholas, Director, Division of Occupations and Professions, P.O. Box 456, Frankfort, Kentucky 40602, (502) 564-3296.

(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 Licensure for Nursing Home Administrators 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 licensure by endorsement is KRS 216A.130 and 216A.070(3).

(b) The administrative regulation that the board intends to promulgate will not amend an existing administrative regulation. It will set out the requirements for issuance of a license by endorsement.

(c) The necessity and function of the proposed administrative regulation is as follows: KRS 216A.130 allows the board to issue a license to a nursing home administrator possessing a license issued by any other state. This regulation establishes the requirements for issuance of a license by endorsement.

(d) The benefits expected from administrative regulation are: The licensees will be made aware of the requirements for issuance of a license by endorsement.

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

ADMINISTRATIVE REGISTER - 2529

May 13, 1998

(1) **201 KAR 6:060. Fees.**

(2) The Kentucky Board of Licensure for Nursing Home Administrators 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 June 24, 1998, at 2:30 p.m., at the Division of Occupations and Professions, Berry Hill Annex, 700 Louisville Road, Frankfort, Kentucky 40601.

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

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

(b) If a request for a public hearing, and agreement to attend the public hearing are not received from the required number of people at least 10 days prior to June 24, 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: David L. Nicholas, Director, Division of Occupations and Professions, P.O. Box 456, Frankfort, Kentucky 40602, (502) 564-3296.

(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 Licensure for Nursing Home Administrators 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 fees is KRS 216A.070(3), 216.110(1) and 216A.130.

(b) The administrative regulation that the board intends to promulgate will not amend an existing administrative regulation. It will set out in detail all of the fees charged by the board.

(c) The necessity and function of the proposed administrative regulation is as follows: This regulation is necessitated by KRS 216A.110(1) and KRS 216A.130 and sets forth in detail all fees charged by the board.

(d) The benefits expected from administrative regulation are: The licensees will be made aware of the fees that may be charged.

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

May 13, 1998

(1) **201 KAR 6:070. Continuing education requirements.**

(2) The Kentucky Board of Licensure for Nursing Home Administrators 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 June 24, 1998, at 2:30 p.m., at the Division of Occupations and Professions, Berry Hill Annex, 700 Louisville Road, Frankfort, Kentucky 40601.

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

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

(b) If a request for a public hearing, and agreement to attend the public hearing are not received from the required number of people at least 10 days prior to June 24, 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: David L. Nicholas, Director, Division of Occupations and Professions, P.O. Box 456, Frankfort, Kentucky 40602, (502) 564-3296.

(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 Licensure for Nursing Home Administrators 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 continuing education requirements is KRS 216A.070(3) and 216A.090.

(b) The administrative regulation that the board intends to promulgate will not amend an existing administrative regulation. It will set out the requirements regarding continuing education.

(c) The necessity and function of the proposed administrative regulation is as follows: KRS 216A.090 authorizes the board to promulgate an administrative regulation requiring a licensed nursing home administrator to complete continuing education requirements as a condition of renewal of his licensure. This administrative regulation delineates the requirements for continuing education and prescribes methods and standards for the accreditation of continuing education courses.

(d) The benefits expected from administrative regulation are: The licensees will be made aware of the requirements for continuing education.

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

ADMINISTRATIVE REGISTER - 2530

May 13, 1998

- (1) **201 KAR 6:080.** Code of ethics.
- (2) The Kentucky Board of Licensure for Nursing Home Administrators 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 June 24, 1998, at 2:30 p.m., at the Division of Occupations and Professions, Berry Hill Annex, 700 Louisville Road, Frankfort, Kentucky 40601.
- (4)(a) The public hearing will be held if:
 1. It is requested, in writing, by at least 5 persons, or an administrative body, or an association having at least 5 members; and
 2. A minimum of 5 persons, or the administrative body or association, agree, in writing, to be present at the public hearing.
- (b) If a request for a public hearing, and agreement to attend the public hearing are not received from the required number of people at least 10 days prior to June 24, 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: David L. Nicholas, Director, Division of Occupations and Professions, P.O. Box 456, Frankfort, Kentucky 40602, (502) 564-3296.
- (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 Licensure for Nursing Home Administrators 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 a code of ethics is KRS 216A.070 (1)(a), (c), (d) and (3).
- (b) The administrative regulation that the board intends to promulgate will not amend an existing administrative regulation. It will set out a code of ethics for persons licensed as nursing home administrators.
- (c) The necessity and function of the proposed administrative regulation is as follows: KRS 216A.070(1)(a) requires the board to develop, impose, and enforce standards which must be met by individuals licensed as nursing home administrators. KRS 216A.070(1)(c) requires the board to discipline individuals who fail to meet those standards after licensure. KRS 216A.070(1)(d) requires the board to establish and carry out procedures to insure compliance with the established standards. This regulation establishes a code of ethics as a portion of the standards which shall be met in compliance with KRS 216A.070(1)(a), (c), and (d).
- (d) The benefits expected from administrative regulation are: The licensees will be made aware of the code of ethics for their practice.
- (e) The administrative regulation will be implemented as follows: The proposed administrative regulation will be implemented as soon as it becomes effective.

May 13, 1998

- (1) **201 KAR 6:090.** Complaint management process.
- (2) The Kentucky Board of Licensure for Nursing Home Administrators 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 June 24, 1998, at 2:30 p.m., at the Division of Occupations and Professions, Berry Hill Annex, 700 Louisville Road, Frankfort, Kentucky 40601.
- (4)(a) The public hearing will be held if:
 1. It is requested, in writing, by at least 5 persons, or an administrative body, or an association having at least 5 members; and
 2. A minimum of 5 persons, or the administrative body or association, agree, in writing, to be present at the public hearing.
- (b) If a request for a public hearing, and agreement to attend the public hearing are not received from the required number of people at least 10 days prior to June 24, 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: David L. Nicholas, Director, Division of Occupations and Professions, P.O. Box 456, Frankfort, Kentucky 40602, (502) 564-3296.
- (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 Licensure for Nursing Home Administrators 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 a complaint management process is KRS 216A.070(1)(e) and (3).
- (b) The administrative regulation that the board intends to promulgate will not amend an existing administrative regulation. It will set out the process for handling complaints.
- (c) The necessity and function of the proposed administrative regulation is as follows: KRS 216A.070(1)(e) requires the board to investigate persons engaging in practices which violate the provisions of KRS Chapter 216A. This regulation establishes the detailed procedures for the investigation of complaints received by the board.
- (d) The benefits expected from administrative regulation are: The licensees will be made aware of the complaint management process.
- (e) The administrative regulation will be implemented as follows: The proposed administrative regulation will be implemented as soon as it becomes effective.

KENTUCKY BOARD OF DENTISTRY

May 9, 1998

(1) **201 KAR 8:140.** Continuing education compliance. This proposed amended administrative regulation amends a point schedule for the accumulation of continuing education required for renewal of the licenses of dentists and hygienists.

(2) The Kentucky Board of Dentistry 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 June 26, 1998, at 3 p.m., in the Kentucky Board of Dentistry office, 10101 Linn Station Road, Suite 540, Thornton Oil Plaza, Louisville, Kentucky 40223.

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

1. It is requested, in writing, by a 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 June 26, 1998 the public hearing will be canceled.

(5)(a) Persons wishing to request a public hearing should file their written request with the executive director at the following address: Mr. Gary Munsie, Executive Director, Kentucky Board of Dentistry, 10101 Linn Station Road, Suite 540, Louisville, Kentucky 40223, Phone: (502) 423-0573, Fax: (502) 423-1239.

(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 Gary Munsie at the address above.

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of an administrative regulation relating to continuing education are KRS 313.080, 313.220(1), 313.305 as well as 1998 KY Acts Chapter 556, which mandates renewal of licenses every other year.

(b) The administrative regulation the Kentucky Board of Dentistry intends to promulgate will amend a point schedule for the accumulation of continuing education required for renewal of the licenses of dentists and hygienists.

(c) The necessity and function of the proposed administrative regulation is as follows: This regulation will amend a point schedule for the accumulation of continuing education required for renewal of the licenses of dentists and hygienists.

(d) The benefit expected from this administrative regulation is the conformity with 1998 KY Acts Chapter 556 which requires licenses to be renewed every other year for both dentists and dental hygienists; uniform requirements will apply to each class of licensee.

(e) The regulation will be implemented by the Executive Director and Executive Secretary of the Board of Dentistry who are charged with overseeing the license renewal process.

May 9, 1998

(1) **201 KAR 8:285.** Hygienists' continuing education points for license renewal. This proposed repeal of an administrative regulation repeals the point schedule for the accumulation of continuing education required for renewal of the licenses of dental hygienists.

(2) The Kentucky Board of Dentistry intends to repeal the administrative regulation cited above.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for June 26, 1998, at 3 p.m., in the Kentucky Board of Dentistry office, 10101 Linn Station Road, Suite 540, Thornton Oil Plaza, Louisville, Kentucky 40223.

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

1. It is requested, in writing, by a 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 June 26, 1998 the public hearing will be canceled.

(5)(a) Persons wishing to request a public hearing should file their written request with the executive director at the following address: Mr. Gary Munsie, Executive Director, Kentucky Board of Dentistry, 10101 Linn Station Road, Suite 540, Louisville, Kentucky 40223, Phone: (502) 423-0573, Fax: (502) 423-1239.

(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 Gary Munsie at the address above.

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of an administrative regulation relating to continuing education are KRS 313.220(1) and 313.305 as well as 1998 KY Acts Chapter 556, which mandates renewal of licenses every other year.

(b) The administrative regulation the Kentucky Board of Dentistry intends to repeal will repeal the point schedule for the accumulation of continuing education required for renewal of the licenses of dental hygienists.

(c) The necessity and function of the proposed administrative regulation is as follows: This regulation will no longer be necessary when 201 KAR 8:140 is promulgated to amend a point schedule for the accumulation of continuing education required for renewal of the licenses of dentists and dental hygienists.

(d) The benefit expected from this administrative regulation is the conformity with 1998 KY Acts Chapter 556 which requires licenses to be renewed every other year for both dentists and dental hygienists; uniform requirements will apply to each class of licensee.

(e) The regulation will be implemented by the Executive Director and Executive Secretary of the Board of Dentistry who are charged with overseeing the license renewal process.

May 9, 1998

(1) **201 KAR 8:440.** Fee schedule. This proposed administrative regulation establishes a fee schedule for the renewal of licenses for dentists and dental hygienists, neither of which is directly set by statute.

(2) The Kentucky Board of Dentistry 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 June 26, 1998, at 3 p.m., in the Kentucky Board of Dentistry office, 10101 Linn Station Road, Suite 540, Thornton Oil Plaza, Louisville, Kentucky 40223.

(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 June 26, 1998 the public hearing will be canceled.

(5)(a) Persons wishing to request a public hearing should file their written request with the executive director at the following address: Mr. Gary Munsie, Executive Director, Kentucky Board of Dentistry, 10101 Linn Station Road, Suite 540, Louisville, Kentucky 40223, Phone: (502) 423-0573, Fax: (502) 423-1239.

(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 Gary Munsie at the address above.

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of an administrative regulation relating to necessary regulations and fees are KRS 13A.100(3), 313.080(2), 313.220(1) as well as 1998 KY Acts Chapter 556, which requires the board to fund a well-being committee for impaired licensees.

(b) The administrative regulation the Kentucky Board of Dentistry intends to promulgate will provide a fee schedule for the renewal of licenses for dentists and dental hygienists, neither of which is directly set by statute.

(c) The necessity and function of the proposed administrative regulation is as follows: This regulation will set a fee schedule for the renewal of licenses for dentists and dental hygienists, neither of which is directly set by statute, and will allow the board to fund a well-being committee for impaired licensees as mandated by 1998 KY Acts Chapter 556.

(d) The benefit expected from this administrative regulation is the conformity with KRS Chapter 13A which requires fees to be listed in regulations when not set by statute.

(e) The regulation will be implemented by the Executive Director and Executive Secretary of the Board of Dentistry who are charged with overseeing the license renewal process.

STATE BOARD OF EMBALMERS AND FUNERAL DIRECTORS

May 15, 1998

(1) **201 KAR 15:030.** Fees.

(2) The State Board of Embalmers and Funeral Directors 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 June 23, 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 June 23, 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: Emma Lou Hartledge, Executive Director, 7025 W. Highway 22, Suite 7, Crestwood, Kentucky 40014.

(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 Emma Lou Hartledge at the above address, or by calling (502) 241-3918 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 the fee for an annual courtesy card is KRS 316.140(2).

(b) The administrative regulation that the State Board of Embalmers and Funeral Directors intends to amend is existing administrative regulation 201 KAR 15:030. It will provide the amount of the fee for the issuance of a courtesy card as authorized by the Kentucky General Assembly during the 1998 General Session.

(c) The necessity, function, and conformity of the proposed administrative regulation is as follows: KRS 316.140, as amended by the 1998 General Session, authorizes the board to issue courtesy cards to licensed funeral directors or licensed embalmers from other states to allow those individuals to receive and transport a dead human body to and from Kentucky for a funeral and to conduct funeral services and burials in Kentucky. The amendment to KRS 316.140 also authorizes the board promulgate a regulation to prescribe the fee for the issuance

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of the courtesy card. The amendment of the administrative regulation will prescribe the fee for the issuance of the courtesy card to comply with statutory revisions that the Kentucky General Assembly made during the 1998 General Session to KRS Chapter 316.

(d) The benefit expected from this administrative regulation is that the fee will cover administrative expenses associated with the issuance of courtesy cards.

(e) This administrative regulation will be implemented as follows: Applicants for the courtesy card will be required to remit the fee with their application.

KENTUCKY STATE BOARD OF REGISTRATION FOR PROFESSIONAL ENGINEERS AND LAND SURVEYORS

April 22, 1998

(1) **201 KAR 18:190.** Continuing professional development.

(2) The Kentucky State Board of Registration for Professional Engineers and Land Surveyors intends to promulgate an administrative regulation implementing the continuing professional development program mandated for land surveyors.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for June 25, 1998, at 1:30 p.m., at the State Board's office, 160 Democrat Drive, Frankfort, Kentucky.

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

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

(b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 10 days prior to June 25, 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: Larry Perkins, Executive Director, Kentucky State Board of Registration for Professional Engineers and Land Surveyors, 160 Democrat Drive, Frankfort, Kentucky 40601.

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

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

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

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

(7) Information relating to the proposed administrative regulation:

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

(b) The administrative regulation that the Kentucky State Board of Registration for Professional Engineers and Land Surveyors intends to promulgate will amend 201 KAR 18:190, Continuing professional development. It will clarify the type of hours required to fulfill the statutory requirements of continuing professional development, explain how the reporting of hours will take place, and the procedure for audits.

(c) The necessity and function of the proposed administrative regulations is as follows: To implement the continuing professional development program mandated by KRS 322.290(2)(h) for land surveyors in Kentucky.

(d) The benefits expected from administrative regulation are: That the procedure for continuing professional development for land surveyors will be further clarified, thus leading to less confusion.

(e) The administrative regulation will be implemented as follows: Land surveyors will be required to comply with the administrative regulations, and the Kentucky State Board of Registration for Professional Engineers and Land Surveyors will enforce the administrative regulation. This proposed amendment will affect all land surveyors registered by this board and will be applied the same to all. Since the board has already implemented the regulation, this proposed amendment simply clarifies procedures and better defines what is allowed and how reporting will take place.

KENTUCKY BOARD OF EXAMINERS OF PSYCHOLOGY

April 30, 1998

(1) **201 KAR 26:121.** Scope of practice.

(2) The Kentucky Board of Examiners of Psychology intends to amend the administrative regulation listed above.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for June 24, 1998, at 10 a.m., at the Division of Occupations and Professions, Berry Hill Annex, 700 Louisville Road, Frankfort, Kentucky 40601.

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

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

(b) If a request for a public hearing, and agreement to attend the public hearing are not received from the required number of people at least 10 days prior to June 24, 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: David L. Nicholas, Director, Division of Occupations and Professions, P.O. Box 456, Frankfort, Kentucky 40602, (502) 564-3296.

(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 Examiners of Psychology at the

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address listed above.

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of an administrative regulation relating to scope of practice is KRS 319.032(1)(b).

(b) The administrative regulation that the board intends to promulgate will amend 201 KAR 26:121, Scope of practice. It will revise the scope of practice for each of the specialty areas of practice by merely updating and modernizing those specialty areas listing the most modern services and techniques in use today by psychologists.

(c) The necessity and function of the proposed administrative regulation is as follows: This regulation is necessitated by KRS 319.032(1)(b) and sets forth in detail the scope of practice for each of the specialty areas within the practice of psychology.

(d) The benefits expected from administrative regulation are: The licensees and certificands will be made aware of the current scope of practice for each of their respective specialty areas.

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

April 30, 1998

(1) **201 KAR 26:125.** Health service provider designation.

(2) The Kentucky Board of Examiners of Psychology intends to amend the administrative regulation listed above.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for June 24, 1998, at 10 a.m., at the Division of Occupations and Professions, Berry Hill Annex, 700 Louisville Road, Frankfort, Kentucky 40601.

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

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

(b) If a request for a public hearing, and agreement to attend the public hearing are not received from the required number of people at least 10 days prior to June 24, 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: David L. Nicholas, Director, Division of Occupations and Professions, P.O. Box 456, Frankfort, Kentucky 40602, (502) 564-3296.

(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 Examiners of Psychology 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 health service provider designation is KRS 319.050(7).

(b) The administrative regulation that the board intends to promulgate will amend 201 KAR 26:125, Health service provider designation. It will revise the administrative regulation by merely updating and modernizing the requirements for this designation.

(c) The necessity and function of the proposed administrative regulation is as follows: This regulation is necessitated by KRS 319.050(7) and sets forth in detail the requirements for the health service provider designation.

(d) The benefits expected from administrative regulation are: The licensees and certificands will be made aware of requirements for the health service provider designation.

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

April 30, 1998

(1) **201 KAR 26:180.** Requirements for granting licensure or certification in psychology by reciprocity.

(2) The Kentucky Board of Examiners of Psychology intends to amend the administrative regulation listed above.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for June 24, 1998, at 10 a.m., at the Division of Occupations and Professions, Berry Hill Annex, 700 Louisville Road, Frankfort, Kentucky 40601.

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

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

(b) If a request for a public hearing, and agreement to attend the public hearing are not received from the required number of people at least 10 days prior to June 24, 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: David L. Nicholas, Director, Division of Occupations and Professions, P.O. Box 456, Frankfort, Kentucky 40602, (502) 564-3296.

(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 Examiners of Psychology 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 requirements for granting licensure or certification in psychology by reciprocity is KRS 319.032(i).

(b) The administrative regulation that the board intends to promulgate will amend is 201 KAR 26:180, requirements for granting

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licensure or certification in psychology by reciprocity. It will allow a person holding the Certificate of Professional Qualification in Psychology granted by the Association of State and Provincial Psychology Boards to become licensed in Kentucky based on that credential.

(c) The necessity and function of the proposed administrative regulation is as follows: KRS 319.032 requires the adoption of regulations for the granting of a license or certificate through reciprocity. This regulation establishes the requirements for licensure or certification by reciprocity.

(d) The benefits expected from administrative regulation are: The licensure application process will be streamlined for persons holding the CPQ designation.

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

April 30, 1998

(1) **201 KAR 26:215**, Nonresident status.

(2) The Kentucky Board of Examiners of Psychology intends to amend the administrative regulation listed above.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for June 24, 1998, at 10 a.m., at the Division of Occupations and Professions, Berry Hill Annex, 700 Louisville Road, Frankfort, Kentucky 40601.

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

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

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

(b) If a request for a public hearing, and agreement to attend the public hearing are not received from the required number of people at least 10 days prior to June 24, 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: David L. Nicholas, Director, Division of Occupations and Professions, P.O. Box 456, Frankfort, Kentucky 40602, (502) 564-3296.

(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 Examiners of Psychology 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 nonresident status is KRS 319.032(2).

(b) The administrative regulation that the board intends to promulgate will amend 201 KAR 26:215, Nonresident status. It will revise the requirements for nonresident practice by psychologists licensed in another jurisdiction.

(c) The necessity and function of the proposed administrative regulation is as follows: KRS 319.017(7) allows a nonresident psychologist temporarily employed in the state to render psychological services for no more than 30 days every 2 years. This regulation establishes the requirements for this practice.

(d) The benefits expected from administrative regulation are: This amendment will allow the board to monitor the practice of nonresident psychologists in Kentucky such that the public will be afforded greater protection.

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

KENTUCKY BOARD OF CERTIFICATION FOR PROFESSIONAL ART THERAPISTS

May 5, 1998

(1) **201 KAR 34:030**. Continuing education requirements.

(2) The Kentucky Board of Certification for Professional Art Therapists 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 June 24, 1998, at 10 p.m., at the Division of Occupations and Professions, Berry Hill Annex, 700 Louisville Road, Frankfort, Kentucky 40601.

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

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

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

(b) If a request for a public hearing, and agreement to attend the public hearing are not received from the required number of people at least 10 days prior to June 24, 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: David L. Nicholas, Director, Division of Occupations and Professions, P.O. Box 456, Frankfort, Kentucky 40602, (502) 564-3296.

(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 Certification for Professional Art Therapists 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 fees is KRS 309.1315(9).

(b) The administrative regulation that the board intends to promulgate will establish the continuing education requirements for renewal

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of certification. It will set forth in detail the number of hours, the appropriate sources, and the required verifications.

(c) The necessity and function of the proposed administrative regulation is as follows: This regulation is necessitated by KRS 309.1335(1)(b) which requires that a certificate holder produce evidence of the receipt of relevant continuing education in order to renew their certificate.

(d) The benefits expected from administrative regulation are: The certificands will know all of requirements regarding continuing education.

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

May 5, 1998

(1) **201 KAR 34:040**, Code of ethics.

(2) The Kentucky Board of Certification for Professional Art Therapists 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 June 24, 1998, at 1 p.m., at the Division of Occupations and Professions, Berry Hill Annex, 700 Louisville Road, Frankfort, Kentucky 40601.

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

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

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

(b) If a request for a public hearing, and agreement to attend the public hearing are not received from the required number of people at least 10 days prior to June 24, 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: David L. Nicholas, Director, Division of Occupations and Professions, P.O. Box 456, Frankfort, Kentucky 40602, (502) 564-3296.

(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 Certification for Professional Art Therapists 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 fees is KRS 309.1315(14).

(b) The administrative regulation that the board intends to promulgate will establish a comprehensive code of ethics for persons holding certification. It will set forth in detail the ethical requirements.

(c) The necessity and function of the proposed administrative regulation is as follows: This regulation is necessitated by KRS 309.137 and will allow the certificands to know the ethical requirements and will assist the board in determining when the code has been violated.

(d) The benefits expected from administrative regulation are: The certificands will know the ethical requirements regarding certification and the public will be protected from unethical actions by certificands.

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

KENTUCKY BOARD OF CERTIFICATION FOR PROFESSIONAL COUNSELORS

April 27, 1998

(1) **201 KAR 36:010**, Definitions.

(2) The Kentucky Board of Certification for Professional Counselors 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 June 24, 1998, at 9 a.m., at the Division of Occupations and Professions, Berry Hill Annex, 700 Louisville Road, Frankfort, Kentucky 40601.

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

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

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

(b) If a request for a public hearing, and agreement to attend the public hearing are not received from the required number of people at least 10 days prior to June 24, 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: David L. Nicholas, Director, Division of Occupations and Professions, P.O. Box 456, Frankfort, Kentucky 40602, (502) 564-3296.

(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 Certification for Professional Counselors 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 definitions is KRS 335.515(3).

(b) The administrative regulation that the board intends to promulgate will establish definitions of terms used in the law that will assist the board in the administration of the law.

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(c) The necessity, function, and conformity of the proposed administrative regulation is as follows: KRS 335.525 sets forth the requirements for certification as a professional counselor. The board is required to review the applications of applicants for certification. In addition to other requirements, KRS 335.525 requires applicants to have experience under supervision, a degree in counseling, and passage of an examination. This administrative regulation establishes definitions necessary for the evaluation of these areas.

(d) The benefits expected from administrative regulation are: The applicants and certificands will know more about the requirements regarding certification.

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

April 27, 1998

(1) **201 KAR 36:020**, Fees - renewal date.

(2) The Kentucky Board of Certification for Professional Counselors 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 June 24, 1998, at 9 a.m., at the Division of Occupations and Professions, Berry Hill Annex, 700 Louisville Road, Frankfort, Kentucky 40601.

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

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

(b) If a request for a public hearing, and agreement to attend the public hearing are not received from the required number of people at least 10 days prior to June 24, 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: David L. Nicholas, Director, Division of Occupations and Professions, P.O. Box 456, Frankfort, Kentucky 40602, (502) 564-3296.

(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 Certification for Professional Counselors 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 fees is KRS 335.515(3).

(b) The administrative regulation that the board intends to promulgate will establish all fees charged by the board. It will set forth in detail all of the fees regarding certification.

(c) The necessity, conformity, and function of the proposed administrative regulation is as follows: This regulation is necessitated by KRS 335.525 and 335.535 and sets forth in detail all fees charged by the board.

(d) The benefits expected from administrative regulation are: The applicants and certificands will know what all of the fees are regarding certification.

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

April 27, 1998

(1) **201 KAR 36:030**. Continuing education requirements.

(2) The Kentucky Board of Certification for Professional Counselors 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 June 24, 1998, at 9 a.m., at the Division of Occupations and Professions, Berry Hill Annex, 700 Louisville Road, Frankfort, Kentucky 40601.

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

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

(b) If a request for a public hearing, and agreement to attend the public hearing are not received from the required number of people at least 10 days prior to June 24, 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: David L. Nicholas, Director, Division of Occupations and Professions, P.O. Box 456, Frankfort, Kentucky 40602, (502) 564-3296.

(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 Certification for Professional Counselors 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 continuing education requirements is KRS 335.515(3), (6) and 335.535(8).

(b) The administrative regulation that the board intends to promulgate will establish the requirements for continuing education.

(c) The necessity, conformity, and function of the proposed administrative regulation is as follows: KRS 335.535(8) authorizes the board to promulgate an administrative regulation requiring a certified professional counselor to complete continuing education requirements as a condition of renewal of his certification. This administrative regulation delineates the requirements for continuing education and prescribes

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methods and standards for the accreditation of continuing education courses.

(d) The benefits expected from administrative regulation are: The certificands will know more about the requirements regarding continuing education.

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

April 27, 1998

(1) **201 KAR 36:040.** Code of ethics.

(2) The Kentucky Board of Certification for Professional Counselors 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 June 24, 1998, at 9 a.m., at the Division of Occupations and Professions, Berry Hill Annex, 700 Louisville Road, Frankfort, Kentucky 40601.

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

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

(b) If a request for a public hearing, and agreement to attend the public hearing are not received from the required number of people at least 10 days prior to June 24, 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: David L. Nicholas, Director, Division of Occupations and Professions, P.O. Box 456, Frankfort, Kentucky 40602, (502) 564-3296.

(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 Certification for Professional Counselors 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 a code of ethics is KRS 335.515(3) and (11).

(b) The administrative regulation that the board intends to promulgate will establish a code of ethics for persons certified as professional counselors.

(c) The necessity, conformity, and function of the proposed administrative regulation is as follows: KRS 335.515(11) requires the board to promulgate a code of ethics for certified professional counselors. This administrative regulation establishes the required code of ethics.

(d) The benefits expected from administrative regulation are: The certificands will know what the ethical requirements are.

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

April 27, 1998

(1) **201 KAR 36:050.** Complaint management process.

(2) The Kentucky Board of Certification for Professional Counselors 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 June 24, 1998, at 9 a.m., at the Division of Occupations and Professions, Berry Hill Annex, 700 Louisville Road, Frankfort, Kentucky 40601.

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

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

(b) If a request for a public hearing, and agreement to attend the public hearing are not received from the required number of people at least 10 days prior to June 24, 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: David L. Nicholas, Director, Division of Occupations and Professions, P.O. Box 456, Frankfort, Kentucky 40602, (502) 564-3296.

(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 Certification for Professional Counselors 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 complaint management process is KRS 335.515(3) and (7) and 335.540.

(b) The administrative regulation that the board intends to promulgate will establish a complaint management process for the board.

(c) The necessity, conformity, and function of the proposed administrative regulation is as follows: KRS 335.515(7) and 335.540 authorize the board to take disciplinary action in regard to a certificand or to refuse to issue a certification under certain circumstances. A complaint or other information coming to the board requires the board to investigate persons engaging in practices which violate the provisions of KRS 335.500 to 335.599. This regulation establishes the detailed procedures for the investigation of complaints received by the board.

(d) The benefits expected from administrative regulation are: The certificands will know what the requirements are of the complaint management process.

(e) The administrative regulation will be implemented as follows: The proposed administrative regulation will be implemented as soon

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as it becomes effective.

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

April 17, 1998

(1) The subject matter of the administrative regulation to be promulgated is **401 KAR 5:002**, Definitions of terms for 401 KAR Chapter 5.

(2) The Natural Resources and Environmental Protection Cabinet, Division of Water, 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 June 25, 1998, at 7 p.m. (eastern time), in the Western Hills High School Auditorium, 101 Doctors' Drive, Frankfort, Kentucky. Persons may also submit written comments on the proposed administrative regulation to the Division of Water at the address given below, by 4:30 p.m. (eastern time) on June 25, 1998.

(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 June 25, 1998, the public hearing will be canceled.

(c) The Natural Resources and Environmental Protection Cabinet does not discriminate on the basis of race, color, national origin, sex, religion, age, or disability. The cabinet will provide, upon request, reasonable accommodations for the public hearing including auxiliary aids and services necessary to afford individuals with a disability an equal opportunity to participate in the scheduled public hearing and all other cabinet programs and activities. If you need an alternative version of this Notice of Intent, contact the Division of Water by June 15, 1998, at the address below or by telephone, (502) 564-3410, or TDD 1-800-648-6056.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Jack A. Wilson, Director, Division of Water, 14 Reilly Road, Frankfort Office Park, Frankfort, Kentucky 40601, phone (502) 564-3410, fax (502) 564-0111.

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

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

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

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

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of administrative regulation relating to definitions of terms is 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.

(b) The administrative regulation that the Natural Resources and Environmental Protection Cabinet, Division of Water, intends to promulgate will be a new regulation that contains the definitions for terms used in 401 KAR Chapter 5. This regulation will replace the current regulation on definitions, 401 KAR 5:001. That regulation is being repealed, along with 401 KAR 5:008. Definitions in this regulation will govern the programs in this chapter, including Kentucky Pollutant Discharge Elimination System (KPDES), construction and operation of wastewater facilities, wastewater planning for regional areas, swine feeding operations, oil and gas production, and other programs relating to water quality. On April 17, 1998, the cabinet filed with the Regulations Compiler two emergency regulations: 401 KAR 5:002E on definitions, and 401 KAR 5:009E on permits for swine feeding operations. The emergency regulations contain the topics that are under consideration for the promulgation of the ordinary regulations, including definitions for swine feeding operation; swine units; swine waste; land application; injection; minimum design volume; nutrient management plan; supernatant; swine waste management permit; and karst feature. The promulgation of this ordinary regulation will continue the emergency regulation 401 KAR 5:002E after the required expiration date.

(c) The necessity and function of the proposed administrative regulation is as follows: This administrative regulation establishes definitions that apply to 401 KAR Chapter 5, including definitions that apply to swine feeding operations.

(d) The benefits expected from the administrative regulation are: The definitions relating to terms used in this chapter will eventually all be in the definitions regulation, thus providing one convenient location to look for definitions.

(e) The administrative regulation will be implemented as follows: On and after the effective date of the administrative regulation, definitions that apply to swine feeding operations and other programs in 401 KAR Chapter 5 will be in this regulation. Copies of the emergency regulations that are now in effect are available from the Division of Water at the above address.

April 17, 1998

(1) The subject matter of the administrative regulation to be promulgated is **401 KAR 5:009**, Permits for swine feeding operations.

(2) The Natural Resources and Environmental Protection Cabinet, Division of Water, 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 June 25, 1998, at 7 p.m. (eastern time), in the Western Hills High School Auditorium, 101 Doctors' Drive, Frankfort, Kentucky. Persons may also submit written comments on the proposed administrative regulation to the Division of Water at the address given below, by 4:30 p.m. (eastern time) on June 25, 1998.

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

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

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(b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 10 days prior to June 25, 1998, the public hearing will be canceled.

(c) The Natural Resources and Environmental Protection Cabinet does not discriminate on the basis of race, color, national origin, sex, religion, age, or disability. The cabinet will provide, upon request, reasonable accommodations for the public hearing including auxiliary aids and services necessary to afford individuals with a disability an equal opportunity to participate in the scheduled public hearing and all other cabinet programs and activities. If you need an alternative version of this Notice of Intent, contact the Division of Water before June 15, 1998, at the address below or by telephone, (502) 564-3410, or TDD 1-800-648-6056.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Jack A. Wilson, Director, Division of Water, 14 Reilly Road, Frankfort Office Park, Frankfort, Kentucky 40601, phone (502) 564-3410, fax (502) 564-0111.

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

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

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

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

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

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of administrative regulation relating to swine feeding operations is KRS 224.10-100, 224.70-100, and 224.70-110.

(b) The administrative regulation that the Natural Resources and Environmental Protection Cabinet, Division of Water, intends to promulgate will be a new regulation for the permitting of swine feeding operations. A swine feeding operation is defined to be an operation that confines 1,000 or more swine units and is not a concentrated animal feeding operation. An emergency regulation to regulate the permitting of those operations has been filed with the Regulations Compiler and is now effective. On April 17, 1998, the cabinet filed two emergency regulations: 401 KAR 5:002E on definitions, which replaces 401 KAR 5:001; and 401 KAR 5:009E, which replaces 401 KAR 5:008. The promulgation of this ordinary regulation will continue the emergency regulation 401 KAR 5:009E after the required expiration date. The proposed new administrative regulation will contain construction and operational requirements for new swine feeding operations that house more than 1,000 swine units. A swine unit takes into consideration the amount of waste generated by swine that are confined and the type of operation it is. Existing operations that are currently under the 1,000 swine unit threshold will not be affected unless they expand their operation above that threshold. Also, existing unpermitted operations will be given the opportunity to be permitted under the current program in 401 KAR 5:005 if they notify the cabinet by October 15, 1998, of the number of swine units at their operations and then subsequently apply for and receive their permit under 401 KAR 5:005 by April 15, 1999. Existing permitted operations are given the opportunity to expand to 1,250 swine units and still remain under the permitting program of 401 KAR 5:005 if they have had no violations for one year. New construction requirements include the construction of anaerobic or aerobic lagoons of specified size and slopes, with compacted soil or synthetic liners. New operation requirements include the development and implementation of a nutrient management plan for each farm. Land setbacks are also specified for the construction of the barns, lagoons, and other related structures and for the land application of the swine waste from the lagoon. The regulation also would require joint liability for persons who have a controlling interest in the swine feeding operation. The emergency regulations contain all the topics under consideration and are currently in effect.

(c) The necessity and function of the proposed administrative regulation is as follows: This administrative regulation establishes administrative procedures and technical standards for the issuance of permits for swine feeding operations authorized under KRS Chapter 224. It also establishes conditions for their proper construction and operation.

(d) The benefits expected from the administrative regulation are: The citizens of the Commonwealth will be assured that the operation of swine feeding operations will protect the waters of the Commonwealth.

(e) The administrative regulation will be implemented as follows: On and after the effective date of this administrative regulation, the permitting of these operations will be governed by the provisions contained in this regulation. Copies of the emergency regulations that contain the cabinet's current requirements and the topics under consideration for the ordinary regulation are available from the Division of Water at the above address.

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

May 15, 1998

(1) **401 KAR 57:002**, 40 CFR Part 61 national emission standards for hazardous air pollutants (NESHAP). The subject matter of this administrative regulation is the incorporation by reference of the federal rule, 40 CFR Part 61, National Emission Standards for Hazardous Air Pollutants, as published in the most recent publication of the Code of Federal Regulations, 40 CFR Part 61. The topic of this administrative regulation is the state's adoption of the current NESHAPs for hazardous air pollutants pursuant to 42 USC 7412. Sources affected by this administrative regulation are already subject to the federal standards which the Commonwealth is required to adopt in order to retain the authority to implement and enforce the national emission standards for hazardous air pollutants, 40 CFR Part 61.

(2) The Division for Air Quality intends to incorporate by reference the federal regulation, 40 CFR 61.01 through 61.359, in the administrative regulation cited above.

(3) A public hearing to receive oral and written comments on the new administrative regulation has been scheduled for June 24, 1998, at 10 a.m. (ET), in the Conference Room of the Division for Air Quality, 803 Schenkel Lane, 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 an agreement to attend the public hearing, are not received from the required number of people at least 10 days prior to June 24, 1998, the public hearing will be cancelled.

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(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Division for Air Quality, Attention Carl Millanti, 803 Schenkel Lane, Frankfort, Kentucky 40601.

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

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

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

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

(7) Information relating to the new administrative regulation.

(a) The statutory authority for the promulgation of the administrative regulation includes KRS 224.10-100, 224.20-100, 224.20-110, and 224.20-120.

(b) The administrative regulation that the Division for Air Quality intends to promulgate will not amend any existing administrative regulation. It will codify all existing NESHAPs into one administrative regulation and incorporate by reference the most current national emission standards in the most recent publication of the Code of Federal Regulations, 40 CFR Part 61.

(c) The necessity and function of the new administrative regulations is as follows: 42 USC 7412(d) mandates the U.S. EPA to promulgate federal regulations which establish emission standards for major and area sources of hazardous air pollutants as listed in the 1990 amendments to the federal Clean Air Act. The new administrative regulation contains the same provisions as the federal regulation as published in the most recent publication of the Code of Regulations, 40 CFR Part 61. The Division for Air Quality is proposing this administrative regulation so that the Commonwealth will have the delegated authority to enforce the provisions of the corresponding federal regulation.

(d) The benefit expected from the new administrative regulation is that sources subject to the federal Part 61 NESHAPs will be able to work with the state rather than the federal government to obtain necessary permits. Furthermore, all Part 61 NESHAPs will be covered in one administrative regulation which can be revised and updated in a manner more timely than has been possible under the old system of having numerous administrative regulations. This method will make the most current federal NESHAPs more readily available to the general public, and Kentucky's regulated community will be able to access all the standards in one volume with the knowledge that Kentucky's regulation is no more stringent than the federal standards.

(e) This administrative regulation will be implemented as follows: On and after the effective date of this administrative regulation, those sources subject to 40 CFR 61.01 through 61.359 shall comply with the provisions of 401 KAR 57:002.

May 15, 1998

(1) **401 KAR 57:019**, Repeal of 401 KAR 57:015, 57:021, 57:025, 57:030, 57:035, 57:040, 57:045, 57:050, 57:055, 57:130, 57:270, 57:300, 59:310, 59:450, 59:455, 59:460, 59:465, 59:485, 59:490, 59:495, 59:500, 59:505, 59:535, 59:540, 59:545, 59:550, 59:555, 59:570, 59:575, 59:580, 59:585, 59:590, 59:595, 59:635, 59:705, 59:725, 59:740, 59:745, 59:750, 59:755, 60:042, 60:043, 60:100, 60:110, 60:111, 60:150, 60:160, 60:170, 60:180, 60:190, 60:250, 60:260, 60:330, 60:340, 60:370, 60:380, 60:390, 60:400, 60:420, 60:440, 60:450, 60:460, 60:470, 60:480, 60:490, 60:500, 60:540, 60:560, 60:580, 60:590, 60:600, 60:620, 60:630, 60:640, 60:680, 60:700, 60:730, 63:070, 63:101, 63:110, 63:160, 63:190, 63:300, 63:320, 63:340, 63:360, 63:400, 63:420, 63:460, 63:520, and 63:701.

(2) As required by KRS 13A.310(b), on the effective date of this administrative regulation the Regulations Compiler shall delete the repealed administrative regulations and the repealing administrative regulation from the Kentucky Administrative Regulations Service.

(3) A public hearing to receive oral and written comments on the new administrative regulation has been scheduled for June 24, 1998, at 10 a.m. (ET), in the Conference Room of the Division for Air Quality, 803 Schenkel Lane, 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 an agreement to attend the public hearing, are not received from the required number of people at least 10 days prior to June 24, 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: Division for Air Quality, Attention Carl Millanti, 803 Schenkel Lane, Frankfort, Kentucky 40601.

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

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

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

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

(7) Information relating to the new administrative regulation.

(a) The statutory authority for the promulgation of the administrative regulation includes KRS 224.10-100, 224.20-100, and 224.20-120.

(b) The administrative regulation that the Division for Air Quality intends to promulgate will not amend any existing administrative regulations. It will repeal 21 existing administrative regulations in 401 KAR Chapter 57, 28 existing administrative regulations in 401 KAR Chapter 59, 37 existing administrative regulations in 401 KAR Chapter 60, and fourteen (14) existing administrative regulations in 401 KAR Chapter 63.

(c) The necessity and function of the new administrative regulations is as follows: 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 repeals the 28 administrative regulations being replaced by 401 KAR 57:002; the 65 administrative regulations being replaced by 401 KAR 60:005, and the fourteen administrative regulations being replaced by 401 KAR 63:002.

(d) The benefit expected from the new administrative regulation is all 40 CFR, Part 60 NSPS's, all 40 CFR, Part 61 NESHAPs, and all Part 63 MACTs will each be covered in one administrative regulation which can be revised and updated in a manner more timely than has been possible under the old system of having numerous administrative regulations. This method will make the most current federal NSPS's, NESHAPs, and MACTs more readily available to the general public, and Kentucky's regulated community will be able to access all the standards in one volume with the knowledge that with Kentucky's regulation is no more stringent than the federal standards.

(e) This administrative regulation will be implemented as follows: On and after the effective date, sources subject to 401 KAR 57:015,

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57:021, 57:025, 57:030, 57:035, 57:040, 57:045, 57:050, 57:055, 57:130, 57:270, and 57:300 will become subject to 401 KAR 57:002; those subject to 59:310, 59:450, 59:455, 59:460, 59:465, 59:485, 59:490, 59:495, 59:500, 59:505, 59:535, 59:540, 59:545, 59:550, 59:555, 59:570, 59:575, 59:580, 59:585, 59:590, 59:595, 59:635, 59:705, 59:725, 59:740, 59:745, 59:750, 59:755, 60:042, 60:043, 60:100, 60:110, 60:111, 60:150, 60:160, 60:170, 60:180, 60:190, 60:250, 60:260, 60:330, 60:340, 60:370, 60:380, 60:390, 60:400, 60:420, 60:440, 60:450, 60:460, 60:470, 60:480, 60:490, 60:500, 60:540, 60:560, 60:580, 60:590, 60:600, 60:620, 60:630, 60:640, 60:680, 60:700, and 60:730 will become subject to 60:005; and those subject to 63:070, 63:101, 63:110, 63:160, 63:190, 63:300, 63:320, 63:340, 63:360, 63:400, 63:420, 63:460, 63:520, and 63:701 will become subject to 401 KAR 63:002.

May 15, 1998

(1) **401 KAR 60:005**, 40 CFR Part 60 standards of performance for new stationary sources (NSPS). The subject matter of this administrative regulation is the incorporation by reference of 40 CFR Part 60, Standards of Performance for New Stationary Sources (NSPS), as published in the most recent publication of the Code of Federal Regulations, 40 CFR Part 60. The topic of this administrative regulation is the state's adoption of the current NSPS's pursuant to 42 USC 7411. Sources affected by this administrative regulation are already subject to the federal standards which the Commonwealth is required to adopt in order to retain the authority to implement and enforce the federal standards of performance for new stationary sources.

(2) The Division for Air Quality intends to incorporate by reference the federal regulation, 40 CFR 60.1 through 60.759, in the administrative regulation cited above.

(3) A public hearing to receive oral and written comments on the new administrative regulation has been scheduled for June 24, 1998, at 10 a.m. (ET), in the Conference Room of the Division for Air Quality, 803 Schenkel Lane, 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 an agreement to attend the public hearing, are not received from the required number of people at least 10 days prior to June 24, 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: Division for Air Quality, Attention Carl Millanti, 803 Schenkel Lane, Frankfort, Kentucky 40601.

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

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

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

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

(7) Information relating to the new administrative regulation.

(a) The statutory authority for the promulgation of the administrative regulation includes KRS 224.10-100, 224.20-100, 224.20-110 and 224.20-120.

(b) The administrative regulation that the Division for Air Quality intends to promulgate will not amend any existing administrative regulation. It will codify all existing NSPS's into one administrative regulation and incorporate by reference the most current federal new source performance standards in the most recent publication of the Code of Federal Regulations, 40 CFR Part 60.

(c) The necessity and function of the new administrative regulations is as follows: 42 USC 7411 mandates the U.S. EPA to promulgate federal regulations which establish standards of performance for new sources. The new administrative regulation contains the same provisions as the federal regulation as published in the most recent publication of the Code of Regulations, 40 CFR Part 60. The Division for Air Quality is proposing this administrative regulation so that the Commonwealth will have the delegated authority to enforce the provisions of the corresponding federal regulation.

(d) The benefit expected from the new administrative regulation is that sources subject to the federal Part 60 NSPS's will be able to work with the state rather than the federal government to obtain necessary permits. Furthermore, all Part 60 NSPS's will be covered in one administrative regulation which can be revised and updated in a manner more timely than has been possible under the old system of having numerous administrative regulations. This method will make the most current federal NSPS's more readily available to the general public, and Kentucky's regulated community will be able to access all the standards in one volume with the knowledge that Kentucky's regulation is no more stringent than the federal standards.

(e) This administrative regulation will be implemented as follows: On and after the effective date of this administrative regulation, those sources subject to 40 CFR 60.1 through 60.759 shall comply with the provisions of 401 KAR 60:005.

May 15, 1998

(1) **401 KAR 63:002**, 40 CFR Part 63 national emission standards for hazardous air pollutants for source categories (MACT). The subject matter of this administrative regulation is the incorporation by reference of 40 CFR Part 63, National Emission Standards for Hazardous Air Pollutants for Source Categories, as published in the most recent publication of the Code of Federal Regulations, 40 CFR Part 63. The topic of this administrative regulation is the state's adoption of the current maximum achievable control technology (MACT) standards for sources emitting hazardous air pollutants pursuant to 42 USC 7412. Sources affected by this administrative regulation are already subject to the federal standards which the Commonwealth is required to adopt in order to retain the authority to implement and enforce the national emission standards for hazardous air pollutants for source categories.

(2) The Division for Air Quality intends to incorporate by reference the federal regulation, 40 CFR 63.1 through 63.1335, in the administrative regulation cited above.

(3) A public hearing to receive oral and written comments on the new administrative regulation has been scheduled for June 24, 1998, at 10 a.m. (ET), in the Conference Room of the Division for Air Quality, 803 Schenkel Lane, 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.

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(b) If a request for a public hearing, and an agreement to attend the public hearing, are not received from the required number of people at least 10 days prior to June 24, 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: Division for Air Quality, Attention Carl Millanti, 803 Schenkel Lane, Frankfort, Kentucky 40601.

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

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

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

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

(7) Information relating to the new administrative regulation.

(a) The statutory authority for the promulgation of the administrative regulation includes KRS 224.10-100, 224.20-100, 224.20-110, and 224.20-120.

(b) The administrative regulation that the Division for Air Quality intends to promulgate will not amend any existing administrative regulation. It will codify all existing MACT standards into one administrative regulation and incorporate by reference the most current national emission standards in the Code of Federal Regulations, 40 CFR Part 63.

(c) The necessity and function of the new administrative regulations is as follows: 42 USC 7412(d) mandates the U.S. EPA to promulgate federal regulations which establish emission standards for major and area sources of hazardous air pollutants as listed in the 1990 amendments to the federal Clean Air Act. The new administrative regulation contains the same provisions as the federal regulation as published in the most recent publication in the Code of Regulations, 40 CFR Part 63. The Division for Air Quality is proposing this administrative regulation so that the Commonwealth will have the delegated authority to enforce the provisions of the corresponding federal regulation.

(d) The benefit expected from the new administrative regulation is that sources subject to the federal Part 63 MACT standards will be able to work with the state rather than the federal government to obtain necessary permits. Furthermore, all MACTs will be covered in one administrative regulation which can be revised and updated in a manner more timely than has been possible under the old system of having numerous administrative regulations. This method will make the most current federal MACT standards more readily available to the general public, and Kentucky's regulated community will be able to access all the standards in one volume with the knowledge that Kentucky's regulation is no more stringent than the federal standards.

(e) This administrative regulation will be implemented as follows: On and after the effective date of this administrative regulation, those sources subject to 40 CFR 63.1 through 63.1335 shall comply with the provisions of 401 KAR 63:002.

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET Department for Surface Mining Reclamation and Enforcement

May 14, 1998

(1) Regulation number and title: **405 KAR 7:097**, Reclamation in lieu of cash payment of civil penalties. The subject matter of this administrative regulation is a person's performance of in-kind reclamation, environmental rehabilitation, or similar action to correct environmental pollution, as an alternative to the cash payment of civil penalties assessed against the person resulting from violation of requirements at surface coal mining and reclamation operations.

(2) The Natural Resources and Environmental Protection Cabinet intends to promulgate a new administrative regulation governing the subject matter listed in item (1) above.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for Tuesday, June 30, 1998, at 10 a.m. eastern time, in Room D-16 (Training Room) of the Department for Surface Mining Reclamation and Enforcement at 2 Hudson Hollow, 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 10 days prior to June 30, 1998, the public hearing will be cancelled.

(c) Written comments may be submitted to the address listed in item (5)(a) below, until 4:30 p.m. eastern time on Tuesday, June 30, 1998, regardless of whether a public hearing is requested or held.

(5)(a) Persons wishing to request a public hearing, or to submit written comments, should mail their written request or written comments to the following address: Jim Villines, Program Development and Coordination Branch, Department for Surface Mining Reclamation and Enforcement, 2 Hudson Hollow, Frankfort, Kentucky 40601-4321, Telephone (502) 564-6940 ext. 436, FAX (502) 564-5698.

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

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

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

(b) Persons who wish to file this request for notices pertaining to administrative regulations of the Department for Surface Mining Reclamation and Enforcement may obtain a request form by contacting the department at the following address: Teri Welch, Program Development and Coordination Branch, Department for Surface Mining Reclamation and Enforcement, 2 Hudson Hollow, Frankfort, Kentucky 40601-4321, Telephone (502) 564-6940, ext. 417.

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the proposed administrative regulation is KRS 350.028(1), (5), 350.151(1), 350.465(2), and 350.990(11).

(b) The proposed administrative regulation will not amend an existing regulation. It will establish requirements and procedures under

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which the cabinet may allow a person to perform in-kind reclamation work instead of making cash payment for civil penalties the person has incurred for violation of requirements at surface coal mining and reclamation operations.

(c) The necessity and function of the proposed administrative regulation are as follows. This administrative regulation is necessary to secure federal approval of KRS 350.090(11) regarding reclamation in lieu of civil penalties. The statute authorizes the cabinet to promulgate administrative regulations as necessary to implement the statute. The federal Office of Surface Mining has withheld approval of KRS 350.990(11) pending submittal and federal approval of state administrative regulations to implement the statute. This administrative regulation is further necessary to establish specific requirements and procedures to properly implement the provisions of the statute.

(d) The expected benefits from this administrative regulation are that some persons will find it less burdensome to perform work to reclaim disturbed lands or to achieve other environmental restoration than to make cash payments, and environmental improvement will result from the work.

(e) This administrative regulation will be implemented through the cabinet's existing organizational structures for regulation of surface coal mining and reclamation operations and for reclamation of abandoned mine lands. A person will voluntarily request to perform work instead of paying cash for civil penalties. The person will submit information to the cabinet that will describe the specific work he proposes to perform, will show how the work will improve the environment, will estimate the cost of the work (which must exceed the assessed penalty amount), will demonstrate that the person has obtained the right to enter the site to perform the work, and will demonstrate the extent of local community support for the work. If the cabinet agrees with the proposal, it may enter into an agreement with the person. If the person satisfactorily fulfills the terms of the agreement, the person's obligation to pay the penalty will be deemed satisfied. If the person does not satisfactorily fulfill the terms of the agreement, the full assessed penalty amount will remain due and payable.

TRANSPORTATION CABINET

May 15, 1998

(1) **600 KAR 5:010**, relating to the transportation of nonpublic school students.

(2) The Kentucky Transportation Cabinet intends to promulgate an administrative regulation amending 600 KAR 5:010 relating to the transportation of nonpublic school students because the existing administrative regulation only addresses the program through fiscal year 1997-98. It is necessary to amend the administrative regulation to address at least the next two fiscal years since the General Assembly appropriated \$2.5 million each year of the biennium which will begin July 1, 1998 for this purpose.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for June 26, 1998 at 8:30 a.m. local prevailing time, at 501 High Street, 4th Floor Hearing/Conference Room, State Office Building, Frankfort, Kentucky 40622.

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

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

(b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 10 days prior to June 26, 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, Transportation Cabinet, Office of General Counsel, 501 High Street, 10th Floor, State Office Building, Frankfort, Kentucky 40622.

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

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

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

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

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of an administrative regulation relating to the transportation of nonpublic school students is the budget bill enacted by the 1998 General Assembly, House Bill 321.

(b) The administrative regulation that the Transportation Cabinet intends to promulgate will amend 600 KAR 5:010. It will address the administration of the reimbursement program for the transportation of nonpublic school students through the next two fiscal years.

(c) The necessity, function, and conformity of the proposed administrative regulation is as follows: The Commonwealth's Biennium Budget for fiscal years 1998-2000 included \$2.5 million each year for the reimbursement of the cost incurred by a fiscal court in the transportation of nonpublic school students. This administrative regulation is necessary to establish the eligibility criteria for application for a portion of the \$2.5 million appropriated each fiscal year of the biennium.

(d) The benefits expected from the administrative regulation are increased safety for nonpublic school students as they are transported to and from school.

(e) The administrative regulation will be implemented as follows: Each eligible fiscal court will be allowed to submit an application for reimbursement of the costs it incurred in the transportation of nonpublic school students. If the total amount requested for reimbursement exceeds \$2.5 million, the Transportation Cabinet will prorate the funds among the eligible applicants.

(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 June 16, 1998.

May 15, 1998

(1) **600 KAR 6:010**, Definitions (relating to 600 KAR Chapter 6, Engineering or Related Services).

(2) The Kentucky Transportation Cabinet intends to promulgate an amendment to the existing administrative regulation of definitions relating to the procurement and management of contracts for engineering or related services.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for June 26, 1998 at 1:30 p.m. local prevailing time, at 501 High Street, 4th Floor Hearing/Conference Room, Frankfort, Kentucky 40622.

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

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

(b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 10 days prior to June 26, 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, Transportation Cabinet, 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 procurement of engineering or related services is KRS 45A.807.

(b) The administrative regulation that the Transportation Cabinet intends to promulgate will amend 600 KAR 6:010 to include or amend any definitions needed as a result of the passage of HB 391 by the 1998 General Assembly.

(c) The necessity, function, and conformity of the proposed administrative regulation is: This administrative regulation adopts the definitions to be used in the administrative regulations promulgated by the Transportation Cabinet in 600 KAR Chapter 6.

(d) The benefit expected from the amendment to this administrative regulation is the update of the administrative regulation to comply with the changes to KRS Chapter 45A which were made in HB 391.

(e) The administrative regulation will be implemented as follows: Provision of copies to the firms which are interested in providing engineering or related services to the Transportation Cabinet.

(8) Any person with a disability for which the Transportation Cabinet needs to make an accommodation in order for the person to participate in the public comment hearing should notify Sandra Pullen Davis at the above-mentioned address no later than June 16, 1998.

May 15, 1998

(1) **600 KAR 6:030**, Federal requirements (governing 600 KAR Chapter 6, Engineering or Related Services).

(2) The Kentucky Transportation Cabinet intends to promulgate an amendment to the existing administrative regulation which sets forth the federal requirements relating to the procurement and management of contracts for engineering or related services.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for June 26, 1998 at 1:30 p.m. local prevailing time, at 501 High Street, 4th Floor Hearing/Conference Room, Frankfort, Kentucky 40622.

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

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

(b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 10 days prior to June 26, 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, Transportation Cabinet, 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 procurement of engineering or related services is KRS 45A.807, 49 CFR 18, and 23 CFR 172.

(b) The administrative regulation that the Transportation Cabinet intends to promulgate will amend 600 KAR 6:030 to include the changes to the federal regulations which govern 600 KAR Chapter 6.

(c) The necessity, function, and conformity of the proposed administrative regulation is: This administrative regulation sets forth the federal requirements to be followed by the Transportation Cabinet when procuring engineering or related services.

(d) The benefit expected from the amendment to this administrative regulation is the update of the federal regulation which govern 600 KAR Chapter 6. 49 CFR 18 was amended in 1997 and the change needs to be included in this administrative regulation.

(e) The administrative regulation will be implemented as follows: Provision of copies to the firms which are interested in providing engineering or related services to the Transportation Cabinet. The Transportation Cabinet will follow the revisions in the federal common rule, "Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments," and the Office of Management and Budget (OMB) Circular A-110, "Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Nonprofit Organizations," as these were issued to implement the Single Audit Act Amendments of 1996.

(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 June 16, 1998.

May 15, 1998

(1) **600 KAR 6:065**, Pools of firms for engineering or related services.

(2) The Kentucky Transportation Cabinet intends to promulgate a new administrative regulation relating to the procurement of engineering or related services, 600 KAR 6:065. This new administrative regulation will set forth the projects, services, or tasks which can be included in a pool, how the firms to be selected for a pool, and how the firms which are in a specific pool are to be assigned a project, service,

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or task.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for June 26, 1998 at 1:30 p.m. local prevailing time, at 501 High Street, 4th Floor Hearing/Conference Room, Frankfort, Kentucky 40622.

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

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

(b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 10 days prior to June 26, 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, Transportation Cabinet, 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 procurement of engineering or related services is KRS 45A.807, and HB 391 enacted by the 1998 General Assembly.

(b) The administrative regulation that the Transportation Cabinet intends to promulgate will be a new administrative regulation, 600 KAR 6:065.

(c) The necessity, function, and conformity of the proposed administrative regulation is: This administrative regulation sets forth the projects, services, or tasks which will be allowed to have the firms providing engineering or related services to be in a pool of firms from which the Transportation Cabinet will assign projects, services, or tasks.

(d) The benefit expected from the amendment to this administrative regulation is the establishment of the policies and procedures the Transportation Cabinet will follow in dealing with pools of firms which are offering engineering or related services. The specific areas of concern or alternative scenarios under consideration at the public comment hearing are:

1. What projects, service, or tasks will be eligible for inclusion in a pool under the provisions of HB 391 passed by the 1998 General Assembly and how detailed will be the description of the project types for each pool (e.g., a pool for environmental services or a pool for archaeological services; relate the pools only to the prequalification categories or would sub-categories be necessary);

2. What mechanisms will be available to the Transportation Cabinet for determining how each specific project will be assigned to the firms in the pool (e.g., pure rotational assignment; assignments based on geographic regions; assignments based on work load); and

3. A discussion of the use of the Procurement Bulletin in this process (e.g., how much of the process must be placed in the administrative regulation and how much can be announced in the Procurement Bulletin advertising the request for proposals for a pool of projects, services, or tasks).

(e) The administrative regulation will be implemented as follows: The Transportation Cabinet will announce in the Procurement Bulletin required by 600 KAR 6:050 the pools which will be established, the number of firms which will be included in the pool, and the procedure which will be used to assign the individual projects, services, or tasks to a specific firm in the pool.

(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 June 16, 1998.

May 15, 1998

(1) **600 KAR 6:070**, Contracting for engineering or related services.

(2) The Kentucky Transportation Cabinet intends to promulgate an amendment to the existing administrative regulation 600 KAR 6:070 which sets forth the procedures to be used by the Transportation Cabinet in contracting with firms providing engineering or related services. This administrative regulation needs to be amended to provide references to pool projects as allowed in HB 391 which was enacted by the 1998 General Assembly.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for June 26, 1998 at 1:30 p.m. local prevailing time, at 501 High Street, 4th Floor Hearing/Conference Room, Frankfort, Kentucky 40622.

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

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

(b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 10 days prior to June 26, 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, Transportation Cabinet, 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 procurement of engineering or related services is KRS 45A.807, and HB 391 enacted by the 1998 General Assembly.

(b) The administrative regulation that the Transportation Cabinet intends to promulgate will be an amendment to the existing administrative regulation, 600 KAR 6:070.

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(c) The necessity, function, and conformity of the proposed administrative regulation is: This administrative regulation sets forth the procedures to be followed by the Transportation Cabinet when negotiating contracts for engineering or related services while implementing the provisions of KRS 45A.800 through 45A.835.

(d) The benefit expected from the amendment to this administrative regulation is the update of this administrative regulation to include appropriate references to the provisions of HB 391 passed by the 1998 General Assembly.

(e) The administrative regulation will be implemented as follows: The Transportation Cabinet will announce in the Procurement Bulletin required by 600 KAR 6:050 the project, service, or task pools which will be established, the number of firms which will be included in the pool, and the mechanism which will be used to assign the individual project, service, or task to a specific firm in the pool.

(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 June 16, 1998.

EDUCATION, ARTS AND HUMANITIES CABINET Department for Libraries and Archives

March 12, 1998

(1) **725 KAR 1:070**, Standards for instruments presented to a county clerk for recording.

(2) The Kentucky Department for Libraries and Archives 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 June 26, 1998, at 10 am, in the Conference Room of the Kentucky Department for Libraries and Archives, 300 Coffee Tree Road, Frankfort, Kentucky 40601.

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

1. It is requested, in writing, by at least 5 persons, or an administrative body, or 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 June 26, 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. Darrell Gabhart, Manager, Local Records Branch, Kentucky Department for Libraries and Archives, 300 Coffee Tree Road, 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 Department for Libraries and Archives 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 standards for instruments presented to a county clerk for recording is KRS 171.450(1)(c), (2) and 171.520 (1), (3).

(b) The administrative regulation that the Kentucky Department for Libraries and Archives intends to promulgate will not amend an existing administrative regulation.

(c) The necessity and function of the proposed administrative regulation is as follows: To provide standards, as mandated by KRS 171.420 and 171.520, that will improve the management, ensure the preservation and enhance public access of instruments presented to a county clerk for official recording.

(d) The benefits expected from administration regulation are: Improve the overall legibility of instruments lodged for recording in the county clerks office, thereby enhancing the ability of county clerks to fulfill their statutory duty to properly record and make accessible such instruments. Improvements in efficiency and reduction in costs associated with duplication, supplies and storage equipment will be realized by county clerks. Public users of the records will receive better service.

(e) The administrative regulation will be implemented as follows: The regulation will allow ample time for county clerks and others to use any current supplies not meeting standards set by the regulation and to reorder.

CABINET FOR WORKFORCE DEVELOPMENT Department of Vocational Rehabilitation

May 14, 1998

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

(2) The Cabinet for Workforce Development, Department of Vocational Rehabilitation intends to promulgate an administrative regulation 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 June 22, 1998 at 1 p.m., eastern time in the DVR Training Room, 209 Saint Clair Street, Frankfort, Kentucky 40601.

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

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

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

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Assistant, Department of Vocational Rehabilitation, 209 Saint Clair Street, Frankfort, Kentucky 40601.

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

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

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

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

(c) Note: Requests for Notification and the Notice of Intent to Promulgate shall be made available in alternative format, upon request, in accordance with the Americans with Disabilities Act. Persons requesting assistance regarding Department of Vocational Rehabilitation regulations may call toll free 1-800 372-7172 (V/TDD).

(7) Information relating to the proposed administrative regulation:

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

(b) The administrative regulation that the department intends to promulgate will amend 781 KAR 1:030 as follows: Section 2 is being revised to use the 1998 Kentucky Median Adjusted Gross Income, as determined by the U.S. Department of Commerce, as the basis for the department's economic needs test. The requirement in Section 2 that the eligible individual apply 100 percent of the excess income to the rehabilitation program will be deleted.

(c) The necessity and function of the proposed administrative regulation is as follows: Federal regulations applicable to the vocational rehabilitation program permit states to adopt an economic needs test in order to distribute funds more equitably over the entire population of individuals with disabilities. This amendment will update the existing financial needs test, will satisfy federal guidelines and will achieve a more equitable distribution of scarce resources.

(d) The benefits expected from administrative regulation are: The economic needs test allows the department to provide some services based on financial need. Eligible individuals who do not meet the financial aid criteria are required to participate in the cost of their programs. This financial participation encourages the individual's ownership of the program while allowing the department to conserve resources.

(e) The administrative regulation will be implemented as follows: Counseling staff will be advised of the changes. Counselors will apply the economic needs test as a condition for providing vocational rehabilitation services. Individuals who are dissatisfied with any decision may appeal pursuant to 781 KAR 1:010.

KENTUCKY BOARD OF TAX APPEALS

May 15, 1998

(1) Regulation number and title or subject matter if new: **802 KAR 1:010**, Rules of practice and procedure.

(2) The Kentucky Board of Tax Appeals 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 June 25, 1998, at 9 a.m., at Room 111, Capitol Annex, Frankfort, Kentucky.

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

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

(b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 10 days prior to June 25, 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: Robert G. Layton, Staff Attorney, Kentucky Board of Tax Appeals, P.O. Box 2120, Frankfort, Kentucky 40602.

(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 Tax Appeals 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 13B.170(1).

(b) The administrative regulation that the Kentucky Board of Tax Appeals intends to promulgate will amend 802 KAR 1:010, Rules of practice and procedure. It will conform the Kentucky Board of Tax Appeals' rules of practice and procedure to KRS Chapter 13B, which governs the conduct of administrative hearings as of July 15, 1996.

(c) The necessity and function of the proposed administrative regulation is as follows: The proposed administrative regulation is necessary to conform the Kentucky Board of Tax Appeals' rules of practice and procedure to KRS Chapter 13B, which governs conduct of administrative hearings as of July 15, 1996. The proposed administrative regulation will function as the prescribed rules of practice and procedure for all appeals to the Kentucky Board of Tax Appeals.

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

1. To inform the public of new administrative hearing procedures mandated by KRS Chapter 13B which applies to all appeals to the Kentucky Board of Tax Appeals as of July 15, 1996;
2. To provide to parties appealing to the Kentucky Board of Tax Appeals rules of practice and procedure which are consistent with KRS Chapter 13B; and
3. To implement a simpler, fairer and more efficient appeal process while protecting the constitutional due process rights of the parties.

(e) The administrative regulation will be implemented as follows: All appeals to and hearings conducted before the Kentucky Board

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of Tax Appeals shall comply with the proposed administrative regulation, KRS Chapter 13B, and KRS 131.310-.370.

DEPARTMENT OF INSURANCE

May 14, 1998

- (1) **806 KAR 3:131**. Repeal of 806 KAR 3:130.
- (2) The Department of Insurance intends to promulgate an administrative regulation governing the subject matter listed above.
- (3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for June 22, 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 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 June 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: Kentucky Department of Insurance, Attn.: Sharron S. Burton, P.O. Box 517, Frankfort, Kentucky 40602, (502) 564-6032, fax number (502) 564-1456.
- (b) On a request for public hearing, a person shall state:
 1. "I agree to attend the public hearing."; or
 2. "I will not attend the public hearing."
- (6)(a) KRS Chapter 13A provides that persons who desire to be informed of the intent of an administrative body to promulgate an administrative regulation governing a specific subject matter may file a request to be informed by the administrative body.
- (b) Persons who wish to file this request may obtain a request form from the Department of Insurance at the address listed above.
- (7) Information relating to the proposed administrative regulation:
 - (a) The statutory authority for the promulgation of an administrative regulation relating to the subject matter of this administrative regulation is KRS 304.2-110, 1998 RS SB 353, and 1998 RS HB 496 Section 35.
 - (b) The administrative regulation that the Department of Insurance intends to promulgate will not amend an existing administrative regulation. It will repeal 806 KAR 3:130, Liability insurance closed claim reporting.
 - (c) The necessity and function of the proposed administrative regulation is as follows: KRS 304.3-245 required the Commissioner of Insurance to promulgate administrative regulations setting out the manner and form in which closed claim information was to be reported. The commissioner, in accordance with this statutory directive, promulgated 806 KAR 3:130. However, during the 1998 General Assembly, KRS 302.3-245 was repealed by 1998 RS SB 353 and 1998 RS HB 496 Section 35. Therefore, since the statute which authorized the commissioner to promulgate 806 KAR 3:130 no longer exists, this administrative regulation must be repealed.
 - (d) The benefits expected from this administrative regulation are: This administrative regulation will eliminate the need for insurers authorized to transact casualty insurance in the state of Kentucky to report closed claim information to the department. The elimination of this report will be beneficial to the insurers who must prepare the report and to department personnel who are charged with collecting and reviewing the closed claim data. In addition, this administrative regulation will improve the coherence and readability of KRS Chapter 304, Subtitle 3 and the administrative regulations which implement that subtitle.
 - (e) The administrative regulation will be implemented as follows: This administrative regulation will be implemented by repealing 806 KAR 3:130. No longer will closed claim reports be required from insurers authorized to transact casualty insurance in this state.

May 14, 1998

- (1) **806 KAR 9:241**. Repeal of 806 KAR 9:240.
- (2) The Department of Insurance intends to promulgate an administrative regulation governing the subject matter listed above.
- (3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for June 22, 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 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 June 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: Kentucky Department of Insurance, Attn.: Sharron S. Burton, P.O. Box 517, Frankfort, Kentucky 40602, (502) 564-6032, fax number (502) 564-1456.
- (b) On a request for public hearing, a person shall state:
 1. "I agree to attend the public hearing."; or
 2. "I will not attend the public hearing."
- (6)(a) KRS Chapter 13A provides that persons who desire to be informed of the intent of an administrative body to promulgate an administrative regulation governing a specific subject matter may file a request to be informed by the administrative body.
- (b) Persons who wish to file this request may obtain a request form from the Department of Insurance at the address listed above.
- (7) Information relating to the proposed administrative regulation:
 - (a) The statutory authority for the promulgation of an administrative regulation relating to the subject matter of this administrative regulation is KRS 304.2-110 and 1998 RS HB 429.
 - (b) The administrative regulation that the Department of Insurance intends to promulgate will not amend an existing administrative regulation. It will repeal 806 KAR 9:240, Financial institutions licensed as noncredit-related insurance agents.
 - (c) The necessity and function of the proposed administrative regulation is as follows: 806 KAR 9:240 confirmed the applicability of licensure statutes and insurance consumer protections to financial institutions. The provisions of this administrative regulation were enacted by the 1998 General Assembly in HB 429. Therefore, 806 KAR 9:240 is no longer required and must be repealed by the Commissioner of Insurance.

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(d) The benefits expected from this administrative regulation are: Because the provisions of 806 KAR 9:240 were enacted by the 1998 General Assembly, the repeal of this administrative regulation will eliminate any duplicative regulatory provisions regarding the applicability of licensure statutes and insurance consumer protections to financial institutions. In addition, the repeal of 806 KAR 9:240 will eliminate any conflicts which may exist between this administrative regulation and 1998 RS HB 429.

(e) The administrative regulation will be implemented as follows: This administrative regulation will be implemented by repealing 806 KAR 9:240. Financial institutions seeking licensure as an insurance agent will now be governed by 1998 RS HB 429.

April 15, 1998

(1) **806 KAR 17:150**, Health benefit plan rate filing requirements.

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

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for June 22, 1998, at 10 a.m. (ET), at the Kentucky Department of Insurance, 215 West Main Street, Frankfort, Kentucky 40601.

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

1. It is requested, in writing, by at least 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 June 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: Sharron S. Burton, Kentucky Department of Insurance, 215 West Main Street, P.O. Box 517, Frankfort, Kentucky 40602.

(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 Insurance at the address listed above.

(7) Information relating to the proposed administrative regulation:

(a) The statutory authority for the promulgation of an administrative regulation relating to the subject matter of the administrative regulation is KRS 304.17A-095(7).

(b) The administrative regulation that the department intends to promulgate will not amend an existing administrative regulation. It will establish new health benefit plan rate filing requirements for insurers that issue, deliver, or renew health benefit plans in Kentucky.

(c) The necessity and function of the proposed administrative regulation is as follows: KRS 304.17A-095(7) provides that the commissioner may promulgate an administrative regulation to obtain relevant information for health benefit plan rate filings to set forth the format of the filings. This administrative regulation establishes procedures for filing health benefit plan rates in order for the commissioner to obtain relevant information to approve or disapprove the rate filing.

(d) The benefits expected from administrative regulation is as follows: This administrative regulation will permit the department to collect relevant information to approve or disapprove health insurance rate filings. Also, this administrative regulation will insure that rate information is submitted to the department in a uniform and standardized manner.

(e) The administrative regulation will be implemented as follows: The administrative regulation will require insurers to file specific information detailing the company's development of its rates. The department will collect and review the information required by the administrative regulation in order to determine whether the rates should be approved or disapproved. After its review of the filing, the department will issue an appropriate order.

May 15, 1998

(1) **806 KAR 17:210**. Criteria for participation in the Guaranteed Acceptance Program (GAP).

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

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for June 22, 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 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 June 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: Kentucky Department of Insurance, Attn.: Sharron S. Burton, P.O. Box 517, Frankfort, Kentucky 40602, (502) 564-6032, fax number (502) 564-1456.

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

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

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

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

(7) Information relating to the proposed administrative regulation:

(a) The statutory authority for the promulgation of an administrative regulation relating to the subject matter of this administrative regulation is KRS 304.2-110, 1998 RS HB 315 Section 1(19)(b).

(b) The administrative regulation that the Department of Insurance intends to promulgate will not amend an existing administrative regulation. It will establish criteria for an insured's participation in the Guaranteed Acceptance Program (GAP).

(c) The necessity and function of the proposed administrative regulation is as follows: The Commissioner of Insurance is required, pursuant to 1998 RS HB 315 Section 1(19)(b), to establish uniform underwriting standards and a score or rating above which a condition is

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considered to be high-cost. The commissioner is permitted, pursuant to 1998 RS HB 315 Section 1(19)(a), to add to the list of high-cost conditions identified in Section 1(19)(c) of HB 315. In addition, health insurers are required to obtain the commissioner's approval of the insurer's alternative underwriting criteria which, in addition to the high-cost condition list, will determine if an insured is eligible to be included in GAP. The administrative regulation is necessary to establish the criteria for the commissioner's approval of an insurer's alternative underwriting guidelines.

(d) The benefits expected from this administrative regulation are: This administrative regulation will allow persons with certain high-cost illnesses or conditions to purchase health insurance at a more reasonable rate. Additionally, this administrative regulation will allow reimbursement to insurers of Guaranteed Acceptance Program Plan participants for losses incurred on their behalf. Finally, this administrative regulation will establish criteria on which the commissioner may base his approval of an insurer's alternative underwriting guidelines.

(e) The administrative regulation will be implemented as follows: Using information compiled from the health insurance market and the uniform underwriting standards established by this administrative regulation, the department will rate medical conditions to determine whether or not the condition should be included as a high-cost condition. If so, the condition will be added to the high-cost condition list. In rating a condition, the commissioner will consider the severity of the condition and the cost associated with treating that condition. In addition, by using the criteria established by this administrative regulation, the commissioner will approve alternative underwriting guidelines submitted by health insurers. This underwriting criteria will categorize individuals as high-risk and therefore, eligible to participate in GAP.

April 22, 1998

(1) **806 KAR 39:081**. Repeal of 806 KAR 39:080.

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

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for June 22, 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 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 June 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: Kentucky Department of Insurance, Attn.: Sharon S. Burton, P.O. Box 517, Frankfort, Kentucky 40602, phone (502) 564-6032, fax (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 Department of Insurance at the address listed above.

(7) Information relating to the proposed administrative regulation:

(a) The statutory authority for the promulgation of an administrative regulation relating to the subject matter of this administrative regulation is KRS 304.39-350 and 304.2-110(1).

(b) The administrative regulation that the Department of Insurance intends to promulgate will repeal 806 KAR 39:080, Reporting requirements for insurers of motor vehicles regarding payment of personal injury benefits.

(c) The necessity and function of the proposed administrative regulation is as follows: 806 KAR 39:080 requires insurers of motor vehicles to report the amount of payments made by the insurer for personal injuries incurred by their covered Kentucky motorists as a result of an accident using a motor vehicle. Insurers were to report this information through July 14, 1996. Since the duty to report no longer exists, 806 KAR 39:080 should be repealed.

(d) The benefits expected from this administrative regulation are: Insurers of motor vehicles will be assured that the report on the amount of payments made by the insurer for personal injuries incurred by their covered Kentucky motorists as a result of an accident using a motor vehicle will no longer be required by this state.

(e) The administrative regulation will be implemented as follows: No active implementation will be necessary. Insurers will no longer be required to submit to the department the reports necessitated by 806 KAR 39:080.

KENTUCKY RACING COMMISSION

May 11, 1998

Kentucky Racing Commission

(1) Regulation number and title: **811 KAR 1:220**. Harness racing at county fairs.

(2) The Kentucky Racing Commission 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 June 26, 1998, 10 a.m. at the commission offices at 4063 Iron Works Parkway, Building B, Lexington, Kentucky 40511.

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

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

(b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 10 days prior to June 26, 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: Bernie Hettel, Kentucky Racing Commission, 4063 Iron Works Parkway, Building B, Lexington, Kentucky 40511.

(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".

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(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 Kentucky Racing 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 administrative regulation is KRS 230.260(3).

(b) The administrative regulation that the Kentucky Racing Commission intends to promulgate will amend 811 KAR 1:220 in its entirety. It will revamp the county fair regulations governing harness racing at the Kentucky county fairs.

(c) The necessity and function of the proposed administrative regulation is as follows: To bring the county fair regulations up to the standards of other states.

(d) The benefits expected from administrative regulation are: It is determined that updating the program will attract more horses and a higher caliber of horses into the program.

(e) The administrative regulation will be implemented as follows: Changes will be applied as soon as administratively permitted.

CABINET FOR HEALTH SERVICES Department for Public Health Division of Epidemiology and Health Planning

May 12, 1998

(1) **902 KAR 2:090**, Tuberculosis detection, prevention and control.

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

(3) A public hearing to receive oral and written comments on the proposed administrative regulations has been scheduled for June 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 five members; and

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

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

(5)(~~r~~) Persons wishing to request a public hearing should mail their written request to the following address: Mae B. Lewis, Cabinet Regulation Coordinator, Office of the Counsel, Cabinet for Health Services, 275 East Main Street, 4-West, 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 the Administrative Regulation Coordinator, Department for Public Health, Commissioner's Office, 275 East Main Street, Frankfort, Kentucky 40621.

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

(7) Information relating to the proposed administrative regulations.

(a) The statutory authority for the promulgation of an administrative regulation relating to 902 KAR 2:090 is found in KRS 214.034.

(b) The amended administrative regulation that the Cabinet for Health Services, Department for Public Health, intends to promulgate, concerns the requirement for tuberculosis testing of first time enrollees in a Kentucky school.

(c) The necessity, function and conformity of the proposed administrative regulations are as follows: KRS 214.034 was amended by the 1998 General Assembly to delete the requirement that all children enrolling in Kentucky schools for the first time be tested for tuberculosis. KRS 214.034 further states that a local health department with the approval of the Department for Public Health may require children in the health departments jurisdiction to receive TB skin testing when enrolling in a school for the first time. This proposed administrative regulation is being promulgated to comply with this revision of KRS 214.034.

(d) The benefits expected from the administrative regulation are: Parents and guardians will no longer be required to have a child tested for tuberculosis; local health department TB control staff time can be diverted to more effective measures for TB detection, prevention and control; and the school systems will not have to maintain a record of the test.

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

Division of Adult and Child Health

May 15, 1998

(1) **902 KAR 13:010**, Definitions for 902 KAR Chapter 13.

(2) Department for Health 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 June 30, 1998, at 9 a.m., in the Department for Health Services Auditorium, Health Services Building, first floor, 275 East Main Street, Frankfort, Kentucky.

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

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

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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 June 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 General Counsel, Cabinet for Health Services, 275 East Main Street, 4th West, Frankfort, Kentucky 40621, (502) 564-7900, Fax: (502) 564-7573.

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

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

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

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

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

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of an administrative regulation relating to: Training, certification, and recertification standards for emergency medical technicians (EMTs) is: KRS 211.964, HB 132 of the 1998 General Assembly.

(b) The amended administrative regulation that the Department for Health Services intends to promulgate will: Amend definitions for 902 KAR Chapter 13 relating to training, certification, and recertification of emergency medical technicians.

(c) The necessity and function of the proposed administrative regulation is as follows: HB 132 of the 1998 General Assembly confirms the reorganization of the Cabinet for Human Resources and places the Department for Public Health and its programs under the Cabinet for Health Services. KRS 211.964 requires the Cabinet for Health Services to promulgate administrative regulations relating to emergency medical technicians. The function of this administrative regulation is to define terms that shall be used in administrative regulations promulgated by the cabinet relating to emergency medical technicians.

(d) The benefit expected from administrative regulation is: To establish uniform definitions for administrative regulations in 902 KAR Chapter 13 relating to training, certification, and recertification of emergency medical technicians.

(3) The administrative regulation will be implemented as follows: The EMS Branch, Division for Adult and Child Health, Department for Public Health will be responsible for the implementation of the amended administrative regulation.

May 15, 1998

(1) **902 KAR 13:025**, Requirements for EMS educational institutions.

(2) Department for Health 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 June 30, 1998, at 9 a.m., in the Department for Health Services Auditorium, Health Services Building, first floor, 275 East Main Street, Frankfort, Kentucky.

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

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

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

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

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

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

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

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

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of an administrative regulation relating to: The certification of emergency medical technicians is KRS 211.964, HB 132 of the 1998 General Assembly.

(b) The new administrative regulation that the Department for Health Services intends to promulgate will: Establish standards for an agency to be certified as an EMS educational institution to conduct training for persons who wish to become certified as an emergency medical technician-basic (EMT-B), or EMT-first responder. EMS educational institutions will be required to have a chief administrative officer, a chief training officer, a course medical director, course faculty and meet performance standards. The ration of instructors or assistant instructors to students shall be one (1) to ten (10). The certification of EMS educational institutions will supplant the current system of approved implementing agencies. An EMS educational institution may be placed on probation or lose certification for failure to meet the requirements of this administrative regulation.

(c) The necessity and function of the proposed administrative regulation is as follows: HB 132 of the 1998 General Assembly confirmed

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the reorganization of the Cabinet for Human Resources and places the Department for Public Health and its programs under the Cabinet for Health Services. KRS 211.964 requires the Cabinet for Health Services to promulgate administrative regulations relating to emergency medical technicians. The function of this administrative regulation is to establish requirements for training agencies to become certified as an EMS educational institution.

(d) The benefit expected from administrative regulation is: To develop uniform requirements for certification of EMS educational institutions including performance standards for continued certification.

(e) The administrative regulation will be implemented as follows: The EMS Branch, Division for Adult and Child Health, Department for Public Health will be responsible for the implementation of the new administrative regulation.

May 15, 1998

(1) **902 KAR 13:030**, Fees.

(2) Department for Health 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 June 30, 1998, at 9 a.m., in the Department for Health Services Auditorium, Health Services Building, first floor, 275 East Main Street, Frankfort, Kentucky.

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

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

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

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

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

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

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

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

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of an administrative regulation relating to: The establishment of a schedule of fees for examinations, certification, and recertification of the emergency medical technician is KRS 211.964, 211.966, HB 132 of the 1998 General Assembly.

(b) The amended administrative regulation that the Department for Health Services intends to promulgate will: Revise the fee schedule and charges related to testing and issuance of certificates, and for the renewal of certificates for emergency medical technicians.

(c) The necessity and function of the proposed administrative regulation is as follows: HB 132 of the 1998 General Assembly confirmed the reorganization of the Cabinet for Human Resources and places the Department for Public Health and its programs under the Cabinet for Health Services. KRS 211.964 requires the Cabinet for Health Services to promulgate administrative regulations relating to emergency medical technicians. KRS 211.966 permits the cabinet to prescribe a schedule of fees and charges related to the testing, certification, and recertification of emergency medical technicians. The function of this administrative regulation is to establish the fee schedule and charges for testing, certification, and recertification of emergency medical technicians.

(d) The benefit expected from administrative regulation is: To more accurately reflect the administrative costs to the cabinet for training, testing, and issuance of certificates for emergency medical technicians.

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

May 15, 1998

(1) **902 KAR 13:050**, Training, examination, certification and recertification of the emergency medical technician.

(2) Department for Health 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 June 30, 1998, at 9 a.m., in the Department for Health Services Auditorium, Health Services Building, first floor, 275 East Main Street, Frankfort, Kentucky.

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

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

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

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

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

(6)(a) KRS Chapter 13A provides that persons who desire to be informed of the intent of an administrative body to promulgate an

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

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

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

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of an administrative regulation relating to: The training, testing, certification, and recertification of the emergency medical technician is KRS 211.964, HB 132 of the 1998 General Assembly.

(b) The amended administrative regulation that the Department for Health Services intends to promulgate will: Establish standards for applicants, testing, certification and recertification of emergency medical technicians.

(c) The necessity and function of the proposed administrative regulation is as follows: HB 132 of the 1998 General Assembly confirmed the reorganization of the Cabinet for Human Resources and places the Department for Public Health and its programs under the Cabinet for Health Services. KRS 211.964 requires the Cabinet for Health Services to promulgate administrative regulations relating to emergency medical technicians. The function of this administrative regulation is to establish standards for applicants, testing, certification and recertification of emergency medical technicians.

(d) The benefit expected from administrative regulation is: To establish uniform standards for applicants, testing, certification and recertification of emergency medical technicians.

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

May 15, 1998

(1) **902 KAR 13:055**, EMT-B course requirements.

(2) Department for Health 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 June 30, 1998, at 9 a.m., in the Department for Health Services Auditorium, Health Services Building, first floor, 275 East Main Street, Frankfort, Kentucky.

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

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

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

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

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

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

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

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

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

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

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of an administrative regulation relating to: The training, testing, certification, and recertification of emergency medical technicians is KRS 211.964, HB 132 of the 1998 General Assembly.

(b) The new administrative regulation that the Department for Health Services intends to promulgate will: Establish standards for the training course which an EMS educational institution shall utilize for emergency medical technician-basic (EMT-B) training.

(c) The necessity and function of the proposed administrative regulation is as follows: HB 132 of the 1998 General Assembly confirmed the reorganization of the Cabinet for Human Resources and places the Department for Public Health and its programs under the Cabinet for Health Services. KRS 211.964 requires the Cabinet for Health Services to promulgate administrative regulations relating to emergency medical technicians. The function of this administrative regulation is to establish requirements for the EMT-B training course.

(d) The benefit expected from administrative regulation is: To develop uniform requirements that all EMS training institution shall follow in the training of EMT-Bs.

(e) The administrative regulation will be implemented as follows: The EMS Branch, Division for Adult and Child Health, Department for Public Health will be responsible for the implementation of the new administrative regulation.

May 15, 1998

(1) **902 KAR 13:070**, EMT-instructors and EMT-instructor trainers.

(2) Department for Health 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 June 30, 1998, at 9 a.m., in the Department for Health Services Auditorium, Health Services Building, first floor, 275 East Main Street, Frankfort, Kentucky.

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

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

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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 June 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 General Counsel, Cabinet for Health Services, 275 East Main Street, 4th West, Frankfort, Kentucky 40621, (502) 564-7900, Fax: (502) 564-7573.

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

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

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

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

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

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of an administrative regulation relating to: The training, testing, certification, and recertification of the emergency medical technician is KRS 211.964, HB 132 of the 1998 General Assembly.

(b) The amended administrative regulation that the Department for Health Services intends to promulgate will: Establish standards for training, certification and recertification of EMT-instructors; establish an evaluation process for approving new instructors; and eliminate the category of instructor-trainers.

(c) The necessity and function of the proposed administrative regulation is as follows HB 132 of the 1998 General Assembly confirmed the reorganization of the Cabinet for Human Resources and places the Department for Public Health and its programs under the Cabinet for Health Services. KRS 211.964 requires the Cabinet for Health Services to promulgate administrative regulations relating to emergency medical technicians. The function of this administrative regulation is to establish requirements for training, certification and recertification of EMT-instructors.

(d) The benefit expected from administrative regulation is: To establish uniform requirements that all persons shall follow in order to be certified as an EMT-instructor.

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

May 15, 1998

(1) **902 KAR 13:080**, Authorized procedures.

(2) Department for Health 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 June 30, 1998, at 9 a.m., in the Department for Health Services Auditorium, Health Services Building, first floor, 275 East Main Street, Frankfort, Kentucky.

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

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

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

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

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

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

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

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

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of an administrative regulation relating to: The certification of emergency medical technicians is KRS 211.964, HB 132 of the 1998 General Assembly.

(b) The amended administrative regulation that the Department for Health Services intends to promulgate will: Establish authorized procedures under the 1994 National Standard Curriculum which EMT-Bs may perform; identify requirements for pilot programs to test specialized procedures; and permit EMT-Bs to perform certain procedures under the direction of a medical director which EMT-Bs have not been previously authorized to perform.

(c) The necessity and function of the proposed administrative regulation is as follows HB 132 of the 1998 General Assembly confirmed the reorganization of the Cabinet for Human Resources and places the Department for Public Health and its programs under the Cabinet for Health Services. KRS 211.964 requires the Cabinet for Health Services to promulgate administrative regulations relating to emergency medical

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technicians. The function of this administrative regulation is to establish requirements for procedures which an EMT-B shall be authorized to perform.

(d) The benefit expected from administrative regulation is: To establish uniform procedures under the 1994 National Standard Curriculum which an EMT-B may perform; authorize pilot programs to test specialized procedures; and permit additional procedures to be performed by an EMT-B under the direction of a medical director.

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

May 15, 1998

(1) **902 KAR 13:090**, Disciplinary actions.

(2) Department for Health 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 June 30, 1998, at 9 a.m., in the Department for Health Services Auditorium, Health Services Building, first floor, 275 East Main Street, Frankfort, Kentucky.

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

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

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

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

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

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

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

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

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of an administrative regulation relating to: The certification of emergency medical technicians (EMTs) is KRS 211.964, HB 132 of the 1998 General Assembly.

(b) The amended administrative regulation that the Department for Health Services intends to promulgate will: Establish criteria, guidelines and procedures for disciplinary actions which the cabinet may take to deny, suspend, revoke, probate, or restrict a certificate of an EMT-B, EMT-first responder, or instructor.

(c) The necessity and function of the proposed administrative regulation is as follows HB 132 of the 1998 General Assembly confirmed the reorganization of the Cabinet for Human Resources and places the Department for Public Health and its programs under the Cabinet for Health Services. KRS 211.964 requires the Cabinet for Health Services to promulgate administrative regulations relating to emergency medical technicians. The function of this administrative regulation is to establish requirements for taking disciplinary action against the certification of an EMT-B, EMT-first responder, or instructor.

(d) The benefit expected from administrative regulation is: To establish uniform guidelines which the cabinet shall utilize in order to take disciplinary action against the certification of all levels of emergency medical technicians.

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

May 15, 1998

(1) **902 KAR 13:110**, EMT-first responder, training, examination, and certification.

(2) Department for Health 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 June 30, 1998, at 9 a.m., in the Department for Health Services Auditorium, Health Services Building, first floor, 275 East Main Street, Frankfort, Kentucky.

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

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

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

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

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

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

(b) Persons who wish to file this request may obtain a request form from the Administrative Regulation Coordinator, Commissioner's

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Office, Department for Health Services, 275 E. Main Street, Frankfort, Kentucky 40621, or by calling (502) 564-3970 between the hours of 8 a.m. and 4:30 p.m. Monday through Friday.

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

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of an administrative regulation relating to: The certification of emergency medical technician is KRS 211.964, HB 132 of the 1998 General Assembly.

(b) The amended administrative regulation that the Department for Health Services intends to promulgate will: Adopt the requirements of the 1995 Department of Transportation (DOT) National Standard Curriculum; increase the number of hours in the current program for forty (40) to forty seven and one half (47.50) which will allow hours for additional training in acquired immune deficiency syndrome (AIDS) as required by KRS 214.610, oxygen therapy and airway adjuncts, automated external defibrillation, cervical collar application, proper use of sphygmomanometer and stethoscope for blood pressure monitoring, and competency in cardiopulmonary resuscitation.

(c) The necessity and function of the proposed administrative regulation is as follows HB 132 of the 1998 General Assembly confirmed the reorganization of the Cabinet for Human Resources and places the Department for Public Health and its programs under the Cabinet for Health Services. KRS 211.964 requires the Cabinet for Health Services to promulgate administrative regulations relating to emergency medical technicians. The function of this administrative regulation is to establish requirements for the education, training, testing, and certification and recertification of emergency medical technician-first responders (EMT-first responders).

(d) The benefit expected from administrative regulation is: To upgrade the EMT-first responder program in order for Kentucky to meet and exceed the criteria established by the DOT in the EMT-first responder 1995 National Curriculum.

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

May 15, 1998

(1) **902 KAR 13:131**, Repealer administrative regulation for 902 KAR 13:020 and 902 KAR 13:130.

(2) Department for Health 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 June 30, 1998, at 9 a.m., in the Department for Health Services Auditorium, Health Services Building, first floor, 275 East Main Street, Frankfort, Kentucky.

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

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

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

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

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

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

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

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

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of an administrative regulation relating to: The certification of emergency medical technicians is: KRS 211.964, HB 132 of the 1998 General Assembly.

(b) The new administrative regulation that the Department for Health Services intends to promulgate will: Repeal 902 KAR 13:020 and 902 KAR 13:130.

(c) The necessity and function of the proposed administrative regulation is as follows HB 132 of the 1998 General Assembly confirmed the reorganization of the Cabinet for Human Resources and places the Department for Public Health and its programs under the Cabinet for Health Services. KRS 211.964 requires the Cabinet for Health Services to promulgate administrative regulations relating to emergency medical technicians. 902 KAR 13:020 is no longer needed because the applicant requirements for EMT training and certification shall be included in other administrative regulations within 902 KAR Chapter 13 relating to the same subject matter. 902 KAR 13:130 is no longer needed because the requirements for EMT maintenance and discontinuation of a preestablished peripheral intravenous (I.V.) infusion shall be included in 902 KAR 13:080.

(d) The benefit expected from administrative regulation is: To repeal 902 KAR 13:020 and 902 KAR 13:130 which are no longer needed because the requirements of these administrative regulation shall be included in other administrative regulations within 902 KAR Chapter 13.

(e) The administrative regulation will be implemented as follows: The EMS Branch, Division for Adult and Child Health, Department for Public Health will be responsible for the implementation of the new administrative regulation.

May 15, 1998

(1) **902 KAR 14:080**, Class I ground ambulance providers.

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

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

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

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

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

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

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

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

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

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

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of an administrative regulation relating to licensure of ambulance providers is KRS 211.952, 216B.020(4), 216B.042, HB 132 of the 1998 General Assembly.

(b) The amended administrative regulation that the Department for Health Services intends to promulgate will: Permit a Class I ground ambulance provider to develop the format and content of a run form containing a minimum data set in lieu of a state provided form; delete Section 5(8) relating to interfacility and facility to home transportation in which the attending physician determines the ambulance service staff, and delete Section 5(9) which permits transportation of individuals, for whom no medical care is required, with one (1) certified attendant who may also be the driver.

(c) The necessity and function of the proposed administrative regulation is as follows: HB 132 of the 1998 General Assembly confirmed the reorganization of the Cabinet for Human Resources and places the Department for Public Health and its programs under the Cabinet for Health Services. KRS 216B.042 requires that the Cabinet for Health Services regulate health facilities and health services. KRS 211.952(2)(c) requires the Cabinet for Health Services to promulgate administrative regulations for the licensing, inspection, and regulation of ambulance providers. The function of this administrative regulation is to provide minimum licensing requirements for Class I ground ambulance providers.

(d) The benefits expected from administrative regulation are:

1. To comply with KRS 216B.410 as amended by the 1998 General which authorizes the Cabinet for Health Services to establish a required minimum data set; to require reporting of the data to the cabinet; authorizes the cabinet to develop a run report form for the use of each class of ambulance provider containing the information that complies with the minimum data set; and permit ambulance providers to submit data to the cabinet by either sending copies of the completed run report form or by transmission in an electronic format.

2. Allow Kentucky to comply with national standards for minimum hospital data sets for comparative analysis, improved data collection, and reporting.

3. Provide ground ambulance providers more flexibility in collecting and reporting required data.

4. Require Class I ground ambulances to be staffed by two (2) certified emergency medical services personnel during nonemergency patient transport.

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

Office of Inspector General

May 15, 1998

(1) **902 KAR 20:081** - Operations and services; home health agencies.

(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 June 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 June 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.

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(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 20:081, Section 3(4) to extend the time for the physician to review and sign changes in treatment plans from 7 days to 21 days. Section 4 will be amended to require preemployment conviction information as a condition of employment. The regulation will be amended to address the prescription of drugs and medicine by clinical personnel acting within the limits of their statutory scope of practice. Other amendments 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 home health agencies.

(d) The benefits expected are that the amendments will extend the time for the physician to sign changes in treatment plans, and will make preemployment conviction information a condition of employment for applicants. Other categories of health professionals will be permitted to perform tasks presently restricted to physicians and dentists.

(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.

May 15, 1998

(1) **902 KAR 20:360** - Abortion facilities.

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

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for June 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 June 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 administrative regulations relating to abortion facilities is SB 217 enacted during the 1998 Regular Session of the General Assembly.

(b) The cabinet intends to promulgate 902 KAR 20:360 to establish licensure requirements for abortion facilities.

(c) The necessity, function, and conformity of the proposed administrative regulation is as follows: To comply with the requirements of SB 217 in the establishment of licensure standards and procedures for abortion facilities.

(d) The benefits expected are that abortion facilities will be regulated 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.

Division of Adult and Child Health

May 1, 1998

(1) **902 KAR 55:010**, Licensing of manufacturers and wholesalers.

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

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for 9 a.m., June 30, 1998, 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, agrees, in writing, to be present at the public hearing.

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

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Regulation Coordinator, Office of the Counsel, Cabinet for Health Services, 275 East Main Street, 4-West, 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 by writing the Administrative Regulation Coordinator, Commissioner's Office, Department for Public Health, 275 E. Main Street, Frankfort, Kentucky 40621, or by calling 502-564-3970 between the hours of 8 a.m. and 4:30 p.m. Monday through Friday.

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

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of an administrative regulation relating to 902 KAR 55:010 is KRS 194.050, 211.090, 218A.150, 218A.250, EO 96-862.

(b) The amended administrative regulation that the Department for Public Health intends to promulgate concerns licensing of manufacturers and wholesalers of controlled substances.

(c) The necessity, function and conformity of the proposed administrative regulation is as follows: KRS 218A.150, 218A.160 and 218A.170 authorize the Cabinet for Health Services to license manufacturers, wholesalers, distributors and repackers of controlled substances. It is the purpose of this administrative regulation to establish uniform requirements for such licenses. Executive Order 96-862, effective July 2, 1996, reorganizes the Cabinet for Human Resources, and places the Department for Public Health and its programs under the Cabinet for Health Services.

The benefits expected from administrative regulation are: uniform licensure requirements, increased access to records of controlled substances distributed into Kentucky and slightly increased revenue.

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

May 1, 1998

(1) 902 KAR 55:030, Schedule IV substances.

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

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for 9 a.m., June 30, 1998, 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 June 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, 4-West, 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 by writing the Administrative Regulation Coordinator, Commissioner's Office, Department for Public Health, 275 E. Main Street, Frankfort, Kentucky 40621, or by calling 502-564-3970 between the hours of 8 a.m. and 4:30 p.m. Monday through Friday.

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

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of an administrative regulation relating to 902 KAR 55:045 is KRS 194.050, 211.020, 218A.020(1), (2) and 218A.100.

(b) The amended administrative regulation that the Department for Public Health intends to promulgate concerns Schedule IV substances. The amendment will conform to recently amended federal regulations.

(c) The necessity, function and conformity of the proposed administrative regulation is as follows: Executive Order 96-862, effective July 2, 1996, reorganizes the Cabinet for Human Resources, establishes and creates the Cabinet for Health Services, changes the name of the Department for Health Services to Department for Public Health, and places the Department for Public Health and its programs under the Cabinet for Health Services. KRS 218A.100 authorizes the Cabinet for Health Services to place a substance in Schedule IV if it finds that:

1. The substance has a low potential for abuse relative to substances in Schedule III;
2. The substance has currently accepted medical use in treatment in the United States; and
3. Abuse of the substance may lead to limited physical dependence or psychological dependence relative to the substances in Schedule III.

In addition, KRS 218A.020(3) provides that if any substance is designated, rescheduled, or deleted as a controlled substance under

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a federal law and notice of the designation, rescheduling or deletion is given to the cabinet, the cabinet may similarly control the substance by administrative regulation. The Cabinet for Health Services, after considering the criteria, designates the substances set forth in this administrative regulation as Schedule IV controlled substances.

(d) The benefits expected from administrative regulation are: Conformity with federal regulation.

(e) The administrative regulation will be implemented as follows: The Division of Adult and Child Health, Department for Public Health will be responsible for the implementation of this administrative regulation.

May 1, 1998

(1) **902 KAR 55:045**, Exempt prescription products.

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

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for 9 a.m., June 30, 1998, 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 June 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, 4-West, 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 by writing the Administrative Regulation Coordinator, Commissioner's Office, Department for Public Health, 275 E. Main Street, Frankfort, Kentucky 40621, or by calling 502-564-3970 between the hours of 8 a.m. and 4:30 p.m. Monday through Friday.

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

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of an administrative regulation relating to 902 KAR 55:045 is KRS 194.050, 211.020, 218A.020(3), 218A.250.

(b) The amended administrative regulation that the Department for Public Health intends to promulgate concerns exempt prescription products. The amendment will conform to recently amended federal regulations.

(c) The necessity, function and conformity of the proposed administrative regulation is as follows: Executive Order 96-862, effective July 2, 1996, reorganizes the Cabinet for Human Resources, establishes and creates the Cabinet for Health Services, changes the name of the Department for Health Services to Department for Public Health, and places the Department for Public Health and its programs under the Cabinet for Health Services. KRS 218A.020(3) provides that if any controlled substance is designated, rescheduled, or deleted as a controlled substance under federal law and notice is given to the Cabinet for Health Services, the Cabinet for Health Services may similarly control the substance under KRS Chapter 218A by administrative regulation. The purpose of this administrative regulation is to exempt certain stimulant or depressant products from the provisions of KRS Chapter 218A that have been exempted pursuant to federal regulation.

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

(e) The administrative regulation will be implemented as follows: The Division of Adult and Child Health, Department for Public Health will be responsible for the implementation of this administrative regulation.

May 1, 1998

(1) **902 KAR 55:105**, Requirements for controlled substance prescription blanks.

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

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for 9 a.m., June 30, 1998, 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 June 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, 4-West, 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

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

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

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

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of an administrative regulation relating to 902 KAR 55:045 is KRS 194.050, 211.020, 218A.250 and House Bill 115 §14.

(b) The amended administrative regulation that the Department for Public Health intends to promulgate concerns the requirements for controlled substance prescription blanks.

(c) The necessity, function and conformity of the proposed administrative regulation is as follows: House Bill 115 §14 authorizes the cabinet to promulgate administrative regulations that establish security requirements for prescription blanks used by practitioner to write a prescriptions for a controlled substance. The purpose of this administrative regulation is to establish requirements that will reduce the ability of individuals to forge or alter prescriptions or prescription blanks for controlled substances.

(d) The benefits expected from administrative regulation are: Decreased diversion of prescription drugs by forgery or alteration of prescription blanks.

(e) The administrative regulation will be implemented as follows: The Division of Adult and Child Health, Department for Public Health will be responsible for the implementation of this administrative regulation.

May 1, 1998

(1) **902 KAR 55:110**, Monitoring system for prescription controlled substances.

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

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for 9 a.m., June 30, 1998, 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 June 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, 4-West, 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 by writing the Administrative Regulation Coordinator, Commissioner's Office, Department for Public Health, 275 E. Main Street, Frankfort, Kentucky 40621, or by calling 502-564-3970 between the hours of 8 a.m. and 4:30 p.m. Monday through Friday.

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

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of an administrative regulation relating to 902 KAR 55:110 is KRS 194.050, 211.090, 218A.250, EO 96-862, HB 115 of the 1998 General Assembly.

(b) The amended administrative regulation that the Department for Public Health intends to promulgate concerns the monitoring system for prescription controlled substances.

(c) The necessity, function and conformity of the proposed administrative regulation is as follows: Executive Order 96-862, effective July 2, 1996, reorganizes the Cabinet for Human Resources, establishes and creates the Cabinet for Health Services, changes the name of the Department for Health Services to Department for Public Health, and places the Department for Public Health and its programs under the Cabinet for Health Services. HB 115 of the 1998 General Assembly directs the Cabinet for Human Resources to establish an electronic system for monitoring schedule II, III, IV, and V controlled substances that are dispensed in the Commonwealth or dispensed to an address within the Commonwealth. The purpose of the system is to enable regulatory or law enforcement agencies to address violations of the KRS Chapter 218A. The purpose of this administrative regulation is to set forth criteria for the reporting of prescription data, the provision of reports to certain persons, and a waiver procedure for any dispenser who does not have an automated recordkeeping system.

(d) The benefits expected from administrative regulation are: Decreased prescription drug fraud and abuse.

(e) The administrative regulation will be implemented as follows: The Division of Adult and Child Health, Department for Public Health will be responsible for the implementation of this administrative regulation.

May 1, 1998

(1) **902 KAR 55:115**, Drug possession by hospice or home health agency.

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

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(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for 9 a.m., June 30, 1998, 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, agrees, in writing, to be present at the public hearing.

(b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 10 days prior to June 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, 4-West, 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 by writing the Administrative Regulation Coordinator, Commissioner's Office, Department for Public Health, 275 E. Main Street, Frankfort, Kentucky 40621, or by calling 502-564-3970 between the hours of 8 a.m. and 4:30 p.m. Monday through Friday.

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

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of an administrative regulation relating to 902 KAR 55:115 is KRS 194.050, 211.090, 217.125, HB 649 of 1998 GA.

(b) The amended administrative regulation that the Department for Public Health intends to promulgate concerns drug possession by a hospice or home health agency.

(c) The necessity, function and conformity of the proposed administrative regulation is as follows: HB 649 of the 1998 General Assembly authorizes the Cabinet for Health Services to promulgate administrative regulations that implement the possession of certain drugs by a hospice or home health agency. The purpose of this administrative regulation is to set forth criteria that a pharmacy, hospice or home agency must follow in order to insure that drugs belonging to a pharmacy, that are stored in a hospice or home health agency, are safe and effective for administration to patients.

(d) The benefits expected from the administrative regulation are: Access to certain drugs by patients whose medical needs require rapid administration of these drugs.

(e) The administrative regulation will be implemented as follows: The Division of Adult and Child Health, Department for Public Health will be responsible for the implementation of this administrative regulation.

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

May 15, 1998

(1) **904 KAR 2:001**, Definitions; **904 KAR 2:020**, Child Support Enforcement Program: confidentiality and cooperative agreements; **904 KAR 2:390**, Child Support Enforcement Program: paternity establishment; **904 KAR 2:400**, Establishment, review, and modification of child support and medical support orders.; **904 KAR 2:410**, Child support collection and distribution.

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

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

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

1. It is requested, in writing, by at least 5 persons, or an administrative body, or an association having at least 5 members; and
2. A minimum of 5 persons, or the administrative body or 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 June 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: Judy Trigg, Regulation Coordinator, Cabinet for Families and Children, 275 East Main Street, 4th West, Frankfort, Kentucky 40621, (502) 564-7900, FAX: (502) 564-7573.

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

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

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

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

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

(7) Information relating to the proposed administrative regulations.

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(a) The statutory authority for the promulgation of an administrative regulation relating to child support is KRS 186.570, 194.050, 205.710 to 205.800, 213.046, 405.430, 405.520, 406.021, 406.025, 42 USC 651 et seq. and House Bills 130, 159 and 161 enacted by the 1998 General Assembly.

(b) The administrative regulations that the Department for Social Insurance intends to promulgate will create requirements regarding a state registry of support orders and directory of new hires; a central disbursement unit; data matches with financial institutions; income withholding including pensions, retirement from previously excluded occupations; liens, levies and administrative subpoenas; denial or suspension of licenses, certifications, passports or permits to carry concealed weapons; and cold check penalties. These amendments will bring Kentucky in compliance with mandatory provisions of 42 USC 651 et seq.

(c) The necessity, function and conformity of the proposed administrative regulations is as follows: The amendments to these administrative regulations are necessary to implement the mandated requirements found in 42 USC 651 et seq., which became effective with the passage of the Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA) of 1996. PRWORA mandates that states enact legislation which would give them authority to implement provisions of this act. The proposed administrative regulations will implement the child support legislation passed in the 1998 session of the General Assembly. State compliance with this act will prevent the loss of federal funds. The Cabinet for Families and Children is required to include the mandatory provisions of 42 USC 651 et seq. in the Title IV-D state plan. These administrative regulations are necessary to:

1. Set forth procedures for the denial or suspension of driver's, occupational, professional, recreational or sporting licenses or certifications and to clarify existing language concerning driver's license suspension.
2. Set forth procedures for safeguarding records if the cabinet determines reasonable cause to believe evidence of domestic violence or child abuse.
3. Prescribe the process by which the cabinet transfers a notice of provision of health care coverage if the obligated parent changes employers.
4. Include the expanded definition of "duty of support", and "income" as provided by KRS 205.710 Sections (5) and (10)(a).
5. Specify the process by which the child support agency shall issue administrative subpoenas and liens against real and personal property.
6. Prescribe the means by which the agency will provide automated methods to identify orders eligible for review, notify parents of the right to review, provide parties to the establishment or modification of a child support obligation notification and to specify the process by which either party may contest an adjustment modification.
7. Implement provisions for a state case registry of support orders, a directory of new hires and a central disbursement unit to collect and disburse child support payments and assigned arrears in accordance with 42 USC sec. 651 et seq.
8. Set forth the terms for the agency's agreements with financial institutions for matching records, prescribe how assets and property shall be identified and surrendered, establish the amount of penalty for noncompliance or negligence in disclosure, establish a reasonable fee to be paid by the cabinet and provide for the release of wage and financial data to the United States Social Security Administration.
9. Set forth provisions for attempting to locate custodial and noncustodial parents, extending location services to parents in parental kidnapping cases, to make or to enforce child custody or visitation orders, and the disclosure of location information by businesses.
10. Prescribe the agency exchange of information with only certified consumer reporting agencies.
11. Specify the process for the voluntary acknowledgment of paternity without the requirement for judicial or administrative proceedings, registration of paternity by Vital Statistics, rescission of acknowledgment, legal consequences and cabinet's payment for genetic testing.
12. Prescribe that the social security number of each party be required on all legal proceedings of the court; where there is reasonable evidence of domestic violence or child abuse, the court or its agent is to determine whether disclosure of information is harmful to parent or child and act accordingly; and to provide for concurrent jurisdiction in circuit and district courts in certain cases.
13. Provide that the cabinet may seek to void the transfer of property or income or obtain a settlement in the best interests of the child support creditor when fraudulent conveyance is determined by a court.
14. Set forth provisions for the cabinet, in cases in which past due support is owed for a child receiving public assistance, to issue an administrative or judicial order requiring the obligated parent to participate in work activities.
15. Prescribe withholding without benefit of a hearing if arrearage is equal to one month or if there is failure to secure ordered health coverage. Withholding shall be paid based on the employer's payment schedule but at least once monthly.
16. Provide that bills for testing, pregnancy and childbirth be regarded as prima facie evidence without third party testimony.
17. Make technical changes.
18. Revise the CS-122, Advance Notice of Intent to Collect Past Due Support, to provide for federal administrative offset.
19. Include the new definitions of "initiating state" and "responding state" as provided by KRS 407.5101.

(d) The benefits expected from administrative regulation are: The amendments to these administrative regulations will bring the cabinet in compliance with federal mandates of 42 USC 651 et seq., and thus, prevent the loss of federal funds. Also, these amendments will comply with state statutory requirements.

(e) The administrative regulations will be implemented as follows: The Cabinet for Families and Children, the Department for Social Insurance, will be responsible for implementing the administrative regulations. The local registrar of the Office of Vital Statistics, Health Services Cabinet, will be responsible to provide for voluntary acknowledgments of paternity services as directed by the State Registrar.

Department for Social Services

April 17, 1998

- (1) **905 KAR 2:160**, Child day care assistance program.
- (2) The Department for Social Services 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 June 30, 1998 at 9 a.m., in the Department for Health Services Auditorium, Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky.
- (4)(a) The public hearing will be held if:
 1. It is requested, in writing, by at least 5 persons, or an administrative body, or an association having at least 5 members; and

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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 June 30, 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: Judy Trigg, Regulations Coordinator, Office of General Counsel, Cabinet for Families and Children, 275 East Main Street, 4th West, Frankfort, Kentucky 40621, (502) 564-7900.

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

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

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

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

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

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of an administrative regulation relating to 905 KAR 2:160, Child day care assistance program is KRS 194.050, 199.892, 199.8994, 42 USC 601 et seq., 7 USC 2015 (b), 45 CFR 98 and EO 96-862, HB 321 (1998).

(b) The administrative regulation that the Department for Social Services intends to promulgate will replace 905 KAR 2:140, Child day care programs. This administrative regulation shall establish the procedure for determining eligibility for subsidized child care payments, identifies parental rights and responsibilities, state and child care provider requirements, establishes maximum child care payment rates, a parental child care fee schedule and procedures for unregulated providers to become enrolled and meet the minimum health and safety standards requirements pursuant to 45 CFR 98.16.

(c) The necessity, function and conformity of the proposed administrative regulation is as follows: KRS 194.050 and 199.8994 authorize the Cabinet for Families and Children to adopt regulations as are necessary to implement programs mandated by federal law, or to qualify for receipt of federal funds and as are necessary to cooperate with federal agencies for the proper administration of the cabinet and its programs and to provide uniform administration of child day care funds. This administrative regulation shall establish the procedure for determining eligibility for subsidized child care payments, identifies parental rights and responsibilities, state and child care provider requirements, establishes maximum child care payment rates, a parental child care fee schedule and procedures for unregulated providers to become enrolled and meet the minimum health and safety standards requirements pursuant to 45 CFR 98.16.

(d) The benefits expected from this administrative regulation are: The cabinet or designee will operate 1 program for the provision of child care services rather than 6 separate programs providing eligible families with simplified access throughout the Commonwealth. The cabinet or designee shall comply with provisions of the Social Services Block Grant, Food Stamp Employment and Training Program and the Child Care Development Block Grant as required or amended by 42 USC 601 et seq. as follows:

Eligible Families: Child under the age of 13, or under the age of 18 if physically or mentally incapable of caring for himself or the child is under court supervision. Family needs child care for child protection, to work, or to participate in K-TAP. Family income at or below 133% of poverty at the time of application and 150% of poverty at the time of reauthorization unless the child is referred by DSS for child protection, the family is receiving benefits as governed by the Food Stamp Employment and Training Program, or the family's K-TAP case has been discontinued and needs child care assistance to accept or retain employment. Families whose K-TAP case has been discontinued and needs child care assistance to accept or retain employment shall be eligible for 12 consecutive months from the date of discontinuance as long as the families income does not exceed 85% of state median income. All income of adult family members earned and unearned, with the exception of 1 time payments is counted. Additional requirements may be identified relative to release of information by enrolled providers, limitations on enrollment of providers, and use of funds as identified by the Child Care Advisory Council as enacted by the 1998 General Assembly.

Eligible Providers: Eligible providers include licensed, certified, and enrolled providers as well as relatives (grandparent, great grandparent, aunt, uncle and sibling, who resides in a separate residence). Persons living in the household are not eligible for child care payments, for a child living in the home.

Payment Rates: The proposed payment rates vary by type of provider, age of the child, needs of the child and geographic area.

Child Care Maximum Payment Rates

West/East Region (Districts #1-5, 8-13)

	License		Certified		Enrolled/Relative	
	FD	PD	FD	PD	FD	PD
Infant/Toddler	13	8	12	7	9	5
Preschool	13	8	13	8	9	5
School Age	13	8	12	7	9	5

Central Kentucky Region (Districts #1-6, 7, 14, and 15)

	License		Certified		Enrolled/Relative	
	FD	PD	FD	PD	FD	PD
Infant/Toddler	16	10	15	9	12	7
Preschool	15	9	15	9	11	6
School Age	14	8	15	9	10	5

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Licensed programs accredited by NAEYC (National Association for the Education of Young Children) and certified programs accredited by NAFDC (National Association for Family Day Care) may be paid an additional \$1 per day, if the general public is charged at least that amount. Licensed or certified providers providing care for special needs child or providing nontraditional care for a child may be paid an additional \$1 per day, if the general public is charged at least that amount. Weekly maximums have been dropped, fulltime and parttime have been defined as 5 or more hours per day or less than 5 hours per day with part-day rates being capped at approximately 60% of the full-time rate.

Payment Policies: In order to serve more families, the following payment policies have been proposed: Payments shall be made on an enrollment basis, with the cabinet or designee enrolling children only for the amount of child care needed. Payments shall only be made for part-time arrangements for those needing only part-time care unless part-time is not available. No payment for private kindergarten unless public kindergarten hours does not permit the parent to work or participate in K-TAP. Families are not eligible for subsidies when alternative programs are available and accessible. e.g., Head Start, state preschool, PACE.

Sliding Copayment Scale: No copays for families with income below \$700 per month. The fees for families at upper income levels approach the maximum payment rate for 1 child. Families will gradually increase their payments rather than experiencing a large increase when their eligibility for subsidy ends.

(e) The administrative regulation will be implemented as follows: The Department for Social Services and designee under contract will implement this administrative regulation.

CABINET FOR HEALTH SERVICES Department for Medicaid Services

May 15, 1998

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

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

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for June 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 June 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 - 4C, 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 pharmacy services and amounts payable for drugs are KRS 194.050, SB 351 and HB 132 of the 1998 General Assembly.

(b) The administrative regulation that the Department for Medicaid Services intends to promulgate will amend 907 KAR 1:019, Pharmacy services, and 907 KAR 1:021, Amounts payable for drugs, to revise prior authorization policy and procedures for an outpatient recipient including long term care recipients, revise drug coverage for brain injury and ventilator dependent recipients in a long term care facility to comply with nursing facility regulations, establish drug class parameters to decrease inappropriate use of certain classes of drugs and revise prior authorization criteria accordingly, implement policy change regarding coverage for legend and over-the-counter drugs, establish consistent wording regarding brand drugs versus generic drugs to be consistent with HCFA guidelines. Also, to establish consistency with regulations 907 KAR 1:673 and 907 KAR: 1:002, revise reimbursement amount for dispensing fees and unit dose packaging, require a recipient in an outpatient setting or someone on their behalf to sign for receipt of medications, incorporate guidelines for measuring outcomes and quality issues regarding Kentucky Medicaid Health Care Partnerships, include provisions mandated by SB 351 and other legislation of the 1998 General Assembly and make minor policy clarifications.

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

(d) The benefits expected from administrative regulation are: Decrease inappropriate use of drugs for an outpatient as well as a recipient in a long term care facility, decrease fraud or possible abuse by requiring a recipient in an outpatient setting or someone on their behalf to sign for receipt of medication, make minor policy clarifications, and eliminate wording inconsistencies.

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

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May 15, 1998

(1) **907 KAR 1:026**, Dental 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 June 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 June 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 dental services are KRS 194.050, 205.520, HB 132 of 1998 GA and KRS Chapter 13A.

(b) The administrative regulation that the Department for Medicaid Services intends to promulgate will increase reimbursement rates for dental services, add dental sealants to the scope of coverage, and provide policy clarification and consider the revision of dental policy as it relates to x-rays.

(c) The necessity, function and conformity of the proposed administrative regulation is as follows: This administrative regulation sets forth the provisions relating to dental services for which payment shall be made by the Medicaid Program on behalf of both the categorically needy and the medically needy.

(d) The benefits expected from administrative regulation are: increasing dental reimbursement rates, the addition of dental sealants and dental manual policy clarification.

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

May 15, 1998

(1) **907 KAR 1:038**, Hearing and Vision Program 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 June 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 June 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 907 KAR 1:038 are KRS 205.520, 194.050,

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and HB 132 of the 1998 GA.

(b) The administrative regulation that the Department for Medicaid Services intends to promulgate will amend 907 KAR 1:038, Hearing and Vision Program services, to delete references to noncoverage of binaural hearing aids and to incorporate new Hearing Program Manual by reference. This policy change is a result of HB 321, 1998 GA. The administrative regulation is also promulgated to make minor policy clarifications.

(c) The necessity, function and conformity of the proposed administrative regulation is as follows: This administrative regulation sets forth the provisions relating to the hearing services and vision program services for which payment shall be made by the Medicaid Program for both categorically needy and medically needy individuals.

(d) The benefits expected from administrative regulation are: Increased access to hearing services for Kentucky Medicaid recipients.

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

May 15, 1998

(1) **907 KAR 1:626**, Reimbursement of dental 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 June 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 June 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 (VTDD).

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of an administrative regulation relating to reimbursement of dental services are KRS 194.050, 205.520, HB 132 of 1998 GA and KRS Chapter 13A.

(b) The administrative regulation that the Department for Medicaid Services intends to promulgate will increase reimbursement rates which will increase access for Medicaid recipients, add dental sealants to the scope of coverage, to provide policy clarification and consider the revision of dental policy as it relates to x-rays.

(c) The necessity, function and conformity of the proposed administrative regulation is as follows: This administrative regulation sets forth the method for determining the amount payable by the cabinet for each dental service.

(d) The benefits expected from administrative regulation are: increasing dental reimbursement rates, the addition of dental sealants and dental manual policy clarification.

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

May 15, 1998

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

(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 June 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 June 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:

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

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

(b) Persons who wish to file this request may obtain a request 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 coverage and payments for the Kentucky Early Intervention Program Services provided through an agreement with state Title V agency are KRS 194.050, 200.660(7), and HB 132 of the 1998 General Assembly.

(b) The administrative regulation that the Department for Medicaid Services intends to promulgate will amend 907 KAR 1:720, Coverage and payments for the Kentucky Early Intervention Program services provided through an agreement with state Title V agency to amend reimbursement rates for providing early intervention services and to implement intensive and tertiary evaluations. The administrative regulation will be amended to make minor policy clarifications and to make technical formatting and drafting changes to comply with KRS Chapter 13A requirements.

(c) The necessity, function and conformity of the proposed administrative regulation is as follows: This administrative regulation sets forth the requirements for coverage and payments for early intervention services provided through an agreement with the state Title V agency, the Department for Public Health.

(d) The benefits expected from this administrative regulation amendment are: To lower costs, improve practices, clarify intent and implement new initiatives.

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

Department for Mental Health and Mental Retardation Services Division of Substance Abuse

April 10, 1998

(1) **908 KAR 1:310.** Licensure and certification standards and administrative procedures for driving under the influence education and treatment programs.

(2) The Department for Mental Health/Mental Retardation Services intends to amend the administrative regulation governing the subject matter listed above.

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

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

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

(b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 10 days prior to June 30, 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: Mae B. Lewis, Cabinet Regulation Coordinator, Cabinet for Health Services, Office of 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 Mental Health and Mental Retardation Services, Division of Administrative & Financial Management, 100 Fair Oaks Lane, 4E-C, 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 the Licensure and Certification Standards and Administrative Procedures for Driving Under the Influence Education and Treatment Programs is KRS 189A.040.

(b) The administrative regulation that the Department for Mental Health and Mental Retardation Services intends to promulgate will amend 908 KAR 1:310. This regulation will mandate the use of a new assessment instrument, change the credentialing requirements for the certification of assessors and make the licensure requirements consistent with administrative regulation 908 KAR 1:370. In addition, it will strengthen the procedure for providing oversight and technical assistance to the programs.

(c) The necessity and function and conformity of the amendments to the administrative regulation is as follows: To promulgate changes related to mandating the use of a new assessment instrument, which will help an assessor distinguish between alcohol abuse and alcohol dependence more effectively; changing the credentialing requirements for an assessor to help ensure the delivery of quality services; and improving the procedures for the Division of Substance Abuse to provide oversight and technical assistance to the programs.

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(d) The benefits expected from the amendments to this administrative regulation are: To improve the quality of education and treatment services delivered to offenders convicted under KRS Chapter 189A. The new assessment instrument and increased credentialing requirements for assessors should help to ensure that offenders will receive education and treatment services more appropriate to their needs. This should improve program outcomes and help reduce recidivism.

May 15, 1998

(1) **908 KAR 2:020.** Personnel rules for local board.

(2) The Department for Mental Health/Mental Retardation Services intends to amend the administrative regulation governing the subject matter listed above.

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

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

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

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

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

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

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

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

(b) Persons who wish to file this request may obtain a request from the Administrative Regulation Coordinator, Department for Mental Health/Mental Retardation Services, Division of Administration and Financial Management, 100 Fair Oaks Dr. (4th Floor), Frankfort, Kentucky 40621.

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

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of an administrative regulation related to personnel rules for local boards is KRS 210.450.

(b) The administrative regulation that the Department for Mental Health/Mental Retardation Services intends to promulgate will amend 908 KAR 2:020. This regulation will eliminate requirements that duplicate those set forth at 902 KAR 20:091, Section 3(3)(e).

(c) The necessity and function of the amendments to the administrative regulation is as follows: To specify acceptable standards for personnel administration and make the requirements related to personnel administration of the local boards consistent with licensing standards set forth at 902 KAR 20:091.

(d) The benefits expected from the amendments to this administrative regulation are: To reduce duplicative oversight activities within the cabinet, and to update standards.

(e) The administrative regulation will be implemented as follows: By the Department for Mental Health and Mental Retardation, Cabinet for Health Services.

May 15, 1998

(1) **908 KAR 2:030.** Board structure and operation; eligibility for state grants.

(2) The Department for Mental Health/Mental Retardation Services intends to amend the administrative regulation governing the subject matter listed above.

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

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

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

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

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

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

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

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

(b) Persons who wish to file this request may obtain a request from the Administrative Regulation Coordinator, Department for Mental Health/Mental Retardation Services, Division of Administration and Financial Management, 100 Fair Oaks Dr. (4th Floor), Frankfort, Kentucky 40621.

(c) NOTE: Requests for Notification and the Notice of Intent to Promulgate shall be made available in another format upon request, in accordance with the American With Disabilities Act. Persons requesting assistance with Cabinet for Health Services' regulations may call toll

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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 mental health and mental retardation boards' plans and budgets and funding allocations is KRS 210.440. The authority for administrative regulations related to operational standards is KRS 210.450.

(b) The administrative regulation that the Department for Mental Health/Mental Retardation Services intends to promulgate will amend 908 KAR 2:030.

(c) The necessity and function of the amendments to the administrative regulation is as follows: To specify amended requirements for the content of regional mental health and mental retardation boards' annual plans and budgets in an ordinary topical regulation and reduce the amount of material in the manuals incorporated by reference at 908 KAR 2:060. This will unify those requirements. In addition the amendments will specify updated operational standards and make language and format changes to conform to KRS Chapter 13A.

(d) The benefits expected from the amendments to this administrative regulation are: To simplify required plan and budget requirements at the local board level; to streamline the department's review and approval process for regional plans and budgets; to update operational standards in accordance with modern programming and business practices. The resulting simplification will make it easier for regulated entities as well as other interested parties and the general public to determine the applicable requirements.

(e) The administrative regulation will be implemented as follows: By the Department for Mental Health and Mental Retardation Services.

May 15, 1998

(1) **908 KAR 2:050.** Formula for allocation of funds.

(2) The Department for Mental Health/Mental Retardation Services intends to amend the administrative regulation governing the subject matter listed above.

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

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

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

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

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

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

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

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

(b) Persons who wish to file this request may obtain a request from the Administrative Regulation Coordinator, Department for Mental Health/Mental Retardation Services, Division of Administration and Financial Management, 100 Fair Oaks Dr. (4th Floor), Frankfort, Kentucky 40621.

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

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of an administrative regulation relating to funding allocations is KRS 210.420.

(b) The administrative regulation that the Department for Mental Health/Mental Retardation Services intends to promulgate will amend 908 KAR 2:050.

(c) The necessity and function of the amendments to the administrative regulation is as follows: To specify fund allocation procedures that will be used in future funding cycles in accordance with KRS 210.420 and to make language and format changes in accordance with KRS Chapter 13A.

(d) The benefits expected from the amendments to this administrative regulation are: To harmonize Department for Mental Health and Mental Retardation Services funding allocation procedures with amended requirements for board structure and operations; eligibility for state grants set forth at 908 KAR 2:030 and amended requirements of request for funding instructions, program policies and standards and reimbursement guidelines set forth at 908 KAR 2:060.

(e) The administrative regulation will be implemented as follows: The Department for Mental Health and Mental Retardation in the Cabinet for Health Services will be responsible for implementation.

May 15, 1998

(1) **908 KAR 2:060.** Mental health and mental retardation manuals for plan and budget instructions, program policies and standards, and reimbursement guidelines.

(2) The Department for Mental Health/Mental Retardation Services intends to amend the administrative regulation governing the subject matter listed above.

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

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

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

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

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

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

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

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

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

(b) Persons who wish to file this request may obtain a request from the Administrative Regulation Coordinator, Department for Mental Health/Mental Retardation Services, Division of Administration and Financial Management, 100 Fair Oaks Dr. (4th Floor), Frankfort, Kentucky 40621.

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

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of an administrative regulation relating to mental health and mental retardation manuals for plan and budget instructions, program policies and standards, and reimbursement guidelines is KRS 210.440 to 210.450.

(b) The administrative regulation that the Department for Mental Health/Mental Retardation Services intends to promulgate will amend 908 KAR 2:060. This regulation will reduce and simplify requirements related to the submission of annual plans and budgets and annual cost reports by regional mental health and mental retardation boards. In addition it will amend program policies and operating standards to reduce duplication with other applicable administrative regulations

(c) The necessity and function of the amendments to the administrative regulation is as follows: To promulgate changes in department policy related to the allocation of available funds to regional mental health and mental retardation boards in accordance with approved annual plans and budgets, program operations, budgets and expenditures for community programs and to require management and financial reports necessary to carry out the purposes of KRS 210.370 to 210.460. In addition the amendments will reduce the amount of material incorporated by reference in favor of establishing ordinary administrative regulations in conformity with the requirements of KRS Chapter 13A.

(d) The benefits expected from the amendments to this administrative regulation are: To reduce required paperwork, simplify the form and content of required plans and budgets, establish more efficient reporting requirements, to update operations standards and to eliminate duplicative regulatory requirements.

(e) The administrative regulation will be implemented as follows: The Department for Mental Health and Mental Retardation in the Cabinet for Health Services will be responsible for implementation.

May 15, 1998

(1) **908 KAR 2:120**, Evaluation and eligibility; **908 KAR 2:130**, Assessment and service planning; **908 KAR 2:140**, Primary service coordination and assistive technology; **908 KAR 2:160**, Covered services; **908 KAR 2:200**, Coverage and payments for the Kentucky Early Intervention Program services.

(2) Cabinet for Health Services, Department for Mental Health and Mental Retardation Services intends to amend an administrative regulation governing the subject matter listed above.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for June 30, 1998 at 9 a.m., in the Department for Public Health 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 prior to June 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 amend an administrative regulation governing a specific subject matter may file a request to be informed by the administrative body.

(b) Persons who wish to file this request may obtain a request form from the Administrative Regulation Coordinator, Department for Mental Health and Mental Retardation Services, Division of Administration and Financial Management, 100 Fair Oaks Lane 4E-A, Frankfort, Kentucky 40601.

(c) Note: Requests for Notification and the Notice of Intent to amend 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 amendment.

(a) The statutory authority for the promulgation of an administrative regulation relating to 908 KAR 2:120, 908 KAR 2:130, 908 KAR 2:140, 908 KAR 2:160, 908 KAR 2:200 is: KRS 200.650 - 200.676.

(b) The administrative regulation amendments that the Department for Mental Health and Mental Retardation Services is examining are intended to clarify and improve the quality of service for KEIS by addressing evaluation definitions; primary service coordinator requirements; service guidelines and limitations; insurance requirements; records requirements; interpreter definition and requirements; reimbursement rates;

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service fees; intensive and tertiary evaluations; initial service coordinator billable service descriptions; collateral definitions; respite services; primary evaluation systems; appropriate fund recoupment systems; to assure full compliance with federal and state statutes relating to early intervention services; and other technical and formatting changes to comply with KRS Chapter 13A.

(c) The necessity, function and conformity of the proposed amended administrative regulation is as follows: To amend administrative regulations governing the operations of the Kentucky Early Intervention Program and the provision of services to eligible children and their families necessary for carrying out the purposes of KRS 210.650-676.

(d) The benefits expected from this administrative regulation amendment are: To lower cost, improve practice, clarify intent, implement new initiatives, and improve and potentially expand services to eligible children in need.

(e) The administrative regulation amendment will be implemented as follows: The regulation amendment will be implemented by the Department for Mental Health and Mental Retardation Services.

EMERGENCY ADMINISTRATIVE REGULATIONS NOW IN EFFECT

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

STATEMENT OF EMERGENCY
31 KAR 4:120

The 1998 General Assembly enacted HB 62 as an emergency measure that became effective upon the Governor's signature. The bill added this language to KRS 117.045: "The state board (of elections) shall promulgate an administrative regulation establishing conditions under which additional precinct officers may be approved." In order to make this administrative regulation effective before the 1998 primary it must be filed as an emergency administrative regulation. This emergency administrative regulation will be replaced by an ordinary administrative regulation.

PAUL E. PATTON, Governor
JOHN Y. BROWN III, Chairman

GENERAL GOVERNMENT CABINET
State Board of Elections

31 KAR 4:120E. Additional precinct officers.

RELATES TO: KRS 117.045

STATUTORY AUTHORITY: KRS 117.045

EFFECTIVE: April 22, 1998

NECESSITY, FUNCTION, AND CONFORMITY: KRS 117.045 requires the State Board of Elections to promulgate an administrative regulation establishing conditions under which additional precinct officers may be appointed. This administrative regulation implements that legislative directive.

Section 1. Request to Appoint Additional Precinct Officers. A county board of elections seeking permission to appoint additional precinct officers pursuant to KRS 117.045 shall file with the State Board of Elections a written request that contains the following information:

(1) The precinct name and number of each precinct for which additional officers will be appointed.

(2) For each designated precinct, the reasons why additional precinct officers are necessary.

(3) The election for which approval is sought if other than the next primary or general election.

Section 2. Nondiscretionary Grounds for Approving Request. The State Board of Elections will approve a request for any precinct in which any of the following apply:

(1) Two (2) or more voting machines will be used in the precinct;

(2) Two (2) or more precincts use the same voting location; or

(3) More than 600 voters are registered in the precinct.

Section 3. Discretionary Grounds for Approving Request. The State Board of Elections will in its discretion approve a request that sets forth a reasonable explanation why voting cannot be conducted safely and expediently unless additional precinct officers are appointed.

Section 4. Approval of Request. (1) Approval of a request made under Section 2 of this administrative regulation may, in the board's discretion, be granted for one (1) election only or for a primary and the following regular election.

(2) Approval of a request made under Section 3 of this ad-

ministrative regulation may be granted for one (1) election only.

(3) Approval of a request to appoint additional precinct officers authorizes a county board of elections to appoint, in its discretion, one (1) or two (2) additional precinct officers.

Section 5. Duties of Additional Precinct Officers. The duties of additional precinct officers shall be prescribed by the county board of elections.

JOHN Y. BROWN III, Chairman
ROSS T. CARTER, Assistant Attorney General
APPROVED BY AGENCY: April 22, 1998
FILED WITH LRC: April 22, 1998 at 3 p.m.

REGULATORY IMPACT ANALYSIS

Contact person: George Russell, Executive Director

(1) Type and number of entities affected: 120 county boards of elections.

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

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

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

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

1. First year following implementation: None

2. Second and subsequent years: None

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings: None

1. First year: None

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements: None

(4) Assessment of anticipated effect on state and local revenues:

Counties may pay the costs associated with having extra precinct workers; however, such cost results from the enabling legislation, not from this administrative regulation.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Not applicable.

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

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

(b) Kentucky: None

(7) Assessment of alternative methods; reasons why alternatives were rejected: Alternative methods were not considered because the legislation directs the agency to promulgate this administrative regulation. No other method of implementation is feasible.

(8) Assessment of expected benefits:

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

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

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

(9) Identify any statute, administrative regulation or government

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policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict:

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

(10) Any additional information or comments: None

(11) TIERING: Is tiering applied? No. Tiering is unnecessary and inappropriate.

FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by local that government? Yes

2. State what unit, part, or division of local government this administrative regulation will affect. All county boards of elections.

3. State the aspect or service of local government to which this administrative regulation relates. Appointment of precinct workers by county board of elections.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a local government for the first full year the regulation is to be in effect. If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation. This administrative regulation will have no effect on the expenditures and revenues of local government.

Revenues (+/-):

Expenditures (+/-):

Other explanation:

STATEMENT OF EMERGENCY

401 KAR 5:002E

KRS 224.10-100 requires the Natural Resources and Environmental Protection Cabinet to adopt administrative regulations as are reasonably necessary to issue, continue in effect, remove, modify, suspend, or deny permits for the discharges into waters of the Commonwealth and permits for the installation, alteration, expansion, and operation of any sewage system. An ordinary administrative regulation is not sufficient and an emergency exists of an imminent threat to the public health and welfare because changes in the pork industry have brought a renewed interest in pork production in Kentucky that have created an urgent need to review and update Kentucky's current environmental permitting program. This means that an emergency administrative regulation must be placed into effect immediately. This emergency administrative regulation will provide definitions to implement the administrative regulation for the permitting of swine feeding operations. It will also provide definitions for the other programs in 401 KAR Chapter 5. These definitions will be part of the cabinet's program to implement new permitting standards for the construction and operation of swine feeding operations, thus protecting the citizens of the Commonwealth. This emergency administrative regulation will be replaced by an ordinary administrative regulation. The previously filed emergency administrative regulation contained definitions in Section 1. The definitions in this administrative regulation are substantially different from the definitions in the previously filed emergency administrative regulation 401 KAR 5:008E in the following manner:

1. A new definition is added for "hydraulic gradient";
2. The definition of "karst feature" is changed to help identify what features are included in the definition;
3. The definition of "land application" is changed to specify that injection occurs directly beneath the surface;
4. The definition of "minimum design volume" is changed to address the treatment volume;
5. The definition of "swine units" is changed to move the formula to the implementing administrative regulation; and
6. The definition of "nutrient management plan" is changed to

address environmental harm and to specify that the plan is for an individual operation.

PAUL E. PATTON, Governor

JAMES E. BICKFORD, Secretary

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET

Department for Environmental Protection
Division of Water

401 KAR 5:002E. Definitions of terms for 401 KAR Chapter 5.

RELATES TO: KRS 224.01-010, 224.10-100, 224.10-110, 224.16-050, 224.16-060, 224.70-100, 224.70-110, 40 CFR Parts 35, 116, 130, 136, 401 - 471, 33 USC 1288, 1313(e), 1314(b), 1342

STATUTORY AUTHORITY: KRS 224.10-100, 224.10-110, 224.16-060, 224.70-100, 224.70-110, 224A.111, 224A.112, 224A.113, 40 CFR Parts 116, 130, 136, 401 - 471, 33 USC 1288, 1313(e), 1314(b), 1342

EFFECTIVE: April 17, 1998

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 "BOD₅" means the amount of oxygen required to stabilize biodegradable organic matter under aerobic conditions within a five (5) day period. Other time periods may be measured, and if so, are indicated where the term is used.

(25) "BMPs" means best management practices.

(26) "Board" means the Kentucky Board of Certification of Wastewater System Operators, as established by KRS 224.73-110.

(27) "BOD" or "BOD₅" means biochemical oxygen demand.

(28) "BPT" means best practicable technology currently available.

(29) "Building drain" means that part of the lowest piping of the drainage system which receives the discharge from plumbing fixtures and other interior drainage pipes and conveys its discharge to the building sewer which begins two (2) feet outside the building wall.

(30) "Building sewer" means that part of the drainage system which extends from the end of the building drain, beginning two (2) feet outside the building wall, and conveys its discharge to a downstream manhole, sewer line, pump station, or sewage disposal system.

(31) "Bypass" means the intentional diversion of sewage or wastestreams 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 milli-equivalents per 100 grams of soil.

(36) "CBOD" means carbonaceous biochemical oxygen demand.

(37) "CEC" means cation exchange capacity.

(38) "CERCLA" means the Comprehensive Environmental Response, Compensation, and Liability Act, as amended (42 USC 9601 et seq.).

(39) "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) "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) "cfm" means cubic feet per minute.

(42) "CFR" means Code of Federal Regulations.

(43) "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) "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) "COD" means chemical oxygen demand.

(46) "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) "Combined sewer" or "combined sewer line" means a sewer or sewer line designed to carry storm water runoff as well as sanitary wastewater.

(48) "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) "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) "Concentrated animal feeding operation" means, for purposes of 401 KAR 5:005, 5:009E, 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) "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) "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) "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) "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) "Conventional domestic water supply treatment" means or includes coagulation, sedimentation, filtration, and chlorination.

(56) "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) "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) "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) "CSO" means combined sewer overflow.

(60) "CWA" means the Clean Water Act, as amended.

(61) "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) "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) "Day" means a twenty-four (24) hour period.

(64) "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) "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) "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) "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) "Disappearing stream" means an intermittent or perennial surface stream that terminates and drains underground through caves, fractures, or swallets in the stream bed.

(69) "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) "Division" means the Kentucky Division of Water, within the Department for Environmental Protection, Natural Resources and Environmental Protection Cabinet.

(71) "DMR" means discharge monitoring report.

(72) "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) "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) "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) "Draft permit" means a document prepared under 401 KAR 5:009E 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 5:009E 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) "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) "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) "DWS" means domestic water supply.

(79) "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) "Effluent lagoon" means a treatment lagoon.

(81) "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) "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) "Engineer" means a professional engineer.

(84) "Enhanced recovery well" means a well used for the injection of fluids to improve or maintain reservoir productivity.

(85) "Environmental Protection Agency" or "EPA" means the United States Environmental Protection Agency.

(86) "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) "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) "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) "Existing source" means, for purposes of 401 KAR 5:080, any source which is not a new source or a new discharger.

(90) "°F" means degrees Fahrenheit.

(91) "Facility" means:

(a) For purposes of 401 KAR 5:005, 5:006, or 5:009E, 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) "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) "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) "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) "Force main" means a conduit used to transport sewage from

a pump discharge to a sewer line, pump station, or WWTP.

(97) "Gas" means, for purposes of 401 KAR 5:090, all natural gas, including casinghead gas, and all other hydrocarbons not defined as oil.

(98) "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) "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) "GPD" or "gpd" means gallons per day.

(101) "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) "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) "Harmonic mean flow" means the reciprocal of the mean of the reciprocal daily flow values.

(104) "Hazardous substance" means, for purposes of 401 KAR 5:050 to 5:080, any pollutant designated under 40 CFR Part 116.

(105) "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) "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) "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) "Incorporated place" means a city, town, township, or village that is created under the Kentucky Revised Statutes.

(110) "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) "Indirect discharger" means a nondomestic discharger introducing pollutants to a publicly-owned treatment works.

(112) "Industrial user" or "user" means a source of indirect discharge.

(113) "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) "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) "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) "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 5:009E, a type

of land application in which the waste is placed directly beneath the land surface.

(118) "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) "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) "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) "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) "Intermediate WWTP" means:

(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) "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) "IWWTP" means an industrial WWTP.

(125) "KAR" means Kentucky Administrative Regulations.

(126) "Karst" means the type of geologic terrane 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) "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) "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) "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) "kg" means kilograms.

(132) "KPDES" means the Kentucky Pollutant Discharge Elimination System.

(133) "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) "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) "Land treatment" or "land disposal" means the application or incorporation of a pollutant onto or into the soil.

(137) "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) "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) "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) "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) "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) "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) "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) "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) "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) "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) "Major outfall" means a major municipal separate storm sewer outfall.

(148) "Manmade" means constructed by humans.

(149) "Maximum daily discharge limitation" means the highest allowable daily discharge.

(150) "Measurement" means the ability of the analytical method or protocol to quantify as well as identify the presence of the substance in question.

(151) "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) "µg/l" means micrograms per liter, same as ppb, assuming unit density.

(153) "mgd" or "MGD" means million gallons per day.

(154) "mg/l" means milligrams per liter, same as ppm, assuming unit density.

(155) "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) "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) "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) "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) "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) "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) "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) "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) "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) "Nonconventional pollutant" means a pollutant not considered to be a conventional pollutant, including priority pollutants identified in 401 KAR 5:060.

(167) "Nonpoint" means any source of pollutants not defined by a point source, as used in this chapter.

(168) "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 (96 LC₅₀) for a representative indigenous aquatic organism. If any of the above conditions is not met, then the discharge is considered to be from a minor industry.

(169) "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) "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) "O&M" means operation and maintenance.

(174) "Operate" means, for purposes of 401 KAR 5:090, any act relating to the construction, operation, or maintenance of any facility.

(175) "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) "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) "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) "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) "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) "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) "Package WWTP" means a factory-built WWTP which is transported to and assembled or set in place at the site.

(182) "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) "pCi/l" means picocuries per liter.

(184) "PCR" means primary contact recreation.

(185) "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;

(b) For purposes of 401 KAR 5:009E, a swine waste management permit; or

(c) For purposes of 401 KAR 5:050 to 5:080, a KPDES permit.

(186) "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) "Planning area" means the geographic area proposed to be served by a regional planning agency in a projected twenty (20) year period.

(188) "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) "POTW" means publicly-owned treatment works as defined in KRS 224.01-010.

(190) "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) "ppb" means parts per billion; assuming unit density, same as µg/l.

(192) "ppm" means parts per million; assuming unit density, same as mg/l.

(193) "Preexisting discharge" means any discharge that is occurring when applying for a KPDES permit under 401 KAR 5:029 or 5:040.

(194) "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) "Pretreatment requirement" means a substantive or procedural requirement related to pretreatment, other than a pretreatment standard, imposed on an industrial user.

(196) "Pretreatment standard" means a national pretreatment standard.

(197) "Primary contact recreation water" means those waters suitable for full body contact recreation during the recreation season of May 1 through October 31.

(198) "Primary industry category" means any industry category listed as being a primary industry in 401 KAR 5:060.

(199) "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) "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) "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) "Produced water" means all water, pollutants, and combinations thereof resulting, obtained, or produced from the exploration, drilling, or production of oil or gas.

(203) "Professional engineer" or "engineer" means a person registered to practice engineering pursuant to KRS Chapter 322.

(204) "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) "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) "RCRA" means the Resource Conservation Recovery Act as amended (42 USC 6901 et seq.).

(208) "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) "Recommencing discharger" means a source which recommences discharge after terminating operations.

(210) "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) "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) "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) "Regional planning agency" means a governmental agency, such as a city, county, or other public body created by KRS Chapters 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) "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) "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) "Remined area" means only that area of any coal remining operation on which a coal mining operation was conducted before August 3, 1977.

(217) "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) "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) "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) "Rock crushing and gravel washing facilities" means facilities which process crushed and broken stone, gravel, and riprap.

(222) "Run-off coefficient" means the fraction of total rainfall that will appear at a conveyance as run-off.

(223) "SARA" means the Superfund Amendments and Reauthorization Act, as amended.

(224) "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) "SCR" means secondary contact recreation.

(226) "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) "Secondary industry category" means any industry category which is not a primary industry category.

(228) "Secondary treatment" means that degree of treatment which results in an effluent quality which meets the minimum requirements of 401 KAR 5:045.

(229) "Service area" means that geographic area currently being served by a regional facility.

(230) "Seven-Q-ten" or "7Q₁₀" means that minimum average flow which occurs for seven (7) consecutive days with a recurrence interval of ten (10) years.

(231) "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) "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) "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) "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) "Sewer line extension" means a proposed construction project which extends a sewer system; it includes gravity sewer lines, pump stations, and force mains.

(236) "Sewer system" means the network of sewer lines, pump stations, and force mains that discharge to a common WWTP.

(237) "SIC" means Standard Industrial Classification.

(238) "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 wastestream 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) "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) "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) "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) "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) "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) "SMCRA" means the Surface Mining Control and Reclamation Act, as amended (33 USC 1201 et seq.).

(245) "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) "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) "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) "Source" means any building, structure, facility, or installation from which there is or may be a discharge of pollutants.

(249) "SPCC" means spill prevention control and countermeasure.

(250) "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) "Storm water" means storm water run-off, snow melt run-off, and surface run-off and drainage.

(252) "Storm water discharge associated with industrial activity" means the discharge from any conveyance which is used for

collecting and conveying storm water and which is directly related to manufacturing, processing, or raw material storage areas at an industrial plant. The term does not include discharges from facilities or activities excluded from the KPDES program under 401 KAR 5:055. For the categories of industries identified in paragraphs (a) to (j) of this subsection, the term includes, but is not limited to, storm water discharges from industrial plant yards; immediate access roads and rail lines used or traveled by carriers of raw materials, manufactured products, waste material, or byproducts used or created by the facility; material handling sites; refuse sites; sites used for the application or disposal of process waste waters; sites used for the storage and maintenance of material handling equipment; sites used for residual treatment, storage, or disposal; shipping and receiving areas; manufacturing buildings; storage areas including tank farms for raw materials, and intermediate and finished products; and areas where industrial activity has taken place in the past and significant materials remain and are exposed to storm water. For the categories of industries identified in paragraph (k) of this subsection, the term includes only storm water discharges from all the areas except access roads and rail lines, that are listed in the previous sentence where material handling equipment or activities, raw materials, intermediate products, final products, waste materials, by-products, or industrial machinery are exposed to storm water. For the purposes of this subsection, material handling activities include the storage, loading and unloading, transportation, or conveyance of any raw material, intermediate product, finished product, byproduct, or waste product. The term excludes areas located on plant lands separate from the plant's industrial activities, such as office buildings and accompanying parking lots as long as the drainage from the excluded areas is not mixed with storm water drained from the above described areas. Industrial facilities including industrial facilities that are federally, state, or municipally owned or operated that meet the description of the facilities listed in this subsection, include those facilities designated under 401 KAR 5:060, Section 12(1)(a). The following categories of facilities are considered to be engaging in an industrial activity for purposes of this subsection:

(a) Facilities subject to storm water effluent limitations guidelines, new source performance standards, or toxic pollutant effluent standards under 401 KAR 5:065, Section 4, except facilities with toxic pollutant effluent standards which are exempted under paragraph (k) of this subsection;

(b) Facilities classified as Standard Industrial Classifications 24 except 2434; 26 except 265 and 267; 28 except 283; 29; 311; 32 except 323; 33; 3441; and 373;

(c) Facilities classified as Standard Industrial Classifications 10 through 14 (mineral industry) including active or inactive mining operations, except for areas of coal mining operations that are no longer reclamation areas because the performance bond issued to the facility by the appropriate SMCRA authority has been released, or except for areas of noncoal mining operations which have been released from applicable state or federal reclamation requirements after December 17, 1990, and oil and gas exploration production, processing, or treatment operations, or transmission facilities that discharge storm water contaminated by contact with or that has come into contact with, any overburden, raw material, intermediate products, finished products, by-products, or waste products located on the site of these operations;

(d) Hazardous waste treatment, storage, or disposal facilities, including those that are operating under interim status or a permit under Subtitle C of RCRA;

(e) Landfills, land application sites, and open dumps that receive or have received any industrial wastes, that is waste that is received from any of the facilities described under this subsection, including those that are subject to regulation under Subtitle D of RCRA;

(f) Facilities involved in the recycling of materials, including metal scrapyards, battery reclaimers, salvage yards, and automobile junkyards, including but limited to those classified as Standard

Industrial Classification 5015 and 5093;

(g) Steam electric power generating facilities, including coal handling sites;

(h) Transportation facilities classified as Standard Industrial Classifications 40, 41, 42 except 4221-4225, 43, 44, 45, and 5171 which have vehicle maintenance shops, equipment cleaning operations, or airport deicing operations. Only those portions of the facility that are either involved in vehicle maintenance, including vehicle rehabilitation, mechanical repairs, painting, fueling, and lubrication, equipment cleaning operations, airport deicing operations, or which are otherwise identified under paragraphs (a) to (g) and (i) to (k) of this subsection are associated with industrial activity;

(i) Treatment works treating domestic sewage or any other sewage sludge or wastewater treatment device or system, used in the storage, treatment, recycling, and reclamation of municipal or domestic sewage, including lands dedicated to the disposal of sewage sludge that are located within the confines of the facility, with a design flow of one and zero-tenths (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) "Stripper well" means any oil well producing ten (10) barrels or less per day of oil.

(254) "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) "Surface mining operation" means only those facilities required to have a permit by 405 KAR Chapters 7 through 26.

(257) "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) "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 5:009E. The number of units shall be determined using the formula in 401 KAR 5:009E.

(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 5:009E 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 5:009E 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) "Tank battery" means an installation where oil is collected from wellheads and is separated from produced water.

(266) "TDS" means total dissolved solids.

(267) "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) "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) "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) "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) "TSS" means total suspended solids.

(272) "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) "Underground injection" means a well injection.

(275) "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) "USC" means United States Code.

(277) "U.S. EPA" means the United States Environmental Protection Agency.

(278) "USGS" means the United States Geological Survey.

(279) "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 5:009E, a mechanism or provision that allows a modification or waiver of specified requirements.

(280) "WAH" means warm water aquatic habitat.

(281) "Warm water aquatic habitat" or "WAH" means any surface water and associated substrate capable of supporting indigenous warm water aquatic life.

(282) "Wastewater system" means a sewage system as defined in KRS 224.01-010.

(283) "Wastewater treatment plant" or "WWTP" means a facility used for the treatment and disposal of sewage.

(284) "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) "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) "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 (1) 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 (1) into which any water, gas, produced water, or other fluid is being injected.

(287) "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) "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) "Wetlands" means land that has a predominance of hydric soils and that is inundated or saturated by surface or groundwater at a frequency and duration sufficient to support, and that under normal circumstances does support, a prevalence of hydrophytic vegetation typically adapted for life in saturated soil conditions.

(290) "Whole effluent toxicity" means the aggregate toxic effect of an effluent measured directly by a toxicity test.

(291) "WWTP" means wastewater treatment plant.

(292) "Zone" means a subsurface layer or stratum capable of producing or receiving fluids.

(293) "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," July 1, 1997, U.S. Environmental Protection Agency, U.S. Government Printing Office, Superintendent of Documents, Mail Stop: SSOP,

Washington, DC 20402-9328;

(2) 40 CFR Part 136, "Guidelines Establishing Test Procedures for the Analysis of Pollutants," July 1997, U.S. Environmental Protection Agency, U.S. Government Printing Office, Superintendent of Documents, Mail Stop: SSOP, Washington, DC 20402-9328; and

(3) 40 CFR Chapter I, Subchapter N, Parts 401 through 471, "Effluent Guidelines and Standards," July 1997, U.S. Environmental Protection Agency, U.S. Environmental Protection Agency, U.S. Government Printing Office, Superintendent of Documents, Mail Stop: SSOP, Washington, DC 20402-9328.

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.

JAMES E. BICKFORD, Secretary

GLENNA JO CURRY, General Counsel

APPROVED BY AGENCY: April 16, 1998

FILED WITH LRC: April 17, 1998 at noon

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 promulgated as an emergency regulation to accompany the emergency regulation for permits for swine feeding operations, 401 KAR 5:009E, filed on the same date as this emergency regulation. The terms defined apply to all the programs in 401 KAR Chapter 5, including the Kentucky Pollutant Discharge Elimination System, permits for the construction and operation of wastewater facilities, oil and gas production, and the new emergency regulation for swine feeding operations. Any impact of these regulations on the entities affected occurs in the specific regulation where the term is actually used. This regulation is being promulgated 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 promulgation of this regulation; any direct or indirect costs or savings would occur in the regulation where the term is used. The direct and indirect costs or savings as a result of the emergency regulation for the permitting of swine feeding operations are discussed in the Regulatory Impact Analysis for that regulation.

(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. Since this is an emergency regulation, no public comments have been received.

(b) Effect on the cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: No known or expected impacts. Since this is an emergency regulation, no public comments have been received.

(c) Effect on the compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition), to the extent available from the public comments received, for the:

1. First year following implementation: Since this is an emergency regulation, no public comments have been received.

2. Second and subsequent years: Since this is an emergency regulation, no public comments have been received.

(3) Effects on the promulgating administrative body: There are no effects on this agency from defining these terms. Any impact would occur when the terms are used in a particular regulation.

(a) Direct and indirect costs or savings: None

1. First year: None

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: There are no reporting and paperwork requirements imposed by the terms defined in this regulation.

(4) Assessment of anticipated effect on state and local revenues: No known or expected effects. Any effects would occur in the regulation where the term is used. The anticipated effect on state and local revenues for the permitting of swine feeding operations is discussed in the Regulatory Impact Analysis for that regulation.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: The sources of revenue will be those funds appropriated to each program in 401 KAR Chapter 5.

(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: Since this is an emergency regulation, no public comments have been received.

(b) Kentucky: Since this is an emergency regulation, no public comments have been received.

(7) Assessment of alternative methods; reasons why alternatives were rejected: One alternative method would have been to define all terms in Section 1 of each regulation, but that would have required that terms be duplicated in each regulation in the chapter. 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 promulgating one regulation that will apply to all regulations in the chapter. As the regulations in the chapter are amended, the definitions in those regulations will be moved to this regulation.

(8) Assessment of expected benefits of the administrative regulation: None

(9)(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: None; any effect on public health and environmental welfare would occur where the term is used in a regulation. The effect on public health and environmental welfare of the permitting of swine feeding operations is discussed in the Regulatory Impact Analysis for that regulation.

(b) State whether a detrimental effect on environment and public health would result if not implemented: Any detrimental effect on environment and public health if the regulation were not implemented would occur in the program where the regulation would exist. The detrimental effect of not promulgating the regulation on the permitting of swine feeding operations is discussed in the Regulatory Impact Analysis for that regulation.

(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 may be tiered.

FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? Yes

2. State what unit, part or division of local government this administrative regulation will affect. This regulation applies to city, county, or other municipal governments, including special districts, sanitation districts, etc.

3. State the aspect or service of local government to which this administrative regulation relates. Portions of this regulation apply to city, county, or other municipal governments, including special districts, sanitation districts, etc. Those entities provide sanitation services to the populations served by the local government.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a local government for the first full year the regulation is to be in effect. If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation. 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 for the definitions for swine feeding operations.

2. State compliance standards. This regulation contains the definitions of all terms for 401 KAR Chapter 5.

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. Where applicable, this regulation has the same definitions as the definitions in the federal regulations.

STATEMENT OF EMERGENCY 401 KAR 5:009E

KRS 224.10-100 requires the Natural Resources and Environmental Protection Cabinet to adopt administrative regulations as are reasonably necessary to issue, continue in effect, remove, modify, suspend, or deny permits for the discharges into waters of the Commonwealth and permits for the installation, alteration, expansion, and operation of any sewage system. An ordinary administrative regulation is not sufficient and an emergency exists of an imminent threat to the public health and welfare because changes in the pork industry have brought a renewed interest in pork production in Kentucky that have created an urgent need to review and update Kentucky's current environmental permitting program. This means that an emergency administrative regulation must be placed into effect immediately. This emergency administrative regulation will implement new permitting standards for the construction and operation of swine feeding operations, thus protecting the citizens of the Commonwealth. This emergency administrative regulation will be replaced by an ordinary administrative regulation. This administrative regulation is substantially different from the previously filed emergency regulation

401 KAR 5:008E in the following manner:

1. The applicability section specifies that owners or operators of unpermitted swine feeding operations who notified the cabinet pursuant to the previous emergency administrative regulation may be permitted under the permitting program of 401 KAR 5:005. Owners or operators of unpermitted facilities are given an opportunity to comply with 401 KAR 5:005 within a specified time frame;
2. The applicability section allows owners or operators of an existing permitted swine feeding operation or an existing permitted agricultural wastes handling system to submit a complete permit application after April 15, 1999, to expand the operation or system to 1,250 swine units;
3. The provision that allowed a variation of swine units at an operation without requiring a permit modification is removed;
4. The equation for calculating swine units is modified to incorporate a broader variety of operations;
5. The applicability section requires that anyone who has a contract with the owner or operator of a swine feeding operation, anyone who directs the manner in which the swine will be housed, anyone who controls the inputs or the other material aspects of the operation, or anyone who exercises control or ownership over any aspect of the operation shall be a cosignee on the permit application. Those persons shall be jointly liable for complying with the permit;
6. Operations are related only if they share common lagoons or common land application areas;
7. The comment period for permit public notice is changed to thirty (30) days;
8. The permit fees are deleted;
9. Barns and lagoons are prohibited in sinkholes or subsidence areas;
10. Land application of swine is allowed on slopes with up to eighteen (18) percent, if there is an established hay or pasture vegetative cover;
11. The setback distances for several features are increased;
12. Aerobic lagoon technology is incorporated as a primary treatment option;
13. The waste production capacity of the lagoon is changed to 180 days;
14. The lagoon liner requirements and specifications are modified;
15. Lysimeters are allowed for lagoon performance monitoring, as applicable;
16. The monitoring frequency is changed to quarterly;
17. The plan developed for repair of a failed lagoon liner must specify the methods to be used;
18. The development of the nutrient management plan is no longer restricted to an agronomic professional or the Natural Resources Conservation Service. The plan is to be reviewed and updated as needed, rather than annually;
19. The spray application of swine waste is prohibited on those crops that are grown for direct human consumption;
20. Residual solids may be either injected or incorporated into the soil within twenty-four (24) hours of application;
21. The lease requirement for land being used for land application is reduced to five (5) years;
22. The restriction of land application on the same field every three (3) out of four (4) years is deleted;
23. The requirement that soil pH be maintained between six and zero-tenths (6.0) and eight and zero-tenths (8.0) is deleted;
24. The time for retaining records is changed to five (5) years;
25. The variance section specifies the sections of the administrative regulation for which a variance may be obtained; and
26. The cabinet's time frame to issue a decision of the completeness of an application is reduced to ninety (90) days.

PAUL E. PATTON, Governor
JAMES E. BICKFORD, Secretary

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

401 KAR 5:009E. Permits for swine feeding operations.

RELATES TO: KRS 224.10, 224.70, 224.73

STATUTORY AUTHORITY: KRS 224.10-100, 224.70-100, 224.70-110

EFFECTIVE: April 17, 1998

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 (4) 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 with less than 1,000 swine units, that increases the total number of swine units at the operation to 1,000 or more after April 17, 1998. The provisions of this administrative regulation shall apply to that portion of an expanded operation from 1,000 swine units and above. However, the total number of swine units at the operation shall determine whether this administrative regulation applies to the new portion; and

(c) An existing swine feeding operation with 1,000 or more swine units, that increases the number of swine units at the operation after April 17, 1998. The provisions of this administrative regulation shall apply to that portion of an expanded swine feeding operation above previous swine unit levels. However, the total number of swine units at the operation shall determine whether this administrative regulation applies to the new portion.

(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 if:

(a) The swine feeding operation was permitted before April 17, 1998, for the construction or operation of an agricultural wastes handling system pursuant to 401 KAR 5:005;

(b) The swine feeding operation submitted to the cabinet before April 17, 1998, 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) and before April 15, 2000, applies for and receives a KNDOP pursuant to 401 KAR 5:005; or

(c) The swine feeding operation demonstrates by substantial evidence that:

1. On April 17, 1998, 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 April 17, 1998, it was engaged in the current daily operation of a swine feeding operation; and

3. The owner and operator:

a. Before October 15, 1998, notifies the cabinet in writing that it

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 April 15, 2000, 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) After April 15, 1999, an existing agricultural wastes handling system or swine feeding operation may increase the total number of swine units at the system or operation to 1,250 swine units if:

(a) The owner and operator has had an approved KNDOP pursuant to 401 KAR 5:005 for at least the previous twelve (12) months;

(b) The operation or system has had no violations during the last twelve (12) months;

(c) The owner and operator submits to the cabinet a request for permit modification pursuant to Section 2(8) of this administrative regulation; and

(d) Additional barns and lagoons are no closer to setback features than the existing barns and lagoons.

(4) 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.

$$\text{Swine Units} = (0.1 \times N_n) + (0.4 \times N_f) + (0.45 \times N_b) + (3.55 \times N_{ff}) + (0.75 \times N_{fw}) + (0.41 \times N_{wf}) + (0.35 \times N_{wt})$$

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_{fw} = Number of sows, farrow to feeder;

N_{wf} = Number of sows, farrow to wean; and

N_{wt} = Number of pigs, wean to finish.

(5) If an applicant for a swine waste management permit operates or intends to operate a swine feeding operation under a contract with another entity that owns the swine, directs the manner in which the swine will be housed, or controls the inputs or the other material aspects of the operation, the permit application shall bear the signatures of the owner and operator of the swine feeding operation and all other entities exercising control or ownership over any aspect of the operation. All signatories shall be jointly liable for complying with the permit.

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 planned site 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", 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 and lysimeters;

(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 Sections 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 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 and persons who meet the criteria in Section 1(5) of this administrative regulation, 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; or

(b) They share common land application areas.

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 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.

(d) This notice shall be required for a permit renewal only if the operation has changed in size or has changed its land application areas.

(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 commentator'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:

a. Twelve (12) percent if it does not have an established hay or pasture vegetative cover; or

b. Eighteen (18) percent if it does have an established hay or pasture vegetative cover; 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.

ADMINISTRATIVE REGISTER - 2592

Land Application Area
Land Application Method
Injection Other Method

Existing Setback Feature

Barn and Lagoon

Dwelling not owned by applicant, church, school and school yard, business, other structure to which the general public has access, park

Incorporated city limit

Lake, river, blue-line stream, karst feature

Water well not owned by applicant

Property line

Downstream* water listed in 401 KAR 5:030 as other than use protected, outstanding resource water**

Downstream* public water supply surface water intake

* Measured along gradient

** Designated outstanding resource waters are listed in 401 KAR 5:026

1,500 feet	500 feet	1,000 feet
3,000 feet	1,000 feet	2,000 feet
150 feet	75 feet	150 feet
300 feet	150 feet	150 feet
750 feet	50 feet	500 feet
1 mile	750 feet	1,500 feet
5 miles	1 mile	1 mile

(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 180 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 constructed so that:
a. The lagoon has a hydraulic gradient of no greater than eight and zero-tenths (8.0);

b. The liner has a maximum permeability of 1×10^{-7} cm/sec; and

c. (i) The soil is deposited and compacted in place in at least two (2) six (6) inch lifts; or

(ii) There is naturally occurring soil in the finished lagoon excavation, compacted in place and with one (1) six (6) inch lift; 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 (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. Except as provided in paragraphs (c) and (d) of this subsection, swine waste lagoon performance monitoring shall be conducted by monitoring the zone of saturation using monitoring wells. If the zone of saturation occurs at a depth of greater than twenty (20) feet below the bottom of the swine waste lagoon, or if bedrock is encountered below the bottom of the swine waste lagoon liner at a depth shallower than the zone of saturation, the owner or operator may monitor the vadose zone using lysimeters, instead of monitoring the zone of saturation. If the owner or operator monitors the vadose zone, the owner or operator shall follow the procedures in paragraph (b) of this subsection.

(a) Zone of saturation monitoring requirements. Zone of saturation monitoring shall be conducted using the following procedures. A minimum of one (1) up-gradient and two (2) down-gradient monitoring wells shall be constructed for each swine waste lagoon.

1. Location of 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.

2. Monitoring well construction requirements. A 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. 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.

(b) Vadose zone monitoring requirements. Vadose zone monitoring shall be conducted using the following procedures. A minimum of one (1) up-gradient and two (2) down-gradient lysimeters shall be installed for each swine waste lagoon.

1. Location of lysimeters.

a. Each up-gradient lysimeter 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 lysimeter.

b. Each down-gradient lysimeter shall be constructed in an area close to and hydrologically down-gradient of the lagoon in a location

and depth that maximizes the ability of the lysimeter to detect a lagoon liner failure.

2. Lysimeter construction. If lysimeters are to be used to monitor the vadose zone, the lysimeters shall be constructed to:

a. Prevent surface contaminants from entering groundwater by way of the lysimeter;

b. Prevent unauthorized access to the lysimeter;

c. Be protected from damage occurring from normal activities at the swine feeding operation; and

d. Be at a total depth of no greater than twenty (20) feet.

(c) If conditions at the site are such that zone of saturation or vadose zone monitoring would not reflect a contribution from the swine waste lagoon, the applicant shall submit an alternative monitoring plan to demonstrate the performance of the lagoon liner.

(d) The cabinet may require additional monitoring, based on geological considerations and the lagoon size, shape, and structure, to reasonably ensure that a leak from the liner will be detected.

(2) Analysis parameters. The permittee shall analyze each monitoring sample for the following parameters: chlorides, nitrate nitrogen, total phosphorus, and fecal coliform. However, if lysimeters are used to monitor the vadose zone, fecal coliform shall not be sampled and analyzed.

(3) Monitoring well and lysimeter sampling.

(a) Each monitoring 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. Purging is not required for a lysimeter.

(c) Each monitoring well and lysimeter shall be sampled quarterly after beginning lagoon operation. Samples from each monitoring well and lysimeter shall be analyzed for the parameters listed in subsection (2) of this section.

(4) Reporting and record keeping. Monitoring sample 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 sample analysis result exceeds three (3) times the value of the up-gradient monitoring 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 paragraph; 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 and residual solids shall be land applied using

irrigation, surface spreading, or injection techniques. Residual solids shall be incorporated into the soil within twenty-four (24) hours of land application or shall be injected.

(c) Swine waste shall not be land applied:

1. On frozen or saturated soil or during a precipitation event;

2. In excess of the amount needed to provide the nitrogen requirement of the crop being grown; or

3. On crops grown for direct human consumption.

(d) Swine waste shall not reach waters of the Commonwealth by runoff, drift, manmade conveyances, direct application, or direct discharge.

(e) 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 authorizing a direct discharge into the waters of the Commonwealth except a discharge 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 require-

ments 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 and operator of the swine feeding operation and persons who meet the criteria in Section 1(5) of this administrative regulation. 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 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 in writing 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 (4/98)", Kentucky Division of Water;

(b) "Change in Ownership Certification for Swine Waste Management Permit, DEP 7033-CO (4/98)", Kentucky Division of Water;

(c) "Swine Waste Land Application Log, DEP 7033-LOG (4/98)", Kentucky Natural Resources and Environmental Protection Cabinet, Department for Environmental Protection, Division of Water;

(d) "Groundwater Sample Analysis for Swine Feeding Operations,

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DEP 7033-GW(4/98)", Kentucky Natural Resources and Environmental Protection Cabinet, Department for Environmental Protection, Division of Water; and

(e) "Worksheet for Calculating Swine Units, DEP 7033-W (4/98)", 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: April 16, 1998

FILED WITH LRC: April 17, 1998 at noon

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 wastes 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 expand their operation. This administrative regulation allows an expansion up to 1,250 swine units for existing permitted operations or existing permitted agricultural wastes handling systems, after April 15, 1999, if the operator was permitted for the previous twelve months and had no violations in that time period. The additional barns and lagoons may be no closer to setback features than those in existence prior to the expansion. For existing operations not invoking this expansion provision, expansions up to or beyond 1,000 swine units will require the operations to be in compliance with this administrative regulation. In all cases, when an operation expands beyond the applicable threshold, only the expanded portion will be subject to this administrative regulation. This administrative regulation does not apply to an existing swine feeding operation that obtained a permit under the KNDOP program, or had applied for the permit before April 17, 1998, unless the swine feeding operation increases the number of swine units after April 17, 1998. This administrative regulation applies to an existing swine feeding operation that confines 1,000 or more swine units and that failed to obtain a permit under the KNDOP program and failed to apply for the permit before the effective date of this administrative regulation, unless it notified the Cabinet in writing by October 15, 1998, that it wished 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 April 15, 2000. Once permitted, changes to the 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 the effective date of this administrative regulation. 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. This administrative regulation requires integrators to be jointly liable, along with their contract growers, for permit compliance. By holding both parties liable, this administrative regulation assures that the owners of the swine will be responsible for the waste their swine generate. This provision also eases the regulatory burden on the contract growers, since liability will be shared with the integrators. 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 wastes 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 150 agricultural wastes handling systems that are near or above the 1,000 swine unit threshold, or 6% of the total number of swine operations in Kentucky. This estimate is based on the Cabinet's KNDOP program database and a survey conducted by researchers at the University of Kentucky's Department of Agricultural Economics. This administrative regulation allows an expansion up to 1,250 swine units for existing permitted operations or existing permitted agricultural wastes handling systems after April 15, 1999, if the operator was permitted for the previous twelve months and had no violations in that time period. The additional barns and lagoons may be no closer to setback features than those in existence prior to the expansion. This expansion opportunity may lower the number of potentially affected entities to less than the 150 systems stated above. Note, however, that future expansions of these operations beyond the 1,250 swine unit threshold would require the expanded portion of the operations to comply with this administrative regulation. 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 tracks existing permit-holders based on the number of head of swine at each permitted operation. The cabinet presently permits 143 agricultural wastes handling systems with 1,000 or more head of 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 wastes handling systems with 1,000 or more swine are west of Interstate 65. The cabinet can only estimate the number of existing agricultural wastes handling systems 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 394 permittees. Using these estimates, there

are roughly 2,106 unpermitted swine operations within the Commonwealth, though not all of these operations require a permit under this administrative regulation.

(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% or those areas with permanent vegetative cover having slopes greater than 18%. Land application is also prohibited in areas with less than 18 inches of soil to bedrock and on areas where crops for direct human consumption are grown. 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. It should be noted, however, that the acreage required for land application of swine waste can be much less if the operator opts to inject the waste directly into the soil, as opposed to spraying or other methods, due to shorter setback requirements. As this technology becomes more widely available and less costly, this may become an option for more and more operators. 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. Farm property values average \$1,077 per acre (1992 Census of Agriculture). This administrative regulation may require the purchase of additional land to meet all setback and siting requirements. However, these costs could be reduced or nonexistent, depending on the amount of land under the operator's control. Costs can also be minimized through a negotiated lease or other agreement between the owner or operator of the swine feeding operation and the owner of acreage suitable for land application of the swine waste. Furthermore, these costs can be offset through income generated by the sale of row crops grown on the land application areas, or through renting the land to farmers of row crops. 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 net 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. Chism and Levins (1994) found that for livestock-intensive operations, the percent spent locally declined dramatically with the size of the operation. 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 four 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 \$2,000 and \$11,400 for the first year. These costs could be less if the site is suitable for the use of lysimeters, instead of wells, for groundwater monitoring. Installation of three lysimeters is estimated to cost \$1,500. 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, constructed with two 6-inch lifts, 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. This regulation allows naturally-occurring soil in the finished excavation to be compacted in place for the first 6-inch layer, as long as permeability and hydraulic gradient requirements are met. This may reduce costs of a clay 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 \$800 to \$2,400 total per year) to test for lagoon liner leaks at three (3) detection points four times 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. These include the existing infrastructure at the operation and the amount of land under the operator's control. The cabinet has prepared the following general breakdown of new costs to the affected entities.

First Year:

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Suitability assessment of lagoon site - \$5,000.
Permit application preparation and development of nutrient management plan * - \$4,000
Lagoon construction with compacted soil liner - \$25,000
If synthetic liner is required, add - \$25,000
Lagoon liner permeability test - \$75
Groundwater monitoring well installation - \$5,100
If lysimeters are appropriate, the cost is lowered to - \$1,500
Quarterly groundwater monitoring - \$1,600
Lagoon waste testing (for 5 land application events) - \$250
Soils testing (per field) - \$50

Second and Subsequent Years:

Quarterly groundwater monitoring - \$1,600
Lagoon waste testing (for 5 land application events) - \$250
Soils testing (per field) - \$50

*Could be less if conducted by the NRCS.

Additional land may be necessary to meet setbacks and siting requirements. Costs are dependent on the amount of 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. 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 wastes handling systems operating under their currently permitted capacity. Therefore, there are no foreseen impacts on the cost of doing business for existing agricultural wastes handling systems, unless they increase up to or beyond the 1,000 swine unit threshold. Furthermore, these operations will be allowed to take advantage of the expansion opportunity provided for in this administrative regulation and, thus stay under the existing regulatory program in 401 KAR 5:005.

(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 section (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 section (2) above.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: 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 will require 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 multi-million 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 and federal grants 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 and federal grants 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 300 swine units. 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, or establishing a threshold higher than 1,000 swine units. However those approaches were rejected since the volume of waste generated by the larger operations poses a threat to Kentucky's environment, and the potential environmental damage due to failure of a lagoon is greater for the larger operations. To ease the burden on existing permitted operations, an expansion opportunity is provided. This provision allows existing permitted operations or existing permitted agricultural wastes handling systems to expand their operations or systems up to 1,250 swine units after April 15, 1999, if the operator was permitted for the previous twelve months and had no violations in that time period. Any additional barns and lagoons may be no closer to setback features than those in existence prior to the expansion. 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 potential contributions of nutrients and other pollutants to area waters, 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 quarterly 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 quarterly 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. This administrative regulation includes a requirement that holds large integrators jointly liable for their contract growers' permit compliance. By holding both parties liable, this administrative regulation assures that the owners of the swine will be responsible for the waste their swine generate.

(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: None

(12) TIERING: Is tiering applied? Yes, tiering was applied in several instances in this regulation. The regulation applies only to those 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 increase the number of swine units to 1,000 or more would be subject to this administrative

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regulation. Existing operations that are currently under the 1,000 swine unit threshold would not be affected by this regulation, unless they expand above that threshold. However, this administrative regulation allows an expansion up to 1,250 swine units for existing permitted operations or existing permitted agricultural wastes handling systems, after April 15, 1999, if the operator was permitted for the previous twelve months and had no violations in that time period. The additional barns and lagoons may be no closer to setback features than those in existence prior to the expansion. This expansion opportunity should lower the number of potentially affected entities to less than the 150 systems stated earlier. Note however, that future expansion of these operations beyond the 1,250 swine unit threshold would require the new portion of the operation above 1,250 swine units to comply with this administrative regulation. 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.

STATEMENT OF EMERGENCY 806 KAR 17:141E

This emergency administrative regulation repeals 806 KAR 17:140, Health insurance rate filing requirements. A new bill, HB 315, was enacted during the 1998 Regular Session of the General Assembly. This bill relates to health insurance and the reform thereof. This bill was signed as an emergency bill by the Governor and became effective on April 15, 1998. The health insurance rate filing requirements established by 806 KAR 17:140 are no longer adequate. In order to immediately implement certain provisions of HB 315, it is necessary to repeal 806 KAR 17:140 and establish new rate filing requirements. The new requirements will be promulgated under 806 KAR 17:150E. An ordinary administrative regulation will not be filed with the Regulations Compiler because this is a repeal of an

administrative regulation.

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

PUBLIC PROTECTION AND REGULATION CABINET Department of Insurance

806 KAR 17:141E. Repeal of 806 KAR 17:140.

RELATES TO: HB 315, 1998 Regular Session
STATUTORY AUTHORITY: HB 315, 1998 Regular Session
EFFECTIVE: April 15, 1998

NECESSITY, FUNCTION, and CONFORMITY: 806 KAR 17:140 is no longer required because 1998 RS HB 315 which relates to health insurance necessitates a new regulation establishing different health insurance rate filing requirements.

Section 1. 806 KAR 17:140, Health insurance rate filing requirements, is hereby repealed.

GEORGE NICHOLS III, Commissioner
LAURA M. DOUGLAS, Secretary
SUETTA W. DICKINSON, General Counsel

APPROVED BY AGENCY: April 14, 1998

FILED WITH LRC: April 15, 1998 at 4 p.m.

PUBLIC HEARING: A public hearing on this emergency administrative regulation shall be held on June 22, 1998, at 10 a.m. at the Department of Insurance, 215 West Main Street, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency, in writing, by June 15, 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: Sharron S. Burton, Counsel, Kentucky Department of Insurance, 215 West Main Street, P.O. Box 517, Frankfort, Kentucky 40602, PH: (502) 564-6032, FAX: (502) 564-1456.

REGULATORY IMPACT ANALYSIS

Contact person: Sharron S. Burton

(1) Type and number of entities affected: There are approximately 1900 insurers and health maintenance organizations authorized to write health insurance in the state of Kentucky. Currently, there are approximately 25 insurers writing health insurance in this state.

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

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: The department has received no public comments regarding this issue.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: The department has received no public comments regarding this issue.

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

1. First year following implementation: This administrative

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regulation will eliminate the need for insurers that issue, deliver, or renew health benefit plans in Kentucky to comply with the rate filing requirements established by 806 KAR 17:140.

2. Second and subsequent years: Insurers will no longer be required to comply with the rate filing requirements established by 806 KAR 17:140.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: The department will no longer be required to review health insurance rate filings under the standards established in 806 KAR 17:140. However, since new rate filing regulations must be established, the repeal of 806 KAR 17:140 will not greatly impact the costs or savings of the department during the first year of implementation of this administrative regulation.

2. Continuing costs or savings: Because the department must promulgate a new regulation regarding health insurance rate filings, the repeal of 806 KAR 17:140 will not greatly impact the continued costs or savings of the department.

3. Additional factors increasing or decreasing costs: The department intends to promulgate new health rate filing requirements in order to implement 1998 RS HB 315. Therefore, the current costs which the department incurs in reviewing rate filings will continue.

(b) Reporting and paperwork requirements: The department will no longer be required to review health insurance rate filings submitted pursuant to 806 KAR 17:140. However, the department must promulgate new health insurance rate filing requirements. Therefore, the paperwork required by the department in its review of rate filings will continue.

(4) Assessment of anticipated effect on state and local revenues: The department does not anticipate that there will be any effect on state and local revenues caused by the implementation of this administrative regulation.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: The department does not anticipate that any revenue will be required for the implementation and enforcement of this administrative regulation. However, if any revenue is required, it will be from the budget of the Department of Insurance.

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

(a) Geographical area in which administrative regulation will be implemented: The department has received no public comments regarding this issue.

(b) Kentucky: The department has received no public comments regarding this issue.

(7) Assessment of alternative methods; reasons why alternatives were rejected: The department reviewed the possibility of amending 806 KAR 17:140 to implement 1998 RS HB 315. This alternative was rejected because of the significant changes which needed to be made to the health rate filing requirements.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: Since 806 KAR 17:140 will be replaced by another administrative regulation regarding health insurance rate filings, the repeal of 806 KAR 17:140 will have no effect on public health and environmental welfare of the geographical area in which implemented or on Kentucky.

(b) State whether a detrimental effect on environment and public health would result if not implemented: A detrimental effect on public health might result if the department does not repeal the old health rate filing requirements and promulgate new requirements that conform to 1998 RS HB 315.

(c) If detrimental effect would result, explain detrimental effect: In order to promulgate new health rate filing requirements, it is necessary to repeal the existing requirements. The department must promulgate a new regulation to insure a proper review of health rate

filings under 1998 RS HB 315.

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

(a) Necessity of proposed regulation if in conflict:

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

(10) Any additional information or comments: None

(11) TIERING: Is tiering applied? Tiering is not applied since this administrative regulation applies to all insurers that issue, deliver, or renew health benefit plans in Kentucky.

STATEMENT OF EMERGENCY

806 KAR 17:150E

This emergency administrative regulation establishes health insurance rate filing requirements. HB 315 was signed as an emergency bill by the Governor and became effective on April 15, 1998. This bill relates to health insurance and the reform thereof. The emergency nature of this bill requires the department to take immediate measures toward the implementation of its components. One such component relates to the establishment of new health insurance rate filing requirements. This emergency administrative regulation establishes those requirements. This emergency administrative regulation will be replaced by an ordinary administrative regulation.

PAUL E. PATTON, Governor

LAURA M. DOUGLAS, Secretary

GEORGE NICHOLS III, Commissioner

PUBLIC PROTECTION AND REGULATION CABINET

Department of Insurance

806 KAR 17:150E. Health benefit plan rate filing requirements.

RELATES TO: KRS 304.17A-095, 1998 RS HB 315 Sections 1, 10, 11, 15-23

STATUTORY AUTHORITY: KRS 304.17A-095(7)

EFFECTIVE: April 15, 1998

NECESSITY, FUNCTION, AND CONFORMITY: KRS 304.17A-095(7) provides that the commissioner may promulgate an administrative regulation to obtain relevant information for health benefit plan rate filings and to set forth the format of the filings. This administrative regulation establishes procedures for filing health benefit plan rates so the commissioner will have relevant information to approve or disapprove the rate filing.

Section 1. Definitions. (1) "Base new business rate" means the premium rate for each product benefit plan for each class of business, prior to any adjustments for case characteristics or health status.

(2) "Base new business rate change" means, for any product benefit plan, the percentage change in the base new business rate measured from the first day of the prior rating period to the first day of the proposed rating period, and for any product within a market segment class of business shall be equal to the premium weighted average base new business rate change for all of the product benefit plans within that market segment class of business.

(3) The definition of "base premium rate" shall be governed by Section 1 of House Bill 315 as enacted during the 1998 Regular Session of the General Assembly.

(4) "Class of business" means all or a distinct grouping of small employers or individuals as shown on the records of the small employer or individual insurance carrier.

(5) "Date of filing" means the date the department confirms that the appropriate filing fee and all information required by this administrative regulation have been provided and received.

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(6) "FFS" means a fee for service product type.

(7) The definition of "Guaranteed Acceptance Program" or "GAP" shall be governed by Section 1 of House Bill 315 as enacted during the 1998 Regular Session of the General Assembly.

(8) "Health benefit plan region" or "geographic region" means each one of the eight (8) allowable rating regions for health benefit plans identified in Form LH-33.

(9) "HMO" means a health maintenance organization product type.

(10) The definition of "index rate" shall be governed by Section 1 of House Bill 315 as enacted during the 1998 Regular Session of the General Assembly.

(11) The definition of "large group" shall be governed by Section 1 of House Bill 315 as enacted during the 1998 Regular Session of the General Assembly.

(12) "POS" means a point of service product type.

(13) "PPO" means preferred provider organization product type.

(14) The definition of "small group" shall be governed by Section 1 of House Bill 315 as enacted during the 1998 Regular Session of the General Assembly.

Section 2. Scope. Every health benefit plan rate filing to which the standards of KRS 304.17A-095 apply, made on or after the effective date of this administrative regulation, shall include the information required by this administrative regulation. The period of time in which the commissioner may affirmatively approve or disapprove the filing shall not begin and the proposed rates may not be used by the insurer until the date of filing. The filing and fee shall not be deemed received until the department has confirmed that all of the information required by this administrative regulation has been provided and that the appropriate fee has been received.

Section 3. Health benefit plan rate filing procedures. (1) The following shall be included and properly completed in a health benefit plan rate filing submission:

(a) Form LH-32, the Health Benefit Rate Filing Information Form;

(b) \$100 filing fee or the domiciliary state fee, whichever is greater;

(c) Form LH-1, Face Sheet and Verification Form;

(d) Signed actuarial memorandum prepared in accordance with Section 5 of this administrative regulation;

(e) The Income and Expense Worksheet;

(f) Certification Form LH-34.

(2) Two (2) copies of all written material shall be submitted to the department.

(3) One (1) copy of all written material including any amendment, update, additional information, or response to an inquiry from the department shall be submitted to the Attorney General's Office by the insurer at the same time as the submission to the Department of Insurance.

(4) The insurer shall provide a self-addressed, postage-paid envelope large enough to accommodate a return copy when filing is approved or disapproved by the commissioner.

(5) One (1) copy of the annual report to shareholders or policyholders of the company shall be attached to the filing as an exhibit.

Section 4. Filing Format. (1) A separate health benefit plan rate filing shall be submitted for each market segment (individual, small group, association, employer-organized association and large group).

(2) A large group rate filing may include each product type offered (FFS, PPO, POS and HMO).

(3) A rate filing for a market segment other than large group may combine FFS/PPO or POS/HMO products, or may be submitted separately for each product type.

Section 5. Actuarial Memorandum. (1) The actuarial memorandum for each rate filing shall be prepared in accordance with the following:

(a) American Academy of Actuaries Actuarial Standard of Practice No. 8, Regulatory Filings for Rates and Financial Projections for Health Plans; and

(b) Interpretative Opinion 3, Professional Communications of Actuaries.

(2) The actuarial memorandum for a rate filing, other than a large group rate filing, shall include the following:

(a) Qualifications of the signing actuary;

(b) A statement identifying when the company will begin using the proposed rates;

(c) A discussion of rate development which shall include a detailed explanation of the following:

1. The claim cost development which shall include an explanation of the following:

a. Methodology;

b. Any assumption including the following:

(i) Trend;

(ii) Any benefit change;

(iii) Any utilization or cost per service change;

(iv) Any demographic change;

(v) Any change in medical management;

(vi) Any change in provider contracts;

(vii) Any other assumption used; and

c. Experience, including exposures or members, earned premium, paid claims, incurred claims and incurred loss ratio, for the last three (3) years for this product, or for a similar product if this filing is for a new product;

2. Development and printout of the base premium rates, index rates, corresponding highest premium rates and any applicable GAP premium rates for the standard plan option by age, gender, and tier combination using the lowest industry factor and the lowest area factor, and separately using the highest industry factor and the highest area factor. If the filing contains more than one (1) product, then the above information shall be provided for each product separately. For any filing containing proposed rates for more than one (1) class of business, the information required in this paragraph shall be provided separately for each class of business. Without the written consent of an employer-organized association filed with the commissioner, the index rate for the employer-organized association shall be calculated solely with respect to that employer-organized association and shall not be tied to, linked to, or otherwise adversely affected by any other index rate used by the issuing insurer.

3. Every factor for each case characteristic (age, gender, industry or occupation, and geographic region), with a separate summary of the maximum factor and the minimum factor for each case characteristic.

a. Only the eight (8) health benefit plan regions identified in Form LH-33 may be used for a geographic region factor adjustment.

b. Include any healthy lifestyle discount factor, along with an explanation of the determination of that factor, and where that factor is applicable;

4. Anticipated pricing loss ratio. Each load factor shall be explained in detail and justified by providing:

a. The percentage allocated for the administrative expense assumption, with an explanation for any change from the factor used for existing rates. Explain how these costs are allocated among each benefit plan design and attach demonstrative documentation as an exhibit;

b. The percentage allocated for the commission assumption with an explanation for any change from the factor used for existing rates;

c. The percentage allocated for federal, state and local government tax assumptions with an explanation for any change from the factor used for existing rates;

d. The percentage allocated for the investment income assumption with an explanation for any change from the factor used for existing rates;

e. The percentage allocated for the profit and contingency

assumption with an explanation for any change from the factor used for existing rates; and

f. The percentage allocated for any other factor;

(d) Detailed explanation, with example, of how a small group composite rate is determined, including the group size which is eligible for a composite rate calculation;

(e) Each health benefit plan description and the applicable benefit factor adjustment, or any other method of calculating rates for a different benefit plan if the method is not multiplicative, for each benefit plan to which this filing applies. If applicable, the two (2) individual GAP benefit plans, other than the standard benefit plan, shall be identified.

(f) Detailed discussion of the manner in which the projected amount of net assessments and refunds under Sections 21 and 22 of House Bill 315 as enacted during the 1998 Regular Session of the General Assembly is included in establishing the proposed rates in the filing as required by KRS 304.17A-095(6);

(g) Information regarding how fees are paid to providers as follows:

1. Justification of fees paid to providers in relation to the rate requested, including any assumption used regarding provider discounts in the rate filing; and

2. Average discount to providers during experience period and average discount for physician payments, hospital payments, laboratory payments, pharmacy payments, mental health payments and other payments for the rate filing period;

(h) Explanation of the anticipated effect of the requested rates on the current policyholders, subscribers, or enrollees;

(i) Information regarding each class of business which shall include:

1. Identification of each class of business;

2. Justification of each separate class of business; and

3. A demonstration that each index rate for the class of business with the highest index rates is within ten (10) percent of the corresponding index rate from the class of business with the lowest index rates; and

(j) Prospective certification of the following, which shall be filed as an attachment to the actuarial memorandum and signed by the qualified actuary who prepares and signs the actuarial memorandum:

1. That the information is prepared in accordance with American Academy of Actuaries Actuarial Standard of Practice No. 26, Compliance with Statutory and Regulatory Requirements for the Actuarial Certification of Small Employer Health Benefit Plans, applicable to individual as well as small employer business; and

2. That all the proposed rates are in compliance with Sections 10, 11 and 19 of House Bill 315 as enacted during the 1998 Regular Session of the General Assembly.

(3) The actuarial memorandum for a large group rate filing shall include the following information:

(a) The information provided in subsection (2)(a), (b), (c)1, (c)4, (f) and (g) of this section;

(b) Development of rating basis including each adjustment for age, gender, family composition, benefit plan, industry, healthy lifestyle and any other adjustment;

(c) Any formula for new and renewal business including a definition of each term used in the formula;

(d) Credibility criteria used in conjunction with experience rating;

(e) Detailed explanation of any change in the manual rating formula or experience rating formula;

(f) Detailed explanation of any change in factors which would be used in any formula;

(g) Any periodic trend rate applied in the formula;

(h) The composite effect of any change in formula and formula factors; and

(i) Detailed explanation of any trend assumption used in experience rating.

Section 6. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) Form LH-32, "Health Benefit Plan Rate Filing Information Form (April 1998 Edition)";

(b) Form F-1 LH, "Face Sheet and Verification Form (April 1998 Edition)";

(c) Actuarial Standards of Practice No. 8, "Regulatory Filings for Rates and Financial Projects for Health Plans (Doc. No. 010, 1990 Edition)", American Academy of Actuaries;

(d) Actuarial Standard of Practice No. 26, "Compliance with Statutory and Regulatory Requirements for the Actuarial Certification of Small Employer Health Benefit Plans (Doc. No. 052, adopted October, 1996)", American Academy of Actuaries;

(e) Interpretive Opinion 3, "Professional Communications of Actuaries (1981 Edition)", American Academy of Actuaries;

(f) Income and Expense Worksheet (1998 Edition);

(g) Form LH-33, "Health Benefit Plan Regions (April 1998 Edition)"; and

(h) Certification Form LH-34 (1998 Edition).

(2) This material may be inspected, copied, or obtained at the Kentucky Department of Insurance, 215 West Main Street, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

GEORGE NICHOLS III, Commissioner

LAURA M. DOUGLAS, Secretary

SUETTA W. DICKINSON, General Counsel

APPROVED BY AGENCY: April 14, 1998

FILED WITH LRC: April 15, 1998 at 4 p.m.

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

REGULATORY IMPACT ANALYSIS

Contact person: Sharron S. Burton.

(1) Type and number of entities affected: There are approximately 1900 insurers and health maintenance organizations authorized to write health insurance in the state of Kentucky. Currently, there are approximately 25 insurers writing health insurance in this state.

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

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: The department has received no public comments regarding this issue.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: The department has received no public comments regarding this issue.

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

1. First year following implementation: This administrative regulation will establish health benefit plan rate filing requirements applicable to all insurers that issue, deliver, or renew health benefit plans in Kentucky. Insurers will be required to file information regarding health insurance rates needed by the commissioner to determine whether the rates should be approved or disapproved. The insurers will be responsible for copying and delivery costs. Because insurers are currently required to file rate information under 806 KAR 17:140, the cost to the insurers for filing under this administrative regulation should not increase dramatically, if at all.

2. Second and subsequent years: Insurers will be required to provide the department with new rate information in the event that any filed rate is changed.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

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1. First year: The department currently collects and reviews health benefit rate filing information pursuant to 806 KAR 17:140. The department does not anticipate that this new administrative regulation regarding rate filing requirements will increase the costs already incurred.

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: The department will be required to review health insurance rate filings submitted pursuant to this administrative regulation. Following review, the department will make a determination as to the approval or disapproval of the rate filing.

(4) Assessment of anticipated effect on state and local revenues: The department does not anticipate that there will be any effect on state and local revenues caused by the implementation of this administrative regulation.

(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 and enforce this administrative regulation.

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

(a) Geographical area in which administrative regulation will be implemented: The department has received no public comments regarding this issue.

(b) Kentucky: The department has received no public comments regarding this issue.

(7) Assessment of alternative methods; reasons why alternatives were rejected: The department reviewed the possibility of amending 806 KAR 17:140 in order to implement 1998 RS HB 315. This alternative was rejected because of the significant changes which needed to be made to the health rate filing requirements. Instead, 806 KAR 17:140 will be repealed and this administrative regulation will govern health benefit plan rate filing requirements.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: This administrative regulation will enable insurers filing rates with the department to comply with the provisions of 1998 RS HB 315. This regulation will also facilitate consistent and efficient compliance with HB 315.

(b) State whether a detrimental effect on environment and public health would result if not implemented: If this administrative regulation was not implemented, the department would not likely collect an adequate amount of information to determine if a company's rates should be approved or disapproved. Therefore, it is for the benefit of the public that appropriate guidelines are in place to regulate the rate filings submitted by insurers to the department.

(c) If detrimental effect would result, explain detrimental effect: Without this administrative regulation, there would be no uniform standards or guidelines for submitting health benefit plan rate filings to the department. The absence of uniform standards would inhibit the department's ability to perform an adequate review of rate filings.

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: This regulation is duplicative, at least in part, of the health insurance rate filing requirements outlined in 806 KAR 17:140.

(a) Necessity of proposed regulation if in conflict: In order to comply with the rate filing provisions contained in 1998 RS HB 315, it is necessary for the department to promulgate new and different rate filing requirements.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: 806 KAR 17:140 will be repealed by emergency administrative regulation. The repeal of 806 KAR 17:140 will eliminate any conflicting or duplicate provisions.

(10) Any additional information or comments: None

(11) TIERING: Is tiering applied? Tiering is not applied since this administrative regulation applies to all insurers that issue, deliver, or renew health benefit plans in Kentucky.

STATEMENT OF EMERGENCY 905 KAR 2:160E

This emergency administrative regulation is being promulgated pursuant to KRS 194.050 and 199.8994 which authorize the cabinet to adopt administrative regulations necessary to operate programs and provide uniform administration of child day care funds. This administrative regulation is necessary to enable the Cabinet for Families and Children to qualify to receive federal funds under both the Social Services Block Grant and Child Care Development Fund. This emergency administrative regulation must be placed into effect immediately to implement an amendment to correct the state plan for the Child Care and Development Fund Services that was effective October 1, 1997 and implements provisions of the 1998 budget bill that allows the cabinet to eliminate copays for families with income below \$700 per month and extends maximum eligibility at exit from the program from 133 percent to 150 percent of poverty. This emergency administrative regulation will enable the Cabinet for Families and Children to implement provisions of PL 104-193, Personal Responsibility and Work Opportunity Reconciliation Act of 1996, that eliminated Title IV-A funding for the Transitional Child Care Assistance Program, the At-Risk Child Care Program and the Jobs Child Care Program and requires seventy (70) percent of the Child Care and Development Services Fund to be expended for K-TAP participants, those families attempting to transition from assistance and those at-risk of remaining dependent on assistance programs. This administrative regulation provides that families whose K-TAP case has been discontinued and needs child care assistance to accept or retain employment shall be eligible for twelve (12) consecutive months from the date of discontinuance. This administrative regulation establishes the policy and procedures for the implementation of these child care assistance programs that were previously covered by the transitional CCDBG plan that expired on September 30, 1997 and the amendment is necessary for the implementation of the child care assistance program and to prevent an imminent threat to the public health, safety or welfare of low income families who need assistance with child care services. An ordinary administrative regulation would not allow for the timely implementation of the amendment. This emergency administrative regulation replaces a previous emergency regulation filed on October 1, 1997. The specific differences in this emergency administrative regulation and the previous one include the correction for the CCDF that places an income eligibility limit of eighty-five (85) percent of state median income for families that have been discontinued from K-TAP, extending maximum eligibility at exit from the child care assistance program from 133 percent to 150 percent of poverty and eliminating copays for families with income below \$700 per month. Other minor revisions include a revision in the copay scale that aligns the lower end of the scale for a family of two (2) with the scale for a family of three (3). This emergency administrative regulation shall be replaced by an ordinary administrative regulation. The Notice of Intent for the ordinary administrative regulation is being filed concurrently with this emergency administrative regulation.

PAUL E. PATTON, Governor
VIOLA P. MILLER, Secretary

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CABINET FOR FAMILIES AND CHILDREN Department for Social Services Division of Family Services

905 KAR 2:160E. Child day care assistance program.

RELATES TO: KRS 199.892 - 896, 45 CFR 98

STATUTORY AUTHORITY: KRS 194.050(1), 199.892, 199.8994, 45 CFR 98.41, 7 USC 2015(d), 42 USC 601 et seq., EO 96-862, HB 321 (1998)

EFFECTIVE: April 20, 1998

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194.050 and 199.8994 provide that the Secretary for the Cabinet for Families and Children shall adopt administrative regulations necessary to operate programs and fulfill the responsibilities vested in the Cabinet for Families and Children and provide uniform administration of child day care funds. Executive Order 96-862, effective July 2, 1996, reorganized the Cabinet for Human Resources and placed the Department for Social Services under the Cabinet for Families and Children. This administrative regulation is necessary to enable the Cabinet for Families and Children to qualify to receive federal funds under the Social Services Block Grant, Child Care and Development Fund and for child care services pursuant to 904 KAR 2:017 and 904 KAR 3:042. The function of this administrative regulation is to establish procedures for the implementation of child day care assistance program.

Section 1. Definitions. (1) "Attending a job training or educational program" means regular and scheduled participation in a program offering appropriate skills training or education required by K-TAP and if postsecondary, consistent with employment goals and if a teen parent, participation in education leading to a high school general equivalency diploma.

(2) "Cabinet" means the Cabinet for Families and Children.

(3) "Center-based child care" means a Type I licensed child day care facility.

(4) "Certificate" means a payment mechanism provided by the cabinet or designee and used by a family to secure child day care from the provider of choice.

(5) "Certified family child care home" means a home as governed by KRS 199.8982(1)(c) and 905 KAR 2:100.

(6) "Child care and development fund, (CCDF)" means child care assistance provided to families throughout the state to improve the affordability, quality and availability of child care services for a low-income family to work, participate in K-TAP or for protection and teen parents.

(7) "Child protective service case" means a case registered for services in which the case file contains case documentation that substantiates child abuse, neglect, dependency or exploitation. This category may also include services to prevent abuse, neglect, dependency or exploitation, including multiproblem families or teen parents.

(8) "Corporal physical discipline" means the deliberate infliction of physical pain and does not include spontaneous physical contact which is intended to protect a child from immediate danger.

(9) "Day care" means the provision of essential child care for a portion of a day on a regular basis and is designed to supplement, but not substitute for, the parent's responsibility for the child's protection, development and supervision.

(10) "Dependent care disregard" means a method of allowing a deduction from the gross income for child care expenses for K-TAP and medical assistance recipients with earned income and for food stamp recipients with earned income or who are in training or educational programs which are preparatory to employment. This deduction allows the K-TAP recipient to retain more income to pay child care expenses.

(11) "Eligibility requirements" means that for a family to qualify for

child day care funds, except in those instances where day care is provided for child protective services cases, a family shall meet both need and income status criteria.

(12) "Employment" means public or private, full- or part-time, permanent or temporary work for which wages are paid, including self-employment.

(13) "Enrolled or enrollment" means the process by which unregulated providers become eligible for CCDF by completing the application for provider enrollment and obtaining approval by the Department for Social Services.

(14) "Family" means one (1) or more adults and children related by blood or law, including stepparents, residing in the same residence.

(15) "Family child care" means:

(a) Certified family child care homes as governed by 905 KAR 2:100; or

(b) Unregulated care provided for no more than three (3) unrelated children.

(16) "Family child care counselor" means cabinet or designee staff who work strictly with the day care assistance program. The family child care counselor provides services to families through the following federally funded programs: Social Services Block Grant, (SSBG), Child Care and Development Fund, (CCDF), Food Stamp Employment and Training Program (FSETP), and other federally funded programs that the cabinet deems the best interest of parents may be served through the child day care assistance program.

(17) "Food Stamp Employment and Training Program (FSETP)" means a program administered by the cabinet and operated by the Workforce Development Cabinet, Department for Employment Services, pursuant to 904 KAR 3:042.

(18) "Group home child care" means a Type II licensed child day care facility.

(19) "Kentucky Transitional Assistance Program (K-TAP)", Kentucky's "Temporary Assistance for Needy Families (TANF) Program" means a money payment program for children who are deprived of parental support or care due to:

(a) Death, continued or involuntary absence, physical or mental incapacity of a parent; or

(b) Unemployment of at least one (1) parent when both parents are in the home.

(20) "Licensed child day care facility" means a facility as governed by KRS 199.894.

(21) "Physical or mental incapacity" means a child under the age of eighteen (18) who has multiple or severe problems diagnosed by a physician or qualified professional, that prevent the child from caring for himself for a part of the day.

(22) "Priorities" mean that the client groups identified for receipt of child day care are ranked in chronological order by priority.

(23) "Provider" means owner, operator or employee, including a volunteer, who works in a Type I or Type II licensed child day care facility, certified family child care home, relative or enrolled home.

(24) "Relative provider" means a person:

(a) At least eighteen (18) years of age;

(b) Who provides child care services only to a:

1. Grandchild;

2. Great grandchild;

3. Niece or nephew; or

4. Sibling, who resides in a separate residence; and

(c) Who is related to the children served by:

1. Marriage;

2. Blood relationship; or

3. Court decree.

(25) "Social services block grant, (SSBG)" means funding for child care assistance provided by licensed or certified providers for families receiving protective and preventive services, which may include multiproblem families or teen parents, and low income working parents.

(26) "Special needs child" means a child who has multiple or severe problems, and the severity of the disability requires ongoing specialized care as defined under PL 99-457 Part H or PL 94-142.2.

(27) "Type I licensed child day care facility" means a facility:

(a) Other than a dwelling unit which regularly receives four (4) or more children for day care, including children of a staff member; or

(b) A facility, including a dwelling unit, which regularly provides day care for thirteen (13) or more children, including children of a staff member.

(c) If preschool children of any day care staff receive care in the facility, they shall be included in the number for which the facility is licensed.

(28) "Type II licensed child day care facility" means a home or dwelling unit which regularly provides care apart from parents for seven (7) to twelve (12) children, including the provider's own preschool children.

(29) "Unmet need" means a list that may be maintained by the cabinet or designee staff once funds are obligated in a contract area. The list is based on the availability of allocated day care funds in each area.

(30) "Unregulated provider" means a child care provider who is not subject to be licensed or certified by the state or federal government.

(31) "Without regard to income" means that SSBG or CCDF child day care services for child protective cases may be provided or purchased without regard to family income.

Section 2. Technical Eligibility for CCDF. A child shall be eligible for services if he:

(1) Is under the age of thirteen (13) or is under the age of eighteen (18) and:

(a) Is physically or mentally incapable of caring for himself as verified by the written determination of:

1. A physician;
2. A licensed or certified psychologist;
3. A qualified mental health professional; or
4. As accepted by a collateral agency (schools, comprehensive care center); or

(b) Is under court supervision;

(2) Resides with a family whose income does not exceed:

- (a) 133 percent of poverty at the time of application; or
- (b) 150 percent of poverty at time of reauthorization;

(c) To the extent necessary, the eligibility requirement relating to the percent of poverty may be revised based on the availability of state and federal funds.

(d) Except a child protective services case is eligible without regard to income.

(3) Resides with parents or K-TAP specified relative whose K-TAP case has been discontinued and needs child care assistance to accept or retain employment.

(a) The family remains eligible for child care assistance for a period of twelve (12) consecutive months from the date of discontinuance from K-TAP and the families income does not exceed eighty five (85) percent of state median income; and

(b) The family shall be responsible for the maximum copayment amount specified in the child care daily parent copayment schedule.

(4) Resides with parents or K-TAP specified relative who are working, participating in K-TAP, are teen parents in education, or in need of protection. A K-TAP family shall comply with eligibility and limitations pursuant to 904 KAR 2:017, Kentucky Works supportive services.

(5) Copayment requirement.

(a) A family receiving child day care assistance shall be required to contribute toward the payment based on the family's income as described in Section 6(3) of this administrative regulation.

(b) An individual who fails to cooperate in paying the required

copayments may, subject to notices and hearing requirements, lose eligibility for the period of time back copayments are owed, unless satisfactory arrangements are made to make full payment.

(c) In situations where the court is involved, parents may be ordered to pay for part or all of the cost of day care for their child. Voluntary payments by parents may be accepted.

(6) Other eligibility conditions or priority requirements including childhood development and before and after school care services, may be established in addition to Sections 3 through 6 of this administrative regulation as long as they shall not:

(a) Discriminate against children on the basis of:

1. Race;
2. National origin;
3. Ethnic background;
4. Sex;
5. Religious affiliation; or
6. Disability.

(b) Limit parental rights as governed by Section 5 or 6(4) of this administrative regulation.

(7) Families shall not be eligible for child care assistance if care is provided by:

- (a) Parents or stepparents;
- (b) Legal guardians;
- (c) Members of the K-TAP or food stamp assistance unit or persons living in a home which includes the child in need of care;
- (d) Providers not meeting applicable standards of state and local law or not enrolled pursuant to Section 6 of this administrative regulation; and

(e) Alternative programs such as Head Start, state preschool and kindergarten which are available and accessible for the hours child care is needed.

Section 3. Technical Eligibility for SSBG. (1) The child shall have met the requirements specified in Section 2(1) of this administrative regulation.

(2) The department for Social Services case record shall:

(a) Substantiate child abuse, neglect, dependency or exploitation; or

(b) Provide documentation that a family has a need for child care services and with the use of child care the need for protective services may be prevented;

(c) Provide case by case documentation if the copayment is waived.

(3) Working parents may be eligible if:

- (a) Child care needs exist in order to allow the parent to work;
- (b) The family is income eligible as specified in Section 2(2) of this administrative regulation; and
- (c) CCDF funds are obligated.

Section 4. Technical Eligibility for Dependent Care Pursuant to the Food Stamp Employment and Training Program (FSETP). (1) A dependent individual of a FSETP participant shall be eligible for services if he:

(a) Is under the age of thirteen (13); or

(b) Regardless of his age, is physically or mentally incapable of caring for himself as verified by the written determination of:

1. A physician;
2. A licensed or certified psychologist;
3. A qualified mental health professional;
4. A Department for Social Services worker indicating that the dependent qualifies as a special needs child;

5. A collateral agency (schools, comprehensive care center); or

(c) Is disabled pursuant to 904 KAR 3:010, Section 1 (9); or

(d) Is under court supervision; and

(e) Resides with an adult household member who:

1. Is responsible for his care; and
2. Is subject to and complying with FSETP, pursuant to 904 KAR

3:042.

(2) Families shall not be eligible for FSETP child care assistance if child care is provided by:

- (a) A member of the food stamp household;
- (b) A food stamp household member who has been exempted from participation in FSETP because he is responsible for the care of a household member who is under six (6) years of age; or
- (c) The food stamp household resides in a Kentucky domestic violence center (KDVC) shelter and child care is provided on site; or
- (d) The FSETP participant is a K-TAP recipient.

Section 5. Parental Rights and Responsibilities. (1) Unless alternative programs such as Head Start, State Preschool and Kindergarten are available and accessible for the hours care is needed, a parent of an eligible child who receives or is offered child care services subject to the availability of state and federal funds shall be offered a choice:

(a) To enroll the child with an eligible child care provider that has a grant or contract, selected by the parent to the maximum extent practicable; or

(b) To receive a child care certificate, the DSS-76, Child Day Care Services Agreement and Child Care Certificate, which shall:

- 1. Be issued to the parent;
- 2. Be of value commensurate with the value of child care services provided in this paragraph;
- 3. If chosen by the parent, be used for child care services provided by a sectarian or nonsectarian organization or agency;
- 4. Not be considered a contract or grant to the provider but assistance to the parent;
- 5. Allow parents to choose from a variety of child care categories in compliance with federal regulations governing child day care programs including:
 - a. Licensed child care providers;
 - b. Certified family child care providers (CFCCP); and
 - c. Unregulated child care providers enrolled with the Department for Social Services; or
 - d. Relative providers as defined in Section 1 of this administrative regulation; and
- 6. Inform parents and providers that the agreement may be terminated upon notice that the Department for Social Services has determined that conditions or circumstances at the child day care premises place children at risk of abuse, neglect, or exploitation pursuant to KRS Chapter 620.

(2) Providers of child care services shall afford parents unlimited access to their children and to the provider during normal hours of operation and whenever the child is in the care of the provider.

(3) The cabinet or designee shall:

- (a) Maintain a record of substantiated parental complaints; and
- (b) Make information regarding parental complaints available to the public upon request.

(4) The cabinet or designee shall make available to the parents and general public, consumer education about parental options relating to child care services including:

- (a) Licensing and regulatory requirements; and
- (b) Complaint procedures.

Section 6. State and Provider Requirements. (1) The cabinet shall assure that providers of child care services funded under CCDF, SSBG, FSETP and other local, state, federal funds under the child day care assistance program:

(a) Shall comply with licensing and regulatory requirements as governed by 905 KAR 2:001, 905 KAR 2:090, 905 KAR 2:110, 905 KAR 2:120 and 905 KAR 2:100;

(b) If not required to be licensed or certified as governed by 905 KAR 2:001, 905 KAR 2:090, 905 KAR 2:110, 905 KAR 2:120 and 905 KAR 2:100 or are not relative providers shall be enrolled with the cabinet to meet minimum health and safety standards. Providers

requesting enrollment shall complete the DSS-1297, Application for Child Care Provider Enrollment: In Child's Home or the DSS-1295, Application for Child Care Provider Enrollment: In Provider's Home and DSS-1296, Child Care Provider Enrollment Self Assessment, and meet the following requirements:

- 1. The provider shall be at least eighteen (18) years of age;
- 2. The provider shall be free of tuberculosis, as stated by a qualified physician or health care specialist;
- 3. The provider shall submit to a criminal records check conducted within the past year by the Kentucky State Police;
- 4. The provider shall sign an agreement not to use any form of corporal physical discipline on the children entrusted into their care; and
- 5. The provider shall complete the enrollment process every three (3) years.

(c) The department may deny or terminate an agreement with an unregulated provider if conditions or circumstances at the child care premises places children at risk of abuse, neglect, or exploitation pursuant to KRS Chapter 620.

(d) If the department denies or terminates an agreement with an unregulated provider, the department shall notify the provider in writing stating the reasons for the adverse action and the provider's right of appeal.

(e) If the provider feels an action of the Department for Social Services is unfair, without reason, or unwarranted, the provider may appeal the action, in writing, to the Commissioner of the Department for Social Services, 6th Floor, 275 East Main Street, Frankfort, Kentucky 40621, within thirty (30) days after receiving the notice of the action from the department.

(f) Upon receipt of the request for hearing, the commissioner, or designee, shall appoint a hearing officer to review the record, conduct the hearing, and make recommendations upon the matter appealed. Within fifteen (15) days of the assignment, the hearing officer shall notify the provider in writing of the date, time and place of the hearing. The notice shall comply with KRS 13B.050(2), (3).

(g) The hearing shall be conducted as governed by KRS 13B.080 and 13B.090.

(h) The hearing officer shall advise the parties that a recommended order shall be distributed within ten (10) days after the close of the hearing, the parties shall have fifteen (15) days from the date of the recommended order to file exceptions, and a final decision shall be rendered within thirty (30) days from the close of the hearing.

(i) The recommended order shall be filed with the commissioner, or designee, and shall comply with KRS 13B.110.

(j) Within twenty (20) days after receipt of the recommended order, the commissioner or designee, shall render a final order, either affirming or overturning the initial decision of negative action. The final order shall comply with KRS 13B.120.

(k) If denial or termination of enrollment is upheld, the commissioner's or designee's notification shall specify the date by which the child care payments shall cease.

(2) The cabinet has established maximum child day care payments as follows:

(a) These charts represent the local maximum payment rate on a per day basis. Chart abbreviations are as follows: FD - full day, five (5) or more hours; PD - part day, less than five (5) hours.

KENTUCKY CHILD CARE MAXIMUM PAYMENT RATES

West/East Region

Counties: Allen, Ballard, Barren, Bath, Bell, Boyd, Bracken, Breckinridge, Breathitt, Butler, Caldwell, Calloway, Carlisle, Carter, Christian, Clay, Crittenden, Daviess, Edmonson, Elliott, Fleming, Floyd, Fulton, Grayson, Graves, Greenup, Hancock, Hardin, Harlan, Hart, Henderson, Hickman, Hopkins, Jackson, Johnson, Knott, Knox, Lawrence, Larue, Laurel, Lee, Leslie, Letcher, Lewis, Livingston, Logan, Lyon, Magoffin, Marion, Marshall, Martin, Mason, McCracken, McLean,

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Meade, Menifee, Metcalfe, Monroe, Montgomery, Morgan, Muhlenberg, Nelson, Ohio, Owsley, Perry, Pike, Robertson, Rockcastle, Rowan, Simpson, Todd, Trigg, Union Warren, Washington, Webster, Whitley, and Wolfe.

	Licensed		Certified		Enrolled/Relative	
	FD	PD	FD	PD	FD	PD
Infant/Toddler	\$13	8	12	7	9	5
Preschool	\$13	8	13	8	9	5
School Age	\$13	8	12	7	9	5

Central Region

Counties: Adair, Anderson, Boone, Bourbon, Boyle, Bullitt, Campbell, Carroll, Casey, Clark, Clinton, Cumberland, Estill, Fayette, Franklin, Gallatin, Garrard, Grant, Green, Harrison, Henry, Jefferson, Jessamine, Kenton, Lincoln, Madison, McCreary, Mercer, Nicholas, Oldham, Owen, Pendleton, Powell, Pulaski, Russell, Scott, Spencer, Shelby, Taylor, Trimble, Wayne, and Woodford.

	Licensed		Certified		Enrolled/Relative	
	FD	PD	FD	PD	FD	PD
Infant/Toddler	\$16	10	15	9	12	7
Preschool	\$15	9	15	9	11	6
School Age	\$14	8	15	9	10	5

(b) Licensed or certified providers, if the same amount is charged to the general public, may receive one (1) dollar per day beyond the maximum rate if the provider:

1. Is accredited by the National Association for the Education for Young Children or National Association for Family Child Care;
 2. Provides child care to a child with special needs; or
 3. Provides nontraditional hour care to a child during the period 6 p.m. to 6:30 a.m. or Friday 6 p.m. through Monday 6 a.m.
- (3) The cabinet or designee shall determine a copayment which the family shall pay to the provider for the cost of child day care based on the following sliding scale:

CHILD CARE DAILY PARENT COPAYMENT SCHEDULE \$700 TO 150% of POVERTY and 85 % of median (98-99)

Income Range Monthly	Family Size 2 Family Copay with 1 Child		Family Size 3 Family Copay with 1 child with 2 or more		Family Size 4 Family Copay with 1 child with 2 or more		Family Size 5 or More Family Copay with 1 child with 2 or more	
0 399	\$0.00		\$-	\$-	\$-	\$-	\$-	\$-
400 499	\$0.00		\$-	\$-	\$-	\$-	\$-	\$-
500 599	\$0.00		\$-	\$-	\$-	\$-	\$-	\$-
600 699	\$0.00		\$-	\$-	\$-	\$-	\$-	\$-
700 799	\$1.75		\$1.75	\$2.25	\$1.75	\$2.25	\$1.75	\$2.25
800 899	\$2.00		\$2.00	\$2.50	\$2.00	\$2.50	\$2.00	\$2.50
900 999	\$2.50		\$2.50	\$3.00	\$2.50	\$2.75	\$2.25	\$2.75
1,000 1,099	\$3.25		\$3.25	\$3.75	\$2.75	\$3.25	\$2.50	\$3.00
1,100 1,199	\$4.25		\$4.00	\$4.50	\$3.25	\$3.75	\$2.75	\$3.25
1,200 1,299	\$5.25		\$5.00	\$5.50	\$4.00	\$4.50	\$3.00	\$3.50
1,300 1,399	\$5.25		\$6.00	\$6.50	\$5.00	\$5.50	\$3.50	\$4.25
1,400 1,499	\$6.00		\$7.00	\$7.50	\$6.00	\$6.75	\$4.25	\$4.75
1,500 1,599	\$6.75		\$7.75	\$8.50	\$7.00	\$7.75	\$5.00	\$5.75
1,600 1,699	\$7.50		\$7.75	\$8.50	\$8.00	\$8.75	\$6.00	\$6.75
1,700 1,799	\$8.00		\$7.75	\$8.50	\$8.50	\$9.25	\$7.00	\$8.00
1,800 1,899	\$8.25		\$8.25	\$9.00	\$9.25	\$10.25	\$8.00	\$8.75
1,900 1,999	\$8.75		\$8.75	\$9.75	\$9.25	\$10.25	\$9.00	\$10.00
2,000 2,099	\$9.25		\$9.25	\$10.25	\$9.25	\$10.25	\$9.75	\$10.75
2,100 2,199	\$9.75		\$9.75	\$10.75	\$9.75	\$10.75	\$10.75	\$11.75
2,200 2,299		\$10.25	\$11.25		\$10.25	\$11.25	\$10.75	\$11.75
2,300 2,399		\$10.75	\$11.75		\$10.75	\$11.75	\$10.75	\$11.75
2,400 2,499		\$11.00	\$12.25		\$11.00	\$12.25	\$10.75	\$11.75
2,500 2,599		\$11.50	\$12.75		\$11.50	\$12.75	\$11.50	\$12.75
2,600 2,699		\$12.00	\$13.25		\$12.00	\$13.25	\$12.00	\$13.25
2,700 2,799		\$-	\$-		\$12.50	\$13.75	\$12.50	\$13.75
2,800 2,899					\$13.00	\$14.25	\$13.00	\$14.25
2,900 2,999					\$13.25	\$14.75	\$13.25	\$14.75
3,000 3,099					\$13.75	\$15.25	\$13.75	\$15.25
3,100 3,199					\$14.00	\$15.50	\$14.00	\$15.50
3,200 3,299					\$-	\$-	\$14.00	\$16.00
3,300 3,399							\$14.00	\$16.00
3,400 3,499							\$14.00	\$16.00
3,500 3,599							\$14.00	\$16.00
3,600 and above							\$14.00	\$16.00
							\$-	\$-

There is no copay below \$700.

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Low income working parent family is no longer eligible above 150 percent of poverty.

Families transitioning from TANF/K-TAP have one (1) year of eligibility if income is below eighty-five (85) percent of state median income, may remain as low income working parent if income is less than 150 percent of poverty.

The maximum copay for eligible families with more than five (5) members is fourteen (14) dollars with one (1) child in care and sixteen (16) dollars with two (2) or more children in care.

(a) Copayments shall not be assessed in:

1. A K-TAP, medical assistance case where clients are receiving dependent care disregard; or

2. A Food Stamp or FSETP case.

(b) Copayment may not be assessed in a child protective case under SSBG or CCDF.

(c) The cabinet or designee shall determine the maximum daily reimbursement rate and parent copayment, not to exceed rates as specified in subsection (2) of this section. If the parent fails to pay the copayment, the cabinet or designee shall develop a plan with the parent to pay the copayment.

(d) The cabinet or designee shall advise the client to report family and financial changes that may affect authorization of payments. Reauthorizations shall be determined:

1. Every twelve (12) months; and

2. Upon receipt of reported changes.

(4) The Cabinet for Families and Children may, except for protective service cases and FSETP cases, establish priorities for child care services as follows:

(a) Children with special needs;

(b) Teen parents;

(c) K-TAP participants to meet the needs of families who are attempting to transition off assistance;

(d) Parents or K-TAP specified relative whose K-TAP case has been discontinued and needs child care assistance to accept or retain employment; and

(e) Other low income working parents.

(5) The Department for Social Services or designee shall exchange client specific information with the Department for Social Insurance within ten (10) days of discovery.

(6) Recoupment. The following provisions apply to overpayment in SSBG, CCDF, FSETP and any other local, state, or federal funds available through the child day care assistance program:

(a) Necessary action shall be taken promptly to correct and recoup an overpayment in a case:

1. Of fraud;

2. Involving a current recipient; and

3. In which the overpayment would equal or exceed the cost of recovery.

(b) An overpayment shall be recovered from the child care provider if due to provider error or fraud.

(c) An overpayment shall be recovered through a reduction in the amount payable to the provider.

(d) An underpayment and an overpayment may be offset against each other in adjusting an incorrect payment.

(7) If a client's child care services are reduced or terminated due to need, income criteria, priority status, or change in law, regulation or policy of the cabinet, the cabinet or designee shall:

(a) Reassess the family so a client may be given a minimum ten (10) days notice of their eligibility if they do not meet the new criteria after their authorization period expires; and

(b) Send written notice explaining new eligibility criteria with a notice of intended action.

(8) The cabinet or designee shall notify the client of their rights to notice of adverse actions, hearings and appeals as governed by 905 KAR 1:320, Fair hearing. If notice of intended action is appealed by the client, the child care worker shall notify the client that child care

services shall not be continued through the month the hearing officer's decision is rendered.

Section 7. Incorporated by Reference. (1) The following material is incorporated by reference:

(a) "Child Care Services Agreement and Child Care Certificate", DSS-76, "October, 1997", Cabinet for Families and Children;

(b) "Child Care Billing Statement, Enrollment Attendance Verification", DSS-77, "February, 1998", Cabinet for Families and Children;

(c) "Application for Child Care Provider Enrollment: In Child's Home", DSS-1297, "February, 1998", Cabinet for Families and Children;

(d) "Application for Child Care Provider Enrollment: In Provider's Home", DSS-1295, "February, 1998", Cabinet for Families and Children;

(e) "Child Care Provider Enrollment Self-assessment", DSS-1296, "February, 1998", Cabinet for Families and Children; and

(f) "Application for Subsidized Child Day Care Assistance", "October, 1997", Cabinet for Families and Children.

(2) This material may be inspected, copied, or obtained at the Department for Social Services, CHR Building, 6th Floor, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m.

DONNA HARMON, MSW, Commissioner

VIOLA P. MILLER, Secretary

CHARLES P. LAURENCE, Attorney

APPROVED BY AGENCY: April 16, 1998

FILED WITH LRC: April 20, 1998 at 4 p.m.

REGULATORY IMPACT ANALYSIS

Agency Contact: Michael Cheek

(1) Type and number of entities affected: The type and number of entities affected are approximately 40,000 children who may receive subsidized child care assistance governed by this administrative regulation and provided by 634 certified, 1878 licensed and 2600 enrolled or relative child care providers. The cabinet or designee will be responsible for the delivery of direct child care services as specified in the approved Child Care and Development Fund Services State Plan which with SSBG has available \$64.3M for SFY'97 and \$75M for SFY'98. This plan allows for the delivery of subsidized child care assistance by a contractor which may improve the delivery of services for both clients and child care providers, expand community resources and increase the number of eligible children served. A Notice of Intent has been filed and a public hearing has been scheduled during which comments may be received.

(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. With the passage of the welfare reform bill, the cabinet has the flexibility to design a service delivery system for the provision of child day care assistance to eligible families. This revised system combines six existing child day care assistance programs into one, implements a simplified child care maximum rate structure and a revised sliding copayment scale based on client eligibility at below 133% of poverty at the time of application and 150% of poverty at the time of reauthorization, and eliminates some duplicative billing processes for providers in the community. The establishment of a child care contractor, who operates in the community, accepting referrals, taking applications, and locating child care services will be more effective in integrating the fiscal and human resources of the local communities with state revenue. This improved service delivery system may encourage the development of needed child day care providers and assist local K-TAP recipients and other low income families in obtaining child day care assistance in

order to work. This administrative regulation provides that families whose K-TAP case has been discontinued and needs child care assistance to accept or retain employment shall be eligible for twelve consecutive months from the date of discontinuance as long as the families income does not exceed 85% of the state median income. Additional savings will be available for the families as there will be no copay requirements for families below an income of \$700 per month and there are some internal adjustments to the copay scale for these families. A Notice of Intent has been filed and a public hearing has been scheduled during which 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. The impact of doing business in the geographical areas will be enhanced with the development of this revised service delivery system which combines six existing child day care assistance programs into one, implements a simplified child care maximum rate structure and a revised sliding copayment scale based on client eligibility at below 133% of poverty at the time of application and 150% of poverty at the time of reauthorization, and eliminates some duplicative billing processes for providers in the community. The establishment of a child care contractor, who operates in the community, accepting referrals, taking applications, and locating child care services will be more effective in integrating the fiscal and human resources of the local communities with state revenue. A Notice of Intent has been filed and a public hearing has been scheduled during which 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 compliance, reporting and paperwork requirement for the first year include the installation of the new child day care assistance automated system to meet expanded federal and state information needs and efficiently serve nearly double the number of children, required training of contractor staff, local providers of subsidized child day care, and the compiling of the required federal reporting data necessary to comply with the CCDF State Plan. These first year requirements will be the responsibility of the local contractor upon designation and the contractors ability to assume authority for the full implementation of the local child day care assistance program.

2. Second and subsequent years: Compliance, reporting and paperwork requirements for the second and subsequent years include operation of the revised child day care assistance program with appropriate monitoring of funds, potential use of other community resources and the reporting of required data for the completion of federal reports mandated pursuant to the CCDF State Plan.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: The first year direct and indirect costs to the agency include the cost of the revised child day care automated system, (\$3.8M) cost of contracting with a local agent to implement the program, (\$3.5M) development and issuance or revised policy and procedures for cabinet staff, necessary training for contractors and providers as each contract area is phased in until the program is statewide. Staff currently providing child care services for the cabinet will be phased into other direct service positions as each contract area becomes operational. The General Assembly allocated \$900,000 for each year of the biennium in order for the cabinet to eliminate copays for families with income below \$700 per month. Also extending the eligibility from 133% to 150% of poverty at reauthorization is expected to cost an additional \$1.6 million in FY'99. Internal adjustments to the copay scale to align the lower end of the scale for a family of two with the scale for a family of three will cost approximately \$162,300 per year which will be offset by the \$3.5 million the cabinet has identified for use to extend the eligibility from 133% to 150%. Additionally in order to serve more families, the following payment policies have been developed:

Payments shall be made on an enrollment basis, with the cabinet or designee enrolling children only for the amount of child care needed.

Payments shall only be made for part-time arrangements for those needing only part-time care unless part-time is not available.

No payment for private kindergarten unless public kindergarten hours do not permit the parent to work or participate in K-TAP.

Families are not eligible for subsidies when alternative programs are available and accessible. (e.g. Head Start, state preschool, PACE)

Families whose K-TAP case has been discontinued and needs child care assistance to accept or retain employment shall be eligible for twelve consecutive months from the date of discontinuance as long as the families income does not exceed 85% of the state median income. We do not have current data on the number of families in this category, but in March 1997, only 6% of the families served were over 150% of poverty. We estimate that families in transition with income at or below 85% of the state median represent less than 3% of the families currently served.

2. Continuing costs or savings: Continuing costs to the agency will include ongoing contract costs, (\$4.2M) monitoring of the contract and statewide child day care expenses for compliance with federal regulations, licensure, certification and enrollment of child day care providers and maintenance of the CCDF State Plan and necessary updates (\$4.0M). The establishment of a child care contractor, who operates in the community, accepting referrals, taking applications, and locating child care services will be more effective in integrating the fiscal and human resources of the local communities with state revenue. The second year cost for extending the eligibility from 133% to 150% of poverty is estimated at \$1.66 million for FY 2000. Internal adjustments to the copay scale to align the lower end of the scale for a family of two with the scale for a family of three will cost approximately \$162,300 per year which will be offset by the \$3.5 million the cabinet has identified for use to extend the eligibility from 133% to 150%. The payment policies identified in the first year will continue to allow the cabinet to serve more families with the limited funds available.

3. Additional factors increasing or decreasing costs: Additional factors increasing or decreasing costs include how effective the local contractor is in integrating the fiscal and human resources of the local communities with state revenue, increases or decreases in the need for child day care assistance for child protection cases, to meet K-TAP participation rates or increases or decreases in the need of low income working parents for subsidized child day care assistance. The cabinet has the flexibility with this regulation to expand the eligibility threshold to remain within the allocated funds for child day care assistance. Another factor that may increase or decrease the costs is the impact of recent minimum wage increases on the cost of the provision of child day care.

(b) Reporting and paperwork requirements: Reporting and paperwork requirements include the development of contracts, monitoring of child day care expenditures, provision of technical assistance to the local contractors, and establish the policies, regulations and state plan for the child day care assistance programs.

(4) Assessment of anticipated effect on state and local revenues: The anticipated effect on state and local revenues is that local contractors may be more effective in integrating the fiscal and human resources of the local communities with the state resources thereby expanding the number of families receiving assistance with meeting their child care needs.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: The source of revenue to be used for implementation is the Child Care and Development Fund, amended with the new welfare reform legislation, Social Services Block Grant and Food Stamp Employment and Training Programs.

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

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from administrative regulation on:

(a) Geographical area in which administrative regulation will be implemented: A Notice of Intent has been filed and a public hearing has been scheduled during which comments may be received.

(b) Kentucky: A Notice of Intent has been filed and a public hearing has been scheduled during which comments may be received.

(7) Assessment of alternative methods; reasons why alternatives were rejected: The cabinet in its effort to meet the increasing demand for child day care services considered numerous alternative methods for the provision of child day care services including retaining the current operating structure all of which were restricting to the cabinet's goal of universal accessible child day care. The goal of universal access is to ensure a simplified system whereby all families in Kentucky are able to secure child care that is easily accessible, affordable and of such quality that all parents are able to work and participate in K-TAP without distraction. This system consists of a broad array of resources, including public and private programs and funding streams and assist all parents. Subsidies from the cabinet are available to low income families and to protection cases while the contractor develops strategies to expand community participation and increase private investments in child day care.

(8) Assessment of expected benefits: Anticipated benefits of this administrative regulation are the development of a revised service delivery system which combines six existing child day care assistance programs into one, implements a simplified child care maximum rate structure and a revised sliding copayment scale based on client eligibility at below 133% of poverty at the time of application and 150% of poverty at the time of reauthorization, and eliminates some duplicative billing processes for providers in the community. This administrative regulation provides that families whose K-TAP case has been discontinued and needs child care assistance to accept or retain employment shall be eligible for twelve consecutive months from the date of discontinuance as long as the families income does not exceed 85% of the state median income. The establishment of a child care contractor, who operates in the community, accepting referrals, taking applications, and locating child care services will be more effective in integrating the fiscal and human resources of the local communities with state revenue. Expected benefits for the enrollment process are that unregulated providers will become enrolled and be eligible for subsidies under the CCDF. Additional savings will be available for the families as there will be no copay requirements for families below an income of \$700 per month and there are some internal adjustments to the copay scale for these families. Additionally the unregulated providers through the enrollment process will comply with 45 CFR 98.41 which requires at a minimum that providers protect the health and safety of children through the prevention and control of infectious diseases including immunizations, building and physical premises safety and minimum health and safety training. Additionally the requirement to have minimum health and safety standards for individuals caring for children provides parents with some assurance about the quality of care their children will receive.

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: One effect on the public health is that the unregulated providers through the enrollment process will comply with 45 CFR 98.41 which requires at a minimum that providers protect the health and safety of children through the prevention and control of infectious diseases including immunizations, building and physical premises safety and minimum health and safety training.

(b) State whether a detrimental effect on environment and public health would result if not implemented: There is no detrimental effect as unregulated providers would be ineligible for subsidies under the CCDF as amended by the new welfare reform legislation.

(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. Tiering is not required as these policies will become effective statewide as the cabinet implements the child day care assistance program pursuant to these administrative regulations.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 42 USC 601 et seq. and 45 CFR 98.41.

2. State compliance standards. In order to comply with the requirements of the above referenced mandate the state has combined six existing child day care programs into one, implemented a simplified child care maximum rate structure, a revised sliding copayment scale on client eligibility at below 133% of poverty at the time of application and 150% of poverty at the time of reauthorization, provides that families whose K-TAP case has been discontinued and needs child care assistance in order to accept or retain employment shall be eligible for twelve consecutive months from the date of K-TAP discontinuance as long as the families income does not exceed 85% of the state median income and established an enrollment process in order for unregulated providers to become eligible to receive payments under the Child Care Development Fund Block Grant as amended by PL 104-193.

3. Minimum or uniform standards contained in the federal mandate. Pursuant to 45 CFR 98.41 providers are required to protect the health and safety of children through the prevention and control of infectious diseases including immunization, building and physical premises safety and minimum health and safety training. Additionally the statute required that 70% of the CCDF be expended for K-TAP participants, those families attempting to transition from assistance and those at-risk of becoming dependent on assistance programs.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No, prior to the amendment to the Child Care and Development Block Grant with PL 104-193, all unregulated providers requesting payment were required to become certified. With the expansion of the Child Care and Development Block Grant to include Title IV-A child care providers the cabinet developed the enrollment process that will provide minimum health and safety requirements for providers of child care that are not required by statute to be licensed or certified.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. No stricter standard than the federal mandate.

STATEMENT OF EMERGENCY 907 KAR 1:026E

This emergency administrative regulation is being promulgated to increase reimbursement rates, to add dental sealants to the scope of coverage and make policy clarifications to the Dental Manual. This action must be taken on an emergency basis to assure quality dental services for Medicaid recipients. Failure to enact this administrative

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regulation on an emergency basis would pose an imminent threat to the public health, safety or welfare of Medicaid recipients. This emergency administrative regulation shall be replaced by an ordinary administrative regulation filed with the Regulations Compiler.

PAUL E. PATTON, Governor
JOHN H. MORSE, Secretary

CABINET FOR HEALTH SERVICES Department for Medicaid Services Division of Administration and Development

907 KAR 1:026E. Dental services.

RELATES TO: KRS 205.520, 42 USC 1396a-d
STATUTORY AUTHORITY: KRS Chapter 13A, 194.050, 42 USC 1396a-d, HB 132 of 1998 GA [EO 96-862]

EFFECTIVE: April 24, 1998

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health Services, Department for Medicaid Services, has the responsibility to administer the Medicaid Program. [~~Executive Order 96-862, effective July 2, 1996, reorganized the Cabinet for Human Resources and placed the Department for Medicaid Services and the Medicaid Program under the Cabinet for Health Services.~~] KRS 205.520 authorizes [empowers] the cabinet, by administrative regulation, to comply with any requirement that may be imposed or opportunity presented by federal law for the provision of medical assistance to Kentucky's indigent citizenry. This administrative regulation establishes [~~sets forth~~] the provisions relating to dental services for which payment shall be made by the Medicaid Program on [in] behalf of both the categorically needy and the medically needy.

Section 1. Definitions. (1) "Department" means the Department for Medicaid Services or its designee.

(2) "Participating" is defined in 907 KAR 1:002.

(3) "Providers" is defined in 907 KAR 1:002.

Section 2. Out-of-hospital Services. Payment for out-of-hospital services shall be limited to those procedures listed in the Dental Manual in the following categories:

- (1) Diagnostic;
- (2) Preventive;
- (3) Oral surgery;
- (4) Endodontics;
- (5) Orthodontics;
- (6) Prosthetics;
- (7) Operative;
- (8) Other services.

Section 3. Inpatient Hospital Services. (1) Payment shall be made for hospital inpatient covered services rendered by an oral surgeon subject to the general physician limitations established in 907 KAR 3:005[~~Physicians' services~~].

(2) Payment shall be provided for covered services rendered by a general dentist for hospital inpatient care for a patient termed to be "medically [a] high risk," defined as:

- (a) Heart disease;
- (b) Respiratory disease;
- (c) Chronic bleeder;
- (d) Uncontrollable patient, i.e., a person with mental or emotional disorder; or
- (e) Other, e.g., car accident, high temperature, massive infection.

Section 4. Incorporation by Reference. (1) "Dental Manual", May 1998 [~~December 1996~~] Edition, Department for Medicaid Services, is incorporated by reference.

(2) It may be inspected, copied, or obtained at the Department for

Medicaid Services, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m.

Section 5. Implementation Date. The provisions of this administrative regulation shall be applicable for services provided on or after May 1, 1998.

LARRY A MCCARTHY, Deputy Commissioner
JOHN H. MORSE, Secretary
JOHN H. WALKER, Attorney

APPROVED BY AGENCY: April 21, 1998

FILED WITH LRC: April 24, 1998 at 3 p.m.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Trish Howard or Karen Doyle

(1) Type and number of entities affected: All Medicaid dental providers and recipients.

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

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: To be determined after the Notice of Intent public hearing which will be held in accordance with KRS Chapter 13A requirement.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: To be determined after the Notice of Intent public hearing which will be held in accordance with KRS Chapter 13A requirement.

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

1. First year following implementation: None

2. Second and subsequent years: None

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: \$4.8 million (cost)

2. Continuing costs or savings: \$4.8 million (cost)

3. Additional factors increasing or decreasing costs: This regulation is being promulgated as a companion to 907 KAR 1:626E.

(b) Reporting and paperwork requirements: None

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

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Federal and state matching funds. *Federal matching funds of 70.37% equaling \$3,377,760 and state matching funds of 29.63% equaling \$1,422,240. State revenues will come from allocated funds already in the Department for Medicaid Services budget.

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

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

(b) Kentucky: To be determined after the Notice of Intent public hearing which will be held in accordance with KRS Chapter 13A requirement.

(7) Assessment of alternative methods; reasons why alternatives were rejected: No viable alternatives were identified.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: Will increase reimbursement rates, add dental sealants to the scope of coverage and to clarify Dental Program policy.

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

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

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May pose an imminent threat to the public health, safety, or welfare of Medicaid recipients. Failure to include dental sealants will result in loss of the benefits that could produce a reduction of future dental caries in Medicaid eligible children.

(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: This regulation is being promulgated as a companion to 907 KAR 1:026E.

(11) TIERING: Is tiering applied? Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it. Disparate treatment of any person or entity subject to this administrative regulation could raise questions of arbitrary action on the part of the agency. The "equal protection" and "due process" clauses of the Fourteenth Amendment of the U.S. Constitution may be implicated as well as Sections 2 and 3 of the Kentucky Constitution.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. Pursuant to 42 USC 1396a et seq., the Commonwealth of Kentucky has exercised the option to establish a Medicaid Program for indigent Kentuckians. Having elected to offer Medicaid coverage, the state must comply with federal requirements contained in 42 USC 1396 et seq.

2. State compliance standards. This administrative regulation does not set compliance standards.

3. Minimum or uniform standards contained in the federal mandate. This administrative regulation does not set minimum or uniform standards.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No. This administrative regulation does not set stricter requirements.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. No additional standard or responsibilities are imposed.

STATEMENT OF EMERGENCY 907 KAR 1:626E

This emergency administrative regulation is being promulgated to increase reimbursement rates, to add dental sealants to the scope of coverage and make policy clarifications to the Dental Manual. This action must be taken on an emergency basis to assure quality dental services for Medicaid recipients. Failure to enact this administrative regulation on an emergency basis would pose an imminent threat to the public health, safety or welfare of Medicaid recipients. This emergency administrative regulation shall be replaced by an ordinary administrative regulation filed with the Regulations Compiler.

PAUL E. PATTON, Governor
JOHN H. MORSE, Secretary

CABINET FOR HEALTH SERVICES Department for Medicaid Services Division of Administration and Development

907 KAR 1:626E. Reimbursement of dental services.

RELATES TO: KRS 205.520, 42 CFR 441.30, 447 Subpart B, 42 USC 1396a-d

STATUTORY AUTHORITY: KRS Chapter 13A, 194.050, 205.520,

HB 132 of 1998 GA [42 CFR 441.30, 447 Subpart B, 42 USC 1396a-d]

EFFECTIVE: April 24, 1998

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health Services, Department for Medicaid Services [Human Resources] has responsibility to administer the Medicaid Program [of Medical Assistance]. KRS 205.520 authorizes [empowers] the cabinet, by administrative regulation, to comply with any requirement that may be imposed or opportunity presented by federal law for the provision of medical assistance to Kentucky's indigent citizenry. This administrative regulation establishes [sets forth] the method for determining the amount [amounts] payable by the cabinet for each dental service [services].

Section 1. Definitions. For purposes of determination of payment, the following definitions shall apply:

(1) "Usual and customary charge" means [refers to] the uniform amount which the individual dentist charges in the majority of cases for a specific dental procedure or service.

(2) "Medically high risk" means [patient is defined as] a patient in one (1) of the following classifications:

(a) Heart disease;

(b) Respiratory disease;

(c) Chronic bleeder;

(d) Uncontrollable patient, i.e., a person with mental or emotional disorder [(retardate, emotionally disturbed)]; or

(e) Other, e.g., [{} car accident, high temperature, massive infection, etc.{}]

Section 2. Reimbursement. (1) Except as specified in Section 4 of this administrative regulation, the cabinet shall reimburse a participating dentist [dentists] for a covered service provided [services rendered] to an eligible recipient [medical assistance recipients] at the dentist's usual and customary actual billed charge up to the fixed upper limit per procedure established by the cabinet at seventy-eight (78) percent of the median billed charge using 1993 calendar year billed charges. If there is no median available for a procedure, or the cabinet determines that available data relating to the median for a procedure is unreliable, the cabinet shall set a reasonable fixed upper limit for the procedure consistent with the general array of upper limits for the type of service.

(2) Fixed upper limits not determined in accordance with the principle shown in [this] subsection (1) of this section [the administrative regulation (if any)] due to consideration of other factors, [{} such as recipient access, {}] shall be specified in Section 4 of this [the] administrative regulation.

Section 3. Hospital Inpatient Care. (1) Hospitalized inpatient care, which shall be paid in the same manner as shown in Section 2 of this administrative regulation, refers to a service [those services] provided for an inpatient [inpatients]. It shall not include a dental service [services] provided in the outpatient extended care or a home health unit of a hospital [units of hospitals]. Any dentist submitting a claim for a hospital inpatient care benefit [benefits] must agree to accept payment in full for a service [services] rendered that patient during that admission.

(2) A general dentist may submit a claim for a hospital inpatient service [services] for the patient termed "medically [a] high risk."

Section 4. Reimbursement Exceptions. The following reimbursement procedure exception [procedures] shall be paid at the lower of the provider's usual and customary actual billed charge or the fixed upper limit [as shown with preauthorization required for all procedures except for orthodontic consultation]:

(1) All comprehensive orthodontic procedures require prior authorization. As referenced in Section 2 of this administrative regulation the following comprehensive orthodontic services pay at a

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fixed fee:

(a) Orthodontic consultation, eighty-four (84) dollars and seventy (70) cents [~~seventy-seven (77) dollars~~], except that the fixed fee shall be forty-two (42) dollars and thirty-five (35) cents [~~thirty-eight (38) dollars and fifty (50) cents~~] if:

1. The provider is referring the recipient to a specialist;
2. [or] The prior authorization for orthodontic [~~preauthorization for orthodontia~~] services is not approved; or
3. A request for prior authorization of orthodontic [~~preauthorization of orthodontia~~] services is not made;

(b) [(2) ~~Preauthorized~~] Early phase [~~orthodontic services~~] for moderately severe or severe disabling [~~handicapping~~] malocclusion, \$1,030 for an orthodontist [~~orthodontists~~] and \$930 for a general dentist [~~dentists~~];

(c) [(3) ~~Preauthorized orthodontic~~] Services for moderately severe disabling [~~handicapping~~] malocclusions, \$1,375 for an orthodontist [~~orthodontists~~] and \$1,250 for a general dentist [~~dentists~~]; and

(d) Service [(4) ~~Preauthorized orthodontic services~~] for severe disabling [~~handicapping~~] malocclusions, \$2,075 for an orthodontist [~~orthodontists~~] and \$1,850 for a general dentist [~~dentists~~].

(2) The upper limit for the following procedures shall be the fixed upper limit derived utilizing the methodology described in Section 2 of this administrative regulation increased by the following fixed percentages:

PROCEDURES	PERCENTAGE OF INCREASE
Initial Oral Exam	25%
Prophylaxis	20%
Amalgam	10%
Resin	7%
Prefabricated Stainless Steel Crown	5%
Prefabricated Resin Crown	5%
Pin Retention	10%
Pulp Cap (Direct)	10%
Pulpotomy (Therapeutic)	10%
Root Canal	10%
Simple Extraction	5%

Section 5. An oral surgeon [~~Oral surgeons~~] shall be treated in the same manner as a physician [~~physicians~~] for reimbursement purposes, and shall be subject to the terms and conditions of payment shown in 907 KAR 3:010 [~~1:010, Payments for physicians' services~~].

Section 6. Third-party Liability. Medicaid shall be the payor of last resort. Policy related to nonduplication of payments and third-party liability is in accordance with [~~shown in~~] 907 KAR 1:005 [~~Nonduplication of payments~~].

Section 7. Implementation Date. The provisions of this administrative regulation shall be applicable for services provided on or after May 1, 1998 [~~June 1, 1994~~].

LARRY A MCCARTHY, Deputy Commissioner
JOHN H. MORSE, Secretary
JOHN H. WALKER, Attorney

APPROVED BY AGENCY: April 21, 1998
FILED WITH LRC: April 24, 1998 at 3 p.m.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Trish Howard or Karen Doyle

(1) Type and number of entities affected: All Medicaid dental providers and recipients.

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

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent

available from the public comments received: To be determined after the Notice of Intent public hearing which will be held in accordance with KRS Chapter 13A requirement.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: To be determined after the Notice of Intent public hearing which will be held in accordance with KRS Chapter 13A requirement.

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

1. First year following implementation: None

2. Second and subsequent years: None

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: \$4.8 million (cost)

2. Continuing costs or savings: \$4.8 million (cost)

3. Additional factors increasing or decreasing costs: This regulation is being promulgated as a companion to 907 KAR 1:626E.

(b) Reporting and paperwork requirements: None

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

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Federal and state matching funds. *Federal matching funds of 70.37% equaling \$3,377,760 and state matching funds of 29.63% equaling \$1,422,240. State revenues will come from allocated funds already in the Department for Medicaid Services budget.

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

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

(b) Kentucky: To be determined after the Notice of Intent public hearing which will be held in accordance with KRS Chapter 13A requirement.

(7) Assessment of alternative methods; reasons why alternatives were rejected: No viable alternatives were identified.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: Will increase reimbursement rates, add dental sealants to the scope of coverage and clarify Dental Program policy.

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

(c) If detrimental effect would result, explain detrimental effect: May pose an imminent threat to the public health, safety, or welfare of Medicaid recipients. Failure to include dental sealants will result in the loss of the benefits that could produce a reduction of future caries in Medicaid eligible children.

(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: This regulation is being promulgated as a companion to 907 KAR 1:026E.

(11) TIERING: Is tiering applied? Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it. Disparate treatment of any person or entity subject to this administrative regulation could raise questions of arbitrary action on the part of the agency. The "equal protection" and "due process" clauses of the Fourteenth Amendment of the U.S. Constitution may be implicated as well as Sections 2 and 3 of the Kentucky Constitution.

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FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. Pursuant to 42 USC 1396a et seq., the Commonwealth of Kentucky has exercised the option to establish a Medicaid Program for indigent Kentuckians. Having elected to offer Medicaid coverage, the state must comply with federal requirements contained in 42 USC 1396 et seq.

2. State compliance standards. This administrative regulation does not set compliance standards.

3. Minimum or uniform standards contained in the federal mandate. This administrative regulation does not set minimum or uniform standards.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No. This administrative regulation does not set stricter requirements.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. No additional standard or responsibilities are imposed.

ADMINISTRATIVE REGULATIONS AS AMENDED BY REVIEWING SUBCOMMITTEE
AND PROMULGATING AGENCY

GENERAL GOVERNMENT CABINET

State Board of Examiners and Registration of Architects
(As Amended at ARRS, May 11, 1998)

201 KAR 19:087. Continuing education.

RELATES TO: KRS 323.120(1)(g), 323.210(3)

STATUTORY AUTHORITY: KRS 323.210(2), (3)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 323.210(3)

authorizes the board to establish continuing education requirements. This administrative regulation establishes continuing education requirements for board licensees.

Section 1. Definitions. (1) "Elective topic" means an additional topic of interest to the registrant that is related to the practice of architecture.

(2) "Professional development unit" or "PDU" means a:

(a) Unit equal to fifty (50) minutes clock time for the taking of an examination; or

(b) Customary time of completion prescribed by an examination vendor, if the board finds the time to be reasonable.

(3) "Relevant topic" means an area which is particularly focused on the health, safety, and welfare of the public.

(4) "Self-directed activity" means:

(a) An unstructured self-study visit to an architecturally significant site;

(b) A professional service to the public which draws on the registrant's expertise as an architect; or

(c) A business practice course related to new technology, offered by a person qualified by education or experience.

(5) "Structured activity" means a:

(a) College or university sponsored course;

(b) Seminar;

(c) Tutorial;

(d) Short course; or

(e) Professional or technical organization sponsored:

1. Program;

2. Course;

3. Self-study course; or

4. Monograph. [(1) "Professional development unit" (PDU) means a unit equal to fifty (50) minutes contact (clock) time. If a vendor of such units prescribes a customary time for completion, then such prescribed time shall, unless the board finds the time to be unreasonable, be accepted as the PDU.

(2) "Structured activities" means a college or university sponsored courses; seminars, tutorials, short courses; programs and courses; including self-study courses and monographs sponsored by professional or technical organizations.

(3) "Self-directed activities" means unstructured self-study visits to architecturally significant sites, professional service to the public which draws on a registrant's expertise as an architect, business practice courses or courses related to new technology offered by persons qualified by education or experience.

(4) "Relevant topics" means areas which are particularly focused on the health, safety and welfare of the public.

(5) "Elective topics" means additional topics of interest to the registrant, but related to the practice of architecture.]

Section 2. Purpose. The purpose of this continuing education program is to insure that all registered architects remain informed on technical and professional subjects which the board deems appropriate to safeguard life, health, property and welfare of the public.

Section 3. Scope and Exemptions. (1) To annually renew his license, an architect registered in Kentucky shall comply with this administrative regulation unless he is exempted by one (1) of the following reasons:

(a) He is exempted as a first time registrant by:

1. Examination; or

2. Reciprocity;

(b) He is an emeritus status architect who:

1. Is at least sixty-five (65) years old;

2. Has requested emeritus status at the beginning of the license renewal period; and

3. Has retired from practice;

(c) He is a civilian who serves on active duty in the United States Armed Forces for a period of time exceeding ninety (90) consecutive days during the annual report period;

(d) He is a registrant of another National Council of Architectural Registration Board's jurisdiction that has a required continuing education program, if:

1. It accepts Kentucky requirements to satisfy its continuing education requirements; and

2. The registrant certifies that all requirements for current continuing education compliance and registration have been met in that jurisdiction.

(2) A hardship case may be considered by the board. [Scope: This program shall apply to every architect registered in Kentucky and compliance will be a condition for renewal of license on an annual basis.

(2) Exemptions. A registrant may be exempt from the requirements of the continuing education program for one (1) of the following reasons:

(a) A first time registrant by examination or a first time registrant by reciprocity shall be exempt for his first license period.

(b) Registrant is an emeritus status architect. The requirements for emeritus status architect are:

1. The registrant must be sixty-five (65) years old;

2. The registrant must request emeritus status at the beginning of a license renewal period; and

3. The registrant must be retired from practice.

(c) Registrant is a civilian who serves on active duty in the Armed Forces of the United States for a period of time exceeding ninety (90) consecutive days during the annual report period.

(d) Registrant of another, National Council of Architectural Registration Boards (NCARB), jurisdiction with a required continuing education program, provided that same jurisdiction accepts the Kentucky requirements as satisfying their continuing education requirements, and the registrant certifies that all requirements of that jurisdiction for current continuing education compliance and registration have been met.

(e) Hardship cases will be considered by the board on an individual basis.]

Section 4. Requirements. (1) A registered Kentucky architect shall:

(a) Obtain a total of twelve (12) PDU's per year; and

(b) Report these credits as a condition for registration renewal.

(2) The continuing education requirement of subsection (1) of this section shall be satisfied during the period beginning July 1 and ending June 30 of the following year.

(3) A minimum of eight (8) PDU's shall consist of structured activities, addressing the following relevant topics:

(a) Codes, statutes, and administrative regulations governing

the practice of architecture;

(b) Environmental issues;

(c) Code of ethics;

(d) State registration law;

(e) Design proficiency;

(f) New technology, including construction:

1. Material;

2. Methods;

3. Systems; or

4. Concepts;

(g) Interface, other than normal day-to-day contact, with other design disciplines, including a:

1. Planner;

2. Consultant;

3. Specialist; or

4. Financier;

(h) Legal aspects, including:

1. Contract documents;

2. Insurance;

3. Bonds; and

4. Project administration;

(i) Specialization in:

1. Presentation;

2. Adaptive reuse; or

3. A building type; and

(j) Study or consultation opportunity.

(4) A maximum of four (4) PDU's may consist of self-directed activities, addressing the following elective topics:

(a) Business or practice efficiency;

(b) Business development;

(c) Personal skills;

(d) New skills; or

(e) General education. [Each registered Kentucky architect shall obtain a total of twelve (12) PDU's per year. This requirement must be satisfied during the period which begins July 1 and ends June 30 of the following year. Reporting of continuing education credits is a condition for registration renewal.

(2) A minimum of eight (8) PDU's shall consist of structured activities, dealing with relevant topics. A maximum of four (4) PDU's may consist of self-directed activities. Topics for the twelve (12) PDU's shall meet the following requirements:

(a) Relevant topics (eight (8) PDU's required):

1. Study of the codes, statutes and regulations governing the practice of architecture;

2. Environmental issues;

3. Code of ethics;

4. State registration law;

5. Design proficiency;

6. New technology (construction materials, methods, systems, or concepts);

7. Interface with other design disciplines (planners, consultants, specialists, (financiers) other than normal day-to-day contact;

8. Legal aspects (contract documents, insurances, bonds, project administration);

9. Specialization (presentation, adaptive reuse, building types); or

10. Studies/consultation opportunities.

(b) Electives (four (4) PDU's maximum):

1. Business or practice efficiency;

2. Business development;

3. Personal skills;

4. New skills; or

5. General education.]

Section 5. Reporting and Recordkeeping. (1) The following shall be submitted for renewal of a license:

(a) A Continuing Education Annual Report Form listing the completed courses;

(b) A renewal application; and

(c) The renewal fee.

(2) An incomplete submission shall be returned to the registrant.

(3) A random sample of annual reports shall be reviewed to ensure accuracy and compliance.

(4) The registrant shall:

(a) Be responsible for retaining proof of participation in continuing education activities;

(b) Retain a record for continuing education for a period of two (2) years from the date of submission of the annual report to the board; and

(c) Furnish copies or continuing education records on the request of the board for audit purposes.

(5) Proof of participation in continuing education activities shall include:

(a) A log showing the:

1. Activity claimed;

2. Sponsoring organization;

3. Location; and

4. Duration;

(b) An attendance certificate;

(c) A signed attendance receipt;

(d) A paid receipt;

(e) A list of attendees signed by a person in charge of the activity; and

(f) Similar documentation.

(6) Disallowances. If continuing education credit is disallowed, the registrant shall have 180 calendar days after notification to:

(a) Substantiate the original claim; or

(b) Earn other continuing education credit to meet the minimum requirements. [The Continuing Education Annual Report Form must be received with the renewal form in order to process the registration renewal. If one (1) form is received without the other, it will be returned to the registrant. The registrant must supply enough detail on the form to permit verification, must sign and certify the Continuing Education Annual Report Form, and submit it with the appropriate renewal application and fee. A random sample of all annual reports will be reviewed to ensure accuracy and compliance.

(2) The registrant is responsible for retaining proof of participation in continuing education activities. These records must be retained for a period of two (2) years from date of submittal of report to the board. Copies must be furnished to the board for audit purposes, if requested. Supporting documents may include but are not limited to:

(a) A log showing activity claimed, sponsoring organizations, location, duration, etc.;

(b) Attendance certificates;

(c) Signed attendance receipts;

(d) Paid receipts; and

(e) Sponsor's list of attendees (signed by a person in responsible charge of the activity).

(3) Disallowances. If continuing education credits are disallowed, the registrant shall have 180 calendar days after notification to substantiate the original claim or earn other continuing education credits to meet the minimum requirements.]

Section 6. Noncompliance and Sanctions. Failure to fulfill the continuing education requirements or file the required annual report, properly completed and signed, shall result in nonrenewal of the architect's certificate of registration.

Section 7. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Continuing Education Annual Report Form", (3/13/1998 Edition), State Board of Examiners and Registration of Architects; and

(b) "License Renewal Application Form", (5/98 Edition), State Board of Examiners and Registration of Architects.

(2) This material may be inspected, copied, or obtained at State Board of Examiners and Registration of Architects, 841 Corporate Drive, Suite 200B, Lexington, Kentucky 40503, Monday through Friday, 8 a.m. to 4:30 p.m. [The following form is incorporated by reference: The Continuing Education Annual Report Form.

(2) This form may be inspected, copied, or obtained at State Board of Examiners and Registration of Architects, 841 Corporate Drive, Suite 200B, Lexington, Kentucky 40503 Monday through Friday, 9 a.m. to 5 p.m.]

DAVID MOHNEY, President

JIM GRAWE, Assistant Attorney General

APPROVED BY AGENCY: January 28, 1998

FILED WITH LRC: March 13, 1998 at noon

**GENERAL GOVERNMENT CABINET
State Board of Examiners and
Registration of Architects
(As Amended at ARRS, May 11, 1998)**

201 KAR 19:095. Professional practice standards; violations, penalties.

RELATES TO: KRS 323.095, 323.120

STATUTORY AUTHORITY: KRS 323.210(2), (3)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 323.210(2) and (3) authorizes the board to establish administrative regulations relating to architecture and continuing education requirements. This administrative regulation establishes penalties for unprofessional practice and the failure to comply with continuing education requirements. [To define basis for board to proceed against architects for unprofessional practice.]

Section 1. Unprofessional Practice, Penalties, and Procedure.

(1) The following shall constitute unprofessional practice:

(a) Gross incompetence or negligence;

(b) Unprofessional conduct or conduct tending to bring the profession into disrepute;

(c) Conviction of a felony;

(d) Fraudulent or dishonest architectural practice;

(e) Use of false evidence or misrepresentation in an:

1. Application for licensing; or

2. License renewal application;

(f) Signing or affixing a seal to a plan, print, specifications for a building, or report which have not been prepared by the architect or an employee under his supervision; and

(g) Failure to comply with continuing education requirements in 201 KAR 19:087.

(2) The following penalties may be imposed on an architect for unprofessional practice:

(a) Refusal of to grant a license;

(b) Refusal to renew or reissue a license;

(c) Private or public reprimand;

(d) Imposition of probation;

(e) Suspension of a license;

(f) Revocation of a license.

(3) The procedure for imposing a penalty on an architect shall be conducted in accordance with KRS Chapter 13B and 323.130. [Penalties for Unprofessional Practice. (1) The board may refuse to issue, reissue, or renew or may issue a private or public reprimand or may probate, suspend for a period or revoke the license of any architect to practice architecture for any of the following reasons:

(a) Gross incompetency or gross negligence.

~~(b) Unprofessional conduct or conduct tending to bring the profession into disrepute.~~

~~(c) Conviction of a felony.~~

~~(d) Fraudulent or dishonest architectural practice.~~

~~(e) Use of false evidence, or misrepresentation in an application for licensing or licenses renewal application.~~

~~(f) Signing or affixing his seal to any plans, prints, specifications for buildings, or reports which have not been prepared personally or by employees under his supervision.~~

~~(g) Failure to comply with established continuing education requirements.~~

~~(2) The procedure for this action shall be in accordance with the provisions of KRS 323.130 [and 323.140].]~~

Section 2. Gross Incompetence and Gross Negligence Defined.
The following acts or omissions by an architect shall be deemed to be gross incompetence or gross negligence within the meaning of the law:

(1) Willfully failing to use reasonable care and diligence in his professional practice, resulting in a building or structure being improperly constructed to the detriment of the occupants.

(2) Willfully failing to use reasonable care and diligence in preparing drawings, specifications, and other documents relating to the design and construction of buildings for the protection of a client in all relationships as agent of the client.

Section 3. Unprofessional Conduct Defined. The following acts by an architect shall be deemed to be "unprofessional conduct":

(1) Accepting compensation for architectural services from any entity other than his client or employer.

(2) Offering or making a payment or gift to a government official (whether elected or appointed) with the intent to influence the official judgment in connection with a prospective or existing project in which the architect has an interest in providing architectural services.

(3)(a) Offering or making a payment or gift, as an individual architect or as a participating member of a partnership or corporation, to an elected governmental official, candidate for governmental office, or the campaign of a candidate for governmental office, when the payment or gift is a violation of federal or state campaign finance laws or administrative regulations.

(b) Entering a plea of guilty or an "Alford" plea to, or having been found guilty of, or having been convicted of, a felony or misdemeanor involving the violation of federal or state campaign finance laws, and the time for appeal has lapsed or the judgment or conviction has been affirmed on appeal, irrespective of an order granting probation following the conviction, suspending imposition of sentence shall be conclusive proof of a violation of this section, and a certified copy of the [said] judgment or order shall constitute sufficient proof of [such] a violation.

(4) Offering or making any gifts, except gifts of nominal value (including, for example, reasonable entertainment and hospitality), with the intent to influence the judgment of an existing or prospective client in connection with a project in which the architect has an interest.

(5) Having a financial interest in the manufacture, sale or installation of any component or process used in a project for which he is the architect unless the client has been advised and has waived any objection.

(6) Publicly endorsing a product, system, or service, or permitting the use of his name or photograph to imply endorsement of a product, system, or service not designed or developed by him; or

(7)(a) Using paid advertising on behalf of himself, his partner, associate, or any other architect affiliated with him or his firm, that contains a statement or claim which is false or tends to be misleading, deceptive, or unfair, or which makes material claims of superiority which cannot be substantiated rather than being designed to inform the public.

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(b) Advertising may include the name of the architect or firm, address, telephone number, a statement of the fields of practice, and a statement of the geographical area where services are rendered, and cost of services.

(c) An architect or architectural firm which advertises a fee for a specific service [services] and accepts [such] employment for that service shall perform [such services] for the amount stated, and a statement to that effect shall be included in every advertisement.

(d) Advertisements may be by newspaper or magazine advertisements, radio or television announcements, or display advertisements in the city or telephone directories.

Section 4. ~~[Conviction of a Felony. Entering a plea of guilty or an "Alford" plea to, or having been found guilty of, or having been convicted of a felony, and the time for appeal has lapsed or the judgment or conviction has been affirmed on appeal, irrespective of an order granting probation following the conviction, suspending imposition of sentence shall be conclusive proof of a violation of this section, and a certified copy of said judgment or order shall constitute sufficient proof of such a violation.~~

Section 5.] Fraudulent or Dishonest Practice Defined. The following practices by an architect shall be deemed to be "fraudulent or dishonest practice" within the meaning of the law:

(1) Making an untrue or deceitful statement [statements] in an application for examination or registration, or in an application for license renewal or in any other statements or representations to the board.

(2) Affixing his seal to a drawing:

(a) For which he was not:

1. The author; or

2. In charge of preparing the plan; or

(b) Which was not prepared under his supervision. [Affixing his seal to any drawings other than those for which he is the author. All plans shall be sealed by the author or authors thereof. "Authors" is defined as those in responsible charge of the preparation of plans which are made by them personally or under their supervision.]

(3) Bribing a person [any person or persons] who may influence the selection of an architect.

(4) Willfully misleading or defrauding a person [any person or persons] employing him as an architect.

(5) Willful violation of:

(a) A Kentucky or other state law relating to the practice of architecture; or

(b) An administrative regulation promulgated by the board. [Willfully violating the laws of Kentucky or any other state, where such are applicable, relating to the practice of architecture; or willfully violating any rule or administrative regulation of this board made in pursuance to law.]

(6) Using, or attempting to use, or practicing under, a license that has been suspended or revoked or which has not been renewed as required by law and the administrative regulations of the board.

Section 5. [6:] Registration while Working for Others. (1) Without affecting the status of his registration, an architect may as an employee of:

(a) Another architect; or

(b) A firm, if his duties are nonarchitectural.

(2) If an architect works as an architect for or with a nonarchitect or corporation not under the control of architects:

(a) He shall maintain:

1. Free and unbiased judgment;

2. Unrestrained use of his professional prerogatives and services to clients; and

(b) The terms of his employment shall permit full compliance with the:

1. Obligations of practice; and

2. Administrative regulations. [An architect may work as the employee of another architect without affecting the status of his registration;

(2) ~~Or he may work as an employee for any firm in which his duties are not those of any architect, without affecting the status of registration. But if he works as an architect for, or with, an individual not an architect, or a firm or corporation not under the control of architects, then he shall maintain free and unbiased judgment and unrestrained use of his professional prerogatives and services to clients; and the terms of his employment or agreement shall permit full compliance with the "obligations of practice," and these administrative regulations.]~~

Section 6. [7:] Office Staffing. An [Each] office maintained for the preparation of drawings, specifications, reports and other professional work shall have a regularly employed architect duly registered with this board, in full authority and responsible charge, having direct knowledge and supervisory control of all [such] work.

DAVID MOHNEY, President

JIM GRAWE, Assistant Attorney General

APPROVED BY AGENCY: January 28, 1998

FILED WITH LRC: March 13, 1998 at noon

DEPARTMENT OF AGRICULTURE Division of Regulation and Inspections (As Amended at ARRS, May 11, 1998)

302 KAR 10:100. Refrigeration of eggs and temperature requirements.

RELATES TO: KRS 260.620

STATUTORY AUTHORITY: KRS 260.620

NECESSITY, FUNCTION, AND CONFORMITY: KRS 260.620 requires the department to establish standards governing eggs offered for sale as graded eggs. This administrative regulation establishes the requirements relating to the refrigeration of eggs, including temperature, transportation, and labeling requirements. [This administration regulation prescribes refrigeration of eggs and temperature requirements.]

Section 1. The refrigeration and temperature requirements in the standards of quality for shell eggs shall be governed by the following specifications:

(1) To prevent undue deterioration, a shell egg [all shell eggs] packed in a container [containers] for the purpose of resale to a consumer [consumers] shall be stored and transported under refrigeration at an ambient temperature of forty-five (45) degrees Fahrenheit or seven and two-tenths (7.2) degrees Centigrade or less [provided; however, any different temperature standard adopted by the United States Department of Agriculture or the Food and Drug Administration shall prevail].

(2) Eggs, which are shipped across the state line into Kentucky, shall be transported under refrigerated conditions at the temperature as required by subsection (1) of this section.

(3) A shell egg that is packed into a container [All shell eggs that are packed into containers] for the purpose of resale to a [the] consumer shall be labeled with the following statement: "Keep refrigerated at or below forty-five (45) degrees Fahrenheit" [or any temperature as mandated by the United States Department of Agriculture or the Food and Drug Administration].

(4)(a) A person who [The person that] takes possession of an egg [these eggs after receiving them] in this state shall be liable for compliance with subsections (1) and (2) of this section.

(b) Upon receiving an egg, a person shall ensure that his supplier complies with the labeling requirements established in

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KRS 260.630. [eggs, it is this person's responsibility to ensure that supplier complies with the labeling requirements of the Kentucky Egg Marketing Law.]

(5) **An egg that does** [Eggs that do] not meet the refrigeration requirements either in transit, storage or display **shall [can]** be seized or destroyed by **a [the]** Department of Agriculture **inspector** [inspectors].

BILLY RAY SMITH, Commissioner

MARK FARROW, General Counsel

APPROVED BY AGENCY: March 9, 1998

FILED WITH LRC: March 9, 1998 at 11 a.m.

**NATURAL RESOURCES AND
ENVIRONMENTAL PROTECTION CABINET
Department for Environmental Protection
Division for Air Quality
(As Amended at ARRS, May 11, 1998)**

401 KAR 63:640. National emission standards for hazardous air pollutants from petroleum refineries.

RELATESTO: KRS 224.10-100, 224.20-100, 224.20-110, 224.20-120, 40 CFR 63.640 to 63.654, **Federal Register (63 FR 13537), March 20, 1998**, 42 USC 7401, 7412, 7414

STATUTORY AUTHORITY: KRS 224.10-100, 224.20-100, 224.20-110, 224.20-120, 40 CFR 63.640 to 63.654, 42 USC 7401, 7412, 7414

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.10-100 requires the Natural Resources and Environmental Protection Cabinet to prescribe administrative regulations for the prevention, abatement, and control of air pollution. The federal regulation incorporated by reference in this administrative regulation establishes emissions standards for hazardous air pollutants from petroleum refineries. Delegation of implementation and enforcement authority for the federal National Emission Standards for Hazardous Air Pollutants (NESHAP) Source Categories from the U.S. EPA to the Commonwealth of Kentucky is provided under 42 USC 7412(l).

Section 1. Definitions. As used in 40 CFR 63.640 to 63.654, the following terms shall be defined as provided in this section.

(1) Except as provided in subsection (2) of this section, "administrator" means the Secretary of the Natural Resources and Environmental Protection Cabinet.

(2) As used in 40 CFR 63.652(3) and (5)(ii), "administrator" means the Administrator of the U.S. EPA.

(3) "State" means the Commonwealth of Kentucky.

Section 2. (1) 40 CFR 63.640 to 63.654, (40 CFR 63, Subpart CC), National emission standards for hazardous air pollutants from petroleum refineries, as published in the Code of Federal Regulations, 40 CFR Part 63, July 1, 1997, **and as amended in the Federal Register, (63 FR 13537), March 20, 1998**, is incorporated by reference.

(2) The material incorporated by reference may be obtained, inspected, or copied at the following offices of the Division for Air Quality, Monday through Friday, 8 a.m. to 4:30 p.m.:

(a) The Division for Air Quality, 803 Schenkel Lane, Frankfort, Kentucky 40601, (502) 573-3382;

(b) Ashland Regional Office, 3700 Thirteenth Street, Ashland, Kentucky 41105, (606) 920-2067;

(c) Bowling Green Regional Office, 1508 Westen Avenue, Bowling Green, Kentucky 42104, (502) 746-7475;

(d) Florence Regional Office, 7964 Kentucky Drive, Suite 8, Florence, Kentucky 41042, (606) 292-6411;

(e) Hazard Regional Office, 233 Birch Street, Suite 2, Hazard,

Kentucky 41701, (606) 435-6022;

(f) London Regional Office, 85 State Police Road, London, Kentucky 40741, (606)-878-0157;

(g) Owensboro Regional Office, 3032 Alvey Park Drive, W., Suite 700, Owensboro, Kentucky 42303, (502) 687-7304; and

(h) Paducah Regional Office, 4500 Clarks River Road, Paducah, Kentucky 42003, (502) 898-8468.

(3) Copies of the Code of Federal Regulations (CFR) are available for sale from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402.

JAMES E. BICKFORD, Secretary

GLENN A. JOHNSON, General Counsel

APPROVED BY AGENCY: December 19, 1997

FILED WITH LRC: December 19, 1997 at 11 a.m.

**NATURAL RESOURCES AND
ENVIRONMENTAL PROTECTION CABINET
Department for Environmental Protection
Division for Air Quality
(As Amended at ARRS, May 11, 1998)**

401 KAR 63:741. National emission standards for aerospace manufacturing and rework facilities.

RELATESTO: KRS 224.10-100, 224.20-100, 224.20-110, 224.20-120, 40 CFR 63.741 to 63.753, **Federal Register (63 FR 15016), March 27, 1998**, 42 USC 7401, 7412, 7414

STATUTORY AUTHORITY: KRS 224.10-100, 224.20-100, 224.20-110, 224.20-120, 40 CFR 63.741 to 63.753, 42 USC 7401, 7412, 7414

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.10-100 requires the Natural Resources and Environmental Protection Cabinet to prescribe administrative regulations for the prevention, abatement, and control of air pollution. The federal regulation incorporated by reference in this administrative regulation establishes emissions standards for aerospace manufacturing and rework facilities. Delegation of implementation and enforcement authority for the federal National Emission Standards for Hazardous Air Pollutants (NESHAP) Source Categories from the U.S. EPA to the Commonwealth of Kentucky is provided under 42 USC 7412(l).

Section 1. Definitions. As used in 40 CFR 63.741 to 63.753, the following terms shall be defined as provided in this section.

(1) Except as provided in subsection (2) of this section, "administrator" means the Secretary of the Natural Resources and Environmental Protection Cabinet.

(2) As used in 40 CFR 63.744(b)(3), "administrator" means the Administrator of the U.S. EPA.

(3) "State" means the Commonwealth of Kentucky.

Section 2. (1) 40 CFR 63.741 to 63.753, (40 CFR 63, Subpart GG), National emission standards for aerospace manufacturing and rework facilities, as published in the Code of Federal Regulations, 40 CFR Part 63, July 1, 1997, **and as amended in the Federal Register (63 FR 15016), March 27, 1998**, is incorporated by reference.

(2) The material incorporated by reference may be obtained, inspected, or copied at the following offices of the Division for Air Quality, Monday through Friday, 8 a.m. to 4:30 p.m.:

(a) The Division for Air Quality, 803 Schenkel Lane, Frankfort, Kentucky 40601, (502) 573-3382;

(b) Ashland Regional Office, 3700 Thirteenth Street, Ashland, Kentucky 41105, (606) 920-2067;

(c) Bowling Green Regional Office, 1508 Westen Avenue, Bowling Green, Kentucky 42104, (502) 746-7475;

(d) Florence Regional Office, 7964 Kentucky Drive, Suite 8,

Florence, Kentucky 41042, (606) 292-6411;

(e) Hazard Regional Office, 233 Birch Street, Suite 2, Hazard, Kentucky 41701, (606) 435-6022;

(f) London Regional Office, 85 State Police Road, London, Kentucky 40741, (606)-878-0157;

(g) Owensboro Regional Office, 3032 Alvey Park Drive, W., Suite 700, Owensboro, Kentucky 42303, (502) 687-7304; and

(h) Paducah Regional Office, 4500 Clarks River Road, Paducah, Kentucky 42003, (502) 898-8468.

(3) Copies of the Code of Federal Regulations (CFR) are available for sale from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402.

JAMES E. BICKFORD, Secretary

GLENN JO CURRY, General Counsel

APPROVED BY AGENCY: December 19, 1997

FILED WITH LRC: December 19, 1997 at 11 a.m.

**NATURAL RESOURCES AND
ENVIRONMENTAL PROTECTION CABINET
Department for Surface Mining
Reclamation and Enforcement
(As Amended at ARRS, May 11, 1998)**

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

RELATES TO: KRS [146.410,] Chapter 350, 7 CFR Part 657, 30 CFR Parts 700.5, 701.5, 707.5, 730-733, 735, 761.5, 762.5, 773.5, 800.5, 843.5, 917, 30 USC 1253, 1255, 1291

STATUTORY AUTHORITY: KRS [Chapter 13A,] 350.028(1), (5), 350.465, 7 CFR Part 657, 30 CFR Parts [700.5, 701.5, 707.5,] 730-733, 735, [761.5, 762.5, 773.5, 800.5, 843.5,] 917, 30 USC 1253, 1255[, 1291]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 350.028(1) and (5) and 350.465(2) authorize the cabinet to promulgate administrative regulations relating to surface and underground coal mining operations. This administrative regulation defines terms used in 405 KAR Chapter 8. [KRS 350.028(1) requires the cabinet to promulgate administrative regulations pertaining to surface coal mining operations including strip mining and the surface effects of underground mining to accomplish the purposes of KRS Chapter 350. This administrative regulation defines terms used in 405 KAR Chapter 8. KRS 350.028(5), 350.151(1), and 350.465(2), (5) authorize and direct the cabinet to promulgate administrative regulations for surface and underground coal mining operations for the purpose of accepting and administering primary enforcement responsibilities under the permanent regulatory program pursuant to PL 95-87, the federal Surface Mining Control and Reclamation Act of 1977, and direct that the cabinet's administrative regulations be consistent with, and not more stringent than required by, that Act. PL 95-87 does not require Kentucky to comply with its provisions, but in order to retain primary enforcement responsibility under that Act the cabinet's administrative regulations must be consistent with federal regulations promulgated pursuant to that Act. The definitions affected in this amendment are the same as the corresponding federal definitions.] [KRS Chapter 350 in pertinent part requires the cabinet to promulgate rules and administrative regulations pertaining to surface coal mining and reclamation operations under the permanent regulatory program. This administrative regulation provides for the defining of certain essential terms used in 405 KAR Chapter 8.]

Section 1. Definitions. (1) "Acid drainage" means water with a pH of less than six (6.0) and in which total acidity exceeds total alkalinity, discharged from an active, inactive, or abandoned surface coal mine and reclamation operation or from an area affected by surface coal mining and reclamation operations.

(2) "Acid-forming materials" means earth materials that contain sulfide minerals or other materials which, if exposed to air, water, or weathering processes, form acids that may create acid drainage.

(3) **"Acquisition" means purchase, lease, or option of the land for the purpose of conducting or allowing through resale, lease, or option, the conduct of surface coal mining and reclamation operations.**

(4) "Adjacent area" means land located outside the affected area or permit area, depending on the context in which "adjacent area" is used, where air, surface or groundwater, fish, wildlife, vegetation or other resources protected by KRS Chapter 350 may be adversely impacted by surface coal mining and reclamation operations.

(5) "Administratively complete application" means an application for permit approval, or approval for coal exploration if required, which the cabinet determines to contain information addressing each application requirement of the regulatory program and to contain all information necessary to initiate technical processing and public review.

(6) "Affected area" means any land or water area which is used to facilitate, or is physically altered by, surface coal mining and reclamation operations. The affected area includes the disturbed area; any area upon which surface coal mining and reclamation operations are conducted; any adjacent lands the use of which is incidental to surface coal mining and reclamation operations; all areas covered by new or existing roads used to gain access to, or for hauling coal to or from, surface coal mining and reclamation operations, except as provided in this definition; any area covered by surface excavations, workings, impoundments, dams, ventilation shafts, entryways, refuse banks, dumps, stockpiles, overburden piles, spoil banks, culm banks, tailings, holes or depressions, repair areas, storage areas, shipping areas; any areas upon which are sited structures, facilities, or other property or material on the surface resulting from, or incident to, surface coal mining and reclamation operations; and the area located above underground workings associated with underground mining activities, auger mining, or in situ mining. The affected area shall include every road used for the purposes of access to, or for hauling coal to or from, surface coal mining and reclamation operations, unless the road:

(a) Was designated as a public road pursuant to the laws of the jurisdiction in which it is located;

(b) Is maintained with public funds, and constructed in a manner similar to other public roads of the same classification within the jurisdiction; and

(c) There is substantial (more than incidental) public use.

(7) "Applicant" means any person seeking a permit, permit revision, permit amendment, permit renewal, or transfer, assignment, or sale of permit rights from the cabinet to conduct surface coal mining and reclamation operations or approval to conduct coal exploration operations pursuant to KRS Chapter 350 and all applicable regulations.

(8) "Application" means the documents and other information filed with the cabinet seeking issuance of permits; revisions; amendments; renewals; and transfer, assignment or sale of permit rights for surface coal mining and reclamation operations or, if required, seeking approval for coal exploration.

(9) "Approximate original contour" is defined in KRS 350.010.

(10) "Aquifer" means a zone, stratum, or group of strata that can store and transmit water in sufficient quantities for domestic, agricultural, industrial, or other beneficial use.

(11) "Auger mining" means a method of mining coal at a cliff or highwall by drilling holes into an exposed coal seam from the highwall and transporting the coal along an auger bit to the surface and shall also include all other methods of mining in which coal is extracted from beneath the overburden by mechanical devices located at the face of the cliff or highwall and extending laterally into the coal seam, such as extended depth, secondary recovery systems.

(12) "Best technology currently available" means equipment,

devices, systems, methods, or techniques which will prevent, to the extent possible, additional contributions of suspended solids to stream flow or runoff outside the permit area and minimize, to the extent possible, disturbances and adverse impacts on fish, wildlife, and related environmental values, and achieve enhancement of those resources where practicable. The term includes equipment, devices, systems, methods, or techniques which are currently available anywhere as determined by the cabinet, even if they are not in routine use. The term includes, but is not limited to, construction practices, siting requirements, vegetative selection and planting requirements, animal stocking requirements, scheduling of activities and design of sedimentation ponds in accordance with 405 KAR Chapters 16 and 18. The cabinet shall have the discretion to determine the best technology currently available on a case-by-case basis, as authorized by KRS Chapter 350 and 405 KAR Chapters 7 through 24.

(13) "Cabinet" is defined in KRS 350.010.

(14) "Cemetery" means any area where human bodies are interred.

(15) "Cessation order" means an order for cessation and immediate compliance and any similar order issued by OSM under SMCRA or issued by any state pursuant to its laws or regulations under SMCRA.

(16) "CFR" means Code of Federal Regulations.

(17) "Coal" means combustible carbonaceous rock, classified as anthracite, bituminous, subbituminous, or lignite by ASTM Standard D 388-77.

(18) "Coal exploration" means the field gathering of:

(a) Surface or subsurface geologic, physical, or chemical data by mapping, trenching, drilling, geophysical, or other techniques necessary to determine the quality and quantity of overburden and coal of an area; or

(b) Environmental data to establish the conditions of an area before beginning surface coal mining and reclamation operations under the requirements of 405 KAR Chapters 7 through 24 if the activity may cause any disturbance of the land surface or may cause any appreciable effect upon land, air, water, or other environmental resources.

(19) "Coal mine waste" means coal processing waste and underground development waste.

(20) "Coal processing plant" means a facility where coal is subjected to chemical or physical processing or cleaning, concentrating, crushing, sizing, screening, or other processing or preparation including all associated support facilities including [but not limited to:] loading facilities; storage and stockpile facilities; sheds, shops, and other buildings; water treatment and water storage facilities; settling basins and impoundments; and coal processing and other waste disposal areas.

(21) "Coal processing waste" means materials which are separated from the product coal during the cleaning, concentrating, or other processing or preparation of coal.

(22) "Collateral bond" means an indemnity agreement in a sum certain payable to the cabinet executed by the permittee and which is supported by the deposit with the cabinet of cash, negotiable certificates of deposit, or an irrevocable letter of credit of any bank organized and authorized to transact business in the United States.

(23) "Combustible material" means organic material that is capable of burning, either by fire or through oxidation, accompanied by the evolution of heat and a significant temperature rise.

(24) "Community or institutional building" means a structure, other than a public building or occupied dwelling, that is used:

(a) For meetings, gatherings, or functions of:

1. A local civic organization; or

2. Other community group;

(b) As a facility for the following purposes:

1. Educational;

2. Cultural;

3. Historic;

4. Religious;

5. Scientific; or

6. Correctional;

(c) As a mental or physical health care facility;

(d) To supply water;

(e) To generate power;

(f) To treat sewage; or

(g) For another public service.

~~[(23) "Community or institutional building" means any structure, other than a public building or an occupied dwelling, which is used primarily for meetings, gatherings or functions of local civic organizations or other community groups; functions as an educational, cultural, historic, religious, scientific, correctional, mental health or physical health care facility; or is used for public services, including, but not limited to, water supply, power generation or sewage treatment.]~~

(25) "Compaction" means increasing the density of a material by reducing the voids between the particles by mechanical effort.

(26) [(24)] "Complete and accurate application" means an application for permit approval, or approval for coal exploration if required, which the cabinet determines to contain all information required under, and necessary to comply with, KRS Chapter 350 and 405 KAR Chapters 7 through 24, in order to make decisions concerning its administrative and technical acceptability and whether a permit or exploration approval may be issued.

(27) [(25)] "Cropland" means land used for the production of adapted crops for harvest, alone or in a rotation with grasses and legumes, and includes row crops, small grain crops, hay crops, nursery crops, orchard crops, and other similar specialty crops.

(28) [(26)] "Cumulative impact area" means the area, including the permit area, within which impacts resulting from the proposed operation may interact with the impacts of all anticipated mining on surface and groundwater systems. Anticipated mining shall include, at a minimum, the entire projected lives through bond release of:

(a) The proposed operation;

(b) All existing operations;

(c) Any operation for which a permit application has been submitted to the cabinet; and

(d) All operations required to meet diligent development requirements for leased federal coal for which there is actual mine development information available.

(29) [(27)] "Day" means calendar day unless otherwise specified to be a working day.

(30) [(28)] "Department" means the Department for Surface Mining Reclamation and Enforcement.

(31) [(29)] "Developed water resources land" means land used for storing water for beneficial uses such as stockponds, irrigation, fire protection, flood control, and water supply.

(32) [(30)] "Disturbed area" means an area where vegetation, topsoil, or overburden is removed or upon which topsoil, spoil, coal processing waste, underground development waste, or noncoal waste is placed by surface coal mining operations. Those areas are classified as "disturbed" until reclamation is complete and the performance bond or other assurance of performance required by 405 KAR Chapter 10 is released.

(33) [(31)] "Diversion" means a channel, embankment, or other manmade structure constructed to divert water from one (1) area to another.

(34) [(32)] "Embankment" means a manmade deposit of material that is raised above the natural surface of the land and used to contain, divert, or store water; to support roads or railways; or for other similar purposes.

(35) [(33)] "Ephemeral stream" means a stream which flows only in direct response to precipitation in the immediate watershed or in response to the melting of a cover of snow and ice, and which has a channel bottom that is always above the local water table.

(36) [(34)] "Excess spoil" means spoil disposed of in a location other than the coal extraction area, except that spoil material used to

achieve the approximate original contour shall not be considered excess spoil.

(37) [(35)] "Existing structure" means a structure or facility used in connection with or to facilitate surface coal mining and reclamation operations, for which construction began prior to January 18, 1983.

(38) [(36)] "Federal lands" means any lands, including mineral interests, owned by the United States, without regard to how the United States acquired ownership of the lands or which agency manages the lands. It does not include Indian lands.

(39) [(37)] "Forest land" means land used or managed for the long-term production of wood, wood fiber, or wood derived products.

(40) [(38)] "Fugitive dust" means that particulate matter which becomes airborne due to wind erosion from exposed surfaces.

(41) [(39)] "General area" means, with respect to hydrology, the topographic and groundwater basin surrounding a permit area which is of sufficient size, including areal extent and depth, to include one (1) or more watersheds containing perennial streams and groundwater zones and to allow assessment of the probable cumulative impacts on the quality and quantity of surface and groundwater systems in the basins.

(42) [(40)] "Ground cover" means the area of ground covered by the combined aerial parts of vegetation and litter produced and distributed naturally and seasonally on site, expressed as a percentage of the total area of measurement.

(43) [(41)] "Groundwater" means subsurface water that fills available openings in rock or soil materials to the extent that they are considered water saturated.

(44) [(42)] "Growing season" means the period during a one (1) year cycle, from the last killing frost in the spring to the first killing frost in the fall, in which climatic conditions are favorable for plant growth. In Kentucky, this period normally extends from mid-April to mid-October.

(45) [(43)] "Highwall" means the face of exposed overburden and coal in an open cut of a surface mining activity or for entry to underground mining activities.

(46) "Historically used for cropland" means land that:

(a) Has been used for cropland for any of five (5) years or more of the ten (10) years immediately preceding the:

1. Application; or

2. Acquisition of the land for the purpose of conducting a surface coal mining and reclamation operation;

(b) Would likely have been used for cropland for any five (5) of the ten (10) years immediately preceding the acquisition or application, but for some fact of ownership or control of the land unrelated to the productivity of the land;

(c) Falls outside the five (5) of ten (10) years criteria, but the cabinet determines is clearly cropland on the basis of additional cropland history of:

1. Surrounding land; and

2. The land under consideration.

[(45) [(44)] "Historically used for cropland:"

(a) "Historically used for cropland" means that lands have been used for cropland for any five (5) years or more out of the ten (10) years immediately preceding:

1. The application; or

2. The acquisition of the land for the purpose of conducting surface coal mining and reclamation operations.

(b) Lands meeting either paragraph (a) 1 or 2 of this subsection shall be considered "historically used for cropland."

(c) In addition to the lands covered by paragraph (a) of this subsection, other lands shall be considered "historically used for cropland" as described below:

1. Lands that would likely have been used as cropland for any five (5) out of the last ten (10) years immediately preceding the acquisition or the application but for some fact of ownership or control of the land unrelated to the productivity of the land; and

2. Lands that the cabinet determines, on the basis of additional

cropland history of the surrounding lands and the lands under consideration, are clearly cropland but fall outside the specific five (5) year: in ten (10) criterion.

(d) Acquisition includes purchase, lease, or option of the land for the purpose of conducting or allowing through resale, lease or option, the conduct of surface coal mining and reclamation operations.]

(47) [(45)] "Hydrologic balance" means the relationship between the quality and quantity of water inflow to, water outflow from, and water storage in a hydrologic unit such as a drainage basin, aquifer, soil zone, lake, or reservoir. It encompasses the dynamic relationship between precipitation, runoff, evaporation, and changes in ground and surface water storage.

(48) [(46)] "Hydrologic regime" means the entire state of water movement in a given area. It is a function of the climate and includes the phenomena by which water first occurs as atmospheric water vapor, passes into a liquid or solid form, falls as precipitation, moves along or into the ground surface, and returns to the atmosphere as vapor by means of evaporation and transpiration.

(49) [(47)] "Imminent danger to the health and safety of the public" means the existence of any condition or practice, or any violation of a permit or other requirements of KRS Chapter 350 in a surface coal mining and reclamation operation, which could reasonably be expected to cause substantial physical harm to persons outside the permit area before the condition, practice, or violation can be abated. A reasonable expectation of death or serious injury before abatement exists if a rational person, subjected to the same condition or practice giving rise to the peril, would avoid exposure to the danger during the time necessary for abatement.

(50) "Impounding structure" means a dam, embankment or other structure used to impound water, slurry, or other liquid or semiliquid material.

(51) [(48)] "Impoundment" means a water, sediment, slurry or other liquid or semiliquid holding structure or depression, either naturally formed or artificially built, [closed basin, naturally formed or artificially built, which is dammed or excavated for the retention of water, sediment, or waste.]

(52) [(49)] "Incidental boundary revision" means an extension to a permit area that is necessary for reasons unforeseen when the original permit application was prepared and that is small in relation to the original or amended permit area.

(53) [(50)] "Industrial/commercial lands" means lands used for:

(a) Extraction or transformation of materials for fabrication of products, wholesaling of products, or long-term storage of products, and heavy and light manufacturing facilities.

(b) Retail or trade of goods or services, including hotels, motels, stores, restaurants, and other commercial establishments.

(54) [(51)] "In situ processes" means activities conducted on the surface or underground in connection with in-place distillation, retorting, leaching, or other chemical or physical processing of coal. The term includes, but is not limited to, in situ gasification, in situ leaching, slurry mining, solution mining, borehole mining, and fluid recovery mining.

(55) [(52)] "Intermittent stream" means:

(a) A stream or reach of stream that drains a watershed of one (1) square mile or more but does not flow continuously during the calendar year; or

(b) A stream or reach of a stream that is below the local water table for at least some part of the year, and obtains its flow from both surface runoff and groundwater discharge.

(56) [(53)] "Irreparable damage to the environment" means any damage to the environment, in violation of SMCRA, KRS Chapter 350, or 405 KAR Chapters 7 through 24, that cannot be corrected by actions of the applicant.

(57) [(54)] "KAR" means Kentucky administrative regulations.

(58) [(55)] "KRS" means Kentucky Revised Statutes.

(59) [(56)] "Land use" means specific functions, uses, or management-related activities of an area, and may be identified in combina-

tion when joint or seasonal uses occur and may include land used for support facilities that are an integral part of the use. In some instances, a specific use can be identified without active management.

(60) "Material damage", as used in 405 KAR 8:040, Section 26, and 405 KAR 18:210 means:

(a) Any functional impairment of surface lands, features, structures or facilities;

(b) Any physical change that has a significant adverse impact on the affected land's capability to support any current or reasonably foreseeable uses or causes significant loss in production or income; or

(c) Any significant change in the condition, appearance or utility of any structure or facility from its presubsidence condition.

(61) [(57)] "Monitoring" means the collection of environmental data by either continuous or periodic sampling methods.

(62) [(58)] "MRP" means mining and reclamation plan.

(63) [(59)] "MSHA" means Mine Safety and Health Administration.

(64) [(60)] "Mulch" means vegetation residues or other suitable materials that aid in soil stabilization and soil moisture conservation, thus providing microclimatic conditions suitable for germination and growth.

(65) "Noncommercial building" means any building, other than an occupied residential dwelling, that, at the time the subsidence occurs, is used on a regular or temporary basis as a public building or community or institutional building. Any building used only for commercial agricultural, industrial, retail or other commercial enterprises is excluded.

(66) [(61)] "Notice of noncompliance and order for remedial measures" means a written document and order prepared by an authorized representative of the cabinet which sets forth with specificity the violations of KRS Chapter 350, 405 KAR Chapters 7 through 24, or permit conditions which the authorized representative of the cabinet determines to have occurred based upon his inspection, and the necessary remedial actions, if any, and the time schedule for completion thereof, which the authorized representative deems necessary and appropriate to correct the violations.

(67) [(62)] "Notice of violation" means any written notification from a governmental entity of a violation of law or regulation, whether by letter, memorandum, legal or administrative pleading, or other written communication. This shall include a notice of noncompliance and order for remedial measures.

(68) [(63)] "Occupied dwelling" means any building that is currently being used on a regular or temporary basis for human habitation.

(69) "Occupied residential dwelling and structures related thereto" means, for purposes of 405 KAR 8:040, Section 26, and 405 KAR 18:210, any building or other structure that, at the time the subsidence occurs, is used either temporarily, occasionally, seasonally, or permanently for human habitation. This term also includes any building, structure or facility installed on, above or below, or a combination thereof, the land surface if that building, structure or facility is adjunct to or used in connection with an occupied residential dwelling. Examples of these structures include, but are not limited to, garages; storage sheds and barns; greenhouses and related buildings; utilities and cables; fences and other enclosures; retaining walls; paved or improved patios, walks and driveways; septic sewage treatment facilities; and lot drainage and lawn and garden irrigation systems. Any structure used only for commercial agricultural, industrial, retail or other commercial purposes is excluded.

(70) [(64)] "Operations" is defined in KRS 350.010.

(71) [(65)] "Operator" is defined in KRS 350.010.

(72) [(66)] "Order for cessation and immediate compliance" means a written document and order issued by an authorized representative of the cabinet when:

(a) A person to whom a notice of noncompliance and order for remedial measures was issued has failed, as determined by a cabinet

inspection, to comply with the terms of the notice of noncompliance and order for remedial measures within the time limits set therein, or as subsequently extended; or

(b) The authorized representative finds, on the basis of a cabinet inspection, any condition or practice or any violation of KRS Chapter 350, 405 KAR Chapters 7 through 24, or any condition of a permit or exploration approval which:

1. Creates an imminent danger to the health or safety of the public; or

2. Is causing or can reasonably be expected to cause significant, imminent environmental harm to land, air or water resources.

(73) [(67)] "OSM" means Office of Surface Mining Reclamation and Enforcement, United States Department of the Interior.

(74) [(68)] "Other mineral" means any commercially valuable substance mined for its mineral value, excluding coal, topsoil, waste, and fill material.

(75) [(69)] "Overburden" is defined in KRS 350.010.

(76) [(70)] "Owned or controlled" and "owns or controls" mean any one (1) or a combination of the relationships specified in paragraphs (a) and (b) of this subsection:

(a)1. Being a permittee of a surface coal mining operation;

2. Based on instruments of ownership or voting securities, owning of record in excess of fifty (50) percent of an entity; or

3. Having any other relationship that gives one (1) person authority directly or indirectly to determine the manner in which an applicant, an operator, or other entity conducts surface coal mining operations.

(b) The following relationships are presumed to constitute ownership or control unless a person can demonstrate that the person subject to the presumption does not in fact have the authority directly or indirectly to determine the manner in which the relevant surface coal mining operation is conducted:

1. Being an officer or director of an entity;

2. Being the operator of a surface coal mining operation;

3. Having the ability to commit the financial or real property assets or working resources of an entity;

4. Being a general partner in a partnership;

5. Based on the instruments of ownership or the voting securities of a corporate entity, owning of record ten (10) through fifty (50) percent of the entity; or

6. Owning or controlling coal to be mined by another person under a lease, sublease, or other contract and having the right to receive the coal after mining or having authority to determine the manner in which that person or another person conducts a surface coal mining operation.

(77) [(71)] "Pastureland" means land used primarily for the long-term production of adapted, domesticated forage plants to be grazed by livestock or occasionally cut and cured for livestock feed.

(78) [(72)] "Perennial stream" means a stream or that part of a stream that flows continuously during all of the calendar year as a result of groundwater discharge or surface runoff. The term does not include "intermittent stream" or "ephemeral stream."

(79) [(73)] "Performance bond" means a surety bond, a collateral bond, or a combination thereof, or bonds filed pursuant to the provisions of the Kentucky Bond Pool Program (405 KAR 10:200, KRS 350.595, and KRS 350.700 through 350.755), by which a permittee assures faithful performance of all the requirements of KRS Chapter 350, 405 KAR Chapters 7 through 24, and the requirements of the permit and reclamation plan.

(80) [(74)] "Permanent diversion" means a diversion remaining after surface coal mining and reclamation operations are completed which has been approved for retention by the cabinet and other appropriate Kentucky and federal agencies.

(81) [(75)] "Permit" means written approval issued by the cabinet to conduct surface coal mining and reclamation operations.

(82) [(76)] "Permit area" means the area of land and water within boundaries designated in the approved permit application, which shall

include, at a minimum, all areas which are or will be affected by surface coal mining and reclamation operations under that permit.

(83) [(77)] "Permittee" means an operator or a person holding or required by KRS Chapter 350 or 405 KAR Chapters 7 through 24 to hold a permit to conduct surface coal mining and reclamation operations during the permit term and until all reclamation obligations imposed by KRS Chapter 350 and 405 KAR Chapters 7 through 24 are satisfied.

(84) [(78)] "Person" is defined in KRS 350.010.

(85) [(79)] "Person having an interest which is or may be adversely affected" or "person with a valid legal interest" shall include any person:

(a) Who uses any resource of economic, recreational, aesthetic, or environmental value that may be adversely affected by coal exploration or surface coal mining and reclamation operations, or by any related action of the cabinet; or

(b) Whose property is or may be adversely affected by coal exploration or surface coal mining and reclamation operations, or by any related action of the cabinet.

(86) [(80)] "Previously mined area" means land that was [disturbed or] affected by coal mining operations conducted prior to August 3, 1977, that has not been reclaimed to the standards of this title; and for which there is no continuing responsibility to reclaim to the standards of this title].

(87) [(81)] "Prime farmland" means those lands which are defined by the Secretary of Agriculture in 7 CFR 657 and which have been "historically used for cropland" as that phrase is defined above.

(88) [(82)] "Principal shareholder" means any person who is the record or beneficial owner of ten (10) percent or more of any class of voting stock of the applicant.

(89) [(83)] "Probable cumulative impacts" means the expected total qualitative, and quantitative, direct and indirect effects of surface coal mining and reclamation operations on the hydrologic regime.

(90) [(84)] "Probable hydrologic consequences" means the projected results of proposed surface coal mining and reclamation operations which may reasonably be expected to change the quantity or quality of the surface and groundwater; the surface or groundwater flow, timing, and pattern; and the stream channel conditions on the permit area and adjacent areas.

(91) [(85)] "Property to be mined" means both the surface and mineral estates on and underneath lands which are within the permit area.

(92) [(86)] "Public building" means any structure that is owned or leased, and principally used by a governmental agency for public business or meetings.

(93) [(87)] "Publicly-owned park" means a public park that is owned by a federal, state, or local governmental entity.

(94) [(88)] "Public office" means a facility under the direction and control of a governmental entity which is open to public access on a regular basis during reasonable business hours.

(95) [(89)] "Public park" means an area dedicated or designated by any federal, state, or local agency primarily for public recreational use, despite whether the use is limited to certain times or days. It includes any land leased, reserved, or held open to the public because of that use.

(96) [(90)] "Public road" means any publicly owned thoroughfare for the passage of vehicles.

(97) [(91)] "Recharge capacity" means the ability of the soils and underlying materials to allow precipitation and runoff to infiltrate and reach the zone of saturation.

(98) [(92)] "Reclamation" is defined in KRS 350.010.

(99) [(93)] "Recreation land" means land used for public or private leisure-time use, including developed recreation facilities such as parks, camps, and amusement areas, as well as areas for less intensive uses such as hiking, canoeing, and other undeveloped recreational uses.

(100) [(94)] "Reference area" means a land unit maintained under

appropriate management for the purpose of measuring vegetative ground cover, productivity, and plant species diversity that are produced naturally or by crop production methods approved by the cabinet.

(101) [(95)] "Refuse pile" means a surface deposit of coal mine waste that is not retained by an impounding structure and does not impound water, slurry, or other liquid or semiliquid material.

(102) [(96)] "Remining" means conducting surface coal mining and reclamation operations which affect previously mined areas.

(103) [(97)] "Renewable resource lands."

(a) As used in 405 KAR Chapter 24, "renewable resource lands" means geographic areas which contribute significantly to the long-range productivity of water supplies or of food or fiber products, these lands to include aquifers and aquifer recharge areas.

(b) As used in 405 KAR 8:040, Section 26, "renewable resource lands" means aquifers and areas for the recharge of aquifers and other underground waters, areas for agricultural or silvicultural production of food and fiber, and grazing lands.

(104) [(98)] "Residential land" means tracts employed for single and multiple-family housing, mobile home parks, and other residential lodgings.

(105) [(99)] "Road" means a surface right-of-way for purposes of travel by land vehicles used in coal exploration or surface coal mining and reclamation operations. A road consists of the entire area within the right-of-way, including the roadbed, shoulders, parking and side area, approaches, structures, ditches, surface, and contiguous appendages necessary for the total structure. The term includes access and haul roads constructed, used, reconstructed, improved, or maintained for use in coal exploration or surface coal mining and reclamation operations, including use by coal hauling vehicles leading to transfer, processing, or storage areas. The term does not include pioneer or construction roadways used for part of the road construction procedure and promptly replaced by a road pursuant to 405 KAR Chapters 16 and 18 located in the identical right-of-way as the pioneer or construction roadway. The term also excludes any roadway within the immediate mining pit area.

(106) [(100)] "SCS" means Soil Conservation Service.

(107) [(101)] "Secretary" is defined in KRS 350.010.

(108) **"Sedimentation pond" means a primary sediment control structure:**

(a) Designed, constructed, or maintained pursuant to 405 KAR 16:090 or 405 KAR 18:090;

(b) That may include a barrier, dam, or excavated depression to:

1. Slow water runoff; and

2. Allow suspended solids to settle out; and

(c) That shall not include secondary sedimentation control structures, including a straw dike, riprap, check dam, mulch, dugout, or other measure that reduces overland flow velocity, reduces runoff volume, or trap sediment, to the extent that the secondary sedimentation structure drains into a sedimentation pond.

[(107) [(102)] "Sedimentation pond" means a primary sediment control structure designed, constructed, and maintained in accordance with 405 KAR 16:090 or 405 KAR 18:090 and including but not limited to a barrier, dam, or excavated depression which slows down water runoff to allow suspended solids to settle out. A sedimentation pond shall not include secondary sedimentation control structures, such as straw dikes, riprap, check dams, mulches, dugouts, and other measures that reduce overland flow velocity, reduce runoff volume, or trap sediment, to the extent that the secondary sedimentation structures drain to a sedimentation pond.]

(109) [(103)] "Significant, imminent environmental harm" means an adverse impact on land, air, or water resources which resources include, but are not limited to, plant and animal life as further defined in this subsection.

(a) An environmental harm is imminent, if a condition, practice, or

violation exists which:

1. Is causing environmental harm; or
2. May reasonably be expected to cause environmental harm at any time before the end of the reasonable abatement time that would be set by the cabinet's authorized agents pursuant to the provisions of KRS Chapter 350.

(b) An environmental harm is significant if that harm is appreciable and not immediately repairable.

(110) [(104)] "Slope" means average inclination of a surface, measured from the horizontal, generally expressed as the ratio of a unit of vertical distance to a given number of units of horizontal distance (e.g., 1v:5h). It may also be expressed as a percent or in degrees.

(111) [(105)] "Slurry mining" means the hydraulic breakdown of subsurface coal with drill-hole equipment, and the eduction of the resulting slurry to the surface for processing.

(112) [(106)] "Small operator", as used in 405 KAR 8:030, Section 3(5) and 405 KAR 8:040, Section 3(5), is defined at KRS 350.450(4)(c).

(113) [(107)] "SMCRA" means Surface Mining Control and Reclamation Act of 1977 (PL 95-87), as amended.

(114) [(108)] "Soil horizons" means contrasting layers of soil parallel or nearly parallel to the land surface. Soil horizons are differentiated on the basis of field characteristics and laboratory data. The four (4) master soil horizons are:

(a) "A horizon." The uppermost mineral layer, often called the surface soil. It is the part of the soil in which organic matter is most abundant, and leaching of soluble or suspended particles is typically the greatest.

(b) "E horizon." The layer commonly near the surface below an A horizon and above a B horizon. An E horizon is most commonly differentiated from an overlying A horizon by lighter color and generally has measurably less organic matter than the A horizon. An E horizon is most commonly differentiated from an underlying B horizon in the same sequence by color of higher value or lower chroma, by coarser texture, or by a combination of these properties.

(c) "B horizon." The layer that typically is immediately beneath the E horizon and often called the subsoil. This middle layer commonly contains more clay, iron, or aluminum than the A, E, or C horizons.

(d) "C horizon." The deepest layer of soil profile. It consists of loose material or weathered rock that is relatively unaffected by biologic activity.

(115) [(109)] "Soil survey" means a field and other investigation, resulting in a map showing the geographic distribution of different kinds of soils and an accompanying report that describes, classifies, and interprets the soils for use. Soil surveys shall meet the standards of the National Cooperative Soil Survey.

(116) [(110)] "Spoil" means overburden and other materials, excluding topsoil, coal mine waste, and mined coal, that are excavated during surface coal mining and reclamation operations.

(117) [(111)] "Stabilize" means to control movement of soil, spoil piles, or areas of disturbed earth by modifying the geometry of the mass, or by otherwise modifying physical or chemical properties, such as by providing a protective surface coating.

(118) [(112)] "Steep slope" means any slope of more than twenty (20) degrees.

(119) [(113)] (a) "Substantial legal and financial commitments" means significant investments, that have been made on the basis of a long-term coal contract, consisting of actual expenditures of substantial monies or execution of valid and binding contracts involving substantial monies for such things as power plants; railroads; coal handling, preparation, extraction, and storage facilities; and other capital-intensive activities such as:

1. Improvement or modification of coal lands within, for access to, or in support of surface coal mining and reclamation operations in the petitioned area;
2. Acquisition of capital equipment for use in, for access to, or for

use in support of surface coal mining and reclamation operations in the petitioned area; and

3. Exploration, mapping, surveying, and geological work, as well as expenditures of engineering and legal fees, associated with the acquisition of the property or preparation of an application to conduct surface coal mining and reclamation operations in the petitioned area.

(b) The costs of acquiring the coal in place or the right to mine such coal are not sufficient to constitute a substantial legal and financial commitment in the absence of other investments as described in paragraph (a) of this subsection.

(120) [(114)] "Substantially disturb" means, for purposes of coal exploration, to significantly impact land or water resources by blasting; by removal of vegetation, topsoil, or overburden; by construction of roads or other access routes; by placement of excavated earth or waste material on the natural land surface; or by other activities, or to remove more than twenty-five (25) tons of coal.

(121) [(115)] "Successor in interest" means any person who succeeds to rights granted under a permit, by transfer, assignment, or sale of those rights.

(122) [(116)] "Surety bond" means an indemnity agreement in a sum certain, payable to the cabinet and executed by the permittee, which is supported by the performance guarantee of a corporation licensed to do business as a surety in the Commonwealth of Kentucky.

(123) [(117)] "Surface coal mining and reclamation operations" is defined in KRS 350.010.

(124) [(118)] "Surface coal mining operations" is defined in KRS 350.010.

(125) [(119)] "Surface mining scowling" means those surface coal mining and reclamation operations incident to the extraction of coal from the earth by removing the overburden over a coal seam before covering the coal by using coal quality by extraction, if coal from coal refuse piles, or by recovery of coal from slurry ponds.

(126) [(120)] "Suspended solid" means nonfibrous, non-aqueous, inorganic or organic particles, means of pore or organic materials carried or held in suspension in water which are retained by a standard glass fiber filter by the procedure outlined by the U.S. EPA's regulations for waste water and effluents (40 CFR 130).

(127) [(121)] "Temporary stream" means a diversion of stream, or wetland flow which is used during coal exploration or surface coal mining and reclamation operations and not approved by the cabinet to remain after reclamation or part of the approved permitted land use.

(128) [(122)] "Ton" means 2000 pounds avoirdupois (907.18 metric ton).

(129) [(123)] "Topsoil" means the A and E soil horizon types of the four (4) master soil horizons.

(130) [(124)] "Toxic-forming materials" means earth materials or wastes which, if acted upon by air, water, weathering, or microbiological processes, are likely to produce chemical conditions in soils or water that are detrimental to biota or uses of water.

(131) [(125)] "Toxic mine drainage" means water that is discharged from active or abandoned mines or other areas affected by coal exploration or surface coal mining and reclamation operations, which contains a substance that through chemical action is likely to kill, injure, or impair biota commonly present in the area that might be exposed to it.

(132) [(126)] "Transfer, assignment, or sale of permit rights" means a change in ownership or other effective control over the right to conduct surface coal mining operations under a permit issued by the cabinet.

(133) [(127)] "TRM" means Technical Reclamation Memorandum.

(134) [(128)] "Underground development waste" means waste coal, shale, claystone, siltstone, sandstone, limestone, or similar materials that are extracted from underground workings in connection with underground mining activities.

(135) [(129)] "Underground mining activities" means a combina-

tion of:

(a) Surface operations incident to underground extraction of coal or in situ processing, including construction, use, maintenance, and reclamation of roads, above-ground repair areas, storage areas, processing areas, and shipping areas; areas upon which are sited support facilities including hoist and ventilating ducts; areas utilized for the disposal and storage of waste; and areas on which materials incident to underground mining operations are placed; and

(b) Underground operations such as underground construction, operation, and reclamation of shafts, adits, underground support facilities; in situ processing; and underground mining, hauling, storage, and blasting.

(136) [(130)] "USDA" means United States Department of Agriculture.

(137) [(131)] "U.S. EPA" means United States Environmental Protection Agency (133) "USGS" means United States Geological Survey.

(138) [(132)] "USGS" means United States Geological Survey.

(139) [(133)] "Valid existing rights" means:

(a) Except for haul roads, property rights in existence on August 3, 1977, that were created by a legally binding conveyance, lease, contract or other instrument which authorizes the applicant to produce coal and the person proposing to conduct a surface coal mining operation on the lands either:

1. Had been validly issued or had made a good faith effort to obtain, on or before August 3, 1977, all state and federal permits necessary to conduct surface coal mining operations on those lands, application for the permits being deemed to constitute good faith efforts to obtain the permits; or

2. Can demonstrate to the cabinet that the coal is both needed for, and immediately adjacent to, an ongoing surface coal mining operation for which all permits were obtained prior to August 3, 1977.

(b) For haul roads:

1. A recorded right-of-way, recorded easement, or a permit for coal haul road recorded as of August 3, 1977; or

2. Any other road in existence as of August 3, 1977.

(c) Valid existing rights does not mean the mere expectation of a right to conduct surface coal mining operations or the right to conduct underground coal mining.

(140) [(134)] "Water transmitting zone" means a body of consolidated or unconsolidated rocks which, due to their greater primary or secondary permeability relative to the surrounding rocks, can reasonably be considered to function as a single hydraulic medium for the flow of groundwater.

(141) [(135)] "Welland" means land that has a predominance of hydric soils and that is inundated or saturated by surface or groundwater at a frequency and duration sufficient to support, and that under normal circumstances does support, a prevalence of hydrophytic vegetation typically adapted for life in saturated soil conditions.

(a) "Hydric soil" means soil that, in its undrained condition, is saturated, flooded, or ponded long enough during a growing season to develop an anaerobic condition that supports the growth and regeneration of hydrophytic vegetation.

(b) "Hydrophytic vegetation" means a plant growing in:

1. Water; or

2. A substrate that is at least periodically deficient in oxygen during a growing season as a result of excessive water content.

(142) [(136)] "Willfully" and "willful violation" mean that a person acted either intentionally, voluntarily, or consciously, and with intentional disregard or plain indifference to legal requirements, in authorizing, ordering, or carrying out an act or omission that constituted a violation of SMCRA, KRS Chapter 350, 405 KAR Chapters 7 through 24, or a permit condition, or that constituted a failure or refusal to comply with an order issued pursuant to SMCRA, KRS Chapter 350, or 405 KAR Chapters 7 through 24.

Section 2. Incorporation by Reference. (1) "ASTM Standard

D 388-77, Standard Specification for Classification of Coals by Rank", (1977), American Society for Testing and Materials, is incorporated by reference.

(2) It may be inspected, copied, or obtained at the Department for Surface Mining Reclamation and Enforcement, 2 Hudson Hollow, Frankfort, Kentucky 40601-4321, Monday through Friday, 8 a.m. to 4:30 p.m.

JAMES E. BICKFORD, Secretary

APPROVED BY AGENCY: July 28, 1997

FILED WITH LRC: July 28, 1997 at 4 p.m.

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET Department for Surface Mining Reclamation and Enforcement (As Amended at ARRS, May 11, 1998)

405 KAR 8:030. Surface coal mining permits.

RELATES TO: KRS 350.060, 350.465, 7 CFR Part 657, 30 CFR Parts 77.216-1, 77.216-2, 730-733, 735, 773.13(a), 778-780, 785.17(b), (d), 917, 40 CFR Parts 136, 434, 16 USC 1276(a), 1531 et seq., 30 USC 1253, 1255, 1257, 1258, 1267

STATUTORY AUTHORITY: KRS [Chapter 13A,] 350.020, 350.028, 350.060, 350.465, 7 CFR Part 657, 30 CFR Parts 77.216-1, 77.216-2, 730-733, 735, 773.13(a), 778-780, 785.17(b), (d), 917, 40 CFR Parts 136, 434, 16 USC 1276(a), 1531 et seq., 30 USC 1253, 1255, 1257, 1258, 1267

NECESSITY, FUNCTION, AND CONFORMITY: KRS 350.028(1), (5), 350.060(13), and 350.465(2) authorize the cabinet to promulgate administrative regulations relating to surface and underground coal mining operations. This administrative regulation establishes requirements for the grant of a surface coal mining permit. This administrative regulation differs from 30 CFR 780.25, Section 34(3) and (5) of this administrative regulation require that the following be submitted to the cabinet after approval by the Mine Safety and Health Administration (MSHA):

(1) A copy of the final approved design plans for impounding structures;

(2) A copy of all correspondence with MSHA;

(3) A copy of technical support documents requested by MSHA;

(4) A notarized statement by the applicant that the copy submitted to the cabinet is a complete and correct copy of the final plan approved by MSHA. These requirements are necessary to minimize duplication of technical review by MSHA and the cabinet, and to minimize conflicts that may arise from duplication of review. [KRS 350.028(1) requires the cabinet to promulgate administrative regulations pertaining to surface coal mining operations including strip mining and the surface effects of underground mining to accomplish the purposes of KRS Chapter 350. KRS 350.060(13) requires the cabinet to promulgate administrative regulations for the permitting of operations with surface effects of underground mining and other surface coal mining and reclamation operations. This administrative regulation applies to surface coal mining and reclamation operations except operations with surface effects of underground mining. It requires the applicant to provide information related to environmental resources, his legal and compliance status, and his mining and reclamation plan, and requires the applicant to make certain showings to obtain a permit. KRS 350.028(5), 350.151(1), and 350.465(2), (5) authorize and direct the cabinet to promulgate administrative regulations for surface and underground coal mining operations for the purpose of accepting and administering primary enforcement responsibilities under the permanent regulatory program pursuant to PL 95-87, the federal Surface Mining Control and

Reclamation Act of 1977; and direct that the cabinet's administrative regulations be consistent with, and not more stringent than required by, that Act. PL 95-87 does not require Kentucky to comply with its provisions, but in order to retain primary enforcement responsibility under that Act the cabinet's administrative regulations must be consistent with federal regulations promulgated pursuant to that Act. This administrative regulation is being amended at Section 16 regarding alternative water supply information, at Section 32(1)(b) regarding the identification of protective measures needed to meet hydrologic requirements, at Section 32(3) regarding the determination of probable hydrologic consequences, and at Section 34 regarding impoundments and embankments. This amendment differs from the corresponding federal regulations as follows:

1. Section 34(3) and (5) of this administrative regulation, like the corresponding federal regulations, require that design plans for impounding structures that are required to be submitted to MSHA must also must be submitted to the cabinet as part of the permit application. However, this administrative regulation further requires that after these plans have been approved by MSHA, the applicant must submit to the cabinet a copy of the final approved plans, a copy of all correspondence from MSHA regarding the plans, a copy of any technical support documents requested by MSHA, and a notarized statement by the applicant that the copy submitted to the cabinet is a complete and correct copy of the final plan approved by MSHA. In order to minimize duplication of technical review of impounding structures by MSHA and the cabinet, and to minimize conflicts for the applicant that may arise from duplication of review, the cabinet intends to rely heavily upon the review conducted by MSHA engineers and upon the final plans approved by MSHA. It is important to ensure that the plans actually approved by MSHA are included in the permit application so there will be no discrepancy between the plans approved by the two agencies. The additional requirements are intended to provide that assurance.

2. Section 34 of this administrative regulation refers to Class B and C criteria under 405 KAR 7:040 Section 5 and 401 KAR 4:030 whereas the federal regulation refers to Class B and C criteria in the USDA-SCS Technical Release No. 60 and incorporate TR-60 by reference. The Class B and C criteria of the cabinet and those of Technical Release No. 60 are virtually identical criteria, since the criteria adopted under 401 KAR 4:030 were originally developed based upon the SCS criteria. Thus there is no need for this administrative regulation to refer to TR-60 or to incorporate it by reference.] [KRS Chapter 350 in pertinent part requires the cabinet to promulgate rules and administrative regulations pertaining to permits for surface mining activities. This administrative regulation specifies certain information to be shown by the applicant related to legal and compliance status, environmental resources, and his mining and reclamation plan. This administrative regulation further specifies certain showings to be made by the applicant to obtain a permit.]

Section 1. General. (1) This administrative regulation applies to any person who applies for a permit to conduct surface mining activities.

(2) The requirements set forth in this administrative regulation specifically for applications for permits to conduct surface mining activities are in addition to the requirements applicable to all applications for permits to conduct surface coal mining and reclamation operations as set forth in 405 KAR 8:010.

(3) This administrative regulation sets forth information required to be contained in applications for permits to conduct surface mining activities, including:

- (a) Legal, financial, compliance, and related information;
- (b) Environmental resources information; and
- (c) Mining and reclamation plan information.

Section 2. Identification of Interests. An application shall contain the following information, except that the submission of a Social

Security number is voluntary:

(1) A statement as to whether the applicant is a corporation, partnership, single proprietorship, association, or other business entity;

(2) The name, address, telephone number and, as applicable, Social Security number and employer identification number of the:

- (a) Applicant;
- (b) Applicant's resident agent; and
- (c) Person who will pay the abandoned mine land reclamation fee.

(3) For each person who owns or controls the applicant:

(a) The person's name, address, Social Security number, and employer identification number;

(b) The person's ownership or control relationship to the applicant, including percentage of ownership and location in organizational structure;

(c) The title of the person's position, date position was assumed, and when submitted under 405 KAR 8:010, Section 18(5) date of departure from the position;

(d) Each additional name and identifying number, including employer identification number, federal or state permit number, and MSHA number with date of issuance, under which the person owns or controls, or previously owned or controlled, a surface coal mining and reclamation operation in the United States within the five (5) years preceding the date of the application; and

(e) The application number or other identifier of, and the regulatory authority for, any other pending surface coal mining operation permit application filed by the person in any state in the United States.

(4) For any surface coal mining operation owned or controlled by either the applicant or by any person who owns or controls the applicant, the operation's:

(a) Name, address, identifying numbers, including employer identification number, federal or state permit number, and MSHA number, the date of issuance of the MSHA number, and the regulatory authority; and

(b) Ownership or control relationship to the applicant, including percentage of ownership and location in organizational structure.

(5) The names and addresses of:

(a) Every legal or equitable owner of record of the property to be mined;

(b) The holders of record of any leasehold interest in the property to be mined; and

(c) Any purchaser of record, under a real estate contract, of the property to be mined.

(6) The names and addresses of the owners of record of all surface and subsurface areas contiguous to any part of the proposed permit area.

(7) The name of the proposed mine and all MSHA identification numbers that have been assigned for the mine and all mine associated structures that require MSHA approval.

(8) Proof, such as a power of attorney or a resolution of the board of directors, that the individual signing the application has the power to represent the applicant in the permit matter.

(9) A statement of all lands, interests in lands, options, or pending bids on interests held or made by the applicant for lands which are contiguous to the area to be covered by the permit.

(10) After an applicant has been notified that his or her application has been approved, but before the permit is issued, the applicant shall, as applicable, update, correct, or indicate that no change has occurred in the information previously submitted under subsections (1) through (4) of this section.

(11) The permittee shall, in writing, inform the cabinet of any change of the permittee's address immediately if changed at any point prior to final bond release.

(12) The permittee shall submit updates of the following information in writing to the cabinet within thirty (30) days of the effective date of any change. Updates shall be submitted for any changes that occur

at any point prior to final bond release. Failure to submit updated information shall constitute a violation of KRS Chapter 350 only upon the permittee's refusal or failure to timely submit, as determined by the cabinet, the information to the cabinet upon request. After the permittee's refusal or failure to timely submit the information to the cabinet upon request, the cabinet may suspend the permit after opportunity for hearing pending compliance with this subsection:

- (a) The names and addresses of every officer, partner, director, or person performing a function similar to a director of the permittee;
- (b) The names and addresses of principal shareholders; and
- (c) Whether the permittee or other persons specified in this subsection are subject to any of the provisions of KRS 350.130(3).

Section 3. Violation Information. Each application shall contain the following information:

(1) A statement of whether the applicant or any subsidiary, affiliate, or persons controlled by or under common control with the applicant has:

- (a) Had a coal mining permit of the United States or any state suspended or revoked in the five (5) years preceding the date of submission of the application; or
- (b) Forfeited a coal mining performance bond or similar security deposited in lieu of bond.

(2) If any suspension, revocation, or forfeiture as described in subsection (1) of this section has occurred, the application shall contain a statement of the facts involved, including:

- (a) Identification number and date of issuance of the permit, and date and amount of bond or similar security;
- (b) Identification of the authority that suspended or revoked the permit or forfeited the bond and the stated reasons for that action;
- (c) The current status of the permit, bond, or similar security involved;
- (d) The date, location, and type of any administrative or judicial proceedings initiated concerning the suspension, revocation, or forfeiture; and

(e) The current status of these proceedings.

(3) For any violation of a provision of SMCRA, federal regulations enacted pursuant to SMCRA, KRS Chapter 350 and administrative regulations adopted pursuant thereto, any other state's laws or regulations under SMCRA, any federal law, rule, or regulation pertaining to air or water environmental protection, or any Kentucky or other state's law, rule, or regulation enacted pursuant to federal law, rule, or regulation pertaining to air or water environmental protection incurred in connection with any surface coal mining operation, a list of all violation notices received by the applicant during the three (3) year period preceding the application date, and a list of all unabated cessation orders and unabated air and water quality violation notices received prior to the date of the application by any surface coal mining and reclamation operation owned or controlled by either the applicant or by any person who owns or controls the applicant. For each violation notice or cessation order reported, the lists shall include the following information, as applicable:

(a) Any identifying numbers for the operation, including the federal or state permit number and MSHA number, the dates of issuance of the violation notice and MSHA number, the name of the person to whom the violation notice was issued, and the name of the issuing regulatory authority, department, or agency;

(b) A brief description of the particular violation alleged in the notice;

(c) The final resolution of each violation notice, if any;

(d) For each violation notice that has not been finally resolved:

1. The date, location, and type of any administrative or judicial proceedings initiated concerning the violation, including ~~but not limited to,~~ proceedings initiated by any person identified in this subsection to obtain administrative or judicial review of the violation; and

2. The current status of the proceedings and of the violation

notice; and

3. The actions, if any, taken or being taken by any person identified in this subsection to abate the violation.

(4) After an applicant has been notified that his or her application has been approved, but before the permit is issued, the applicant shall, as applicable, update, correct, or indicate that no change has occurred in the information previously submitted under subsections (1) through (3) of this section.

(5) Upon request by a small operator the cabinet shall provide to the small operator, with regard to persons under subsection (1) of this section which are identified by the small operator, the compliance information required by this section regarding suspension and revocation of permits and forfeiture of bonds under KRS Chapter 350, and information pertaining to violations of KRS Chapter 350 and administrative regulations promulgated thereunder.

Section 4. Right of Entry and Right to Surface Mine. (1) Each application shall contain a description of the documents upon which the applicant bases his or her legal right to enter and begin surface mining activities in the permit area and whether that right is the subject of pending litigation. The description shall identify those documents by type and date of execution, identify the specific lands to which the document pertains, and explain the legal rights claimed by the applicant.

(2) If the private mineral estate to be mined has been severed from the private surface estate, the application shall contain:

(a) A copy of the written consent of the surface owner for the extraction of coal by surface mining methods; or

(b) A copy of the conveyance that expressly grants or reserves the right to extract coal by surface mining methods; or

(c) If the conveyance does not expressly grant the right to extract the coal by surface mining methods, a copy of the original instrument of severance upon which the applicant bases his right to extract coal by surface mining methods and documentation that under applicable state law, the applicant has the legal authority to extract the coal by those methods.

~~[(3) Nothing in this section shall be construed to afford the cabinet the authority to adjudicate property title disputes.]~~

Section 5. Relationship to Areas Designated Unsuitable for Mining. (1) Each application shall contain a statement of available information on whether the proposed permit area is within an area designated unsuitable for surface mining activities under 405 KAR Chapter 24 or under study for designation in an administrative proceeding under that chapter.

(2) If an applicant claims the exemption in 405 KAR 8:010, Section 14(4)(b), the application shall contain information supporting the applicant's assertion that it made substantial legal and financial commitments before January 4, 1977, concerning the proposed surface mining activities.

(3) If an applicant proposes to conduct surface mining activities within 300 feet of an occupied dwelling, the application shall contain the waiver of the owner of the dwelling as required in 405 KAR 24:040, Section 2(5).

(4) If the applicant proposes to conduct surface mining activities within 100 feet of a public road, the requirements of 405 KAR 24:040, Section 2(6) shall be met.

Section 6. Permit Term Information. (1) Each application shall state the anticipated or actual starting and termination date of each phase of the surface mining activities and the anticipated number of acres of land to be affected for each phase of mining and over the total life of the permit.

(2) If the applicant proposes to conduct the surface mining activities in excess of five (5) years, the application shall contain the information needed for the showing required under 405 KAR 8:010, Section 17(1).

Section 7. Personal Injury and Property Damage Insurance Information. Each permit application shall contain a certificate of liability insurance according to 405 KAR 10:030, Section 4.

Section 8. Identification of Other Licenses and Permits. Each application shall contain a list of all other licenses and permits needed by the applicant to conduct the proposed surface mining activities. This list shall identify each license and permit by:

- (1) Type of permit or license;
- (2) Name and address of issuing authority;
- (3) Identification numbers of applications for those permits or licenses or, if issued, the identification numbers of the permits or licenses; and
- (4) If a decision has been made, the date of approval or disapproval by each issuing authority.

Section 9. Identification of Location of Public Office for Filing of Application. Each application shall identify, by name and address, the appropriate regional office of the cabinet where the applicant will file a copy of the entire application for public inspection under 405 KAR 8:010, Section 8(8).

Section 10. Newspaper Advertisement and Proof of Publication. A copy of the newspaper advertisement of the application for a permit, major revision, amendment, transfer, or renewal of a permit and proof of publication of the advertisement, which is acceptable to the cabinet, shall be filed with the cabinet and made a part of the application, not later than fifteen (15) days after the last date of publication required under 405 KAR 8:010, Section 8(2).

Section 11. Environmental Resources Information. (1) Each permit application shall include descriptions of the existing environmental resources within the proposed permit area and adjacent areas as required by Sections 11 through 23 of this administrative regulation. The descriptions required by this administrative regulation may, where appropriate, be based upon published texts or other public documents together with reasonable extrapolations from specific data available from existing permit areas or other appropriate areas.

(2)(a) Each application shall describe and identify the nature of cultural, historic, and archaeological resources listed or eligible for listing on the National Register of Historic Places and known archaeological sights within the proposed permit area and adjacent areas. The description shall be based on all available information, including ~~[- but not limited to,]~~ information from the state Historic Preservation Officer and from local archaeological, historical, and cultural preservation agencies.

(b) The cabinet may require the applicant to identify and evaluate important historic and archaeological resources that may be eligible for listing on the National Register of Historic Places, through collection of additional information, field investigations, or other appropriate analyses.

Section 12. General Requirements for Baseline Geologic and Hydrologic Information. (1) The application shall contain baseline geologic and hydrologic information which has been collected, analyzed, and submitted in the detail and manner acceptable to the cabinet, and which shall be sufficient to:

(a) Identify and describe protective measures pursuant to Section 32(1) of this administrative regulation which will be implemented during the mining and reclamation process to assure protection of the hydrologic balance, or to demonstrate that protection of the hydrologic balance can be assured without the design and installation of protective measures; and to design necessary protective measures pursuant to Section 32(2) of this administrative regulation;

(b) Determine the probable hydrologic consequences of the mining and reclamation operations upon the hydrologic balance in the permit area and adjacent area pursuant to Section 32(3) of this

administrative regulation so that an assessment can be made by the cabinet pursuant to 405 KAR 8:010, Section 14(3) of the probable cumulative impacts of all anticipated mining on the hydrologic balance in the cumulative impact area;

(c) Determine pursuant to 405 KAR 8:010, Section 14(2) and (3) whether reclamation as required by 405 KAR can be accomplished and whether the proposed operation has been designed to prevent material damage to the hydrologic balance; and

(d) Design surface and groundwater monitoring systems pursuant to Section 32(4) of this administrative regulation for the during-mining and postmining time period which, together with the baseline data collected under Sections 14(1) and 15(1) of this administrative regulation, will demonstrate whether the mining operation is meeting applicable effluent limitations and stream standards and protecting the hydrologic balance.

(2)(a) Geologic and hydrologic information pertaining to the area outside the permit and adjacent area but within the cumulative impact assessment area shall be provided to the applicant by the cabinet:

1. If this information is needed in preparing the cumulative impact assessment; and

2. If this information is available from an appropriate federal or state agency.

(b) If this information is needed by the cabinet for conducting the cumulative impact assessment and is not available from a federal or state agency, the applicant may gather and submit this information to the cabinet as part of the permit application.

(3) Interpolation, modeling, correlation or other statistical methods, and other data extrapolation techniques may be used if the applicant can demonstrate to the satisfaction of the cabinet that the data extrapolation techniques are valid and that information obtained through the techniques meets the requirements of subsection (1) of this section.

(4) Water quality analysis and sampling required by this chapter shall be conducted according to:

(a) Standard Methods for the Examination of Water and Wastewater (14th Edition); or

(b) 40 CFR Parts 136 and 434. [All water quality analyses performed to meet the requirements of this chapter shall be conducted according to the methodology in the fourteenth edition of "Standard Methods for the Examination of Water and Wastewater," or the methodology in 40 CFR Parts 136 and 434. All water quality sampling shall be conducted according to either methodology listed above when feasible.]

Section 13. Baseline Geologic Information. (1) The application shall contain baseline geologic information collected from the permit area which shall meet the requirements of Section 12(1) of this administrative regulation and shall include at a minimum:

(a) The results of samples obtained from continuous cores; drill cuttings; channel cuttings from fresh, unweathered, rock outcrops; or other rock or soil material which has been collected using acceptable sampling techniques.

1. The vertical extent of sampling shall include those strata from the surface down to and including the stratum immediately below the lowest coal seam to be mined; and

2. Where aquifers which are located within the permit area underlie the lowest coal seam to be mined and these aquifers may be adversely affected by the mining operation, the vertical extent of sampling shall also include those strata from the lowest coal seam to be mined down to and including the aquifers.

3. The area and vertical density of sampling shall, at a minimum, be sufficient to determine the distribution of strata which have a potential to produce acid drainage and to determine the area and vertical extent of aquifers which may be adversely affected.

4. If the vertical extent, and the area and vertical density of sampling specified in subparagraphs 1 through 3 of this paragraph are not sufficient to locate suitable strata for use as a topsoil

substitute, or for other required design or analysis, additional sampling shall be conducted as necessary to furnish adequate geologic information.

(b) Chemical analyses including~~[- but not limited to;]~~ maximum potential acidity and neutralization potential of each overburden stratum and the stratum immediately below the lowest coal seam to be mined, to identify those strata which have a potential to produce acid or toxic drainage.

(c) Chemical analyses of the coal seam to be mined to determine the potential to produce acid or toxic drainage, including the parameters of total sulfur and pyritic sulfur; except that the cabinet shall not require an analysis for pyritic sulfur if the applicant can demonstrate to the satisfaction of the cabinet that an analysis for total sulfur provides adequate information to assure protection of the hydrologic balance.

(d) Collection of geologic information from the permit area as required in this subsection may be waived in whole or in part if:

1. The applicant can demonstrate to the satisfaction of the cabinet through geologic correlation or other procedures that information collected from outside the permit area is representative of the permit area and is sufficient to meet the requirements of Section 12(1) of this administrative regulation; or

2. Other information equivalent to that required by this subsection is available to the cabinet in a satisfactory form and is made a part of the permit application; and

3. The cabinet provides a written statement granting a waiver.

(2) The application shall contain a description of the geology of the proposed permit area and adjacent area which shall meet the requirements of Section 12(1) of this administrative regulation and be based on the information required in subsection (1) of this section or other appropriate geologic information. The description shall include, at a minimum, geologic logs, cross-sections, fence diagrams, or other appropriate illustrations and written descriptions depicting:

(a) Within the permit area:

1. The structural geology and lithology of overburden strata and the stratum immediately below the lowest coal seam to be mined;

2. The thickness and chemical characteristics of each overburden stratum and the stratum immediately below the lowest coal seam to be mined; and

3. Where aquifers may be adversely affected by the mining operation, the structural geology, lithology, thickness, and area extent of the aquifers; and structural geology and lithology of strata, and thickness of each stratum, from the surface down to the aquifers.

(b) Within the adjacent area, the approximate area extent and approximate thickness of aquifers which may be adversely affected by the mining operation.

(3) If determined by the cabinet to be necessary to assure adequate reclamation and protection of the hydrologic balance, the cabinet may require geologic information and description in addition to that required by subsections (1) and (2) of this section including~~[- but not limited to;]~~ leaching tests of material from strata which may be disturbed by the operation to determine the potential for the operation to produce drainage with elevated levels of acidity, sulfate, and total dissolved solids, and the collection of information to greater depths within the proposed permit area or the collection of information for areas outside the proposed permit area.

Section 14. Baseline Groundwater Information. (1) The application shall contain baseline groundwater information for the permit area and adjacent area which shall be collected and submitted in a manner acceptable to the cabinet and shall be adequate to meet the requirements of Section 12(1) of this administrative regulation.

(2) Groundwater information shall include an inventory of wells, springs, underground mines, or other similar groundwater supply facilities which are currently being used, have been used in the past, or have a potential to be used for domestic, agricultural, industrial, or other beneficial purpose. The inventory shall include the location,

ownership, type of usage, and where possible, other relevant information such as the depth and diameter of wells and approximate rate of usage, pumpage or discharge from wells, springs, and other groundwater supply facilities.

(3) Groundwater information shall include seasonal groundwater quantity and quality data collected from monitoring wells, springs, underground mines, or other appropriate groundwater monitoring facilities, at a sufficient number of monitoring locations with adequate area distribution to meet the requirements of Section 12(1) of this administrative regulation. Seasonal groundwater quantity and quality data shall be provided for each water transmitting zone above, and potentially impacted water transmitting zone below, the lowest coal seam to be mined including at a minimum:

(a) Groundwater levels; and

(b) Total dissolved solids, or specific conductance corrected to twenty-five (25) degrees C; pH; dissolved iron; dissolved manganese; acidity; alkalinity; and sulfate. For data collected prior to August 13, 1985, total iron and total manganese may be substituted for dissolved iron and dissolved manganese.

(4) The groundwater information described in subsection (3) of this section shall be required in whole or in part for coal seams if the coal seams to be mined are serving as water supply sources or are otherwise significant in protecting the hydrologic balance.

(5) If additional information is needed to assess the need for protective measures, to design protective measures, to determine the probable hydrologic consequences of mining, or to conduct the cumulative impact assessment, the cabinet may require groundwater information in addition to that described in subsections (2), (3), and (4) of this section including~~[- but not limited to;]~~ information pertaining to aquifer storage, yield, discharge, recharge capacity, and additional water quality parameters.

Section 15. Baseline Surface Water Information. (1) The application shall contain baseline surface water information for the permit area and adjacent area which shall be collected and submitted in a manner acceptable to the cabinet and shall be adequate to meet the requirements of Section 12(1) of this administrative regulation.

(2) Surface water information shall include an inventory of all streams, lakes, impoundments or other surface water bodies in the permit and adjacent area which are currently being used for domestic, agricultural, industrial, or other beneficial purpose. The inventory shall include the name of the surface water body which is being used as a water supply source; the location, drainage area, ownership, and type of usage for the withdrawal; and where possible other relevant information such as the rate of withdrawal and seasonal variation.

(3) Surface water information shall include:

(a) The name, location, and ownership where appropriate, of all streams, lakes, impoundments, and other surface water bodies which receive run-off from watersheds which will be disturbed by the operation; and

(b) The location and description of any existing facilities located in watersheds which will be disturbed by the mining operation which may contribute to surface water pollution, such as existing or abandoned mining operations, oil wells, logging operations, or other similar facilities, including the location of any discharges which may be flowing from the facilities.

(4) Surface water information shall include seasonal quantity and quality data collected from a sufficient number of watersheds which will be disturbed by the operation with adequate area distribution to meet the requirements of Section 12(1) of this administrative regulation and include at a minimum:

(a) Flow rates; and

(b) Total dissolved solids, or specific conductance corrected to twenty-five (25) degrees C; total suspended solids; pH; total iron; total manganese; acidity; alkalinity; and sulfate.

(5) If additional information is needed to assess the need for protective measures, to design protective measures, to determine the

probable hydrologic consequences of mining, or to conduct the cumulative impact assessment, the cabinet may require surface water information in addition to that described in subsections (2), (3), and (4) of this section including ~~[, but not limited to,]~~ information pertaining to flood flows and additional water quality parameters.

Section 16. Alternative Water Supply Information. ~~If the determination of probable hydrologic consequences required under Section 32 of this administrative regulation indicates that [(1) The application shall identify the extent to which]~~ the proposed surface mining activities may proximately result in contamination, diminution, or interruption of an underground or surface source of water within the proposed permit area or adjacent area which is used for domestic, agricultural, industrial, or other legitimate [beneficial] use[~~]~~:

(2) ~~If contamination, diminution, or interruption of a surface or groundwater source may result~~, then the application shall identify and describe the adequacy and suitability of the alternative sources of water supply that could be developed for existing premining uses and approved postmining land uses.

Section 17. Climatological Information. (1) When requested by the cabinet, the application shall contain a statement of the climatological factors that are representative of the proposed permit area, including:

- (a) The average seasonal precipitation;
- (b) The average direction and velocity of prevailing winds; and
- (c) Seasonal temperature ranges.

(2) The cabinet may request additional data as deemed necessary to ensure compliance with the requirements of this chapter.

Section 18. Soil Resources Information. (1) If soil survey information for the proposed permit area is available from SCS, the application shall include this information as a part of the description of premining land use capability and productivity required by Section 22(1)(b) of this administrative regulation.

(2) Where the applicant proposes to use selected overburden materials as a supplement or substitute for topsoil, the application shall provide results of analyses, trials, and tests as required under 405 KAR 16:050, Section 2(5).

Section 19. Vegetation Information. (1) The permit application shall, as required by the cabinet, contain a map that delineates existing vegetative types and a description of the plant communities within the proposed permit area and within any proposed reference area. This description shall include information adequate to predict the potential for reestablishing vegetation.

(2) When a map or aerial photograph is required, sufficient adjacent areas shall be included to allow evaluation of vegetation as important habitat for fish and wildlife.

Section 20. Fish and Wildlife Resources Information. (1) Each application shall include fish and wildlife resource information for the permit area and adjacent area. The scope and level of detail for this information shall be determined by the cabinet in consultation with the Kentucky Department of Fish and Wildlife Resources and the U.S. Department of the Interior, Fish and Wildlife Service, and shall be sufficient to design the protection and enhancement plan required under Section 36 of this administrative regulation.

(2) Site-specific resource information necessary to address the respective species or habitats shall be required when the permit area or adjacent area is likely to include:

(a) Listed or proposed endangered or threatened species of plants or animals or their critical habitats listed by the Secretary of the Interior under the Endangered Species Act of 1973, as amended (16 USC Sec. 1531 et seq.), or those species or habitats protected by similar state statutes;

(b) Habitats of unusually high value for fish and wildlife such as important streams, wetlands, riparian areas, cliffs supporting raptors,

areas offering special shelter or protection, migration routes, or reproduction and wintering areas; or

(c) Other species or habitats identified through agency consultation as requiring special protection under state or federal law.

(3) Wetland delineations shall be conducted in accordance with:

(a) The Corps of Engineers Wetlands Delineation Manual;

(b) U. S. Army Corps of Engineers Regulatory Guidance Letter No. 90-7;

(c) National Lists of Plant Species that Occur in Wetlands and Biological Reports and Summary; and

(d) List of Hydric Soils of the United States, All Kentucky Counties. [Wetland delineations shall be conducted in accordance with the "Corps of Engineers Wetlands Delineation Manual", U.S. Army Corps of Engineers, (January, 1987), as modified by U.S. Army Corps of Engineers Regulatory Guidance Letter No. 90-7 (September 26, 1990). The modifications to this material include replacement of Sections 1 and 2 of Appendix C with the "National Lists of Plant Species that Occur in Wetlands and Biological Reports and Summary", Fish and Wildlife Service, U.S. Department of the Interior (May, 1988); and, in Appendix D, Section 2, use of the "List of Hydric Soils of the United States, All Kentucky Counties", Soil Conservation Service (SCS), U.S. Department of Agriculture (December, 1991). This document, and related material, is incorporated by reference. It may be obtained from the National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161. Telephone (703) 487-4650. It may also be reviewed, copied, or obtained at the Department for Surface Mining Reclamation and Enforcement, #2 Hudson Hollow, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.]

(4) Upon request, the cabinet shall provide the resource information required under this section to the U.S. Department of the Interior, Fish and Wildlife Service regional or field office for their review. This information shall be provided within ten (10) days of receipt of the request from the Service.

(5)(a) Fish and wildlife resource information shall be required for amendments and revisions that:

- 1. Propose extension into a wetland;
- 2. Propose significant disturbance in a new watershed in which the permit area or adjacent area includes an important stream;
- 3. Seek to obtain a stream buffer zone variance under 405 KAR 16:060, Section 11, or seek to modify an existing stream buffer zone variance;

4. Propose extension of the permit boundary that involves a new surface disturbance of five (5) acres or more; or

5. Involve new permit or adjacent areas likely to contain, or that could reasonably be expected to contain, a state or federal endangered or threatened species or its critical habitat.

(b) For other amendments and revisions, a determination of whether fish and wildlife information is necessary, and the scope of information needed, shall be made on a case-by-case basis.

(6) This section shall apply to applications for permits, amendments and revisions submitted to the cabinet on or after November 17, 1992.

Section 21. Prime Farmland Investigation. (1) The applicant shall before making application investigate the proposed permit area to determine whether lands within the area may be prime farmland.

(2) Land shall not be considered prime farmland where the applicant can demonstrate, to the satisfaction of the cabinet, one (1) of the following:

(a) The land has not been historically used as cropland;

(b) The slope of the land is ten (10) percent or greater;

(c) Other relevant factors exist, which would preclude the soils from being defined as prime farmland according to 7 CFR 657, such as a very rocky surface, or the land is flooded during the growing season more often than once in two (2) years, and the flooding has

reduced crop yields; or

(d) On the basis of a soil survey of lands within the permit area, there are no soil map units that have been designated prime farmland by the U.S. SCS.

(3) If the investigation establishes that the lands are not prime farmland, the applicant shall submit with the permit application a request for a negative determination and results of the investigation which show that the land for which the negative determination is being sought meets one (1) of the criteria of subsection (2) of this section.

(4) If the investigation indicates that lands within the proposed permit area may be prime farmlands, the applicant shall contact the U.S. SCS to determine if a soil survey exists for those lands and whether the applicable soil map units have been designated as prime farmlands. If no soil survey has been made for the lands within the proposed permit area, the applicant shall request the SCS to conduct a soil survey.

(a) If a soil survey of lands within the proposed permit area contains soil map units which have been designated as prime farmlands, the applicant shall submit an application, in accordance with 405 KAR 8:050, Section 3 for the designated land.

(b) If a soil survey for lands within the proposed permit area contains no soil map units which have been designated as prime farmland after review by the U.S. SCS, the applicant shall submit with the permit application a request for negative determination under subsection (2)(d) of this section for the nondesignated land.

(5) The cabinet shall decide to grant or deny a negative determination based upon documentation provided by the applicant and any other pertinent information, such as cropping history, available to the cabinet from other sources.

(6) The cabinet shall consult with the SCS in deciding on a request for negative determination under subsection (2)(c) of this section.

(7) The cabinet shall examine any records on crop history available from the Agriculture Stabilization and Conservation Service when deciding on a request for negative determination under subsection (2)(a) of this section.

Section 22. Land-use Information. (1) The application shall contain a statement of the condition, capability, and productivity of the land within the proposed permit area, including:

(a) A map and supporting narrative of the uses of the land existing when the application is filed. If the premining use of the land was changed within five (5) years before the date of application, the historic use of the land shall also be described.

(b) A narrative of land use capability and productivity, which analyzes the land-use description in conjunction with other environmental resources information required under this administrative regulation. The narrative shall provide analyses of:

1. The capability of the land before any mining to support a variety of uses, giving consideration to soil and foundation characteristics, topography, vegetative cover and the hydrology of the proposed permit area; and

2. The productivity of the proposed permit area before mining, expressed as average yield of food, fiber, forage, or wood products from the lands obtained under high levels of management. The productivity shall be determined by yield data or estimates for similar sites based on current data from the U.S. Department of Agriculture, state agricultural universities or appropriate state natural resource or agricultural agencies.

(2) The application shall state whether the proposed permit area has been previously mined, and, if so, the following information, if available:

- (a) The type of mining method used;
- (b) The coal seams or other mineral strata mined;
- (c) The extent of coal or other minerals removed;
- (d) The approximate dates of past mining; and

(e) The uses of the land preceding mining.

(3) The application shall contain a description of the existing land uses and local government land use classifications, if any, of the proposed permit area and adjacent areas.

(4) The application shall contain a description identifying the extent to which cities, towns, and municipalities, or parts thereof, are located within the proposed permit area.

Section 23. Maps and Drawings. (1) The permit application shall include a map or maps showing:

(a) The boundaries of all subareas which are proposed to be affected over the estimated total life of the proposed surface mining activities, with a description of the size, sequence, and timing of the surface mining operations for which it is anticipated that additional permits will be sought;

(b) Any land within the proposed permit area and adjacent area which is within the boundaries of any units of the National System of Trails or the Wild and Scenic Rivers System, including study rivers designated under Section 5(a) of the Wild and Scenic Rivers Act (16 USC 1276(a)), or which is within the boundaries of a wild river established pursuant to KRS Chapter 146;

(c) The boundaries of any public park and locations of any cultural or historical resources listed on or eligible for listing on the National Register of Historic Places and known archaeological sites within the permit area and adjacent areas;

(d) The locations of water supply intakes for current users of surface water within a hydrologic area defined by the cabinet, and those surface waters which will receive discharges from affected areas in the proposed permit area;

(e) All boundaries of lands and names of present owners of record of those lands, both surface and subsurface, included in or contiguous to the permit area;

(f) The boundaries of land within the proposed permit area upon which the applicant has the legal right to enter and begin surface mining activities;

(g) The location of surface and subsurface manmade features within, passing through, or passing over the proposed permit area, including[~~;~~ ~~but not limited to;~~] major electric transmission lines, pipelines, and agricultural drainage tile fields;

(h) The location and boundaries of any proposed reference areas for determining the success of revegetation for the permit area;

(i) The location of all buildings on and within 1,000 feet of the proposed permit area, with identification of the current use of the buildings;

(j) Each public road located in or within 100 feet of the proposed permit area;

(k) Each cemetery that is located in or within 100 feet of the proposed permit area;

(l) Other relevant information required by the cabinet.

(2) The application shall include drawings, cross sections, and maps showing:

(a) Elevations and locations of test borings and core samplings;

(b) Elevations and locations of monitoring stations or other sampling points in the permit area and adjacent areas used to gather data on water quality and quantity, fish and wildlife, and air quality, if required, in preparation of the application, or which will be used for this data gathering during the term of the permit;

(c) Nature, depth, and thickness of the coal seams to be mined, any coal or rider seams above the seam to be mined, each stratum of the overburden, and the stratum immediately below the lowest coal seam to be mined, for the permit area;

(d) All coal crop lines and the strike and dip of the coal to be mined within the proposed permit area;

(e) Location and extent of known workings of active, inactive, or abandoned underground mines, including mine openings to the surface within the proposed permit area and adjacent areas;

(f) Location and extent of subsurface water, if encountered, within

the proposed permit area or adjacent areas;

(g) Location of surface water bodies such as streams, lakes, ponds, springs, constructed or natural drainage patterns, and irrigation ditches within the proposed permit area and adjacent areas;

(h) Location and extent of existing or previously surface-mined areas within the proposed permit area;

(i) Location, and depth if available, of gas and oil wells within the proposed permit area and water wells in the permit area and adjacent areas;

(j) Location and dimensions of existing areas of spoil, waste, and noncoal waste disposal, dams, embankments, other impoundments, and water treatment and air pollution control facilities within the proposed permit area;

(k) Sufficient slope measurements to adequately represent the existing land surface configuration of the proposed permit area, measured and recorded according to the following:

1. Each measurement shall consist of an angle of inclination along the prevailing slope extending 100 linear feet above and below or beyond the coal outcrop or the area to be disturbed or, where this is impractical, at locations and in a manner as specified by the cabinet.

2. Where the area has been previously mined, the measurements shall extend at least 100 feet beyond the limits of mining disturbances, or any other distance determined by the cabinet to be representative of the premining configuration of the land.

3. Slope measurements shall take in account natural variations in slope, to provide accurate representation of the range of natural slopes and reflect geomorphic differences of the area to be disturbed.

(3) The permit application shall include the map information specified in Sections 22(1)(a), 24(3), 24(4)(c), 24(4)(h), 27(1), 28(1), 31, 32, 33, 34, and 38 of this administrative regulation, and 405 KAR 8:010, Section 5(6).

(4) Maps, drawings, and cross-sections included in a permit application which are required by this section shall be prepared by or under the direction of and certified by a qualified registered professional engineer, and shall be updated as required by the cabinet. The qualified registered professional engineer shall not be required to certify true ownership of property.

Section 24. Mining and Reclamation Plan; General Requirements.

(1) Each application shall contain a detailed mining and reclamation plan (MRP) for the proposed permit area as set forth in this section through Section 38 of this administrative regulation, showing how the applicant will comply with KRS Chapter 350 and 405 KAR Chapters 16 through 20.

(2) Each application shall contain a description of the mining operations proposed to be conducted within the proposed permit area, including, at a minimum, the following:

(a) A narrative description of the type and method of coal mining procedures and proposed engineering techniques, anticipated annual and total production of coal, by tonnage, and the major equipment to be used for all aspects of those operations; and

(b) A narrative explaining the construction, modification, use, maintenance, and removal of the following facilities (unless retention of the facilities is to be approved as necessary for postmining land use as specified in 405 KAR 16:210):

1. Dams, embankments, and other impoundments;

2. Overburden and topsoil handling and storage areas and structures;

3. Coal removal, handling, storage, cleaning, and transportation areas and structures;

4. Spoil, coal processing waste, and noncoal waste removal, handling, storage, transportation, and disposal areas and structures;

5. Mine facilities; and

6. Water and air pollution control facilities.

(3) Each application shall contain plans and maps of the proposed permit area and adjacent areas as follows:

(a) The plans and maps shall show the lands proposed to be affected throughout the operation and any change in a facility or feature to be caused by the proposed operations, if the facility or feature was shown under Section 23 of this administrative regulation.

(b) The following shall be shown for the proposed permit area:

1. Buildings, utility corridors and facilities to be used;

2. The area of land to be affected within the proposed permit area, according to the sequence of mining and reclamation;

3. Each area of land for which a performance bond or other equivalent guarantee will be posted under 405 KAR Chapter 10;

4. Each coal storage, cleaning and loading area;

5. Each topsoil, spoil, coal waste, and noncoal waste storage area;

6. Each water diversion, collection, conveyance, treatment, storage, and discharge facility to be used;

7. Each air pollution collection and control facility;

8. Each source of waste and each waste disposal facility relating to coal processing or pollution control;

9. Each facility to be used to protect and enhance fish and wildlife and related environmental values;

10. Each explosive storage and handling facility; and

11. Location of each sedimentation pond, permanent water impoundment, coal processing waste bank, and coal processing waste dam and embankment, in accordance with Section 34 of this administrative regulation, and fill area for the disposal of excess spoil in accordance with Section 27 of this administrative regulation.

(c) Plans, maps, and drawings required under this section shall be prepared by, or under the direction of, and certified by a qualified registered professional engineer.

(4) Each plan shall contain the following information for the proposed permit area:

(a) A projected timetable for the completion of each major step in the mining and reclamation plan;

(b) A detailed estimate of the cost of reclamation of the proposed operations required to be covered by a performance bond under 405 KAR Chapter 10, with supporting calculations for the estimates;

(c) A plan for backfilling, soil stabilization, compacting, and grading, with contour maps or cross-sections that show the anticipated final surface configuration of the proposed permit area, in accordance with 405 KAR 16:190;

(d) A plan for removal, storage, and redistribution of topsoil, subsoil, and other material to meet the requirements of 405 KAR 16:050 including a demonstration of suitability of any proposed topsoil substitutes or supplements;

(e) A plan for revegetation as required in 405 KAR 16:200, including ~~but not limited to~~ descriptions of the: schedule of revegetation; species and amounts per acre of seeds and seedlings to be used; methods to be used in planting and seeding; mulching techniques; irrigation, if appropriate; pest and disease control measures, if any; and measures proposed to be used to determine the success of revegetation as required in 405 KAR 16:200, Section 6; and a soil testing plan for evaluation of the results of topsoil handling and reclamation procedures related to revegetation;

(f) A description of the measures to be used to maximize the use and conservation of the coal resource as required in 405 KAR 16:010, Section 2;

(g) A description of measures to be employed to ensure that all debris, acid-forming and toxic-forming materials, and materials constituting a fire hazard are disposed of in accordance with 405 KAR 16:150, and 405 KAR 16:190, Section 3, and a description of the contingency plans which have been developed to preclude sustained combustion of the materials;

(h) A description, including appropriate maps and drawings, of the measures to be used to seal or manage mine openings, and to plug, case, or manage exploration holes, other bore holes, wells, and other openings within the proposed permit area, in accordance with 405 KAR 16:040; and

(i) A description of steps to be taken to comply with the requirements of the Clean Air Act (42 USC 7401 et seq.), the Clean Water Act (33 USC 1251 et seq.), and other applicable air and water quality laws and regulations and health and safety standards. This description shall, at a minimum, consist of identification of permits or approvals required by these laws and regulations which the applicant either has obtained, has applied for, or intends to apply for.

Section 25. MRP; Existing Structures. (1) Each application shall contain a description of each existing structure proposed to be used in connection with or to facilitate the surface coal mining and reclamation operation. The description shall include:

- (a) Location;
- (b) Plans of the structure which describe its current condition;
- (c) Approximate dates on which construction of the existing structure was begun and completed; and
- (d) A showing, including relevant monitoring data or other evidence, whether the structure meets the performance standards of 405 KAR Chapters 16 through 20 or, if the structure does not meet those performance standards, a showing whether the structure meets the performance standards of the interim performance standards of 405 KAR Chapter 1.

(2) Each application shall contain a compliance plan for each existing structure proposed to be modified or reconstructed for use in connection with or to facilitate the surface coal mining and reclamation operation. The compliance plan shall include:

- (a) Design specifications for the modification or reconstruction of the structure to meet the performance standards of 405 KAR Chapters 16 through 20;
- (b) A construction schedule which shows dates for beginning and completing interim steps and final reconstruction;
- (c) Provisions for monitoring the structure as required by the cabinet to ensure that the performance standards of 405 KAR Chapters 16 through 20 are met; and
- (d) A showing that the risk of harm to the environment or to public health or safety will not be significant during the period of modification or reconstruction.

Section 26. MRP; Blasting. (1) Each application shall contain a blasting plan for the proposed permit area explaining how the applicant intends to comply with the requirements of 405 KAR 16:120. This plan shall include, at a minimum, information setting forth the limitations the permittee will meet with regard to ground vibration and airblast, the bases for the ground vibration and airblast limitations, and the methods to be applied in controlling the adverse effects of blasting operations.

(2) Each application shall contain a description of the systems to be used to monitor compliance with the standards for ground vibration and airblast including identification of the types, capabilities, and sensitivities of blast monitoring equipment and identification of the monitoring procedures and locations.

(3) Blasting operations within 500 feet of active underground mines shall require approval of the cabinet, MSHA, and the Kentucky Department of Mines and Minerals.

Section 27. MRP; Disposal of Excess Spoil. (1) Each application shall contain descriptions, including appropriate maps and cross-section drawings, of the proposed disposal site and design of the spoil disposal structures according to 405 KAR 16:130. These plans shall describe the geotechnical investigation, design, construction, operation, maintenance, and removal if appropriate, of the site and structures.

(2) Each application shall contain the results of a geotechnical investigation of the proposed disposal site, including the following:

- (a) The character of bedrock and any adverse geologic conditions in the disposal area;
- (b) A survey identifying all springs, seepage, and groundwater

flow observed or anticipated during wet periods in the area of the disposal site;

(c) An assessment of the potential effects of subsidence of the subsurface strata due to past and future mining operations;

(d) A technical description of the rock materials to be utilized in the construction of those disposal structures containing rock chimney cores or underlain by a rock drainage blanket; and

(e) A stability analysis including~~[- but not limited to;-]~~ strength parameters, pore pressures and long-term seepage conditions. These data shall be accompanied by a description of all engineering design assumptions and calculations and the alternatives considered in selecting the specific design specifications and methods.

(3) If, under 405 KAR 16:130, Section 1(4), rock toe buttresses or key way cuts are required, the application shall include the following:

(a) The number, location, and depth of borings or test pits which shall be determined with respect to the size of the spoil disposal structure and subsurface conditions; and

(b) Engineering specifications utilized to design the rock toe buttresses or key way cuts which shall be determined in accordance with subsection (2)(e) of this section.

Section 28. MRP; Transportation Facilities. (1) Each application shall contain a transportation facilities plan including a description of each road, conveyor, or rail system to be constructed, used, or maintained within the proposed permit area. The description shall include a map, appropriate cross-sections, and the following:

(a) Specifications for each road width, road gradient, road surface, road cut, fill embankment, culvert, bridge, drainage ditch, and drainage structure.

(b) A report of appropriate geotechnical analysis, where approval of the cabinet is required for alternative specifications, or for steep cut slopes under 405 KAR 16:220.

(c) A description of measures to be taken to obtain approval of the cabinet for alteration or relocation of a natural drainageway under 405 KAR 16:220.

(d) A description of measures, other than use of a rock headwall, to be taken to protect the inlet end of a ditch relief culvert, for approval by the cabinet under 405 KAR 16:220.

(2) Each plan shall contain a general description of each road, conveyor, or rail system to be constructed, used, or maintained within the proposed permit area.

Section 29. MRP; Surface Mining Near Underground Mining. For surface mining activities within the proposed permit area to be conducted within 500 feet of an underground mine, the application shall describe the measures to be used to comply with 405 KAR 16:010, Section 3.

Section 30. MRP; Protection of Public Parks and Historic Places. (1) For any publicly-owned parks or any places listed on the National Register of Historic Places that may be adversely affected by the proposed operations, each plan shall describe the measures to be used to prevent adverse impact; or, if valid existing rights exist or joint agency approval is to be obtained under 405 KAR 24:040, Section 2(4), to minimize adverse impacts.

(2) The cabinet may require the applicant to protect historic or archaeological properties listed or eligible for listing on the National Register of Historic Places through appropriate mitigation and treatment measures. These measures need not be completed prior to permit issuance, but shall be completed before the properties are affected by surface mining activities.

Section 31. MRP; Protection of Public Roads. Each application shall describe, with appropriate maps and drawings, the measures to be used to ensure that the interests of the public and landowners affected are protected if, under 405 KAR 24:040, Section 2(6), the applicant seeks to have the cabinet approve:

- (1) Conducting the proposed surface mining activities within 100 feet of the right-of-way line of any public road, except where mine access or haul roads join that right-of-way; or
- (2) Relocating a public road.

Section 32. MRP; Protection of the Hydrologic Balance. (1) Each application shall contain a description, as set forth in this subsection, of the measures to be taken to minimize disturbances to the hydrologic balance within the permit area and adjacent area and to prevent material damage to the hydrologic balance outside the permit area.

(a) The description shall be based upon the baseline geologic, hydrologic, and other information required by Sections 12 through 16 of this administrative regulation and other appropriate information, shall be specific to local hydrologic conditions, and shall be prepared in a manner and detail acceptable to the cabinet.

(b) The description shall identify the protective measures to be taken to enable the operation to meet, at a minimum, each of the hydrologic requirements referenced in this paragraph, or shall demonstrate to the satisfaction of the cabinet that protective measures are not necessary for the operation to meet the requirements:

1. Meet applicable water quality statutes, administrative regulations, standards, and effluent limitations as required by 405 KAR 16:060, Section 1(3);
2. Avoid acid or toxic drainage as required by 405 KAR 16:060, Sections 4, 5, and 6;
3. Control the discharge of sediment to streams located outside the permit area as required by 405 KAR 16:060, Section 2;
4. Control the drainage and discharge of water within the permit area as required by 405 KAR 16:060, Sections 1(4), 3, 9, and 12, and 405 KAR 16:080;
5. Restore the approximate premining recharge capacity of the permit area as required by 405 KAR 16:060, Section 5; and
6. Protect or replace the water supply of present users as required by 405 KAR 16:060, Section 8.

(c) The cabinet may require that the description include protective measures in addition to those identified under paragraph (b) of this subsection, if the cabinet determines that additional measures are needed to protect the hydrologic balance in accordance with 405 KAR 16:060.

(2) Each application shall include the design of any necessary protective measures identified under subsection (1) of this section. The design shall be prepared in a manner and detail acceptable to the cabinet including, as appropriate, calculations, maps, drawings, and written explanations as necessary to document the design.

(3) Each application shall include a determination of the probable hydrologic consequences of the mining and reclamation operations for the permit area and adjacent area.

(a) The determination shall be based upon the baseline geologic, hydrologic, and other information required by Sections 12 through 16 of this administrative regulation and other appropriate information, and may include information statistically representative of the site.

(b) The determination shall be completed according to the parameters and in the detail required by the cabinet to enable the cabinet to prepare a cumulative impact assessment, and shall take into account the anticipated effects of protective measures required by this chapter.

(c) For surface water systems, the determination shall, at a minimum, include probable impacts on:

1. Peak discharge rates, emphasizing the potential for flooding;
2. Settleable solids at peak discharge;
3. Low-flow discharge rates, emphasizing the potential for water supply diminution;
4. Suspended solids at low flow;
5. pH, at low flow, emphasizing the potential for acid drainage conditions, including depressed levels of alkalinity and elevated levels of iron, manganese, acidity, sulfate, and total dissolved solids or specific conductance, which are generally associated with acid

drainage conditions.

(d) For groundwater systems, the determination shall, at a minimum, include probable impacts on:

1. Water quantity, emphasizing water levels and the potential for water supply diminution for existing users, and dewatering of aquifers which are not currently being used for water supply but have the potential to be developed as a water supply source.

2. pH, emphasizing the potential for acid drainage conditions, including depressed levels of alkalinity and elevated levels of iron, manganese, acidity, sulfate, and total dissolved solids or specific conductance, which are generally associated with acid drainage conditions.

(e) The determination shall include a finding on whether the proposed surface mining activities may proximately result in contamination, diminution or interruption of an underground or surface source of water within the permit area or adjacent areas that is used for domestic, agricultural, industrial or other legitimate use [within the permit area or adjacent areas] at the time the application is submitted.

(f) An application for a major revision to a permit shall be reviewed by the cabinet to determine whether a new or updated determination of the probable hydrologic consequences shall be required.

(4)(a) The application shall include a plan for the collection, recording, and reporting of groundwater and surface water quantity and quality data to monitor the effects of the mining and reclamation operations on the hydrologic balance, according to 405 KAR 16:110.

(b) The monitoring plan shall be based on the geologic and hydrologic baseline information, the mining and reclamation plan, and the determination of probable hydrologic consequences; and shall:

1. Identify the quantity and quality parameters to be monitored, sampling frequency, and monitoring site locations; and
2. Describe how the data may be used to determine the impacts of the operation on the hydrologic balance.

(5) An application for a major revision to a permit shall be reviewed by the cabinet to determine whether a new or updated cumulative hydrologic impact assessment shall be made.

Section 33. MRP; Diversions. Each application shall contain descriptions, including maps and cross-sections, of stream channel diversions and other diversions to be constructed within the proposed permit area to achieve compliance with 405 KAR 16:080.

Section 34. MRP; Impoundments and Embankments. (1) General. Each application shall include detailed design plans for each proposed sedimentation pond, water impoundment, and coal mine [processing] waste bank, dam, or embankment within the proposed permit area. Each plan shall:

(a) Be prepared by, or under the direction of, and certified by a qualified registered professional engineer;

(b) Contain a description, map, and appropriate cross-sections and drawings of the structure and its location;

(c) Contain all hydrologic and geologic information and computations necessary to demonstrate compliance with the design and performance standards of 405 KAR Chapter 16; and all information utilized by the applicant to determine the probable hydrologic consequences of the mining operations under Section 32(3) of this administrative regulation;

(d) Contain an assessment of the potential effect on the structure from subsidence of the subsurface strata resulting from past underground mining operations if underground mining has occurred;

(e) Include any geotechnical investigation, design, and construction requirements for the structure;

(f) Describe the operation and maintenance requirements for each structure; and

(g) Describe the timetable and plans to remove each structure, if appropriate.

(2) Sedimentation ponds.

(a) Sedimentation ponds, whether temporary or permanent, shall be designed in compliance with the requirements of 405 KAR 16:090 and 16:100. ~~[Any sedimentation pond or earthen structure which will remain on the proposed permit area as a permanent water impoundment shall also be designed to comply with the requirements of 405 KAR 16:100.]~~

(b) Each plan shall, at a minimum, comply with the requirements of the MSHA, 30 CFR 77.216-1 and 77.216-2.]

(3) Permanent and temporary impoundments. Permanent and temporary impoundments shall be designed to comply with the requirements of 405 KAR 16:100. Each plan for an impoundment meeting the size or other criteria of MSHA, 30 CFR 77.216(a), shall comply with the requirements of [the MSHA,] 30 CFR 77.216-1 and 77.216-2. The plan required to be submitted to the district manager of MSHA under 30 CFR 77.216 shall be submitted to the cabinet as part of the permit application. After the plan has been approved by MSHA, the applicant shall submit to the cabinet a copy of the final approved plan, a copy of all correspondence from MSHA regarding the plan, a copy of any technical support documents requested by MSHA during its review, and a notarized statement by the applicant that the copy submitted to the cabinet is a complete and correct copy of the final plan approved by MSHA.

(4) Coal mine [processing] waste banks. Coal mine [processing] waste banks shall be designed to comply with the requirements of 405 KAR 16:140.

(5) Coal mine [processing] waste dams and embankments. Coal mine [processing] waste dams and embankments shall be designed to comply with the requirements of 405 KAR 16:100 and 16:160. The plan for an impounding structure that is required to be submitted to the district manager of MSHA under 30 CFR 77.216 shall be submitted to the cabinet as part of the permit application. After the plan has been approved by MSHA, the applicant shall submit to the cabinet a copy of the final approved plan, a copy of all correspondence from MSHA regarding the plan, a copy of any technical support documents requested by MSHA during its review, and a notarized statement by the applicant that the copy submitted to the cabinet is a complete and correct copy of the final plan approved by MSHA. Each plan shall comply with the requirements of MSHA, 30 CFR 77.216-1 and 77.216-2, and shall contain the results of a geotechnical investigation of the proposed dam or embankment foundation area, to determine the structural competence of the foundation which will support the proposed dam or embankment structure and the impounded material. The geotechnical investigation shall be planned and supervised by an engineer or engineering geologist, according to the following:

(a) The number, location, and depth of borings and test pits shall be determined using current prudent engineering practice for the size of the dam or embankment, quantity or material to be impounded, and subsurface conditions.

(b) The character of the overburden and bedrock, the proposed abutment sites, and any adverse geotechnical conditions which may affect the particular dam, embankment, or reservoir site shall be considered.

(c) All springs, seepage, and groundwater flow observed or anticipated during wet periods in the area of the proposed dam or embankment shall be identified on each plan.

(d) Consideration shall be given to the possibility of mud flows, rock-debris falls, or other landslides into the dam, embankment, or impounded material.

(6) If the structure is Class B-moderate hazard or Class C-high hazard under 405 KAR 7:040, Section 5, and 401 KAR 4:030, or if the structure meets the size or other criteria of MSHA, 30 CFR 77.216(a), [to be twenty (20) feet or higher or is to impound more than twenty (20) acre-feet,] each plan under subsections (2), (3), and (5) of this section shall include a stability analysis of the [each] structure. The stability analysis shall include~~[-but not be limited to,]~~ strength parameters, pore pressures, and long-term seepage conditions. The

plan shall also contain a description of each engineering design assumption and calculation with a discussion of each alternative considered in selecting the specific design parameters and construction methods.

Section 35. MRP; Air Pollution Control. For all surface mining activities the application shall contain an air pollution control plan which includes the following:

(1) An air quality monitoring program, if required by the cabinet, to provide sufficient data to evaluate the effectiveness of the fugitive dust control practices under subsection (2) of this section to comply with applicable federal and state air quality standards; and

(2) A plan for fugitive dust control practices, as required under 405 KAR 16:170.

Section 36. MRP; Fish and Wildlife Protection and Enhancement.

(1) Each application shall include a description of how, to the extent possible using the best technology currently available, the permittee will minimize disturbances and adverse impacts on fish and wildlife and related environmental values, including compliance with the Endangered Species Act, during the surface coal mining and reclamation operations, and how enhancement of these resources will be achieved where practicable.

(2) This description shall:

(a) Apply, at a minimum, to species and habitats identified under Section 20 of this administrative regulation;

(b) Include protective measures that will be used during the active mining phase of operation. Protective measures may include the establishment of buffer zones, the selective location and special design of haul roads and powerlines, and the monitoring of surface water quality and quantity; and

(c) Include enhancement measures that will be used during the reclamation and postmining phase of operation to develop aquatic and terrestrial habitat. Enhancement measures may include restoration of streams and other wetlands, retention of ponds and impoundments, establishment of vegetation for wildlife food and cover, and the replacement of perches and nest boxes. If the plan does not include enhancement measures, a statement shall be given explaining why enhancement is not practicable.

(3) Upon request, the cabinet shall provide the protection and enhancement plan required under this section to the U.S. Department of the Interior, Fish and Wildlife Service regional or field office for their review. This information shall be provided within ten (10) days of receipt of the request from the Service.

(4)(a) A fish and wildlife protection and enhancement plan shall be required for amendments and revisions that:

1. Propose extension into a wetland;

2. Propose significant disturbance in a new watershed in which the permit area or adjacent area includes an important stream;

3. Seek to obtain a stream buffer zone variance under 405 KAR 16:060, Section 11, or seek to modify an existing stream buffer zone variance;

4. Propose extension of the permit boundary that involves a new surface disturbance of five (5) acres or more; or

5. Involve new permit or adjacent areas likely to contain, or that could reasonably be expected to contain, a state or federal endangered or threatened species or its critical habitat.

(b) For other amendments and revisions, a determination of whether a protection and enhancement plan is necessary shall be made on a case-by-case basis.

(5) This section shall apply to applications for permits, amendments and revisions submitted to the cabinet on or after November 17, 1992.

Section 37. MRP; Postmining Land Use. (1) Each plan shall contain a description of the proposed land use or uses following reclamation of the land within the proposed permit area, including:

(a) A discussion of the utility and capacity of the reclaimed land to support a variety of alternative uses, and the relationship of the proposed use to existing land use policies and plans;

(b) A discussion of how the proposed postmining land use is to be achieved and the necessary support activities which may be needed to achieve the proposed land use, including [but not necessarily limited to] management practices to be conducted during the liability period for the commercial forest land, cropland (including hayland), and pastureland land uses;

(c) If a land use different from the premining land use is proposed, all supporting documentation required for approval of the proposed alternative use under 405 KAR 16:210;

(d) A discussion of the consideration which has been given to making all of the proposed surface mining activities consistent with surface owner plans and applicable state and local land use plans and programs; and

(e) A copy of the comments concerning the proposed use from the legal or equitable owner of record of the surface of the proposed permit area and the state and local government agencies, if any, which would have to initiate, implement, approve, or authorize the proposed use of the land following reclamation.

(2) Approval of the initial postmining land use plan pursuant to this section, shall not preclude subsequent consideration and approval of a revised postmining land use plan in accordance with the applicable requirements of 405 KAR Chapters 7 through 24.

Section 38. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Standard Methods for the Examination of Water and Wastewater", (14th Edition, 1975), American Public Health Association, American Water Works Association, and Water Pollution Control Federation;

(b) "Corps of Engineers Wetlands Delineation Manual", (January, 1987 Edition), U. S. Army Corps of Engineers;

(c) "U. S. Army Corps of Engineers Regulatory Guidance Letter No. 90-7", (September 26, 1990), U. S. Army Corps of Engineers;

(d) "National Lists of Plant Species that Occur in Wetlands and Biological Reports and Summary", (May, 1988 Edition), Fish and Wildlife Service, U. S. Department of the Interior; and

(e) "List of Hydric Soils of the United States, All Kentucky Counties", (December, 1991 Edition), Soil Conservation Service, U. S. Department of Agriculture;

(2) This material may be inspected, copied, or obtained at the Department for Surface Mining Reclamation and Enforcement, #2 Hudson Hollow, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

JAMES E. BICKFORD, Secretary

GLENN JO CURRY, General Counsel

APPROVED BY AGENCY: November 14, 1997

FILED WITH LRC: November 14, 1997 at noon

NATURAL RESOURCES AND
ENVIRONMENTAL PROTECTION CABINET
Department for Surface Mining
Reclamation and Enforcement
(As Amended at ARRS, May 11, 1998)

405 KAR 8:040. Underground coal mining permits.

RELATES TO: KRS 350.060, 350.151, 7 CFR Part 657, 30 CFR Parts 77.216-1, 77.216-2, 730-733, 735, 773.13(a), 778, 783, 784, 785.17(b), (d), 917, 40 CFR Parts 136, 434, 16 USC 1276(a), 1531 et seq., 30 USC 1253, 1255, 1257, 1258, 1266, 1267

STATUTORY AUTHORITY: KRS [Chapter 13A,] 350.020,

350.028, 350.060, 350.151, 350.465, 7 CFR Part 657, 30 CFR Parts 77.216-1, 77.216-2, 730-733, 735, 773.13(a), 778, 783, 784, 785.17(b), (d), 917, 40 CFR Parts 136, 434, 16 USC 1276(a), 1531 et seq., 30 USC 1253, 1255, 1257, 1258, 1266, 1267

NECESSITY, FUNCTION, AND CONFORMITY: KRS 350.028(1), (5), 350.151(1), and 350.465(2) authorize the cabinet to promulgate administrative regulations relating to surface and underground coal mining operations. This administrative regulation establishes requirements for the grant of a permit for underground coal mining operations. This administrative regulation differs from the corresponding federal regulations as follows:

(1) Section 16 of this administrative regulation requires information on alternative sources of water supply if the applicant's determination of probable hydrologic consequences under Section 32 of this administrative regulation finds that water supplies may be adversely affected. There is no exact federal counterpart to this requirement for alternative water supply information for underground mines, although a close parallel is found in the subsidence control plan requirements at 30 CFR 784.20(b)(8), which require a description of measures to be taken to replace adversely affected protected water supplies. This administrative regulation makes underground mines and surface mines subject to the same requirements regarding water supply replacement, consistent with KRS 350.421 as amended in 1994.

(2) Section 26(1) of this administrative regulation requires that the application contain an example of the letter by which the applicant proposes to notify the owners of structures for which a presubsidence condition survey is required under 405 KAR 18:210, Section 1(4). The corresponding federal regulation does not require a sample letter. The federal regulations are structured so that these presubsidence surveys must be included in the permit application prior to permit issuance. The cabinet's administrative regulations allow the detailed surveys of structures to be submitted after permit issuance. The example letter is needed in the permit application to ensure that the applicant is prepared to provide proper notice to owners of structures after permit issuance.

(3) Section 26 of this administrative regulation does not include the requirement at 30 CFR 784.20(a)(3) for detailed surveys of the presubsidence condition of structures that may be damaged by subsidence. These surveys may be submitted after permit issuance, and therefore are required under 405 KAR 18:210 rather than this administrative regulation.

(4) Section 26 of this administrative regulation applies to water supplies for "domestic, agricultural, industrial, or other legitimate use", whereas the corresponding federal regulation is limited to "drinking, domestic, or residential" water supplies. This administrative regulation applies to water supplies protected under KRS 350.421, whereas the federal regulation applies to water supplies protected under 30 USC 1309a.

(5) Section 32(3)(e) of this administrative regulation requires that the applicant's determination of probable hydrologic consequences shall include a finding on whether the proposed underground mining activities conducted after July 16, 1994 may proximately result in contamination, diminution, or interruption of an underground or surface source of water for domestic, agricultural, industrial, or other legitimate use within the permit area or adjacent areas at the time the application is submitted. The corresponding federal requirement at 30 CFR 784.14(e)(3)(iv) applies to underground mining activities conducted after October 24, 1992 and wells or springs used for domestic, drinking, or residential use. This administrative regulation addresses water supplies protected under KRS 350.421, as amended July 16, 1994. The federal regulation addresses water supplies protected under 30 USC 1309a, effective October 24, 1992.

(6) Section 34(3) and (5) of this administrative regulation

require that the following be submitted to the cabinet after approval by the Mine Safety and Health Administration (MSHA):

(a) A copy of the final approved design plans for impounding structures;

(b) A copy of all correspondence with MSHA;

(c) A copy of technical support documents requested by MSHA;

(d) A notarized statement by the applicant that the copy submitted to the cabinet is a complete and correct copy of the final plan approved by MSHA.

These requirements are necessary to minimize duplication of technical review by MSHA and the cabinet, and to minimize conflicts that may arise from duplication of review. [KRS 350.028(1) requires the cabinet to promulgate administrative regulations pertaining to surface coal mining operations including strip mining and the surface effects of underground mining to accomplish the purposes of KRS Chapter 350. KRS 350.060(13) requires the cabinet to promulgate administrative regulations for the permitting of operations with surface effects of underground mining and other surface coal mining and reclamation operations. This administrative regulation applies to surface coal mining and reclamation operations with surface effects of underground mining. It requires the applicant to provide information related to environmental resources, his legal and compliance status, and his mining and reclamation plan, and requires the applicant to make certain showings to obtain a permit. KRS 350.028(5), 350.151(1), and 350.465(2), (5) authorize and direct the cabinet to promulgate administrative regulations for surface and underground coal mining operations for the purpose of accepting and administering primary enforcement responsibilities under the permanent regulatory program pursuant to PL 95-87, the federal Surface Mining Control and Reclamation Act of 1977, and direct that the cabinet's administrative regulations be consistent with, and not more stringent than required by, that Act. PL 95-87 does not require Kentucky to comply with its provisions, but in order to retain primary enforcement responsibility under that Act the cabinet's administrative regulations must be consistent with federal regulations promulgated pursuant to that Act. This administrative regulation is being amended at Section 16 regarding alternative water supply information, at Section 26 regarding subsidence control, at Section 32(1)(b) regarding the identification of protective measures needed to meet hydrologic requirements, at Section 32(3) regarding the determination of probable hydrologic consequences, and at Section 34 regarding impoundments and embankments. This amendment differs from the corresponding federal regulations as follows:

1. Section 16 of this administrative regulation requires information on alternative sources of water supply if the applicant's determination of probable hydrologic consequences under Section 32 of this administrative regulation finds that water supplies may be adversely affected. There is no exact federal counterpart to this requirement for alternative water supply information for underground mines, although a close parallel is found in the subsidence control plan requirements at 30 CFR 784.20(b)(8), which require a description of measures to be taken to replace adversely affected protected water supplies. This requirement makes underground mines and surface mines subject to the same requirements regarding water supply replacement, consistent with KRS 350.421 as amended by 1994 HB 338.

2. Section 26(1) of this administrative regulation requires that the application contain an example of the letter by which the applicant proposes to notify the owners of all structures and water supplies identified under this subsection for which a presubsidence condition survey is required under 405 KAR 18:210 Section 1(4). The corresponding federal regulation does not require the sample letter. The federal regulations are structured such that the presubsidence condition surveys of structures and water supplies must be included in the permit application prior to permit issuance. The cabinet's administrative regulations allow those surveys to be submitted after permit issuance. The example letter is needed in the permit applica-

tion to ensure that the applicant is prepared to provide proper notice to owners of structures and water supplies after permit issuance.

3. Section 26 of this administrative regulation does not include the requirement at 30 CFR 784.20(a)(3) for presubsidence surveys of the condition of structures and the quantity and quality of water supplies that may be damaged by subsidence. The federal regulation is structured such that the map and narrative information to identify structures and water supplies vulnerable to subsidence damage, and all necessary presubsidence condition surveys on those structures and water supplies, must be conducted prior to issuance of the permit. The map and narrative information required under Section 26(1)(a) and (b) of this administrative regulation is necessary to determine if a subsidence control plan is needed, and if so to design it, and therefore must be included in the permit application and subject to review by the public and the cabinet prior to issuance of the permit. However, it is appropriate to allow presubsidence condition surveys to be conducted after permit issuance. Because the purpose of a presubsidence condition survey is to provide a baseline against which subsidence damage to a particular structure or water supply, if it occurs, can be measured, it is essential that the survey be conducted prior to mining near that structure or water supply, but it is not essential to the purpose of the survey that it be conducted prior to permit issuance. Requiring presubsidence surveys under 405 KAR 18:210 rather than under this administrative regulation will achieve the purpose intended under 30 CFR 784.20.

4. Section 26 of this administrative regulation, in three (3) locations refers to water supplies for "domestic, agricultural, industrial, or other legitimate use", whereas the corresponding federal regulation refers to "drinking, domestic, or residential" water supplies. This administrative regulation addresses water supplies protected under KRS 350.421, whereas the federal regulation addresses water supplies protected under 30 USC 1309a.

5. Section 32(3) of this administrative regulation includes a new paragraph (e) so that the applicant's determination of probable hydrologic consequences shall include a finding on whether the proposed underground mining activities conducted after July 16, 1994 may proximately result in contamination, diminution, or interruption of an underground or surface source of water for domestic, agricultural, industrial, or other legitimate use within the permit area or adjacent areas at the time the application is submitted. The corresponding federal requirement at 30 CFR 784.14(e)(3)(iv) applies to underground mining activities conducted after October 24, 1992 and wells or springs used for domestic, drinking, or residential use. This administrative regulation addresses water supplies protected under KRS 350.421, as amended by 1994 HB 338, which took effect July 16, 1994. The federal regulation addresses water supplies protected under 30 USC 1309a, which was created October 24, 1992.

6. Section 34(3) and (5) of this administrative regulation, like the corresponding federal regulations, require that design plans for impounding structures that are required to be submitted to MSHA must also must be submitted to the cabinet as part of the permit application. However, this administrative regulation further requires that after these plans have been approved by MSHA, the applicant must submit to the cabinet a copy of the final approved plans, a copy of all correspondence from MSHA regarding the plans, a copy of any technical support documents requested by MSHA, and a notarized statement by the applicant that the copy submitted to the cabinet is a complete and correct copy of the final plan approved by MSHA. In order to minimize duplication of technical review of impounding structures by MSHA and the cabinet, and to minimize conflicts for the applicant that may arise from duplication of review, the cabinet intends to rely heavily upon the review conducted by MSHA engineers and upon the final plans approved by MSHA. It is important to ensure that the plans actually approved by MSHA are included in the permit application so there will be no discrepancy between the plans approved by the two agencies. The additional requirements are intended to provide that assurance.

~~7. Section 34 of this administrative regulation refers to Class B and C criteria under 405 KAR 7:040 Section 5 and 401 KAR 4:030 whereas the federal regulation refers to Class B and C criteria in the USDA-SCS Technical Release No. 60 and incorporate TR-60 by reference. The Class B and C criteria of the cabinet and those of Technical Release No. 60 are virtually identical criteria, since the criteria adopted under 401 KAR 4:030 were originally developed based upon the SCS criteria. Thus there is no need for this administrative regulation to refer to TR-60 or to incorporate it by reference.] [KRS Chapter 350 in pertinent part requires the cabinet to promulgate rules and administrative regulations pertaining to permits for underground mining activities. This administrative regulation recognizes the distinct differences between surface mining activities and underground mining activities. This administrative regulation specifies certain information to be shown by the applicant related to legal and compliance status, environmental resources, and his mining and reclamation plan. This administrative regulation further specifies certain showings to be made by the applicant to obtain a permit.]~~

Section 1. General. (1) Applicability.

(a) This administrative regulation applies to any person who applies for a permit to conduct underground mining activities.

(b) The requirements set forth in this administrative regulation specifically for applications for permits to conduct underground mining activities, are in addition to the requirements applicable to all applications for permits to conduct surface coal mining and reclamation operations as set forth in 405 KAR 8:010.

(c) This administrative regulation sets forth information required to be contained in applications for permits to conduct underground mining activities, including:

1. Legal, financial, compliance, and related information;
2. Environmental resources information; and
3. Mining and reclamation plan information.

(2) The permit applicant shall provide to the cabinet in the application all the information required by this administrative regulation.

Section 2. Identification of Interests. An application shall contain the following information, except that the submission of a Social Security number is voluntary:

(1) A statement as to whether the applicant is a corporation, partnership, single proprietorship, association, or other business entity;

(2) The name, address, telephone number and, as applicable, Social Security number and employer identification number of the:

- (a) Applicant;
- (b) Applicant's resident agent; and
- (c) Person who will pay the abandoned mine land reclamation fee.

(3) For each person who owns or controls the applicant:

(a) The person's name, address, Social Security number, and employer identification number;

(b) The person's ownership or control relationship to the applicant, including percentage of ownership and location in organizational structure;

(c) The title of the person's position, date position was assumed, and when submitted under 405 KAR 8:010, Section 18(5) date of departure from the position;

(d) Each additional name and identifying number, including employer identification number, federal or state permit number, and MSHA number with date of issuance, under which the person owns or controls, or previously owned or controlled, a surface coal mining and reclamation operation in the United States within the five (5) years preceding the date of the application; and

(e) The application number or other identifier of, and the regulatory authority for, any other pending surface coal mining operation permit application filed by the person in any state in the United States.

(4) For any surface coal mining operation owned or controlled by either the applicant or by any person who owns or controls the applicant, the operation's:

(a) Name, address, identifying numbers, including employer identification number, federal or state permit number, and MSHA number, the date of issuance of the MSHA number, and the regulatory authority; and

(b) Ownership or control relationship to the applicant, including percentage of ownership and location in organizational structure.

(5) The names and addresses of:

(a) Every legal or equitable owner of record of the areas to be affected by surface operations and facilities and every legal or equitable owner of record of the coal to be mined;

(b) The holders of record of any leasehold interest in areas to be affected by surface operations or facilities and the holders of record of any leasehold interest in the coal to be mined; and

(c) Any purchaser of record under a real estate contract of areas to be affected by surface operations and facilities and any purchaser of record under a real estate contract of the coal to be mined.

(6) The names and addresses of the owners of record of all surface and subsurface areas contiguous to any part of the proposed permit area.

(7) The name of the proposed mine and all MSHA identification numbers that have been assigned for the mine and all mine associated structures that require MSHA approval.

(8) Proof, such as a power of attorney or resolution of the board of directors, that the individual signing the application has the power to represent the applicant in the permit matter.

(9) A statement of all lands, interests in lands, options, or pending bids on interests held or made by the applicant for lands which are contiguous to the area to be covered by the permit.

(10) After an applicant has been notified that his or her application has been approved, but before the permit is issued, the applicant shall, as applicable, update, correct, or indicate that no change has occurred in the information previously submitted under subsections (1) through (4) of this section.

(11) The permittee shall, in writing, inform the cabinet of any change of the permittee's address immediately if changed at any point prior to final bond release.

(12) The permittee shall submit updates of the following information in writing to the cabinet within thirty (30) days of the effective date of any change. Updates shall be submitted for any changes that occur at any point prior to final bond release. Failure to submit updated information shall constitute a violation of KRS Chapter 350 only upon the permittee's refusal or failure to timely submit, as determined by the cabinet, the information to the cabinet upon request. After the permittee's refusal or failure to timely submit the information to the cabinet upon request, the cabinet may suspend the permit after opportunity for hearing pending compliance with this subsection:

(a) The names and addresses of every officer, partner, director, or person performing a function similar to a director of the permittee;

(b) The names and addresses of principal shareholders; and

(c) Whether the permittee or other persons specified in this subsection are subject to any of the provisions of KRS 350.130(3).

Section 3. Violation Information. Each application shall contain the following information:

(1) A statement of whether the applicant or any subsidiary, affiliate, or persons controlled by or under common control with the applicant has:

(a) Had a coal mining permit of the United States or any state suspended or revoked in the five (5) years preceding the date of submission of the application; or

(b) Forfeited a coal mining performance bond or similar security deposited in lieu of bond.

(2) If any suspension, revocation, or forfeiture, as described in subsection (1) of this section, has occurred, the application shall

contain a statement of the facts involved, including:

- (a) Identification number and date of issuance of the permit, and date and amount of bond or similar security;
- (b) Identification of the authority that suspended or revoked the permit or forfeited the bond and the stated reasons for that action;
- (c) The current status of the permit, bond, or similar security involved;
- (d) The date, location, and type of any administrative or judicial proceedings initiated concerning the suspension, revocation, or forfeiture; and
- (e) The current status of these proceedings.

(3) For any violation of a provision of SMCRA, federal regulations enacted pursuant to SMCRA, KRS Chapter 350 and administrative regulations adopted pursuant thereto, any other state's laws or regulations under SMCRA, any federal law, rule, or regulation pertaining to air or water environmental protection, or any Kentucky or other state's law, rule, or regulation enacted pursuant to federal law, rule, or regulation pertaining to air or water environmental protection incurred in connection with any surface coal mining operation, a list of all violation notices received by the applicant during the three (3) year period preceding the application date, and a list of all unabated cessation orders and unabated air and water quality violation notices received prior to the date of the application by any surface coal mining and reclamation operation owned or controlled by either the applicant or by any person who owns or controls the applicant. For each violation notice or cessation order reported, the lists shall include the following information, as applicable:

(a) Any identifying numbers for the operation, including the federal or state permit number and MSHA number, the dates of issuance of the violation notice and MSHA number, the name of the person to whom the violation notice was issued, and the name of the issuing regulatory authority, department, or agency;

(b) A brief description of the particular violation alleged in the notice;

(c) The final resolution of each violation notice, if any;

(d) For each violation notice that has not been finally resolved:

1. The date, location, and type of any administrative or judicial proceedings initiated concerning the violation, including ~~but not limited to,~~ proceedings initiated by any person identified in this subsection to obtain administrative or judicial review of the violation; and

2. The current status of the proceedings and of the violation notice; and

3. The actions, if any, taken or being taken by any person identified in this subsection to abate the violation.

(4) After an applicant has been notified that his or her application has been approved, but before the permit is issued, the applicant shall, as applicable, update, correct, or indicate that no change has occurred in the information previously submitted under subsections (1) through (3) of this section.

(5) Upon request by a small operator the cabinet shall provide to the small operator, with regard to persons under subsection (1) of this section which are identified by the small operator, the compliance information required by this section regarding suspension and revocation of permits and forfeiture of bonds under KRS Chapter 350, and information pertaining to violations of KRS Chapter 350 and administrative regulations promulgated thereunder.

Section 4. Right of Entry and Right to Mine. (1) Each application shall contain a description of the documents upon which the applicant bases his or her legal right to enter and begin underground mining activities in the permit area and whether that right is the subject of pending litigation. The description shall identify those documents by type and date of execution, identify the specific lands to which the document pertains, and explain the legal rights claimed by the applicant.

(2) For underground mining activities where the associated

surface operations involve the surface mining of coal and the private mineral estate to be mined has been severed from the private surface estate, the application shall contain, for lands to be affected by those operations within the permit area:

(a) A copy of the written consent of the surface owner for the extraction of coal by surface mining methods; or

(b) A copy of the conveyance that expressly grants or reserves the right to extract coal by surface mining methods; or

(c) If the conveyance does not expressly grant the right to extract the coal by surface mining methods, a copy of the original instrument of severance upon which the applicant bases his right to extract coal by surface mining methods and documentation that under applicable state law, the applicant has the legal authority to extract the coal by those methods.

~~[(3) Nothing in this section shall be construed to afford the cabinet the authority to adjudicate property title disputes.]~~

Section 5. Relationship to Areas Designated Unsuitable for Mining. (1) Each application shall contain a statement of available information on whether the proposed permit area is within an area designated unsuitable for underground mining activities under 405 KAR Chapter 24, or designated unsuitable for surface mining activities if the proposed underground mining activities also involve surface mining of coal, or under study for designation in an administrative proceeding initiated under that chapter.

(2) If an applicant claims the exemption in 405 KAR 8:010, Section 14(4)(b), the application shall contain information supporting the applicant's assertion that it made substantial legal and financial commitments before January 4, 1977, concerning the proposed underground mining activities.

(3) If an applicant proposes to conduct or locate surface operations or facilities within 300 feet of an occupied dwelling, the application shall include the waiver of the owner of the dwelling as required in 405 KAR 24:040, Section 2(5).

(4) If the applicant proposes to conduct or locate surface operations or facilities within 100 feet of a public road, the requirements of 405 KAR 24:040, Section 2(6) shall be met.

Section 6. Permit Term Information. (1) Each application shall state the anticipated or actual starting and termination date of each phase of the underground mining activities and the anticipated number of acres of surface lands to be affected, and the horizontal and vertical extent of proposed underground mine workings including the surface acreage overlying the underground workings, for each phase of mining and over the total life of the permit.

(2) If the applicant proposes to conduct the underground mining activities in excess of five (5) years, the application shall contain the information needed for the showing required under 405 KAR 8:010, Section 17(1).

Section 7. Personal Injury and Property Damage Insurance Information. Each application shall contain a certificate of liability insurance according to 405 KAR 10:030, Section 4.

Section 8. Identification of Other Licenses and Permits. Each application shall contain a list of all other licenses and permits needed by the applicant to conduct the proposed underground mining activities. This list shall identify each license and permit by:

(1) Type of permit or license;

(2) Name and address of issuing authority;

(3) Identification numbers of applications for those permits or licenses or, if issued, the identification numbers of the permits or licenses; and

(4) If a decision has been made, the date of approval or disapproval by each issuing authority.

Section 9. Identification of Location of Public Office for Filing of

Application. Each application shall identify, by name and address, the appropriate regional office of the cabinet where the applicant will file a copy of the entire application for public inspection under 405 KAR 8:010, Section 8(8).

Section 10. Newspaper Advertisement and Proof of Publication. A copy of the newspaper advertisement of the application for a permit, major revision, amendment, transfer, or renewal of a permit and proof of publication of the advertisement, which is acceptable to the cabinet, shall be filed with the cabinet and made a part of the application not later than fifteen (15) days after the last date of publication required under 405 KAR 8:010, Section 8(2).

Section 11. Environmental Resource Information. (1) Each permit application shall include a description of the existing environmental resources either within the areas affected by proposed surface operations and facilities, or within the proposed permit area and adjacent areas, as required by Sections 11 through 23 of this administrative regulation. The descriptions required by this administrative regulation may, where appropriate, be based upon published texts or other public documents together with reasonable extrapolations from specific data available from existing permit areas or other appropriate areas.

(2)(a) Each application shall describe and identify the nature of cultural, historic, and archaeological resources listed or eligible for listing on the National Register of Historic Places and known archaeological sites within the proposed permit area and adjacent areas. The description shall be based on all available information, including~~[- but not limited to,]~~ information from the state Historic Preservation Officer and from local archaeological, historical, and cultural preservation agencies.

(b) The cabinet may require the applicant to identify and evaluate important historic and archaeological resources that may be eligible for listing on the National Register of Historic Places, through collection of additional information, field investigations, or other appropriate analyses.

Section 12. General Requirements for Baseline Geologic and Hydrologic Information. (1) The application shall contain baseline geologic and hydrologic information which has been collected, analyzed, and submitted in the detail and manner acceptable to the cabinet, and which shall be sufficient to:

(a) Identify and describe protective measures pursuant to Section 32(1) of this administrative regulation which will be implemented during the mining and reclamation process to assure protection of the hydrologic balance, or to demonstrate that protection of the hydrologic balance can be assured without the design and installation of protective measures; and to design necessary protective measures pursuant to Section 32(2) of this administrative regulation.

(b) Determine the probable hydrologic consequences of the mining and reclamation operations upon the hydrologic balance in the permit area and adjacent area pursuant to Section 32(3) of this administrative regulation so that an assessment can be made by the cabinet pursuant to 405 KAR 8:010, Section 14(3) of the probable cumulative impacts of all anticipated mining on the hydrologic balance in the cumulative impact area;

(c) Determine pursuant to 405 KAR 8:010, Section 14(2) and (3) whether reclamation as required by 405 KAR can be accomplished and whether the proposed operation has been designed to prevent material damage to the hydrologic balance; and

(d) Design surface and groundwater monitoring systems pursuant to Section 32(4) of this administrative regulation for the during-mining and postmining time period which, together with the baseline data collected under Sections 14(1) and 15(1) of this administrative regulation, will demonstrate whether the mining operation is meeting applicable effluent limitations and stream standards and protecting the hydrologic balance.

(2)(a) Geologic and hydrologic information pertaining to the area outside the permit and adjacent area but within the cumulative impact assessment area shall be provided to the applicant by the cabinet:

1. If this information is needed in preparing the cumulative impact assessment; and

2. If this information is available from an appropriate federal or state agency.

(b) If this information is needed by the cabinet for conducting the cumulative impact assessment and is not available from a federal or state agency, the applicant may gather and submit this information to the cabinet as part of the permit application.

(3) Interpolation, modeling, correlation or other statistical methods, and other data extrapolation techniques may be used if the applicant can demonstrate to the satisfaction of the cabinet that the data extrapolation techniques are valid and that information obtained through the techniques meets the requirements of subsection (1) of this section.

(4) All water quality analyses performed to meet the requirements of this chapter shall be conducted according to the methodology in the fourteenth edition of "Standard Methods for the Examination of Water and Wastewater," or the methodology in 40 CFR Parts 136 and 434. All water quality sampling shall be conducted according to either methodology listed above when feasible.

Section 13. Baseline Geologic Information. (1) The application shall contain baseline geologic information collected from the permit area which shall meet the requirements of Section 12(1) of this administrative regulation and shall include at a minimum:

(a) The results of samples obtained from continuous cores; drill cuttings; channel cuttings from fresh, unweathered, rock outcrops; or other rock or soil material which has been collected using acceptable sampling techniques.

1. For those areas where overburden will be removed, the vertical extent of sampling shall include those strata from the surface down to and including the stratum immediately below the lowest coal seam to be mined; and

2. For those areas overlying underground workings where overburden will not be removed, the vertical extent of sampling shall include those strata above and below the coal seam to be mined which may be impacted by the mining operation.

3. Where aquifers within the permit area are located above or below the coal seam to be mined and these aquifers may be adversely affected by the mining operation, the vertical extent of sampling shall also include the aquifer and those strata which lie between the coal seam and the aquifer.

4. The areal and vertical density of sampling shall, at a minimum, be sufficient to determine the distribution of strata which have a potential to produce acid drainage and to determine the areal and vertical extent of aquifers which may be adversely affected.

5. If the vertical extent, and the areal and vertical density of sampling specified in subparagraphs 1 through 4 of this paragraph are not sufficient to locate suitable strata for use as a topsoil substitute, to determine the potential for subsidence, or for other required design or analysis, additional sampling shall be conducted as necessary to furnish adequate geologic information.

(b)1. To identify strata which have a potential to produce acid or toxic drainage for areas where overburden will be removed, chemical analyses including, but not limited to, maximum potential acidity and neutralization potential of each overburden stratum and the stratum immediately below the lowest coal seam to be mined; and

2. To identify strata which have a potential to produce acid or toxic drainage for areas overlying underground workings where overburden will not be removed, chemical analyses including~~[- but not limited to,]~~ maximum potential acidity and neutralization potential of the strata immediately above and below the coal seam to be mined.

(c) Chemical analyses of the coal seam to be mined to determine the potential to produce acid or toxic drainage, including the parame-

ters of total sulfur and pyritic sulfur; except that the cabinet shall not require an analysis for pyritic sulfur if the applicant can demonstrate to the satisfaction of the cabinet that an analysis for total sulfur provides adequate information to assure protection of the hydrologic balance.

(d) For standard room and pillar mining operations, the engineering properties of clays or soft rock such as clay shale, if any, located immediately above and below each coal seam to be mined.

(e) Collection of geologic information from the permit area as required in this subsection may be waived in whole or in part if:

1. The applicant can demonstrate to the satisfaction of the cabinet through geologic correlation or other procedures that information collected from outside the permit area is representative of the permit area and is sufficient to meet the requirements of Section 12(1) of this administrative regulation; or

2. Other information equivalent to that required by this subsection is available to the cabinet in a satisfactory form and is made a part of the permit application; and

3. The cabinet provides a written statement granting a waiver.

(2) The application shall contain a description of the geology of the proposed permit area and adjacent area which shall meet the requirements of Section 12(1) of this administrative regulation and be based on the information required in subsection (1) of this section or other appropriate geologic information. The description shall include, at a minimum, geologic logs, cross-sections, fence diagrams, or other appropriate illustrations and written descriptions depicting:

(a) Within the permit area:

1. The structural geology and lithology of overburden strata and the stratum immediately below the lowest coal seam to be mined for those areas where overburden will be removed; and the structural geology and lithology of strata which may be impacted by the mining operation for those areas overlying underground workings where overburden will not be removed.

2. The thickness and chemical characteristics of each overburden stratum and the stratum immediately below the lowest coal seam to be mined for those areas where overburden will be removed; or the thickness and chemical characteristics of each stratum which may be impacted by the mining operation for those areas overlying underground workings where overburden will not be removed.

3. Where aquifers may be adversely affected by the mining operation, the structural geology, lithology, thickness, and areal extent of the aquifers; and structural geology and lithology of strata, and thickness of each stratum, whether located above or below the coal seam to be mined, which lie between the coal seam and the aquifers.

4. For standard room and pillar mining operations, the thickness and engineering properties of clays or soft rock such as clay shale, if any, located immediately above and below each coal seam to be mined.

(b) Within the adjacent area, the approximate areal extent and approximate thickness of aquifers which may be adversely affected by the mining operation.

(3) If determined by the cabinet to be necessary to assure adequate reclamation and protection of the hydrologic balance, the cabinet may require geologic information and description in addition to that required by subsections (1) and (2) of this section including[; but not limited to;] leaching tests of material from strata which may be disturbed by the operation to determine the potential for the operation to produce drainage with elevated levels of acidity, sulfate, and total dissolved solids, and the collection of information to greater depths within the proposed permit area or the collection of information for areas outside the proposed permit area.

Section 14. Baseline Groundwater Information. (1) The application shall contain baseline groundwater information for the permit area and adjacent area which shall be collected and submitted in a manner acceptable to the cabinet and shall be adequate to meet the requirements of Section 12(1) of this administrative regulation.

(2) Groundwater information shall include an inventory of wells, springs, underground mines, or other similar groundwater supply facilities which are currently being used, have been used in the past, or have a potential to be used for domestic, agricultural, industrial, or other beneficial purpose. The inventory shall include the location, ownership, type of usage, and where possible, other relevant information such as the depth and diameter of wells and approximate rate of usage, pumpage or discharge from wells, springs, and other groundwater supply facilities.

(3) Groundwater information shall include seasonal groundwater quantity and quality data collected from monitoring wells, springs, underground mines, or other appropriate groundwater monitoring facilities, at a sufficient number of monitoring locations with adequate areal distribution to meet the requirements of Section 12(1) of this administrative regulation. Seasonal groundwater quantity and quality data shall be provided for each water transmitting zone above, and potentially impacted water transmitting zone below, the lowest coal seam to be mined including at a minimum:

(a) Groundwater levels; and

(b) Total dissolved solids, or specific conductance corrected to twenty-five (25) degrees C; pH; dissolved iron; dissolved manganese; acidity; alkalinity; and sulfate. For data collected prior to August 13, 1985, total iron and total manganese may be substituted for dissolved iron and dissolved manganese.

(4) The groundwater information described in subsection (3) of this section shall be required in whole or in part for coal seams if the coal seams to be mined are serving as water supply sources or are otherwise significant in protecting the hydrologic balance.

(5) If additional information is needed to assess the need for protective measures, to design protective measures, to determine the probable hydrologic consequences of mining, or to conduct the cumulative impact assessment, the cabinet may require groundwater information in addition to that described in subsections (2), (3), and (4) of this section including[; but not limited to;] information pertaining to aquifer storage, yield, discharge, recharge capacity, and additional water quality parameters.

Section 15. Baseline Surface Water Information. (1) The application shall contain baseline surface water information for the permit area and adjacent area which shall be collected and submitted in a manner acceptable to the cabinet and shall be adequate to meet the requirements of Section 12(1) of this administrative regulation.

(2) Surface water information shall include an inventory of all streams, lakes, impoundments or other surface water bodies in the permit and adjacent area which are currently being used for domestic, agricultural, industrial, or other beneficial purpose. The inventory shall include the name of the surface water body which is being used as a water supply source; the location, drainage area, ownership, and type of usage for the withdrawal; and where possible other relevant information such as the rate of withdrawal and seasonal variation.

(3) Surface water information shall include:

(a) The name, location, and ownership where appropriate, of all streams, lakes, impoundments, and other surface water bodies which receive run-off from watersheds which will be disturbed by the operation; and

(b) The location and description of any existing facilities located in watersheds which will be disturbed by the mining operation which may contribute to surface water pollution, such as existing or abandoned mining operations, oil wells, logging operations, or other similar facilities, including the location of any discharges which may be flowing from the facilities.

(4) Surface water information shall include seasonal quantity and quality data collected from a sufficient number of watersheds which will be disturbed by the operation with adequate areal distribution to meet the requirements of Section 12(1) of this administrative regulation and include at a minimum:

(a) Flow rates; and

(b) Total dissolved solids, or specific conductance corrected to twenty-five (25) degrees C; total suspended solids; pH; total iron; total manganese; acidity; alkalinity; and sulfate.

(5) If additional information is needed to assess the need for protective measures, to design protective measures, to determine the probable hydrologic consequences of mining, or to conduct the cumulative impact assessment, the cabinet may require surface water information in addition to that described in subsections (2), (3), and (4) of this section including ~~[- but not limited to,]~~ information pertaining to flood flows and additional water quality parameters.

Section 16. Alternative Water Supply Information. If the determination of probable hydrologic consequences required under Section 32 of this administrative regulation indicates that the proposed underground mining activities may proximately result in contamination, diminution, or interruption of an underground or surface source of water within the proposed permit area or adjacent area which is used for domestic, agricultural, industrial, or other legitimate use, then the application shall identify and describe the adequacy and suitability of the alternative sources of water supply that could be developed for existing premining uses and approved postmining land uses. [If contamination, diminution, or interruption of an underground or surface source of water (for domestic, agricultural, industrial, or other legitimate use) within the proposed permit area or adjacent area may result from underground mining activities, then the applicant may identify, in the permit application, the alternative sources of water supply that could be developed to replace the existing sources.]

Section 17. Climatological Information. (1) When requested by the cabinet, the application shall contain a statement of the climatological factors that are representative of the proposed permit area, including:

- (a) The average seasonal precipitation;
- (b) The average direction and velocity of prevailing winds; and
- (c) Seasonal temperature ranges.

(2) The cabinet may request additional data as deemed necessary to ensure compliance with the requirements of this chapter.

Section 18. Soil Resources Information. (1) If soil survey information for the proposed permit area is available from SCS, the application shall include this information as a part of the description of premining land use capability and productivity required by Section 22(1)(b) of this administrative regulation.

(2) Where the applicant proposes to use selected overburden materials as a supplement or substitute for topsoil, the application shall provide results of the analyses, trials and tests required under 405 KAR 18:050, Section 2(5).

Section 19. Vegetation Information. (1) The permit application shall, as required by the cabinet, contain a map that delineates existing vegetative types and a description of the plant communities within the area affected by surface operations and facilities and within any proposed reference area. This description shall include information adequate to predict the potential for reestablishing vegetation.

(2) When a map or aerial photograph is required, sufficient adjacent areas shall be included to allow evaluation of vegetation as important habitat for fish and wildlife.

Section 20. Fish and Wildlife Resources Information. (1) Each application shall include fish and wildlife resource information for the area of surface operations and facilities and adjacent area, and areas subject to probable impacts from underground workings, including areas of probable subsidence. The scope and level of detail for this information shall be determined by the cabinet in consultation with the Kentucky Department of Fish and Wildlife Resources and the U.S. Department of the Interior, Fish and Wildlife Service, and shall be sufficient to design the protection and enhancement plan required under Section 36 of this administrative regulation.

(2) Site-specific resource information necessary to address the respective species or habitats shall be required when the area of surface operations and facilities or adjacent area, or areas subject to probable impacts from underground workings, including areas of probable subsidence, are likely to include:

(a) Listed or proposed endangered or threatened species of plants or animals or their critical habitats listed by the Secretary of the Interior under the Endangered Species Act of 1973, as amended (16 USC Sec. 1531 et seq.), or those species or habitats protected by similar state statutes;

(b) Habitats of unusually high value for fish and wildlife such as important streams, wetlands, riparian areas, cliffs supporting raptors, areas offering special shelter or protection, migration routes, or reproduction and wintering areas; or

(c) Other species or habitats identified through agency consultation as requiring special protection under state or federal law.

(3) Wetland delineations shall be conducted in accordance with:

(a) The Corps of Engineers Wetlands Delineation Manual;

(b) U. S. Army Corps of Engineers Regulatory Guidance Letter No. 90-7;

(c) National Lists of Plant Species that Occur in Wetlands and Biological Reports and Summary; and

(d) List of Hydric Soils of the United States, All Kentucky Counties. [Wetland delineations shall be conducted in accordance with the "Corps of Engineers Wetlands Delineation Manual", U.S. Army Corps of Engineers, (January, 1987), as modified by U.S. Army Corps of Engineers Regulatory Guidance Letter No. 90-7 (September 26, 1990). The modifications to this material include replacement of Sections 1 and 2 of Appendix C with the "National Lists of Plant Species that Occur in Wetlands and Biological Reports and Summary", Fish and Wildlife Service, U.S. Department of the Interior (May, 1988); and, in Appendix D, Section 2, use of the "List of Hydric Soils of the United States, All Kentucky Counties", Soil Conservation Service (SCS), U.S. Department of Agriculture (December, 1991). This document, and related material, is incorporated by reference. It may be obtained from the National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161. Telephone (703) 487-4650. It may also be reviewed, copied, or obtained at the Department for Surface Mining Reclamation and Enforcement, #2 Hudson Hollow, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.]

(4) Upon request, the cabinet shall provide the resource information required under this section to the U.S. Department of the Interior, Fish and Wildlife Service regional or field office for their review. This information shall be provided within ten (10) days of receipt of the request from the Service.

(5)(a) Fish and wildlife resource information shall be required for amendments and revisions that:

1. Propose extension into a wetland;
2. Propose significant disturbance in a new watershed in which the area of surface operations and facilities or adjacent area, or areas subject to probable impacts from underground workings, including areas of probable subsidence, include an important stream;
3. Seek to obtain a stream buffer zone variance under 405 KAR 18:060, Section 11, or seek to modify an existing stream buffer zone variance;
4. Propose extension of the permit boundary that involves a new surface disturbance of five (5) acres or more;
5. Involve new areas of surface operations and facilities or adjacent areas, or areas subject to probable impacts from underground workings, including areas of probable subsidence, likely to contain, or that could reasonably be expected to contain, a state or federal endangered or threatened species or its critical habitat; or
6. Propose extension of the coal extraction area associated with an underground mine that may by subsidence or other means impact a wetland, important stream, or stream that contains, or could

reasonably be expected to contain, a state or federal endangered or threatened species or its critical habitat.

(b) For other amendments and revisions, a determination of whether fish and wildlife information is necessary, and the scope of information needed, shall be made on a case-by-case basis.

(6) This section shall apply to applications for permits, amendments and revisions submitted to the cabinet on or after November 17, 1992.

Section 21. Prime Farmland Investigation. (1) The applicant shall conduct a preapplication investigation of the area proposed to be affected by surface operations or facilities to determine whether lands within the area may be prime farmland.

(2) Land shall not be considered prime farmland where the applicant can demonstrate, to the satisfaction of the cabinet, one (1) or more of the following:

(a) The land has not been historically used as cropland;

(b) The slope of the land is ten (10) percent or greater;

(c) Other relevant factors exist which would preclude the soils from being defined as prime farmland according to 7 CFR 657, such as a very rocky surface, or the land is frequently flooded during the growing season more often than once in two (2) years and the flooding has reduced crop yields; or

(d) On the basis of a soil survey of the lands within the permit area there are no soil map units that have been designated prime farmland by the U.S. SCS.

(3) If the investigation establishes that the lands are not prime farmland, the applicant shall submit with the permit application a request for a negative determination and results of the investigation which show that the land for which the negative determination is being sought meets one (1) or more of the criteria in subsection (2) of this section.

(4) If the investigation indicates that lands within the proposed area to be affected by surface operations and facilities may be prime farmlands, the applicant shall contact the U.S. SCS to determine if these lands have a soil survey and whether the applicable soil map units have been designated prime farmlands. If no soil survey has been made for these lands, the applicant shall request the SCS to conduct a soil survey.

(a) If a soil survey as required by this section contains soil map units which have been designated as prime farmlands, the applicant shall submit an application, in accordance with 405 KAR 8:050, Section 3 for the designated land.

(b) If a soil survey as required by this section contains no soil map units which have been designated as prime farmland, after review by the U.S. SCS, the applicant shall submit with the permit application a request for negative determination under subsection (2)(d) of this section for the nondesignated land.

(5) The cabinet shall decide to grant or deny a negative determination based upon documentation provided by the applicant and any other pertinent information, such as cropping history, available to the cabinet from other sources.

(6) The cabinet shall consult with the SCS in deciding on a request for negative determination under subsection (2)(c) of this section.

(7) The cabinet shall examine any records on crop history available from the Agriculture Stabilization and Conservation Service when deciding on a request for negative determination under subsection (2)(a) of this section.

Section 22. Land-use Information. (1) The application shall contain a statement of the condition, capability and productivity of the land which will be affected by surface operations and facilities within the proposed permit area, including:

(a) A map and supporting narrative of the uses of the land existing when the application is filed. If the premining use of the land was changed within five (5) years before the date of application, the

historic use of the land shall also be described.

(b) A narrative of land capability and productivity, which analyzes the land-use description in conjunction with other environmental resources information required under this administrative regulation. The narrative shall provide analyses of:

1. The capability of the land before any mining to support a variety of uses, giving consideration to soil and foundation characteristics, topography, vegetative cover, and the hydrology of the area proposed to be affected by surface operations or facilities; and

2. The productivity of the area proposed to be affected by surface operations and facilities before mining, expressed as average yield of food, fiber, forage, or wood products from the lands obtained under high levels of management. The productivity shall be determined by yield data or estimates for similar sites based on current data from the U.S. Department of Agriculture, state agricultural universities or appropriate state natural resources or agricultural agencies.

(2) The application shall state whether the proposed permit area has been previously mined, and, if so, the following information, if available:

(a) The type of mining method used;

(b) The coal seams or other mineral strata mined;

(c) The extent of coal or other minerals removed;

(d) The approximate dates of past mining; and

(e) The uses of the land preceding mining.

(3) The application shall contain a description of the existing land uses and local government land use classifications, if any, of the proposed permit area and adjacent areas.

(4) The application shall contain a description identifying the extent to which cities, towns, and municipalities, or parts thereof, are located within the proposed permit area.

Section 23. Maps and Drawings. (1) The permit application shall include maps showing:

(a) The boundaries of all subareas which are proposed to be affected over the estimated total life of the underground mining activities, with a description of size, sequence and timing of the underground mining activities for which it is anticipated that additional permits will be sought;

(b) Any land within the proposed permit area and adjacent area which is within the boundaries of any units of the National System of Trails or the Wild and Scenic Rivers System, including study rivers designated under Section 5(a) of the Wild and Scenic Rivers Act (16 USC 1276(a)), or which is within the boundaries of a wild river established pursuant to KRS Chapter 146;

(c) The boundaries of any public park and locations of any cultural or historical resources listed on or eligible for listing on the National Register of Historic Places and known archaeological sites within the permit area and adjacent areas;

(d) The locations of water supply intakes for current users of surface waters within a hydrologic area defined by the cabinet, and those surface waters which will receive discharges from affected areas in the proposed permit area;

(e) All boundaries of lands and names of present owners of record of those lands, both surface and subsurface, included in or contiguous to the permit area;

(f) The boundaries of land within the proposed permit area upon which, or under which, the applicant has the legal right to conduct underground mining activities. In addition, the map shall indicate the boundaries of that portion of the permit area which the applicant has the legal right to enter upon the surface to conduct surface operations.

(g) The location of surface and subsurface manmade features within, passing through, or passing over the proposed permit area, including, but not limited to, major electric transmission lines, pipelines, and agricultural drainage tile fields;

(h) The location and boundaries of any proposed reference areas for determining the success of revegetation for the permit area;

(i) The location of all buildings in and within 1000 feet of the proposed permit area, with identification of the current use of the buildings;

(j) Each public road located in or within 100 feet of the proposed permit area;

(k) Each cemetery that is located in or within 100 feet of the proposed permit area;

(l) Other relevant information required by the cabinet.

(2) The application shall include drawings, cross-sections, and maps showing:

(a) Elevations and locations of test borings and core samplings;

(b) Elevations and locations of monitoring stations or other sampling points in the permit area and adjacent areas used to gather data on water quality and quantity, fish and wildlife, and air quality, if required, in preparation of the application or which will be used for this data gathering during the term of the permit;

(c) All coal crop lines and the strike and dip of the coal to be mined within the proposed permit area;

(d) Location and extent of known workings of active, inactive, or abandoned underground mines, including mine openings to the surface within the proposed permit area and adjacent areas;

(e) Location and extent of subsurface water, if encountered, within the proposed permit area or adjacent areas;

(f) Location of surface water bodies such as streams, lakes, ponds, springs, constructed or natural drainage patterns, and irrigation ditches within the proposed permit area and adjacent areas;

(g) Location, and depth if available, of gas and oil wells within the proposed permit area and water wells in the permit area and adjacent areas;

(h) Location and dimensions of existing coal refuse disposal areas and dams, or other impoundments within the proposed permit area;

(i) Sufficient slope measurements to adequately represent the existing land surface configuration of the area to be affected by surface operations and facilities, measured and recorded according to the following:

1. Each measurement shall consist of an angle of inclination along the prevailing slope extending 100 linear feet above and below or beyond the coal outcrop or the area to be disturbed or, where this is impractical, at locations and in a manner as specified by the cabinet.

2. Where the area has been previously mined, the measurements shall extend at least 100 feet beyond the limits of mining disturbances, or any other distance determined by the cabinet to be representative of the premining configuration of the land.

3. Slope measurements shall take into account natural variations in slope, to provide accurate representation of the range of natural slopes and reflect geomorphic differences of the area to be disturbed.

(3) The permit application shall include the map information specified in Sections 22(1)(a), 24(3), 24(4)(c), 24(4)(h), 26, 27(1), 28, 31, 32, 33, 34, and 38 of this administrative regulation and 405 KAR 8:010, Section 5(6).

(4) Maps, drawings and cross-sections included in a permit application and required by this section shall be prepared by, or under the direction of and certified by a qualified registered professional engineer, and shall be updated as required by the cabinet. The qualified registered professional engineer shall not be required to certify the true ownership of property.

Section 24. Mining and Reclamation Plan; General Requirements.

(1) Each application shall contain a detailed mining and reclamation plan (MRP) for the proposed permit area as set forth in this section through Section 39 of this administrative regulation, showing how the applicant will comply with KRS Chapter 350 and 405 KAR Chapters 16 through 20.

(2) Each application shall contain a description of the mining operations proposed to be conducted within the proposed permit area, including, at a minimum, the following:

(a) A narrative description of the type and method of coal mining procedures and proposed engineering techniques, anticipated annual and total production of coal, by tonnage, and the major equipment to be used for all aspects of those operations; and

(b) A narrative explaining the construction, modification, use, maintenance, and removal of the following facilities (unless retention of the facility is to be approved as necessary for postmining land use as specified in 405 KAR 18:220):

1. Dams, embankments, and other impoundments;

2. Overburden and topsoil handling and storage areas and structures;

3. Coal removal, handling, storage, cleaning, and transportation areas and structures;

4. Spoil, coal processing waste, mine development waste, and noncoal waste removal, handling, storage, transportation, and disposal areas and structures;

5. Mine facilities; and

6. Water pollution control facilities.

(3) Each application shall contain plans and maps of the proposed permit area and adjacent areas as follows:

(a) The plans, maps and drawings shall show the underground mining activities to be conducted, the lands to be affected throughout the operation, and any change in a facility or feature to be caused by the proposed operations, if the facility or feature was shown under Section 23 of this administrative regulation.

(b) The following shall be shown for the proposed permit area:

1. Buildings, utility corridors, and facilities to be used;

2. The area of land to be affected within the proposed permit area, according to the sequence of mining and reclamation;

3. Each area of land for which a performance bond or other equivalent guarantee will be posted under 405 KAR Chapter 10;

4. Each coal storage, cleaning and loading area;

5. Each topsoil, spoil, coal preparation waste, underground development waste, and noncoal waste storage area;

6. Each water diversion, collection, conveyance, treatment, storage and discharge facility to be used;

7. Each source of waste and each waste disposal facility relating to coal processing or pollution control;

8. Each facility to be used to protect and enhance fish and wildlife related environmental values;

9. Each explosive storage and handling facility;

10. Location of each sedimentation pond, permanent water impoundment, coal processing waste bank, and coal processing waste dam and embankment, in accordance with Section 34 of this administrative regulation, and each disposal area for underground development waste and excess spoil, in accordance with Section 28 of this administrative regulation;

11. Cross-sections, at locations as required by the cabinet, of the anticipated final surface configuration to be achieved for the affected areas;

12. Location of each water and any subsidence monitoring point;

13. Location of each facility that will remain on the proposed permit area as a permanent feature, after the completion of underground mining activities.

(c) Plans, maps and drawings required under this section shall be prepared by, or under the direction of, and certified by a qualified registered professional engineer.

(4) Each plan shall contain the following information for the proposed permit area:

(a) A projected timetable for the completion of each major step in the mining and reclamation plan;

(b) A detailed estimate of the cost of the reclamation of the proposed operations required to be covered by a performance bond under 405 KAR Chapter 10, with supporting calculations for the estimates;

(c) A plan for backfilling, soil stabilization, compacting and grading, with contour maps or cross-sections that show the an-

anticipated final surface configuration of the proposed permit area, in accordance with 405 KAR 18:190;

(d) A plan for removal, storage, and redistribution of topsoil, subsoil, and other material to meet the requirements of 405 KAR 18:050 including a demonstration of suitability of any proposed topsoil substitutes or supplements;

(e) A plan for revegetation as required in 405 KAR 18:200, including ~~[-, but not limited to,]~~ descriptions of the: schedule of revegetation; species and amounts per acre of seeds and seedlings to be used; methods to be used in planting and seeding; mulching techniques; irrigation, if appropriate, and pest and disease control measures, if any; measures proposed to be used to determine the success of revegetation as required in 405 KAR 18:200, Section 6; and a soil testing plan for evaluation of the results of topsoil handling and reclamation procedures related to revegetation;

(f) A description of the measures to be used to maximize the use and conservation of the coal resource as required in 405 KAR 18:010, Section 2;

(g) A description of measures to be employed to ensure that all debris, acid-forming and toxic-forming materials, and materials constituting a fire hazard are disposed of in accordance with 405 KAR 18:150 and 405 KAR 18:190, Section 3 and a description of the contingency plans which have been developed to preclude sustained combustion of the materials;

(h) A description, including appropriate drawings and maps, of the measures to be used to seal or manage mine openings, and to plug, case or manage exploration holes, other bore holes, wells and other openings within the proposed permit area, in accordance with 405 KAR 18:040; and

(i) A description of steps to be taken to comply with the requirements of the Clean Air Act (42 USC 7401 et seq.), the Clean Water Act (33 USC 1251 et seq.), and other applicable air and water quality laws and regulations and health and safety standards. This description shall, at a minimum, consist of identification of the permits or approvals required by these laws and regulations which the applicant has obtained, has applied for, or intends to apply for.

Section 25. MRP; Existing Structures. (1) Each application shall contain a description of each existing structure proposed to be used in connection with or to facilitate the surface coal mining and reclamation operation. The description shall include:

(a) Location;

(b) Plans of the structure which describe its current condition;

(c) Approximate dates on which construction of the existing structure was begun and completed; and

(d) A showing, including relevant monitoring data or other evidence, whether the structure meets the performance standards of 405 KAR Chapters 16 through 20, or if the structure does not meet those performance standards, a showing whether the structure meets the interim performance standards of 405 KAR Chapter 3.

(2) Each application shall contain a compliance plan for each existing structure proposed to be modified or reconstructed for use in connection with or to facilitate the surface coal mining and reclamation operation. The compliance plan shall include:

(a) Design specifications for the modification or reconstruction of the structure to meet the performance standards of 405 KAR Chapters 16 through 20;

(b) A construction schedule which shows dates for beginning and completing interim steps and final reconstruction;

(c) Provisions for monitoring the structure as required by the cabinet to ensure that the performance standards of 405 KAR Chapters 16 through 20 are met; and

(d) A showing that the risk of harm to the environment or to public health or safety will not be significant during the period of modification or reconstruction.

Section 26. MRP; Subsidence Control. (1)(a) The application shall

include a map of the permit and adjacent areas at a scale of 1:12,000, or larger if determined necessary by the cabinet, showing the location and type of structures and renewable resource lands that subsidence may materially damage or for which the value or reasonably foreseeable use may be diminished by subsidence, and showing the location and type of water supplies for domestic, agricultural, industrial or other legitimate use that could be contaminated, diminished, or interrupted by subsidence.

(b) The application shall include a narrative indicating whether subsidence, if it occurred, could cause material damage to or diminish the value or reasonably foreseeable use of structures identified in paragraph (a) of this subsection or renewable resource lands or could contaminate, diminish, or interrupt water supplies for domestic, agricultural, industrial or other legitimate use.

(c) The application shall include an example of the letter by which the applicant proposes to notify the owners of all structures ~~and water supplies~~ identified under this subsection for which a presub-sidence survey is required under 405 KAR 18:210 Section 1(4). [The application shall include a survey which shall show whether structures or renewable resource lands exist within the proposed permit area and adjacent areas and whether subsidence, if it occurred could cause material damage or diminution of reasonably foreseeable use of the structures or renewable resource lands.]

(d)1. The application shall include a survey of the quantity and quality of each water supply for domestic, agricultural, industrial or other legitimate use within the permit area and adjacent area that could be contaminated, diminished, or interrupted by subsidence. If the applicant cannot make this survey because the owner will not allow access to the site, the application shall include documentation of the denial of access. The applicant shall pay for its technical assessment or engineering evaluation used to determine the quantity and quality of a water supply for domestic, agricultural, industrial or other legitimate use. The applicant shall provide copies of the survey and any technical assessment or engineering evaluation to the property owner and the cabinet.

2. If the owner or his representative is present at the time a survey, technical assessment, or engineering evaluation is conducted under this paragraph, the report shall include the name of the person. If the owner disagrees with the results of the survey, technical assessment or engineering evaluation, he may submit in writing to the cabinet and to the permittee, a detailed description of the specific areas of disagreement. The cabinet may require additional measures to ensure that adequate and accurate information is included in the survey, technical assessment or engineering evaluation and to ensure compliance with 405 KAR 18:210.

(2) If the information submitted under subsection (1) of this section [survey] shows that no structures, or water supplies for domestic, agricultural, industrial or other legitimate use, or renewable resource lands exist, or ~~that~~ no material damage or diminution in value or reasonably foreseeable use of the structures or lands, and no contamination, diminution, or interruption of the water supplies would occur as a result [could be caused in the event] of mine subsidence, and if the cabinet agrees with this conclusion, no further information need be provided [in the application] under this section.

(3) If the information submitted under subsection (1) of this section [survey] shows that structures, [or] renewable resource lands, or water supplies exist and ~~[-or]~~ that subsidence could cause material damage or diminution in [or] value or reasonably foreseeable use, or contamination, diminution, or interruption of protected water supplies [of the land], or if the cabinet determines that damage, [or] diminution in value or foreseeable use, or contamination, diminution, or interruption could occur, the application shall include a subsidence control plan which shall contain the following information:

(a) A [detailed] description of the [mining] method of coal removal, such as longwall mining, room and pillar removal or hydraulic mining,

including the size, sequence and timing of the development of underground workings. [and other measures to be taken which may affect subsidence, including:

1. The technique of coal removal, such as longwall mining, room and pillar with pillar removal, hydraulic mining or other methods; and
2. The extent, if any, to which planned and controlled subsidence is intended;]

(b) A map of the underground workings at a scale of 1:12,000, or larger if determined necessary by the cabinet, that describes the location and extent of the areas in which planned subsidence mining methods will be used and that identifies all areas where the measures described in paragraphs (d), (e), and (g) of this subsection will be taken to prevent or minimize subsidence and subsidence related damage; and, when applicable, to correct subsidence related material damage.

(c) A description of the physical conditions, such as depth of cover, seam thickness and lithology of overlying strata, that affect the likelihood or extent of subsidence and subsidence related damage.

(d) A description of the monitoring, if any, needed to determine the commencement and degree of subsidence so that, when appropriate, other measures can be taken to prevent, reduce or correct material damage in accordance with 405 KAR 18:210, Section 3.

(e) Except for those areas where planned subsidence is projected to be used, a detailed description of the subsidence control measures that will be taken to prevent or minimize subsidence and subsidence related damage including: [-such as, but not limited to:]

1. Backstowing or backfilling of voids;
2. Leaving support pillars of coal;
3. Leaving areas in which no coal is removed, including a description of the overlying area to be protected by leaving the coal in place; and
4. Taking measures on the surface to prevent or minimize material damage or diminution in value of the surface.

(f) A description of the anticipated effects of planned subsidence, if any.

(g) For those areas where planned subsidence is projected to be used, a description of methods to be employed to minimize damage from planned subsidence to noncommercial buildings and occupied residential dwellings and structures related thereto; or the written consent of the owner of the structure or facility that minimization measures not be taken; or, unless the anticipated damage would constitute a threat to health or safety, a demonstration that the costs of minimizing damage exceed the anticipated costs of repair;

(h) A description of the measures to be taken in accordance with 405 KAR 18:060, Section 12, and 405 KAR 18:210, Section 3, to replace adversely affected protected water supplies or to mitigate or remedy any subsidence related material damage to the land and protected structures; and

(i) Other information specified by the cabinet as necessary to demonstrate that the operation will be conducted in accordance with 405 KAR 18:210. [A detailed description of the measures to be taken to prevent subsidence from causing material damage or lessening the value of reasonably foreseeable use of the surface, including:

1. The anticipated effects of planned subsidence, if any;
2. Measures, if any, to be taken in the mine to reduce the likelihood of subsidence, including measures such as backstowing or backfilling of voids; leaving support pillars of coal; and areas in which no coal removal is planned, including a description of the overlying area to be protected by leaving coal in place.

3. Measures to be taken on the surface to prevent material damage or lessening of the value or reasonably foreseeable use of the surface, including measures such as reinforcement of sensitive structures or features; installation of footers designed to reduce damage caused by movement; change of location of pipelines, utility lines or other features; relocation of movable improvements to sites outside the angle of draw; and monitoring, if any, to determine the

commencement and degree of subsidence so that other appropriate measures can be taken to prevent or reduce material damage:

(c) A detailed description of the measures to be taken to mitigate the effects of any material damage or diminution of value or foreseeable use of lands which may occur, including one (1) or more of the following as required by 405 KAR 18:210, Section 3:

1. Restoration or rehabilitation of structures and features, including approximate land surface contours, to premining condition;
2. Replacement of structures destroyed by subsidence;
3. Purchase of structures prior to mining and restoration of the land after subsidence to condition capable of supporting and suitable for the structures and foreseeable land uses;
4. Purchase of noncancellable insurance policies payable to the surface owner in the full amount of the possible material damage or other comparable measures.

(d) A detailed description of measures to be taken to determine the degree of material damage or diminution of value or foreseeable use of the surface, including measures such as:

1. The results of presubsidence surveys of all structures and surface features which might be materially damaged by subsidence;
2. Monitoring, if any, proposed to measure deformations near specified structures or features or otherwise as appropriate for the operation;]

Section 27. MRP; Return of Coal Processing Waste to Abandoned Underground Workings. (1) Each plan shall describe the design, operation and maintenance of any proposed use of abandoned underground workings for coal processing waste disposal, including flow diagrams and any other necessary drawings and maps, for the approval of the cabinet and MSHA under 405 KAR 18:140, Section 7.

(2) Each plan shall describe the source and quality of waste to be stowed, area to be backfilled, percent of the mine void to be filled, method of constructing underground retaining walls, influence of the backfilling operation on active underground mine operations, surface area to be supported by the backfill, and the anticipated occurrence of surface effects following backfilling.

(3) The applicant shall describe the source of the hydraulic transport mediums, method of dewatering the placed backfill, retainment of water underground, treatment of water if released to surface streams, and the effect on the hydrologic regime.

(4) The plan shall describe each permanent monitoring well to be located in the backfilled area, the stratum underlying the mined coal, and gradient from the backfilled area.

(5) The requirements of this section shall also apply to pneumatic backfilling operations, except where the operations are exempted by the cabinet from requirements specifying hydrologic monitoring.

Section 28. MRP; Underground Development Waste and Excess Spoil. Each plan shall contain descriptions, including appropriate maps and cross-section drawings, of the proposed disposal methods and sites for placing underground development waste and excess spoil according to 405 KAR 18:130, 405 KAR 18:140, and 405 KAR 18:160 as applicable. Each plan shall describe the geotechnical investigation, design, construction, operation, maintenance, and removal, if appropriate, of the structures and be prepared according to 405 KAR 8:030, Section 27 and the applicable requirements of this administrative regulation.

Section 29. MRP; Transportation Facilities. (1) Each application shall contain a description of each road, conveyor, and rail system to be constructed, used, or maintained within the proposed permit area. The description shall include a map, appropriate cross-sections, and the following:

(a) Specifications for each road width, road gradient, road surface, road cut, fill embankment, culvert, bridge, drainage ditch, and drainage structure.

(b) A report of appropriate geotechnical analysis, where approval of the cabinet is required for alternative specifications or for steep cut slopes under 405 KAR 18:230.

(c) A description of each measure to be taken to obtain approval of the cabinet for alteration or relocation of a natural drainage way under 405 KAR 18:230.

(d) A description of measures, other than use of a rock headwall, to be taken to protect the inlet end of a ditch relief culvert, for approval by the cabinet under 405 KAR 18:230.

(2) Each plan shall contain a general description of each road, conveyor, or rail system to be constructed, used, or maintained within the proposed permit area.

Section 30. MRP; Protection of Public Parks and Historic Places.

(1) For any publicly-owned parks or any places listed on the National Register of Historic Places that may be adversely affected by the proposed operations, each plan shall describe the measures to be used to prevent adverse impact; or, if valid existing rights exist or joint agency approval is to be obtained under 405 KAR 24:040, Section 2(4), to minimize adverse impacts.

(2) The cabinet may require the applicant to protect historic or archaeological properties listed or eligible for listing on the National Register of Historic Places through appropriate mitigation and treatment measures. These measures need not be completed prior to permit issuance, but shall be completed before the properties are affected by underground mining activities.

Section 31. MRP; Relocation or Use of Public Roads. Each application shall describe, with appropriate maps and drawings the measures to be used to ensure that the interests of the public and landowners affected are protected if, under 405 KAR 24:040, Section 2(6), the applicant seeks to have the cabinet approve:

(1) Conducting the proposed underground mining activities within 100 feet of the right-of-way line of any public road, except where mine access or haul roads join that right-of-way; or

(2) Relocating a public road.

Section 32. MRP; Protection of Hydrologic Balance. (1) Each application shall contain a description, as set forth in this subsection, of the measures to be taken to minimize disturbances to the hydrologic balance within the permit area and adjacent area and to prevent material damage to the hydrologic balance outside the permit area.

(a) The description shall be based upon the baseline geologic, hydrologic, and other information required by Sections 12 through 16 of this administrative regulation and other appropriate information, shall be specific to local hydrologic conditions, and shall be prepared in a manner and detail acceptable to the cabinet.

(b) The description shall identify the protective measures to be taken to enable the operation to meet, at a minimum, each of the hydrologic requirements referenced in this paragraph, or shall demonstrate to the satisfaction of the cabinet that protective measures are not necessary for the operation to meet the requirements:

1. Meet applicable water quality statutes, administrative regulations, standards, and effluent limitations as required by 405 KAR 18:060, Section 1(3);

2. Avoid acid or toxic drainage as required by 405 KAR 18:060, Sections 4, 5, and 6;

3. Control the discharge of sediment to streams located outside the permit area as required by 405 KAR 18:060, Section 2; ~~and~~

4. Control the drainage and discharge of water within the permit area as required by 405 KAR 18:060, Sections 1(4), 3, 8 and 9, and 405 KAR 18:080; ~~and~~

5. Protect or replace the water supply of present users as required by 405 KAR 18:060, Section 12.

(c) The cabinet may require that the description include protective measures in addition to those identified under paragraph (b) of this subsection, if the cabinet determines that additional measures are

needed to protect the hydrologic balance in accordance with 405 KAR 18:060.

(2) Each application shall include the design of any necessary protective measures identified under subsection (1) of this section. The design shall be prepared in a manner and detail acceptable to the cabinet including, as appropriate, calculations, maps, drawings, and written explanations as necessary to document the design.

(3) Each application shall include a determination of the probable hydrologic consequences of the mining and reclamation operations for the permit area and adjacent area.

(a) The determination shall be based upon the baseline geologic, hydrologic, and other information required by Sections 12 through 16 of this administrative regulation and other appropriate information, and may include information statistically representative of the site.

(b) The determination shall be completed according to the parameters and in the detail required by the cabinet to enable the cabinet to prepare a cumulative impact assessment, and shall take into account the anticipated effects of protective measures required by this chapter.

(c) For surface water systems, the determination shall, at a minimum, include probable impacts on:

1. Peak discharge rates, emphasizing the potential for flooding;

2. Settleable solids at peak discharge;

3. Low-flow discharge rates, emphasizing the potential for water supply diminution;

4. Suspended solids at low flow;

5. pH, at low flow, emphasizing the potential for acid drainage conditions, including depressed levels of alkalinity and elevated levels of iron, manganese, acidity, sulfate, and total dissolved solids or specific conductance, which are generally associated with acid drainage conditions.

(d) For groundwater systems, the determination shall, at a minimum, include probable impacts on:

1. Water quantity, emphasizing water levels and the potential for water supply diminution for existing users, and dewatering of aquifers which are not currently being used for water supply but have the potential to be developed as a water supply source.

2. pH, emphasizing the potential for acid drainage conditions, including depressed levels of alkalinity and elevated levels of iron, manganese, acidity, sulfate, and total dissolved solids or specific conductance, which are generally associated with acid drainage conditions.

(e) The determination shall include a finding on whether the proposed underground mining activities conducted after July 16, 1994 may proximately result in contamination, diminution or interruption of an underground or surface source of water within the permit area or adjacent areas that is used for domestic, agricultural, industrial or other legitimate use [within the permit area or adjacent areas] at the time the application is submitted.

(f) An application for a major revision to a permit shall be reviewed by the cabinet to determine whether a new or updated determination of the probable hydrologic consequences shall be required.

(4)(a) The application shall include a plan for the collection, recording, and reporting of groundwater and surface water quantity and quality data to monitor the effects of the mining and reclamation operations on the hydrologic balance, according to 405 KAR 18:110.

(b) The monitoring plan shall be based on the geologic and hydrologic baseline information, the mining and reclamation plan, and the determination of probable hydrologic consequences; and shall:

1. Identify the quantity and quality parameters to be monitored, sampling frequency, and monitoring site locations; and

2. Describe how the data may be used to determine the impacts of the operation on the hydrologic balance.

(5) An application for a major revision to a permit shall be reviewed by the cabinet to determine whether a new or updated cumulative hydrologic impact assessment shall be made.

Section 33. MRP; Diversions. Each application shall contain descriptions, including maps and cross-sections, of stream channel diversions and other diversions to be constructed within the proposed permit area to achieve compliance with 405 KAR 18:080.

Section 34. MRP; Impoundments and Embankments. (1) General. Each application shall include detailed design plans for each proposed sedimentation pond, water impoundment, and coal mine [processing] waste bank, dam, or embankment within the proposed permit area. Each design plan shall:

- (a) Be prepared by, or under the direction of, and certified by, a qualified registered professional engineer;
- (b) Contain a description, map, and appropriate cross-sections and drawings of the structure and its location;
- (c) Contain all hydrologic and geologic information and computations necessary to demonstrate compliance with the design and performance standards of 405 KAR Chapter 18; and all information utilized by the applicant to determine the probable hydrologic consequences of the mining operation under Section 32(3) of this administrative regulation;
- (d) Contain an assessment of the potential effect on the structure from subsidence of the subsurface strata resulting from past underground mining operations if underground mining has occurred;
- (e) Include any geotechnical investigation, design, and construction requirements for the structure;
- (f) Describe the operation and maintenance requirements for each structure; and
- (g) Describe the timetable and plans to remove each structure, if appropriate.

(2) Sedimentation ponds.

~~[(a)]~~ Sedimentation ponds, whether temporary or permanent, shall be designed in compliance with the requirements of 405 KAR 18:090 and 18:100. ~~[Any sedimentation pond or earthen structure which will remain on the proposed permit area as a permanent water impoundment shall also be designed to comply with the requirements of 405 KAR 18:100.]~~

~~(b) Each plan shall, at a minimum, comply with the requirements of MSHA, 30 CFR 77.216-1 and 77.216-2.]~~

(3) Permanent and temporary impoundments. Permanent and temporary impoundments shall be designed to comply with the requirements of 405 KAR 18:100. Each plan for an impoundment meeting the size or other criteria of MSHA, 30 CFR 77.216(a), shall comply with the requirements of [MSHA,] 30 CFR 77.216-1 and 77.216-2. The plan required to be submitted to the District Manager of MSHA under 30 CFR 77.216 shall be submitted to the cabinet as part of the permit application. After the plan has been approved by MSHA, the applicant shall submit to the cabinet a copy of the final approved plan, a copy of all correspondence from MSHA regarding the plan, a copy of any technical support documents requested by MSHA during its review, and a notarized statement by the applicant that the copy submitted to the cabinet is a complete and correct copy of the final plan approved by MSHA.

(4) Coal mine [processing] waste banks. Coal mine [processing] waste banks shall be designed to comply with the requirements of 405 KAR 18:140.

(5) Coal mine [processing] waste dams and embankments. Coal mine [processing] waste dams and embankments shall be designed to comply with the requirements of 405 KAR 18:100 and 18:160. The plan for an impounding structure that is required to be submitted to the District Manager of MSHA under 30 CFR 77.216 shall be submitted to the cabinet as part of the permit application. After the plan has been approved by MSHA, the applicant shall submit to the cabinet a copy of the final approved plan, a copy of all correspondence from MSHA regarding the plan, a copy of any technical support documents requested by MSHA during its review, and a notarized statement by the applicant that the copy submitted to the cabinet is a complete and correct copy of the final plan approved by MSHA.

Each plan shall comply with the requirements of MSHA, 30 CFR 77.216-1 and 77.216-2, and shall contain the results of a geotechnical investigation of the proposed dam or embankment foundation area, to determine the structural competence of the foundation which will support the proposed dam or embankment structure and the impounded material. The geotechnical investigation shall be planned and supervised by an engineer or engineering geologist, according to the following:

(a) The number, location, and depth of borings and test pits shall be determined using current prudent engineering practice for the size of the dam or embankment, quantity of material to be impounded, and subsurface conditions.

(b) The character of the overburden and bedrock, the proposed abutment sites, and any adverse geotechnical conditions which may affect the particular dam, embankment, or reservoir site shall be considered.

(c) All springs, seepage, and groundwater flow observed or anticipated during wet periods in the area of the proposed dam or embankment shall be identified on each plan.

(d) Consideration shall be given to the possibility of mud flows, rock-debris falls, or other landslides into the dam, embankment, or impounded material.

(6) If the structure is Class B-moderate hazard or Class C-high hazard under 405 KAR 7:040, Section 5, and 401 KAR 4:030, or if the structure meets the size or other criteria of MSHA, 30 CFR 77.216(a), [to be twenty (20) feet or higher or is to impound more than twenty (20) acre-feet,] each plan under subsections (2), (3), and (5) of this section shall include a stability analysis of the [each] structure. The stability analysis shall include[~~;~~ but not be limited to,] strength parameters, pore pressures, and long-term seepage conditions. The plan shall also contain a description of each engineering design assumption and calculation with a discussion of each alternative considered in selecting the specific design parameters and construction methods.

Section 35. MRP; Air Pollution Control. For all surface operations associated with underground mining activities, the application shall contain an air pollution control plan which includes the following:

(1) An air quality monitoring program, if required by the cabinet, to provide sufficient data to evaluate the effectiveness of the fugitive dust control practices, under subsection (2) of this section to comply with applicable federal and state air quality standards; and

(2) A plan for fugitive dust control practices, as required under 405 KAR 18:170.

Section 36. MRP; Fish and Wildlife Protection and Enhancement.

(1) Each application shall include a description of how, to the extent possible using the best technology currently available, the permittee will minimize disturbances and adverse impacts on fish and wildlife and related environmental values, including compliance with the Endangered Species Act, during the surface coal mining and reclamation operations, and how enhancement of these resources will be achieved where practicable.

(2) This description shall:

(a) Apply, at a minimum, to species and habitats identified under Section 20 of this administrative regulation;

(b) Include protective measures that will be used during the active mining phase of operation. Protective measures may include the establishment of buffer zones, the selective location and special design of haul roads and powerlines, and the monitoring of surface water quality and quantity; and

(c) Include enhancement measures that will be used during the reclamation and postmining phase of operation to develop aquatic and terrestrial habitat. Enhancement measures may include restoration of streams and other wetlands, retention of ponds and impoundments, establishment of vegetation for wildlife food and cover, and the replacement of perches and nest boxes. If the plan does not include

enhancement measures, a statement shall be given explaining why enhancement is not practicable.

(3) Upon request, the cabinet shall provide the protection and enhancement plan required under this section to the U.S. Department of the Interior, Fish and Wildlife Service regional or field office for their review. This information shall be provided within ten (10) days of receipt of the request from the Service.

(4)(a) A fish and wildlife protection and enhancement plan shall be required for amendments and revisions that:

1. Propose extension into a wetland;

2. Propose significant disturbance in a new watershed in which the area of surface operations and facilities or adjacent area, or areas subject to probable impacts from underground workings, including areas of probable subsidence, include an important stream;

3. Seek to obtain a stream buffer zone variance under 405 KAR 18:060, Section 11, or seek to modify an existing stream buffer zone variance;

4. Propose extension of the permit boundary that involves a new surface disturbance of five (5) acres or more;

5. Involve new areas of surface operations and facilities or adjacent areas, or areas subject to probable impacts from underground workings, including areas of probable subsidence, likely to contain, or that could reasonably be expected to contain, a state or federal endangered or threatened species or its critical habitat; or

6. Propose extension of the coal extraction area associated with an underground mine that may by subsidence or other means impact a wetland, important stream, or stream that contains, or could reasonably be expected to contain, a state or federal endangered or threatened species or its critical habitat.

(b) For other amendments and revisions, a determination of whether a protection and enhancement plan is necessary shall be made on a case-by-case basis.

(5) This section shall apply to applications for permits, amendments and revisions submitted to the cabinet on or after November 17, 1992.

Section 37. MRP; Postmining Land Use. (1) Each plan shall contain a description of the proposed land use or uses following reclamation of the land to be affected within the proposed permit area by surface operations and facilities, including:

(a) A discussion of the utility and capacity of the reclaimed land to support a variety of alternative uses, and the relationship of the proposed use to existing land use policies and plans;

(b) A discussion of how the proposed postmining land use is to be achieved and the necessary support activities which may be needed to achieve the proposed land use, including ~~[but not necessarily limited to]~~ management practices to be conducted during the liability period for the commercial forest land, cropland (including hayland), and pastureland land uses;

(c) If a land use different from the premining land use is proposed, all supporting documentation required for approval of the proposed alternative use under 405 KAR 18:220;

(d) A discussion of The consideration which has been given to making all of the proposed underground mining activities consistent with surface owner plans and applicable state and local land use plans and programs;

(e) A copy of the comments concerning the proposed use from the legal or equitable owner of record of the area to be affected by surface operations and facilities and the state and local government agencies, if any, which would have to initiate, implement, approve, or authorize the proposed use of the land following reclamation.

(2) Approval of the initial postmining land use plan pursuant to this section shall not preclude subsequent consideration and approval of a revised postmining land use plan in accordance with the applicable requirements of 405 KAR Chapters 7 through 24.

Section 38. MRP; Blasting. (1) Each application shall contain a

blasting plan for the proposed permit area explaining how the applicant intends to comply with the requirements of 405 KAR 18:120. This plan shall include, at a minimum, information setting forth the limitations the permittee will meet with regard to ground vibration and airblast, the bases for the ground vibration and airblast limitations, and the methods to be applied in controlling the adverse effects of blasting operations.

(2) Each application shall contain a description of the systems to be used to monitor compliance with the standards for ground vibration and airblast including the types, capabilities, and sensitivities of blast monitoring equipment and identification of the monitoring procedures and locations.

(3) Blasting operations within 500 feet of active underground mines require approval of the cabinet, MSHA, and the Kentucky Department of Mines and Minerals.

Section 39. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Standard Methods for the Examination of Water and Wastewater", (14th Edition, 1975), American Public Health Association, American Water Works Association, and Water Pollution Control Federation;

(b) "Corps of Engineers Wetlands Delineation Manual", (January, 1987 Edition), U. S. Army Corps of Engineers;

(c) "U. S. Army Corps of Engineers Regulatory Guidance Letter No. 90-7", (September 26, 1990), U. S. Army Corps of Engineers;

(d) "National Lists of Plant Species that Occur in Wetlands and Biological Reports and Summary", (May, 1988 Edition), Fish and Wildlife Service, U. S. Department of the Interior; and

(e) "List of Hydric Soils of the United States, All Kentucky Counties", (December, 1991 Edition), Soil Conservation Service, U. S. Department of Agriculture;

(2) This material may be inspected, copied, or obtained at the Department for Surface Mining Reclamation and Enforcement, #2 Hudson Hollow, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

JAMES E. BICKFORD, Secretary

GLENNA JO CURRY, General Counsel

APPROVED BY AGENCY: November 14, 1997

FILED WITH LRC: November 14, 1997 at noon

**NATURAL RESOURCES AND
ENVIRONMENTAL PROTECTION CABINET
Department for Surface Mining
Reclamation and Enforcement
(As Amended at ARRS, May 11, 1998)**

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

RELATES TO: KRS Chapter 350, 7 CFR Part 657, 30 CFR Parts 700.5, 701.5, 707.5, 730-733, 735, 761.5, 762.5, 773.5, 800.5, 843.5, 917c 30 USC 1253, 1255, 1291

STATUTORY AUTHORITY: KRS ~~[Chapter 13A]~~ 350.028(1), (5), 350.465c 30 CFR Parts ~~[700.5, 701.5, 707.5]~~ 730-733, 735, ~~[761.5, 762.5, 773.5, 800.5, 843.5]~~ 917, 30 USC 1253, 1255, ~~[+291]~~

NECESSITY, FUNCTION, AND CONFORMITY: KRS 350.028(1), (5) and 350.465(2) authorize the cabinet to promulgate administrative regulations relating to surface and underground coal mining operations. This administrative regulation defines terms used in 405 KAR Chapter 16. ~~[KRS 350.028(1) requires the cabinet to promulgate administrative regulations pertaining to surface coal mining operations including strip mining and the surface effects of underground mining to accomplish the purposes of KRS Chapter 350. This administrative regulation defines terms used in 405 KAR Chapter~~

16. KRS 350.028(5), 350.151(1), and 350.465(2), (5) authorize and direct the cabinet to promulgate administrative regulations for surface and underground coal mining operations for the purpose of accepting and administering primary enforcement responsibilities under the permanent regulatory program pursuant to PL 95-87, the federal Surface Mining Control and Reclamation Act of 1977; and direct that the cabinet's administrative regulations be consistent with, and not more stringent than required by, that Act. PL 95-87 does not require Kentucky to comply with its provisions, but in order to retain primary enforcement responsibility under that Act the cabinet's administrative regulations must be consistent with federal regulations promulgated pursuant to that Act. This definitions affected in this amendment are the same as the corresponding federal definitions, except as follows:

1. The federal definition of "other treatment facilities" refers to compliance with "applicable state and federal water quality standards," whereas that definition in this amendment refers to compliance with 405 KAR 16:070. 405 KAR 16:070 is the administrative regulation relating to water quality standards and effluent limitations, and it contains the appropriate reference to "all applicable federal and state water quality standards".

2. The federal definition of "replacement of water supply" is not included in this amendment. Because the federal definition contains substantive requirements, the cabinet promulgated the provisions of the federal definition as substantive requirements in 405 KAR 16:060, Section 8, and 405 KAR 18:060, Section 12.] [KRS Chapter 350 in pertinent part requires the cabinet to promulgate rules and administrative regulations pertaining to surface coal mining and reclamation operations under the permanent regulatory program. This administrative regulation provides for the defining of certain essential terms used in 405 KAR Chapter 16.]

Section 1. Definitions. (1) "Acid drainage" means water with a pH of less than six (6.0) and in which total acidity exceeds total alkalinity, discharged from an active, inactive, or abandoned surface coal mine and reclamation operation or from an area affected by surface coal mining and reclamation operations.

(2) "Acid-forming materials" means earth materials that contain sulfide minerals or other materials which, if exposed to air, water, or weathering processes, form acids that may create acid drainage.

(3) "Acquisition" means purchase, lease, or option of the land for the purpose of conducting or allowing through resale, lease, or option, the conduct of surface coal mining and reclamation operations.

(4) "Adjacent area" means land located outside the affected area or permit area, depending on the context in which "adjacent area" is used, where air, surface or groundwater, fish, wildlife, vegetation or other resources protected by KRS Chapter 350 may be adversely impacted by surface coal mining and reclamation operations.

(5) "Affected area" means any land or water area which is used to facilitate, or is physically altered by, surface coal mining and reclamation operations. The affected area includes the disturbed area; any area upon which surface coal mining and reclamation operations are conducted; any adjacent lands the use of which is incidental to surface coal mining and reclamation operations; all areas covered by new or existing roads used to gain access to, or for hauling coal to or from, surface coal mining and reclamation operations, except as provided in this definition; any area covered by surface excavations, workings, impoundments, dams, ventilation shafts, entryways, refuse banks, dumps, stockpiles, overburden piles, spoil banks, culm banks, tailings, holes or depressions, repair areas, storage areas, shipping areas; any areas upon which are sited structures, facilities, or other property or material on the surface resulting from, or incident to, surface coal mining and reclamation operations; and the area located above underground workings associated with underground mining activities, auger mining, or in situ mining. The affected area shall include every road used for the purposes of access to, or for hauling coal to or from, surface coal mining and reclamation operations,

unless the road:

(a) Was designated as a public road pursuant to the laws of the jurisdiction in which it is located;

(b) Is maintained with public funds, and constructed in a manner similar to other public roads of the same classification within the jurisdiction; and

(c) There is substantial (more than incidental) public use.

(6) "Applicant" means any person(s) seeking a permit, permit revision, permit amendment, permit renewal, or transfer, assignment, or sale of permit rights from the cabinet to conduct surface coal mining and reclamation operations or approval to conduct coal exploration operations pursuant to KRS Chapter 350 and all applicable administrative regulations.

(7) "Application" means the documents and other information filed with the cabinet seeking issuance of permits; revisions; amendments; renewals; and transfer, assignment or sale of permit rights for surface coal mining and reclamation operations or, if required, seeking approval for coal exploration.

(8) "Approximate original contour" is defined in KRS 350.010.

(9) "Aquifer" means a zone, stratum, or group of strata that can store and transmit water in sufficient quantities for domestic, agricultural, industrial, or other beneficial use.

(10) "Auger mining" means a method of mining coal at a cliff or highwall by drilling holes into an exposed coal seam from the highwall and transporting the coal along an auger bit to the surface and shall also include all other methods of mining in which coal is extracted from beneath the overburden by mechanical devices located at the face of the cliff or highwall and extending laterally into the coal seam, such as extended depth, secondary recovery systems.

(11) "Best technology currently available" means equipment, devices, systems, methods, or techniques which will prevent, to the extent possible, additional contributions of suspended solids to stream flow or runoff outside the permit area and minimize, to the extent possible, disturbances and adverse impacts on fish, wildlife, and related environmental values, and achieve enhancement of those resources where practicable. The term includes equipment, devices, systems, methods, or techniques which are currently available anywhere as determined by the cabinet, even if they are not in routine use. The term includes, but is not limited to, construction practices, siting requirements, vegetative selection and planting requirements, animal stocking requirements, scheduling of activities and design of sedimentation ponds in accordance with 405 KAR Chapters 16 and 18. The cabinet shall have the discretion to determine the best technology currently available on a case-by-case basis, as authorized by KRS Chapter 350 and 405 KAR Chapters 7 through 24.

(12) "Blaster" means a person who is directly responsible for surface blasting operations in surface coal mining and reclamation operations or coal exploration operations.

(13) "Bond pool" or "Kentucky Bond Pool" means the voluntary alternative bonding program established at KRS 350.700 through 350.755.

(14) "Cabinet" is defined in KRS 350.010.

(15) "CFR" means Code of Federal Regulations.

(16) "Coal" means combustible carbonaceous rock, classified as anthracite, bituminous, subbituminous, or lignite by ASTM Standard D 388-77.

(17) "Coal exploration" means the field gathering of:

(a) Surface or subsurface geologic, physical, or chemical data by mapping, trenching, drilling, geophysical, or other techniques necessary to determine the quality and quantity of overburden and coal of an area; or

(b) Environmental data to establish the conditions of an area before beginning surface coal mining and reclamation operations under the requirements of 405 KAR Chapters 7 through 24 if the activity may cause any disturbance of the land surface or may cause any appreciable effect upon land, air, water, or other environmental resources.

(18) "Coal mine waste" means coal processing waste and underground development waste.

(19) "Coal processing waste" means materials which are separated from the product coal during the cleaning, concentrating, or other processing or preparation of coal.

(20) "Collateral bond" means an indemnity agreement in a sum certain payable to the cabinet executed by the permittee and which is supported by the deposit with the cabinet of cash, negotiable certificates of deposit, or an irrevocable letter of credit of any bank organized and authorized to transact business in the United States.

(21) "Combustible material" means organic material that is capable of burning, either by fire or through oxidation, accompanied by the evolution of heat and a significant temperature rise.

(22) "Compaction" means increasing the density of a material by reducing the voids between the particles by mechanical effort.

(23) "Cropland" means land used for the production of adapted crops for harvest, alone or in a rotation with grasses and legumes, and includes row crops, small grain crops, hay crops, nursery crops, orchard crops, and other similar specialty crops.

(24) "Cumulative impact area" means the area, including the permit area, within which impacts resulting from the proposed operation may interact with the impacts of all anticipated mining on surface and groundwater systems. Anticipated mining shall include, at a minimum, the entire projected lives through bond release of:

(a) The proposed operation;

(b) All existing operations;

(c) Any operation for which a permit application has been submitted to the cabinet; and

(d) All operations required to meet diligent development requirements for leased federal coal for which there is actual mine development information available.

(25) "Day" means calendar day unless otherwise specified to be a working day.

(26) "dB" means decibels.

(27) "Department" means the Department for Surface Mining Reclamation and Enforcement.

(28) "Developed water resources land" means land used for storing water for beneficial uses such as stockponds, irrigation, fire protection, flood control, and water supply.

(29) "Disturbed area" means an area where vegetation, topsoil, or overburden is removed or upon which topsoil, spoil, coal processing waste, underground development waste, or noncoal waste is placed by surface coal mining operations. Those areas are classified as "disturbed" until reclamation is complete and the performance bond or other assurance of performance required by 405 KAR Chapter 10 is released.

(30) "Diversion" means a channel, embankment, or other manmade structure constructed to divert water from one (1) area to another.

(31) "Downslope" means the land surface below the projected outcrop of the lowest coalbed being mined along each highwall.

(32) **"Durable rock" means rock that:**

(a) Does not slake in water;

(b) Is not reasonably expected to degrade to a size or condition that will block, cause failure of, impair, or restrict the effectiveness of the internal drainage system; and

(c) Has been demonstrated to have a slake durability index value of ninety (90) or greater as determined by:

1. The "Method of Determination of Slake Durability Index (Kentucky Method 64-513-79)"; or

2. A test method that yields an equivalent measure of durability based upon correlation of results with Kentucky Method 64-513-79. ["Durable rock" means rock that does not slake in water and that is not reasonably expected to degrade to such a size or condition as to block, cause failure of, or otherwise impair or restrict the effectiveness of the internal drainage system. The cabinet shall consider rock to be durable if it is demonstrated, to the satisfac-

tion of the cabinet in the application, that the rock has an SDI value of ninety (90) or greater as determined by the Kentucky Department of Transportation "Method for Determination of Slake Durability Index" (Kentucky Method 64-513-79), incorporated herein by reference. This document may be obtained from the Kentucky Transportation Cabinet, Division of Materials, Wilkinson Blvd., Frankfort, Kentucky 40601; or the Kentucky Transportation Cabinet, Division of Management Services, State Office Building, Frankfort, Kentucky 40601. It may be reviewed, copied, or obtained at the Department for Surface Mining Reclamation and Enforcement, #2 Hudson Hollow, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m. The cabinet may accept other test methods of demonstrating that rock is durable if it is demonstrated to the satisfaction of the cabinet that the alternative test methods yield equivalent measure of durability based upon correlation of results with Kentucky Method 64-513-79.]

(33) "Embankment" means a manmade deposit of material that is raised above the natural surface of the land and used to contain, divert, or store water; to support roads or railways; or for other similar purposes.

(34) "Ephemeral stream" means a stream which flows only in direct response to precipitation in the immediate watershed or in response to the melting of a cover of snow and ice, and which has a channel bottom that is always above the local water table.

(35) "Excess spoil" means spoil disposed of in a location other than the coal extraction area, except that spoil material used to achieve the approximate original contour shall not be considered excess spoil.

(36) "Fish and wildlife land use", as used in 405 KAR 16:210 and in similar situations when referring to a premining or postmining land use, means land dedicated wholly or partially to the production, protection, or management of fish or wildlife. Areas considered as having the fish and wildlife land use are typically characterized by a diversity of habitats in which use by wildlife is the dominant characteristic, whether actively managed or not.

(37) "Forest land" means land used or managed for the long term production of wood, wood fiber, or wood derived products.

(38) "Fugitive dust" means that particulate matter which becomes airborne due to wind erosion from exposed surfaces.

(39) "Ground cover" means the area of ground covered by the combined aerial parts of vegetation and litter produced and distributed naturally and seasonally on site, expressed as a percentage of the total area of measurement.

(40) "Groundwater" means subsurface water that fills available openings in rock or soil materials to the extent that they are considered water saturated.

(41) "Growing season" means the period during a one (1) year cycle, from the last killing frost in the spring to the first killing frost in the fall, in which climatic conditions are favorable for plant growth. In Kentucky, this period normally extends from mid-April to mid-October.

(42) "Head-of-hollow fill" means a fill structure consisting of any material, other than coal processing waste and organic material, placed in the uppermost reaches of a hollow near the approximate elevation of the ridgeline, where there is no significant natural drainage area above the fill, and where the side slopes of the existing hollow measured at the steepest point are greater than twenty (20) degrees or the average slope of the profile of the hollow from the toe of the fill to the top of the fill is greater than ten (10) degrees.

(43) "Higher or better uses" means postmining land uses that have a higher economic value or nonmonetary benefit to the landowner or the community than the premining land uses.

(44) "Highwall" means the face of exposed overburden and coal in an open cut of a surface mining activity or for entry to underground mining activities.

(45) "Highwall remnant" means that portion of highwall that remains after backfilling and grading of a remining permit area.

(46) **"Historically used for cropland" means land that:**

(a) Has been used for cropland for any of five (5) years or

more of the ten (10) years immediately preceding the:

1. Application; or

2. Acquisition of the land for the purpose of conducting a surface coal mining and reclamation operation;

(b) Would likely have been used for cropland for any five (5) of the ten (10) years immediately preceding the acquisition or application, but for some fact of ownership or control of the land unrelated to the productivity of the land;

(c) Falls outside the five (5) of ten (10) years criteria, but the cabinet determines is clearly cropland on the basis of additional cropland history of:

1. Surrounding land; and

2. The land under consideration. [~~"Historically used for cropland."~~]

(a) "~~Historically used for cropland~~" means that lands have been used for cropland for any five (5) years or more out of the ten (10) years immediately preceding:

1. The application; or

2. The acquisition of the land for the purpose of conducting surface coal mining and reclamation operations:

(b) Lands meeting either paragraph (a) 1 or 2 of this subsection shall be considered "~~historically used for cropland.~~"

(c) In addition to the lands covered by paragraph (a) of this subsection, other lands shall be considered "~~historically used for cropland~~" as described below:

1. Lands that would likely have been used as cropland for any five (5) out of the last ten (10) years immediately preceding the acquisition or the application but for some fact of ownership or control of the land unrelated to the productivity of the land; and

2. Lands that the cabinet determines, on the basis of additional cropland history of the surrounding lands and the lands under consideration, are clearly cropland but fall outside the specific five (5) years in ten (10) criterion:

(d) Acquisition includes purchase, lease, or option of the land for the purpose of conducting or allowing through resale, lease or option, the conduct of surface coal mining and reclamation operations.]

(47) "Hydrologic balance" means the relationship between the quality and quantity of water inflow to, water outflow from, and water storage in a hydrologic unit such as a drainage basin, aquifer, soil zone, lake, or reservoir. It encompasses the dynamic relationship between precipitation, runoff, evaporation, and changes in ground and surface water storage.

(48) "Hz" means hertz.

(49) "Imminent danger to the health and safety of the public" means the existence of any condition or practice, or any violation of a permit or other requirements of KRS Chapter 350 in a surface coal mining and reclamation operation, which could reasonably be expected to cause substantial physical harm to persons outside the permit area before the condition, practice, or violation can be abated. A reasonable expectation of death or serious injury before abatement exists if a rational person, subjected to the same condition or practice giving rise to the peril, would avoid exposure to the danger during the time necessary for abatement.

(50) "Impounding structure" means a dam, embankment or other structure used to impound water, slurry, or other liquid or semiliquid material.

(51) "Impoundment" means a water, sediment, slurry or other liquid or semiliquid holding structure or depression, either naturally formed or artificially built, [closed basin, naturally formed or artificially built, which is dammed or excavated for the retention of water, sediment, or waste.]

(52) [(50)] "Industrial/commercial lands" means lands used for:

(a) Extraction or transformation of materials for fabrication of products, wholesaling of products, or long-term storage of products, and heavy and light manufacturing facilities.

(b) Retail or trade of goods or services, including hotels, motels, stores, restaurants, and other commercial establishments.

(53) [(51)] "In situ process" means:

(a) In situ gasification;

(b) In situ leaching;

(c) Slurry mining;

(d) Solution mining;

(e) Borehole mining;

(f) Fluid recovery mining; or

(g) Another activity conducted on the surface or underground

in connection with:

1. In-place distillation;

2. Retorting;

3. Leaching; or

4. Chemical or physical processing of coal. [~~"In situ processes"~~

means activities conducted on the surface or underground in connection with in-place distillation, retorting, leaching, or other chemical or physical processing of coal. The term includes, but is not limited to, in situ gasification, in situ leaching, slurry mining, solution mining, borehole mining, and fluid recovery mining.]

(54) [(52)] "Intermittent stream" means:

(a) A stream or reach of stream that drains a watershed of one (1) square mile or more but does not flow continuously during the calendar year; or

(b) A stream or reach of a stream that is below the local water table for at least some part of the year, and obtains its flow from both surface runoff and groundwater discharge.

(55) [(53)] "KAR" means Kentucky administrative regulations.

(56) [(54)] "KPDES" means Kentucky Pollutant Discharge Elimination System.

(57) [(55)] "KRS" means Kentucky Revised Statutes.

(58) [(56)] "Land use" means specific functions, uses, or management-related activities of an area, and may be identified in combination when joint or seasonal uses occur and may include land used for support facilities that are an integral part of the use. In some instances, a specific use can be identified without active management.

(59) [(57)] "Modified highwall" means either:

(a) The highwall resulting from remining where the preexisting highwall face is removed; or

(b) The highwall resulting from remining where the preexisting highwall is vertically enlarged.

(60) [(58)] "Monitoring" means the collection of environmental data by either continuous or periodic sampling methods.

(61) [(59)] "MRP" means mining and reclamation plan.

(62) [(60)] "MSHA" means Mine Safety and Health Administration.

(63) [(61)] "Mulch" means vegetation residues or other suitable materials that aid in soil stabilization and soil moisture conservation, thus providing microclimatic conditions suitable for germination and growth.

(64) [(62)] "Notice of noncompliance and order for remedial measures" means a written document and order prepared by an authorized representative of the cabinet which sets forth with specificity the violations of KRS Chapter 350, 405 KAR Chapters 7 through 24, or permit conditions which the authorized representative of the cabinet determines to have occurred based upon his inspection, and the necessary remedial actions, if any, and the time schedule for completion thereof, which the authorized representative deems necessary and appropriate to correct the violations.

[(64)] [(63)] "~~Noxious plants~~" means ~~species classified under Kentucky law as noxious plants.~~

(65) [(64)] "Operations" is defined in KRS 350.010.

(66) [(65)] "Operator" is defined in KRS 350.010.

(67) [(66)] "Order for cessation and immediate compliance" means a written document and order issued by an authorized representative of the cabinet when:

(a) A person to whom a notice of noncompliance and order for remedial measures was issued has failed, as determined by a cabinet inspection, to comply with the terms of the notice of noncompliance

and order for remedial measures within the time limits set therein, or as subsequently extended; or

(b) The authorized representative finds, on the basis of a cabinet inspection, any condition or practice or any violation of KRS Chapter 350, 405 KAR Chapters 7 through 24, or any condition of a permit or exploration approval which:

1. Creates an imminent danger to the health or safety of the public; or

2. Is causing or can reasonably be expected to cause significant, imminent environmental harm to land, air or water resources.

(68) [(67)] "OSM" means Office of Surface Mining Reclamation and Enforcement, United States Department of the Interior.

(69) "Other treatment facilities" means any chemical treatments, such as flocculation or neutralization, or mechanical structures, such as clarifiers or precipitators, that have a point source discharge and are utilized:

(a) To prevent additional contributions of dissolved or suspended solids to streamflow or runoff outside the permit area; or

(b) To comply with 405 KAR 16:070.

(70) [(68)] "Outslope" means the face of the spoil or embankment sloping downward from the highest elevation to the toe.

(71) [(69)] "Overburden" is defined in KRS 350.010.

(72) [(70)] "Pastureland" means land used primarily for the long-term production of adapted, domesticated forage plants to be grazed by livestock or occasionally cut and cured for livestock feed.

(73) [(71)] "Perennial stream" means a stream or that part of a stream that flows continuously during all of the calendar year as a result of groundwater discharge or surface runoff. The term does not include "intermittent stream" or "ephemeral stream."

(74) [(72)] "Performance bond" means a surety bond, a collateral bond, or a combination thereof, or bonds filed pursuant to the provisions of the Kentucky Bond Pool Program (405 KAR 10:200, KRS 350.595, and KRS 350.700 through 350.755), by which a permittee assures faithful performance of all the requirements of KRS Chapter 350, 405 KAR Chapters 7 through 24, and the requirements of the permit and reclamation plan.

(75) [(73)] "Permanent diversion" means a diversion remaining after surface coal mining and reclamation operations are completed which has been approved for retention by the cabinet and other appropriate Kentucky and federal agencies.

(76) [(74)] "Permit" means written approval issued by the cabinet to conduct surface coal mining and reclamation operations.

(77) [(75)] "Permit area" means the area of land and water within boundaries designated in the approved permit application, which shall include, at a minimum, all areas which are or will be affected by surface coal mining and reclamation operations under that permit.

(78) [(76)] "Permittee" means an operator or a person holding or required by KRS Chapter 350 or 405 KAR Chapters 7 through 24 to hold a permit to conduct surface coal mining and reclamation operations during the permit term and until all reclamation obligations imposed by KRS Chapter 350 and 405 KAR Chapters 7 through 24 are satisfied.

(79) [(77)] "Person" is defined in KRS 350.010.

(80) [(78)] "Precipitation event" means a quantity of water resulting from drizzle, rain, snowmelt, sleet, or hail in a specified period of time.

(81) [(79)] "Previously mined area" means land that was [disturbed or] affected by coal mining operations conducted prior to August 3, 1977, that has not been reclaimed to the standards of this title, and for which there is no continuing responsibility to reclaim to the standards of this title.

(82) [(80)] "Prime farmland" means those lands which are defined by the Secretary of Agriculture in 7 CFR 657 and which have been "historically used for cropland" as that phrase is defined above.

(83) [(81)] "Probable hydrologic consequences" means the projected results of proposed surface coal mining and reclamation

operations which may reasonably be expected to change the quantity or quality of the surface and groundwater; the surface or groundwater flow, timing, and pattern; and the stream channel conditions on the permit area and adjacent areas.

(84) [(82)] "Public building" means any structure that is owned or leased, and principally used by a governmental agency for public business or meetings.

(85) [(83)] "Public road" means any publicly owned thoroughfare for the passage of vehicles.

(86) [(84)] "RAM" means Reclamation Advisory Memorandum.

(87) [(85)] "Reasonably available spoil" means spoil and suitable coal mine waste material generated by the remining operation and other spoil or suitable coal mine waste material located in the permit area that is accessible and available for use and that when rehandled will not cause a hazard to public safety or significant damage to the environment. For this purpose, the permit area shall include all spoil of this nature located in the immediate vicinity of the mining operation.

(88) [(86)] "Recharge capacity" means the ability of the soils and underlying materials to allow precipitation and runoff to infiltrate and reach the zone of saturation.

(89) [(87)] "Reclamation" is defined in KRS 350.010.

(90) [(88)] "Recreation land" means land used for public or private leisure-time use, including developed recreation facilities such as parks, camps, and amusement areas, as well as areas for less intensive uses such as hiking, canoeing, and other undeveloped recreational uses.

(91) [(89)] "Reference area" means a land unit maintained under appropriate management for the purpose of measuring vegetative ground cover, productivity, and plant species diversity that are produced naturally or by crop production methods approved by the cabinet.

(92) [(90)] "Refuse pile" means a surface deposit of coal mine waste that is not retained by an impounding structure and does not impound water, slurry, or other liquid or semiliquid material.

(93) [(91)] "Remining" means conducting surface coal mining and reclamation operations which affect previously mined areas.

(94) [(92)] "Residential land" means tracts employed for single and multiple-family housing, mobile home parks, and other residential lodgings.

(95) [(93)] "Road" means a surface right-of-way for purposes of travel by land vehicles used in coal exploration or surface coal mining and reclamation operations. A road consists of the entire area within the right-of-way, including the roadbed, shoulders, parking and side area, approaches, structures, ditches, surface, and contiguous appendages necessary for the total structure. The term includes access and haul roads constructed, used, reconstructed, improved, or maintained for use in coal exploration or surface coal mining and reclamation operations, including use by coal hauling vehicles leading to transfer, processing, or storage areas. The term does not include pioneer or construction roadways used for part of the road construction procedure and promptly replaced by a road pursuant to 405 KAR Chapters 16 and 18 located in the identical right-of-way as the pioneer or construction roadway. The term also excludes any roadway within the immediate mining pit area.

(96) [(94)] "Safety factor" means the ratio of the available shear strength to the developed shear stress, or the ratio of the sum of the resisting forces to the sum of the loading or driving forces, as determined by accepted engineering practices.

(97) [(95)] "SCS" means Soil Conservation Service.

(98) [(96)] "Sedimentation pond" means a primary sediment control structure:

(a) Designed, constructed, or maintained pursuant to 405 KAR 16:090 or 405 KAR 18:090;

(b) That may include a barrier, dam, or excavated depression to:

1. Slow water runoff; and

2. Allow suspended solids to settle out; and

(c) That shall not include secondary sedimentation control structures, including a straw dike, riprap, check dam, mulch, dugout, or other measure that reduces overland flow velocity, reduces runoff volume, or trap sediment, to the extent that the secondary sedimentation structure drains into a sedimentation pond. ["Sedimentation pond" means a primary sediment control structure designed, constructed, and maintained in accordance with 405 KAR 16:090 or 405 KAR 18:090 and including but not limited to a barrier, dam, or excavated depression which slows down water runoff to allow suspended solids to settle out. A sedimentation pond shall not include secondary sedimentation control structures, such as straw dikes, riprap, check dams, mulches, dugouts, and other measures that reduce overland flow velocity, reduce runoff volume, or trap sediment, to the extent that the secondary sedimentation structures drain to a sedimentation pond.]

(99) [(97)] "Significant, imminent environmental harm" means an adverse impact on land, air, or water resources which resources include[, but are not limited to,] plant and animal life as further defined in this subsection.

(a) An environmental harm is imminent, if a condition, practice, or violation exists which:

1. Is causing environmental harm; or
2. May reasonably be expected to cause environmental harm at any time before the end of the reasonable abatement time that would be set by the cabinet's authorized agents pursuant to the provisions of KRS Chapter 350.

(b) An environmental harm is significant if that harm is appreciable and not immediately repairable.

(100) [(98)] "Slope" means average inclination of a surface, measured from the horizontal, generally expressed as the ratio of a unit of vertical distance to a given number of units of horizontal distance (e.g., 1v:5h). It may also be expressed as a percent or in degrees.

(101) [(99)] "Slurry mining" means the hydraulic breakdown of subsurface coal with drill-hole equipment, and the eduction of the resulting slurry to the surface for processing.

(102) [(100)] "SMCRA" means Surface Mining Control and Reclamation Act of 1977 (PL 95-87), as amended.

(103) [(101)] "Soil horizons" means contrasting layers of soil parallel or nearly parallel to the land surface. Soil horizons are differentiated on the basis of field characteristics and laboratory data. The four (4) master soil horizons are:

(a) "A horizon." The uppermost mineral layer, often called the surface soil. It is the part of the soil in which organic matter is most abundant, and leaching of soluble or suspended particles is typically the greatest.

(b) "E horizon." The layer commonly near the surface below an A horizon and above a B horizon. An E horizon is most commonly differentiated from an overlying A horizon by lighter color and generally has measurably less organic matter than the A horizon. An E horizon is most commonly differentiated from an underlying B horizon in the same sequum by color of higher value or lower chroma, by coarser texture, or by a combination of these properties.

(c) "B horizon." The layer that typically is immediately beneath the E horizon and often called the subsoil. This middle layer commonly contains more clay, iron, or aluminum than the A, E, or C horizons.

(d) "C horizon." The deepest layer of soil profile. It consists of loose material or weathered rock that is relatively unaffected by biologic activity.

(104) [(102)] "Spoil" means overburden and other materials, excluding topsoil, coal mine waste, and mined coal, that are excavated during surface coal mining and reclamation operations.

(105) [(103)] "Stabilize" means to control movement of soil, spoil piles, or areas of disturbed earth by modifying the geometry of the mass, or by otherwise modifying physical or chemical properties, such as by providing a protective surface coating.

(106) [(104)] "Steep slope" means any slope of more than twenty

(20) degrees.

(107) [(105)] "Surety bond" means an indemnity agreement in a sum certain, payable to the cabinet and executed by the permittee, which is supported by the performance guarantee of a corporation licensed to do business as a surety in the Commonwealth of Kentucky.

(108) [(106)] "Surface blasting operations":

(a) Means the on-site storage, transportation, and use of explosives in association with:

1. A coal exploration operation;
2. Surface mining activities; or
3. A surface disturbance of underground mining activities;

and

(b) Includes the following activities:

1. Design of an individual blast;
2. Implementation of a blast design;
3. Initiation of a blast;
4. Monitoring of an airblast and ground vibration; and
5. Use of access control, warning and all-clear signals, and similar protective measures.

["Surface blasting operations" means the on-site storage, transportation, and use of explosives in association with coal exploration operations, surface mining activities, and surface disturbances of underground mining activities. The term shall be interpreted broadly and shall encompass activities including, but not limited to, the design of individual blasts, the implementation of blast designs, the initiation of blasts, the monitoring of airblast and ground vibration, and the use of protective measures such as access control and warning and all-clear signals.]

(109) [(107)] "Surface coal mining and reclamation operations" is defined in KRS 350.010.

(110) [(108)] "Surface coal mining operations" is defined in KRS 350.010.

(111) [(109)] "Surface mining activities" means those surface coal mining and reclamation operations incident to the extraction of coal from the earth by removing the materials over a coal seam before recovering the coal, by auger coal mining, by extraction of coal from coal refuse piles, or by recovery of coal from slurry ponds.

(112) [(110)] "Suspended solids" or nonfilterable residue, expressed as milligrams per liter, means organic or inorganic materials carried or held in suspension in water which are retained by a standard glass fiber filter in the procedure outlined by the U.S. EPA's regulations for waste water and analyses (40 CFR 136).

(113) [(111)] "Temporary diversion" means a diversion of a stream or overland flow which is used during coal exploration or surface coal mining and reclamation operations and not approved by the cabinet to remain after reclamation as part of the approved postmining land use.

(114) [(112)] "Ton" means 2000 pounds avoirdupois (.90718 metric ton).

(115) [(113)] "Topsoil" means the A and E soil horizon layers of the four (4) master soil horizons.

(116) [(114)] "Toxic-forming materials" means earth materials or wastes which, if acted upon by air, water, weathering, or microbiological processes, are likely to produce chemical conditions in soils or water that are detrimental to biota or uses of water.

(117) [(115)] "Toxic mine drainage" means water that is discharged from active or abandoned mines or other areas affected by coal exploration or surface coal mining and reclamation operations, which contains a substance that through chemical action is likely to kill, injure, or impair biota commonly present in the area that might be exposed to it.

(118) [(116)] "Transfer, assignment, or sale of permit rights" means a change in ownership or other effective control over the right to conduct surface coal mining operations under a permit issued by the cabinet.

(119) [(117)] "TRM" means Technical Reclamation Memorandum.

(120) [(118)] "Underground development waste" means waste

coal, shale, claystone, siltstone, sandstone, limestone, or similar materials that are extracted from underground workings in connection with underground mining activities.

(121) [(+19)] "Underground mining activities" means a combination of:

(a) Surface operations incident to underground extraction of coal or in situ processing, including construction, use, maintenance, and reclamation of roads, aboveground repair areas, storage areas, processing areas, and shipping areas; areas upon which are sited support facilities including hoist and ventilating ducts; areas utilized for the disposal and storage of waste; and areas on which materials incident to underground mining operations are placed; and

(b) Underground operations such as underground construction, operation, and reclamation of shafts, adits, underground support facilities; in situ processing; and underground mining, hauling, storage, and blasting.

(122) [(+20)] "Undeveloped land or no current use or land management" means land that is undeveloped or, if previously developed, land that has been allowed to return naturally to an undeveloped state or has been allowed to return to forest through natural succession.

(123) [(+24)] "U.S. EPA" means United States Environmental Protection Agency.

(124) [(+22)] "Valley fill" means a fill structure consisting of any material other than coal waste and organic material that is placed in a valley where side slopes of the existing valley measured at the steepest point are greater than twenty (20) degrees or the average slope of the profile of the valley from the toe of the fill to the top of the fill is greater than ten (10) degrees.

(125) [(+23)] "Valuable environmental resources" means:

(a) Listed or proposed endangered or threatened species of plants or animals or their critical habitats listed by the Secretary of the Interior under the Endangered Species Act of 1973, as amended (16 USC Sec. 1531 et seq.), or those species or habitats protected by similar state statutes; and

(b) Habitats of unusually high value for fish and wildlife, as determined by the cabinet in consultation with state and federal agencies with responsibilities for fish and wildlife.

(126) [(+24)] "Water table" means the upper surface of a zone of saturation, where the body of groundwater is not confined by an overlying impermeable zone.

(127) [(+25)] "Water transmitting zone" means a body of consolidated or unconsolidated rocks which, due to their greater primary or secondary permeability relative to the surrounding rocks, can reasonably be considered to function as a single hydraulic medium for the flow of groundwater.

(128) [(+26)] "Wetland" means land that has a predominance of hydric soils and that is inundated or saturated by surface or groundwater at a frequency and duration sufficient to support, and that under normal circumstances does support, a prevalence of hydrophytic vegetation typically adapted for life in saturated soil conditions.

(a) "Hydric soil" means soil that, in its undrained condition, is saturated, flooded, or ponded long enough during a growing season to develop an anaerobic condition that supports the growth and regeneration of hydrophytic vegetation.

(b) "Hydrophytic vegetation" means a plant growing in:

1. Water; or
2. A substrate that is at least periodically deficient in oxygen during a growing season as a result of excessive water content.

Section 2. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "ASTM Standard D 388-77, Standard Specification for Classification of Coals by Rank", (1977), American Society for Testing and Materials, is incorporated by reference;

(b) "Method for Determination of Slake Durability Index, Kentucky Method 64-513-79", (1979), Kentucky Department of

Transportation.

(2) It may be inspected, copied, or obtained at the Department for Surface Mining Reclamation and Enforcement, 2 Hudson Hollow, Frankfort, Kentucky 40601-4321, Monday through Friday, 8 a.m. to 4:30 p.m.

JAMES E. BICKFORD, Secretary

APPROVED BY AGENCY: July 28, 1997

FILED WITH LRC: July 28, 1997 at 4 p.m.

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET Department for Surface Mining Reclamation and Enforcement (As Amended at ARRS, May 11, 1998)

405 KAR 16:090. Sedimentation ponds.

RELATES TO: KRS 151.100, 151.250(3), 350.020, 350.100, 350.420, 350.465, 30 CFR Parts 730-733, 735, 816.46, 917, 30 USC 1253, 1255, 1265

STATUTORY AUTHORITY: KRS 350.028, 350.100, 350.420, 350.465, 30 CFR Parts 730-733, 735, 816.46, 917, 30 USC 1253, 1255, 1265

NECESSITY, FUNCTION, AND CONFORMITY: KRS 350.028(1), (5), 350.151(1), and 350.465(2) authorize the cabinet to promulgate administrative regulations relating to surface and underground coal mining operations. This administrative regulation establishes the requirements for the location, design, construction, certification, maintenance, removal, and retention of sedimentation ponds for surface mines. [KRS 350.028(1) requires the cabinet to promulgate administrative regulations pertaining to surface coal mining operations including strip mining and the surface effects of underground mining to accomplish the purposes of KRS Chapter 350. This administrative regulation applies to surface coal mining and reclamation operations except operations with surface effects of underground mining. This administrative regulation sets forth requirements for the location, design, construction, certification, maintenance, and removal or retention of sedimentation ponds. KRS 350.028(5), 350.151(1), and 350.465(2), (5) authorize and direct the cabinet to promulgate administrative regulations for surface and underground coal mining operations for the purpose of accepting and administering primary enforcement responsibilities under the permanent regulatory program pursuant to PL 95-87, the federal Surface Mining Control and Reclamation Act of 1977; and direct that the cabinet's administrative regulations be consistent with, and not more stringent than required by, that Act. PL 95-87 does not require Kentucky to comply with its provisions, but in order to retain primary enforcement responsibility under that Act the cabinet's administrative regulations must be consistent with federal regulations promulgated pursuant to that Act. This amendment differs from the federal regulations as follows:

1. Some requirements in 30 CFR 816.46 are contained in 405 KAR 16:070 rather than this administrative regulation.

2. This administrative regulation does not use the term "siltation structure", as does the federal regulation. 30 CFR 701.5 defines "siltation structure" to mean "a sedimentation pond, a series of sedimentation ponds, or other treatment facility." This administrative regulation uses "sedimentation pond", "in series", and "other treatment facility" as needed, so "siltation structure" is unnecessary.

3. Section 2 of this administrative regulation, regarding sediment storage volume, contains provisions for a time schedule or clean-out elevations that are not found in the federal regulation. Section 2 of this administrative regulation, corresponds to two (2) federal requirements at 30 CFR 816.46(c)(1)(iii)(A) and (F), and contains additional clarifying language that corresponds to explanatory language in the

preamble to the federal regulations at 48 FR 44041, September 26, 1983;

4. Section 3 of this administrative regulation, regarding detention time and pond sizing, contains provisions that are not found in the federal regulation. Section 3(2) of this administrative regulation, corresponds to the requirement in 30 CFR 816.46(c)(1)(iii)(G) to "contain or treat the ten (10) year, twenty-four (24) hour precipitation event". Section 3(2) of this administrative regulation, clarifies the meaning of the federal requirement, consistent with the explanation in the preamble to the federal regulations at 48 FR 44042, September 26, 1983.] [KRS Chapter 350 in pertinent part requires the cabinet to promulgate rules and administrative regulations establishing performance standards for protection of people and property, land, water and other natural resources, and aesthetic values, during surface mining activities and for restoration and reclamation of surface areas affected by mining activities. This administrative regulation sets forth specific requirements for the location, design, construction, and removal or retention of sedimentation ponds.]

Section 1. General Requirements. Sedimentation ponds shall be used individually or in series and shall:

(1) Comply with this administrative regulation and 405 KAR 16:100;

(2)(a) In accordance with 405 KAR 16:100, Section 1(2), be designed and certified by a qualified registered professional engineer as meeting the requirements of this administrative regulation and 405 KAR 16:100; and

(b) In accordance with 405 KAR 16:100, Section 1(9), be inspected during construction by or under the direct supervision of the responsible registered professional engineer, and after construction be certified by the responsible registered professional engineer as having been constructed in accordance with the approved design plans;

(3) Be constructed and certified under subsection (2) of this section [Section 5(14) of this administrative regulation] before any disturbance in the watershed that drains [of the undisturbed area to be drained] into the sedimentation pond; and

(4) [(2)] Be located as near as possible to the disturbed area, and out of perennial streams unless approved by the cabinet;

(3) Meet all the criteria of this administrative regulation;

(4) Be removed pursuant to Section 5(18) of this administrative regulation unless approved for retention under Section 5(19) of this administrative regulation].

Section 2. Sediment Storage Volume. Sedimentation ponds shall provide adequate [a] sediment storage volume as approved on a case-by-case basis by the cabinet based upon the anticipated volume of sediment to be collected and a feasible plan [time schedule] for clean-out operations. The plan shall include a time schedule or clean-out elevations, or an appropriate combination thereof, that shall provide periodic sediment removal sufficient to maintain adequate volume for the sediment to be collected during the design precipitation event under Section 3 of this administrative regulation. [The sediment storage volume shall be the anticipated volume of sediment that will be collected by the pond between scheduled clean-out operations.] The proposed clean-out plan [schedule] shall be included in the design and shall [will] be approved if the cabinet determines that the proposed plan [schedule] is feasible.

Section 3. Detention Time. Sedimentation ponds shall be designed, constructed, and maintained to:

(1) Provide detention time so [such] that discharges from the sedimentation pond shall meet the requirements of 405 KAR 16:070, Section 1(1)(g); and

(2)(a) Contain the runoff from the ten (10) year, twenty-four (24) hour precipitation event by providing a runoff storage volume, between the top elevation of the design sediment storage volume and

the principal spillway elevation, equal to or greater than the runoff from that precipitation event. The cabinet may approve a smaller runoff storage volume based on terrain, the amount of disturbance, other site specific conditions, and a demonstration by the permittee that the effluent limitations of 405 KAR 16:070, Section 1(1)(g) will be met; or

(b) Treat the runoff from the ten (10) year, twenty-four (24) hour precipitation event by using other treatment facilities in conjunction with adequate runoff storage volume, so [such] that the effluent limitations of 405 KAR 16:070, Section 1(1)(g) will be met.

Section 4. Dewatering. The water storage resulting from inflow shall be removed by a nonclogging dewatering device or [a conduit] spillway approved by the cabinet. The dewatering device or spillway shall not be located at a lower elevation than the top [maximum] elevation of the design sediment storage volume.

Section 5. Other Requirements. (1) Each permittee shall design, construct, and maintain sedimentation ponds to prevent short-circuiting to the extent possible.

(2) The design, construction, and maintenance of a sedimentation pond or other sediment control measures in accordance with this administrative regulation shall not relieve the permittee from compliance with 405 KAR 16:070, Section 1(1)(g).

(3) [There shall be no outflow through an emergency spillway during the passage through the sedimentation pond of the run-off resulting from the ten (10) year, twenty-four (24) hour precipitation event or lesser events.

(4)] Sediment shall be removed from sedimentation ponds in accordance with the approved clean-out plan [when the designed sediment storage volume has filled with sediment].

(4) [(5) An appropriate combination of principal and emergency] Spillways shall be provided in accordance with 405 KAR 16:100. [to safely discharge the run-off from a twenty-five (25) year, twenty-four (24) hour precipitation event, or larger event specified by the cabinet. The elevation of the crest of the emergency spillway shall be a minimum of one and five-tenths (1.5) feet above the crest of the principal spillway.] Emergency spillway grades and allowable velocities shall be approved by the cabinet. [Sedimentation ponds not meeting the size or other qualifying criteria of 30 CFR 77.216(a) may use a single spillway if the spillway:

(a) is an open channel of nonerodible construction and capable of maintaining sustained flows; and

(b) is not earth or grass lined.

(6) The minimum elevation at the top of the settled embankment shall be one (1.0) foot above the water surface in the pond with the emergency spillway flowing at design depth. For embankments subject to settlement, this one (1.0) foot minimum elevation requirement shall apply at all times, including the period after settlement.

(7) The constructed height of the dam shall be increased a minimum of five (5) percent over the design height to allow for settlement, unless it has been demonstrated to the cabinet that the material used and the design will ensure against all settlement.

(8) The minimum top width of the embankment shall not be less than the quotient of $(H + 35)/5$, where H is the height, in feet, of the embankment as measured from the upstream toe of the embankment.

(9) The combined upstream and downstream side slopes of the settled embankment shall not be less than 1v:5h, with neither slope steeper than 1v:2h. Slopes shall be designed to be stable in all cases, even if flatter side slopes are required.

(10) The embankment foundation area shall be cleared of all organic matter, all surfaces sloped to no steeper than 1v:1h, and the entire foundation surface scarified.

(11) The fill material shall be free of sod, large roots, other large vegetative matter, and frozen soil, and in no case shall coal-processing waste be used.

(12) The placing and spreading of fill material shall be started at

the lowest point of the foundation. The fill shall be brought up in horizontal layers of such thickness as is required to facilitate compaction and meet the design requirement of this administrative regulation. Compaction shall be conducted as specified in the design approved by the cabinet.

(13) If a sedimentation pond has an embankment that is more than twenty (20) feet in height, as measured from the upstream toe of the embankment to the crest of the emergency spillway, or has a storage volume of twenty (20) acre-feet or more, the following additional requirements shall be met:

(a) An appropriate combination of principal and emergency spillways shall be provided to discharge safely the run-off resulting from a 100-year, twenty-four (24) hour precipitation event, or a larger event specified by the cabinet.

(b) The embankment shall be designed and constructed with a static safety factor of at least one and five-tenths (1.5), or a higher safety factor as designated by the cabinet to ensure stability.

(c) Appropriate barriers shall be provided to control seepage along conduits that extend through the embankment.

(d) The criteria of the MSHA as published in 30 CFR 77.216 shall be met.

(14) Each pond shall be designed and certified by a registered professional engineer; shall be inspected during construction by or under the direct supervision of the responsible registered professional engineer; and after construction shall be certified by the responsible registered professional engineer as having been constructed in accordance with the approved design plans.

(15) The entire embankment including the surrounding areas disturbed by construction shall be stabilized with respect to erosion by a vegetative cover or other means immediately after the embankment is completed. The active upstream face of the embankment where water will be impounded may be riprapped or otherwise stabilized. Areas in which the vegetation is not successful or where fills and gullies develop shall be repaired and revegetated in accordance with 405 KAR 16:190, Section 6.

(16) All ponds, meeting or exceeding the size or other criteria of 30 CFR 77.216(a), shall be examined for structural weakness, erosion, and other hazardous conditions and reports shall be made to the cabinet, in accordance with 30 CFR 77.216-3. Such inspections shall be made by a qualified registered professional engineer, by someone under the supervision of a qualified registered professional engineer, or by a person approved by MSHA for such inspections. Ponds not meeting these criteria (30 CFR 77.216(a)) shall be examined four (4) times per year for structural weakness, erosion and other hazardous conditions and reports of the inspection shall be submitted to the cabinet.]

(5) [(17)] Sedimentation ponds shall be properly maintained and shall not be removed until the requirements of 405 KAR 16:070, Section 1(1)(b), have been met.

(6) [(18)] Sedimentation ponds shall be removed prior to final release of bond liability for the permit area unless retention of the pond is approved by the cabinet under subsection (7) [(19)] of this section. After [When] a sedimentation pond is removed, the affected land shall be regraded and revegetated in accordance with 405 KAR 16:190 and 405 KAR 16:200.

(7) [(19)] If the cabinet approves retention of a sedimentation pond as a permanent impoundment, the sedimentation pond shall meet all the requirements for permanent impoundments under 405 KAR 16:060, Section 10, and 405 KAR 16:100[, Section 10].

[(20) Notwithstanding other provisions of this administrative regulation, all dams as defined by KRS 151.100(13) and other impoundments classified as Class B - moderate hazard or Class C - high hazard, shall comply with 405 KAR 7:040, Section 5 and with 401 KAR 4:030.]

JAMES E. BICKFORD, Secretary

APPROVED BY AGENCY: July 28, 1997

FILED WITH LRC: July 28, 1997 at 4 p.m.

NATURAL RESOURCES AND
ENVIRONMENTAL PROTECTION CABINET
Department for Surface Mining
Reclamation and Enforcement
(As Amended at ARRS, May 11, 1998)

405 KAR 16:100. Permanent and temporary impoundments.

RELATES TO: KRS 151.100, 151.250(3), 350.100, 350.420, 350.455, 350.465, 30 CFR Parts 730-733, 735, 816.49, 917, 30 USC 1253, 1255, 1265

STATUTORY AUTHORITY: KRS [Chapter 13A,] 350.028, 350.465, 30 CFR Parts 730-733, 735, 816.49, 917, 30 USC 1253, 1255, 1265

NECESSITY, FUNCTION, AND CONFORMITY: KRS 350.028(2), (5), 350.151(1), and 350.465(2) authorize the cabinet to promulgate administrative regulations relating to surface and underground coal mining operations. This administrative regulation establishes the requirements for the design, construction, certification, inspection, and maintenance of temporary and permanent impoundments for surface mines. This administrative regulation differs from federal regulations as follows:

(1) Section 1 of this administrative regulation provides criteria related to the stability, settlement, embankment height and width, and freeboard of impoundments which is not found in the federal regulations. These criteria have been retained because they have long been effective guidelines for embankment safety and stability.

(2) Section 1(9)(c) of this administrative regulation provides an exemption from engineering inspection for certain types of impoundments without embankments. These inspections are unnecessary because the embankments do not present a safety hazard or environmental concern that would warrant routine, detailed inspection.

(3) Section 1(10)(b) of this administrative regulation provides an exemption from quarterly inspections for certain small nonhazardous impoundments without embankment structures. These inspections are unnecessary because the structures cannot develop the hazardous conditions which the inspections were intended to detect. [KRS 350.028(1) requires the cabinet to promulgate administrative regulations pertaining to surface coal mining operations including strip mining and the surface effects of underground mining to accomplish the purposes of KRS Chapter 350. This administrative regulation applies to surface coal mining and reclamation operations except operations with surface effects of underground mining. This administrative regulation sets forth requirements for the design, construction, certification, inspection and maintenance of temporary and permanent impoundments, and specific criteria for impoundments which are to be retained as permanent facilities after mining and reclamation. KRS 350.028(5), 350.151(1), and 350.465(2), (5) authorize and direct the cabinet to promulgate administrative regulations for surface and underground coal mining operations for the purpose of accepting and administering primary enforcement responsibilities under the permanent regulatory program pursuant to PL 95-87, the federal Surface Mining Control and Reclamation Act of 1977; and direct that the cabinet's administrative regulations be consistent with, and not more stringent than required by, that Act. PL 95-87 does not require Kentucky to comply with its provisions, but in order to retain primary enforcement responsibility under that Act the cabinet's administrative regulations must be consistent with federal regulations promulgated pursuant to that Act. This amendment differs from the federal regulations as follows:

1. The corresponding federal regulation at 30 CFR 816.49 incorporates by reference the USDA Soil Conservation Service

~~Technical Release No. 60, "Earth Dams and Reservoirs". The federal regulation refers to the Class B and C structure hazard criteria in this publication, and for certain structures requires compliance with the freeboard hydrograph criteria and the emergency spillway hydrograph criteria in the "Minimum Emergency Spillway Hydrologic Criteria" table of this publication. In corresponding requirements, this administrative regulation refers to the Class B and C criteria under 405 KAR 7:040, Section 5 and 401 KAR 4:030. Although they appear in different publications, the state Class B and C criteria and spillway hydrologic criteria are essentially the same as the federal criteria, since the state criteria were originally developed based upon the federal criteria. Thus there is no need for SCS TR-60 to be incorporated by reference in this administrative regulation.~~

~~2. The exemption from engineering inspections for certain impoundments without embankments at Section 1(9)(c) of this administrative regulation does not appear in the federal regulation. These impoundments do not present safety hazards or other environmental concerns that warrant routine, detailed inspections by experienced registered professional engineers or other specialists. Additionally, the exemption includes provisions that allow the cabinet to require the inspections on a case-by-case basis if needed.~~

~~3. The exemption at Section 1(10)(b) of this administrative regulation from quarterly inspections by qualified personnel of the operator for certain small nonhazardous impoundments without embankment structures does not appear in the federal regulation. The required inspections are for appearance of structural weakness and other hazardous conditions. The exempted structures cannot develop the hazardous conditions the inspections are intended to protect against, so the inspections are unnecessary for this limited class of structures.~~

~~4. Section 1 of this administrative regulation retains specific criteria related to stability, including criteria on settlement, embankment width to height ratio, and side slopes, and minimum criteria related to freeboard, that do not appear in the federal regulation. These criteria have been retained because they have long been effective guidelines for embankment stability.] [KRS Chapter 350 in pertinent part requires the cabinet to promulgate rules and administrative regulations establishing performance standards for protection of people and property, land, water and other natural resources, and aesthetic values, during surface mining activities and for restoration and reclamation of surface areas affected by mining activities. This administrative regulation sets forth requirements for inspection and maintenance of temporary and permanent impoundments, and specific criteria for impoundments which are to be retained as permanent facilities after mining and reclamation.]~~

Section 1. General Requirements. The requirements of this section apply to both temporary and permanent impoundments.

(1)(a) Impoundments meeting the criteria of MSHA, 30 CFR 77.216(a), shall comply with the requirements of 30 CFR 77.216 and this administrative regulation. The plan required to be submitted to the district manager of MSHA under 30 CFR 77.216 shall [also] be submitted to the cabinet as part of the permit application in accordance with 405 KAR 8:030, Section 34(3).

(b) All impoundments classified as Class B-moderate hazard or Class C-high hazard, and all permanent "dams," as defined in KRS 151.100, shall comply with 405 KAR 7:040, Section 5 and with 401 KAR 4:030.

(2) Design certification. The design of impoundments shall be certified by a qualified registered professional engineer as designed to meet the requirements of this administrative regulation using current, prudent engineering practices, and any design criteria established by the cabinet. The qualified registered professional engineer shall be experienced in the design and construction of impoundments.

(3) Stability.

(a) 1. Permanent and temporary impoundments meeting the

criteria of MSHA, 30 CFR 77.216(a), all Class B and C impoundments, and all permanent impoundments, shall have a minimum static safety factor of 1.5 for the normal pool with steady seepage saturation conditions, and a seismic safety factor of at least 1.2.

2. Impoundments not included in subparagraph 1 of this paragraph, except coal mine waste impoundments, shall have a minimum static safety factor of 1.3 for the normal pool with steady state seepage saturation conditions.

(b) The constructed height of the dam shall be increased a minimum of five (5) percent over the design height to allow for settlement, unless it has been demonstrated to the cabinet that the material used and the design will ensure against all settlement.

(c) The minimum top width of the embankment shall not be less than the quotient of $(H+35)/5$, where H is the height, in feet, of the embankment as measured from the upstream toe of the embankment.

(d) Unless the cabinet approves steeper slopes, based upon a satisfactory demonstration of stability by the applicant acceptable to the cabinet, the sum of the upstream and downstream side slopes (h/v) of the settled embankment shall not be less than 5h:1v, with neither slope steeper than 2h:1v. Slopes shall be designed to be stable in all cases, even if flatter side slopes are required.

(e) The fill material shall be free of sod, large roots, other large vegetative matter, and frozen soil and shall not contain coal mine waste except for coal mine waste impounding structures pursuant to 405 KAR 16:160.

(f) The placing and spreading of fill material shall be started at the lowest point of the foundation. The fill shall be brought up in horizontal layers of [such] thickness as is required to facilitate compaction and meet the design requirement of this administrative regulation. Compaction shall be conducted as specified in the design approved by the cabinet.

(g) The entire embankment including the surrounding areas disturbed by construction shall be stabilized with respect to erosion by a vegetative cover or other means immediately after the embankment is completed. The active upstream face of the embankment where water will be impounded may be riprapped or otherwise stabilized. Areas in which the vegetation is not successful or where rills and gullies develop shall be repaired and revegetated in accordance with 405 KAR 16:190, Section 6.

(h) Slope protection shall be provided to protect against surface erosion at the site and protect against sudden drawdown.

(4) Freeboard. Impoundments shall have adequate freeboard to resist overtopping by waves and by sudden increases in storage volume. The minimum elevation at the top of the settled embankment shall be one (1.0) foot above the water surface in the pond with the emergency spillway flowing at design depth. For embankments subject to settlement, this one (1.0) foot minimum elevation requirement shall apply at all times, including the period after settlement. Freeboard requirements shall not apply to incised impoundments which have no embankment or levee.

(5) Foundation.

(a) 1. Foundation and abutments for the impounding structure shall be designed to be stable under all conditions of construction and operation of the impoundment and shall be designed based on adequate and accurate information on the foundation conditions.

2. For permanent and temporary impoundments meeting the criteria of MSHA, 30 CFR 77.216(a), for all Class B and C impoundments, and for all permanent impoundments, foundation investigations as well as any necessary laboratory testing of materials shall be performed in order to determine the design requirements for foundation and embankment stability.

3. If [Where] an approved temporary impoundment has been constructed and the permittee subsequently seeks a permit revision to upgrade the structure to a permanent impoundment, the cabinet may waive the foundation investigations and laboratory testing required by subparagraph 2 of this paragraph under the following circumstances:

a. The structure has been recently verified as being a Class A-low hazard structure;

b. The structure does not meet the definition of the term "dam," as defined at KRS 151.100; and

c. The cabinet approves conservative, assumed values for the strength parameters used in the stability analyses to ensure compliance with subsection (3)(a) of this section.

(b) All vegetative and organic materials shall be removed and foundations excavated and prepared to resist failure. Cutoff trenches shall be installed if necessary to ensure stability.

(6) Impoundments shall include a combination of principal and emergency spillways which shall be designed and constructed to safely pass the design precipitation event specified in this subsection [below], unless the cabinet requires a larger event. Twenty-four (24) hours may be used in lieu of six (6) hours for the duration of a design precipitation event specified in this subsection.

(a) Except as provided in paragraph (c) of this subsection, Class A structures that do not meet the criteria of MSHA, 30 CFR 77.216(a), shall pass the:

1. Twenty-five (25) year, six (6) [twenty-four (24)] hour precipitation event if it is a temporary structure; or

2. The fifty (50) year, six (6) [twenty-four (24)] hour precipitation event if it is a permanent structure.

(b) Class A structures that ~~do~~ meet the criteria of MSHA, 30 CFR 77.216(a), shall pass the 100 year, six (6) [twenty-four (24)] hours precipitation event.

(c) Class B and C structures and all permanent dams as defined in KRS 151.100 shall comply with the criteria established in 401 KAR 4:030.

(7) Class A impoundments not meeting the criteria of MSHA, 30 CFR 77.216(a), may use a single spillway (if allowed pursuant to subsection (1)(b) of this section) if the spillway:

(a) Is an open channel of nonerodible construction and capable of maintaining sustained flows; and

(b) Is not earth or grass lined.

(8) The vertical portion of any remaining highwall shall be located far enough below the low-water line along the full extent of the highwall to provide adequate safety and access for the proposed water users.

(9) Engineer inspections. A qualified registered professional engineer or other qualified professional specialist, under the direction of the professional engineer, shall inspect the impoundment. The professional engineer or specialist shall be experienced in the construction of impoundments.

(a) Inspections shall be made regularly during construction, upon completion of construction, and at least yearly until removal of the structure or release of the performance bond.

(b) The qualified registered professional engineer shall promptly, after each inspection, provide to the cabinet a certified report that the impoundment has been constructed and maintained as designed and in accordance with the plan approved in the permit and 405 KAR Chapters 7 through 24. The report shall include discussion of any appearances of instability, structural weakness or other hazardous conditions, depth and elevation of any impounded waters, existing storage capacity, any existing or required monitoring procedures and instrumentation and any other aspects of the structure affecting stability. The report shall also confirm the hazard classification of the impoundment, or if the hazard classification has changed, the report shall contain a detailed explanation of the change and the conditions causing the change.

[(e)] A copy of the report shall be retained at or near the mine site.

(c) An impoundment with no embankment structure, that is completely incised or is created by a depression left by backfilling and grading, that is not a sedimentation pond or coal mine waste impoundment and is not otherwise intended to facilitate active mining, shall be exempt from this subsection unless the cabinet determines

on a case-by-case basis that engineering inspection and certification are necessary to insure public health and safety or environmental conditions, in which case the cabinet shall establish appropriate inspection and certification requirements for the impoundment that shall apply in lieu of the requirements of this subsection and shall notify the permittee in writing.

(10) Operator examinations.

(a) Impoundments subject to 30 CFR 77.216, and Class B and C impoundments, shall [must] be examined in accordance with 30 CFR 77.216-3.

(b) [Other] Impoundments not included in paragraph (a) of this subsection shall be examined at least quarterly by a qualified person designated by the operator for appearance of structural weakness and other hazardous conditions. Quarterly examinations shall [are to] be conducted each calendar quarter (i.e., January-March, April-June, July-September, and October-December) and no two (2) examinations shall be within thirty (30) days of each other unless additional examination within a quarter are required. Reports of the examinations shall [are to] be retained at or near the mine site. An impoundment with no embankment structure, that is completely incised or is created by a depression left by backfilling and grading, shall be exempt from this paragraph.

(11) Emergency procedures. If any examination or inspection discloses that a potential hazard exists, the person who examined the impoundment shall immediately notify the department and the Kentucky Division of Water, or if these agencies cannot be reached, Disaster and Emergency Services. The permittee shall immediately implement emergency procedures formulated for public protection and remedial action. If adequate emergency procedures cannot be formulated or implemented by the permittee, the cabinet shall be notified, and the cabinet shall notify the appropriate agencies that other emergency procedures are required to protect the public.

Section 2. Permanent Impoundments. A permanent impoundment of water may be created, if authorized by the cabinet in the approved permit based upon the following demonstration:

(1) The size and configuration of the [such] impoundment will be adequate for its intended purposes.

(2) The quality of impounded water will be suitable on a permanent basis for its intended use and, after reclamation, will meet applicable state and federal water quality standards, and discharges from the impoundment will meet applicable effluent limitations and will not degrade the quality of receiving water below applicable state and federal water quality standards.

(3) The water level will be sufficiently stable and be capable of supporting the intended use.

(4) Final grading will provided for adequate safety and access for proposed water users. Perimeter slopes shall be stable and shall be protected against erosion.

(5) The impoundment will not result in the diminution of the quality and quantity of water utilized by adjacent or surrounding landowners for agricultural, industrial, recreational, or domestic uses.

(6) The impoundment will be suitable for the approved postmining land use.

JAMES E. BICKFORD, Secretary

APPROVED BY AGENCY: July 28, 1997

FILED WITH LRC: July 28, 1997 at 4 p.m.

NATURAL RESOURCES AND
ENVIRONMENTAL PROTECTION CABINET
Department for Surface Mining
Reclamation and Enforcement
(As Amended at ARRS, May 11, 1998)

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

RELATES TO: KRS 151.100, 151.250(3), 350.425, 30 CFR Parts 730-733, 735, 816.84, 917, 30 USC 1253, 1255, 1265

STATUTORY AUTHORITY: KRS 350.028, 350.465, 30 CFR Parts 730-733, 735, 816.84, 917, 30 USC 1253, 1255, 1265

NECESSITY, FUNCTION, AND CONFORMITY: KRS 350.028(2), (5), 350.151(1), and 350.465(2) authorize the cabinet to promulgate administrative regulations relating to surface and underground coal mining operations. This administrative regulation establishes requirements for coal mine waste dams and impoundments for surface mines. This administrative regulation differs from 30 CFR 816.84.

(1) Section 3(1)(b) of this administrative regulation includes detailed requirements for principal spillways in impoundments that do not have an open channel emergency spillway.

(2) Section 3(1)(c) of this administrative regulation requires a minimum freeboard of three (3) feet that is not included in the federal regulation. This is necessary to ensure the safety of an impounding structure that may be susceptible to erosion if overtopping occurs. [KRS 350.028(1) requires the cabinet to promulgate administrative regulations pertaining to surface coal mining operations including strip mining and the surface effects of underground mining to accomplish the purposes of KRS Chapter 350. This administrative regulation applies to surface coal mining and reclamation operations except operations with surface effects of underground mining. This administrative regulation sets forth requirements for the design and construction of impounding structures that are constructed of coal mine waste or will impound coal mine waste. KRS 350.028(5), 350.151(1), and 350.465(2), (5) authorize and direct the cabinet to promulgate administrative regulations for surface and underground coal mining operations for the purpose of accepting and administering primary enforcement responsibilities under the permanent regulatory program pursuant to PL 95-87, the federal Surface Mining Control and Reclamation Act of 1977; and direct that the cabinet's administrative regulations be consistent with, and not more stringent than required by, that Act. PL 95-87 does not require Kentucky to comply with its provisions, but in order to retain primary enforcement responsibility under that Act the cabinet's administrative regulations must be consistent with federal regulations promulgated pursuant to that Act. This amendment differs from the federal regulations as follows:

1. Section 2(1) of this administrative regulation includes requirements for removal of vegetative matter during site preparation. This requirement is not found in the corresponding federal regulation at 30 CFR 816.84. However, 30 CFR 816.84 refers to 816.49, which includes much the same requirement as Section 2(1) of this administrative regulation.

2. The federal regulation does not include the detailed requirements in Section 3(1)(b) of this administrative regulation regarding principal spillways in impoundments without open channel emergency spillways. The cabinet believes these are appropriate criteria that are necessary to ensure the safety of large impoundments that do not have open channel emergency spillways. It is significant that these criteria are consistent with criteria in the USDA SCS publication Technical Release No. 60.

3. The federal regulation does not include the minimum freeboard of three (3) feet that is specified in Section 3(1)(c) of this administrative regulation. The cabinet believes this is an important safety provision for the types of impounding structures under this administra-

tive regulation, which are sometimes highly susceptible to erosion if overtopping occurs.] [KRS Chapter 350 in pertinent part requires the cabinet to promulgate rules and administrative regulations establishing performance standards for protection of people and property, land, water and other natural resources, and aesthetic values, during surface mining activities and for restoration and reclamation of surface areas affected by mining activities. This administrative regulation sets forth specific design and construction requirements for existing and new dams or embankments which are constructed of coal processing waste or will impound coal processing waste.]

Section 1. General Requirements. (1) This administrative regulation applies to dams and impoundments, constructed of coal mine [processing] waste or intended to impound coal mine [processing] waste, that were completed or are to be completed after August 3, 1977.

(2) Coal mine waste shall not be used in the construction of dams and impoundments unless it has been demonstrated to the cabinet that the stability of the [such-a] structure conforms with the requirements of Section 3(1) of this administrative regulation. It shall also be demonstrated that the use of coal mine waste will [material-shall] not have a detrimental effect on downstream water quality or the environment due to acid seepage through the dam or impoundment. All demonstrations shall be submitted to and approved by the cabinet.

(3) An impounding structure constructed of coal mine waste or intended to impound coal mine waste shall not be retained permanently as part of the approved postmining land use.

Section 2. Site Preparation. Before coal mine [processing] waste is placed at a dam or impoundment site:

(1) All trees, shrubs, grasses, and other organic material shall be cleared and grubbed from the site, and all combustible materials shall be removed and disposed of or stockpiled in accordance with the requirements of this chapter; and

(2) Surface drainage that may cause erosion to the dam or the impoundment features, whether during construction or after completion, shall be diverted away from the dam or impoundment by diversion ditches that comply with the requirements of 405 KAR 16:080, Section 1. Adequate outlets for discharge from these diversions shall be in accordance with 405 KAR 16:060, Section 3. Diversions that are designed to divert drainage from the upstream area away from the impoundment area shall be designed to carry the peak run-off from a 100-year, six (6) [twenty-four (24)] hour precipitation event. Twenty-four (24) hours may be used in lieu of six (6) hours for the duration of the 100-year design precipitation event in this subsection. The diversion shall be maintained to prevent blockage, and the discharge shall be in accordance with 405 KAR 16:060, Section 3.

Section 3. Design and Construction. (1) The design of each dam and impoundment constructed of coal mine [processing] waste or intended to impound coal mine [such] waste shall comply with the requirements of 405 KAR 16:100, [Sections 1(1)(e) and 2;] including the certification requirements thereof, modified as follows:

(a) An impounding structure constructed of coal mine waste or intended to impound coal mine waste that meets the criteria of 30 CFR 77.216(a) shall have sufficient spillway capacity to safely pass, adequate storage capacity to safely contain, or a combination of storage capacity and spillway capacity to safely control, the probable maximum precipitation of a six (6) hour precipitation event. The cabinet may require a duration longer than six (6) hours if safety concerns warrant a longer time period [on a case-by-case basis].

(b) An impounding structure with a drainage area of ten (10) square miles or less that does not have an open channel emergency spillway shall have a closed conduit principal spillway that shall meet the requirements of this paragraph. The impounding structure shall have sufficient storage capacity available to store the entire runoff

from the probable maximum precipitation event while maintaining the required freeboard against overtopping, disregarding flow through the principal spillway.

1. The spillway shall have a trash rack designed to provide positive protection against clogging of the spillway at all operating levels, and an elbow designed to facilitate the passage of trash;

2. The conduit shall be large enough to pass the routed freeboard hydrograph peak discharge while maintaining the required freeboard against overtopping the structure. For structures included in paragraph (a) of this subsection, the probable maximum precipitation event shall be used to determine the freeboard hydrograph;

3. The conduit shall be large enough to meet the requirements under 401 KAR 4:030 for minimum emergency spillway discharge capacity; and

4. The spillway shall meet all other applicable requirements under 401 KAR 4:030, 405 KAR 16:100, and this administrative regulation, except the requirement under 401 KAR 4:030 that the conduit have a minimum cross-sectional area of thirty-six (36) square feet. The cross-sectional area of the barrel of the conduit shall be not less than twelve (12) square feet for a Class A structure with a product of storage in acre-feet times effective height in feet of less than 10,000 and shall be not less than twenty (20) square feet for other structures.

(c) The design freeboard between the lowest point on the dam or impoundment crest and the maximum water elevation shall be at least three (3) feet. For structures not included in paragraph (a) of this subsection, the maximum water elevation shall be that determined by the freeboard hydrograph criteria for the appropriate structure hazard classification under 405 KAR 7:040, Section 5, and 401 KAR 4:030, [contained in the U.S. Soil Conservation Service criteria referenced in 405-KAR-16:100.]

(d) [(b)] The dam or impoundment shall have a minimum safety factor of one and five-tenths (1.5) for the normal pool with steady seepage saturation conditions, and the seismic safety factor shall be at least one and two-tenths (1.2).

(e) [(c)] The dam or impoundment foundation and abutments shall be designed to be stable under all conditions of construction and operation of the impoundment. Sufficient foundation investigations and laboratory testing shall be performed to determine the safety factors of the dam or impoundment for all loading conditions required [appearing] in paragraph (d) [(b)] of this subsection or [the publications referred to in] 405 KAR 16:100 and for all increments of construction.

(2) Spillways and outlet works shall be designed to provide adequate protection against erosion and corrosion. Inlets shall be protected against blockage.

(3) Dams or impoundments constructed of or impounding coal mine waste [materials] shall be designed so that at least ninety (90) percent of the water stored during the design precipitation event can [shall] be removed within a ten (10) day period.

Section 4. Operation. For a dam or impoundment constructed of or impounding coal mine waste, at least ninety (90) percent of the water stored during the design precipitation event shall be removed within the ten (10) day period following the design precipitation event.

JAMES E. BICKFORD, Secretary

APPROVED BY AGENCY: July 28, 1997

FILED WITH LRC: July 28, 1997 at 4 p.m.

NATURAL RESOURCES AND
ENVIRONMENTAL PROTECTION CABINET
Department for Surface Mining
Reclamation and Enforcement
(As Amended at ARRS, May 11, 1998)

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

RELATES TO: KRS Chapter 350, 7 CFR Part 657, 30 CFR Parts 700.5, 701.5, 707.5, 730-733, 735, 761.5, 762.5, 773.5, 800.5, 843.5, 917, 30 USC 1253, 1255, 1291

STATUTORY AUTHORITY: KRS [Chapter 13A,] 350.028(1), (5), 350.465, 30 CFR Parts [700.5, 701.5, 707.5,] 730-733, 735, [761.5, 762.5, 773.5, 800.5, 843.5,] 917, 30 USC 1253, 1255[, 1291]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 350.028(1), (5), and 350.465(2) authorize the cabinet to promulgate administrative regulations relating to surface and underground coal mining operations. This administrative regulation defines terms used in 405 KAR Chapter 18. This administrative regulation differs from federal regulations by including the definition of "angle of draw". This definition is necessary to determine areas subject to subsidence requirements and to comply with the intent of federal regulations. [KRS 350.028(1) requires the cabinet to promulgate administrative regulations pertaining to surface coal mining operations including strip mining and the surface effects of underground mining to accomplish the purposes of KRS Chapter 350. This administrative regulation defines terms used in 405 KAR Chapter 18. KRS 350.028(5), 350.151(1), and 350.465(2), (5) authorize and direct the cabinet to promulgate administrative regulations for surface and underground coal mining operations for the purpose of accepting and administering primary enforcement responsibilities under the permanent regulatory program pursuant to PL 95-87, the federal Surface Mining Control and Reclamation Act of 1977; and direct that the cabinet's administrative regulations be consistent with, and not more stringent than required by, that Act. PL 95-87 does not require Kentucky to comply with its provisions, but in order to retain primary enforcement responsibility under that Act the cabinet's administrative regulations must be consistent with federal regulations promulgated pursuant to that Act. This definitions affected in this amendment are the same as the corresponding federal definitions, except as follows:

1. The definition of "angle of draw" in this amendment is not included in the federal regulations. It is taken from the preamble to the federal regulations at 60 FR 16738, March 31, 1995. It is included in this amendment because it determines the areas subject to certain requirements related to subsidence and the cabinet must apply this term uniformly and in a manner consistent with the intent of the federal regulations;

2. The federal definition of "other treatment facilities" refers to compliance with "applicable state and federal water quality standards", whereas that definition in this amendment refers to compliance with 405 KAR 18:070. 405 KAR 18:070 is the administrative regulation relating to water quality standards and effluent limitations, and it contains the appropriate reference to "all applicable federal and state water quality standards";

3. The federal definition of "replacement of water supply" is not included in this amendment. Because the federal definition contains substantive requirements, the cabinet promulgated the provisions of the federal definition as substantive requirements in 405 KAR 16:060, Section 8 and 405 KAR 18:060, Section 12. [KRS Chapter 350 in pertinent part requires the cabinet to promulgate rules and administrative regulations pertaining to surface coal mining and reclamation operations under the permanent regulatory program. This administrative regulation provides for the defining of certain essential terms used in 405 KAR Chapter 18.]

Section 1. Definitions. (1) "Acid drainage" means water with a pH of less than six (6.0) and in which total acidity exceeds total alkalinity,

discharged from an active, inactive, or abandoned surface coal mine and reclamation operation or from an area affected by surface coal mining and reclamation operations.

(2) "Acid-forming materials" means earth materials that contain sulfide minerals or other materials which, if exposed to air, water, or weathering processes, form acids that may create acid drainage.

(3) "Acquisition" means purchase, lease, or option of the land for the purpose of conducting or allowing through resale, lease, or option, the conduct of surface coal mining and reclamation operations.

(4) "Adjacent area" means land located outside the affected area or permit area, depending on the context in which "adjacent area" is used, where air, surface or groundwater, fish, wildlife, vegetation or other resources protected by KRS Chapter 350 may be adversely impacted by surface coal mining and reclamation operations.

(5) "Affected area" means any land or water area which is used to facilitate, or is physically altered by, surface coal mining and reclamation operations. The affected area includes the disturbed area; any area upon which surface coal mining and reclamation operations are conducted; any adjacent lands the use of which is incidental to surface coal mining and reclamation operations; all areas covered by new or existing roads used to gain access to, or for hauling coal to or from, surface coal mining and reclamation operations, except as provided in this definition; any area covered by surface excavations, workings, impoundments, dams, ventilation shafts, entryways, refuse banks, dumps, stockpiles, overburden piles, spoil banks, culm banks, tailings, holes or depressions, repair areas, storage areas, shipping areas; any areas upon which are sited structures, facilities, or other property or material on the surface resulting from, or incident to, surface coal mining and reclamation operations; and the area located above underground workings associated with underground mining activities, auger mining, or in situ mining. The affected area shall include every road used for the purposes of access to, or for hauling coal to or from, surface coal mining and reclamation operations, unless the road:

(a) Was designated as a public road pursuant to the laws of the jurisdiction in which it is located;

(b) Is maintained with public funds, and constructed in a manner similar to other public roads of the same classification within the jurisdiction; and

(c) There is substantial (more than incidental) public use.

(6) "Angle of draw" means the angle of inclination between the vertical at the edge of the underground mine workings and the point of zero vertical displacement at the edge of a subsidence trough.

(7) "Applicant" means any person(s) seeking a permit, permit revision, permit amendment, permit renewal, or transfer, assignment, or sale of permit rights from the cabinet to conduct surface coal mining and reclamation operations or approval to conduct coal exploration operations pursuant to KRS Chapter 350 and all applicable administrative regulations.

(8) [(6)] "Application" means the documents and other information filed with the cabinet seeking issuance of permits; revisions; amendments; renewals; and transfer, assignment or sale of permit rights for surface coal mining and reclamation operations or, if required, seeking approval for coal exploration.

(9) [(7)] "Approximate original contour" is defined in KRS 350.010.

(10) [(8)] "Aquifer" means a zone, stratum, or group of strata that can store and transmit water in sufficient quantities for domestic, agricultural, industrial, or other beneficial use.

(11) [(9)] "Auger mining" means a method of mining coal at a cliff or highwall by drilling holes into an exposed coal seam from the highwall and transporting the coal along an auger bit to the surface and shall also include all other methods of mining in which coal is extracted from beneath the overburden by mechanical devices located at the face of the cliff or highwall and extending laterally into the coal seam, such as extended depth, secondary recovery systems.

(12) [(10)] "Best technology currently available" means equipment,

devices, systems, methods, or techniques which will prevent, to the extent possible, additional contributions of suspended solids to stream flow or runoff outside the permit area and minimize, to the extent possible, disturbances and adverse impacts on fish, wildlife, and related environmental values, and achieve enhancement of those resources where practicable. The term includes equipment, devices, systems, methods, or techniques which are currently available anywhere as determined by the cabinet, even if they are not in routine use. The term includes, but is not limited to, construction practices, siting requirements, vegetative selection and planting requirements, animal stocking requirements, scheduling of activities and design of sedimentation ponds in accordance with 405 KAR Chapters 16 and 18. The cabinet shall have the discretion to determine the best technology currently available on a case-by-case basis, as authorized by KRS Chapter 350 and 405 KAR Chapters 7 through 24.

(13) [(11)] "Blaster" means a person who is directly responsible for surface blasting operations in surface coal mining and reclamation operations or coal exploration operations.

(14) [(12)] "Bond pool" or "Kentucky Bond Pool" means the voluntary alternative bonding program established at KRS 350.700 through 350.755.

(15) [(13)] "Cabinet" is defined in KRS 350.010.

(16) [(14)] "CFR" means Code of Federal Regulations.

(17) [(15)] "Coal" means combustible carbonaceous rock, classified as anthracite, bituminous, subbituminous, or lignite by ASTM Standard D 388-77.

(18) [(16)] "Coal exploration" means the field gathering of:

(a) Surface or subsurface geologic, physical, or chemical data by mapping, trenching, drilling, geophysical, or other techniques necessary to determine the quality and quantity of overburden and coal of an area; or

(b) Environmental data to establish the conditions of an area before beginning surface coal mining and reclamation operations under the requirements of 405 KAR Chapters 7 through 24 if the activity may cause any disturbance of the land surface or may cause any appreciable effect upon land, air, water, or other environmental resources.

(19) [(17)] "Coal mine waste" means coal processing waste and underground development waste.

(20) [(18)] "Coal processing plant" means a facility where coal is subjected to chemical or physical processing or cleaning, concentrating, crushing, sizing, screening, or other processing or preparation including all associated support facilities including [but not limited to]: loading facilities; storage and stockpile facilities; sheds, shops, and other buildings; water treatment and water storage facilities; settling basins and impoundments; and coal processing and other waste disposal areas.

(21) [(19)] "Coal processing waste" means materials which are separated from the product coal during the cleaning, concentrating, or other processing or preparation of coal.

(22) [(20)] "Collateral bond" means an indemnity agreement in a sum certain payable to the cabinet executed by the permittee and which is supported by the deposit with the cabinet of cash, negotiable certificates of deposit, or an irrevocable letter of credit of any bank organized and authorized to transact business in the United States.

(23) [(21)] "Combustible material" means organic material that is capable of burning, either by fire or through oxidation, accompanied by the evolution of heat and a significant temperature rise.

(24) "Community or institutional building" means a structure, other than a public building or occupied dwelling, that is used:

(a) For meetings, gatherings, or functions of:

1. A local civic organization; or

2. Other community group;

(b) As a facility for the following purposes:

1. Educational;

2. Cultural;

3. Historic;

- 4. Religious;
- 5. Scientific; or
- 6. Correctional;

(c) As a mental or physical health care facility;

(d) To supply water;

(e) To generate power;

(f) To treat sewage; or

(g) For another public service. [~~"Community or institutional building" means any structure, other than a public building or an occupied dwelling, which is used primarily for meetings, gatherings or functions of local civic organizations or other community groups; functions as an educational, cultural, historic, religious, scientific, correctional, mental health or physical health care facility; or is used for public services, including, but not limited to, water supply, power generation or sewage treatment.~~]

(25) [(22)] "Compaction" means increasing the density of a material by reducing the voids between the particles by mechanical effort.

(26) [(23)] "Cropland" means land used for the production of adapted crops for harvest, alone or in a rotation with grasses and legumes, and includes row crops, small grain crops, hay crops, nursery crops, orchard crops, and other similar specialty crops.

(27) [(24)] "Cumulative impact area" means the area, including the permit area, within which impacts resulting from the proposed operation may interact with the impacts of all anticipated mining on surface and groundwater systems. Anticipated mining shall include, at a minimum, the entire projected lives through bond release of:

(a) The proposed operation;

(b) All existing operations;

(c) Any operation for which a permit application has been submitted to the cabinet; and

(d) All operations required to meet diligent development requirements for leased federal coal for which there is actual mine development information available.

(28) [(25)] "Day" means calendar day unless otherwise specified to be a working day.

(29) [(26)] "dB" means decibels.

(30) [(27)] "Department" means the Department for Surface Mining Reclamation and Enforcement.

(31) [(28)] "Developed water resources land" means land used for storing water for beneficial uses such as stockponds, irrigation, fire protection, flood control, and water supply.

(32) [(29)] "Disturbed area" means an area where vegetation, topsoil, or overburden is removed or upon which topsoil, spoil, coal processing waste, underground development waste, or noncoal waste is placed by surface coal mining operations. Those areas are classified as "disturbed" until reclamation is complete and the performance bond or other assurance of performance required by 405 KAR Chapter 10 is released.

(33) [(30)] "Diversion" means a channel, embankment, or other manmade structure constructed to divert water from one (1) area to another.

(34) [(31)] "Downslope" means the land surface below the projected outcrop of the lowest coalbed being mined along each highwall.

(35) [(32)] "Durable rock" means rock that:

(a) Does not slake in water;

(b) Is not reasonably expected to degrade to a size or condition that will block, cause failure of, impair, or restrict the effectiveness of the internal drainage system; and

(c) Has been demonstrated to have an slake durability index value of ninety (90) or greater as determined by:

1. The "Method of Determination of Slake Durability Index (Kentucky Method 64-513-79)"; or

2. A test method that yields an equivalent measure of durability based upon correlation of results with Kentucky Method 64-513-79. ["Durable rock" means rock that does not slake

in water and that is not reasonably expected to degrade to such a size or condition as to block, cause failure of, or otherwise impair or restrict the effectiveness of the internal drainage system. The cabinet shall consider rock to be durable if it is demonstrated, to the satisfaction of the cabinet in the application, that the rock has an SDI value of ninety (90) or greater as determined by the Kentucky Department of Transportation "Method for Determination of Slake Durability Index" (Kentucky Method 64-513-79), incorporated herein by reference. This document may be obtained from the Kentucky Transportation Cabinet, Division of Materials, Wilkinson Blvd., Frankfort, KY 40601; or the Kentucky Transportation Cabinet, Division of Management Services, State Office Building, Frankfort, KY 40601. It may be reviewed, copied, or obtained at the Department for Surface Mining Reclamation and Enforcement, #2 Hudson Hollow, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m. The cabinet may accept other test methods of demonstrating that rock is durable if it is demonstrated to the satisfaction of the cabinet that the alternative test methods yield equivalent measure of durability based upon correlation of results with Kentucky Method 64-513-79.]

(36) [(33)] "Embankment" means a manmade deposit of material that is raised above the natural surface of the land and used to contain, divert, or store water; to support roads or railways; or for other similar purposes.

(37) [(34)] "Ephemeral stream" means a stream which flows only in direct response to precipitation in the immediate watershed or in response to the melting of a cover of snow and ice, and which has a channel bottom that is always above the local water table.

(38) [(35)] "Excess spoil" means spoil disposed of in a location other than the coal extraction area, except that spoil material used to achieve the approximate original contour shall not be considered excess spoil.

(39) [(36)] "Fish and wildlife land use", as used in 405 KAR 16:210 and in similar situations when referring to a premining or postmining land use, means land dedicated wholly or partially to the production, protection, or management of fish or wildlife. Areas considered as having the fish and wildlife land use are typically characterized by a diversity of habitats in which use by wildlife is the dominant characteristic, whether actively managed or not.

(40) [(37)] "Forest land" means land used or managed for the long term production of wood, wood fiber, or wood derived products.

(41) [(38)] "Fugitive dust" means that particulate matter which becomes airborne due to wind erosion from exposed surfaces.

(42) [(39)] "Ground cover" means the area of ground covered by the combined aerial parts of vegetation and litter produced and distributed naturally and seasonally on site, expressed as a percentage of the total area of measurement.

(43) [(40)] "Groundwater" means subsurface water that fills available openings in rock or soil materials to the extent that they are considered water saturated.

(44) [(41)] "Growing season" means the period during a one (1) year cycle, from the last killing frost in the spring to the first killing frost in the fall, in which climatic conditions are favorable for plant growth. In Kentucky, this period normally extends from mid-April to mid-October.

(45) [(42)] "Head-of-hollow fill" means a fill structure consisting of any material, other than coal processing waste and organic material, placed in the uppermost reaches of a hollow near the approximate elevation of the ridgeline, where there is no significant natural drainage area above the fill, and where the side slopes of the existing hollow measured at the steepest point are greater than twenty (20) degrees or the average slope of the profile of the hollow from the toe of the fill to the top of the fill is greater than ten (10) degrees.

(46) [(43)] "Higher or better uses" means postmining land uses that have a higher economic value or nonmonetary benefit to the landowner or the community than the premining land uses.

(47) [(44)] "Highwall" means the face of exposed overburden and coal in an open cut of a surface mining activity or for entry to

underground mining activities.

(48) [(45)] "Highwall remnant" means that portion of highwall that remains after backfilling and grading of a remining permit area.

(49) [(46)] "Historically used for cropland" means land that:

(a) Has been used for cropland for any of five (5) years or more of the ten (10) years immediately preceding the:

1. Application; or

2. Acquisition of the land for the purpose of conducting a surface coal mining and reclamation operation;

(b) Would likely have been used for cropland for any five (5) of the ten (10) years immediately preceding the acquisition or application, but for some fact of ownership or control of the land unrelated to the productivity of the land;

(c) Falls outside the five (5) of ten (10) years criteria, but the cabinet determines is clearly cropland on the basis of additional cropland history of:

1. Surrounding land; and

2. The land under consideration. ["Historically used for cropland."

(a) "Historically used for cropland" means that lands have been used for cropland for any five (5) years or more out of the ten (10) years immediately preceding:

1. The application; or

2. The acquisition of the land for the purpose of conducting surface coal mining and reclamation operations.

(b) Lands meeting either paragraph (a) 1 or 2 of this subsection shall be considered "historically used for cropland."

(c) In addition to the lands covered by paragraph (a) of this subsection, other lands shall be considered "historically used for cropland" as described below:

1. Lands that would likely have been used as cropland for any five (5) out of the last ten (10) years immediately preceding the acquisition or the application but for some fact of ownership or control of the land unrelated to the productivity of the land; and

2. Lands that the cabinet determines, on the basis of additional cropland history of the surrounding lands and the lands under consideration, are clearly cropland but fall outside the specific five (5) years in ten (10) criterion.

(d) Acquisition includes purchase, lease, or option of the land for the purpose of conducting or allowing through resale, lease or option, the conduct of surface coal mining and reclamation operations.]

(50) [(47)] "Hydrologic balance" means the relationship between the quality and quantity of water inflow to, water outflow from, and water storage in a hydrologic unit such as a drainage basin, aquifer, soil zone, lake, or reservoir. It encompasses the dynamic relationship between precipitation, runoff, evaporation, and changes in ground and surface water storage.

(51) [(48)] "Hz" means hertz.

(52) "Impounding structure" means a dam, embankment or other structure used to impound water, slurry, or other liquid or semiliquid material.

(53) [(49)] "Impoundment" means a water, sediment, slurry or other liquid or semiliquid holding structure or depression, either naturally formed or artificially built [closed basin, naturally formed or artificially built, which is dammed or excavated for the retention of water, sediment, or waste].

(54) [(50)] "Industrial/commercial lands" means lands used for:

(a) Extraction or transformation of materials for fabrication of products, wholesaling of products, or long-term storage of products, and heavy and light manufacturing facilities.

(b) Retail or trade of goods or services, including hotels, motels, stores, restaurants, and other commercial establishments.

(55) [(51)] "In situ process" means:

(a) In situ gasification;

(b) In situ leaching;

(c) Slurry mining;

(d) Solution mining;

(e) Borehole mining;

(f) Fluid recovery mining; or

(g) Another activity conducted on the surface or underground in connection with:

1. In-place distillation;

2. Retorting;

3. Leaching; or

4. Chemical or physical processing of coal. ["In situ processes" means activities conducted on the surface or underground in connection with in-place distillation, retorting, leaching, or other chemical or physical processing of coal. The term includes, but is not limited to, in situ gasification, in situ leaching, slurry mining, solution mining, borehole mining, and fluid recovery mining.]

(56) [(52)] "Intermittent stream" means:

(a) A stream or reach of stream that drains a watershed of one (1) square mile or more but does not flow continuously during the calendar year; or

(b) A stream or reach of a stream that is below the local water table for at least some part of the year, and obtains its flow from both surface runoff and groundwater discharge.

(57) [(53)] "KAR" means Kentucky administrative regulations.

(58) [(54)] "KPDES" means Kentucky Pollutant Discharge Elimination System.

(59) [(55)] "KRS" means Kentucky Revised Statutes.

(60) [(56)] "Land use" means specific functions, uses, or management-related activities of an area, and may be identified in combination when joint or seasonal uses occur and may include land used for support facilities that are an integral part of the use. In some instances, a specific use can be identified without active management.

(61) "Material damage", as used in [405 KAR 8:040, Section 26 and] 405 KAR 18:210 means:

(a) Any functional impairment of surface lands, features, structures or facilities;

(b) Any physical change that has a significant adverse impact on the affected land's capability to support any current or reasonably foreseeable uses or causes significant loss in production or income; or

(c) Any significant change in the condition, appearance or utility of any structure or facility from its presubsidence condition.

(62) [(57)] "Modified highwall" means either:

(a) The highwall resulting from remining where the preexisting highwall face is removed; or

(b) The highwall resulting from remining where the preexisting highwall is vertically enlarged.

(63) [(58)] "Monitoring" means the collection of environmental data by either continuous or periodic sampling methods.

(64) [(59)] "MRP" means mining and reclamation plan.

(65) [(60)] "MSHA" means Mine Safety and Health Administration.

(66) [(61)] "Mulch" means vegetation residues or other suitable materials that aid in soil stabilization and soil moisture conservation, thus providing micro-climatic conditions suitable for germination and growth.

(67) "Noncommercial building" means any building, other than an occupied residential dwelling, that, at the time the subsidence occurs, is used on a regular or temporary basis as a public building or community or institutional building. Any building used only for commercial agricultural, industrial, retail or other commercial enterprises is excluded.

[(67) [(62)]] "Noxious plants" means species classified under Kentucky law as noxious plants.

(68) "Occupied residential dwelling and structures related thereto" means, for purposes of 405 KAR 8:040, Section 26 and 405 KAR 18:210, any building or other structure that, at the time the subsidence occurs, is used either temporarily, occasionally, seasonally, or permanently for human habitation. This term also includes any building, structure or facility installed on, above or below, or a

combination thereof, the land surface if that building, structure or facility is adjunct to or used in connection with an occupied residential dwelling. Examples of these structures include, but are not limited to, garages; storage sheds and barns; greenhouses and related buildings; utilities and cables; fences and other enclosures; retaining walls; paved or improved patios, walks and driveways; septic sewage treatment facilities; and lot drainage and lawn and garden irrigation systems. Any structure used only for commercial agricultural, industrial, retail or other commercial purposes is excluded.

(69) [(63)] "Operations" is defined in KRS 350.010.

(70) [(64)] "Operator" is defined in KRS 350.010.

(71) [(65)] "OSM" means Office of Surface Mining Reclamation and Enforcement, United States Department of the Interior.

(72) "Other treatment facilities" means any chemical treatments, such as flocculation or neutralization, or mechanical structures, such as clarifiers or precipitators, that have a point source discharge and are utilized:

(a) To prevent additional contributions of dissolved or suspended solids to streamflow or runoff outside the permit area; or

(b) To comply with 405 KAR 18:070.

(73) [(66)] "Outslope" means the face of the spoil or embankment sloping downward from the highest elevation to the toe.

(74) [(67)] "Overburden" is defined in KRS 350.010.

(75) [(68)] "Pastureland" means land used primarily for the long-term production of adapted, domesticated forage plants to be grazed by livestock or occasionally cut and cured for livestock feed.

(76) [(69)] "Perennial stream" means a stream or that part of a stream that flows continuously during all of the calendar year as a result of groundwater discharge or surface runoff. The term does not include "intermittent stream" or "ephemeral stream."

(77) [(70)] "Performance bond" means a surety bond, a collateral bond, or a combination thereof, or bonds filed pursuant to the provisions of the Kentucky Bond Pool Program (405 KAR 10:200, KRS 350.595, and 350.700 through 350.755), by which a permittee assures faithful performance of all the requirements of KRS Chapter 350, 405 KAR Chapters 7 through 24, and the requirements of the permit and reclamation plan.

(78) [(71)] "Permanent diversion" means a diversion remaining after surface coal mining and reclamation operations are completed which has been approved for retention by the cabinet and other appropriate Kentucky and federal agencies.

(79) [(72)] "Permit" means written approval issued by the cabinet to conduct surface coal mining and reclamation operations.

(80) [(73)] "Permit area" means the area of land and water within boundaries designated in the approved permit application, which shall include, at a minimum, all areas which are or will be affected by surface coal mining and reclamation operations under that permit.

(81) [(74)] "Permittee" means an operator or a person holding or required by KRS Chapter 350 or 405 KAR Chapters 7 through 24 to hold a permit to conduct surface coal mining and reclamation operations during the permit term and until all reclamation obligations imposed by KRS Chapter 350 and 405 KAR Chapters 7 through 24 are satisfied.

(82) [(75)] "Person" is defined in KRS 350.010.

(83) [(76)] "Precipitation event" means a quantity of water resulting from drizzle, rain, snowmelt, sleet, or hail in a specified period of time.

(84) [(77)] "Previously mined area" means land that was [disturbed or] affected by coal mining operations conducted prior to August 3, 1977, that has not been reclaimed to the standards of this title[, and for which there is no continuing responsibility to reclaim to the standards of this title].

(85) [(78)] "Prime farmland" means those lands which are defined by the Secretary of Agriculture in 7 CFR 657 and which have been "historically used for cropland" as that phrase is defined above.

(86) [(79)] "Probable hydrologic consequences" means the projected results of proposed surface coal mining and reclamation

operations which may reasonably be expected to change the quantity or quality of the surface and groundwater; the surface or groundwater flow, timing, and pattern; and the stream channel conditions on the permit area and adjacent areas.

(87) [(80)] "Public building" means any structure that is owned or leased, and principally used by a governmental agency for public business or meetings.

(88) [(81)] "Public road" means any publicly owned thoroughfare for the passage of vehicles.

(89) [(82)] "RAM" means Reclamation Advisory Memorandum.

(90) [(83)] "Reasonably available spoil" means spoil and suitable coal mine waste material generated by the remining operation and other spoil or suitable coal mine waste material located in the permit area that is accessible and available for use and that when rehandled will not cause a hazard to public safety or significant damage to the environment. For this purpose, the permit area shall include all spoil of this nature located in the immediate vicinity of the mining operation.

(91) [(84)] "Reclamation" is defined in KRS 350.010.

(92) [(85)] "Recreation land" means land used for public or private leisure-time use, including developed recreation facilities such as parks, camps, and amusement areas, as well as areas for less intensive uses such as hiking, canoeing, and other undeveloped recreational uses.

(93) [(86)] "Reference area" means a land unit maintained under appropriate management for the purpose of measuring vegetative ground cover, productivity, and plant species diversity that are produced naturally or by crop production methods approved by the cabinet.

(94) [(87)] "Refuse pile" means a surface deposit of coal mine waste that is not retained by an impounding structure and does not impound water, slurry, or other liquid or semiliquid material.

(95) [(88)] "Remining" means conducting surface coal mining and reclamation operations which affect previously mined areas.

(96) [(89)] "Residential land" means tracts employed for single and multiple-family housing, mobile home parks, and other residential lodgings.

(97) [(90)] "Road" means a surface right-of-way for purposes of travel by land vehicles used in coal exploration or surface coal mining and reclamation operations. A road consists of the entire area within the right-of-way, including the roadbed, shoulders, parking and side area, approaches, structures, ditches, surface, and contiguous appendages necessary for the total structure. The term includes access and haul roads constructed, used, reconstructed, improved, or maintained for use in coal exploration or surface coal mining and reclamation operations, including use by coal hauling vehicles leading to transfer, processing, or storage areas. The term does not include pioneer or construction roadways used for part of the road construction procedure and promptly replaced by a road pursuant to 405 KAR Chapters 16 and 18 located in the identical right-of-way as the pioneer or construction roadway. The term also excludes any roadway within the immediate mining pit area.

(98) [(91)] "Safety factor" means the ratio of the available shear strength to the developed shear stress, or the ratio of the sum of the resisting forces to the sum of the loading or driving forces, as determined by accepted engineering practices.

(99) [(92)] "SCS" means Soil Conservation Service.

(100) [(93)] "Sedimentation pond" means a primary sediment control structure:

(a) Designed, constructed, or maintained pursuant to 405 KAR 16:090 or 405 KAR 18:090;

(b) That may include a barrier, dam, or excavated depression to:

1. Slow water runoff; and

2. Allow suspended solids to settle out; and

(c) That shall not include secondary sedimentation control structures, including a straw dike, riprap, check dam, mulch, dugout, or other measure that reduces overland flow velocity,

reduces runoff volume, or trap sediment, to the extent that the secondary sedimentation structure drains into a sedimentation pond. ["Sedimentation pond" means a primary sediment control structure designed, constructed, and maintained in accordance with 405 KAR 16:090 or 405 KAR 18:090 and including but not limited to a barrier, dam, or excavated depression which slows down water runoff to allow suspended solids to settle out. A sedimentation pond shall not include secondary sedimentation control structures, such as straw dikes, riprap, check dams, mulches, dugouts, and other measures that reduce overland flow velocity, reduce runoff volume, or trap sediment, to the extent that the secondary sedimentation structures drain to a sedimentation pond.]

(101) [(94)] "Slope" means average inclination of a surface, measured from the horizontal, generally expressed as the ratio of a unit of vertical distance to a given number of units of horizontal distance (e.g., 1v:5h). It may also be expressed as a percent or in degrees.

(102) [(95)] "Slurry mining" means the hydraulic breakdown of subsurface coal with drill-hole equipment, and the eduction of the resulting slurry to the surface for processing.

(103) [(96)] "SMCRA" means Surface Mining Control and Reclamation Act of 1977 (PL 95-87), as amended.

(104) [(97)] "Soil horizons" means contrasting layers of soil parallel or nearly parallel to the land surface. Soil horizons are differentiated on the basis of field characteristics and laboratory data. The four (4) master soil horizons are:

(a) "A horizon." The uppermost mineral layer, often called the surface soil. It is the part of the soil in which organic matter is most abundant, and leaching of soluble or suspended particles is typically the greatest.

(b) "E horizon." The layer commonly near the surface below an A horizon and above a B horizon. An E horizon is most commonly differentiated from an overlying A horizon by lighter color and generally has measurably less organic matter than the A horizon. An E horizon is most commonly differentiated from an underlying B horizon in the same sequum by color of higher value or lower chroma, by coarser texture, or by a combination of these properties.

(c) "B horizon." The layer that typically is immediately beneath the E horizon and often called the subsoil. This middle layer commonly contains more clay, iron, or aluminum than the A, E, or C horizons.

(d) "C horizon." The deepest layer of soil profile. It consists of loose material or weathered rock that is relatively unaffected by biologic activity.

(105) [(98)] "Spoil" means overburden and other materials, excluding topsoil, coal mine waste, and mined coal, that are excavated during surface coal mining and reclamation operations.

(106) [(99)] "Stabilize" means to control movement of soil, spoil piles, or areas of disturbed earth by modifying the geometry of the mass, or by otherwise modifying physical or chemical properties, such as by providing a protective surface coating.

(107) [(100)] "Steep slope" means any slope of more than twenty (20) degrees.

(108) [(101)] "Surety bond" means an indemnity agreement in a sum certain, payable to the cabinet and executed by the permittee, which is supported by the performance guarantee of a corporation licensed to do business as a surety in the Commonwealth of Kentucky.

(109) [(102)] "Surface blasting operations":

(a) Means the on-site storage, transportation, and use of explosives in association with:

1. A coal exploration operation;
2. Surface mining activities; or
3. A surface disturbance of underground mining activities;

(b) Includes the following activities:

1. Design of an individual blast;
2. Implementation of a blast design;
3. Initiation of a blast;

4. Monitoring of an airblast and ground vibration; and

5. Use of access control, warning and all-clear signals, and similar protective measures. ["Surface blasting operations" means the on-site storage, transportation, and use of explosives in association with coal exploration operations, surface mining activities, and surface disturbances of underground mining activities. The term shall be interpreted broadly and shall encompass activities including, but not limited to, the design of individual blasts, the implementation of blast designs, the initiation of blasts, the monitoring of airblast and ground vibration, and the use of protective measures such as access control and warning and all-clear signals.]

(110) [(103)] "Surface coal mining and reclamation operations" is defined in KRS 350.010.

(111) [(104)] "Surface coal mining operations" is defined in KRS 350.010.

(112) [(105)] "Surface mining activities" means those surface coal mining and reclamation operations incident to the extraction of coal from the earth by removing the materials over a coal seam before recovering the coal, by auger coal mining, by extraction of coal from coal refuse piles, or by recovery of coal from slurry ponds.

(113) [(106)] "Suspended solids" or nonfilterable residue, expressed as milligrams per liter, means organic or inorganic materials carried or held in suspension in water which are retained by a standard glass fiber filter in the procedure outlined by the U.S. EPA's regulations for waste water and analyses (40 CFR 136).

(114) [(107)] "Temporary diversion" means a diversion of a stream or overland flow which is used during coal exploration or surface coal mining and reclamation operations and not approved by the cabinet to remain after reclamation as part of the approved postmining land use.

(115) [(108)] "Ton" means 2000 pounds avoirdupois (.90718 metric ton).

(116) [(109)] "Topsoil" means the A and E soil horizon layers of the four (4) master soil horizons.

(117) [(110)] "Toxic-forming materials" means earth materials or wastes which, if acted upon by air, water, weathering, or microbiological processes, are likely to produce chemical conditions in soils or water that are detrimental to biota or uses of water.

(118) [(111)] "Toxic mine drainage" means water that is discharged from active or abandoned mines or other areas affected by coal exploration or surface coal mining and reclamation operations, which contains a substance that through chemical action is likely to kill, injure, or impair biota commonly present in the area that might be exposed to it.

(119) [(112)] "Transfer, assignment, or sale of permit rights" means a change in ownership or other effective control over the right to conduct surface coal mining operations under a permit issued by the cabinet.

(120) [(113)] "TRM" means Technical Reclamation Memorandum.

(121) [(114)] "Underground development waste" means waste coal, shale, claystone, siltstone, sandstone, limestone, or similar materials that are extracted from underground workings in connection with underground mining activities.

(122) [(115)] "Underground mining activities" means a combination of:

(a) Surface operations incident to underground extraction of coal or in situ processing, including construction, use, maintenance, and reclamation of roads, aboveground repair areas, storage areas, processing areas, and shipping areas; areas upon which are sited support facilities including hoist and ventilating ducts; areas utilized for the disposal and storage of waste; and areas on which materials incident to underground mining operations are placed; and

(b) Underground operations such as underground construction, operation, and reclamation of shafts, adits, underground support facilities; in situ processing; and underground mining, hauling, storage, and blasting.

(123) [(116)] "Undeveloped land or no current use or land

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management" means land that is undeveloped or, if previously developed, land that has been allowed to return naturally to an undeveloped state or has been allowed to return to forest through natural succession:

(124) [(117)] "U.S. EPA" means United States Environmental Protection Agency.

(125) [(118)] "Valley fill" means a fill structure consisting of any material other than coal waste and organic material that is placed in a valley where side slopes of the existing valley measured at the steepest point are greater than twenty (20) degrees or the average slope of the profile of the valley from the toe of the fill to the top of the fill is greater than ten (10) degrees.

(126) [(119)] "Valuable environmental resources" means:

(a) Listed or proposed endangered or threatened species of plants or animals or their critical habitats listed by the Secretary of the Interior under the Endangered Species Act of 1973, as amended (16 USC Sec. 1531 et seq.), or those species or habitats protected by similar state statutes; and

(b) Habitats of unusually high value for fish and wildlife, as determined by the cabinet in consultation with state and federal agencies with responsibilities for fish and wildlife.

(127) [(120)] "Water table" means the upper surface of a zone of saturation, where the body of groundwater is not confined by an overlying impermeable zone.

(128) [(121)] "Water transmitting zone" means a body of consolidated or unconsolidated rocks which, due to their greater primary or secondary permeability relative to the surrounding rocks, can reasonably be considered to function as a single hydraulic medium for the flow of groundwater.

(129) [(122)] "Wetland" means land that has a predominance of hydric soils and that is inundated or saturated by surface or groundwater at a frequency and duration sufficient to support, and that under normal circumstances does support, a prevalence of hydrophytic vegetation typically adapted for life in saturated soil conditions.

(a) "Hydric soil" means soil that, in its undrained condition, is saturated, flooded, or ponded long enough during a growing season to develop an anaerobic condition that supports the growth and regeneration of hydrophytic vegetation.

(b) "Hydrophytic vegetation" means a plant growing in:

1. Water; or

2. A substrate that is at least periodically deficient in oxygen during a growing season as a result of excessive water content.

Section 2. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "ASTM Standard D 388-77, Standard Specification for Classification of Coals by Rank", (1977), American Society for Testing and Materials;

(b) "Method for Determination of Slake Durability Index, Kentucky Method 64-513-79", (1979), Kentucky Department of Transportation.

(2) It may be inspected, copied, or obtained at the Department for Surface Mining Reclamation and Enforcement, 2 Hudson Hollow, Frankfort, Kentucky 40601-4321, Monday through Friday, 8 a.m. to 4:30 p.m.

JAMES E. BICKFORD, Secretary

APPROVED BY AGENCY: July 28, 1997

FILED WITH LRC: July 28, 1997 at 4 p.m.

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET Department for Surface Mining Reclamation and Enforcement (As Amended at ARRS, May 11, 1998)

405 KAR 18:090. Sedimentation ponds.

RELATES TO: KRS 151.100, 151.250(3), 350.020, 350.100, 350.151, 350.420, 350.465, 30 CFR Parts 730-733, 735, 817.46, 917, 30 USC 1253, 1255, 1266

STATUTORY AUTHORITY: KRS 350.028, 350.100, 350.151, 350.420, 350.465, 30 CFR Parts 730-733, 735, 817.46, 917, 30 USC 1253, 1255, 1266

NECESSITY, FUNCTION, AND CONFORMITY: KRS 350.028(1), (5), 350.151(1), and 350.465(2) authorize the cabinet to promulgate administrative regulations relating to surface and underground coal mining operations. This administrative regulation establishes the requirements for the location, design, construction, certification, maintenance, removal, and retention of sedimentation ponds for underground mines. [KRS 350.028(1) requires the cabinet to promulgate administrative regulations pertaining to surface coal mining operations including strip mining and the surface effects of underground mining to accomplish the purposes of KRS Chapter 350. This administrative regulation applies to surface coal mining and reclamation operations with surface effects of underground mining. This administrative regulation sets forth requirements for the location, design, construction, certification, maintenance, and removal or retention of sedimentation ponds. KRS 350.028(5), 350.151(1), and 350.465(2), (5) authorize and direct the cabinet to promulgate administrative regulations for surface and underground coal mining operations for the purpose of accepting and administering primary enforcement responsibilities under the permanent regulatory program pursuant to PL 95-87, the federal Surface Mining Control and Reclamation Act of 1977; and direct that the cabinet's administrative regulations be consistent with, and not more stringent than required by, that Act. PL 95-87 does not require Kentucky to comply with its provisions, but in order to retain primary enforcement responsibility under that Act the cabinet's administrative regulations must be consistent with federal regulations promulgated pursuant to that Act. This amendment differs from the federal regulations as follows:

1. Some requirements in 30 CFR 817.46 are contained in 405 KAR 18:070 rather than this administrative regulation;

2. This administrative regulation does not use the term "siltation structure", as does the federal regulation. 30 CFR 701.5 defines "siltation structure" to mean "a sedimentation pond, a series of sedimentation ponds, or other treatment facility". This administrative regulation uses "sedimentation pond", "in series", and "other treatment facility" as needed, so "siltation structure" is unnecessary;

3. Section 2 of this administrative regulation, regarding sediment storage volume, contains provisions for a time schedule or clean-out elevations that are not found in the federal regulation. Section 2 of this administrative regulation corresponds to two (2) federal requirements at 30 CFR 817.46(c)(1)(iii)(A) and (F), and contains additional clarifying language that corresponds to explanatory language in the preamble to the federal regulations at 48 FR 44041, September 26, 1983;

4. Section 3 of this administrative regulation, regarding detention time and pond sizing, contains provisions that are not found in the federal regulation. Section 3(2) of this administrative regulation corresponds to the requirement in 30 CFR 817.46(c)(1)(iii)(C) to "contain or treat the 10-year, 24-hour precipitation event". Section 3(2) of this administrative regulation clarifies the meaning of the federal requirement, consistent with the explanation in the preamble to the federal regulations at 48 FR 44042, September 26, 1983.] [KRS Chapter 350 in pertinent part requires the cabinet to promulgate rules

and administrative regulations establishing performance standards for protection of people and property, land, water and other natural resources, and aesthetic values, during underground mining activities and for restoration and reclamation of surface areas affected by underground mining activities. This administrative regulation sets forth specific requirements for the location, design, construction, and removal or retention of sedimentation ponds used for treatment of discharges from areas affected by surface operations and discharges from underground workings.]

Section 1. General Requirements. Sedimentation ponds shall be used individually or in series and shall:

(1) Comply with this administrative regulation and 405 KAR 18:100;

(2)(a) In accordance with 405 KAR 18:100, Section 1(2), be designed and certified by a qualified registered professional engineer as meeting the requirements of this administrative regulation and 405 KAR 18:100; and

(b) In accordance with 405 KAR 18:100, Section 1(9), be inspected during construction by or under the direct supervision of the responsible registered professional engineer, and after construction be certified by the responsible registered professional engineer as having been constructed in accordance with the approved design plans;

(3) Be constructed and certified under subsection (2) of this section [Section 5(14) of this administrative regulation] before any disturbance in the watershed that drains [of the area to be drained] into the sedimentation pond and prior to any discharge of water to surface waters from underground mine workings; and

(4) [(2)] Be located as near as possible to the disturbed area, and out of perennial streams unless approved by the cabinet;

(3) Meet all the criteria of this administrative regulation;

(4) Be removed pursuant to Section 5(18) of this administrative regulation unless approved for retention under Section 5(19) of this administrative regulation].

Section 2. Sediment Storage Volume. Sedimentation ponds shall provide adequate [a] sediment storage volume as approved on a case-by-case basis by the cabinet based upon the anticipated volume of sediment to be collected and a feasible plan [time schedule] for clean-out operations. The plan shall include a time schedule or clean-out elevations, or an appropriate combination thereof, that shall provide periodic sediment removal sufficient to maintain adequate volume for the sediment to be collected during the design precipitation event under Section 3 of this administrative regulation. [The sediment storage volume shall be the anticipated volume of sediment that will be collected by the pond between scheduled clean-out operations.] The proposed clean-out plan [schedule] shall be included in the design and shall [will] be approved if the cabinet determines that the proposed plan [schedule] is feasible.

Section 3. Detention Time. Sedimentation ponds shall be designed, constructed, and maintained to:

(1) Provide detention time such that discharges from the sedimentation pond shall meet the requirements of 405 KAR 18:070, Section 1(1)(g); and

(2)(a) Contain the runoff from the ten (10) year, twenty-four (24) hour precipitation event by providing a runoff storage volume, between the top elevation of the design sediment storage volume and the principal spillway elevation, equal to or greater than the runoff from that precipitation event. The cabinet may approve a smaller runoff storage volume based on terrain, the amount of disturbance, other site specific conditions, and a demonstration by the permittee that the effluent limitations of 405 KAR 18:070, Section 1(1)(g) will be met; or

(b) Treat the runoff from the ten (10) year, twenty-four (24) hour precipitation event by using other treatment facilities in conjunction

with adequate runoff storage volume, so [such] that the effluent limitations of 405 KAR 18:070, Section 1(1)(g), will be met.

Section 4. Dewatering. The water storage resulting from inflow shall be removed by a nonclogging dewatering device or [a conduit] spillway approved by the cabinet. The dewatering device or spillway shall not be located at a lower elevation than the top [maximum] elevation of the design sediment storage volume.

Section 5. Other Requirements. (1) Each permittee shall design, construct, and maintain sedimentation ponds to prevent short-circuiting to the extent possible.

(2) The design, construction, and maintenance of a sedimentation pond or other sediment control measures in accordance with this administrative regulation shall not relieve the permittee from compliance with 405 KAR 18:070, Section 1(1)(g).

(3) [There shall be no outflow through an emergency spillway during the passage through the sedimentation pond of the run-off resulting from the ten (10) year, twenty-four (24) hour precipitation events and lesser events.] The design shall take into account the volume of water and sediment contributed by the underground mine discharge.

(4) Sediment shall be removed from sedimentation ponds in accordance with the approved clean-out plan. [when the designed sediment storage volume has filled with sediment.]

(5) [An appropriate combination of principal and emergency] Spillways shall be provided in accordance with 405 KAR 18:100. [to discharge safely the run-off from a twenty-five (25) year, twenty-four (24) hour precipitation event, or larger event specified by the cabinet plus any inflow from the underground mine. The elevation of the crest of the emergency spillway shall be a minimum of one and five-tenths (1.5) feet above the crest of the principal spillway.] Emergency spillway grades and allowable velocities shall be approved by the cabinet. [Sedimentation ponds not meeting the size or other qualifying criteria of 30 CFR 77.216(a) may use a single spillway if the spillway:

(a) is an open channel on nonerodible construction and capable of maintaining sustained flows; and

(b) is not earth or grass lined.

(6) The minimum elevation of the top of the settled embankment shall be one (1.0) foot above the water surface in the reservoir with the emergency spillway flowing at design depth. For embankments subject to settlement, this one (1.0) foot minimum elevation requirement shall apply at all times, including the period after settlement.

(7) The constructed height of the dam shall be increased a minimum of five (5) percent over the design height to allow for settlement, unless it has been demonstrated to the cabinet that the material used and the design will ensure against all settlement.

(8) The minimum top width of the embankment shall not be less than the quotient of $(H + 35)/5$, where H, in feet, is the height of the embankment as measured from the upstream toe of the embankment.

(9) The combined upstream and downstream side slopes of the settled embankment shall not be less than 1v:5h, with neither slope steeper than 1v:2h. Slopes shall be designed to be stable in all cases, even if flatter side slopes are required.

(10) The embankment foundation area shall be cleared of all organic matter, all surfaces sloped to no steeper than 1v:1h, and the entire foundation surface scarified.

(11) The fill material shall be free of sod, large roots, other large vegetative matter, and frozen soil, and in no case shall coal processing waste be used.

(12) The placing and spreading of fill material shall be started at the lowest point of the foundation. The fill shall be brought up in horizontal layers of such thickness as is required to facilitate compaction and meet the design requirements of this administrative regulation. Compaction shall be conducted as specified in the design approved by the cabinet.

(13) If a sedimentation pond has an embankment that is more

than twenty (20) feet in height, as measured from the upstream toe of the embankment to the crest of the emergency spillway, or has a storage volume of twenty (20) acre-feet or more, the following additional requirements shall be met:

(a) An appropriate combination of principal and emergency spillways shall be provided to safely discharge the run-off resulting from a 100-year, twenty-four (24) hour precipitation event, or a larger event specified by the cabinet, plus any inflow from the underground mine.

(b) The embankment shall be designed and constructed with a static safety factor of at least one and five-tenths (1.5), or a higher safety factor as designated by the cabinet to ensure stability.

(c) Appropriate barriers shall be provided to control seepage along conduits that extend through the embankment.

(d) The criteria of the MSHA as published in 30 CFR 77.216 shall be met.

(14) Each pond shall be designed and certified by a registered professional engineer, shall be inspected during construction by or under the direct supervision of the responsible registered professional engineer, and after construction shall be certified by the responsible registered professional engineer as having been constructed in accordance with the approved design plans.

(15) The entire embankment including the surrounding areas disturbed by construction shall be stabilized with respect to erosion by a vegetative cover or other means immediately after the embankment is completed. The active upstream face of the embankment where water is being impounded may be riprapped or otherwise stabilized. Areas in which the vegetation is not successful or where fills and gullies develop shall be repaired and revegetated, in accordance with 405 KAR 18:190, Section 4.

(16) All ponds meeting or exceeding the size or other criteria of 30 CFR 77.216(a) shall be examined for structural weakness, erosion, and other hazardous conditions and reports shall be made to the cabinet, in accordance with 30 CFR 77.216-3. Such inspections shall be made by a qualified registered professional engineer, by someone under the supervision of a qualified registered professional engineer, or by a person approved by MSHA for such inspections. Ponds not meeting these criteria (30 CFR 77.216(a)) shall be examined four (4) times per year for structural weakness, erosion, and other hazardous conditions and reports of the inspection shall be submitted to the cabinet.]

(6) [(17)] Sedimentation ponds shall be properly maintained and shall not be removed until the requirements of 405 KAR 18:070, Section 1(1)(b) have been met.

(7) [(18)] Sedimentation ponds shall be removed prior to final release of bond liability for the permit area unless retention of the pond is approved by the cabinet under subsection (8) [(19)] of this section. **After [When]** a sedimentation pond is removed, the affected land shall be regraded and revegetated in accordance with 405 KAR 18:190 and 405 KAR 18:200.

(8) [(19)] If the cabinet approves retention of a sedimentation pond as a permanent impoundment, the sedimentation pond shall meet all the requirements for permanent impoundments under 405 KAR 18:060, Section 10 [8], and 405 KAR 18:100.

[(20) Notwithstanding other provisions of this administrative regulation, all dams as defined by KRS 151.100(13) and other impoundments classified as Class B - moderate hazard or Class C - high hazard, shall comply with 405 KAR 7:040, Section 5 and with 401 KAR 4:030.]

JAMES E. BICKFORD, Secretary

APPROVED BY AGENCY: July 28, 1997

FILED WITH LRC: July 28, 1997 at 4 p.m.

NATURAL RESOURCES AND
ENVIRONMENTAL PROTECTION CABINET
Department for Surface Mining
Reclamation and Enforcement
(As Amended at ARRS, May 11, 1998)

405 KAR 18:100. Permanent and temporary impoundments.

RELATES TO: KRS 151.100, 151.250(3), 350.100, 350.151, 350.420, 350.455, 350.465, 30 CFR Parts 730-733, 735, 817.49, 917, 30 USC 1253, 1255, 1266

STATUTORY AUTHORITY: KRS [Chapter 13A,] 350.028, 350.151, 350.465, 30 CFR Parts 730-733, 735, 817.49, 917, 30 USC 1253, 1255, 1266

NECESSITY, FUNCTION, AND CONFORMITY: KRS 350.028(1), (5), 350.151(1), and 350.465(2) authorize the cabinet to promulgate administrative regulations relating to surface and underground coal mining operations. This administrative regulation establishes the requirements for the design, construction, certification, inspection, and maintenance of temporary and permanent impoundments for underground mines. This administrative regulation differs from federal regulations as follows:

(1) Section 1 of this administrative regulation provides criteria related to the stability, settlement, embankment height and width, and freeboard of impoundments which is not found in the federal regulations. These criteria have been retained because they have long been effective guidelines for embankment safety and stability.

(2) Section 1(9)(c) of this administrative regulation provides an exemption from engineering inspection for certain types of impoundments without embankments. These inspections are unnecessary because the embankments do not present a safety hazard or environmental concern that would warrant routine, detailed inspection.

(3) Section 1(10)(b) of this administrative regulation provides an exemption from quarterly inspections for certain small nonhazardous impoundments without embankment structures. These inspections are unnecessary because the structures cannot develop the hazardous conditions which the inspections were intended to detect. [KRS 350.028(1) requires the cabinet to promulgate administrative regulations pertaining to surface coal mining operations including strip mining and the surface effects of underground mining to accomplish the purposes of KRS Chapter 350. This administrative regulation applies to surface coal mining and reclamation operations with surface effects of underground mining. This administrative regulation sets forth requirements for the design, construction, certification, inspection and maintenance of temporary and permanent impoundments, and specific criteria for impoundments which are to be retained as permanent facilities after mining and reclamation. KRS 350.028(5), 350.151(1), and 350.465(2), (5) authorize and direct the cabinet to promulgate administrative regulations for surface and underground coal mining operations for the purpose of accepting and administering primary enforcement responsibilities under the permanent regulatory program pursuant to PL 95-87, the federal Surface Mining Control and Reclamation Act of 1977; and direct that the cabinet's administrative regulations be consistent with, and not more stringent than required by, that Act. PL 95-87 does not require Kentucky to comply with its provisions, but in order to retain primary enforcement responsibility under that Act the cabinet's administrative regulations must be consistent with federal regulations promulgated pursuant to that Act. This amendment differs from the federal regulations as follows:

1. The corresponding federal regulation at 30 CFR 817.49 incorporates by reference the USDA Soil Conservation Service Technical Release No. 60, "Earth Dams and Reservoirs". The federal regulation refers to the Class B and C structure hazard criteria in this publication, and for certain structures requires compliance with the

~~freeboard hydrograph criteria and the emergency spillway hydrograph criteria in the "Minimum Emergency Spillway Hydrologic Criteria" table of this publication. In corresponding requirements, this administrative regulation refers to the Class B and C criteria under 405 KAR 7:040, Section 5, and 401 KAR 4:030. Although they appear in different publications, the state Class B and C criteria and spillway hydrologic criteria are essentially the same as the federal criteria, since the state criteria were originally developed based upon the federal criteria. Thus there is no need for SCS TR-60 to be incorporated by reference in this administrative regulation.~~

~~2. The exemption from engineering inspections for certain impoundments without embankments at Section 1(9)(c) of this administrative regulation does not appear in the federal regulation. These impoundments do not present safety hazards or other environmental concerns that warrant routine, detailed inspections by experienced registered professional engineers or other specialists. Additionally, the exemption includes provisions that allow the cabinet to require the inspections on a case-by-case basis if needed.~~

~~3. The exemption at Section 1(10)(b) of this administrative regulation from quarterly inspections by qualified personnel of the operator for certain small nonhazardous impoundments without embankment structures does not appear in the federal regulation. The required inspections are for appearance of structural weakness and other hazardous conditions. The exempted structures cannot develop the hazardous conditions the inspections are intended to protect against, so the inspections are unnecessary for this limited class of structures.~~

~~4. Section 1 of this administrative regulation retains specific criteria related to stability, including criteria on settlement, embankment width to height ratio, and side slopes, and minimum criteria related to freeboard, that do not appear in the federal regulation. These criteria have been retained because they have long been effective guidelines for embankment stability.] [KRS Chapter 350 in pertinent part requires the cabinet to promulgate rules and administrative regulations establishing performance standards for protection of people and property, land, water and other natural resources, and aesthetic values, during underground mining activities and for restoration and reclamation of surface areas affected by mining activities. This administrative regulation sets forth requirements for inspection and maintenance of temporary and permanent impoundments, and specific criteria for impoundments which are to be retained as permanent facilities after completion of underground mining activities.]~~

Section 1. General Requirements. The requirements of this section apply to both temporary and permanent impoundments.

(1)(a) Impoundments meeting the criteria of MSHA, 30 CFR 77.216(a), shall comply with the requirements of 30 CFR 77.216 and this administrative regulation. The plan required to be submitted to the district manager of MSHA under 30 CFR 77.216 shall [also] be submitted to the cabinet as part of the permit application after the plan has been approved by MSHA.

(b) All impoundments classified as Class B-moderate hazard or Class C-high hazard, and all permanent "dams," as defined in KRS 151.100, shall comply with 405 KAR 7:040, Section 5 and with 401 KAR 4:030.

(2) Design certification. The design of impoundments shall be certified by a qualified registered professional engineer as designed to meet the requirements of this administrative regulation using current, prudent engineering practices, and any design criteria established by the cabinet. The qualified registered professional engineer shall be experienced in the design and construction of impoundments.

(3) Stability.

(a) 1. Permanent and temporary impoundments meeting the criteria of MSHA, 30 CFR 77.216(a), all Class B and C impoundments, and all permanent impoundments, shall have a minimum static

safety factor of 1.5 for the normal pool with steady seepage saturation conditions, and a seismic safety factor of at least 1.2.

2. Impoundments not included in subparagraph 1 of this paragraph, except coal mine waste impoundments, shall have a minimum static safety factor of 1.3 for the normal pool with steady state seepage saturation conditions.

(b) The constructed height of the dam shall be increased a minimum of five (5) percent over the design height to allow for settlement, unless it has been demonstrated to the cabinet that the material used and the design will ensure against all settlement.

(c) The minimum top width of the embankment shall not be less than the quotient of $(H+35)/5$, where H is the height, in feet, of the embankment as measured from the upstream toe of the embankment.

(d) Unless the cabinet approves steeper slopes, based upon a satisfactory demonstration of stability by the applicant acceptable to the cabinet, the sum of the upstream and downstream side slopes (h/v) of the settled embankment shall not be less than 5h:1v, with neither slope steeper than 2h:1v. Slopes shall be designed to be stable in all cases, even if flatter side slopes are required.

(e) The fill material shall be free of sod, large roots, other large vegetative matter, and frozen soil and shall not contain coal mine waste except for coal mine waste impounding structures pursuant to 405 KAR 18:160.

(f) The placing and spreading of fill material shall be started at the lowest point of the foundation. The fill shall be brought up in horizontal layers of [such] thickness as is required to facilitate compaction and meet the design requirement of this administrative regulation. Compaction shall be conducted as specified in the design approved by the cabinet.

(g) The entire embankment including the surrounding areas disturbed by construction shall be stabilized with respect to erosion by a vegetative cover or other means immediately after the embankment is completed. The active upstream face of the embankment where water will be impounded may be riprapped or otherwise stabilized. Areas in which the vegetation is not successful or where rills and gullies develop shall be repaired and revegetated in accordance with 405 KAR 18:190, Section 4.

(h) Slope protection shall be provided to protect against surface erosion at the site and protect against sudden drawdown.

(4) Freeboard. Impoundments shall have adequate freeboard to resist overtopping by waves and by sudden increases in storage volume. The minimum elevation at the top of the settled embankment shall be one (1.0) foot above the water surface in the pond with the emergency spillway flowing at design depth. For embankments subject to settlement, this one (1.0) foot minimum elevation requirement shall apply at all times, including the period after settlement. Freeboard requirements shall not apply to incised impoundments which have no embankment or levee.

(5) Foundation.

(a) 1. Foundation and abutments for the impounding structure shall be designed to be stable under all conditions of construction and operation of the impoundment and shall be designed based on adequate and accurate information on the foundation conditions.

2. For permanent and temporary impoundments meeting the criteria of MSHA, 30 CFR 77.216(a), for all Class B and C impoundments, and for all permanent impoundments, foundation investigations as well as any necessary laboratory testing of materials shall be performed in order to determine the design requirements for foundation and embankment stability.

3. If [Where] an approved temporary impoundment has been constructed and the permittee subsequently seeks a permit revision to upgrade the structure to a permanent impoundment, the cabinet may waive the foundation investigations and laboratory testing required by subparagraph 2 of this paragraph under the following circumstances:

a. The structure has been recently verified as being a Class A-low hazard structure;

b. The structure does not meet the definition of the term "dam," as defined at KRS 151.100; and

c. The cabinet approves conservative, assumed values for the strength parameters used in the stability analyses to ensure compliance with subsection (3)(a) of this section.

(b) All vegetative and organic materials shall be removed and foundations excavated and prepared to resist failure. Cutoff trenches shall be installed if necessary to ensure stability.

(6) Impoundments shall include a combination of principal and emergency spillways which shall be designed and constructed to safely pass the design precipitation event specified in this subsection [below], unless the cabinet requires a larger event. Twenty-four (24) hours may be used in lieu of six (6) hours for the duration of a design precipitation event specified in this subsection.

(a) Except as provided in paragraph (c) of this subsection, Class A structures that do not meet the criteria of MSHA, 30 CFR 77.216(a), shall pass the:

1. Twenty-five (25) year, six (6) [twenty-four (24)] hour precipitation event if it is a temporary structure; or

2. The fifty (50) year, six (6) [twenty-four (24)] hour precipitation event if it is a permanent structure.

(b) Class A structures that do meet the criteria of MSHA, 30 CFR 77.216(a), shall pass the 100 year, six (6) [twenty-four (24)] hour precipitation event.

(c) Class B and C structures and all permanent dams as defined in KRS 151.100 shall comply with the criteria established in 401 KAR 4:030.

(7) Class A impoundments not meeting the criteria of MSHA, 30 CFR 77.216(a), may use a single spillway (if allowed pursuant to subsection (1)(b) of this section) if the spillway:

(a) Is an open channel of nonerodible construction and capable of maintaining sustained flows; and

(b) Is not earth or grass lined.

(8) The vertical portion of any remaining highwall shall be located far enough below the low-water line along the full extent of the highwall to provide adequate safety and access for the proposed water users.

(9) Engineer inspections. A qualified registered professional engineer or other qualified professional specialist, under the direction of the professional engineer, shall inspect the impoundment. The professional engineer or specialist shall be experienced in the design and construction of impoundments.

(a) Inspections shall be made regularly during construction, upon completion of construction, and at least yearly until removal of the structure or release of the performance bond.

(b) The qualified registered professional engineer shall promptly, after each inspection, provide to the cabinet a certified report that the impoundment has been constructed and maintained as designed and in accordance with the plan approved in the permit and 405 KAR Chapters 7 through 24. The report shall include discussion of any appearances of instability, structural weakness or other hazardous conditions, depth and elevation of any impounded waters, existing storage capacity, any existing or required monitoring procedures and instrumentation and any other aspects of the structure affecting stability. The report shall also confirm the hazard classification of the impoundment, or if the hazard classification has changed, the report shall contain a detailed explanation of the change and the conditions causing the change.

[(c)] A copy of the report shall be retained at or near the mine site.

(c) An impoundment with no embankment structure, that is completely incised or is created by a depression left by backfilling and grading, that is not a sedimentation pond or coal mine waste impoundment and is not otherwise intended to facilitate active mining, shall be exempt from this subsection unless the cabinet determines on a case-by-case basis that engineering inspection and certification are necessary to insure public health and safety or environmental

conditions, in which case the cabinet shall establish appropriate inspection and certification requirements for the impoundment that shall apply in lieu of the requirements of this subsection and shall notify the permittee in writing.

(10) Operator examinations.

(a) Impoundments subject to 30 CFR 77.216, and Class B and C impoundments, shall [must] be examined in accordance with 30 CFR 77.216-3.

(b) [Other] Impoundments not included in paragraph (a) of this subsection shall be examined at least quarterly by a qualified person designated by the operator for appearance of structural weakness and other hazardous conditions. Quarterly examinations shall [are to] be conducted each calendar quarter (i.e., January-March, April-June, July-September, and October-December) and no two (2) examinations shall be within thirty (30) days of each other unless additional examinations within a quarter are required. Reports of the examinations shall [are to] be retained at or near the mine site. An impoundment with no embankment structure, that is completely incised or is created by a depression left by backfilling and grading, shall be exempt from this paragraph.

(11) Emergency procedures. If any examination or inspection discloses that a potential hazard exists, the person who examined the impoundment shall immediately notify the department and the Kentucky Division of Water, or if these agencies cannot be reached, Disaster and Emergency Services. The permittee shall immediately implement emergency procedures formulated for public protection and remedial action. If adequate emergency procedures cannot be formulated or implemented by the permittee, the cabinet shall be notified, and the cabinet shall notify the appropriate agencies that other emergency procedures are required to protect the public.

Section 2. Permanent Impoundments. A permanent impoundment of water may be created, if authorized by the cabinet in the approved permit based upon the following demonstration:

(1) The size and configuration of the [such] impoundment will be adequate for its intended purposes.

(2) The quality of impounded water will be suitable on a permanent basis for its intended use and, after reclamation, will meet applicable state and federal water quality standards, and discharges from the impoundment will meet applicable effluent limitations and will not degrade the quality of receiving water below applicable state and federal water quality standards.

(3) The water level will be sufficiently stable and be capable of supporting the intended use.

(4) Final grading will provide for adequate safety and access for proposed water users. Perimeter slopes shall be stable and shall be protected against erosion.

(5) The impoundment will not result in the diminution of the quality and quantity of water utilized by adjacent or surrounding landowners for agricultural, industrial, recreational, or domestic uses.

(6) The impoundment will be suitable for the approved postmining land use.

JAMES E. BICKFORD, Secretary

APPROVED BY AGENCY: July 28, 1997

FILED WITH LRC: July 28, 1997 at 4 p.m.

NATURAL RESOURCES AND
ENVIRONMENTAL PROTECTION CABINET
Department for Surface Mining
Reclamation and Enforcement
(As Amended at ARRS, May 11, 1998)

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

RELATES TO: KRS 151.100, 151.250(3), 350.151, 350.425, 30 CFR Parts 730-733, 735, 817.84, 917, 30 USC 1253, 1255, 1266

STATUTORY AUTHORITY: KRS 350.028, 350.151, 350.465, 30 CFR Parts 730-733, 735, 817.84, 917, 30 USC 1253, 1255, 1266

NECESSITY, FUNCTION, AND CONFORMITY: KRS 350.028(1), (5), 350.151(1), and 350.465(2) authorize the cabinet to promulgate administrative regulations relating to surface and underground coal mining operations. This administrative regulation establishes requirements for coal mine waste dams and impoundments for underground mines. This administrative regulation differs from 30 CFR 817.84.

(1) Section 3(1)(b) of this administrative regulation includes detailed requirements for principal spillways in impoundments that do not have an open channel emergency spillway. This is necessary to ensure the safety of a large impoundment that does not have an open channel emergency spillways.

(2) Section 3(1)(c) of this administrative regulation requires a minimum freeboard of three (3) feet that is not included in the federal regulation. This is necessary to ensure the safety of an impounding structure that may be susceptible to erosion if overtopping occurs. [KRS 350.028(1) requires the cabinet to promulgate administrative regulations pertaining to surface coal mining operations including strip mining and the surface effects of underground mining to accomplish the purposes of KRS Chapter 350. This administrative regulation applies to surface coal mining and reclamation operations with surface effects of underground mining. This administrative regulation sets forth requirements for the design and construction of impounding structures that are constructed of coal mine waste or will impound coal mine waste. KRS 350.028(5), 350.151(1), and 350.465(2), (5) authorize and direct the cabinet to promulgate administrative regulations for surface and underground coal mining operations for the purpose of accepting and administering primary enforcement responsibilities under the permanent regulatory program pursuant to PL 95-87, the federal Surface Mining Control and Reclamation Act of 1977; and direct that the cabinet's administrative regulations be consistent with, and not more stringent than required by, that Act. PL 95-87 does not require Kentucky to comply with its provisions, but in order to retain primary enforcement responsibility under that Act the cabinet's administrative regulations must be consistent with federal regulations promulgated pursuant to that Act. This amendment differs from the federal regulations as follows:

1. Section 2(1) of this administrative regulation includes requirements for removal of vegetative matter during site preparation. This requirement is not found in the corresponding federal regulation at 30 CFR 817.84. However, 30 CFR 817.84 refers to 817.49, which includes much the same requirement as Section 2(1) of this administrative regulation.

2. The federal regulation does not include the detailed requirements in Section 3(1)(b) of this administrative regulation regarding principal spillways in impoundments without open channel emergency spillways. The cabinet believes these are appropriate criteria that are necessary to ensure the safety of large impoundments that do not have open channel emergency spillways. It is significant that these criteria are consistent with criteria in the USDA-SCS publication Technical Release No. 60.

3. The federal regulation does not include the minimum freeboard of three (3) feet that is specified in Section 3(1)(c) of this administrative regulation. The cabinet believes this is an important safety

provision for the types of impounding structures under this administrative regulation, which are sometimes highly susceptible to erosion if overtopping occurs.] [KRS Chapter 350 in pertinent part requires the cabinet to promulgate rules and administrative regulations establishing performance standards for protection of people and property, land, water and other natural resources, and aesthetic values, during underground mining activities and for restoration and reclamation of surface areas affected by underground mining activities. This administrative regulation sets forth specific design and construction requirements for existing and new dams or embankments which are constructed of coal processing waste or will impound coal processing waste.]

Section 1. General Requirements. (1) This administrative regulation applies to dams and impoundments, constructed of coal mine [processing] waste or intended to impound coal mine [processing] waste, that were completed or are to be completed after August 3, 1977.

(2) Coal mine waste shall not be used in the construction of dams and impoundments unless it has been demonstrated to the cabinet that the stability of the [such-a] structure conforms with the requirements of Section 3(1) of this administrative regulation. It shall also be demonstrated that the use of coal mine waste will [material-shall] not have a detrimental effect on downstream water quality or the environment due to acid seepage through the dam or impoundment. All demonstrations shall be submitted to and approved by the cabinet.

(3) An impounding structure constructed of coal mine waste or intended to impound coal mine waste shall not be retained permanently as part of the approved postmining land use.

Section 2. Site Preparation. Before coal mine [processing] waste is placed at a dam or impoundment site:

(1) All trees, shrubs, grasses, and other organic material shall be cleared and grubbed from the site, and all combustible materials shall be removed and disposed of or stockpiled in accordance with the requirements of this chapter; and

(2) Surface drainage that may cause erosion to the dam or the impoundment features, whether during construction or after completion, shall be diverted away from the dam or impoundment by diversion ditches that comply with the requirements of 405 KAR 18:080, Section 1. Adequate outlets for discharge from these diversions shall be in accordance with 405 KAR 18:060, Section 3. Diversions that are designed to divert drainage from the upstream area away from the impoundment area shall be designed to carry the peak run-off from a 100-year, six (6) [twenty-four (24)] hour precipitation event. Twenty-four (24) hours may be used in lieu of six (6) hours for the duration of the 100-year design precipitation event in this subsection. The diversion shall be maintained to prevent blockage, and the discharges shall be in accordance with 405 KAR 18:060, Section 3.

Section 3. Design and Construction. (1) The design of each dam and impoundment constructed of coal mine [processing] waste or intended to impound coal mine [such] waste shall comply with the requirements of 405 KAR 18:100, Sections 1(1)(e) and 2, including the certification requirements thereof, modified as follows:

(a) An impounding structure constructed of coal mine waste or intended to impound coal mine waste that meets the criteria of 30 CFR 77.216(a) shall have sufficient spillway capacity to safely pass, adequate storage capacity to safely contain, or a combination of storage capacity and spillway capacity to safely control, the probable maximum precipitation of a six (6) hour precipitation event. The cabinet may require a duration longer than six (6) hours if safety concerns warrant a longer time period. [on a case-by-case basis.]

(b) An impounding structure with a drainage area of ten (10) square miles or less that does not have an open channel emergency spillway shall have a closed conduit principal spillway that shall meet the requirements of this paragraph. The impounding structure shall

have sufficient storage capacity available to store the entire runoff from the probable maximum precipitation event while maintaining the required freeboard against overtopping, disregarding flow through the principal spillway.

1. The spillway shall have a trash rack designed to provide positive protection against clogging of the spillway at all operating levels, and an elbow designed to facilitate the passage of trash;

2. The conduit shall be large enough to pass the routed freeboard hydrograph peak discharge while maintaining the required freeboard against overtopping the structure. For structures included in paragraph (a) of this subsection, the probable maximum precipitation event shall be used to determine the freeboard hydrograph;

3. The conduit shall be large enough to meet the requirements under 401 KAR 4:030 for minimum emergency spillway discharge capacity; and

4. The spillway shall meet all other applicable requirements under 401 KAR 4:030, 405 KAR 18:100, and this administrative regulation, except the requirement under 401 KAR 4:030 that the conduit have a minimum cross-sectional area of thirty-six (36) square feet. The cross-sectional area of the barrel of the conduit shall be not less than twelve (12) square feet for a Class A structure with a product of storage in acre-feet times effective height in feet of less than 10,000 and shall be not less than twenty (20) square feet for other structures.

(c) The design freeboard between the lowest point on the dam or impoundment crest and the maximum water elevation shall be at least three (3) feet. For structures not included in paragraph (a) of this subsection, the maximum water elevation shall be that determined by the freeboard hydrograph criteria for the appropriate structure hazard classification under 405 KAR 7:040, Section 5, and 401 KAR 4:030 [contained in the U.S. Soil Conservation Service criteria referenced in 405 KAR 18:100].

(d) [(b)] The dam or impoundment shall have a minimum safety factor of one and five-tenths (1.5) for the partial pool with steady seepage saturation conditions, and the seismic safety factor shall be at least one and two-tenths (1.2).

(e) [(e)] The dam or impoundment foundation and abutments shall be designed to be stable under all conditions of construction and operation of the impoundment. Sufficient foundation investigations and laboratory testing shall be performed to determine the safety factors of the dam or impoundment for all loading conditions required [appearing] in paragraph (d) [(b)] of this subsection or [the publications referred to in] 405 KAR 18:100, and for all increments of construction.

(2) Spillways and outlet works shall be designed to provide adequate protection against erosion and corrosion. Inlets shall be protected against blockage.

(3) Dams or impoundments constructed of or impounding coal mine waste [materials] shall be designed so that at least ninety (90) percent of the water stored during the design precipitation event can [shall] be removed within a ten (10) day period.

Section 4. Operation. For a dam or impoundment constructed of or impounding coal mine waste, at least ninety (90) percent of the water stored during the design precipitation event shall be removed within the ten (10) day period following the design precipitation event.

JAMES E. BICKFORD, Secretary

APPROVED BY AGENCY: July 28, 1997

FILED WITH LRC: July 28, 1997 at 4 p.m.

NATURAL RESOURCES AND
ENVIRONMENTAL PROTECTION CABINET
(As Amended at ARRS, May 11, 1998)

405 KAR 18:210. Subsidence control.

RELATES TO: KRS 350.020, 350.028, 350.151, 350.465, 30 CFR Parts 730-733, 735, 784.20(a)(3), 817.121-.122, 917, 30 USC 1253, 1255, 1266, 1309a

STATUTORY AUTHORITY: KRS 350.028, 350.151, 350.465, 30 CFR Parts 730-733, 735, [784.20(a)(9);] 817.121-.122, 917, 30 USC 1253, 1255, 1266, 1309a

NECESSITY, FUNCTION, AND CONFORMITY: KRS 350.028(2), (5), 350.151(1), and 350.465(2) authorize the cabinet to promulgate administrative regulations relating to surface and underground coal mining operations. This administrative regulation establishes requirements for prevention or control of subsidence and for correction of subsidence damage to surface lands and structures. This administrative regulation differs from 30 CFR 817.121 -.122.

(1) The provisions in Section 1(4)(b) of this administrative regulation regarding identification of the owner or his representative if present during the presubsidence survey, the owner's ability to submit a written description of any areas of disagreement with the survey, and the cabinet's ability to require additional measures to assure accurate information is included in the survey, are not included in the corresponding federal regulations. The cabinet believes these provisions, which are similar to those used for preblasting surveys for many years, are reasonable and necessary to the effective conduct and use of presubsidence surveys and are not burdensome to permittees.

(2) Section 1(4)(c) of this administrative regulation establishes a temporary buffer zone of 1500 feet horizontal distance around structures for which a presubsidence survey is required, until the permittee has submitted either the presubsidence survey or documentation that the owner has denied access to conduct the survey, the structure owner has had an opportunity to comment on the survey, and the cabinet has made a determination on any dispute that has arisen about the adequacy of the survey. Section 1(4)(d) of this administrative regulation provides an option to Section 1(4)(c) of this administrative regulation, whereby the applicant would demonstrate buffer distances based upon the angle of draw and site specific conditions. These provisions are not included in the corresponding federal regulations, which require that all necessary presubsidence surveys, or documentation of denial of access, be submitted prior to issuance of the permit. Because this administrative regulation allows the surveys to be submitted after permit issuance, these requirements are necessary to insure that a survey for a particular structure will be conducted before mining approaches close enough to have a potential subsidence impact on the structure, and that there is time for consideration of the survey after it is submitted.

(3) Section 3(2) of this administrative regulation, regarding repair or compensation for subsidence damage to noncommercial buildings and occupied residential dwellings and related structures existing at the time of mining, is not limited to damage resulting from underground mining activities conducted after October 24, 1992, the effective date of 30 USC 1309a as created by PL 102-486, the Energy Policy Act of 1992, whereas the federal counterpart regulation at 30 CFR 817.121(c)(2) is so limited. Section 3(2) of this administrative regulation is not limited to subsidence damage resulting from underground mining activities conducted after October 24, 1992 because that would retroactively remove protection currently existing under this administrative regulation and applicable state law.

(4) Section 3(5)(c) of this administrative regulation allows the

additional performance bond amount for subsidence damage to be released or returned promptly after the cabinet determines the permittee has satisfactorily completed the required repair or compensation for subsidence damage. The federal counterpart at 30 CFR 817.121(c)(5) does not include any provision for prompt release of the additional performance bond amount after the subsidence damage is corrected. The purpose of the additional bond is to guarantee that the cabinet will have the money to repair or compensate if the permittee fails to do so. Since the repair or compensation guaranteed by the additional bond amount must be satisfactorily completed before any release or return of the bond can take place, the purpose of the bond will have been fulfilled and thus the cabinet believes the prompt release or return is not inconsistent with the federal regulations.

(5) Section 5(1) of this administrative regulation, regarding permittee submission of an annual plan of underground workings, does not provide for confidentiality of the annual plan. The federal counterpart at 30 CFR 817.121(g) provides that information submitted with the plan may be held as confidential in accordance with 30 CFR 773.13(d) if requested by the permittee. The cabinet's counterpart to 30 CFR 773.13(d) is 405 KAR 8:010, Section 12. The cabinet believes it is unlikely that any information submitted in the annual plan of underground workings will qualify for confidentiality under 405 KAR 8:010, Section 12, and that it would be misleading to mention confidentiality in connection with the plan, thereby creating the false impression that the plan generally would be held confidential on request. [KRS 350.028(1) requires the cabinet to promulgate administrative regulations pertaining to surface coal mining operations including strip mining and the surface effects of underground mining to accomplish the purposes of KRS Chapter 350. KRS 350.151(1) requires the cabinet to promulgate administrative regulations for the mining and reclamation of land disturbed or removed by operations resulting from or incident to underground coal mining. This administrative regulation sets forth requirements for prevention or control of subsidence and for correction of subsidence damage to surface lands and structures. KRS 350.028(5), 350.151(1), and 350.465(2), (5) authorize and direct the cabinet to promulgate administrative regulations for surface and underground coal mining operations for the purpose of accepting and administering primary enforcement responsibilities under the permanent regulatory program pursuant to PL 95-87, the federal Surface Mining Control and Reclamation Act of 1977; and direct that the cabinet's administrative regulations be consistent with, and not more stringent than required by, that Act. PL 95-87 does not require Kentucky to comply with its provisions, but in order to retain primary enforcement responsibility under that Act the cabinet's administrative regulations must be consistent with federal regulations promulgated pursuant to that Act. This administrative regulation differs from the federal regulations as follows:

1. Section 1(4)(a) of this administrative regulation requires surveys of the presubsidence condition of certain structures and water supplies. The corresponding federal requirement is located in the permitting requirements at 30 CFR 784.20(a)(3), not in the performance standards at 30 CFR 817.121. The cabinet's requirement fulfills the same purpose as the federal requirement, but provides greater flexibility to the permittee by allowing the presubsidence surveys to be conducted after permit issuance.

2. Section 1(4)(a) of this administrative regulation, regarding presubsidence surveys, addresses all types of structures and water supplies for "domestic, agricultural, industrial or other legitimate use", whereas the corresponding federal requirement at 30 CFR 784.20(a)(3) is limited to "noncommercial structures or occupied residential dwellings and structures related thereto" and "drinking, domestic, or residential" water supplies. The federal regulation defers to applicable provisions of state law regarding structures other than noncommercial structures or occupied residential dwellings and struc-

tures related thereto. This administrative regulation reflects Kentucky common law and the current requirements of this regulation since 1982 that owners of all types of structures are entitled to repair or compensation for subsidence damage, and requires presubsidence surveys for all types of structures vulnerable to subsidence damage because the surveys are necessary to establish a baseline against which to measure the extent of damage. This administrative regulation addresses the types of water supplies included in KRS 350.421(2), whereas the federal requirement addresses the fewer types of water supplies included in 30 USC 1309a.

3. The provisions in Section 1(4)(b) of this administrative regulation regarding identification of the owner or his representative if present during the presubsidence survey, the owner's ability to submit a written description of any areas of disagreement with the survey, and the cabinet's ability to require additional measures to assure accurate information is included in the survey, are not included in the corresponding federal regulations. The cabinet believes these provisions, which are similar to those used for preblasting surveys for many years, are reasonable and necessary to the effective conduct and use of presubsidence surveys and are not burdensome to permittees.

4. Section 1(4)(c) of the administrative regulation establishes a temporary buffer zone of 1500 feet horizontal distance around structures and water supplies for which a presubsidence survey is required, until ninety (90) days after the permittee has submitted either the presubsidence survey or documentation that the owner has denied access to conduct the survey. These provisions are not included in the corresponding federal regulations, which require that all necessary presubsidence surveys, or documentation of denial of access, be submitted prior to issuance of the permit. Because this administrative regulation allows the surveys to be submitted after permit issuance, these requirements are necessary to insure that a survey for a particular structure or water supply will be conducted before mining approaches close enough to have a potential subsidence impact on the structure or water supply, and that there is time for consideration of the survey after it is submitted.

5. Section 2 of this administrative regulation requires the permittee to mail a notice to surface owners at least three (3) months prior to mining beneath their property, but allows mining within as little as thirty (30) days after the notice if necessitated by emergency or other unforeseen conditions. The federal counterpart at 30 CFR 817.122 requires that the notice be mailed at least six (6) months prior to undermining, but allows mining sooner than six (6) months after the notice if approved by the regulatory authority. The time frame in Section 2 of this administrative regulation provides additional flexibility to the permittee and is consistent with the federal regulation, which allows the regulatory authority to approve a time frame shorter than six (6) months.

6. Section 3(2) of this administrative regulation, regarding repair or compensation for subsidence damage to noncommercial buildings and occupied residential dwellings and related structures existing at the time of mining, is not limited to damage resulting from underground mining activities conducted after October 24, 1992, the effective date of 30 USC 1309a as created by PL 102-486, the Energy Policy Act of 1992, whereas the federal counterpart regulation at 30 CFR 817.121(c)(2) is so limited. Section 3(2) of this administrative regulation is not limited to subsidence damage resulting from underground mining activities conducted after October 24, 1992 because that would retroactively remove protection currently existing under this administrative regulation and applicable state law.

7. Section 3(5)(a) of this administrative regulation, regarding adjustment of bond amount for subsidence damage, does not include subsidence damage to water supplies. The federal counterpart at 30 CFR 817.121(c)(5) includes adjustment of bond amount for subsidence damage to water supplies. Adjustment of bond amount for damage to water supplies is addressed in 405 KAR 18:060, the same administrative regulation that requires replacement of damaged water

supplies:

~~8. Section 3(5)(b) of this administrative regulation allows the additional performance bond amount for subsidence damage to be reduced by the amount of the permittee's liability insurance coverage that is applicable to the subsidence damage. The federal counterpart at 30 CFR 817.121(c)(5) does not include consideration of liability insurance coverage. However, the federal bonding and insurance regulations at 30 CFR 800.14(c) allow the permittee's financial responsibility under 30 CFR 817.121(c) for repairing material damage from subsidence to be satisfied by the liability insurance policy required under 30 CFR 800.60.~~

~~9. Section 3(5)(c) of this administrative regulation allows the additional performance bond amount for subsidence damage to be released or returned promptly after the cabinet determines the permittee has satisfactorily completed the required repair or compensation for subsidence damage. The federal counterpart at 30 CFR 817.121(c)(5) does not include any provision for prompt release of the additional performance bond amount after the subsidence damage is corrected. The purpose of the additional bond is to guarantee that the cabinet will have the money to repair or compensate if the permittee fails to do so. Since the repair or compensation guaranteed by the additional bond amount must be satisfactorily completed before any release or return of the bond can take place, the purpose of the bond will have been fulfilled and thus the cabinet believes the prompt release or return is not inconsistent with the federal regulations.~~

~~10. Section 5(1) of this administrative regulation, regarding permittee submission of an annual plan of underground workings, includes a specific time frame to submit the plan. The federal counterpart at 30 CFR 817.121(g) does not set a specific time for the submission, but provides that the regulatory authority must establish the time schedule. The time schedule established by the administrative regulation is the same as the schedule required by law for submission of underground mining maps to the Kentucky Department of Mines and Minerals. The time schedule fulfills the requirement of the federal regulation.~~

~~11. Section 5(1) of this administrative regulation, regarding permittee submission of an annual plan of underground workings, does not provide for confidentiality of the annual plan. The federal counterpart at 30 CFR 817.121(g) provides that information submitted with the plan may be held as confidential in accordance with 30 CFR 773.13(d) if requested by the permittee. The cabinet's counterpart to 30 CFR 773.13(d) is 405 KAR 8:040, Section 12. The cabinet believes it is unlikely that any information submitted in the annual plan of underground workings will qualify for confidentiality under 405 KAR 8:040, Section 12, and that it would be misleading to mention confidentiality in connection with the plan, thereby creating the false impression that the plan generally would be held confidential on request.] [KRS Chapter 350 in pertinent part requires the cabinet to promulgate rules and administrative regulations establishing performance standards for protection of people and property, land, water and other natural resources, and aesthetic values, during underground mining activities and for restoration and reclamation of surface areas affected by underground mining activities. This administrative regulation sets forth requirements for prevention or control of the effects of subsidence on surface areas which overlie underground workings, including planning and conduct of specific underground mining measures to control subsidence, underground mining buffer zones for protection of important aquifers, public buildings, communities, industrial and commercial facilities, perennial streams and major impoundments, requirements for notification of surface property owners and compensation for damages to surface properties, and restoration of surface lands affected by subsidence.]~~

Section 1. General Requirements. (1)(a) **The permittee shall adopt:**

1. Measures consistent with known technology that:

a. Prevent subsidence from causing material damage to the

extent technologically and economically feasible;

b. Maximize mine stability; and

c. Maintain the value and reasonably foreseeable use of surface land; or

2. Mining technology that provides for planned subsidence in a predictable and controlled manner.

~~(b) Nothing in 405 KAR Chapters 7 through 24 shall be construed to prohibit the standard method of room and pillar mining. [The permittee shall either adopt measures consistent with known technology that prevent subsidence from causing material damage to the extent technologically and economically feasible, maximize mine stability, and maintain the value and reasonably foreseeable use of surface lands or adopt mining technology that provides for planned subsidence in a predictable and controlled manner.] [Underground mining activities shall be planned and conducted so as to prevent subsidence from causing material damage to the surface, to the extent technologically and economically feasible, and so as to maintain the value and reasonably foreseeable use of surface lands. This may be accomplished by leaving adequate coal in place, backfilling, or other measures to support the surface, or by conducting underground mining in a manner that provides for planned and controlled subsidence.] [Nothing in 405 KAR Chapters 7 through 24 shall be construed to prohibit the standard method of room and pillar mining.]~~

~~(2) If a permittee employs mining technology that provides for planned subsidence in a predictable and controlled manner, the permittee shall take necessary and prudent measures, consistent with the mining method employed, to minimize material damage to the extent technologically and economically feasible to noncommercial buildings and occupied residential dwellings and structures related thereto except that measures required to minimize material damage to these structures are not required if:~~

~~(a) The permittee has the written consent of their owners; or~~

~~(b) Unless the anticipated damage would constitute a threat to health or safety, the costs of the measures exceed the anticipated costs of repair.~~

~~(3) The permittee shall comply with all provisions of the approved subsidence control plan prepared pursuant to 405 KAR 8:040, Section 26 [and approved by the cabinet].~~

~~(4) Presubsidence surveys of structures [and water supplies].~~

~~(a) The permittee shall conduct and submit to the cabinet a survey of the condition of each noncommercial building or occupied residential dwelling and structures related thereto [structure] that may be materially damaged or for which the reasonably foreseeable use may be diminished by subsidence, within the area encompassed by the applicable angle of draw; and a survey of the quantity and quality of each water supply for domestic, agricultural, industrial or other legitimate use within the permit area and adjacent area that could be contaminated, diminished, or interrupted by subsidence]. If the permittee cannot make this survey because the owner will not allow access to the site, the permittee shall notify the owner, in writing, of the effect that denial of access will have under Section 3(4)(c) of this administrative regulation. The permittee shall pay for its [any] technical assessment or engineering evaluation used to determine the premining condition or value of a structure [or to determine the quantity and quality of a water supply for domestic, agricultural, industrial or other legitimate use]. The permittee shall provide copies of the survey and any technical assessment or engineering evaluation to the property owner and the cabinet.~~

~~(b) If the owner or his representative is present at the time a survey, technical assessment, or engineering evaluation is conducted under this subsection, the report shall include the name of the person. If the owner disagrees with the results of the survey, technical assessment or engineering evaluation, he may submit in writing to the cabinet and to the permittee, within thirty (30) days after receiving a copy of the survey, a detailed description of the specific areas of disagreement. If the cabinet receives written disagreement from~~

the owner, the cabinet shall promptly notify the permittee. The cabinet may require additional measures to ensure that adequate and accurate information is included in the survey, technical assessment or engineering evaluation and to ensure compliance with this administrative regulation.

(c) Underground operations shall not be conducted within 1,500 feet horizontally of a structure [or water supply] for which a survey is required under this subsection unless the permittee has submitted to the cabinet the required survey or [for that structure or water supply; or has submitted] documentation that he cannot perform the survey because the owner will not allow access to the site, and the time period for written disagreement by the owner has expired without a written disagreement being received by the cabinet. If a dispute arises over the adequacy of the survey the cabinet shall establish, based upon site specific conditions, a horizontal distance of 1,500 feet or less which the cabinet deems adequate to ensure the structure will not be damaged by subsidence, and underground operations shall not be conducted within that distance until the cabinet has made a determination on the dispute. The cabinet shall make a determination within thirty (30) days after receiving the written disagreement. [Underground operations shall not be conducted within the 1,500 feet horizontal distance until at least ninety (90) days after the survey or documentation of denial of access has been submitted to the cabinet.]

(d)1. If requested in writing by the permittee and approved in writing by the cabinet, the permittee shall comply with the requirements of this paragraph instead of the requirements of paragraph (c) of this subsection. The numerical magnitude of the angle of draw shall not be established under this paragraph.

2. The permittee's request for approval under this paragraph shall include a map or maps that show the horizontal separation between the underground workings and each structure that is necessary to ensure that the structure is outside the surface area encompassed by the angle of draw. The request shall also include drawings, calculations, and other relevant supporting information to demonstrate, to the satisfaction of the cabinet, the validity of the map information submitted by the permittee.

3. Underground operations shall not be conducted closer to a structure than the horizontal distance established under this paragraph based upon the angle of draw unless the permittee has submitted to the cabinet the required presubsidence survey or documentation that he cannot perform the survey because the owner will not allow access to the site, and the time period for written disagreement by the owner has expired without a written disagreement being received by the cabinet. If a dispute arises over the adequacy of the survey, underground operations shall not be conducted within the horizontal distance established under this paragraph until the cabinet has made a determination on the dispute. The cabinet shall make a determination within thirty (30) days after receiving the written disagreement.

(e) This subsection shall apply:

1. To extraction of coal under a permit, permit amendment, and permit revision issued after the effective date of this administrative regulation; and

2. 180 days after the effective date of this administrative regulation, to extraction of coal under a permit, permit amendment, and permit revision issued prior to the effective date of this administrative regulation.

Section 2. Public Notice. (1) The permittee shall mail a notification [mining schedule shall be distributed by mail] to all owners and occupants of surface property and structures [residents] within the area above the underground workings [and adjacent areas]. Each owner or occupant [such person] shall be notified by mail at least ninety (90) days [three (3) months] prior to mining beneath his [or her] property or structure.

(2) If the [residence. When such] notice has been properly given,

and subsequent emergencies or other unforeseen conditions in underground mining necessitate mining beneath the [such] property or structure [residence] sooner than ninety (90) days [three (3) months] after the [such] notice, the permittee shall immediately provide additional written notice to the owner or occupant [resident] that the [such] mining will be conducted sooner than ninety (90) days, if approved by the cabinet. The permittee shall submit a written request to the cabinet for approval, including a description of the emergency or other unforeseen conditions that necessitate mining sooner than ninety (90) days after the initial notice. If the cabinet determines that conditions necessitate mining sooner than ninety (90) days after the initial notice, and if the presubsidence condition survey of structures required under Section 1(4) of this administrative regulation, or documentation of denial of access to conduct the survey, has been submitted to the cabinet and the cabinet has made a determination on a dispute, if any, that has arisen over the adequacy of the survey under Section 1(4) of this administrative regulation, the cabinet may approve the request. The cabinet shall promptly notify the permittee in writing of its determination on the request. However, [but] in no case shall mining be conducted beneath the property or structure [residence] sooner than ten (10) [thirty (30)] days after the [such] additional notice is given, unless the ten (10) day notice period is expressly waived by the owner in writing.

(3) The notification shall include, at [contain, as] a minimum:

(a) [(+)] Identification of specific areas in which mining will take place;

(b) [(2)] Dates that specific areas are anticipated to [will] be undermined; and [Approximate dates of mining activities that could cause subsidence and affect specific structures; and]

(c) [(3)] The location or locations where the permittee's subsidence control plan may be examined. [Measures to be taken to prevent or control adverse surface effects:]

Section 3. Repair of Damage. (1) Repair of damage to surface lands. The permittee shall correct any material damage resulting from subsidence caused to surface lands, to the extent technologically and economically feasible, by restoring the land to a condition capable of maintaining the value and reasonably foreseeable uses that it was capable of supporting before subsidence damage.

(2) Repair or compensation for damage to noncommercial buildings and occupied residential dwellings and related structures existing at the time of mining. The permittee shall promptly repair, or compensate the owner for, material damage resulting from subsidence caused to any noncommercial building or occupied residential dwelling or structure related thereto that existed at the time of mining. If repair is selected, the permittee shall fully rehabilitate, restore or replace the damaged structure. If compensation is selected, the permittee shall compensate the owner of the damaged structure for the full amount of the decrease in value resulting from the subsidence related damage. The permittee may provide compensation by the purchase before mining of a noncancellable, premium prepaid insurance policy.

(3) Repair or compensation for damage to other structures. The permittee shall, to the extent required under applicable provisions of state law, either correct material damage resulting from subsidence caused to any structures or facilities not protected by subsection (2) of this section by repairing the damage or compensate the owner of the structures or facilities for the full amount of the decrease in value resulting from the subsidence. Repair of damage shall include rehabilitation, restoration, or replacement of damaged structures or facilities. Compensation may be accomplished by the purchase before mining of a noncancellable, premium prepaid insurance policy.

(4) Rebuttable presumption of causation by subsidence.

(a) Rebuttable presumption of causation for damage within angle of draw. If damage to any noncommercial building or occupied residential dwelling or structure related thereto occurs as a result of

earth movement within an area determined by projecting a specified angle of draw from the outermost boundary of any underground mine workings to the surface of the land, a rebuttable presumption shall exist that the permittee caused the damage. The presumption shall normally apply to an angle of draw of thirty (30) degrees.

(b) Approval of site specific angle of draw. A permittee or applicant may request that the presumption apply to an angle of draw different from that established in paragraph (a) of this subsection. The cabinet may approve application of the presumption to a site specific angle of draw based upon a site specific analysis submitted by the applicant. To establish a site specific angle of draw, the applicant shall demonstrate and the cabinet shall determine in writing that the proposed angle of draw has a more reasonable basis than the angle of draw established in paragraph (a) of this subsection, based upon a site specific geotechnical analysis of the potential surface impacts of the mining operation.

(c) No presumption where access for presubsidence survey is denied. If the permittee was denied access to the land or property for the purpose of conducting the presubsidence survey in accordance with Section 1(4) of this administrative regulation, a rebuttable presumption under this subsection shall not exist.

(d) Rebuttal of presumption. **The presumption may be rebutted if the evidence establishes that the damage:**

1. **Predated the mining;**
2. **Was proximately caused by another factor and not the subsidence; or**
3. **Occurred outside the surface area within which subsidence was actually caused by the mining in question.** [The presumption shall be rebutted if, for example, the evidence establishes that: The damage predated the mining in question; the damage was proximately caused by some other factor or factors and was not proximately caused by subsidence; or the damage occurred outside the surface area within which subsidence was actually caused by the mining in question.]

(e) Information to be considered in determination of causation. In any determination whether damage to protected structures was caused by subsidence from underground mining, all relevant and reasonably available information shall be considered by the cabinet.

(5) Adjustment of bond amount for subsidence damage.

(a) If subsidence related material damage to land, structures or facilities protected under subsections (1) through (3) of this section occurs, the cabinet shall require the permittee to obtain additional performance bond in the amount of the estimated cost of the repairs if the permittee will be repairing, or in the amount of the decrease in value if the permittee will be compensating the owner, until the repair or compensation is completed. If repair or compensation is completed within ninety (90) days of the occurrence of damage, additional bond shall not be required. The cabinet may extend the ninety (90) day time frame, but not to exceed one (1) year, if the permittee demonstrates and the cabinet finds in writing that subsidence is not complete, or that not all probable subsidence related material damage has occurred to lands or protected structures, and that therefore it would be unreasonable to complete within ninety (90) days the repair of the subsidence related material damage to lands or protected structures.

(b) If the permittee demonstrates that his liability insurance policy under 405 KAR 10:030, Section 4, covers the subsidence damage, the additional bond amount required under paragraph (a) of this subsection may be reduced by the amount of the insurance coverage applicable to the subsidence damage. The existence of applicable insurance coverage shall not prevent forfeiture of a performance bond under 405 KAR 10:050.

(c) The cabinet may promptly release or return the additional bond amount provided under paragraph (a) of this subsection if the cabinet determines, based upon an application and information submitted by the permittee, the cabinet's own investigation as appropriate, and other information available to the cabinet, that the

permittee has satisfactorily completed the required repair or compensation. [Surface Owner Protection: (1) Each permittee shall adopt all measures approved by the cabinet under 405 KAR 8:040 to reduce the likelihood of subsidence, to prevent subsidence causing material damage or reducing the value or reasonably foreseeable use of surface lands, and to mitigate the effects of any such damage or reduction which may occur.

(2) Each permittee who conducts underground mining which results in subsidence that causes material damage or reduces the value or reasonably foreseeable use of the surface lands shall, with respect to each surface area affected by subsidence:

(a) Restore, rehabilitate, or remove and replace each damaged structure, feature or value, promptly after the damage is suffered, to the condition it would be in if no subsidence had occurred and restore the land to a condition capable of supporting reasonably foreseeable uses it was capable of supporting before subsidence;

(b) Purchase the damaged structure or feature for its fair market, presubsidence value and shall promptly after subsidence occurs, to the extent technologically and economically feasible, restore the land surface to a condition capable and appropriate of supporting the purchased structure, and other foreseeable uses it was capable of supporting before mining. Nothing in this paragraph shall be deemed to grant or authorize an exercise of the power of condemnation or the right of eminent domain by any person engaged in underground mining activities; or

(c) Compensate the owner of any surface structure in the full amount of the diminution in value resulting from subsidence, by purchase prior to mining of a noncancellable, premium-prepaid insurance policy or other means approved by the cabinet as assuring before mining begins that payment will occur; indemnify every person with a direct financial interest in the surface for all damages suffered as a result of the subsidence; and, to the extent technologically and economically feasible, fully restore the land to a condition capable of maintaining reasonably foreseeable uses which it could support before subsidence.]

Section 4. Buffer Zones. (1) Underground mining activities shall not be conducted beneath or adjacent to public buildings and facilities; churches, schools, and hospitals; or impoundments with a storage capacity of twenty (20) acre-feet or more or bodies of water with a volume of twenty (20) acre-feet or more, unless the subsidence control plan demonstrates that subsidence will not cause material damage to, or reduce the reasonably foreseeable use of, the features or facilities. If the cabinet determines that it is necessary in order to minimize the potential for material damage to the features or facilities previously described in this subsection or to any aquifer or body of water that serves as a significant water source for any public water supply system, it may limit the percentage of coal extracted under or adjacent to the feature, facility, aquifer, or body of water [thereto].

(2) If subsidence causes material damage to any of the features or facilities covered by subsection (1) of this section, the cabinet may suspend mining under or adjacent to the features or facilities until the subsidence control plan is modified to ensure prevention of further material damage to the features or facilities. [Underground mining activities shall not be conducted beneath or adjacent to any perennial stream, or impoundment having a storage volume of twenty (20) acre-feet or more, unless the cabinet determines, on the basis of detailed subsurface information and consultation with the Kentucky Department of Mines and Minerals and MSHA as the cabinet deems appropriate, that subsidence will not cause material damage to streams, water bodies and associated structures. If subsidence causes material damage, then measures will be taken to the extent technologically and economically feasible to correct the damage and to prevent additional subsidence from occurring.]

(2) Underground mining activities beneath any aquifer that serves as a significant source of water supply to any public water system shall be conducted so as to avoid disruption of the aquifer and

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consequent exchange of ground water between the aquifer and other strata. The cabinet may prohibit mining in the vicinity of the aquifer or may limit the percentage of coal extraction to protect the aquifer and water supply.

(3) ~~Underground mining activities shall not be conducted beneath or adjacent to any public buildings, including but not limited to churches, schools, hospitals, courthouses and government offices; unless the cabinet determines, on the basis of detailed subsurface information and consultation with the Kentucky Department of Mines and Minerals and MSHA as the cabinet deems appropriate, that subsidence for those activities will not cause material damage to these structures and specifically authorizes the mining activities.]~~

(3) [(4)] The cabinet shall suspend underground [coal] mining activities under urbanized areas, cities, towns, and communities, and adjacent to industrial or commercial buildings, major impoundments, or perennial [permanent] streams, if imminent danger is found to inhabitants of the urbanized areas, cities, towns, or communities.

Section 5. Annual Plan of Underground Workings. (1) Within forty-five (45) days after the first day of January following each year in which underground mining activities are conducted, and at any other time upon written request by the cabinet, the permittee shall submit two (2) copies of a detailed plan of the existing and proposed underground workings. The detailed plan shall include maps and descriptions, as appropriate, of significant features of the underground mine, including the size, configuration, and approximate location of pillars and entries, extraction ratios, measures taken to prevent or minimize subsidence and related damage, areas of full extraction, the boundaries of the permit area, and other information required by the cabinet.

(2) Copies of the maps required to be filed with the Kentucky Department of Mines and Minerals under KRS 352.450 and 352.480 may be submitted to the cabinet to fulfill the requirements of this section, if the maps include all the information required under subsection (1) of this section.

JAMES E. BICKFORD, Secretary

APPROVED BY AGENCY: July 28, 1997

FILED WITH LRC: July 28, 1997 at 4 p.m.

EDUCATION, ARTS, AND HUMANITIES CABINET

Kentucky Board of Education

Kentucky Department of Education

(As Amended at ARRS, May 11, 1998)

704 KAR 3:303. Required program of studies.

RELATES TO: KRS 156.070, 156.160, 158.6451, 160.290

STATUTORY AUTHORITY: KRS 156.070, 156.160

NECESSITY, FUNCTION, AND CONFORMITY: KRS 156.160 requires the Kentucky Board of Education [State Board for Elementary and Secondary Education] to establish courses of study for the different grades and kinds of common schools, with the [such] courses of study to comply with the expected outcomes for students and schools established [set forth] in KRS 158.6451. KRS 156.070(1) requires [gives] the Kentucky Board of Education [state board] to manage and control [the management and control of] the common schools and all programs operated in the [such] schools. KRS 160.290 authorizes local boards of education to provide for courses and other services for students consistent with the administrative regulations of the Kentucky Board of Education [state board]. [In fulfilling and perpetuating such duties and intent:] This administrative regulation incorporates by reference the program of studies, which contains [prescribes the document containing] the general courses for use in Kentucky's common schools.

Section 1. Before graduating from a Kentucky high school, a student shall meet the minimum content requirements established in the Program of Studies.

Section 2. Incorporation by Reference. (1) [Pursuant to the authority vested in the State Board for Elementary and Secondary Education by KRS 156.160;] The "Program of Studies for Kentucky Schools, Grades Primary-12," April 28, 1998 [February 1998] [as amended on March 10, 1993], is [hereby] [promulgated and filed with the Legislative Research Commission and] incorporated [herein] by reference.

(2) This [Such] document may be inspected and copied at the Division of Curriculum and Assessment Development [Division of Curriculum Development], Department of Education, 18th [17th] Floor, Capital Plaza Tower, Frankfort, Monday through Friday, 8 a.m. through 4:30 p.m. [Monday through Friday.]

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

WILMER S. CODY, Commissioner of Education

JOSEPH W. KELLY, Chairman

KEVIN M. NOLAND, Attorney

APPROVED BY AGENCY: April 10, 1998

FILED WITH LRC: April 10, 1998 at 11 a.m.

LABOR CABINET

Department of Workers' Claims

(As Amended at ARRS, May 11, 1998)

803 KAR 25:096. Selection of physicians, treatment plans and statements for medical services.

RELATES TO: KRS Chapter 342

STATUTORY AUTHORITY: KRS 342.020, 342.035, 342.260, 342.320, 342.735

NECESSITY, FUNCTION, AND CONFORMITY: 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 under KRS Chapter 342. KRS 342.735 requires the commissioner to promulgate administrative regulations to expedite the payment of medical expense benefits. This administrative regulation regulates the selection of physicians and provides for treatment plans under KRS Chapter 342 in order to assure high quality medical care at a reasonable cost.

Section 1. Definitions. (1) "Designated physician" means the physician selected by the employee for treatment pursuant to KRS 342.020(5).

(2) "Emergency care" means:

(a) Those medical services required for the immediate diagnosis or treatment of a medical condition that if not immediately diagnosed or treated could lead to a serious physical or mental disability or death; or

(b) Medical services which are immediately necessary to alleviate severe pain.

(3) "Long-term medical care" means:

(a) Medical treatment or medical rehabilitation that is reasonably projected to require a regimen of medical care for a period extending beyond ninety (90) days;

(b) Medical treatment that continues for a period of more than ninety (90) days; or

(c) Medical treatment including the recommendation that the employee not engage in the performance of the employee's usual

work for a period of more than sixty (60) days.

(4) "Physician" is defined in KRS 342.0011(32).

(5) "Statement for services" means:

(a) For a nonpharmaceutical bill [bills], a completed Form HCFA 1500, or for a hospital, a completed Form UB-92, with an attached copy of legible treatment notes, hospital admission and discharge summary, or other supporting documentation for the billed medical treatment, procedure, or hospitalization; and

(b) For a pharmaceutical bill [bills], a bill containing the identity of the prescribed medication, the number of units prescribed, the date of the prescription, and the name of the prescribing physician.

(6) "Treatment plan" means a written plan that:

(a) [which] May consist of copies of charts, consultation reports or other written documents maintained by the employee's designated physician discussing symptoms, clinical findings, results of diagnostic studies, diagnosis, prognosis, and the objectives, modalities, frequency, and duration of treatment;

(b) [-H] Shall include, as appropriate, details of the course of ongoing and recommended treatment and the projected results; and

(c) May be amended, supplemented or changed as conditions warrant.

Section 2. Employer's Obligation to Supply Kentucky Workers' Compensation Designation and Medical Release Card (Form 113). Within ten (10) days following receipt of notice of a work injury or occupational disease causing lost work time or necessitating continuing medical treatment, the medical payment obligor shall mail a Form 113 to the employee, including a self-addressed, postage prepaid envelope for returning the Form 113. Failure by the medical payment obligor to timely mail the form shall waive an objection to treatment by other than a designated physician prior to receipt by the employee of the form.

Section 3. Employee Selection of Physician. (1) Except for emergency care, treatment for a work-related injury or occupational disease shall be rendered under the coordination of a single physician selected by the employee. The employee shall give notice to the medical payment obligor of the identity of the designated physician by tendering the completed Form 113, including a written acceptance by the designated physician, within ten (10) days after treatment is commenced by that physician.

(2) Within ten (10) days following receipt of a Form 113 designating a treating physician, the medical payment obligor shall tender a card to the employee, which shall be presented to a medical provider each time that a medical service is [~~services are~~] sought in connection with the work-related injury or occupational disease.

(3) The card shall serve as notice to a medical provider of the identity of the designated physician, who shall have the sole authority to make a referral to a treatment facility or to a specialist. [~~referrals to treatment facilities or to specialists.~~]

(a) The card shall bear the legend "First Designated Physician-Workers' Compensation" and shall further contain the following information:

1. Name and telephone number of the first designated physician;
2. Name, Social Security number, date of birth, and date of work injury or occupational disease and last exposure of the employee; and
3. Name and telephone number of the medical payment obligor.

(b) The reverse side of the first designated physician card shall contain:

1. A notice that treatment shall be performed by or on referral from the first designated physician; and

2. Shall further contain space for the identification and notification of a change of designated physician.

(4) Failure by the medical payment obligor to timely mail the "First Designated Physician" card shall waive an objection to treatment by other than a designated physician prior to receipt by the employee of the card.

(5) The unreasonable failure of an employee to comply with the requirements of this section may suspend all benefits payable under KRS Chapter 342 [et seq.] until compliance by the employee and receipt of the Form 113 by the medical payment obligor has occurred.

Section 4. Change of Designated Physician. (1) Following initial selection of a designated physician, the employee may change designated physicians once without authorization of the employer or its medical payment obligor. Referral by a designated physician to a specialist shall not constitute a change of designated physician unless the latter physician is specifically selected by the employee as the second designated physician.

(2) Within ten (10) days of a decision to change the designated physician, the employee shall complete the back of the first designated physician card and return the card with the name of the second designated physician, including a written acceptance by the second designated physician, to the medical payment obligor, which shall issue a second card within ten (10) days.

(3) The card shall bear the legend "Second Designated Physician-Workers' Compensation" and shall further contain the information required on the first designated physician card. The reverse side of the card shall contain a notice that:

(a) Treatment shall be performed by or on referral from the second designated physician; and

(b) A further change of designated physician shall require the written consent of the employer, its medical payment obligor, arbitrator, or the administrative law judge.

(4) Failure by the medical payment obligor to timely mail the "Second Designated Physician" card shall waive an objection to treatment by other than a designated physician prior to receipt by the employee of the card.

(5) If an employee's two (2) choices of designated physician have been exhausted, he shall not, except as required by medical emergency, make an additional selection of a physician without the written consent of the employer, its medical payment obligor, arbitrator, or the administrative law judge. This consent shall not be unreasonably withheld.

(6) If the employer provides medical services through a managed health care system, it may establish alternate methods for provider selection within the managed health care plan.

Section 5. Treatment Plan. (1) A treatment plan shall be prepared if:

(a) Long-term medical care is required as a result of a work-related injury or occupational disease; or

(b) The employee has received treatment with passive modalities, including electronic stimulation, heat or cold packs, massage, ultrasound, diathermy, whirlpool, or similar procedures for a period exceeding sixty (60) days. The treatment plan shall detail the need for the passive treatment, the benefits, if any, derived from the treatment, the risks attendant with termination of the treatment, and the projected period of future treatment; or

(c) An elective surgical procedure or placement into a resident work hardening, pain management, or medical rehabilitation program is recommended. The treatment plan shall set forth specific and measurable performance goals for the employee through the surgery, work hardening, or medical rehabilitation program.

(2) The designated physician shall provide a copy of the treatment plan to the medical payment obligor seven (7) days in advance of an elective surgical procedure or placement into a resident work hardening, pain management, or medical rehabilitation program. In all other instances when a treatment plan is required, a copy of the treatment plan shall be provided within fifteen (15) days following a request by the medical payment obligor. An amendment, supplement, or change to a treatment plan shall be furnished within fifteen (15) days following a request.

(3) Preparation of a treatment plan shall be a necessary part of

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the care to be rendered and shall be an integral part of the fee authorized in the medical fee schedule for the underlying services. An additional fee shall not be charged for the preparation of a treatment plan or progress report, except for the reasonable cost of photocopying and mailing the records.

Section 6. Tender of Statement for Services. If the medical services provider fails to submit a statement for services as required by KRS 342.020(1) without reasonable grounds, the medical bills shall not be compensable.

Section 7. Written Denial of Statement for Services Prior to the Resolution of Claim. (1) Prior to resolution of a workers' compensation claim by opinion or order of an arbitrator or administrative law judge, the medical payment obligor shall notify the medical provider and employee of its denial of a specific statement for services, or payment for future services from the same provider, in writing within thirty (30) days following receipt of a completed statement for services.

(2) A copy of the denial shall be mailed to the employee, employer, and medical service provider.

(3) The denial shall:

(a) Include a statement of the reasons for denial and a brief synopsis of available utilization review or medical bill audit procedures with relevant telephone contact numbers; and

(b) ~~[-A denial shall]~~ Be made ~~[only]~~ for a good faith reason.

(4) ~~[reasons:]~~ Upon receipt of a denial from a medical payment obligor, a medical provider may tender a statement for services to another potential payment source ~~[sources]~~ or to the patient.

Section 8. Payment or Challenge to Statement for Services Following Resolution of Claim. (1) Following resolution of a claim by an opinion or order of an arbitrator or administrative law judge, including an order approving settlement of a disputed claim, the medical payment obligor shall tender payment or file a medical fee dispute with an appropriate motion to reopen the claim, within thirty (30) days following receipt of a completed statement for services.

(2) The thirty (30) day period provided in KRS 342.020(1) shall be tolled during a period in which:

(a) The medical provider submitted an incomplete statement for services. The payment obligor shall promptly notify the medical provider of a deficient statement and shall request specific documentation. The medical payment obligor shall tender payment or file a medical fee dispute within thirty (30) days following receipt of the required documentation; or

(b) A medical provider fails to respond to a reasonable information request from the employer or its medical payment obligor pursuant to KRS 342.020(4); ~~[324.020(4); or]~~

(c) The employee's designated physician fails to provide a treatment plan if required by this administrative regulation; or

(d) The utilization review required by 803 KAR 25:190 is pending. The thirty (30) day period for filing a medical fee dispute shall commence on the date of rendition of the final decision from the utilization review ~~[or medical bill audit]~~. A medical fee dispute filed thereafter shall include a copy of the final utilization review ~~[or medical bill audit]~~ decision and the supporting medical opinions.

(3) An obligation for payment or challenge shall not arise if a statement for services clearly indicates that the services were not performed for a work-related condition.

Section 9. Payment Pursuant to Fee Schedules. (1) If the statement for services contains charges in excess of those provided in the applicable fee schedule established ~~[adopted by the commissioner]~~ in 803 KAR 25:089, 803 KAR 25:091, and 803 KAR 25:092, the medical payment obligor shall make payment in the scheduled amount and shall serve a written notice of denial setting forth the reason for refusal to pay a greater amount.

(2) Following receipt of a final medical bill audit reconsideration

decision pursuant to 803 KAR 25:190, the medical provider shall file within thirty (30) days ~~[may dispute the amount of payment within thirty (30) days by filing]~~ a medical fee dispute in accordance with 803 KAR 25:012 to dispute the amount of payment.

Section 10. Patient Billing. (1) A medical provider may tender a statement for services to a patient once it has received:

(a) A written denial from the medical payment obligor; or

(b) ~~[has received]~~ An opinion by an arbitrator or administrative law judge finding that the services were unrelated to a work injury or occupational disease.

(2) The medical provider shall not bill a patient for services which have been found to be unreasonable or unnecessary by an arbitrator or administrative law judge, if the medical provider has been joined as a party to a workers' compensation claim or to a medical fee dispute and has had an opportunity to present ~~[any]~~ contrary evidence.

(3) The medical provider shall not bill a patient for services which have been denied by the payment obligor for failure to submit bills following treatment within forty-five (45) days as required by KRS 342.020 and Section 6 of this administrative regulation.

Section 11. Request for Payment for Services Provided or Expenses Incurred to Secure Medical Treatment. (1) If an individual who is not a physician or medical provider provides compensable services for the cure or relief of a work injury or occupational disease, including home nursing services, the individual shall submit a fully completed Form 114 to the employer or medical payment obligor within sixty (60) days of the date the service is initiated and every sixty (60) days thereafter, if appropriate, for so long as the services are rendered.

(2) Expenses incurred by an employee for access to compensable medical treatment for a work injury or occupational disease, including reasonable travel expenses, out-of-pocket payment for prescription medication, and similar items shall be submitted to the employer or its medical payment obligor within sixty (60) days of incurring of the expense. A request for payment shall be made on a Form 114.

(3) Failure to timely submit the Form 114, without reasonable grounds, may result in a finding that the expenses are not compensable.

Section 12. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) Form 113, "Notice of Designated Physician", (August 15, 1996 Edition), Department of Workers Claims; and

(b) Form 114, "Request for Payment for Services or Reimbursement for Compensable Expenses", (August 15, 1996 Edition), Department of Workers Claims.

(2) This material may be inspected, copied, or obtained at the Department of Workers Claims, Monday through Friday, 9 a.m. to 4 p.m., at the following locations:

(a) Perimeter Park West, Building C, 1270 Louisville Road, Frankfort, Kentucky 40601;

(b) 410 West Chestnut Street, Louisville, Kentucky 40202;

(c) 220B North 8th Street, Paducah, Kentucky 42001; or

(d) 101 Summit Drive, Pikeville, Kentucky 41501.

WALTER W. TURNER, Commissioner

STEPHEN B. COX, General Counsel

APPROVED BY AGENCY: February 20, 1998

FILED WITH LRC: February 26, 1998 at 1 p.m.

LABOR CABINET
Department of Workers' Claims
(As Amended at ARRS, May 11, 1998)

803 KAR 25:101. Provision of workers' compensation rehabilitation services.

RELATES TO: KRS [Chapter] 342.710

STATUTORY AUTHORITY: KRS [Chapter 13A,] 342.260, 342.710

NECESSITY, FUNCTION, AND CONFORMITY: KRS 342.260 requires the Department of Workers' Claims to promulgate [such] administrative regulations [as it considers necessary] to carry out its work and the work of the administrative law judges and arbitrators [in accordance with the provisions of KRS Chapter 342 and KRS Chapter 13A]. KRS 342.710(3) requires rehabilitation services for an employee who has suffered an injury covered by KRS Chapter 342. This administrative regulation establishes requirements for [The function of this proposed administrative regulation is to regulate] the provision of rehabilitation services pursuant to KRS 342.260 and 342.710.

Section 1. Definitions. (1) "Administrative law judge" means an individual appointed pursuant to KRS 342.230(3).

(2) "Arbitrator" means an individual appointed pursuant to KRS 342.230(9). "Association of Rehabilitation Nurses" means the national organization which certifies nurses as certified rehabilitation registered nurses.

(3) "Board for Rehabilitation Certification (BRC)" means the national organization which certifies rehabilitation counselors and nurses as certified insurance rehabilitation specialists, certified rehabilitation counselors, and certified case managers.

(3) [(4)] "Commission on Accreditation of Rehabilitation Facilities (CARF)" means the national organization which accredits rehabilitation facilities.

(4) [(5)] "Directory of Qualified Rehabilitation Facilities" means the directory of facilities in Kentucky which are licensed pursuant to KRS Chapter 216B and which are accredited by CARF in either comprehensive inpatient rehabilitation or outpatient medical rehabilitation whose application for accreditation is pending. [These facilities are resources to which administrative law judges or Department of Workers' Claims rehabilitation counselors may refer injured employees for comprehensive medical evaluations when the administrative law judge has ordered the provision of rehabilitation services pursuant to KRS 342.710.]

(5) [(6)] "Directory of Vocational Evaluation Facilities" means the directory of facilities in Kentucky which are:

(a) Accredited by CARF in the area of comprehensive vocational evaluation services; or

(b) [are] Assessment centers operated by the Department for Technical Education. [These facilities are resources to which administrative law judges or Department of Workers' Claims rehabilitation counselors may refer injured employees for vocational evaluations when the administrative law judge has ordered the provision of rehabilitation services pursuant to KRS 342.710.]

(6) [(7)] "Medical rehabilitation services" means those medically oriented services beyond basic medical surgical and hospital treatment which are necessary for the accomplishment of feasible, practical, and justifiable physical rehabilitation goals. [Such services shall continue for whatever period of time is necessary to accomplish such goals:

(8) "Qualified rehabilitation coordinator (QRC)" means an individual who is listed in the Registry of Qualified Rehabilitation Coordinators or Registry of In-House Qualified Rehabilitation Coordinators and is not a direct provider of therapeutic services.

(9) "Qualified rehabilitation coordinator intern (QRC-Intern)" means an individual who meets the educational but not the certifica-

tion requirements of a QRC and who is permitted a period of supervised employment under the guidance of a QRC.]

(7) [(10)] "Rehabilitation services" means both medical rehabilitation services and vocational rehabilitation services provided pursuant to KRS 342.710.

[(11)] "Suitable employment" means employment which is reasonable taking into consideration the injured employee's age, education, previous employment, place of residence, and limitations.]

(8) [(12)] "Vocational evaluation" means a comprehensive process which utilizes a combination of structured interviews and testing [; paper and pencil tests, and real or simulated work activities to assist the employee in identifying employment objectives].

(9) [(13)] "Vocational rehabilitation services" means those vocationally related services which are necessary to restore an injured employee to suitable employment.

Section 2. Application for Listing in Directory of Qualified Rehabilitation Facilities. (1) An application for listing in the Directory of Qualified Rehabilitation Facilities shall not be required for a facility [is not necessary for facilities] fully accredited by CARF in either comprehensive inpatient rehabilitation or outpatient medical rehabilitation as the names of those [these] facilities are obtained from CARF.

(2) Provisional listing in the Directory of Qualified Rehabilitation Facilities may be granted by the Department of Workers' Claims to a facility:

(a) Which is licensed through the Cabinet for Human Resources pursuant to KRS Chapter 216B;

(b) [but] Whose application to CARF for accreditation is pending; and

(c) That complies with the requirements established in subsection (3) of this section. [The Department of Workers' Claims may grant provisional listing for a facility upon receipt of a letter requesting listing in the Directory accompanied by a copy of an application which has been submitted to CARF for accreditation in comprehensive inpatient rehabilitation or outpatient medical rehabilitation.]

(3) A facility shall file the following with the Department of Workers' Claims to request provisional listing:

(a) Letter requesting provisional listing in the directory; and

(b) Copy of the application which has been submitted to CARF for accreditation in comprehensive inpatient rehabilitation or outpatient medical rehabilitation.

(4) The provisional listing shall be valid for one (1) year unless CARF accreditation is granted or denied prior to that time. [thereto.]

[Section 3. Registry of Qualified Rehabilitation Coordinators. (1) To apply for listing in the Registry of Qualified Rehabilitation Coordinators, an individual shall submit an application containing the information requested and in the format shown in Appendix A submit supporting documentation as the Department of Workers' Claims may require. A QRC shall also provide such information as the Department of Workers' Claims may require for monitoring purposes. An applicant may be employed by a qualified rehabilitation agency in the public sector such as the Department of Vocational Rehabilitation or Department for the Blind or may be employed in the private sector.

(2) A QRC may be a rehabilitation nurse or a rehabilitation counselor who has complied with the following educational and certification requirements:

(a) Rehabilitation nurse. A rehabilitation nurse must be:

1. A registered nurse with a current nurse license or work permit in each state in which he or she will be physically present in a case management capacity with Kentucky workers' compensation claimants; and

2. Certified as a certified rehabilitation registered nurse by the Association of Rehabilitation Nurses or certified as a certified insurance rehabilitation specialist or certified case manager by the

Board for Rehabilitation Certification:

(b) Rehabilitation counselor. A rehabilitation counselor must have attained the following educational credentials:

1. A baccalaureate master's or doctoral degree in rehabilitation counseling or a related field as defined by the BRC; and
2. Certified as a certified rehabilitation counselor, certified insurance rehabilitation specialist, or certified case manager by the Board for Rehabilitation Certification.

Section 4. Registry of QRC Interns. (1) An individual who meets the licensure and educational requirements but who does not meet the certification qualifications contained in Section 3 of this administrative regulation may apply to the Department of Workers' Claims for permission to work under the direct supervision of a QRC to obtain the experience required for the appropriate certification examination. During this period of supervised employment such individual shall be designated a QRC Intern.

(2) Upon meeting the experience requirement, the QRC Intern shall apply to sit for the next available appropriate certification examination and shall provide the Department of Workers' Claims with a copy of the test results within seven (7) days of receipt. A candidate who receives a passing score may immediately apply to the Department of Workers' Claims for registration as a qualified rehabilitation coordinator. A candidate who did not receive a passing score shall be permitted one (1) more attempt to achieve a passing score at the next examination for which the candidate is eligible to participate. A qualified rehabilitation coordinator intern who fails two (2) certification examinations shall no longer be eligible to work as a qualified rehabilitation coordinator intern but may apply for registration as a QRC upon achieving the appropriate certification.

(3) Qualified rehabilitation coordinators and qualified rehabilitation coordinator interns shall provide the Department of Workers' Claims with copies of nurse licenses and notice of renewal of certification as a certified insurance rehabilitation specialist, certified rehabilitation counselor, certified rehabilitation registered nurse, or certified case manager within seven (7) days of receipt.

(4) An individual who is employed by a qualified rehabilitation facility or other facilities which provide medical or rehabilitation services to workers' compensation claimants shall not be eligible to apply for listing in the Registry of Qualified Rehabilitation Coordinators Registry of In-House Qualified Rehabilitation Coordinators or Registry of Qualified Rehabilitation Coordinator Interns.

Section 5. Registry of In-House Qualified Rehabilitation Coordinators. (1) Nothing in these administrative regulations shall prevent self-insured employers, self-insured groups, or workers' compensation insurance carriers from referring injured employees to a QRC on their staff.

(2) In-house qualified rehabilitation coordinators shall be subject to the same qualification and reporting requirements as rehabilitation nurses and counselors listed in the Registry of Qualified Rehabilitation Coordinators.]

Section 3, [6:] Referral of an Injured Employee [Employees] by the Self-Insured Employer or Insurance Carrier. (1) A self-insured employer or [and] insurance carrier [Self-insured employers and insurance carriers] may voluntarily refer an injured employee [employees] at any time for rehabilitation case management services involving the coordination of medical rehabilitation services and vocational rehabilitation services.

(2) A self-insured employer or [and] insurance carrier [Self-insured employers and insurance carriers] shall [may] refer an injured employee [employees only] to a case manager who is qualified as either a certified case manager, certified rehabilitation counselor, certified insurance rehabilitation specialist, or certified rehabilitation registered nurse, [qualified rehabilitation coordinators registered with the Department of Workers' Claims.]

Section 4, [7:] Referral of an Injured Employee [Employees] by an Administrative Law Judge or [and] Arbitrator [Judges]. (1) An administrative law judge or arbitrator [judges] may refer an injured employee [employees] to a Department of Workers' Claims employee for implementation of rehabilitation services [rehabilitation counselors employed by the Department of Workers' Claims to obtain evaluations] pursuant to KRS 342.710(3).

(2) A Department of Workers' Claims employee [The rehabilitation counselor to whom the case is assigned shall conduct an initial interview with the employee in the Department of Workers' Claims facility closest to the employee's residence or such other location as is reasonably convenient.

(3) Subsequent to the initial rehabilitation interview the rehabilitation counselor shall refer the employee for a vocational evaluation at a facility listed in the Directory of Vocational Evaluation Facilities, [accredited by CARF in the area of vocational evaluation.]

(3) [(4)] Absent medical incapacitation or another compelling circumstance, the employee [employees] shall attend [initial rehabilitation interviews and] the vocational evaluation [evaluations] when scheduled.

(4) [(5)] The [employees' travel expenses to attend the initial rehabilitation interview and the] cost of the vocational evaluation including travel expenses shall be paid by the employer or other party [parties] designated by the administrative law judge or arbitrator.

(5) The employee's travel expenses shall be reimbursed in accordance with 200 KAR 2:006 [state travel administrative regulations and standards as promulgated and established pursuant to KRS Chapter 18A].

(6) Upon receipt of the vocational evaluation report the employee and the employer or [f] insurance carrier shall cooperate in the implementation of services designed to restore the employee to suitable employment.

[APPENDIX A

Application for Registration as a Qualified Rehabilitation Coordinator or Qualified Rehabilitation Coordinator Intern
Department of Workers' Claims
Frankfort, Kentucky 40601

APPLICATION FOR REGISTRATION

I. REGISTRATION FOR WHICH APPLICATION IS SUBMITTED:
(CHECK A, B, OR C)

- A. QUALIFIED REHABILITATION COORDINATOR
- B. IN-HOUSE QUALIFIED REHABILITATION COORDINATOR
- C. QUALIFIED REHABILITATION COORDINATOR INTERN

REHABILITATION COUNSELORS ONLY:

QRC No. _____ Expiration Date _____
GIRS No. _____ Expiration Date _____
GCM No. _____ Expiration Date _____

REHABILITATION NURSES ONLY:

Ky. Nurse License No. _____ Expiration Date _____

Complete one of the following:

GIRS No. _____ Expiration Date _____
GRRN No. _____ Expiration Date _____
GCM No. _____ Expiration Date _____

II. IDENTIFYING DATA

Name: (Last, First, Middle)
Home Address: (Street, City, State, Zip)
Home Telephone Number: (area code) - (number)
Social Security Number:
Company Name:
Office Address: (Street, City, State, Zip)

ADMINISTRATIVE REGISTER - 2686

Office Telephone Number: (area code) -- (number)

If you have ever been fined or convicted or are now under charges for any violation of law please describe:

List any languages other than English which you speak and write:

Are you able to communicate in sign language with persons with hearing impairments?

Describe service area (statewide or other explain):

III. EDUCATIONAL DATA

Name & Address of College:

Graduation Date:

Major:

Minor:

Degree:

IV. EMPLOYMENT DATA

Describe your work history in detail. Beginning with your current or most recent job describe fully your duties and responsibilities. Include reason for leaving each job. Use additional sheets as necessary:

Employer:

Address:

Telephone Number: (area code) -- (number)

Name and Title of Immediate Supervisor:

Your Job Title(s):

Dates of Employment:

Duties:

Employer:

Address:

Telephone Number: (area code) -- (number)

Name and Title of Immediate Supervisor:

Your Job Title(s):

Dates of Employment:

Duties:

Employer:

Address:

Telephone Number: (area code) -- (number)

Name and Title of Immediate Supervisor:

Your Job Title(s):

Dates of Employment:

Duties:

Employer:

Address:

Telephone Number: (area code) -- (number)

Name and Title of Immediate Supervisor:

Your Job Title(s):

Dates of Employment:

Duties:

List other names under which education or employment may be verified:

V. The applicant by virtue of his notarized signature on this application hereby attests:

1. The Department of Workers' Claims is authorized to investigate any information in this application. I understand any substantial omission or misrepresentation may result in rejection of my application or revocation of my registration.

2. I agree to promptly submit any information requested for registration or monitoring purposes.

3. I agree to attend training sessions sponsored by the Department of Workers' Claims at such times and places as may be deemed necessary.

4. I agree to notify the Department of Workers' Claims within one week of a change in my employment status loss of required license or certification or other occurrence which is likely to affect my registration status.

5. Enclosed is a copy of each license or certificate I described in Section I.

6. Unless I am a nurse submitting a copy of my current Kentucky license or a rehabilitation counselor submitting a copy of my current GRC-CIRS or CCM certificate attached is a copy of my letter to each college listed in Section III requesting a copy of my official transcript be mailed to: Department of Workers' Claims Rehabilitation Branch, Perimeter Park West, 1270 Louisville Road, Building C, Frankfort, Kentucky 40601.

7. Attached is a current description of services provided and fees charged to the employer/carrier. I agree to submit updated descriptions of services and fees within seven (7) days of the effective date of change.

Signed Date:

Notary:

My Commission Expires:

Date:]

WALTER W. TURNER, Commissioner

STEPHEN B. COX, General Counsel

APPROVED BY AGENCY: March 3, 1998

FILED WITH LRC: March 3, 1998 at noon

LABOR CABINET

Department of Workers' Claims
(As Amended at ARRS, May 11, 1998)

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

RELATES TO: KRS Chapter 342

STATUTORY AUTHORITY: KRS 342.035(5), 342.260

NECESSITY, FUNCTION, AND CONFORMITY: KRS 342.260

provides that the Commissioner of the Department of Workers' Claims shall promulgate administrative regulations necessary to carry on the work of the Department of Workers' Claims, and the commissioner may promulgate administrative regulations not inconsistent with the provisions of KRS Chapter 342. KRS 342.035(5) provides that the Commissioner of the Department of Workers' Claims shall promulgate administrative regulations that require each insurance carrier, group self-insurer and individual self-insured employer to certify to the commissioner the program it has adopted to insure compliance with the medical fee schedule provisions of KRS 342.035(1) and (4). KRS 342.035(5) also requires the commissioner to promulgate administrative regulations governing medical provider utilization review activities conducted by an insurance carrier, group self-insurer or self-insured employer pursuant to KRS Chapter 342. This administrative regulation insures that insurance carriers, group self-insurers, and individual self-insured employers implement a utilization review and audit program.

Section 1. Definitions. (1) "Carrier" is defined by KRS 342.0011(6).

(2) "Commissioner" is defined by KRS 342.0011(9).

(3) [(2)] "Denial" means a determination by the utilization reviewer that the medical treatment or service under review is not medically necessary or appropriate and, therefore, payment is not recommended.

(4) [(3)] "Medical bill audit" means the review of medical bills for services which have been provided to assure compliance with

adopted fee schedules.

(5) [(4)] "Preauthorization" means a process whereby payment for a medical service or course of treatment is assured in advance by a carrier. [review by the utilization review program of the medical necessity and appropriateness of medical services prior to the service being rendered.]

(6) [(5)] "Utilization review" means a review of the medical necessity and appropriateness of medical care and services for purposes of recommending payments for a compensable injury or disease. [Medical services which are rendered or requested for incidents which are noncompensable under KRS Chapter 342 shall not be subject to utilization review.]

(7) [(6)] "Utilization review and medical bill audit plan" means the written plan submitted to the commissioner by each [insurance] carrier, [individual self-insured employer, group self-insurer, or vendor] describing the procedures governing utilization review and medical bill [bills] audit activities.

(8) [(7)] "Vendor" means a person or entity [which is not required to implement a utilization review or medical bill audit program, but] which implements a utilization review and medical bill audit program for purposes of offering those services to [insurance] carriers; [individual self-insured employers or group self-insurers].

Section 2. Utilization Review and Medical Bill Audit Program. (1) The utilization review program shall assure that:

- (a) A utilization reviewer is appropriately qualified;
- (b) Treatment rendered to an injured worker is medically necessary and appropriate; and
- (c) Necessary medical services are not withheld or unreasonably delayed.

(2) The medical bill audit program shall assure that:

- (a) A statement or payment for medical goods and services and charges for a deposition, report, or photocopy complies with KRS Chapter 342 and applicable administrative regulations;
- (b) A medical bill auditor is appropriately qualified; and
- (c) A statement for medical services is not disputed without reasonable grounds.

Section 3. Utilization Review and Medical Bill Audit Plan Approval.

(1) **A carrier** [All carriers] [An insurance carrier, individual self-insured employer, and group self-insurer] shall fully implement and maintain a utilization review and medical bill audit program.

(2) **A carrier** [All carriers] [Each insurance carrier, individual self-insured employer and group self-insurer] shall provide to the commissioner a written plan describing the utilization review and medical bill audit program. The commissioner shall approve [a] each utilization review and medical bill audit plan which complies [plans which comply] [plan which complies] with the requirements of this administrative regulation and KRS Chapter 342.

(3) A vendor shall submit to the commissioner for approval a written plan describing the utilization review and medical bill audit program. [The utilization review and medical bill audit program described in the written plan shall comply with the requirements of this administrative regulation.] Upon approval, the vendor shall receive written notice from the commissioner.

(4) Utilization review shall be performed by a private review agent certified by the Kentucky Cabinet for Health Services pursuant to KRS 211.461 to 211.466. A medical bill audit plan shall not require certification by the Kentucky Cabinet for Health Services.

(5) **A carrier** [Carriers who contracts] [contract] [An insurance carrier, individual self-insured employer, and group self-insurer which contracts] with an approved vendor for utilization review or medical bill audit services shall notify the commissioner of the contractual arrangement. The contractual arrangement may provide for separate utilization review and medical bill audit vendors.

(6) A plan shall be approved for a period of four (4) years, or until December 31, 2000, whichever is later.

(a) At least ninety (90) days prior to the expiration of the period of approval, a [December 31, 2000, and every four (4) years thereafter, an insurance] carrier or its [individual self-insured employer, group self-insurer, and] approved vendor shall apply for renewal of the approval.

(b) During the term of an approved plan, the commissioner shall be notified as soon as practicable of a material change in the approved plan or a change in the selection of a vendor.

Section 4. Utilization Review and Medical Bill Audit Written Plan Requirements. The written utilization review and medical bill audit plan submitted to the commissioner shall include the following elements:

(1) A description of the process, policies and procedures whereby decisions shall be made;

(2) A description of the specific criteria utilized in the decision making process, including a description of the specific medical guidelines used as the resource to confirm the medical diagnosis and to provide consistent criteria and practice standards against which care quality and related costs are measured;

(3) A description of the criteria by which claims, medical services and medical bills shall be selected for review;

(4) A description of the qualifications of internal and consulting personnel who shall conduct utilization review and medical bill audit and the manner in which the personnel shall be involved in the review process;

(5) A description of the process to assure that a treatment plan [plans] shall be obtained for review by qualified medical personnel if a treatment plan is required by 803 KAR 25:096;

(6) A description of the process to assure that a physician shall be designated by each injured employee as required under 803 KAR 25:096;

(7) A description of the process for rendering and promptly notifying the medical provider and employee of the initial utilization review decision;

(8) A description of the reconsideration process within the structure of the utilization review and medical bill audit program;

(9) **An assurance that a database shall be maintained, which shall:**

(a) **Record:**

1. Each instance of utilization review;

2. Each instance of medical bill audit;

3. The name of the reviewer;

4. The extent of the review;

5. The conclusions of the reviewer; and

6. The action, if any, taken as the result of the review;

(b) Be maintained for a period of at least two (2) years; and

(c) Be subject to audit by the commissioner, or his agent, pursuant to KRS 342.035(5)(b); [An assurance that a database shall be maintained recording the instances of utilization review, medical bill audit, the name of the reviewer, the extent of the review, the conclusions of the reviewer, and the action, if any, taken as the result of the review. Data shall be maintained for a period of no less than two (2) years and shall be subject to audit by the commissioner, or his agent pursuant to KRS 342.035(5)(b).]

(10) An assurance that a toll free line shall be provided for an employee or medical provider to contact the utilization reviewer. The reviewer or a representative of the reviewer shall be reasonably accessible to an interested party [parties] at least five (5) days per week, forty (40) hours per week during normal business hours;

(11) A description of the policies and procedures that shall be implemented to protect the confidentiality of patient information; and

(12) An assurance that the acute low back pain practice parameter adopted by the commissioner pursuant to KRS 342.035(8)(a) shall be incorporated in the plan as the standard for evaluating an applicable low back claim [claims]. Additional medical guidelines which may be adopted by the commissioner pursuant to KRS

342.035(8)(a) shall be incorporated in a utilization review plan.

Section 5. Claim Selection Criteria. (1) Unless the carrier, in good faith, denies the claim [is-denied] as noncompensable, medical services reasonably related to the [a] claim shall be subject to utilization review if:

- (a) A medical provider requests preauthorization of a medical treatment or procedure; ~~or~~
- (b) Notification of a surgical procedure or resident placement pursuant to an 803 KAR 25:096 treatment plan is received; ~~or~~
- (c) The total medical costs cumulatively exceed \$3000; ~~or~~
- (d) The total lost work days cumulatively exceed thirty (30) days;

or

- (e) An arbitrator or administrative law judge orders a review.
- (2) If applicable, utilization review shall commence when the carrier has notice that [begin no later than fifteen (15) days following the occurrence of] a claims selection criteria has been met.

(a) The following requirements shall apply if [When] pre-authorization has been requested:

1. The initial utilization review decision shall be communicated to the medical provider and employee [rendered] within two (2) working [thirty (30)] days of the initiation of the utilization review process, unless additional information is required. If [Where] additional information is required, tender of a single request shall be made within two (2) additional working days.

2. The requested information shall be tendered by the medical provider within ten (10) working days.

3. The initial utilization review decision [then] shall be rendered within two (2) working days following receipt of the requested information.

(b) The following requirements shall apply if [When] retrospective utilization review occurs:

1. The initial utilization review decision shall be communicated to the medical provider and employee within ten (10) days of the initiation of the utilization review process, unless additional information is required. If [Where] additional information is required, tender of a single request shall be made within two (2) additional working days.

2. The requested information shall be tendered by the medical provider within ten (10) working days.

3. The initial utilization review decision [then] shall be rendered within two (2) working days following receipt of the requested information.

(3) A medical provider may request an expedited utilization review determination for proposed medical treatment or services, the lack of which could reasonably be expected to lead to serious physical or mental disability or death. The expedited utilization review determination shall be provided within twenty-four (24) hours following a request for expedited review.

(4) Initiation of utilization review shall toll the thirty (30) day period for challenging or paying medical expenses pursuant to KRS 342.020(1). The thirty (30) day period shall commence on the date of the final utilization review decision.

(5) Each medical bill audit shall be initiated [audited] within seven (7) days of receipt to assure:

- (a) Compliance with applicable fee schedules;
- (b) Accuracy; and

(c) That a physician has been designated in accordance with 803 KAR 25:096.

(6) A medical bill audit shall not toll the thirty (30) day period for challenging or paying medical expenses pursuant to KRS 342.020(1).

Section 6. Utilization Review and Medical Bill Audit Personnel Qualifications. (1) Utilization review personnel shall have education, training, and experience necessary for evaluating the clinical issues and services under review. A [licensed] physician, registered nurse, licensed practical nurse, medical records technician or other personnel, who through training and experience is qualified to issue

decisions on medical necessity or appropriateness, shall issue the initial utilization review approval.

(2) A [licensed] physician shall issue an initial utilization review denial. A [licensed] physician shall supervise utilization review personnel in making utilization review recommendations. Personnel shall hold the license required by the jurisdiction in which they are employed.

(3) Personnel conducting a medical bill audit shall have the education, training or experience necessary for evaluating medical bills and statements.

Section 7. Written Notice of Denial. (1) Following initial review, a written notice of denial shall:

(a) Be issued to both the medical provider [treating physician] and the employee in a timely manner but no more than ten (10) [thirty (30)] days from the initiation of the utilization review process;

(b) [The notice of denial shall] Be clearly entitled "UTILIZATION REVIEW - NOTICE OF DENIAL"; and

(c) [and shall] Contain:

- 1. [(a)] A statement of the medical reasons for denial;
- 2. [(b)] The name, state of licensure and medical license number of the reviewer; and

3. [(c)] An explanation of utilization review reconsideration rights.

(2) Payment for medical services shall not be denied on the basis of lack of information absent documentation of a good faith effort to obtain the necessary information.

Section 8. Reconsideration. (1) A reconsideration process to appeal an initial decision shall be provided within the structure of utilization review.

(a) A request for reconsideration of the initial utilization review decision shall be made by an aggrieved party [may request reconsideration of the initial utilization review decision] within fourteen (14) [ten (10)] days of receipt of a written notice of denial.

(b) Reconsideration of the initial utilization review decision shall be conducted by a different reviewer of at least the same qualifications as the initial reviewer.

(c) A written reconsideration decision shall be rendered within ten (10) [twenty-one (21)] days of receipt of a request for reconsideration. The written decision shall be clearly entitled "UTILIZATION REVIEW - RECONSIDERATION DECISION". If the reconsideration decision is made by an appropriate specialist or subspecialist, the written decision shall further be entitled "FINAL UTILIZATION REVIEW DECISION".

(d) Those portions of the medical record that are relevant to the reconsideration, if authorized by the patient and in accordance with state or federal law, shall be considered and providers shall be given the opportunity to present additional information.

(2)(a) If a utilization review denial is upheld upon reconsideration and a board eligible or certified physician in the appropriate specialty or subspecialty area, or a chiropractor qualified pursuant to KRS 312.200(3) and 201 KAR 21:095 has not previously reviewed the matter, an aggrieved party may request further review by:

1. A board eligible or certified physician in the appropriate specialty or subspecialty; or

2. A chiropractor qualified pursuant to KRS 312.200(3) and 201 KAR 21:095.

(b) A written decision shall be rendered within ten (10) days of the request for specialty reconsideration. The specialty decision shall be clearly entitled "FINAL UTILIZATION REVIEW DECISION".

(3) A reconsideration process to appeal an initial decision shall be provided within the structure of medical bill audit.

(a) A request for reconsideration of the medical bill audit decision shall be made by an aggrieved party [may request reconsideration of the medical bill audit decision] within fourteen (14) [ten (10)] days of receipt of that decision.

(b) Reconsideration shall be conducted by a different reviewer of

at least the same qualifications as the initial reviewer.

(c) A written decision shall be rendered within ~~ten (10)~~ seven (7) days of receipt of a request for reconsideration. The written decision shall be clearly entitled "MEDICAL BILL AUDIT-RECONSIDERATION DECISION".

(d) A request for reconsideration of the medical bill audit decision shall not toll the thirty (30) day period for challenging or paying medical expenses pursuant to KRS 342.020(1).

WALTER W. TURNER, Commissioner

STEPHEN B. COX, General Counsel

APPROVED BY AGENCY: March 5, 1998

FILED WITH LRC: March 9, 1998 at 4 p.m.

PUBLIC PROTECTION AND REGULATION CABINET

Department of Insurance

(As Amended at ARRS, May 11, 1998)

806 KAR 17:110. Establishment of the Kentucky Risk Assessment and Risk Adjustment System.

RELATES TO: KRS 304.17A-130

STATUTORY AUTHORITY: KRS 304.17A-130

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.

(3) "Department" shall be governed by KRS 304.1-050(2).

(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 pay-out 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" means an insurer as defined in KRS 304.17A-100(5) [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 assessment 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_i = (composite PRAF_i - statewide average composite PRAF) * reference premium * rated risk ratio_i * member months of enrollment_i * .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) If the adjustment amount is negative for an insurer [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) If the adjustment amount is positive for an insurer, the insurer shall be [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) If [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) If [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) An insurer shall collect information from an enrollee and group sponsor necessary to classify a risk in accordance with Section 3 of this administrative regulation. This information may include the active or retired status of a policyholder and similar information. [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 or [] 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 or [] 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.

(4) On an annual basis, each insurer shall file a high cost case annual summary report with the administrator. For each procedure or [] 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.

(5) The months of exposure referenced in subsection (2)(e) of this section and the total payments referenced in subsection (2)(f) of this section shall be totaled for each procedure or [] diagnosis.

(6) 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.

(7) 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.

(8) Each health maintenance organization shall impute costs based on a standard accounting methodology established by the administrator if the plan is [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 or [] diagnosis described in Table 2 and Table 2A of this administrative regulation. This calculation will determine the value for each procedure or [] 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 or [] diagnosis on the high cost case list by the total number of months of exposure reported for each respective procedure or [] 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 or [] diagnosis on the high cost case list by the number of months of exposure reported for each respective procedure or [] 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 " represents medical procedure or [] diagnosis specific values and " i " represents insurer-specific values:

1. Average payment per month of exposure_p = total high cost case payments_p/months of exposure_p;

2. Statewide average high cost case score = Σ_p (average payment per month of exposure_p * months of exposure_p)/total member months of enrollment;

3. Insurer-specific high cost case score_i = Σ_p (average payment per month of exposure_p * months of exposure_p)/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.

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(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 "e" designates eligible insurer-specific values:

(a) Amount of payment_e = unadjusted payment amount_e * pool equalization factor;

(b) Unadjusted payment amount_e = (high cost case score_e - statewide average high cost case score) * member months of enrollment_e * .75; and

(c) Fund equalization factor = (High Cost Case Fund contributions + fund interest) / Σ_e unadjusted payment amount.

(11) In order to receive a payment, an insurer shall certify that:

(a) Every service for a procedure or [f] 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 or [f] 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;

(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+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

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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	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

Procedure/Diagnosis	Payment Conditions and Limitations
Liver transplantation	Payment limited to the cost of preoperative care, transplantation and immediate follow-up care
Heart transplantation	
Bone marrow transplantation	
Kidney transplantation	
End State 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 30 days of ICU care	
HIV/AIDS	With specified opportunistic infections and disease designated in Table 2A of this administrative regulation
Leukemia	

*The administrator will identify code number annually.

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 if [when] due to HIV or [/] 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: demyelinating 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 (non-infectious), 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 or [/] AIDS with other conditions which evidence severe immune system compromise subject to case-by-case review and approval.

GEORGE NICHOLS III, Commissioner

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LAURA M. DOUGLAS, Secretary
SUETTA W. DICKINSON, General Counsel
APPROVED BY AGENCY: February 13, 1998
FILED WITH LRC: February 17, 1998 at 2 p.m.

PUBLIC PROTECTION AND REGULATION CABINET Kentucky Racing Commission (As Amended at ARRS, May 11, 1998)

810 KAR 1:018. Medication; testing procedures.

RELATES TO: KRS 230.215, 230.260(1), (2), (3), (6), (7), 230.320(1) [230.210 to 230.360]

STATUTORY AUTHORITY: KRS 230.215, 230.260(1), (2), (3), (6), (7), 230.320(1) [230.215(2)]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 230.215, 230.260, and 230.320 grant the Kentucky Racing Commission authority to regulate conditions under which thoroughbred racing shall be conducted in Kentucky. [The function of] This administrative regulation governs [relates to] the use of medication on [the] horses and establishes requirements and controls in the administration of drugs or medications.

Section 1. Use of Medication. Therapeutic measures and medication required to improve or protect the health of a horse shall be administered to a horse in training under the direction of a licensed veterinarian. [Full use of modern therapeutic measures and medication calculated to improve or protect the health of a horse may be administered to a horse in training, under the direction of a licensed veterinarian. In the interest of protecting the racing public; health of the horse; safety of the participants in a race; nurturing formful racing; and improvement of the breed of thoroughbreds:]

(1) While participating in a race, a horse shall not carry in its body any medication, drug, substance, or metabolic derivative, that [which]:

- (a) Is a narcotic;
- (b) Could serve as a local anesthetic or tranquilizer; or
- (c) Could stimulate or depress the circulatory, respiratory, or central nervous system of a horse, thereby affecting [effecting] its speed.

(2) A medication, drug, substance, or metabolic derivative thereof that might [Drugs which may] mask or screen the presence of prohibited drugs, or prevent or delay testing procedures shall be prohibited.

(3) It shall be prima facie evidence that a horse had been administered and carried a medication, drug, substance, or metabolic derivative thereof, prohibited by subsection (1) of this section in its body while running a race, if:

(a) A saliva, urine, blood, or other specimen was taken under the supervision of the commission veterinarian promptly after a horse ran in a race; and

(b) The commission chemist detected a medication, drug, substance or metabolic derivative thereof, prohibited by subsection (1) of this section. [Proof of detection by the commission chemist of a medication, drug, substance, or metabolic derivative, prohibited by subsection (1) of this section, in a saliva, urine, blood, or other specimen duly taken under the supervision of the commission veterinarian from a horse promptly after running in a race, shall be prima facie evidence that the horse was administered and carried prohibited medications, drugs, or substances, in its body while running in the race in violation of this administrative regulation.]

Section 2. When Administration Prohibited. (1) On the day of a race for which a horse is entered, only a licensed veterinarian shall administer, cause to be administered, participate or attempt to participate in any manner in the administration of a medication, drug, substance, or metabolic derivative thereof.

(2) A medication, drug, or substance, or metabolic derivative thereof shall not be administered less than four (4) hours prior to post time.

(3) The commission veterinarian or his designated representative may accompany a veterinarian. [Only a licensed veterinarian shall administer, or cause to be administered, or participate, or attempt to participate, in any way in the administration to a horse registered for racing of any medication, drug, or substance on the day of a race for which the horse is entered and prior to the race. Medications, drugs, or substances shall not be administered less than four (4) hours prior to post time. The commission veterinarian or his designated representative may accompany any or all veterinarians.]

Section 3. Responsibility for Prohibited Administration. (1) A licensed trainer, assistant trainer, groom, stable watchman, or other person having the immediate care and custody of a horse governed by the provisions of this administrative regulation shall exercise a high degree of care in safeguarding the horse from tampering. [A person found to have administered a medication, drug, or substance which caused or could have caused a violation of Section 1 or 2 of this administrative regulation, or caused, or participated, or attempted to participate in any way in the administration, of medications, drugs, or substances, shall be subject to disciplinary action:]

(2) A person shall be subject to disciplinary action, if he administered, or caused, or participated or attempted to participate in any manner, in the administration of a medication, drug, substance, or metabolic derivative thereof in violation of Section 1 or 2 of this administrative regulation.

(3) If the commission determines that a horse had been administered a medication, drug, substance, or metabolic derivative thereof in violation of Section 1 or 2 of this administrative regulation, a licensed trainer, assistant trainer, groom, stable watchman, or other person having the immediate care and custody of a horse governed by the provisions of this administrative regulation shall be subject to disciplinary action if he does not establish that he had:

(a) Not been negligent by failing to exercise a high degree of care in safeguarding the horse from tampering; or

(b) Relied on the professional ability of a licensed veterinarian. [The licensed trainer of a horse found to have been administered a medication, drug, or substance in violation of Sections 1 or 2 of this administrative regulation shall bear the burden of proof showing freedom from negligence in the exercise of a high degree of care in safeguarding the horse from tampering. Failure to prove freedom from negligence or reliance on the professional ability of a licensed veterinarian shall be subject to disciplinary action.]

(3) The assistant trainer, groom, stable watchman, or any other person having the immediate care and custody of a horse found to have been administered a medication, drug, or substance in violation of Sections 1 or 2 of this administrative regulation, if found negligent in guarding or protecting the horse from tampering shall be subject to disciplinary action.

Section 4. Record of Administration. (1) A licensed veterinarian who administers or prescribes the treatment of a horse registered for racing with a medication, drug, substance, or metabolic derivative thereof, shall submit a daily report of the treatment to the commission veterinarian.

(2) If an unreported medication, drug, substance, or metabolic derivative thereof, has been detected by the commission chemist, the licensed veterinarian and trainer shall:

(a) Be issued a warning by the stewards, if the:

1. Unreported medication, drug, substance, or metabolic derivative thereof, is not prohibited by the provisions of this administrative regulation; and

2. Licensed veterinarian or trainer had not previously

administered an unreported medication, drug, substance, or metabolic derivative thereof; and

(b) Disciplined by the stewards if the:

1. Unreported medication, drug, substance, or metabolic derivative thereof, is not prohibited by the provisions of this administrative regulation; and

2. Licensed veterinarian or trainer had previously administered an unreported medication, drug, substance, or metabolic derivative thereof.

(3) If an unreported medication, drug, substance, or metabolic derivative thereof, has been detected by the commission chemist, the licensed veterinarian and trainer shall be disciplined if the unreported medication, drug, substance, or metabolic derivative thereof, is prohibited by the provisions of this administrative regulation. [Daily reports of any treatment of any horse registered for racing with any medication, drug, or substance shall be submitted by the licensed veterinarian administering or prescribing the treatment to the commission veterinarian. Detection of any unreported medication, drug, or substance by the commission chemist in a pre-race or post-race test may be grounds for disciplinary action:]

(1) Daily reports shall accurately reflect the identity of the horse treated, time of treatment, type and dosage of medication, drug, or substance, and method of administration.

(2) Daily reports shall be submitted on a timely basis to allow the commission veterinarian to verify designated medications, drugs, or substances which were prescribed, thereby insuring the accuracy of the published information. Designated medications, drugs, or substances prescribed in pre-race treatment and submitted daily reports shall be in complete accord. A deviation in the treatment and reports shall result in the scratching of the particular horse, and may be grounds for disciplinary action:]

(4) A daily report shall state the:

(a) Identity of the horse treated;

(b) Time of treatment; and

(c) Type, dosage, and method of administration of the medication, drug, substance, or metabolic derivative thereof, that was prescribed for the treatment.

(5) A daily report shall be submitted on "Veterinarian Report of Horses Treated to be Submitted Daily, KRC-2".

(6) If a daily report does not accurately state the information required by subsection (2) of this section, the:

(a) Horse that was the subject of the treatment shall be scratched; and

(b) The veterinarian shall be subject to disciplinary action, if the stewards determine that the inaccuracy was due to an intent to violate the provisions of this administrative regulation.

Section 5. (1) A medication, drug, substance, or metabolic derivative thereof shall be prohibited if it is specified in:

(a) "Prohibited Medication, Drug, Substance, or Metabolic Derivative KRC-3"; or

(b) "Uniform Classification Guidelines for Foreign Substances"; or

(2) A type specified by Section 1 of this administrative regulation. [Commission Veterinarian List. As a guide to owners, trainers, and veterinarians, the commission veterinarian may from time to time publish a list of medications, shown by brand and generic names, specifically prohibited for racing. This list when published shall not be considered exclusive and medications shown thereon shall be considered only as among those, along with others not so listed, prohibited by general classification under Section 1 of this administrative regulation:]

Section 6. Detention Area. (1) A licensed association shall provide and maintain on association grounds a detention area.

(2) The detention area shall be a fenced enclosure sufficient

in size and facilities to accommodate the stabling of horses temporarily detained for the taking of sample specimens for chemical testing.

(3) [Each licensed association shall provide and maintain on association grounds a fenced enclosure sufficient in size and facilities to accommodate stabling of horses temporarily detained for the taking of sample specimens for chemical testing.] The detention area shall be under the supervision and control of the commission veterinarian.

Section 7. Horses to be Tested. (1) The stewards may at any time order the taking of a blood, urine, saliva or other specimen from a [any] horse entered to be tested.

(2) An [Any] owner or trainer may [at any time] request that a specimen be:

(a) Taken from a horse he owns or trains by the commission veterinarian; and

(b) Tested by the commission chemist.

(3) The cost [costs] of testing shall be borne by the owner or trainer who requested [requesting] the test.

(4) If an [In the absence of any] order or request has not been made, the commission veterinarian shall take specimens from, and the commission chemist shall test, a horse [all horses which]:

(a) That finished [Finish] first in any race;

(b) [Finish first or second in any quinella or exacta race;

(c) Finish first or second or third in any stakes; and

(d) [Any horse] Whose performance in a race, in the opinion of the stewards, indicates that a medication, drug, substance, or metabolic derivative thereof may have been administered in violation of Sections 1 and 2 of this administrative regulation. [may require blood, urine, or saliva drug testing.] [have been altered by a prohibited substance:]

(c) [Any horse] Randomly selected by the stewards.

Section 8. Procedure for Taking Specimens. (1)(a) A horse [Horses] from which specimens are to be drawn shall:

1. Be taken to the detention area at the [prescribed] time prescribed by the commission veterinarian; and

2. Remain there until released by the commission veterinarian.

(b) Only the owner, trainer, groom, or hotwalker of a horse to be tested shall be admitted to the detention area without permission of the commission veterinarian.

(2)(a) Only stable equipment [other than equipment] necessary for washing and cooling out a horse shall be permitted [prohibited] in the detention area.

(b) [(a)] Buckets and water shall be furnished by the commission veterinarian.

(c) [(b)] If a body brace is to be used, it shall:

1. Be supplied by the [responsible] trainer; and

2. Administered only with the permission and in the presence of the commission veterinarian.

(d) [(c)] A licensed veterinarian shall attend a horse in the detention area only in the presence of the commission veterinarian.

(3) One (1) of the following persons shall be present and attest the taking of a specimen from a horse:

(a) The owner; or

(b) The trainer; or

(c) For a claimed horse, the trainer in whose name the horse raced; or

(d) A stable representative designated by the owner or trainer. [One (1) of the following persons shall be present and witness the taking of the specimen from a horse and so signify in writing:

(a) The owner;

(b) The responsible trainer who, in the case of a claimed horse shall be the person in whose name the horse raced; or

(c) A stable representative designated by such owner or trainer.]

(4)(a) A container that had been used for specimens shall be:

1. Thoroughly cleaned in the commission chemist's laboratory; and

2. Sealed with the commission chemist's laboratory seal.

(b) The laboratory stamp shall be broken only in the presence of one (1) of the witnesses specified by subsection (3) of this section. [Containers previously used for specimens shall be thoroughly cleaned in the commission chemist laboratory and shall be sealed with the laboratory stamp which shall not be broken, except in the presence of the witness as provided by subsection (3) of this section.]

(5) Samples taken from a horse, by the commission veterinarian or his assistant at the detention barn, shall be placed equally in two (2) [double] containers and designated as the "primary" and "secondary" samples.

(a) A sample [These samples] shall be sealed with tamper-proof tape and bear a portion of the multiple part "identification tag" that has identical printed numbers only. The other portion of the specimen identification tag bearing the same printed identification number shall be detached in the presence of the witness specified [as provided] by subsection (3) of this section.

(b) The commission veterinarian shall:

1. Identify the horse from which the specimen was taken;
2. Document the race and day, verified by the witness; and
3. Place the detached portions of the identification tags in a sealed commission specimen identification tag envelope for delivery only to the stewards.

(c) After both portions of samples have been identified as provided by paragraph (a) of [in accordance with] this subsection, the "primary" sample shall be delivered to the [Racing] commission chemist's laboratory.

(d) The "secondary" sample shall remain in the custody of the commission veterinarian at the detention area and[~~as near as possible,~~] shall be preserved in the same condition and temperature as the primary sample.

(e) The commission veterinarian shall take every precaution to ensure that neither the commission chemist nor any member of the laboratory staff knows [shall know] the identity of the horse from which a specimen was taken prior to the completion of all testing.

(f) If [When] the commission chemist has reported that the "primary" sample delivered to him does not contain a [contains no] prohibited medication, drug, substance, or metabolic derivative thereof, the "secondary" sample shall be properly disposed.

(g) The commission veterinarian may permit a horse to be returned to its barn and usual surroundings for the taking of a specimen under his supervision, if he has determined that:

1. The horse has remained in the detention area for a reasonable time; and

2. It will not be possible to obtain a specimen from the horse in the detention area. [If after a horse remains a reasonable time in the detention area and a specimen may not be taken from the horse, the commission veterinarian may permit the horse to be returned to its barn and usual surroundings for the taking of a specimen under the supervision of the commission veterinarian.]

(h) If fifty (50) ml. or less of urine is obtained:

1. It shall not be split;

2. It shall be considered the primary sample;

3. It shall be tested as other primary samples are tested; and

4. If the total urine collected is less than 100 ml., the secondary sample shall consist of the balance of the collected urine that exceeds fifty (50) ml. [If fifty (50) ml. or less of urine is obtained it will not be split, but will be considered the "primary" sample and will be tested as other "primary" samples. When the total urine collected consists of less than 100 ml., the "secondary" sample shall consist of the balance of urine collected over fifty (50) ml.]

(i) 1. A blood sample [samples] shall be initially taken in a [sufficient] quantity sufficient to ensure that ample amounts are obtained for [both] the primary and secondary sample [samples].

2. [1:] The primary and secondary blood sample [samples] shall be equal in quantity and consist of at least twenty (20) ml., for a total of forty (40) cc.

[2:] In the event of an initial finding of a prohibited drug or of a negative in violation of these administrative regulations, the commission chemist shall notify the commission, both orally and in writing, and an oral or written notice shall be issued by the commission to the owner and trainer or other responsible person no more than twenty-four (24) hours after the receipt by the commission of the initial finding.]

(j) 1. The commission chemist shall notify the commission, orally and in writing, if an initial finding establishes the presence of a medication, drug, substance, or metabolic derivative thereof, prohibited by Sections 1 and 2 of this administrative regulation or a negative.

2. Within twenty-four (24) hours of receipt of notification by the commission chemist, the commission shall notify the owner and trainer orally and in writing of the initial finding.

(k) Upon an initial finding of a medication, drug, substance, or metabolic derivative thereof prohibited by Sections 1 and 2 of this administrative regulation [prohibited drug] or negative, the commission veterinarian shall immediately freeze the secondary urine sample.

1. The secondary samples shall be tested after notification of the owner, trainer or other responsible person, if requested.

2. Testing of the secondary samples shall be performed at a referee laboratory selected by representatives of the owner and [:] trainer or [other responsible persons] from a laboratory [list of not less than two (2) laboratories] approved by the [Kentucky Racing] commission.

(l) [(k)] The commission shall pay the [bear the responsibility and] cost of preparing and shipping a [the] sample, [~~but~~] The cost of testing at the referee laboratory shall be assumed by the person who requested [requesting] the test [testing, whether it be the owner, trainer or other person charged].

[1:] A commission representative and the owner, trainer or other responsible person or a representative of the persons notified under these administrative regulations may be present at the time of the opening, repacking, and testing of the "secondary" sample to ensure its identity and that the testing is satisfactorily performed.

2. The referee laboratory shall be informed of the initial findings of the commission chemist prior to making the test.

3. If the finding of the referee laboratory does not confirm the finding of the initial test performed by the commission chemist and in the absence of other independent proof of the administration of a prohibited drug of the horse in question, it shall be concluded that there is insubstantial evidence upon which to charge anyone with a violation.]

(m) 1. The referee laboratory shall be informed by the commission veterinarian of the initial finding of the commission chemist before it conducts its test.

2. To ensure the identity of the secondary sample and that the test of the sample is performed satisfactorily, a commission representative, the owner, or trainer may be present when the secondary sample is opened, repacked and tested.

(n) It shall be concluded that there is insubstantial evidence upon which to charge a person with a violation of the provisions of this administrative regulation, if:

1. The finding of the referee laboratory did not confirm the finding of the initial test performed by the commission chemist; and

2. There is no other independent proof that a medication, drug, substance, or metabolic derivative thereof, prohibited by Sections 1 and 2 of this administrative regulation was administered to the horse that was the subject of the test.

[(l)] The commission veterinarian shall be responsible for safeguarding all specimens while in his possession and shall cause the

specimens to be delivered only to the commission chemist as soon as possible after sealing, but in a manner so as not to reveal the identity of a horse from which the sample was taken.]

(o) The commission veterinarian shall:

1. Safeguard a specimen in his possession;

2. Deliver a specimen only to the commission chemist after it has been sealed; and

3. Ensure that the identity of the horse from which a sample was taken is not revealed.

Section 9. Procedure for Testing. (1)(a) The commission chemist shall safeguard and test [be responsible for safeguarding and testing] each specimen delivered to his laboratory by the commission veterinarian.

(b) A [Each] specimen shall be divided into two (2) portions.

1. The first [so that one (1)] portion shall be used for initial testing for unknown substances; and

2. The second portion shall be used for confirmation tests.

(2)(a) For each specimen, the commission chemist shall conduct:

1. Individual tests that are capable of screening a specimen for medication, drug, substance, or metabolic derivative thereof, prohibited by Sections 1 and 2 of this administrative regulation; and

2. Other tests necessary to detect and identify a medication, drug, substance, or metabolic derivative thereof that may be prohibited by Sections 1 and 2 of this administrative regulation.

(b) Pooling shall be permitted upon approval of the commission veterinarian. [The commission chemist shall conduct individual tests on each specimen capable of screening the specimen for prohibited substances, and other tests as necessary to detect and identify any suspected prohibited substance or metabolic derivative with specificity. Pooling of specimens shall be permitted only with the knowledge and approval of the commission veterinarian.]

(3)(a) Upon a [the] finding of a test negative for prohibited medication, drug, substance, or metabolic derivative thereof [substances], the remaining portions of the specimen may be discarded.

(b) If the finding of a test is suspicious or positive for a medication, drug, substance, or metabolic derivative thereof, prohibited by Sections 1 and 2 of this administrative regulation, the:

1. Test shall be reconfirmed; and

2. Remaining portions of a specimen shall be preserved and protected until the stewards rule that the specimen shall be discarded. [Upon the finding of tests suspicious or positive for prohibited substances, the tests shall be reconfirmed, and the remaining portions, if available, of the specimen shall be preserved and protected until such the stewards rule that the specimen shall be discarded.]

(4)(a) The commission chemist shall submit to the state steward a written report on each specimen that has been tested.

(b) The report shall state, by specimen tag identification number, whether a specimen had tested negative or positive for a medication, drug, substance, or metabolic derivative thereof, prohibited by Sections 1 and 2 of this administrative regulation.

(c) The commission chemist shall report a test finding only to the state steward or his designated representative.

(d) If the commission chemist finds a specimen suspicious for a medication, drug, substance, or metabolic derivative thereof, prohibited by Sections 1 and 2 of this administrative regulation, he may request additional time for test analysis and confirmation.

(e) A racing association shall not distribute a purse until the stewards notify it that tests relating to a medication, drug, substance, or metabolic derivative thereof, prohibited by Sections 1 and 2 of this administrative regulation, have:

1. Been completed;

2. Have not shown the presence of a medication, drug, substance, or metabolic derivative thereof, prohibited by Sections 1 and 2 of this administrative regulation. [The commission chemist shall submit to the state steward a written report as to each specimen tested, indicating by specimen tag identification number, whether a specimen was tested negative or positive for prohibited substances. The commission chemist shall not report the test findings to persons other than the state steward or his designated representative.]

(a) In the event the commission chemist should find a specimen suspicious for a prohibited medication, he may request additional time for test analysis and confirmation:

(b) The racing association shall not make distribution of any purses until it is given clearance of chemical tests by the stewards:

(5)(a) The commission chemist shall make a further report to the state steward on a [any] substance which his tests reveal are not normal in a horse.

(b) The report [These reports] shall be confidential and shall [are] not be evidence for disciplinary action.

(c) This report may be disclosed to the trainer or veterinarian by the stewards or commission veterinarian to improve his surveillance.

(d) This report may be submitted to the Equine Research Program at the University of Kentucky for pharmacological evaluation. [These reports may be used as a warning to the trainer or veterinarian, by the stewards, by the commission veterinarian to improve his surveillance and by the Equine Research Program at the University of Kentucky.]

(e) [(d)] The residue of specimen material from these tests shall be preserved by the commission chemist until released by the racing commission.

[(6) In reporting to the stewards a finding of a test positive for a prohibited substance, the commission chemist shall present documentary or demonstrative evidence acceptable in the scientific community and admissible in court in support of a professional opinion as to a positive finding.]

Section 10. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Veterinarian Report of Horses Treated to be Submitted Daily, KRC-2 (8/97)";

(b) "Prohibited Medication, Drug, Substance, or Metabolic Derivative KRC-3 (5/98)";

(c) "Uniform Classification Guidelines for Foreign Substances, April 1998", Association of Racing Commissioners International, Inc.;

(d) "Specimen Identification Tag, KRC-5 (5/98)"; and

(e) "Specimen Identification Tag Envelope, KRC-6 (5/98)".

(2) This material may be inspected, copied, or obtained at the Kentucky Racing Commission, 4063 Ironworks Parkway, Lexington, Kentucky 40511, Monday through Friday, 8 a.m. to 4:30 p.m.

RICHARD "SMITTY" TAYLOR, Chairman

DICK CARROLL, Office of the Attorney General

APPROVED BY AGENCY: January 13, 1998

FILED WITH LRC: January 13, 1998 at 11 a.m.

PUBLIC PROTECTION AND REGULATION CABINET
Kentucky Racing Commission
(As Amended at ARRS, May 11, 1998)

810 KAR 1:026. Racing associations.

RELATES TO: KRS 230.215(2), 230.225(1), 230.260(3)

STATUTORY AUTHORITY: KRS 230.215(2), 230.225(1), 230.260(3), (6)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 230.215(2), 230.225(1), and 230.260(3) require [requires that] the commission to promulgate administrative regulations establishing [prescribing] conditions governing [all aspects of] horse racing. This administrative regulation establishes the requirements for racing associations.

Section 1. Maintenance of Grounds, Facilities and Uniform Track.

(1) The grounds and facilities of an association shall be maintained in a manner that provides for the:

(a) Comfort and safety of patrons, employees, and other persons whose business requires their attendance; and

(b) Health and safety of horses that are stabled, or exercise, or entered to race at the association.

(2) The grounds and facilities of an association shall be:

(a) Neat and clean;

(b) Painted; and

(c) In good repair.

(3) An association shall have implements adequate to maintain a uniform track, weather conditions permitting. [Each association shall at all times maintain its grounds and facilities so as to be neat and clean, painted and in good repair, with special consideration for the comfort and safety of patrons, employees, and other persons whose business requires their attendance; with special consideration for the health and safety of horses there stabled, exercising, or entered to race; and shall have available adequate and proper implements to maintain a uniform track, weather conditions permitting.]

Section 2. Results Boards, Totalizators Required. An [Each] association shall provide and maintain mechanically operated totalizators and electronic boards that show [showing] odds, results, and other race information located in plain view of patrons.

Section 3. Starting Gate. (1) An [Each] association shall provide and maintain a working starting gate on every day horses are permitted to exercise on its racing strip.

(2) An [Each] association shall have in attendance one (1) or more persons qualified to keep the starting gates in good working order whenever the gates are in use.

(3) An [and each] association shall provide for periodic inspections of the starting gates.

Section 4. Stabling. (1) An [All] association barn and stall [barns and stalls] shall be:

(a) Constructed of fire-resistant material [materials];

(b) Clean, sanitary, and equipped for adequate drainage; and

(c) Maintained in good repair.

(2)(a) Prior to the opening of a race meeting, the racing commission shall submit to the racing secretary a list of locations of approved off-track stabling facilities from which horses shall be permitted to race.

(b) The locations shall be considered association grounds. [The racing commission shall submit to the racing secretary prior to the opening of each race meeting a list of locations of approved off-track stabling facilities from which horses may be permitted to race. The locations shall be considered for purposes of these administrative regulations "association grounds."]

Section 5. Stands for Officials. (1) An [Each] association shall provide and maintain stands commanding an uninterrupted view of the entire racing strip for racing officials.

(2) The stands and their locations [location] shall be approved by the commission. [Patrol judge stands shall be constructed so the floor shall be at least six (6) feet higher than the track rail.]

(3) The floor of patrol judge stands shall be at least six (6) feet higher than the track rail.

Section 6. Distance Pole Markings. An [Each] association shall have:

(1) Red and white [cause] quarter poles;

(2) Green and white [to be painted red and white,] eighth poles; [to be painted green and white,] and

(3) Black and white 16th poles [to be painted black and white].

Section 7. Lighting. (1) An [Each] association shall provide and maintain flood lights that provide [so as to insure] adequate illumination in the stable area and parking area. [Adequacy of track lighting for night racing shall be determined by the commission.]

(2) If an association conducts night racing, it shall provide adequate track lighting.

Section 8. Facilities for Stable Employees. (1) An [Each] association shall provide and maintain in good repair adequate living quarters and conveniently located sanitary facilities, which shall include showers, toilets, and wash basins for stable employees.

(2) [No] Personnel shall not be permitted to sleep in a [any] stall or barn loft.

Section 9. Facilities for Jockeys. (1) An [Each] association shall provide and maintain adequate facilities for jockeys scheduled to ride each day.

(2) The facilities shall include accommodations for rest and recreation of jockeys on racing days, showers, toilets, wash basins, mirrors, arrangements for safekeeping of apparel and personal effects, and snack bar, and other accommodations as requested by the clerk of scales.

Section 10. Facilities for Commission. (1) An association shall provide adequate office space for the commission on its grounds.

(2) An association shall provide the following to the commission:

(a) A season box, marked "Kentucky Racing Commission", of six (6) to eight (8) seats; and

(b) A number of parking places sufficient for the commission and commission staff.

(3) An association shall honor for access to preferred parking facilities and other areas on its grounds a commission or Association of Racing Commissioners International ring, lapel button, or automobile emblem. [Each association shall provide adequate office space for the commission on association grounds and shall make available to the commission, and mark accordingly, a season box of six (6) to eight (8) seats and appropriate parking places for use of the commission throughout each racing day. Each association shall honor for access to preferred parking facilities and all other areas on association grounds any ring, lapel button, or automobile emblem issued or designated as approved at any time by the commission, or by the Association of Racing Commissioners International.]

Section 11. Sanitary Facilities for Patrons. An [Each] association shall, on every racing day, provide [adequate and] sanitary toilets and wash rooms, and [furnish] free drinking water for adequate for the number of patrons and persons having business at the association that comply with applicable statutes, administrative regulations,

codes or ordinances.

Section 12. Manure Removal. (1) An [Each] association shall provide and maintain [adequate] manure pits of the size and construction adequate to handle refuse from stalls.

(2) The contents of the manure pits shall be removed from the stable area as promptly as is possible.

Section 13. Photo Finish Cameras. (1) An [Each] association shall provide and maintain at the finish line two (2) photo finish cameras for photographing the finish of races.

(2) One (1) of the photo finish cameras shall [camera-to] be held in reserve. The photo finish photographer shall promptly furnish to the stewards and placing judges the number of prints of [all] finishes [as may be] requested [and in such number as may be required for public posting].

(3) An [The] association shall maintain a one (1) year file of all photo finishes.

Section 14. Patrol Films or Video Tapes. (1) During a race meeting, an association shall provide and maintain personnel and equipment necessary to record and produce motion pictures or video tapes that clearly record each race from start to finish.

(2) [Each association shall at all times during a race meeting provide and maintain personnel and equipment necessary to produce adequate motion pictures or video tapes and record each race from start to finish:

(1) Projection or viewing equipment shall be adequate to permit simultaneous showing of head-on and side-angle views of the running of each race.

(3)(a) A film and video tape shall be:

1. Retained and secured by an association for at least one (1) year; and

2. Made available to the commission and stewards upon demand.

(b) Upon order of the stewards, a visual record of a race that has raised a question, dispute, or controversy shall be filed with the commission.

[(2) Films and video tapes, shall be retained and secured by the association for not less than one (1) year and shall be available at all times to the commission and stewards. Each visual record of a race involving any questions, dispute, or controversy shall be filed with the commission upon order of the stewards.]

(4) [(3)] Films and video tapes shall be made available:

(a) For viewing at the track by licensees who owned, trained, or rode a horse in the race requested to be viewed; and

(b) To members of the press.

Section 15. Ambulances. (1) An [Each] association shall provide and maintain at least one (1) man-ambulance and [at least] one (1) horse-ambulance whenever [during times] horses are permitted to exercise or race.

(2) An ambulance [The ambulances] shall be:

(a) Equipped;

(b) Manned;

(c) [-and] Ready for immediate duty; and

(d) [shall be] Located at an entrance to the racing strip.

Section 16. (1) Except as provided by subsection (2) of this section, an association shall equip and maintain a first aid facility that is:

(a) Equipped with at least two (2) beds; and

(b) Attended by a licensed physician and registered nurse during race hours.

(2) An association shall not be required to maintain a first aid facility, if the association:

(a) Has an ambulance on standby on its premises during race

hours; and

(b) Can transport an injured individual to a fully-equipped hospital emergency room in:

1. Five (5) minutes or less;

2. An ambulance manned by a certified paramedic and certified emergency medical technician.

(3) A paramedic provided pursuant to subsection (2) of this section shall be equipped with:

(a) Heart monitor and defibrillator;

(b) Cellular phone; and

(c) Airways intubation equipment. [First-Aid-Room. Each association shall equip and maintain adequate first aid facilities with not less than two (2) beds and attendance of a competent physician and registered nurse during race hours unless the association can transport injured individuals to a fully-equipped hospital emergency room in five (5) minutes or less in an ambulance manned by a certified paramedic and certified emergency medical technician. The ambulance shall be on standby on association premises during race hours. In the absence of a competent physician, paramedics shall be equipped, at a minimum, with the following equipment: heart monitor and defibrillator, cellular phone, and airways intubation equipment.]

Section 17. Track Kitchen. An [Each] association shall provide a track kitchen [adequate eating facilities] within the stable area, maintained in a clean and sanitary manner that complies with applicable statutes, administrative regulations, codes, or ordinances at all times horses are stabled on association grounds.

Section 18. Communication System. An [Each] association shall install and maintain in good working service a communication system between the stewards' stand and:

(1) Patrol judges;

(2) Parimutuel department;

(3) Starting gate;

(4) Public address announcer; and

(5) Clerk of the scales.

Section 19. Fire Prevention. (1) An association shall have a fire prevention and suppression program.

(2) The commission shall not approve the commencement of a race meeting, unless, within fifteen (15) days before commencement of the race meeting, the state or local fire marshal:

(a) Has inspected the association; and

(b) Certified that the association plant and stable area meets fire safety requirements.

(3) An association shall maintain a firefighting unit of trained personnel that has high-expansion foam fire extinguishers, and other equipment required by the local fire inspection authority.

(4) An [Each association shall be responsible for maintaining an adequate program for fire prevention and fire suppression. Each association within fifteen (15) days before commencement of a race meeting shall be inspected by the state or local fire marshal whose certification that the association plant and stable area meet fire safety requirements is necessary for the commission to approve commencement of the race meeting. Each association shall maintain a firefighting unit of trained personnel equipped with high-expansion foam fire extinguishers and other equipment as may be recommended by the local fire inspection authority. Each] association shall prohibit:

(a) [(1)] Smoking in stalls, under shed rows, and in feed rooms;

(b) [(2)] Open fires, oil or gas lamps in the stable area; and

(c) [(3)] Locking of stalls occupied by horses.

Section 20. Association Security. (1) An [Police. Each] association shall provide and maintain security [competent police and watchman] services, night and day, in and about association grounds.

(2) An association [-and] shall furnish [daily] to the commission a report on any disturbances, drunkenness, or disorderly conduct

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committed by a [any] person on association grounds.

Section 21. Security. (1) An association shall exclude from association grounds a person designated to be excluded by order of the commission or stewards.

(2) An association shall implement security measures to protect a horse on association ground from being injured by being frightened or tampered with.

(3) An association shall exclude from the paddock area, race strip, and winner's entrance a person who:

(a) Does not have an immediate connection with the horses entered; and

(b) Is not a commission member, racing official, or accredited member of the news media. [Each association shall cause to be excluded from association grounds all persons designated by order of the commission or stewards to be excluded. Each association shall take measures to maintain security of horses on association grounds so as to protect from injury due to frightening or tampering with horses. Each association shall exclude from the paddock area, race strip, and winner's entrance all persons who have no immediate connection with the horses entered except members of the commission, racing officials, and duly accredited members of the news media.]

Section 22. Vendors and Suppliers. (1) A vendor shall comply with procedures and requirements established by an association.

(2) An [Each association shall supervise the practice and procedures of all vendors of food, horse feed, medication, and tack, who have entry to the stable area. No] association [by virtue of this section] shall not attempt to control or monopolize sales [proper selling] to owners, trainers, or stable employees.

(3) [-nor shall] An association shall not grant a concession to a [any] vendor of feed, racing supplies, or racing services.

(4) A [Every] vendor of horse feeds or medications shall file with the commission veterinarian a list of products which he proposes to sell, including a [any] new preparation or medication.

(5) An [No] association shall not permit the sale of an [any] alcoholic beverage except beer [excepted] within the stable area.

Section 23. Ejection or Exclusion From Association Grounds. (1) An association shall for probable cause eject or exclude from association grounds a person [all persons]:

(a) Believed to be engaged in:

1. A bookmaking activity; or
2. Solicitation of bets; or
3. Touting. [and promptly submit a report to the:]

(b) An association shall immediately submit a report on the ejection or exclusion from association grounds of a person who engaged in activity prohibited by paragraph (a) of this subsection to the:

1. Commission;
2. Stewards; and
3. Police.

(c) [(b)] Who as a business or for compensation, either directly or indirectly:

1. Accepted [-accepts] any thing of value to be wagered, or [to be] transmitted, or delivered for wager to a [any] pari-mutuel wagering enterprise; or

2. Participated [participate] in the transaction; and

(d) Attempted [(c)-Attempting] to use tax exempt admissions credentials not issued to him by the association.

(2) An association shall eject or exclude from its stable area a person who is not:

(a) Licensed to conduct an activity which requires his presence in the stable area;

(b) An accredited member of the news media;

(c) A guest of a licensed owner or trainer accompanied by

the owner or trainer; or

(d) Accompanied by, and under the control and supervision of a:

1. Racing official;

2. Association security guard; or

3. Association public relations department representative.

[Associations shall eject or exclude from the stable areas on association grounds all persons, except those whose presence in the stable area is authorized as:

(a) Persons licensed to conduct an activity, the conduct of which requires the presence of the licensee in the stable area;

(b) Duly accredited members of the news media;

(c) Guests of licensed owner or licensed trainer physically in the company of the owner or trainer;

(d) Persons physically in the company of and under the control and supervision of a racing official, association security guard, association public relations department representative.]

(3)(a) A report [Reports] of an ejection or exclusion [all ejections or exclusions] from association grounds for any reason shall be made immediately to the commission and the stewards.

(b) A report [The reports] shall state the:

1. Name of person ejected or excluded;

2. Reasons for the ejection or exclusion; and

3. Facts relating to the ejection or exclusion. [all persons and circumstances:]

Section 24. Ownership of Associations. An [Each] association shall file with the commission a revised list of persons whose identity is required by 810 KAR 1:025, Section 6(2), immediately upon transfer of a [any] beneficial interest or control in the association [as from time to time may occur].

Section 25. Plan of Association Grounds. (1) An [Each] association shall file with the commission [existing] maps and plans of association grounds, showing:

(a) [all] Structures;

(b) Piping;

(c) Fire hydrants;

(d) Fixed equipment;

(e) Racing strip, noting elevation as filled, drained, and gapped; and

(f) Composition of track base and cushion.

(2) An [Each] association shall file revised maps or plans of association grounds upon any material change [as may occur from time to time].

Section 26. Attendance Report and Badge List Report; Tax Exempt Credentials. (1) An association shall file with the commission a copy of the "Race Track Pari-mutuel and Admissions Report" required by KRS 137.180 and 138.480.

(2) A tax exempt admission credential shall not be transferable. [In addition to filing with the commission a copy of the report required by KRS 138.480 to be filed with the Department of Revenue on admission taxes, each association shall file with the commission daily attendance reports showing a turnstile count of all persons admitted to association grounds where pari-mutuel wagering is conducted. The attendance report shall indicate the daily number of paid admissions, taxed complimentary admissions, and tax exempt admissions:

(2) On request from the commission, each association shall file with the commission a current badge list showing the names of all persons issued tax exempt admission credentials:

(3) Tax exempt admission credentials shall not be transferable.]

Section 27. Financial Report. Within sixty (60) days after the close of its fiscal year, an association shall file:

(1) Three (3) copies of its balance sheet; and

(2) A comparison to the prior year. [In addition to filing with the commission copies of reports required by KRS 137.180 and 138.530 to be filed with the Department of Revenue on pari-mutuel and license taxes, each association shall furnish to the commission within sixty (60) days after the close of its fiscal year three (3) copies of its balance sheet and operating statement for the fiscal year along with a comparison to the prior year, which shall be duly sworn to by the treasurer of the association and certified by a licensed certified public accountant. The financial report shall be in a form as may be prescribed from time to time by the commission.]

Section 28. Horseman's Account and Horseman's Bookkeeper. (1) An association shall maintain a bank account that shall:

- (a) Be separate from its other accounts;
- (b) Entitled "horsemen's account";
- (c) Contain sufficient funds to pay money owing to horsemen

for:

- 1. Purses;
- 2. Stakes;
- 3. Rewards;
- 4. Claims; and
- 5. Deposits.

(2) Withdrawals from the horsemen's account shall be subject to audit by the commission at any time.

(3)(a) Except as provided by paragraph (b) of this subsection, purse money shall be available to earners with forty-eight (48) hours, dark days excluded, after the result of the race in which the money was earned has been declared official.

(b) The stewards shall order money withheld until final adjudication of a dispute over which persons are entitled to money.

(4)(a) Except for jockey fees, a deduction from purse money shall not be made, unless the deduction has been requested in writing by the:

- 1. Person to whom purse money is payable; or
- 2. Authorized representative of the person to whom purse money is payable.

(b) Whether or not a deduction request is made, at the close of a race meeting, the horsemen's bookkeeper in charge of the horsemen's account shall mail to an owner a duplicate of each record of a deposit, withdrawal, or transfer of funds that affects his racing account.

(5) The horsemen's bookkeeper in charge of the horsemen's account shall be bonded. [Horseman's Bookkeeper. (1) Each association shall maintain a separate bank account, to be known as the "horsemen's account", with at all times sufficient funds in the account to pay all money owing to horsemen in regard to purses, stakes, rewards, claims, and deposits. Withdrawals from this account shall at all times be subject to audit by the commission, and the horsemen's bookkeeper in charge of the account shall be bonded.

(2) All portions of purse money shall be made available to earners within forty-eight (48) hours, dark days excluded after the result of the race in which the money was earned has been declared official; except, when the stewards shall order money withheld until final adjudication of a dispute determining which persons are entitled to the money in dispute:

(3) No portion of purse money other than jockey fees shall be deducted by the association for itself or for another, unless so requested in writing by the person to whom the purse monies are payable, or his duly authorized representative. Irrespective of whether requested, the horsemen's bookkeeper shall mail to each owner a duplicate of each record of a deposit, withdrawal, or transfer of funds affecting such owner's racing account at the close of each race meeting.]

Section 29. Outriders. (1) An association shall employ at least

two (2) outriders.

(2) An outrider shall:

(a) Escort starters to the post; and

(b) Assist in the returning of all horses to the unsaddling area.

(3) An outrider shall:

(a) Only lead a horse that has demonstrated unruliness; and

(b) Assist in the control of a horse that might cause injury to a jockey or others.

(4) Whenever horses are permitted on the racing strip for exercising or racing, an outrider shall be:

(a) Present on the racing strip;

(b) Mounted; and

(c) Ready to assist in the:

1. Control of an unruly horse; or

2. Recapture of a loose horse.

(5) When a person exercises a horse during training hours, or accompanies a horse to the starting gate during racing hours, he shall wear a protective helmet and a safety vest approved for use in racing by a racing trade association. [Each thoroughbred association shall employ at least two (2) outriders to escort starters to the post and to assist in the returning of all horses to the unsaddling area. No outrider shall lead any horse that has not demonstrated unruliness, but shall assist in the control of any horse which might cause injury to a jockey or others. Each association shall provide traditional wearing apparel. Outriders shall be required to be present on the racing strip, mounted, and ready to assist in the control of any unruly horse or to recapture any loose horse, at all times horses are permitted on the racing strip for exercising or racing. All persons exercising horses during training hours, or accompanying horses to the starting gate during racing hours shall wear a protective helmet and safety vest which shall provide a minimum of shock protection to the upper body of a five (5) rating as defined by the British Equestrian Trade Association. The term "exercising" includes breezing, galloping, or ponying horses.]

Section 30. Valets. (1) An association shall employ a number of licensed valets sufficient to attend each rider on a day's racing program.

(2) A valet shall be under the immediate supervision and control of the clerk of scales.

(3) A rider shall not employ a valet or be attended by a person other than the valet assigned to him by the clerk of scales.

(4) A valet shall not be assigned to the same rider for more than two (2) consecutive racing days.

(5) A valet shall:

(a) Be responsible for the care and cleaning up of the apparel and equipment of his assigned rider;

(b) Ensure his rider has the proper equipment and colors for a race;

(c) Present the proper equipment and attend the saddling of his rider's mount; and

(d) Attend the weighing out of his rider.

(6) A valet or other jockey room attendant shall not place a wager, directly or indirectly, on races run while he serves as a valet for himself or another.

(7)(a) An association shall provide uniform attire for valets.

(b) A valet shall wear the attire provided by an association whenever he performs his duty within public view. [Each thoroughbred association shall employ a sufficient number of persons licensed as valets to attend each individual rider on a day's racing program. The valets shall be under the immediate supervision and control of the clerk of scales. No rider shall employ a valet or be attended by any person other than the valet assigned to him by the clerk of scales. No valet shall be assigned to the same rider for more than two (2) consecutive racing days. Valets shall be responsible for

~~the care and cleaning up of his assigned riders apparel and equipment; shall insure his rider has the proper equipment and colors for each race; shall present the proper equipment and attend the saddling of his rider's mount; and shall attend the weighing out of his rider. No valet or other jockey room attendant may place a wager for himself or another, directly or indirectly, on races run while he is serving as a valet. Each association shall provide uniform attire for valets who shall wear same at all times while performing their duties within public view.]~~

Section 31. Minimum Purse and Stakes Values. ~~(1) An [No thoroughbred]~~ association shall ~~not~~ program or run any race ~~[the purse]~~ for which the purse is less than \$2,000 in cash, without special permission of the commission.

~~(2) An [No thoroughbred]~~ association shall ~~not~~ program or run a ~~[any]~~ stakes race the added value of which is less than \$10,000 in cash added by the association to stakes fees paid by owners.

~~(3) The minimum cash amounts paid by the association shall be exclusive of;~~

- ~~(a) Nomination;~~
- ~~(b) Eligibility;~~
- ~~(c) Entrance; [and]~~
- ~~(d) Starting fees; [and]~~
- ~~(e) [exclusive of other] Cash awards;~~
- ~~(f) Premiums;~~
- ~~(g) Prizes; or~~
- ~~(h) Objects of value.~~

Section 32. Maximum Number of Races. ~~An [No]~~ association shall ~~not~~ program or run more than nine (9) races on a ~~[any single]~~ racing day without ~~[special]~~ permission of the commission.

Section 33. Two (2) Year Old Races. Beginning on March 1 of each year, an ~~[each thoroughbred]~~ association shall program in the conditions book at least four (4) two (2) year old races each week.

Section 34. (1) Exculpatory clauses. Effective January 1, 1997, agreements including but not limited to stall applications, entry forms and condition books between persons or entities licensed by the Kentucky Racing Commission regarding the stabling of horses, the racing of horses, the training of horses or other activities at tracks owned or operated by licensed associations, and conditions of racing established by licensed associations, shall not contain provisions which absolve or hold harmless a licensee from liability, or limit the liability of a licensee, for loss, loss of use, injury or damage caused or contributed to by the acts or omissions of any licensee or its agents or employees, except for:

(a) Ordinary negligence which causes or contributes to loss, injury or damage to horses while on the premises of a licensed association; and

(b) Ordinary negligence which causes or contributes to personal injury or property damage, including but not limited to loss, loss of use, injury or damage to horses arising from the use of grass fields or gallops owned or controlled by the licensed association. Subject to the above exceptions, all licensees participating in the stabling of horses, the racing of horses, the training of horses, and related activities at tracks owned or operated by licensed associations shall be responsible for their own acts and omissions and those of their agents and employees to the same extent as provided by law. No licensee shall attempt to limit liability of any person or entity for gross negligence or intentional wrongdoing.

(2) Constructive notice to and consent of licensees. All persons licensed by the Kentucky Racing Commission shall be deemed, as a condition of licensure, to have notice of and to have consented to exculpatory provisions, which comply with the limitations set forth in this administrative regulation, included in agreements between licensees and in conditions of racing established by a licensed

association. Exculpatory provisions which exceed the limitations set forth in this administrative regulation shall be void and unenforceable in their entirety.

(3) Model provision. The following provision shall be deemed to comply with the limitations set forth in this administrative regulation: All Kentucky Racing Commission licensees, including but not limited to the host association, owners, trainers, jockeys, and grooms ("licensees"), participating in stabling, racing, training, and related activities at (name of licensed association) recognize that hazards and risks inherent in such activities may cause the injury or death of horses. Therefore, in consideration of participating in stabling, racing, training, and related activities at (name of licensed association), all licensees assume the risks of, and release, hold harmless and covenant not to sue all other licensees so participating for:

(a) Ordinary negligence which causes or contributes to loss, loss of use, injury or damage to horses while on the premises of (name of licensed association); and

(b) Ordinary negligence which causes or contributes to personal injury or property damage, including but not limited to loss, loss of use, injury or damage to horses arising from the use of grass fields or gallops owned or controlled by (name of licensed association), whether arising from alleged acts or omissions of a licensee and its agents or employees, the condition of the premises of (name of licensed association) or any other cause. Except as provided above, all licensees participating in racing, training and related activities at (name of licensed association) shall be responsible for their own acts and omissions and those of their agents and employees to the same extent as provided by law.

RICHARD "SMITTY" TAYLOR, Chairman
DICK CARROLL, Office of the Attorney General
APPROVED BY AGENCY: January 13, 1998
FILED WITH LRC: January 13, 1998 at 11 a.m.

PUBLIC PROTECTION AND REGULATION CABINET
Kentucky Racing Commission
(As Amended at ARRS, May 11, 1998)

811 KAR 1:085. Conduct of racing.

RELATES TO: KRS 230.260, 230.310, 230.990 ~~[230.630(1), (3), 230.640]~~

STATUTORY AUTHORITY: KRS 230.260, 230.310 ~~[230.630(3), (4), (7)]~~

NECESSITY, FUNCTION, AND CONFORMITY: To regulate conditions under which harness racing shall be conducted in Kentucky. The function of this administrative regulation is to regulate the conduct of racing.

Section 1. **Definitions.** (1) **"High nerving" means a neurectomy at or above the fetlock, including the volar, palmar, or plantar nerves.**

(2) **"Low nerving" or "posterior low nerving" means a palmar digital neurectomy.**

(3) **"Nerved horse" means a horse in which the nerve cells in a foot have been removed or desensitized by surgical, physical, or chemical means.**

Section 2. A person shall not:

(1) **Refuse to comply with an order or ruling of a member or employee of the commission, an officer or judge, or a person who serves under them;**

(2) **Interfere with the performance of the duty of a person specified in subsection (1) of this section.** ~~[An owner, trainer, driver, attendant of a horse, or any other person shall not use improper language to an official or member or employee of the~~

commission, or be guilty of any improper conduct toward such officers or judges, or persons serving under their orders:

Section 2. An owner, trainer, driver, attendant of a horse, or any other person shall not threaten, strike, insult, ridicule, annoy, embarrass, make unwelcome sexual advances toward, request sexual favors from, engage in verbal or physical conduct of a sexual nature with, use force or intimidation of any kind against, an owner, trainer, driver or attendant of a horse, or permit, force, aid or encourage another person to commit or engage in any of the foregoing prohibited offenses.]

Section 3. (1) A person shall not commit, force, aid, or encourage another person to commit or engage in acts prohibited by the provisions of this section on association grounds.

(2) A person shall not threaten, strike, or annoy an owner, trainer, driver or attendant of a horse, or an employee of the association or commission.

(3) A person shall not make unwelcome sexual advances toward, or request sexual favors from, or engage in verbal or physical conduct of a sexual nature with an owner, trainer, driver or attendant of a horse, or an employee of the association or commission.

(4) A person shall not use force or intimidation against an owner, trainer, driver or attendant of a horse, or an employee of the association or commission.

Section 4. (1) An owner, trainer, or driver of a horse shall not threaten or join with others in threatening not to race, or not to declare in, because of the entry of a certain horse or a particular stable, thereby compelling or attempting to compel the race secretary to reject an [certain] eligible entry.

(2) An action prohibited by subsection (1) of this section [entries. Such actions] shall be immediately reported to the commission. [Offending parties may be suspended pending a hearing and thereafter if such action was unjustified.]

(3) An owner, trainer, or driver of a horse who violates the provisions of this section shall be suspended.

Section 5. [4-] An owner, agent, or driver who has entered a horse shall not demand of the track a bonus of money or other special award or consideration as a condition for starting the horse.

Section 6. (1) A driver shall not place a wager, or cause a wager to be placed on his behalf, or accept a ticket or winnings from a wager on a race, except:

(a) A race on the horse he is driving; and

(b) Through the owner or trainer of the horse he is driving.

(2) An owner or trainer who places a wager for his rider shall:

(a) Maintain a complete record of the wagers; and

(b) Make the record available for examination by the judges upon request. [5- No driver shall place a wager, cause a wager to be placed on his behalf, or accept any ticket or winnings from a wager on any race except on his own mount, and except through the owner or trainer of the horse he is driving. The owner or trainer placing wagers for his rider shall maintain a precise and complete record of all such wagers, and the record shall be available for examination by the stewards at all times.] [An owner, trainer or driver of a horse shall not:

(1) Bet or cause another person to bet on his behalf on a horse in a race in which a horse owned, trained or driven by him starts, or which he represents or handles in any manner or in which he has an interest; or

(2) Participate in exacta, quinella or other multiple pool wagering on a race in which such horse starts except the daily double.]

Section 7. Duty to Report Fraudulent Proposal. A person shall

immediately report to the presiding judge the details of:

(1) An offer, promise, or request for a bribe or wager; or
(2) An act that violates the provisions of statutes or administrative regulations governing racing; or

(3) An offer, promise, or request in return for an act that violates the provisions of statutes or administrative regulations governing racing; or

(4) An offer, promise, or request that a race be conducted otherwise than:

(a) Fairly;

(b) Honestly; and

(c) In compliance with applicable statutes and administrative regulations. [6- Duty to Report Fraudulent Proposal. If a person is approached with an offer or promise of a bribe, or a wager, or with a request or suggestion for a bribe, or for an improper, corrupt or fraudulent act in relation to racing, or that a race shall be conducted otherwise than fairly and honestly, he shall report the details thereof immediately to the presiding judge.]

[Section 7- Misconduct on the part of a licensee, fraudulent in its nature or injurious to the character of the turf, is forbidden. A person who, individually or in concert with one another, shall fraudulently and corruptly, affect or attempt to affect the outcome of a race, or affect or attempt to affect a false registration or commit any other act injurious to the sport, shall be guilty of a violation.]

Section 8. If two (2) or more persons combine and confederate together in any manner, regardless of where they may be located, for the purpose of violating any of these administrative regulations and commit an act in furtherance of said purpose and plan, it shall constitute a conspiracy and a violation.]

Section 8. [9-] When an oath is administered by judges, representative of the commission, a notary public, or any other person legally authorized to administer oaths, and a party knowingly swears falsely or withholds information pertinent to the investigation, he shall be fined, suspended, or both, or expelled.

Section 9. [10-] Financial Responsibility. A participant who has failed to pay an obligation, defaulted in an obligation, issued drafts or checks that have been dishonored or for which payment has been refused, or otherwise has displayed [shall accumulate unpaid obligations, or default in obligations, or issue drafts or checks that are dishonored or payment refused, or otherwise display] financial irresponsibility reflecting on the sport, shall [may] be denied a license or [may be] suspended by the commission.

Section 10. [11-] Nerved Horses. (1) A horse that has been nerved shall be:

(a) Designated "nerved" on its United States Trotting Association registration and eligibility certificates; and

(b) Certified as nerved by a licensed veterinarian.

(2) When a horse is nerved, the owner of the horse at the time it was nerved shall cause the information required by subsection (1) of this section to be entered on the horse's registration and eligibility certificates.

(3) High nerving.

(a) High nerving shall not be permitted in a horse to be raced.
(b) An incision of nerves at or above the fetlock shall be evidence that a horse has been high nerved, even if partial or complete feeling is present at the front of the coronary band of the foot.

(4) Low nerving.

(a) Only low nerving by surgery, freezing, or other physical means; or the injection of alcohol or snake venom, or other chemical means shall be permitted in a horse to be raced.

(b) Only the posterior digital nerve and middle branches to

the palmar part of the foot may be desensitized.

(c) Low nerving shall be performed below the fetlock.

(d) The dorsal branches shall be preserved so the horse has feeling at the coronary band at the front of the foot on both sides of the midline of the foot.

(5) A lack of feeling at the coronary band on the front of the foot shall be prima facie evidence that a horse has been nerved in violation of the provisions of this administrative regulation.

(6) A trainer or owner shall not be permitted to enter or start a horse that is high nerved.

(7) A low nerved horse shall be permitted to start, if the fact that it has been low nerved is published on the bulletin board in the association's racing office. [Horses that have been nerved shall be so designated on the United States Trotting Association registration certificate and the eligibility certificate and be certified by a practicing veterinarian. It is the responsibility of the owner of the horse at the time the horse is nerved to see that this information is placed on the registration certificate and the eligibility certificate. Horses that have been nerved prior to the adoption of this administrative regulation shall also be certified and it is the responsibility of the owner or trainer of the horse to see that such information is carried on the registration certificate. A trainer or owner shall not be permitted to enter or start a horse that is high nerved. Low nerved horses may be permitted to start providing this information is published on the bulletin board in the racing secretary's office.]

Section 11. [12:] Spayed Mares. If a mare has been spayed:

(1) It shall be noted on the:

(a) Registration certificate;

(b) Eligibility certificate; and

(c) Program when the mare races; and

(2) The owner shall:

(a) Notify the United States Trotting Association that the mare has been spayed; and

(b) Return the mare's papers to the United States Trotting Association for correction. [The fact that a mare has been spayed shall be noted on the registration certificate, the eligibility certificate and any program when the mare races. It is the owner's responsibility to report the fact that the mare has been spayed to the United States Trotting Association and return its papers for correction.]

Section 12. [13:] A violation of an [any] of the provisions of this administrative regulation shall be punishable by a fine, suspension or both, or by expulsion.

Section 13. (1) [14:] An owner, trainer, driver, attendant or other person representing a horse which has previously tested positive for equine infectious anemia shall not knowingly cause it to be declared into any race.

(2) An owner, trainer, driver, attendant or other person shall not transfer, or attempt to transfer, the [such-a] horse without first notifying the prospective purchaser or transferee of the fact that the horse had previously tested positive for equine infectious anemia.

RICHARD "SMITTY" TAYLOR, Chairman

DICK CARROLL, Office of the Attorney General

APPROVED BY AGENCY: January 13, 1998

FILED WITH LRC: January 13, 1998 at 11 a.m.

ADMINISTRATIVE REGULATIONS AMENDED AFTER PUBLIC HEARING OR RECEIPT OF WRITTEN COMMENTS

COUNCIL ON POSTSECONDARY EDUCATION (Amended After Hearing)

13 KAR 2:045. Determination of residency status for admission and tuition assessment purposes.

RELATES TO: KRS Chapter 13B, 164.020, 164.030, 164A.330(9)
STATUTORY AUTHORITY: KRS 164.020(8)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 164.020(8) requires the Council on Postsecondary Education to determine tuition and approve the minimum qualifications for admission to a state-supported postsecondary education institution [the public institutions of higher education] and authorizes the Council to set different tuition amounts for residents of Kentucky and for nonresidents [of Kentucky]. This administrative regulation establishes the procedure and guidelines for determining the residency status of a student who is seeking admission to, or who is enrolled at, a state-supported postsecondary education institution [public institution of higher education and for each student residency determination].

Section 1. Definitions. (1) "Academic term" means a division of the school year during which a course of studies is offered, and includes a semester, quarter, or single, consolidated summer term as defined by the institution.

(2) "Continuous enrollment" means enrollment in a state-supported postsecondary education institution [college or university] at the same degree level for consecutive terms, excluding summer term, since the beginning of the period for which continuous enrollment is claimed unless a sequence of continuous enrollment is broken due to extenuating circumstances beyond the student's control, including serious personal illness or injury, or illness or death of a parent.

(3) "Degree level" means enrollment in a course or program which could result in the award of a:

(a) Certificate, diploma or other programs at an [a technical] institution;

(b) Baccalaureate degree or lower including enrollment in a course by a nondegree seeking postbaccalaureate student;

(c) [(b)] Graduate degree or graduate certification other than a first-professional degree in law, medicine, dentistry or "Pharm. D"; or

(d) [(e)] Professional degree in law, medicine, dentistry, or "Pharm. D".

(4) "Demonstration of Kentucky domicile and residency" means the presentation of documented information and evidence sufficient to prove by a preponderance of the evidence that a person is domiciled in Kentucky and is a resident of Kentucky.

(5) "Dependent person" means a person who cannot demonstrate financial independence from parents or persons other than a spouse and who does not meet the criteria established in Section 5 of this administrative regulation.

(6) "Determination of residency status" means the decision of a postsecondary education institution [college or university] and a subsequent decision by the Council on Postsecondary Education including an administrative hearing, if appropriate, that results in the classification of a person as a Kentucky resident or as a nonresident for admission and tuition assessment purposes.

(7) "Domicile" means a person's true, fixed, and permanent home and is the place where the person intends to remain, and to which the person expects to return if absent without intending to establish a new domicile elsewhere.

(8) "Full-time employment" means continuous employment for at least forty-eight (48) weeks at an average of at least thirty (30) hours per week.

(9) "Independent person" means a person who demonstrates financial independence from parents or persons other than a spouse and who can meet the criteria established in Section 5 of this administrative regulation.

(10) "Institution" [; "institution of higher education", or "college"] means an entity defined in KRS 164.001(10) [all entities offering instruction and conferring degrees or diplomas beyond the secondary school level, including four (4) year colleges or universities, two (2) year institutions including community colleges, and postsecondary vocational technical schools;] if the type of institution is not expressly stated.

(11) "Kentucky residency" or "Kentucky resident" means the result of a determination by an institution or by the Council on Postsecondary Education that a person is a resident of Kentucky for the purpose of tuition assessment and for the purpose of admission to that institution, if applicable.

(12) "Nonresident" means a person who is domiciled outside of Kentucky or who currently maintains legal residence outside Kentucky or who has not met the criteria for Kentucky residency established in this administrative regulation.

(13) "Preponderance of the evidence" means the greater weight of evidence, or evidence which is more credible and convincing to the mind.

(14) "Parent" means one (1) of the following:

(a) A person's father or mother; or

(b) A court-appointed legal guardian if:

1. The guardianship is recognized by an appropriate court within the United States;

2. [(if) There was a relinquishment of the rights of the parents; and

3. The [independent of a] guardianship was not established primarily to confer Kentucky residency on the person.

(15) "Residence" or "residency" means the place of abode of a person and the place where the person is physically present most of the time for a noneducational purpose in accordance with Section 3 of this administrative regulation.

(16) "Sustenance" means living expenses including room, board, maintenance, transportation, and also may include educational expenses including tuition, fees, books, and supplies.

Section 2. Scope (1) State-supported postsecondary education [Public] institutions [of higher education] were established and are maintained by the Commonwealth of Kentucky primarily for the benefit of qualified residents of Kentucky. The substantial commitment of public resources to postsecondary [higher] education is predicated on the proposition that the state benefits significantly from the existence of an educated citizenry. As a matter of policy, access to postsecondary [higher] education shall be provided so far as feasible at reasonable cost to an individual who is domiciled in Kentucky and who is a resident of Kentucky. ~~[bona fide residents of the state.]~~

(2) The Council on Postsecondary Education requires a student who is neither domiciled in nor a resident of Kentucky to meet higher admission standards and to pay a higher level of tuition than resident students.

(3) [The Commonwealth of Kentucky has a significant interest in providing for the needs of Kentucky's citizenry in graduate, health related and other professional programs. Limited space and the high cost of professional programs, combined with the need to ensure an equitable number of professional health practitioners in the state, makes Kentucky especially vigilant in residency determinations at the graduate and professional program levels of instruction. This administrative regulation is predicated on a basic assumption that an individual domiciled in Kentucky is more likely to practice professional-

~~ly in the Commonwealth than is a student who is not domiciled in Kentucky and who is primarily located in the Commonwealth for the purpose of attending an institution.~~

~~(4)] This administrative regulation applies to all student residency determinations regardless of circumstances, including the Southern Regional Education Board contract spaces, reciprocity agreements, where appropriate, and academic common market programs.~~

Section 3. Determination of Residency Status; General Rules. (1) A determination of residency shall include:

(a) An initial determination of residency status by an institution during the [a college or university at the time of] admission process or upon enrollment in an institution for a specific academic term or for admission into a specific academic program;

(b) Each administrative and residency review committee determination made by an institution;

(c) A reconsideration of a determination of residency status by an [the] institution based upon a changed circumstance;

(d) An intermediate review by the Appeals Officer of the Council on Postsecondary Education if requested by the student; and

(e) An administrative hearing conducted in accordance with the provisions of KRS Chapter 13B and 13 KAR 2:070, if requested by the student.

(2)(a) An initial determination of residency status shall be based upon the facts in existence when the credentials established by an institution for admission for a specific academic term have been received and during the period of review by the institution~~[-Provided, however, that an institution may delay an initial determination of residency status for graduate, doctoral or professional school applicants until the applicant is admitted to the program];~~

(b) An initial determination of residency status shall be based on:

1. Information derived from admissions materials;

2. Other materials required by an institution and which are consistent with this administrative regulation; or

3. Other information available to the institution from any source.

(3) An individual seeking a determination of Kentucky residency status shall demonstrate that status by a preponderance of the evidence.

(4) A determination of residency status shall be based upon verifiable circumstances or actions.

(5) Evidence and information cited as the basis for Kentucky domicile and residency shall accompany the application for a determination of residency status.

(6) A student classified as a nonresident shall retain that status until the student is officially reclassified by an [the] institution or the Council on Postsecondary Education, as appropriate.

(7) A student may apply for a review of a determination of residency status once for each academic term.

(8) If an institution has information that a student's residency status may be incorrect, the institution shall review and determine the student's correct residency status.

(9) If the Council on Postsecondary Education has information that an institution's determination of residency status for a student may be incorrect, it may require the institution to review the circumstances and report the results of that review.

(10) An institution shall impose a penalty or sanction against a student who gives incorrect or misleading information to an institutional official, including payment of nonresident tuition for each academic term for which resident tuition was assessed based on an improper determination of residency status and may also include:

(a) Criminal prosecution;

(b) Student discipline by the institution through a policy written and disseminated to students; or

(c) Criminal prosecution.

[(c) Payment of nonresident tuition for each academic term for which resident tuition was assessed based on an improper determination of residency status.]

Section 4. Presumptions Regarding Residency Status. (1) In making a determination of residency status, it shall be presumed that a person is a nonresident if:

(a) A person is, or seeks to be, an undergraduate student and whose admissions records show the student to be a graduate of an out-of-state high school;

(b) A person's admission records indicate the student's residence to be outside of Kentucky at the time of application for admission;

(c) A person moves to Kentucky primarily for the purpose of enrollment in an institution [of higher education];

(d) A person moves to Kentucky and within twelve (12) months enrolls in an institution of higher education more than half time; or

(e) A person has a continuous absence of one (1) year from the state.

(2) A presumption arising from subsection (1) of this section shall be overcome by a demonstration of Kentucky domicile and residency.

Section 5. Determination of Whether a Student is Dependent or Independent. (1) In a determination of residency status, an institution shall first determine whether a student is dependent or independent. This provision is predicated on the assumption that a dependent person lacks the financial ability to live independently of the person upon whom the student is dependent and therefore lacks the ability to form their requisite intent to establish domicile.

(2) In determining the dependent or independent status of a person, the following information shall be considered as well as other relevant information available at the time the determination is made:

(a) 1. That the person has not been claimed as a dependent on the federal or state tax returns of a parent or other person for the year preceding the date of application for a determination of residency status; or

2. [(b)1-] That the person is no longer claimed by a parent or other person as a dependent or as an exemption for federal and state tax purposes; and

(b) 2-] That the person has financial earnings and resources independent of both parents or a person other than an independent [a] spouse necessary to provide for the person's own sustenance.

(3) [In determining the independent or dependent status of an individual, financial earning and resources from state, federal and other student financial assistance programs shall be excluded.

(4) [An individual who enrolls in an institution [college] immediately following graduation from high school and remains enrolled shall be presumed to be a dependent person unless the contrary is evident from the information submitted.

(4) [(5)] [(4)] Domicile may be inferred from the student's permanent address, parent's mailing address, or location of high school of graduation.

(5) [(6)] [(5)] Marriage to an independent [a] person domiciled in and who is a resident of Kentucky shall be a factor considered by an institution in determining whether a student is dependent or independent.

(6) [(7)] Gifts from, [or] made, or cosigned by a parent or family member other than an independent [a] spouse, if used for sustenance of the student:

(a) Shall not be considered in establishing a student as independent; and

(b) Shall be a factor in establishing that a student is dependent.

Section 6. Effect of a Determination of Dependent or Independent Status on a Determination of Residency Status. (1) The effect of a determination that a person is dependent shall be as follows:

(a) The domicile and residency of a dependent person shall be the same as either parent. The domicile and residency of the parent shall be determined in the same manner as the domicile and residency of an independent person.

(b) The domicile and residency of a dependent person whose parents are divorced, separated, or otherwise living apart shall be [a

resident of Kentucky if either parent is domiciled in and is a resident of Kentucky regardless of which parent has legal custody or is entitled to claim that person as a dependent pursuant to Kentucky income tax provisions.

(c) 1. If the parent or parents of a dependent person are Kentucky residents and are domiciled in Kentucky but subsequently move from the state, the dependent person shall be considered a resident of Kentucky while in continuous enrollment at the degree level in which currently enrolled.

2. If continuous enrollment is broken or the current degree level is completed, the dependent person's residency status shall be reassessed when the circumstances detailed in subparagraph 1 of this paragraph are present.

(2) If ~~[an independent person;]~~ the sole parent or both parents of a dependent person moves out of state, Kentucky domicile and residency, having been previously established, shall be retained until steps are taken to establish domicile and residency elsewhere.

Section 7. Member of Armed Forces of the United States, Spouse and Dependents; Effect on a Determination of Residency Status. (1) A member, spouse, or dependent of a member whose domicile and residency was Kentucky at the time of induction into the Armed Forces of the United States, and who maintains Kentucky as home of record and permanent address, shall be entitled to Kentucky residency status:

(a) During the time of active service; or [and]

(b) If the member, spouse, or dependent returns to this state within six (6) months of the date of the member's discharge from active duty.

(2)(a) A member, spouse or dependent of a member of the Armed Forces of the United States stationed in Kentucky on active military orders shall be considered a Kentucky resident while the member is on active duty in this state pursuant to those orders if the member is not:

1. Stationed in Kentucky for the purpose of enrollment at an institution ~~[of higher education]~~; or

2. On temporary assignment of less than one (1) year.

(b) A member, spouse or dependent of a member, shall not lose Kentucky residency status if the member is thereafter transferred on military orders while the member, spouse or dependent requesting the status is in continuous enrollment at the degree level in which currently enrolled.

(3) A person's residency status established pursuant to this section shall be reassessed if the qualifying condition is terminated.

Section 8. Status of Nonresident Aliens; Visas and Immigration. (1)(a) A person holding a permanent residency visa or classified as a political refugee shall establish domicile and residency in the same manner as another person.

(b) Time spent in Kentucky and progress made in fulfilling the conditions of domicile and residency prior to obtaining permanent residency status shall be considered in establishing Kentucky domicile and residency.

(2) A person holding a nonimmigrant visa with designation A, E, G, H, I, L, N, O, P, R, S, TD or TN shall establish domicile and residency the same as another person.

(3)(a) An independent [A] person holding a nonimmigrant visa with designations B, C, D, F, J, K, M, or Q shall not be classified as a Kentucky resident, because that person does not have the capacity to remain in Kentucky indefinitely and therefore cannot form the requisite intent necessary to establish domicile within the meaning of this administrative regulation.

(b) A dependent person holding a visa as described in paragraph (a) of this subsection, but who is a dependent of a parent holding a visa as described in subsection (2) of this section, shall be considered as holding the visa of the parent.

(c) A dependent person holding a visa described in subsection (2)

of this section or paragraph (a) of this subsection, if a parent is a citizen of the United States and is a resident of and domiciled in Kentucky, shall be a resident of Kentucky for the purposes of this administrative regulation.

Section 9. Beneficiaries of a Kentucky Educational Savings Plan Trust. A beneficiary of a Kentucky Educational Savings Plan Trust shall be granted residency status if the beneficiary meets the requirements of KRS 164A.330(9).

Section 10. Criteria Used in a Determination of Residency Status.

(1) A determination of Kentucky domicile and residency shall be based upon verifiable circumstances or actions. A single fact shall not be paramount, and each situation shall be evaluated to identify those facts which are essential to the determination of domicile and residency.

(2) The following facts, although not conclusive, shall have probative value in their entirety and shall be individually weighted, appropriate to the facts and circumstances in each determination of residency;

(a) Acceptance of an offer of full-time employment or transfer to an employer in Kentucky or contiguous area while maintaining residence and domicile in Kentucky;

(b) Continuous physical presence in Kentucky while in a nonstudent status for the twelve (12) months immediately preceding the start [commencement] of the academic term for which a classification of Kentucky residency is sought;

(c) 1. Filing of Kentucky resident income tax return for the calendar year preceding the date of application for a change in residency status; or

2. Payment of Kentucky withholding taxes while employed during the calendar year for which a change in classification is sought;

(d) Full-time employment of at least one (1) year while living in Kentucky;

(e) Attendance as a full-time, nonresident student at an out-of-state institution ~~[of higher education]~~ based on a determination by that school that the person is a resident of Kentucky;

(f) Abandonment of a former domicile or residence and establishing domicile and residency in Kentucky with attendance at an institution ~~[of higher education]~~ following and incidental to the change in domicile and residency;

(g) Obtaining licensing or certification for a professional and occupational purpose in Kentucky;

(h) Payment of real property taxes in Kentucky;

(i) Ownership of real property in Kentucky, if the property was used by the student as a residence preceding the date of application for a determination of residency status;

(j) Long-term lease of at least twelve (12) consecutive months of noncollegiate housing;

(k) Marriage of an independent student to a Kentucky resident; [and]

(l) Continued presence in Kentucky during academic breaks; and (m) The extent to which a student is dependent on student financial aid in order to provide basic sustenance.

(3) The following facts, because of the ease and convenience in completing them, shall have limited probative value in a determination that a person is domiciled in and is a resident of Kentucky:

(a) Kentucky automobile registration;

(b) ~~[(m)]~~ Kentucky driver's license; and

(c) ~~[(n)]~~ Continued presence as a resident in Kentucky during academic breaks; and

(e) Registration as a Kentucky voter.

(4) Provided, however, that the absence of a fact contained in subsection (3) of this section shall have significant probative value in determining that a student is not domiciled in or is not a resident of Kentucky.

(5) ~~[(3)]~~ Kentucky residency status shall not be conferred by the

performance of an act which is incidental to fulfilling an educational purpose or by an act which is performed as a matter of convenience. Mere physical presence in Kentucky, including living with a relative or friend, shall not be sufficient evidence of domicile and residency.

Section 11. Effect of a Change in Circumstances on Residency Status. (1) If a person becomes independent or if the residency status of a parent or parents of a dependent person changes, an [the] institution shall reassess residency either upon a request by the student or a review initiated by an institution.

(2) Upon transfer to ~~[-or matriculation from-]~~ a Kentucky ~~[public]~~ institution ~~[of higher education]~~, a student's residency status shall be reassessed by the receiving institution.

(3) A reconsideration of a determination of residency status for a dependent person shall be subject to the provisions for continuous enrollment, if applicable.

Section 12. Institutional Requirements; Designation of Office and Officer and Publication of the Administrative Regulation. (1) Each institution shall designate:

(a) A person or office at the institution with responsibility for a determination of residency status at that institution; and

(b) An administrative office or person with delegated day-to-day responsibility for administration of this administrative regulation.

(2) The designation of an administrative office or person pursuant to subsection (1) of this section shall be in writing setting forth the duties and responsibilities. A copy shall be provided to the Council on Postsecondary Education.

(3) Each institution shall establish an operational policy for the determination of residency status which shall be filed with the Council on Postsecondary Education and which shall include:

(a) Procedures describing the steps in the initial determination of residency status;

(b) Designated responsibilities of each institutional official;

(c) Responsibilities of a person requesting admission to an [the] institution or to an academic program, or[-] requesting a change in residency status;

(d) Procedures for the operation of a residency review committee created pursuant to Section 13 of this administrative regulation;

(e) Timetables and deadlines for student and institutional responses to a request for a review of an institutional determination of residency status;

(f) Training of institutional officials responsible for a determination of residency status; and

(g) The role of the residency review committee.

(4) The administrative regulation shall be published in its entirety in all of each institution's catalogs and disseminated to each student.

(5) Copies of the administrative regulation shall be maintained in the office designated pursuant to subsection (1) of this section and shall be made available to each student requesting Council on Postsecondary Education review of an institution's initial determination, review or reconsideration of residency status.

Section 13. Establishment of a residency review committee by an Institution. (1) Each institution shall establish a residency review committee, which shall be a standing committee, to review, evaluate, and act upon:

(a) A student appeal related to an initial determination of residency status;

(b) A recommendation of the administrative office or person designated pursuant to Section 12 of this administrative regulation, that the residency review committee review, evaluate, and act upon an initial determination of residency status; and

(c) A student request for a reconsideration of a residency classification because of a changed circumstance.

(2) The Kentucky Community and Technical College System may establish uniform operating policies and procedures for each branch

within the system as defined in KRS 164.001(11) including a provision for separate institutional residency review committees.

(3) Membership on the residency review committee shall include at least one (1) faculty and one (1) student member.

(4) ~~[(3)]~~ The policies and procedures of an institution's residency review committee shall be in writing and published for student use.

(5) ~~[(4)]~~ A copy of the document authorizing and creating an institution's residency review committee, and a copy of the operating policies and procedures of the residency review committee shall be provided to the Council on Postsecondary Education.

Section 14. Student Responsibilities. (1) A student shall register under the proper residency classification which includes the following actions:

(a) Raising a question in a timely manner concerning residency classification;

(b) Making application for change of residency classification in a timely manner with the designated office or person at the institution; and

(c) Notifying the designated office or person at the institution immediately upon a change in residency.

(2) If a student fails to notify an institutional official of a change in residency, an institutional official may investigate and evaluate the student's current residency status.

(3)(a) If a student fails to provide, in a timely manner, information required by an institution in a determination of residency status or by the Council on Postsecondary Education in an appeal of a determination of residency status, the student shall be notified by the institution or by the Council on Postsecondary Education, as appropriate, that the review has been canceled and that a determination has been made.

(b) Notification shall be made by registered mail, return receipt requested.

(c) Notification shall be made within ten (10) calendar days after the deadline for receipt of materials has passed.

(4) A student shall not be entitled to appeal a determination of residency status if the determination made by an institution or by the Council on Postsecondary Education is made because a student has failed [for a failure] to meet published deadlines for the submission of information as set forth in subsection (3) of this section. A student may request a review of a determination of residency status in a subsequent academic term.

Section 15. Procedures for an Initial Determination of Residency Status, an Institutional Review of Residency Status and for a Reconsideration of a Determination of Residency Status. (1) Application for a review of a determination of residency status shall be made to the administrative office or person designated by an [the] institution pursuant to Section 12 of this administrative regulation.

(2) The application, with supporting documentation, shall be made by the student no later than ~~[within]~~ thirty (30) calendar days after the first day of classes of the academic term for which a review of a determination of residency status is sought.

(3) An application shall consist of:

(a) An affidavit authorized by the Council on Postsecondary Education and submitted by the student or the parent of a dependent student asserting the claim for a determination of residency status and asserting that the documentation and information are accurate and true; and

(b) Information and documentation required by an institution and consistent with this administrative regulation which is necessary to substantiate a request for a change in a determination of residency status.

(4)(a) An application shall be first reviewed by the office or person designated by the institution pursuant to Section 12 of this administrative regulation.

(b) If a student asks, in writing and in a manner set forth by the

institution consistent with this administrative regulation, to appeal the decision of the designated office or person, the residency review committee shall review, evaluate, and act upon that appeal.

(c) An application for a review of residency status which is not submitted in a timely manner[.] shall result in a determination of residency status consistent with an initial determination of residency status.

(5) The decision of the designated office or person, or of the residency review Committee shall be set forth in a letter that includes [include]:

(a) Findings of fact;

(b) Determination of whether the applicant is deemed to be a "dependent person" or "independent person"; [and]

(c) Whether the applicant is a resident or nonresident, and the reasons consistent with institutional policy and this administrative regulation; and

(d) A citation of the specific section of the administrative regulation that provided the basis for the institutional determination.

(6) If a student has requested an institutional review of a residency determination, the student shall be notified in writing, by registered or certified mail, of the decision of the administrative officer designated by the institution or the residency review committee, as appropriate, within forty-five (45) calendar days after receipt of a person's application for a change.

(7) A change in a determination of residency shall not be made retroactive beyond the academic term in which the request for a change is made.

(8) A student shall have the right to appeal a decision of the residency review committee to the Council on Postsecondary Education pursuant to Sections 16, 17, and 18 of this administrative regulation

(9) An institution shall, by written policy, establish deadlines for the submission of written documentation by a person seeking a review of an initial determination of residency status and shall not consider an appeal which does not conform to the timetable requirements for documentation and for the process established in the institution's operational policy.

Section 16. Procedure for Appeal to the Council on Postsecondary Education and Intermediate Review by the Council on Postsecondary Education Appeals Officer. (1) The President of the Council on Postsecondary Education shall designate a person on the staff of the Council on Postsecondary Education to serve as an appeals officer.

(2) The appeals officer's review of an institutional determination of residency status shall be to determine whether the residency review committee's written decision was supported by a preponderance of evidence and whether the decision conforms [conformed] to this administrative regulation.

(3) Upon receipt of notice from the residency review committee of an institution's [the] decision by certified or registered mail, the student shall have fourteen (14) calendar days to appeal that decision to the Council on Postsecondary Education by giving notice in writing to the office or person designated by the institution to administer this administrative regulation.

(4) An appeal filed more than fourteen (14) calendar days after receipt of the decision of the residency review committee shall be dismissed and the decision of the residency review committee shall be final.

(5) The office or person designated by the institution pursuant to Section 12 of this administrative regulation shall be responsible for forwarding to the Council on Postsecondary Education a complete copy of the student's file within fourteen (14) calendar days of the receipt of a notice of appeal. The student may review the content of the file before it is forwarded to the Council on Postsecondary Education.

Section 17. Determination of the Council on Postsecondary

Education Appeals Officer. (1) The appeals officer shall make a determination, based solely on the written record submitted, to affirm or reverse the residency review committee's decision.

(2) Provided, however, that the appeals officer may order the appeal remanded to the residency review committee for further proceedings before the appeals officer renders a final determination if the appeals officer determines that the residency review committee:

(a) Failed to consider all information and evidence submitted; or

(b) Failed to follow institutional policies and procedures; or

(c) The information provided by an institution does not support a determination of residency status.

(3)(a) New information provided by the student that was not available to the institution at the time of the institution's determination of residency status shall result in a decision by the appeals officer to remand the case to the residency review committee for further action.

(b) A remand by the appeals officer [~~because of information not available at the time of the determination of residency status~~] shall require the residency review committee to reconsider the determination of residency status in light of the new information.

(c) An institution shall notify a student in writing of additional information required and shall establish a deadline for the receipt of that information.

(d) The residency review committee shall consider the new information or evidence and shall forward a written recommendation to the appeals officer within twenty-one (21) calendar days after receipt of the notice of remand.

(e) ~~[(d)]~~ A copy of the residency review committee recommendation shall be provided to the student.

(f) ~~[(e)]~~ A remand shall be part of the appeal to the Council on Postsecondary Education and shall not constitute a determination by the appeals officer.

(4) The determination of the appeals officer shall be in writing and shall state the reason for the decision.

(5)(a) Except as provided in paragraph (b) of this subsection, within twenty-one (21) calendar days after receipt of the student's file, the recommendation of the appeals officer shall be forwarded to the student by certified or registered mail with a copy to the office or person designated by the institution to administer this administrative regulation.

(b) If the appeals officer remands an appeal under subsection (2) of this section, the twenty-one (21) days shall not include the time the order was made until the time the residency review committee's written recommendation was received by the appeals officer.

(6) The student shall have ten (10) calendar days after receipt of the appeals officer's recommendation to file a written appeal by registered or certified mail with the Council on Postsecondary Education requesting a formal adjudicatory hearing pursuant to KRS Chapter 13B and 13 KAR 2:070.

Section 18. Administrative Hearing to be Held If Requested by Student. (1) An administrative hearing on a request for a change in a determination shall be held in accordance with the provisions of KRS Chapter 13B and 13 KAR 2:070.

(2) The recommended order shall be received by the President of the Council on Postsecondary Education who shall issue a final decision on the appeal.

(a) The decision of the president shall be in writing and in accordance with KRS 13B.120.

(b) The decision of the president shall be provided to the student and the institution within twenty-one (21) calendar days after receipt of the hearing officer's decision.

(3) Upon receipt of the notification of the final decision of the president, the student shall have the right to appeal the decision to the appropriate court in accordance with KRS 13B.140.

Section 19. Charges to Institutions for Administrative Hearings. The Council on Postsecondary Education, upon receipt of a bill for the

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conduct of an administrative hearing on an appeal of a determination of residency status, shall assign one-half (1/2) of the cost of the administrative hearing to the institution from which the appeal is taken. An [The] institution shall provide payment to the Council on Postsecondary Education or to the office or administrative entity so designated by the Council on Postsecondary Education within thirty (30) calendar days of receipt of the notice of payment.

J. KENNETH WALKER, Acting Chief Operating Officer
DENNIS L. TAULBEE, General Counsel
APPROVED BY AGENCY: May 8, 1998
FILED WITH LRC: May 8, 1998 at noon

REGULATORY IMPACT ANALYSIS

Agency Contact: Dennis L. Taulbee

(1) Type and number of entities affected: This regulation affects the eight public senior institutions of higher education and the Kentucky Community and Technical College System institutions. It also affects all students enrolled at those institutions who might seek a determination of residency status.

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

(a) Cost of living and employment in the geographical area in which the administrative regulation is to be implemented. Negligible

(b) Cost of doing business in the geographical area in which the administrative regulation is to be implemented. This administrative regulation has no impact on business.

(c) Compliance, reporting and paperwork requirements, including factors increasing or decreasing costs for the:

1. First year following implementation. No increase or decrease is anticipated or required.

2. Second and subsequent years. No increase or decrease is anticipated or required.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year. None

2. Continuing costs or savings. None

3. Additional factors increasing or decreasing costs. None

(b) Reporting and paperwork requirements. No additional 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. State general funds-existing appropriation. No new funds required.

(6) Economic impact in Kentucky on:

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

(b) On Kentucky. None

(7) Assessment of alternative methods; reasons why alternatives were rejected. None. Administrative regulation processes work well but fine tuning was required.

(8) Assessment of expected benefits. The current administrative regulation would result if not implemented. Same as (a).

(a) Impact on public health and environmental welfare is not applicable.

(b) State whether a detrimental effect on environment and public health would result if not implemented. Same as (a).

(c) If detrimental effect would result, explain detrimental effect. Same as (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. 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 additional comments are offered.

(11) TIERING: Is tiering being applied. Tiering is not being applied and is not appropriate for this administrative regulation.

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

401 KAR 58:005. Accreditation of asbestos professionals. [School asbestos abatement accreditations.]

RELATES TO: KRS 224.10-100, 224.20-100, 224.20-110, 224.20-120, 224.20-300, 224.20-310, 224.20-320, 224.99-010, 40 CFR 763.80 through 763.99, [40 CFR 763.80, 763.84, 763.85, 763.86, 763.87, 763.88, 763.90, 763.91, 763.92, 763.93, 763.94, 763.95, 763.99.] Appendices A through E to Subpart E, as published in the Code of Federal Regulations, July 1, 1996, 15 USC 2601 through 2692, as amended November 28, 1990 ([B, and D (October 30, 1987);] Toxic Substances Control Act [15 USC 2601 and the related sections which follow, as in effect on July 18, 1988])

STATUTORY AUTHORITY: KRS [Chapter 13A:] 224.10-100, 224.20-100, 224.20-110, 224.20-120, 224.20-300, 224.20-310, 224.20-320, 224.99-010, 40 CFR 763.80 through 763.99, Appendices A through E to Subpart E, as published in the Code of Federal Regulations, July 1, 1996, 15 USC 2601 through 2692 as amended November 28, 1990

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. KRS 224.20-300 allows the cabinet to develop, adopt, and maintain a comprehensive statewide asbestos contractor accreditation program relating to asbestos [in schools]. This administrative regulation provides for the accreditation of persons [individuals] who inspect for asbestos in school, public, and commercial buildings; who design, supervise, or perform response actions in school, public, or commercial buildings, and who [schools,] prepare plans addressing potential and actual asbestos hazards in school buildings. Additionally, this administrative regulation provides for the review and approval of training courses that are prerequisites for accreditation. [schools, and design, supervise, or perform response actions in schools.]

Section 1. Definitions. [Terms not defined in this section shall have the meaning given them in 401 KAR 58:001.]

(1) "Abatement project design" means a plan specifying the scope of a proposed response action and the procedures, equipment, and controls to be used to conduct the response action, in compliance with applicable regulations, in a school, public, or commercial building.

(2) "Abatement project designer" means a person who prepares an abatement project design.

(3) "Accredited" means that a person has been issued an accreditation certificate pursuant to Section 5 of [is accredited in accordance with 15 USC 2646 (Section 206 of Title II of the Toxic Substances Control Act (TSCA), as amended November 28, 1990) and with] this administrative regulation.

(4) "Asbestos" means the asbestiform varieties of serpentine (chrysotile), riebeckite (crocidolite), cumingtonite-grunerite (amosite), anthophyllite, actinolite, and tremolite.

(5) "Asbestos abatement activity" means an inspection, a management plan, an abatement project design, or a response action.

(6) "Asbestos abatement supervisor" means the person responsible for the on-site supervision of a response action in a school, public, or commercial building. An asbestos abatement supervisor

may also perform the duties of an asbestos abatement worker.

(7) "Asbestos abatement worker" means a person who performs a response action.

(8) "Compliance inspection" means activity performed by federal, state, or local regulatory agencies to determine adherence to statutes and administrative regulations.

(9) "Contingent approval" means temporary approval contingent upon a training course provider's submitting to a site audit.

(10) "Day" means a calendar day.

~~[(9) "Diploma" means a document that is issued by a training course provider to a course attendee pursuant to the Kentucky Asbestos Accreditation Program (KAAP). The KAAP document is incorporated by reference in Section 11 of this administrative regulation.]~~

(11) "Discipline" means inspection, management planning, abatement project design, asbestos abatement supervision, or asbestos abatement work.

(12) "EPA-approved state" means a state which has been authorized by the U.S. EPA to approve training courses for accreditation purposes.

(13) "EPA-approved training course" means an initial or refresher training course for the discipline for which accreditation is requested and which is approved by the U.S. EPA or an EPA-approved state at the time the course is taken to comply with the requirements of 15 USC 2646 (Section 206 of the Toxic Substances Control Act (TSCA)), as amended November 28, 1990.

(14) "Management plan" means a document submitted or maintained by a local education agency (LEA) to satisfy the requirements of 40 CFR 763.93 and 401 KAR 58:010. Inspection findings, asbestos management strategies, and required records are among the contents of a management plan, pursuant to 40 CFR 763.93 through 763.94.

(15) "Management planner" means a person who develops management plans. A management planner may also perform the duties of an inspector.

(16) "Proof of training" means a document issued by a training course provider to a course attendee pursuant to Unit I.D. of the Kentucky Asbestos Accreditation Program (KAAP). ~~The KAAP document is incorporated by reference in Section 11 of this administrative regulation.~~

(17) "State" means a state, the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, the Northern Marianas, the Trust Territory of the Pacific Islands, and the Virgin Islands.

Section 2. Applicability. This administrative regulation shall apply to:

(1) Persons required to be accredited pursuant to 401 KAR 58:010 and the Kentucky Asbestos Accreditation Program (KAAP); and

(2) Persons who provide accreditation training in the Commonwealth of Kentucky pursuant to the KAAP.

Section 3. Prohibitions. (1) The cabinet shall not consider a person for initial accreditation or accreditation renewal unless the training requirements of Section 9 of this administrative regulation are completed prior to application.

(2) A person shall not engage in, nor allow a person to engage in, an asbestos abatement project at a school on or after October 12, 1988, or at a public or commercial building on or after the effective date of this administrative regulation, unless an accreditation certificate to engage in these projects has been issued to the person by the cabinet, is currently in effect, and is maintained on the person at all times while the asbestos abatement project is being conducted.

(3) A person shall not provide accreditation training in Kentucky unless the requirements of Section 10 of this administrative regulation have been met.

Section 4. Applications for Accreditation. (1) Applications for initial accreditation and accreditation renewal shall be made on form DEP 6038, which is incorporated by reference in Section 11 of this administrative regulation. The application shall include **a copy of the most current proof of training** ~~[all initial and current diplomas or other proof of satisfactory completion issued by an EPA-approved training course]~~ in the discipline for which accreditation is requested.

(a) In lieu of a **proof of training [diploma]**, the applicant may submit **other proof of satisfactory completion [proof of training]** from an EPA-approved state pursuant to Unit H of the KAAP document.

(b) The **proof of training [diploma]** or other proof of satisfactory completion issued by the training provider shall ~~[be an original document and shall]~~ contain the information required in Unit I.C. of the KAAP document.

(c) **If original proofs of training are submitted with the request for accreditation, they** ~~[Original diplomas or other original proofs of training]~~ shall be returned to the applicant when the requested accreditation certificate is provided or when the cabinet denies the request for accreditation in writing.

(2) Applications for accreditation shall be signed by the individual requesting accreditation. The signature shall constitute personal affirmation that the statements made in the application are true and complete.

(3) Applications shall be accompanied by the applicable accreditation fee as specified in Section 7(1) and (2) of this administrative regulation.

Section 5. Consideration of Applications. The cabinet shall make a determination regarding issuance or denial of accreditation based upon the information contained in the application and the qualification requirements of ~~[Unit E. of]~~ the KAAP document. The cabinet may deny an application for accreditation if the cabinet determines that the applicant willfully made a misstatement in the application, or if the applicant has violated a provision of this administrative regulation, the KAAP document, 401 KAR 58:010, or 401 KAR 58:025, or for other good cause. Failure by an applicant to supply information required by the cabinet to act upon the renewal applications shall result in denial of that renewal.

(1) Application for initial accreditation. Within fifteen (15) days after receipt of an application for initial accreditation, the cabinet shall make a completeness determination concerning the application. If the application is not complete, the cabinet shall identify the additional information that is necessary in order to evaluate the application. Issuance by the cabinet of the accreditation certificate within this fifteen (15) day period shall have the effect of documenting the completeness of the application.

(a) Within fifteen (15) days after the application is deemed complete, the cabinet shall make a determination to issue or deny the accreditation certificate, unless the cabinet determines, and the applicant concurs, that an additional period of time is necessary.

(b) If the application is approved, the cabinet shall issue an accreditation certificate. If accreditation is denied, the cabinet shall notify the applicant, in writing, of the reason for denial and shall provide an opportunity for appeal.

(2) Application for renewal of accreditation. The cabinet shall make its determination to approve or deny a request for renewal within fifteen (15) days of receipt of a complete renewal application.

(a) If the renewal is approved, the cabinet shall issue a renewed accreditation certificate pursuant to this administrative regulation and 401 KAR 58:010.

(b) If the renewal is denied, the cabinet shall notify the applicant, in writing, of the reason for denial and shall provide an opportunity for appeal.

Section 6. Duration of Accreditation Certificates. Unless the cabinet revokes an initial accreditation certificate, pursuant to Unit I.G.

of the KAAP document, the certificate shall remain in effect until expiration of the proof of training [diploma] issued pursuant to Unit I.D. of the KAAP document.

(1) An expired accreditation certificate may be renewed if the applicant completes all requirements for renewal of accreditation within one (1) year after the accreditation certificate has expired.

(2) If a person fails to renew an accreditation certificate within one (1) year of expiration of a previously-issued accreditation certificate, the individual shall complete all requirements for initial accreditation to receive accreditation.

Section 7. Fees. Fees shall be submitted to the cabinet by check or money order, made payable to the Kentucky State Treasurer.

(1) Initial accreditation.

(a) The fee for inspector, management planner, abatement project designer, or asbestos abatement supervisor accreditation shall be 100 dollars.

(b) The fee for asbestos abatement worker accreditation shall be twenty (20) dollars.

(c) The fee for accreditation in more than one (1) discipline shall be obtained by summing the fees for each of the requested accreditations.

(2) Renewal of accreditation. The fee for renewal of accreditation for each discipline shall be one-half (1/2) the initial accreditation fee.

(3) Course review fees. Training providers who request cabinet review for approval of training courses shall submit the required fee with the request for a course review. The formula for the fee for course review shall be 350 dollars per day of training times the total number of days of training. The minimum review fee for course approval shall be 350 dollars.

Section 8. Accreditation Revocation. The cabinet may revoke an accreditation issued under this administrative regulation pursuant to Unit I.G and Unit III [IV.] of the KAAP document.

Section 9. Training Requirements. (1) Initial accreditation. To be eligible for initial accreditation, an applicant shall successfully complete an EPA-approved training course in the discipline for which accreditation is requested within one (1) year prior to the date on which the application is filed. Eligibility for accreditation shall expire one (1) year after successful completion of the training course.

(2) Renewal of accreditation. Accreditation shall be renewed annually.

(a) To be eligible for accreditation renewal, an applicant shall successfully complete an EPA-approved refresher course in the discipline for which accreditation renewal is requested, pursuant to Unit I.E. of the KAAP document.

(b) An applicant may renew accreditation only in a discipline for which he has been accredited during the two (2) year period immediately preceding the date the application is filed.

Section 10. Approval of Training Courses. (1) Providers of courses that are not EPA-approved shall either gain approval from an EPA-approved state or apply for and receive contingent approval from the cabinet, pursuant to this administrative regulation and the KAAP document before presenting the course in Kentucky.

(2) EPA-approved training courses shall be considered approved by the cabinet at the same level as their approval by the U.S. EPA or an EPA-approved state (i.e., contingent or full).

(3) Training providers shall allow representatives of the cabinet to attend, evaluate, and monitor a training course presented in Kentucky without charge to the cabinet. Cabinet representatives shall not be required to give advance notice of their attendance to perform compliance inspections of training programs or to upgrade the approval of a course from contingent approval to full approval.

(a) The training provider shall provide written notification to the cabinet of:

1. An upcoming training course, at least ten (10) days before the course is presented;

2. The training provider's name, address, phone number, and a contact person;

3. Training course title;

4. Inclusive dates of the training course and examination;

5. Description of the training course as either a public offering, contract training, or in-house training for the provider's employees;

6. Location of and directions to the training facility; and

7. The language in which the course will be taught.

(b) If the training course is cancelled, the provider shall notify the cabinet at least twenty-four (24) hours before the scheduled start date.

(4) The application for course approval shall be accompanied by the applicable review fee as specified in Section 7(3) of this administrative regulation. The cabinet shall receive the total applicable review fee prior to the course being granted contingent approval.

(5) Contingent approval. Applications for contingent approval by the cabinet shall be made pursuant to Unit III of the KAAP document.

(a) If the training course is to be presented in Kentucky, the application shall include written certification by the training provider that the requirements of subsection (3) of this section shall be met if the training course is approved.

(b) The cabinet shall review the training provider's request for course approval pursuant to the KAAP document and this administrative regulation. If there are no deficiencies the cabinet shall give the training provider written notification that the training course has been given contingent approval. Unless suspended or revoked by the cabinet, contingent approval of a training course shall be valid for one (1) year and shall not be renewed. Throughout this year, the training provider shall meet the requirements of subsection (3) of this section.

(6) Full approval. For full approval of a training course, the training provider shall meet the contingent course approval criteria of subsection (5) of this section, the applicable course-content criteria of the KAAP document, and the criteria specified in paragraph (a) of this subsection.

(a) Full approval criteria.

1. Course administration. The physical environment in which the course is conducted shall be conducive to learning (e.g. adequate lighting and ventilation, minimal distractions, and adequate classroom layout). Teaching equipment shall operate properly. Classroom materials and instructional aids shall be organized in a logical fashion that is conducive to learning.

2. Teaching effectiveness. Instructors shall use clear and effective presentation methods, including stating the purpose and giving an overview for each topic, adhering to the agenda, checking for student comprehension, using teaching aids, and organizing presentation into logically-sequenced segments. Instructors shall also demonstrate their own satisfactory knowledge of course content by defining terms clearly, emphasizing key concepts, using analogies and examples correctly and appropriately, and distinguishing fact from opinion.

3. Hands-on training administration. Physical environment and equipment shall be conducive to learning (e.g., functional equipment, appropriate student-to-work station ratio, appropriate student-trainer ratio, and adequate space and time.) The trainer shall demonstrate the techniques covered, use appropriate hands-on teaching materials, and ensure student participation.

4. Courses to be audited by the cabinet for full approval shall be presented in English, unless prior arrangements have been made with the cabinet. The cabinet may require course providers whose courses are not presented in English to seek approval from an EPA-approved state which has the linguistic capabilities to review these courses adequately.

(b) Duration of full approval. Full approval shall remain in effect unless suspended or revoked.

(c) Suspension or revocation of training course approval. The cabinet may suspend or revoke the approval of a training course

pursuant to this administrative regulation and Units II and III of the KAAP document.

Section 11. Materials Incorporated by Reference. (1)(a) "Form DEP 6038, Application for Individual Accreditation/ Asbestos Abatement Program," is incorporated by reference.

(b) The Division for Air Quality document for the "Kentucky Asbestos Accreditation Program, May [January] 1998" is incorporated by reference.

(2) The material incorporated by reference may be obtained, inspected, or copied at the following offices of the Division for Air Quality, Monday through Friday, 8 a.m. to 4:30 p.m.:

(a) The Division for Air Quality, 803 Schenkel Lane, Frankfort, Kentucky 40601, (502) 573-3382;

(b) Ashland Regional Office, 3700 Thirteenth Street, Ashland, Kentucky 41105, (606) 920-2067;

(c) Bowling Green Regional Office, 1508 Westen Avenue, Bowling Green, Kentucky 42104, (502) 746-7475;

(d) Florence Regional Office, 7964 Kentucky Drive, Suite 8, Florence, Kentucky 41042, (606) 292-6411;

(e) Hazard Regional Office, 233 Birch Street, Suite 2, Hazard, Kentucky 41701, (606) 435-6022;

(f) London Regional Office, 85 State Police Road, Room 345, London Kentucky 40741, (606) 878-0157;

(g) Owensboro Regional Office, 3032 Alvey Park Drive W, Suite 700, Owensboro, Kentucky 42303, (502) 687-7304; and

(h) Paducah Regional Office, 4500 Clarks River Road, Paducah, Kentucky 42003, (502) 898-8468. [As used in this administrative regulation, the following terms shall have the following meanings. If not defined in this section, a term shall have the meaning given it by commonly accepted usage:

(1) "Abatement project designer" means an individual who determines how asbestos abatement work should be conducted and who prepares for purposes of an abatement response action, plans, designs, procedures, workscope, or other substantive direction or criteria.

(2) "Act" means the Toxic Substances Control Act (TSCA), 15 USC 2601 and the related sections which follow, as in effect on July 18, 1988.

(3) "Accredited" means when referring to an individual that the individual is accredited in accordance with section 206 of Title II of the Act.

(4) "Accreditation certificate" means a certificate issued by the cabinet attesting to the training qualifications of an individual to perform specified asbestos abatement projects.

(5) "Asbestos" means the asbestiform varieties of: chrysotile (serpentine), crocidolite (riebeckite), amosite (cummingtonite-grunerite), anthophyllite, tremolite, and actinolite.

(6) "Asbestos abatement contractor" means the individual responsible for the on-site supervision of the removal, encapsulation, or enclosure of friable ACM in a school. An asbestos abatement contractor may also perform the duties of an asbestos abatement supervisor, abatement project designer, or an asbestos abatement worker.

(7) "Asbestos abatement project" means any project intended to identify, assess, plan for, or respond to an asbestos hazard in a school building.

(8) "Asbestos abatement supervisor" means the individual responsible for the on-site supervision of the removal, encapsulation, or enclosure of friable ACM in a school. An asbestos abatement supervisor may also perform the duties of an asbestos abatement contractor, abatement project designer, or an asbestos abatement worker.

(9) "Asbestos abatement worker" means an individual who cleans, removes, encapsulates, encloses, hauls, or disposes of friable asbestos material or who performs any response action required to be performed by an accredited individual.

(10) "Asbestos-containing material" or "ACM" means, when referring to school buildings, any material or product which contains more than one (1) percent asbestos by area.

(11) "Asbestos-containing building material" or "ACBM" means surfacing ACM, thermal system insulation ACM, or miscellaneous ACM that is found in or on interior structural members or other parts of a school building.

(12) "Cabinet" has the meaning given it in KRS 224.01-010.

(13) "Day" means calendar day.

(14) "Discipline" means any of the following: an inspector, management planner, abatement project designer, asbestos abatement contractor, asbestos abatement supervisor, and asbestos abatement worker.

(15) "Encapsulation" means the treatment of ACBM with a material that surrounds or embeds asbestos fibers in an adhesive matrix to prevent the release of fibers, as the encapsulant creates a membrane over the surface (bridging encapsulant) or penetrates the material and binds its components together (penetrating encapsulant).

(16) "Enclosure" means an airtight, impermeable, permanent barrier around ACBM to prevent the release of asbestos fibers into the air.

(17) "EPA" or "U.S. EPA" means the United States Environmental Protection Agency.

(18) "EPA-approved training course" means a training or refresher course for the discipline for which accreditation is requested which is approved by the U.S. EPA, at the time the course is taken, for the purpose of complying with the requirements of section 206 of the Act.

(19) "Friable" means that the material, when dry, may be broken, crumbled, pulverized, or reduced to powder by hand pressure, and includes previously nonfriable material after the previously nonfriable material becomes damaged to the extent that when dry it may be crumbled, pulverized, or reduced to powder by hand pressure.

(20) "Functional space" means a room, group of rooms, or homogeneous area (including crawl spaces or the space between a dropped ceiling and the floor or roof deck above), such as classrooms, a cafeteria, gymnasium, hallways, designated by an individual accredited to prepare management plans, or design or conduct response actions.

(21) "Homogeneous area" means an area of surfacing material, thermal system insulation material, or miscellaneous material that is uniform in color and texture.

(22) "Inspector" means an individual who identifies, assesses the condition of, or collects preabatement air samples or bulk samples of ACM.

(23) "Inspection" means an identification of the status of asbestos in schools, including identification of, assessment of the conditions of, or collection of preabatement air samples or bulk samples of, ACM. This term also includes reinspections, after the initial inspection has been performed.

(24) "Local education agency" or "LEA" means:

(a) Any local education agency as defined in section 198 of the Elementary and Secondary Education Act of 1965 (20 USC 3381), which means, a public board of education or other public authority legally constituted for either administrative control or direction of, or to perform a service function for, public elementary or secondary schools in a city, county, township, school district, or other political subdivision, or any combination of school districts or counties recognized as an administrative agency for its public elementary or secondary schools. This term also includes any other public institution or agency having administrative control and direction of a public elementary or secondary school.

(b) The owner of any nonpublic, nonprofit elementary or secondary school building.

(c) The governing authority of any school operated under the defense dependents' education system provided for under the Defense Dependents' Education Act of 1978 (20 USC 921, and the following related sections):

(25) "Management plan" means a plan submitted by an LEA and which is not disapproved, and which contains the items required in 40 CFR 763.93.

(26) "Management planner" means an individual who uses data gathered by inspectors to assess asbestos hazards, and by doing so determines appropriate response actions and develops management plans. A management planner may also perform the duties of an inspector.

(27) "Miscellaneous ACM" means miscellaneous material that is ACM in a school building.

(28) "Miscellaneous material" means interior building material on structural components, structural members, or fixtures, such as floor and ceiling tiles, and does not include surfacing material or thermal system insulation.

(29) "Nonfriable" means material in a school building which when dry may not be broken, crumbled, pulverized, or reduced to powder by hand pressure.

(30) "Operations and maintenance program" or "O&M program" means a program of work practices to maintain friable ACBM in good condition, ensure cleanup of asbestos fibers previously released, and prevent further release by minimizing and controlling friable ACBM disturbance or damage.

(31) "Person" has the meaning given it in KRS 224.01-010.

(32) "Removal" means the taking out or the stripping of substantially all ACBM from a damaged area, a functional space, or a homogeneous area in a school building.

(33) "Repair" means returning damaged ACBM to an undamaged condition or to an intact state so as to prevent fiber release.

(34) "Response action" means a method, including but not limited to removal, encapsulation, enclosure, repair, operations and maintenance, that protects human health and the environment from friable ACBM.

(35) "School" means any elementary or secondary school as defined in section 198 of the Elementary and Secondary Education Act of 1965 (20 USC 2854).

(36) "School building" means:

(a) Any structure suitable for use as a classroom, including a school facility such as a laboratory, library, school eating facility, or facility used for the preparation of food;

(b) Any gymnasium or other facility which is specially designed for athletic or recreational activities for an academic course in physical education;

(c) Any other facility used for the instruction or housing of students or for the administration of education or research programs;

(d) Any maintenance, storage, or utility facility, including any hallway, essential to the operation of any facility described in paragraphs (a) to (c) of this subsection;

(e) Any portico or covered exterior hallway or walkway; or

(f) Any exterior portion of a mechanical system used to condition interior space.

(37) "Surfacing ACM" means surfacing material that is ACM.

(38) "Surfacing material" means material in a school building that is sprayed on, troweled on, or otherwise applied to surfaces, such as acoustical plaster on ceilings and fireproofing materials on structural members, or other materials on surfaces for acoustical, fireproofing, or other purposes.

(39) "Thermal system insulation" means material in a school building applied to pipes, fittings, boilers, breeching, tanks, ducts, or other interior structural components to prevent heat loss or gain, or water condensation, or for other purposes.

(40) "Thermal system insulation ACM" means thermal system insulation that is ACM.

Section 2. Applicability. The provisions of this administrative regulation shall apply to all individuals required to be accredited by 401 KAR 58:010.

Section 3. Prohibition. No individual may engage in, nor any person cause or allow any individual to engage in, any asbestos abatement project at a school on or after October 12, 1988, unless an accreditation certificate to so engage in these projects has been issued to that individual by the cabinet, is currently in effect, and is maintained on the person of that individual at all times.

Section 4. Applications. (1) No individual shall be considered for accreditation unless the training requirements of Section 9 of this administrative regulation have been completed prior to application.

(2) Applications for accreditation shall be made on forms prepared by the cabinet for this purpose and shall contain the information that the cabinet deems is necessary to determine whether the accreditation should be issued.

(3) Applications for accreditation shall be signed by the individual requesting accreditation. The signature shall be made under oath and shall constitute personal affirmation that the statements made in the application are true and complete.

(4) Applications shall contain the accreditation fee as indicated in Section 7 of this administrative regulation.

Section 5. Consideration of Applications. (1) Within fifteen (15) days after receipt of an application for accreditation, the cabinet shall advise the applicant as to whether or not the application is complete, and if not complete, what additional information is necessary in order to evaluate the application.

(2) Within fifteen (15) days after the application for accreditation is deemed complete, the cabinet shall make its determination concerning the application unless the cabinet determines that an additional period of time is necessary.

(3) If the application is approved, the cabinet shall issue to the applicant the accreditation certificate to engage in asbestos abatement projects at schools, according to the provisions of the administrative regulation.

(4) The cabinet may deny an application for accreditation if the cabinet determines that the applicant has violated any provision of this administrative regulation, 401 KAR 57:011, 401 KAR 63:042, or 401 KAR 58:010, if the applicant willfully made any misstatements in the application, or if the applicant cannot reasonably be expected to conduct himself in a manner that is consistent with the acceptance of responsibility for asbestos abatement projects at schools. The cabinet shall make determinations regarding issuance or denial of the accreditation based upon the applicant's actions during any prior term of accreditation, the information contained in the application, and any other pertinent information that is available to the cabinet.

(5) Accreditations issued according to this administrative regulation shall be subject to the terms and conditions set forth and embodied in the accreditation certificate as the cabinet deems necessary to ensure compliance with the requirements of this administrative regulation, 401 KAR 57:011, 401 KAR 63:042, and 401 KAR 58:010.

Section 6. Duration and Renewal of Accreditation Certificates. (1) Unless the cabinet revokes an accreditation certificate, both initial and renewed accreditation certificates issued after the effective date of this administrative regulation, shall remain in effect concurrent with the certificate which is issued upon successful completion of the EPA-approved training or refresher course required in Section 9 of this administrative regulation.

(2) No individual shall be considered for renewal of accreditation unless the training requirements of Section 9 of this administrative regulation have been completed prior to application.

(3) Applications for renewal of accreditation shall be made on forms prepared by the cabinet for this purpose and shall contain the information that the cabinet deems is necessary to determine whether the accreditation should be issued.

(4) Applications for renewal of accreditation shall be signed by the

individual requesting accreditation. The signatures shall be made under oath and shall constitute personal affirmation that the statements made in the application are true and complete.

(5) Failure to supply information required or deemed necessary by the cabinet to enable it to act upon the renewal application shall result in denial of that renewal.

(6) Any individual who submits an application for renewal of accreditation shall include with the application an accreditation fee, as specified in Section 7 of this administrative regulation.

(7) The cabinet shall make its determination to approve or deny the renewal within fifteen (15) days of receipt of a complete renewal application. The cabinet shall notify the applicant, in writing, of its determination and shall set forth its reasons for any denial.

(8) If the renewal is approved, the cabinet shall issue to the applicant the renewed certificate to engage in asbestos abatement projects in schools, according to the provisions of this administrative regulation and 401 KAR 58:010.

(9) The cabinet may deny an application for renewal of accreditation if the cabinet determines that the applicant has violated any provision of this administrative regulation, 401 KAR 57:011, 401 KAR 63:042, or 401 KAR 58:010, if the applicant willfully made any misstatements in the application, or if the applicant cannot reasonably be expected to conduct himself in a manner that is consistent with the acceptance of responsibility for asbestos abatement projects at schools. The cabinet shall make determinations regarding issuance or denial of the renewed accreditation based upon the applicant's actions during any prior term of accreditation, the information contained in the application, and any other pertinent information that is available to the cabinet.

(10) Renewed accreditations issued according to this administrative regulation shall be subject to the terms and conditions set forth and embodied in the accreditation certificate as the cabinet deems necessary to ensure compliance with the requirements of this administrative regulation, 401 KAR 57:011, 401 KAR 63:042, and 401 KAR 58:010.

Section 7. Fees. All fees shall be submitted to the cabinet by check or money order, payable to the Kentucky State Treasurer. Fees for more than one (1) discipline shall be obtained by summing the fees for the requested accreditations. The fee for accreditation as an inspector, management planner, abatement project designer, asbestos abatement contractor, asbestos abatement supervisor, or asbestos abatement worker shall be twenty (20) dollars. The fee for renewal of accreditation for each of those disciplines shall be ten (10) dollars.

Section 8. Accreditation Revocation. The cabinet may revoke any accreditation issued under this administrative regulation if the accredited individual:

(1) Willfully makes any misstatement or knowingly omits information in the certification application, renewal application, or any amendments to an application;

(2) Fails to comply with the terms or conditions of the accreditation;

(3) Fails to comply with 401 KAR 57:011, 401 KAR 63:042, or 401 KAR 58:010;

(4) Fails to perform a response action in a manner which will protect human health and the environment;

(5) Performs a response action required to be performed by an accredited individual which is disapproved by the cabinet or not contained in an applicable management plan; or

(6) Alters any accreditation certificate.

Section 9. Training Requirements. (1) Initial accreditation. Every individual requesting accreditation shall attend and successfully complete an EPA-approved training course for the appropriate discipline for which accreditation is requested within one (1) year prior

to applying for accreditation. Training successfully completed at an EPA-approved training course for the requested discipline since January 1, 1985, shall satisfy the requirement of this subsection for one (1) year from October 5, 1988.

(2) Renewal of accreditation.

(a) If an individual successfully completes an EPA-approved refresher course for the discipline for which accreditation is requested prior to the expiration of his certificate and if the individual requests that his accreditation certificate be renewed prior to expiration, then the cabinet may extend the accreditation certificate for one (1) year. The cabinet will issue a renewal certificate for each approved extension.

(b) If an individual fails to successfully complete an EPA-approved refresher course for the discipline for which accreditation is requested within one (1) year of being certified, his accreditation certificate shall expire; however, an expired certificate may be renewed if the applicant successfully completes an EPA-approved refresher course within one (1) year of expiration, and completes all other requirements for renewal of certifications.

(c) If an individual fails to successfully complete an EPA-approved refresher course for the discipline for which accreditation is requested within one (1) year of expiration of his accreditation certificate, the individual shall complete all requirements for initial accreditation in order to receive accreditation.

Section 10. Penalties. Any individual or other person who violates any provision of this administrative regulation shall be subject to the appropriate enforcement action as provided under KRS 224.99-010.]

JAMES E. BICKFORD, Secretary

GLENNA JO CURRY, General Counsel

APPROVED BY AGENCY: May 6, 1998

FILED WITH LRC: May 7, 1998 at 11 a.m.

CONTACT PERSON: Millie Ellis, Supervisor, Division for Air Quality, 803 Schenkel Lane, Frankfort, Kentucky, 40601, (502) 573-3382, and fax number (502) 573-3787.

REGULATORY IMPACT ANALYSIS

Agency Contact: Millie Ellis, Supervisor

(1) Type and number of entities affected: This administrative regulation provides for the accreditation of persons who inspect for asbestos in school, public, or commercial buildings; who design, supervise, or perform response actions in school, public, or commercial buildings; and who prepare plans addressing potential and actual asbestos hazards in schools. It also provides standards for trainers of accreditation applicants and administrative mechanisms for approval of qualified trainers.

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

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented. Some communities might see a small financial benefit if training programs were to locate in the area, bringing applicants into local businesses such as hotels or restaurants. There is the possibility for negligible costs increases for asbestos surveys in public and commercial buildings. However, the main costs resulting from the implementation of this amendment will be borne by the asbestos professionals who will pay fees for the services of training, accreditation and course approval.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented. There may be increased costs for accredited building surveys in public and commercial buildings, but these increased costs should offset costs of remedying problems caused by inadvertent asbestos disturbance. Conversely, promulgation of this amendment will reduce costs for trainers to acquire and maintain course approvals and for the applicants who want to minimize travel costs by attending local

courses.

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

1. First year following implementation: In the area of compliance, there will be some increase for accreditation requirements in public and commercial buildings, but this increase is likely to be offset by reduced remediation costs. Reporting requirements will increase for trainers because of federally-mandated recordkeeping requirements in certifying and recertifying applicants. There will also be additional recordkeeping for applications, accreditation, and course approval.

2. Second and subsequent years: There will be no additional requirements beyond those mentioned for the first year.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: There will be fees for accreditation and course approval that are designed to cover costs.

2. Continuing costs or savings: Continuing costs of the recertification/renewal fee are reflected in the renewal fees described in Section 7 of the administrative regulation.

3. Additional factors increasing or decreasing costs: There are no known additional factors increasing or decreasing costs.

(b) Reporting and paperwork requirements: A slight increase in applications for accreditation and course approval is expected. Additionally, federally-mandated recordkeeping requirements for trainers are expected to increase agency review and oversight slightly.

(4) Assessment of anticipated effect on state and local revenues: Accreditation fee receipts are estimated at \$67,300/yr, and course review fee receipts are estimated at \$8,050/yr. These fees are expected to recover increased costs for processing double the current number of accreditation applications and reviewing approximately one (1) new training course per year in each discipline.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: The fees from applicants for accreditation and course approval are expected to recover costs.

(6) Economic impact, including effects of economic activities arising from administrative regulation, on:

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

(b) Kentucky: Because federal law already requires asbestos professionals to be accredited and asbestos trainers to be approved, economic benefits should accrue from locating the program at the state level.

(7) Assessment of alternative methods; reason why alternatives were rejected: No alternative methods were considered because this amendment mirrors the provisions of the federal regulation. This amended administrative regulation is designed with provisions for maximum efficiency in benefiting regulated entities who pay fees for services provided by the program and for maximum effectiveness in carrying out the federal mandate to protect human health and the environment.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which administrative regulation will be implemented and on Kentucky: By establishing qualification requirements for asbestos professionals and their trainers, the statewide accreditation program will minimize asbestos exposures resulting from incompetence.

(b) State whether a detrimental effect on environment and public health would result if not implemented: The division anticipates a detrimental effect on the environment and public health if this administrative regulation is not implemented because a federally-administered program could provide only long-distance oversight, with insufficient administrative and technical staff, for the volume of asbestos-abatement activity in Kentucky.

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

this administrative regulation is not implemented, trainers could present unmonitored training in Kentucky. Additionally, oversight of asbestos professionals' qualifications will be diminished if this requirement is administered long distance from a federal rather than a state perspective.

(9) Identify any statute, rule, regulation or government policy which may be in conflict, overlapping, or duplication: Federal statutes for the Clean Air Act and Toxic Substance Control Act overlap at the supervisor discipline. However, the activities and facilities covered under the overlapping mandates are sufficiently distinct to warrant separate sets of requirements.

(a) Necessity of proposed regulation if in conflict: This administrative regulation is not in conflict. To minimize any burdens caused by the overlap mentioned in (9) above, the division has integrated both programs into a single administrative unit and has established reciprocal considerations for supervisors who are subject to both program requirements.

(b) If in conflict, was effort made to harmonize the proposed regulation with conflicting provisions: This administrative regulations is not in conflict.

(10) Any additional information or comments: The cabinet has no additional information or comment.

(11) TIERING: Is tiering applied? No. There is no tiering of requirements by the state.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. The federal mandate for an asbestos accreditation program is found at 40 CFR 763, Subpart E, Appendix C, as published in the Code of Federal Regulations July 1, 1996, and at 15 USC 2601 through 2692, as amended November 28, 1990 (Toxic Substances Control Act).

2. State compliance standards. The federal regulation contains standards for persons and courses subject to 40 CFR Part 763, Subpart E, Appendix C, and provisions for maintaining those standards. The requirements in the state administrative regulation meet those of the federal regulation. Specific procedures are outlined toward the training and accreditation of asbestos abatement professionals.

3. Minimum or uniform standards contained in the federal mandate. The minimum standards appear at 40 CFR 763, Subpart E, Appendix C.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities of requirements, than those required by the federal mandate? This administrative regulation does not impose requirements beyond those specified in the federal. However, the federal mandate does not provide specific administrative procedures to follow in the accreditation process, but instead allows states to develop application procedures, fee protocols, and reciprocity plans that allow individuals accredited in one state to show proof of accreditation that is acceptable in other states.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Stricter standards and requirements are not imposed.

FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? Yes

2. State what unit, part or division of local government this administrative regulation will affect. Any unit of local government that uses its personnel for asbestos inspections or removals will be required to obtain accreditation for those personnel from the Division for Air Quality before performing those tasks.

3. State the aspect or service of local government to which this administrative regulation relates. This administrative regulation relates

to any aspect of service of local government for activities involving asbestos inspections or removals.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a local government for the first full year the regulation is to be in effect. If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal import of the administrative regulation.

Revenues (+/-): There is no known effect on current revenues.

Expenditures (+/-): Local governments may expect modest costs increases in their current expenditures for training and accreditation of in-house inspectors, but the bulk of these costs will be for meeting the federal requirements for training. A minimal expense should be expected for administrative fees.

Other Explanation: There is no other explanation.

**NATURAL RESOURCES AND
ENVIRONMENTAL PROTECTION CABINET
Department for Environmental Protection
Division for Air Quality
(Amended After Hearing)**

401 KAR 58:025. Asbestos standards.

RELATESTO: KRS 224.10-100, 224.20-100, 224.20-110, 224.20-120, 224.20-300, 224.20-310, 224.20-320, 224-99-010, 40 CFR 61.140 through 61.157, Appendix A to Subpart M

STATUTORY AUTHORITY: KRS 224.10-100, 224.20-100, 224.20-110, 224.20-120, 224.20-300, 224.20-310, 224.20-320, 224.99-010, 40 CFR 61.140 through 61.157, Appendix A to Subpart M

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.10-100 requires the Natural Resources and Environmental Protection Cabinet to prescribe administrative regulations for the prevention, abatement, and control of air pollution. The federal regulation incorporated by reference in this administrative regulation provides for identification, handling, and disposal of asbestos materials and for conversion of asbestos-containing waste material into asbestos-free material. Included in the standard is the interpretive rule governing roof removal operations. [This administrative regulation provides for the control of asbestos emissions.]

Section 1. Definitions. As used in 40 CFR 61.140 through 61.157, the following terms shall be defined as provided in this section:

(1) Except as provided in subsection (2) of this section, "administrator" means the Secretary of the Natural Resources and Environmental Protection Cabinet.

(2) As used in 40 CFR 61.149(c)(2), 61.150(a)(4), 61.151(c), 61.152(b)(3), 61.154(d), and 61.155(a), "administrator" means the Administrator of the U.S. EPA.

Section 2. (1)(a) "40 CFR 61.140 through 61.157 (40 CFR 61, Subpart M), National Emission Standard for Asbestos, and Appendix A to Subpart M, Interpretive Rule Governing Roof Removal Operations", as published in the Code of Federal Regulations, Title 40 Parts 61 to 71, July 1, 1996, is incorporated by reference.

(b) "Form DEP 7036, Notification of Asbestos Abatement/Demolition/Renovation, May 1998" [Ten (10) Day Report for Prior Notification of Asbestos Abatement Activities:] is incorporated by reference.

(2) The material incorporated by reference may be obtained, inspected, or copied at the following offices of the Division for Air Quality, Monday through Friday, 8 a.m. to 4:30 p.m.:

(a) The Division for Air Quality, 803 Schenkel Lane, Frankfort, Kentucky 40601, (502) 573-3382;

(b) Ashland Regional Office, 3700 Thirteenth Street, Ashland, Kentucky 41105, (606) 920-2067;

(c) Bowling Green Regional Office, 1508 Westen Avenue, Bowling Green, Kentucky 42104, (502) 746-7475;

(d) Florence Regional Office, 7964 Kentucky Drive, Suite 8, Florence, Kentucky 41042, (606) 292-6411;

(e) Hazard Regional Office, 233 Birch Street, Suite 2, Hazard, Kentucky 41701, (606) 435-6022;

(f) London Regional Office, 85 State Police Road, Regional State Office Building, Room 345, London Kentucky 40741, (606) 878-0157;

(g) Owensboro Regional Office, 3032 Alvey Park Drive W., Suite 700, Owensboro, Kentucky 42303, (502) 687-7304; and

(h) Paducah Regional Office, 4500 Clarks River Road, Paducah, Kentucky 42003, (502) 898-8468.

(3) Copies of the Code of Federal Regulations (CFR) are available for sale from the Superintendent of documents, U.S. Government Printing Office, Washington, D.C. 20402. [General References. In the federal regulation adopted by reference in this administrative regulation, "Regional Administrator" shall be read as "secretary," "EPA" and "Agency" shall be read as "cabinet," and "this subpart" shall be read as "this administrative regulation."]

Section 2. The national emission standard for asbestos contained in 40 CFR 61, Subpart M, as published in the Code of Federal Regulations, Title 40, Parts 53 to 80, July 1, 1985, and as amended by Federal Register 51 FR 8199, March 10, 1986, is hereby adopted and filed herein by reference. The methods for determining compliance as required in 40 CFR 61, Subpart M are filed by reference in 401 KAR 50:015.

Section 3. Summary. The federal regulation adopted herein by reference, 40 CFR 61, Subpart M, provides standards for sources that use commercial asbestos. Standards for demolition, renovation, fabricating and waste disposal are also included. The standards provide for a no visible emission limitation and equipment or work practice requirements.

Section 4. Availability. (1) Copies of the Code of Federal Regulations (CFR) and Federal Register are available for sale from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402.

(2) Copies of the material incorporated by reference in this administrative regulation shall be available for public review at the following offices of the Division for Air Quality:

(a) Director's Office, Division for Air Quality, Fort Boone Plaza, 18 Reilly Road, Frankfort, Kentucky 40601, (502) 564-3382;

(b) Ashland Regional Office, 3700 13th Street, Ashland, Kentucky 41101, (606) 325-8569;

(c) Bowling Green Regional Office, 1508 Westen Avenue, Bowling Green, Kentucky 42101, (502) 642-8131;

(d) Florence Regional Office, 7964 Kentucky Drive, Suite 8, Florence, Kentucky 41042, (606) 371-0598;

(e) Hazard Regional Office, 233 Birch Street, Hazard, Kentucky 41701, (606) 439-2391;

(f) Owensboro Regional Office, 311 West Second Street, Owensboro, Kentucky 42301, (502) 686-3304; and

(g) Paducah Regional Office, 1390 Irvin Cobb Drive, Paducah, Kentucky 42001, (502) 444-8295.]

JAMES E. BICKFORD, Secretary

GLENNA JO CURRY, General Counsel

APPROVED BY AGENCY: May 6, 1998

FILED WITH LRC: May 7, 1998 at 11 a.m.

CONTACT PERSON: Millie Ellis, Supervisor, Division for Air Quality, 803 Schenkel Lane, Frankfort, Kentucky 40601, (502) 573-3382, and fax number (502) 573-3787.

REGULATORY IMPACT ANALYSIS

Agency Contact: Millie Ellis, Supervisor

(1) Type and number of entities affected: This updates the incorporation by reference of the national emission standard for hazardous air pollutants (NESHAP) for asbestos, 40 CFR 61, Subpart M. The federal regulation applies to the following sources and activities that emit asbestos: asbestos mills, roadways, spraying, insulating materials, manufacturing and fabricating operations, demolition and renovation, and active and inactive waste disposal sites. At present, there are no asbestos mills in Kentucky. There are two (2) asbestos products manufacturers and four (4) asbestos product fabricators.

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

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented. There are no costs or savings beyond those which are described in the federal NESHAP final rulemakings at 53 FR 36972 (September 23, 1988); 55 FR 48406 (November 20, 1990); 56 FR 1669 (January 16, 1991); 59 FR 31157 (June 17, 1994); and 60 FR 31920 (June 19, 1995).

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented. This amendment does not affect the cost of doing business in the geographical areas where the federal actions are implemented beyond the costs described in the federal rulemakings.

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

1. First year following implementation: There are no additional first year costs or savings due to the promulgation of this amendment.

2. Second and subsequent years: There are no additional second year and subsequent years costs or savings due to the promulgation of this amendment.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: The costs for implementing and enforcing this administrative regulation will be absorbed as a part of the division's operating budget. There are no additional costs or savings resulting from this administrative regulation.

2. Continuing costs or savings: There are no additional costs or savings resulting from this administrative regulation.

3. Additional factors increasing or decreasing costs: There are no additional factors increasing or decreasing costs.

(b) Reporting and paperwork requirements: There will be no increase in reporting and paperwork requirements.

(4) Assessment of anticipated effect on state and local revenues: This amendment will have no known effect on state and local revenues.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: The Division for Air Quality's 105 grant and state funds will be used to implement this amendment and to continue enforcement of this administrative regulation.

(6) Economic impact, including effects of economic activities arising from administrative regulation, on:

(a) Geographical area in which administrative regulation will be implemented: This amendment will have no economic impact in the geographical location beyond that described in the federal rulemakings.

(b) Kentucky: This amendment will have no known economic impact in any geographical location in Kentucky beyond that described in the federal rulemaking.

(7) Assessment of alternative methods; reason why alternatives were rejected: No alternative methods were considered because this administrative regulation mirrors the federal regulation so that Kentucky can continue its delegated authority for this source category.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of

the geographical area in which administrative regulation will be implemented and on Kentucky: There will be no detrimental effect on environment and public health if this amendment is not implemented because it will be implemented by the U.S. EPA if Kentucky fails to do so.

(b) State whether a detrimental effect on environment and public health would result if not implemented: There will be no detrimental effect on environment and public health if this amendment is not implemented because it will be implemented by the U.S. EPA if Kentucky fails to do so.

(c) If detrimental effect would result, explain detrimental effect: There will be no detrimental effect on environment and public health.

(9) Identify any statute, rule, regulation or government policy which may be in conflict, overlapping, or duplication: There is no conflict, overlapping, or duplication.

(a) Necessity of proposed regulation if in conflict: There is no conflict with other administrative regulations.

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

(10) Any additional information or comments: This administrative regulation was previously codified as 401 KAR 57:011.

(11) TIERING: Is tiering applied? No. There is no additional tiering of requirements by the state.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute of regulation constituting the federal mandate. The federal mandate is found at 40 CFR 61.140 through 61.157 (40 CFR 61, Subpart M) and Appendix A to Subpart M.

2. State compliance standards. KRS 224.10-100 requires the Cabinet to provide an air quality program for Kentucky.

3. Minimum or uniform standards contained in the federal mandate. The federal regulation incorporated by reference addresses startup, operation, and closure of facilities and sources that can emit asbestos. Specifically, it applies to owners or operators of asbestos mills, roadway construction and maintenance activities, manufacturing operations using commercial asbestos, spray-applicators of asbestos-containing materials, fabricating operations using commercial asbestos, insulators installing or reinstalling commercial asbestos, active or inactive waste-disposal sites, operations using air cleaning to control asbestos emissions, demolition and renovation involving asbestos, and operations converting asbestos-containing waste into non-asbestos materials.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities of requirements, than those required by the federal mandate? There are no stricter requirements or additional responsibilities or requirements beyond those required by the federal regulation.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Stricter standards or different responsibilities or requirements are not imposed.

FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? No. This administrative regulation is directed toward control of asbestos emissions from specific operations.

2. State what unit, part or division of local government this administrative regulation will affect. Any unit, part, or division of local government that acts in the role of "owner or operator of a renovation or demolition operation" will be affected by this administrative regulation. Additionally, any of these entities that operate asbestos-disposal sites or build asbestos-containing roads will be affected.

3. State the aspect or service of local government to which this

administrative regulation relates. Local government is affected if it acts as "owner or operator of a renovation or demolition operation" or it operates asbestos-disposal sites or builds asbestos-containing roads.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a local government for the first full year the regulation is to be in effect. If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal import of the administrative regulation.

Revenues (+/-): There is no known effect on current revenues.

Expenditures (+/-): There is no known effect on current expenditures.

Other Explanation: There is no additional explanation.

PUBLIC PROTECTION AND REGULATION CABINET
Department of Insurance
(Amended After Hearing)

806 KAR 6:100. Actuarial opinion and memorandum.

RELATES TO: KRS 304.3-240, 304.6-070, 304.6-150, 304.6-155, 304.6-171, 304.6-180

STATUTORY AUTHORITY: KRS 304.2-110, 304.6-171

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

Section 1. Definitions. (1) "Actuarial opinion" means:

(a) With respect to Section 6, 7, or 8 of this administrative regulation, the opinion of an appointed actuary regarding the adequacy of the reserves and related actuarial items based on an asset adequacy test in accordance with Section 6 of this administrative regulation and with presently accepted actuarial standards; or

(b) With respect to Section 5 of this administrative regulation, the opinion of an appointed actuary regarding the calculation of reserves and related items, in accordance with Section 5 of this administrative regulation and with those presently accepted actuarial standards which specifically relate to this opinion. [the opinion of an appointed actuary regarding the calculation and adequacy of reserves and related actuarial items prepared in accordance with presently accepted actuarial standards and this administrative regulation which may require an asset adequacy test pursuant to Section 5 of this administrative regulation.]

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

(3) "Annual statement" means that statement required by KRS 304.3-240.

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

(5) "Asset adequacy analysis" means an analysis that conforms to presently accepted actuarial standards and methods of analysis as

promulgated by the Actuarial Standards Board and this administrative regulation and which forms the basis of the statement of actuarial opinion in accordance with Section 6 of this administrative regulation.

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

(7) "Company" means a life insurance company; fraternal benefit society doing business in this state; or a life insurance company **or [and]** fraternal benefit society which is authorized to reinsure life insurance, annuities, or accident and health insurance business.

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

(9) "Qualified actuary" means any individual who is qualified to sign a statement of actuarial opinion for a life and health insurance company annual statement and who meets the qualifications of Section 2 of this administrative regulation.

(10) "Specified reserve" means assets held in support of reserves which are the subject for specific analysis pursuant to Section 8(3) of this administrative regulation.

Section 2. Actuarial Qualifications. In order to be considered a qualified expert for the purposes of this administrative regulation, a person shall:

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

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

(3) Be familiar with the valuation requirements applicable to life and health insurance companies;

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

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

(b) Been found guilty of fraudulent or dishonest practices;

(c) Demonstrated incompetence, lack of cooperation, or untrustworthiness to act as a qualified actuary;

(d) Submitted to the commissioner during the past five (5) years, pursuant to this administrative regulation, an actuarial opinion or memorandum that the commissioner rejected because it did not comply with this administrative regulation or standards established by the Actuarial Standards Board; or

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

(5) Not have failed to notify the commissioner of any action taken by any commissioner of any other state which action was based on a disqualification standard outlined in subsection (4) of this section.

Section 3. General Requirements. (1) The actuarial opinion shall:

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

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

(c) Be the statement of an appointed actuary setting forth an opinion relating to reserves and related actuarial items held in support of policies and contracts;

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

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

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

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

1. The name of the appointed actuary;
2. The title of the appointed actuary;
3. If the actuary is a consulting actuary, the name of the firm;
4. The manner of appointment or retention by the company of each appointed actuary; and

5. That the person appointed or retained by the company meets the requirements of a qualified actuary pursuant to Section 2 of this administrative regulation.

(b) In the event the actuary ceases to be appointed or retained as an appointed actuary or to meet the requirements of a qualified actuary; or [and]

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

(5) The actuarial opinion shall set forth an opinion relating to reserves and related actuarial items held in support of policies and contracts and be based on an asset adequacy analysis in accordance with Section 6 of this administrative regulation.

(6) Any company exempted pursuant to Section 4 of this administrative regulation from submitting a statement of actuarial opinion based on an asset adequacy analysis shall include on or attach to page 1 of the annual statement a statement of actuarial opinion rendered by an appointed actuary that does not include an asset adequacy analysis in accordance with Section 5 of this administrative regulation.

(7) If in the previous year a company provided a statement of actuarial opinion in accordance with Section 5 of this administrative regulation that does not include an asset adequacy analysis, and in the current year fails the exemption criteria of Section 4 of this administrative regulation to again provide an actuarial opinion that does not include an asset adequacy analysis, the statement of actuarial opinion in accordance with Section 6 of this administrative regulation which is based on an asset adequacy analysis shall not be required until August 1 following the date of the annual statement. In this instance, the company shall provide a statement of actuarial opinion in accordance with Section 5 of this administrative regulation noting the intent to subsequently provide a statement of actuarial opinion in accordance with Section 6 of this administrative regulation.

Section 4. Required Actuarial Opinion. (1) Every company doing business in this state shall annually submit the opinion of an appointed actuary as provided for by this administrative regulation.

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

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

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

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

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

(3) Any Category A company that, for any year beginning with the year in which this administrative regulation becomes effective, meets all of the following criteria shall be eligible for exemption from submission of a statement of actuarial opinion based on an asset adequacy analysis in accordance with Section 6 of this administrative regulation for the year in which these criteria are met. Each ratio in paragraphs (a), (b), and (c) of this subsection shall be calculated based on amounts as of the end of the calendar year for which the actuarial opinion is applicable.

(a) The ratio of the sum of capital and surplus to the sum of cash

and invested assets is at least equal to one-tenth (.10);

(b) The ratio of the sum of the reserves and liabilities for annuities and deposits to the total admitted assets is less than three-tenths (.30);

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

(d) With respect to priority status:

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

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

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

(4) Any Category B company that, for any year beginning with the year in which this administrative regulation becomes effective, meets all of the following criteria shall be eligible for exemption from submission of a statement of actuarial opinion based on an asset adequacy analysis in accordance with Section 6 of this administrative regulation for the year in which the criteria are met. Each ratio in paragraphs (a), (b), and (c) of this subsection shall be calculated based on amounts as of the end of the calendar year for which the actuarial opinion is applicable.

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

(b) The ratio of the sum of the reserves and liabilities for annuities and deposits to the total admitted assets is less than four-tenths (.40);

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

(d) With respect to priority status:

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

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

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

(5) Any Category A or Category B company that meets all of the criteria set forth in subsections (3) or (4) of this section is exempted from submission of a statement of actuarial opinion in accordance with Section 6 of this administrative regulation unless the commissioner specifically indicates to the company that the exemption is not to be taken.

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

(7) Any Category C company that, after submitting an opinion in accordance with Section 6 of this administrative regulation, meets all of the following criteria shall not be required, unless required in accordance with subsection (8) of this section, to submit a statement

of actuarial opinion in accordance with Section 6 of this administrative regulation more frequently than every third year. Any Category C company which fails to meet all of the following criteria for any year shall submit a statement of actuarial opinion in accordance with Section 6 of this administrative regulation for that year. The ratios in paragraphs (a), (b), and (c) of this subsection shall be calculated based on amounts as of the end of the calendar year for which the actuarial opinion is applicable.

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

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

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

(d) With respect to priority status:

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

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

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

(8) Every Category D company shall submit a statement of actuarial opinion in accordance with Section 6 of this administrative regulation for each year beginning with the year in which this administrative regulation becomes effective.

(9) Every company exempted by this section from filing an actuarial opinion in accordance with Section 6 of this administrative regulation must file a statement of actuarial opinion in accordance with Section 5 of this administrative regulation except that the commissioner may require any company otherwise exempt to submit a statement of actuarial opinion and to prepare a memorandum in support thereof in accordance with Sections 6 and 7 of this administrative regulation if, in the opinion of the commissioner, an asset adequacy analysis is necessary with respect to the company.

Section 5. Statement of Actuarial Opinion Not Including an Asset Adequacy Analysis. (1) The statement of actuarial opinion required by this section shall contain an opening paragraph which shall:

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

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

(c) Identify the name of the company;

(d) Identify the qualifications of the appointed actuary;

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

(f) Include language identical or substantially similar to the following:

1. For a company actuary: "I, (name of actuary), am (title) of (name of company) and a member of the American Academy of Actuaries. I was appointed by, or by the authority of, the Board of Directors of said insurer to render this opinion as stated in the letter to the commissioner dated (insert date). I meet the Academy qualification standards for rendering the opinion and am familiar with the valuation requirements applicable to life and health insurance companies."; or

2. For a consulting actuary: "I, (name and title of actuary), a member of the American Academy of Actuaries, am associated with the firm of (insert name of consulting firm). I have been appointed by, or by the authority of, the Board of Directors of (name of company) to render this opinion as stated in the letter to the commissioner dated

(insert date). I meet the Academy qualification standards for rendering the opinion and am familiar with the valuation requirements applicable to life and health insurance companies."

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

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

(b) ~~State that the opinion, which is not based on an asset adequacy analysis, is rendered in accordance with Section 5 of this administrative regulation; and~~

(c) ~~Include~~ language identical or substantially similar to the following: "Said company is exempt pursuant to administrative regulation (insert designation) of the Kentucky Department of Insurance from submitting a statement of actuarial opinion based on an asset adequacy analysis. This opinion, which is not based on an asset adequacy analysis, is rendered in accordance with Section 5 of the administrative regulation."

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

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

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

(c) List each item and amount with respect to which the appointed actuary is expressing an opinion including:

1. [The] Aggregate reserve and deposit funds for policies and contracts included in Exhibit 8 of the annual statement;

2. [The] Aggregate reserve and deposit funds for policies and contracts included in Exhibit 9 of the annual statement;

3. Deposit funds, premiums, dividend and coupon accumulations, and supplementary contracts not involving life contingencies included in Exhibit 10 of the annual statement; and

4. Policy and contract claims - liability end of current year included in Exhibit 11, Part I of the annual statement.

(d) Include language identical or substantially similar to the following: "I have examined the actuarial assumptions and actuarial methods used in determining reserves and related actuarial items listed below, as shown in the annual statement of the company, as prepared for filing with state regulatory officials, as of December 31, (year).";

(e) If the appointed actuary has examined the underlying records, include language identical or substantially similar to the following: "My examination included such review of the actuarial assumptions and actuarial methods and of the underlying basic records and such tests of the actuarial calculations as I considered necessary."; and

(f) If the appointed actuary has not examined the underlying records, but has relied upon listings and summaries of policies in force prepared by the company or a third party, include language identical or substantially similar to the following:

1. "I have relied upon listings and summaries of policies and contracts and other liabilities in force prepared by (name and title of company officer certifying in force records) as certified in the attached statement. (See accompanying affidavit by a company officer.) In other respects my examination included review of the actuarial assumptions and actuarial methods and such tests of the actuarial calculations as I considered necessary."; or

2. "I have relied upon (name of accounting firm) for the substantial accuracy of the in force records inventory and information concerning other liabilities, as certified in the attached statement. In other respects my examination included review of the actuarial assumptions and actuarial methods and such tests of the actuarial calculations as I considered necessary."

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

(a) Express the opinion of the appointed actuary[;

(b) ~~State~~ that the amounts carried in the balance sheet on account of the actuarial items identified in subsection (3)(c) of this section:

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

2. Are based on actuarial assumptions which produce reserves at least as great as those required by any contract provision as to reserve basis and method, and are in accordance with all other contract provisions;

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

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

5. Include provision for all actuarial reserves and related statement items which ought to be established; and

(b) [(e)] Include language identical or substantially similar to the following: "The actuarial methods, considerations and analyses used in forming my opinion conform to the appropriate Compliance Guidelines as promulgated by the Actuarial Standards Board, which guidelines form the basis of this statement of opinion."

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

(a) State that the opinion is being provided in accordance with Section 5 of this administrative regulation and does not include an opinion regarding the adequacy of reserves and related actuarial items when considered in light of the assets which support them;

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

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

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

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

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

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

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

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

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

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

(6) The statement of actuarial opinion shall describe any change in actuarial assumptions from ~~those [that]~~ previously employed by supplementing the language required by subsection (4)(b)4 of this section with the following language: "...with the exception of the change described on page () of the annual statement (or in the preceding paragraph)." A change in actuarial assumptions shall not include the adoption for a new issue, a new claim, or other new

liability of an actuarial assumption which differs from a corresponding assumption used for a prior new issue, new claim, or other new liability.

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

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

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

(a) Include language identical or substantially similar to the following: "I (name of officer), (title) of (name and address of company or accounting firm), hereby affirm that the listings and summaries of policies and contracts in force as of December 31, (year), prepared for and submitted to (name of appointed actuary), were prepared under my direction and, to the best of my knowledge and belief, are substantially accurate and complete"; and

(b) Include the signature, address, and telephone number of the officer of the company or accounting firm.

Section 6. Statement of Actuarial Opinion Based on an Asset Adequacy Analysis. (1) The statement of actuarial opinion required by this section shall contain an opening paragraph which shall:

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

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

(c) Identify the name of the company;

(d) Identify the qualifications of the appointed actuary;

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

(f) Include language identical or substantially similar to the following:

1. For a company actuary: "I, (name of actuary), am (title) of (name of company) and a member of the American Academy of Actuaries. I was appointed by, or by the authority of, the Board of Directors of said insurer to render this opinion as stated in the letter to the commissioner dated (insert date). I meet the Academy qualification standards for rendering the opinion and am familiar with the valuation requirements applicable to life and health insurance companies.; or

2. For a consulting actuary: "I, (name and title of actuary), a member of the American Academy of Actuaries, am associated with the firm of (insert name of consulting firm). I have been appointed by, or by the authority of, the Board of Directors of (name of company) to render this opinion as stated in the letter to the commissioner dated (insert date). I meet the Academy qualification standards for rendering the opinion and am familiar with the valuation requirements applicable to life and health insurance companies."

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

(a) Identify the subjects on which an opinion is to be expressed;

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

(c) Include a tabulation delineating the reserves and related actuarial items which have been analyzed for asset adequacy and the method of analysis;

(d) Identify the reserves and related actuarial items covered by the opinion which have not been so analyzed; and

(e) Include language identical or substantially similar to the following: "I have examined the actuarial assumptions and actuarial methods used in determining reserves and related actuarial items listed below, as shown in the annual statement of the company, as prepared for filing with state regulatory officials, as of December 31, (year). Tabulated below are those reserves and related actuarial items which have been subjected to asset adequacy analysis."

(3) If the appointed actuary has relied on other experts to develop portions of the analysis, the statement of actuarial opinion required by this section shall contain a reliance paragraph which shall:

(a) Describe each area where the appointed actuary has deferred to another expert in developing data, procedures, or assumptions;

(b) Include a supporting statement from each expert to whom the appointed actuary has deferred in the form prescribed by subsection (8) of this section;

(c) If the appointed actuary has relied on other experts to develop certain portions of the analysis, include a statement identical or substantially similar to the following and contain a statement in the form prescribed by subsection (8) of this section:

1. "I have relied on (name), (title) for (e.g., anticipated cash flows from currently owned assets, including variations in cash flows according to economic scenarios) and, as certified in the attached statement, . . ."; or

2. "I have relied on personnel as cited in the supporting memorandum for certain critical aspects of the analysis in reference to the accompanying statement."

(d) If the appointed actuary has examined the underlying asset and liability records, include a statement identical or substantially similar to the following: "My examination included such review of the actuarial assumptions and actuarial methods and of the underlying basic asset and liability records and such tests of the actuarial calculations as I considered necessary."; and

(e) If the appointed actuary has not examined the underlying records, but has relied upon listings and summaries of policies in force or asset records prepared by the company or a third party, include a statement identical or substantially similar to the following and be accompanied by the form prescribed by subsection (8) of this section:

1. "I have relied upon listings and summaries (of policies and contracts, of asset records) prepared by (name and title of company officer certifying in-force records) as certified in the attached statement. In other respects my examination included such review of the actuarial assumptions and actuarial methods and such tests of the actuarial calculations as I considered necessary."; or

2. "I have relied upon (name of accounting firm) for the substantial accuracy of the in-force records inventory and information concerning other liabilities, as certified in the attached statement. In other respects my examination included review of the actuarial assumptions and actuarial methods and tests of the actuarial calculations as I considered necessary."

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

(a) Express the opinion of the appointed actuary with respect to the adequacy of the supporting assets to mature the liabilities[;]

(b) ~~State~~ that reserves and related actuarial values concerning the identified statement items:

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

2. Are based on actuarial assumptions which produce reserves at least as great as those called for in any contract provision as to reserve basis and method, and are in accordance with all other contract provisions;

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

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

5. Include provision for all actuarial reserves and related statement items which ought to be established.

(b) ~~(c)~~ Express an opinion as to the adequate provision for the anticipated cash flow by including language identical or substantially

similar to the following: "The reserves and related items, when considered in light of the assets held by the company with respect to such reserves and related actuarial items including, but not limited to, the investment earnings on such assets, and the considerations anticipated to be received and retained under such policies and contracts, make adequate provision, according to presently accepted actuarial standards of practice, for the anticipated cash flows required by the contractual obligations and related expenses of the company.";

(d) State that the actuarial methods, considerations and analyses used in forming the actuarial opinion conform ~~[conforms]~~ to the appropriate Standards of Practice as promulgated by the Actuarial Standards Board, which standards form the basis of the statement of opinion;

(e) State whether or not there has been a material change from the applicable date of the annual statement to the date of the rendering of the actuarial opinion which should be considered in reviewing the opinion and include language identical or substantially similar to one (1) of the following:

1. "This opinion is updated annually as required by statute. To the best of my knowledge, there have been no material changes from the applicable date of the annual statement to the date of the rendering of this opinion which should be considered in reviewing this opinion."; or

2. "The following material change(s) which occurred between the date of the statement for which this opinion is applicable and the date of this opinion should be considered in reviewing this opinion: (describe the change or changes.);";

(f) Include a statement regarding unanticipated events which is identical or substantially similar to the following: "The impact of unanticipated events subsequent to the date of this opinion is beyond the scope of this opinion. The analysis of asset adequacy portion of this opinion should be viewed recognizing that the company's future experience may not follow all the assumptions used in the analysis"; and

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

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

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

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

(8) If the appointed actuary does not express an opinion as to the accuracy and completeness of the listings and summaries of policies in force or asset oriented information, there shall be attached to the opinion, the statement of a company officer or accounting firm who prepared such underlying data which shall:

(a) Include language identical or substantially similar to the following:

1. "I (name of officer), (title), of (name of company or accounting firm), hereby affirm that the listings and summaries of policies and contracts in force as of December 31, (year), and other liabilities prepared for and submitted to (name of appointed actuary) were prepared under my direction and, to the best of my knowledge and belief, are substantially accurate and complete."; or

2. "I, (name of officer), (title) of (name of company, accounting firm, or security analyst), hereby affirm that the listings, summaries and analyses relating to data prepared for and submitted to (name of appointed actuary) in support of the asset-oriented aspects of the opinion were prepared under my direction and, to the best of my knowledge and belief, are substantially accurate and complete."; and

(b) Include the signature, address, and telephone number of the officer of the company, accounting firm, or security analyst, whichever

is applicable.

(9) A company shall include additional paragraphs:

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

(b) If the appointed actuary must disclose the method of aggregation for reserves of different products or lines of business for asset adequacy analysis;

(c) If the appointed actuary must disclose reliance upon any portion of the assets supporting the asset valuation reserve (AVR), interest maintenance reserve (IMR), or other mandatory or voluntary statement of reserves for asset adequacy analysis;

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

(e) If the appointed actuary must disclose whether additional reserves of the prior opinion date are released as of this opinion date, and the extent of the release; or

(f) If the appointed actuary chooses to briefly describe the assumptions which form the basis for the actuarial opinion.

Section 7. Description of Actuarial Memorandum Including an Asset Adequacy Analysis. (1) In accordance with KRS 304.6-171, the appointed actuary shall prepare a memorandum to the company which shall describe the actuarial analysis accomplished in support of the actuarial opinion which is based on an asset adequacy analysis pursuant to Section 6 of this administrative regulation.

(2) The memorandum shall:

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

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

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

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

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

(b) The commissioner finds that the analysis described in the memorandum fails to meet the standards of the Actuarial Standards Board; or

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

(4) In preparing the memorandum, the appointed actuary may rely on, and include as a part of the actuarial memorandum, memoranda prepared and signed by another actuary who is qualified in accordance with Section 2 of this administrative regulation with respect to the subjects covered in the memorandum.

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

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

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

(8) The reviewing actuary shall not be an employee of a consulting firm involved with the preparation of any prior memorandum or opinion for the insurer pursuant to this administrative regulation for

any one of the current year or the preceding three (3) years.

(9) When an actuarial opinion based on an asset adequacy analysis in accordance with Section 6 of this administrative regulation is provided, the memorandum shall demonstrate that the analysis has been done in accordance with the standards for asset adequacy referred to in this administrative regulation.

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

(a) For reserves:

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

2. Source of liability in force;

3. Reserve method and basis;

4. Investment reserves; and

5. Reinsurance arrangements.

(b) For assets:

1. Portfolio descriptions, including a risk profile disclosing the quality, distribution and types of assets;

2. Investment and disinvestment assumptions;

3. Source of asset data; and

4. Asset valuation bases.

(c) Analysis basis:

1. Methodology;

2. Rationale for inclusion or exclusion of different blocks of business and how pertinent risks were analyzed;

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

4. Criteria for determining asset adequacy; and

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

(d) Summary of results; and

(e) Conclusion.

(11) The memorandum shall include a statement which indicates that the memorandum conforms to the appropriate Standards of Practice and which shall include language identical or substantially similar to the following: "Actuarial methods, considerations, and analyses used in the preparation of this memorandum conform to the appropriate standards of practice as promulgated by the Actuarial Standards Board, which standards form the basis for this memorandum."

Section 8. Additional Considerations for Analysis. (1) For the asset adequacy analysis for the statement of actuarial opinion provided in accordance with Section 6 of this administrative regulation, reserves and assets may be aggregated by either of the following methods:

(a) Aggregate the reserves and related actuarial items, and the supporting assets, for different products or lines of business, before analyzing the adequacy of the combined assets to mature the combined liabilities. The appointed actuary must be satisfied that the assets held in support of the reserves and related actuarial items so aggregated are managed in such a manner that the cash flows from the aggregated assets are available to help mature the liabilities from the blocks of business that have been aggregated; or

(b) Aggregate the results of asset adequacy analysis of one or more products or lines of business, the reserves for which prove through analysis to be redundant, with the results of one or more products or lines of business, the reserves for which prove through analysis to be deficient. The appointed actuary shall determine that the asset adequacy results for the various products or lines of business for which the results are so aggregated:

1. Are developed using [a] consistent economic scenarios; or

2. Are subject to mutually independent risks, i.e., the likelihood of events impacting the adequacy of the assets supporting the redundant reserves is completely unrelated to the likelihood of events impacting the adequacy of the assets supporting the deficient

reserves.

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

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

(4) An appropriate allocation of assets in the amount of the interest maintenance reserve (IMR), whether positive or negative, shall be used in any asset adequacy analysis. Analysis of risks regarding asset default may include an appropriate allocation of assets supporting the asset valuation reserve (AVR). AVR assets may not be applied for any other risks with respect to reserve adequacy. Analysis of these and other risks may include assets supporting other mandatory or voluntary reserves available to the extent not used for risk analysis and reserve support. The amount of the assets used for the AVR shall be disclosed in the Table of Reserves and Liabilities of the opinion and in the memorandum. The method used for selecting particular assets or allocated portions of assets shall be disclosed in the memorandum. The Table of Reserves and Liabilities is provided in Appendix A of this administrative regulation.

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

(a) The qualified actuary shall follow standards adopted by the Actuarial Standards Board; and

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

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

7. An immediate decrease of three (3) percent and then level.

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

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

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

(b) [On] An outside index, such as Treasury yields, for assets of the appropriate length on a date close to the valuation date.

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

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

- (a) The procedures followed;
- (b) The analyses performed;
- (c) The bases for assumptions; and
- (d) The results obtained.

Section 9. Liabilities to be Covered. (1) The statement of actuarial opinion shall apply to all in force business on the statement date regardless of when or where issued, including, but not limited to, the following:

- (a) Reserves of Exhibits 8, 9, and 10 of the annual statement;
- (b) Claim liabilities of Exhibit 11, Part I of the annual statement; and

(c) Any equivalent item in a separate account statement.

(2) If the appointed actuary determines as the result of asset adequacy analysis that a reserve should be held in addition to the aggregate reserve held by the company and calculated in accordance with KRS 304.6-070, 304.6-150, 304.6-155, 304.6-171, and 304.6-180, the company shall establish the additional reserve.

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

(a) For December 31, 1997, the additional reserve divided by three (3);

(b) For December 31, 1998, two (2) times the additional reserve divided by three (3).

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

ADMINISTRATIVE REGISTER - 2726

APPENDIX A TABLE OF RESERVES AND LIABILITIES

Asset Adequacy Tested Amounts		Reserves and Liabilities			
Statement Item	Formula Reserves (1)	Additional Actuarial Reserves (a) (2)	Analysis Method (b)	Other Amount (3)	Total Amount (1)+(2)+(3) (4)
Exhibit 8					
A Life Insurance					
B Annuities					
C Supplementary Contracts Involving Life Contingencies					
D Accidental Death Benefit					
E Disability - Active					
F Disability - Disabled					
G Miscellaneous					
Total (Exhibit 8, Item 1, Page 3)					
Exhibit 9					
A Active Life Reserve					
B Claim Reserve					
Total (Exhibit 9, Item 2, Page 3)					
Exhibit 10					
1 Premiums and Other Deposit Funds					
1.1 Policyholder Premiums (Page 3, Line 10.1)					
1.2 Guaranteed Interest Contracts (Page 3, Line 10.2)					
1.3 Other Contract Deposit Funds (Page 3, Line 10.3)					
2 Supplementary Contracts Not Involving Life Contingencies (Page 3, Line 3)					
3 Dividend and Coupon Accumulations (Page 3, Line 5)					
Total Exhibit 10					
Exhibit 11, Part 1					
1 Life (Page 3, Line 4.1)					
2 Health (Page 3, Line 4.2)					
Total Exhibit 11, Part 1					
Separate Accounts (Page 3, Line 27)					
TOTAL RESERVES					

IMR (Page ___, Line ___)	
AVR (Page ___, Line ___)	(c)

Table Notes:

(a) The additional actuarial reserves are the reserves established under Section 9(2) or (3) of this administrative regulation.

(b) The appointed actuary should indicate the method of analysis, determined in accordance with the standards for asset adequacy analysis of this administrative regulation by means of symbols which should be defined in footnotes to the table.

(c) Allocated amount.

RON KREITER, Deputy Commissioner

GEORGE NICHOLS III, Commissioner

LAURA M. DOUGLAS, Secretary

SUETTA W. DICKINSON, General Counsel

APPROVED BY AGENCY: May 1, 1998

FILED WITH LRC: May 5, 1998 at 1 p.m.

CONTACT PERSON: Sharron Burton, Counsel, Kentucky Department of Insurance, 215 West Main Street, P.O. Box 517, Frankfort, Kentucky 40602, Telephone Number: (502) 564-6032, Ext. 249, Fax Number: (502) 564-1456.

REGULATORY IMPACT ANALYSIS

Contact person: Sharron S. Burton

(1) Type and number of entities affected: This administrative regulation will apply to all life insurance companies, fraternal benefit societies, and to life insurance companies and fraternal benefit societies which are authorized to reinsure life insurance, annuities, or accident and health insurance business in the state of Kentucky. There are approximately 607 life insurance companies, 20 fraternal benefit societies, and 35 reinsurers to which this administrative regulation will apply.

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

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: There have been no public comments received regarding this issue.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: There have been no public comments received regarding this issue.

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

1. First year following implementation: Each entity to which this administrative regulation applies will be required to draft and submit to the department an actuarial opinion and, if applicable, an actuarial memorandum.

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

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: The department will receive and evaluate all actuarial opinions and memorandums submitted by the entities to which this administrative regulation applies. The opinions and memorandums will be based on actuarial standards and will contain an actuarial analysis of the companies' reserves and liabilities. Therefore, the review and evaluation of the actuarial opinion and

memorandum by the department will require the expertise of a qualified actuary.

2. Continuing costs and savings: A departmental review of the actuarial opinions and memorandums submitted by the companies will require the expertise of a qualified actuary on a yearly basis.

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: Each entity to which this administrative regulation applies will be required to draft and submit to the department an actuarial opinion and, if applicable, an actuarial memorandum which is based on generally accepted actuarial standards and which includes the information specified by this administrative regulation.

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

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: The budget for the Department of Insurance will be used to implement this administrative regulation.

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

(a) Geographical area in which administrative regulation will be implemented: There have been no public comments received regarding this issue.

(b) Kentucky: There have been no public comments received regarding this issue.

(7) Assessment of alternative methods; reasons why alternatives were rejected: In order to maintain its accreditation status, the Department of Insurance is required by the National Association of Insurance Commissioners to promulgate this administrative regulation. Accreditation assures that all financial examinations and statistics have been produced using uniform procedures and standards. Accreditation status also assures that the financial examinations and statistics produced in the state of Kentucky are reliable and conform with the baseline guidelines established by the National Association of Insurance Commissioners. Absent this administrative regulation, the department's accreditation status is in jeopardy. The department promulgated an emergency regulation which incorporated certain portions of the model regulation by reference. Comments received from the public indicated that the industry preferred that the incorporated material be included within the body of the regulation. The department agreed to eliminate the incorporated material and place the information in the body of the administrative regulation. Therefore, the ordinary regulation does not contain any material incorporated by reference as does its emergency counterpart.

(8) Assessment of expected benefits:

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

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

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

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

(a) Necessity of proposed regulation if in conflict:

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

(10) Any additional information or comments: None

(11) TIERING: Is tiering applied? No, tiering is not applied since this administrative regulation applies to all life insurance companies, fraternal benefit societies, and to all life insurance companies and

fraternal benefit societies which are authorized to reinsure life insurance, annuities, or accident and health insurance business in the state of Kentucky.

PUBLIC PROTECTION AND REGULATION CABINET
Department of Financial Institutions
(Amended After Hearing)

808 KAR 10:110. Records of investment advisers.

RELATES TO: KRS Chapter 292

STATUTORY AUTHORITY: KRS 292.500(3)

NECESSITY, FUNCTION, AND CONFORMITY: To insure that all investment advisers maintain and preserve sufficient records for the efficient operation of their business and for the protection of their clients.

Section 1. Pursuant to KRS 292.330(12)(a), all investment advisers shall meet the recordkeeping requirements of section 203 of the Investment Advisers Act of 1940 (15 USC 80b-3), and maintain their books and records in accordance with the rules enacted thereunder by the United States Securities and Exchange Commission. Such rules, which are expressly incorporated by reference as if set out herein, shall include but not necessarily be limited to 17 CFR 275.204-2. This administrative regulation shall apply to investment advisers subject the Securities Act of Kentucky regardless of whether they are subject to the Investment Advisers Act of 1940 or subject to the rules of the United States Securities and Exchange Commission. The commissioner may, by order and upon application for good cause shown, relieve an investment adviser of compliance with this administrative regulation in part if such action is in the public interest.

Section 2. For those advisers who maintain a principal place of business in a state other than Kentucky, the requirements of Section 1 of this administrative regulation shall be limited by the books and records and recordkeeping requirements of the state where the investment adviser has its principal place of business, provided that the adviser is registered in that state and in compliance with its books and records and recordkeeping requirements. [Every registered investment adviser shall maintain and keep current the following books and records:

(1) Ledgers (or other records) reflecting all assets and liabilities, income and expense and capital accounts;

(2) A record showing all payments received, including date of receipt, purpose and from whom received; and all disbursements, including date paid, purpose and to whom made;

(3) A record showing all receivables and payables;

(4) Records showing separately for each client the securities purchased or sold and, to the extent it has been made available to the investment adviser, the date and amount of and price at which such purchases or sales were executed. If available to the investment adviser this record should also show the name of the security broker-dealer who handled the transaction;

(5) Records showing separately all securities bought or sold by the clients of the investment adviser and indicating thereon with proper identification of the individual account, the date, amount, and the price at which such securities were purchased or sold by or for each client; or, in the alternative, a record showing all of such securities bought or sold by or for the accounts of all clients of the investment adviser in each month, the total number of shares or principal amount of each security bought or sold and the lowest and highest price at which such purchases or sales were made during the month;

(6) Copies of broker-dealers' confirmations of all transactions placed by the investment adviser for any account, and such other broker-dealers' confirmations as may be supplied to the investment

adviser by a client or broker-dealer.

Section 2. Every registered investment adviser shall preserve for a period of not less than three (3) years, the first two (2) years in an easily accessible place:

(1) All check books, bank statements, cancelled checks, and cash reconciliations;

(2) All bills or statements (or copies thereof) paid or unpaid, relating to the business of such investment adviser;

(3) Originals of all communications received and copies of all communications sent, pertaining to services rendered or to be rendered to its clients or customers by such investment adviser, other than interoffice or interdepartmental communications;

(4) All powers of attorney and other evidence of the granting of any discretionary authority in any account and copies of resolutions empowering an agent to act on behalf of any client;

(5) All written agreements (or copies thereof) entered into by an investment adviser relating to the business of such investment adviser including agreements with respect to any account, which agreements shall set forth the fees to be charged and the manner of computation and method of payment thereof.]

ARTHUR FREEMAN, Commissioner

COLLEEN KEEFE, Staff Attorney

APPROVED BY AGENCY: May 4, 1998

FILED WITH LRC: May 4, 1998 at 11 a.m.

CONTACT PERSON: Colleen Keefe, Staff Attorney, Department of Financial Institutions, 477 Versailles Road, Frankfort, Kentucky 40601, Telephone (502) 573-3390.

REGULATORY IMPACT ANALYSIS

Contact Person: Colleen Keefe, Staff Attorney

(1) Type and number of entities affected: Investment advisers who are required to be licensed by the department. The number is indeterminable.

(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: Indeterminable, no comments received.

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

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

1. First year following implementation: May reduce costs because of increased uniformity with SEC and other states.

2. Second and subsequent years: May reduce costs because of increased uniformity with SEC and other states.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: None

2. Continuing costs or savings: None

(b) Reporting and paperwork requirements: None

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

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Fees from regulated entities.

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

(a) Geographical area in which the administrative regulation will be implemented: Indeterminable, no comments received.

(b) Kentucky: Indeterminable, no comments received.

(7) Assessment of alternative methods; reasons why alternatives were rejected: No alternatives considered. Federal law mandates this change.

(8) Assessment of expected benefits:

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

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

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

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

(a) Necessity of proposed regulation, if in conflict:

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

(10) Any additional information or comments: This change adopts existing federal requirements and is intended to increase uniformity among the states pursuant to federal mandate.

(11) TIERING: Is tiering applied? No. Different treatment of individuals within the regulated class is not justified and would raise constitutional issues.

FEDERAL MANDATE ANALYSIS COMPARISON

1. 110 STAT. 3416, National Securities Markets Improvement Act of 1996 ("NSMIA").

2. NSMIA provides:

(a) States may not require registration of investment advisers with assets under management in excess of \$25 million or federal "covered securities";

(b) States must assume sole responsibility for regulation of investment advisers with assets under management of less than \$25 million;

(c) States must increase the uniformity of their regulation.

Pursuant to NSMIA, Kentucky must now not only regulate small investment advisers but also the representatives employed by those advisers.

3. NSMIA requires states to amend their securities statutes and regulations to comply with the mandate before October 1999.

4. The administrative regulation does not impose any additional or different requirements than those required by the federal mandate.

CABINET FOR HEALTH SERVICES Department for Mental Health and Mental Retardation Services Division of Mental Retardation (Amended After Hearing)

908 KAR 2:190. Supported living services.

RELATES TO: KRS 210.770 through 210.795

STATUTORY AUTHORITY: KRS 210.770 through 210.795

NECESSITY, FUNCTION, AND CONFORMITY: The Department for Mental Health and Mental Retardation Services is promulgating administrative regulations pursuant to KRS 210.795 that shall enable provisions of KRS 210.770 to 210.795 concerning supported living services to be implemented.

Section 1. Definitions. (1) "Adaptive and therapeutic equipment" means items recommended by a physician, or therapist which promote the recipient's independent functioning and communication.

(2) "Applicant" means a person who is eligible for supported living funds and submits a completed application to the regional supported living coordinator employed by the mental health/mental retardation board located in the region where the applicant resides by the deadline established in the application.

(3) "Application" means a written request for supported living

services which must be completed and submitted in accordance with Section 4 of this administrative regulation to the regional supported living coordinator.

(4) "Eligibility for services" means as stated at KRS 210.790(1).

(5) "Home modifications" means architectural changes, ramps, widening of doors, or other adaptations which need to be made to the recipient's place of residence to accommodate that person's disability.

(6) "Homemaker services" means cooking, cleaning, shopping, laundry housekeeping and practical assistance in maintaining the recipients household.

(7) "Impairment" means as stated at KRS 210.770(1) and (3).

(8) "Nominating organization" means one (1) of the organizations specified in KRS 210.775.

(9) "Personal care services" means assistance with feeding, bathing, dressing, transferring, turning, repositioning, activities of daily living, and if necessary, ambulation and emergency procedures.

(10) "Recipient" means a person who has applied and been approved for supported living funds by a Regional Supported Living Council.

(11) "Regional supported living coordinator" means a person who is responsible for fiscal and programmatic oversight of supported living funds and plans.

(12) "Regional Supported Living Council" means as stated at KRS 210.770(9) and 210.785.

(13) "Request for reconsideration" means the process to be followed when a recipient disagrees with a decision made by the regional supported living coordinator or council regarding a request for a supported living plan amendment.

(14) "Start-up grants" means an award of funds to a recipient for one (1) time expenses limited to a security deposit, down payment not to exceed ten (10) percent of the purchase price, closing costs for a home, purchase of furniture or equipment.

(15) "State Supported Living Council" means as stated at KRS 210.770(7) and 210.775.

(16) "Substantial limitation of a major life activity" means as stated at KRS 210.770(4).

(17) "Supported living" means as stated at KRS 210.770(5) and (6).

(18) "Supported living community resource developer" means a person who coordinates and assists a recipient to develop friendships, opportunities, networks, in the community on an individualized basis.

(19) "Supported living grant" means an award of funds other than start-up grants by a Regional Supported Living Council to an applicant.

(20) "Supported living plan" means the document developed between the regional supported living coordinator and the recipient to account for the services to be provided and funds awarded as a supported living grant.

(21) "Supported living plan amendment" means a written, documented change in a supported living plan in the same fiscal year.

(22) "Transportation" means a service or mileage reimbursement for a person who transports the recipient to work or community activities.

Section 2. State Supported Living Council Operating Procedures.

(1) State Supported Living Council members shall:

(a) Adhere to the bylaws. Failure to act in accordance with the bylaws shall result in a request by the chairperson of the State Supported Living Council to recommend to the Governor the dismissal from the State Supported Living Council.

(b) Adhere to applicable laws and regulations concerning confidentiality.

(c) Neither influence, discuss, deliberate nor vote on decisions where the member has a personal, professional or financial interest of conflict and shall not be physically present in the meeting when such matters are discussed or voted upon.

(d) In no way assist another individual, regardless of where the

person resides, to complete an application for supported living services except as provided in subsection (2) of this section.

(2) State Supported Living Council members may assist in the completion of an application for supported living services for himself, if eligible, or an eligible family member.

Section 3. Regional Supported Living Council Operating Procedures. (1) Regional Supported Living Council members shall:

(a) Adhere to the bylaws. Failure to act in accordance with the bylaws shall result in a request by the chairperson of the Regional Supported Living Council to recommend to the State Supported Living Council for dismissal from the Regional Supported Living Council.

(b) Adhere to applicable laws and regulations concerning confidentiality.

(c) Neither influence, discuss, deliberate nor vote on decisions where the member has a personal, professional or financial interest of conflict and shall not be physically present in the meeting when such matters are discussed or voted upon.

(d) In no way assist another individual, regardless of where the person resides, to complete an application for supported living services except as provided in Section 3(2) of this administrative regulation.

(e) Comply with the evaluation criteria [application-review process] as established by the State Supported Living Council and the Department for Mental Health and Mental Retardation Services for a given fiscal year.

(f) Accord all recipients the same opportunity for personal interaction with the council.

(g) Accord all applicants the same opportunity for personal interaction with the council.

(2) Regional Supported Living Council members may assist in the completion of an application for supported living services for himself, if eligible, or an eligible family member.

Section 4. Applicant Responsibilities. (1) The applicant shall submit a completed application to the regional supported living coordinator where the applicant wishes to reside. The application shall specify:

- (a) Name;
- (b) Address;
- (c) Telephone number;
- (d) Social Security number;
- (e) Disability;
- (f) Type of services or supports requested;
- (g) Proposed budget.

(2) Supported living grants shall not be used for:

- (a) On-going rent or mortgage payments.
- (b) Payment of medical insurance premiums or unpaid medical bills.

(c) Supplementation of wages for staff in other publicly-funded programs.

(d) Modifications costing over \$2,500 to rental property.

(e) Home improvements not related to a person's disability.

(f) Rental of a vehicle for more than thirty (30) days in a fiscal year.

(g) Purchase of a vehicle.

(h) Living arrangements that include more than three (3) people who are eligible for supported living unless all are related legally or biologically as a family unit.

(i) Equipment or service which is obtainable from another program for which the applicant qualifies.

(j) Tuition or fees to programs or activities for more than thirty (30) days in a fiscal year where the majority of the participants are eligible to apply for supported living.

Section 5. Recipient Responsibilities. (1) Recipients of supported living grants shall:

(a) Participate in the development of a supported living plan in coordination with the supported living coordinator.

(b) Adhere to the supported living plan and request a plan amendment for desired changes.

(c) Negotiate with any service providing agency or any individual who provides services, either as an employee or independent contractor, about what services shall be provided.

(2) Recipients of supported living grants who are employers shall:

(a) Be responsible for the computation of required employee payroll, withholdings, workers' compensation, unemployment and actual payment of required withholdings, taxes and disbursements appropriate to being an employer.

(b) Establish terms of employment for any employee, to include time, duties and responsibilities. This shall be in the form of a signed agreement between the recipient and the employee.

(c) Establish terms for any independent contract to include services to be provided and compensation. This shall be in the form of a signed agreement between the recipient and the independent contractor.

(d) Neither sell equipment nor other items purchased with supported living funds without written consent of regional council.

(e) Comply with standards as set forth in KRS 210.795.

Section 6. Termination of a Supported Living Grant. Termination of a supported living grant shall occur for the following reasons if:

(1) Recipient does not use the funds in accordance with the principles of supported living.

(2) Recipient does not comply with employer responsibilities if applicable.

(3) Recipient takes up residence outside of Kentucky.

(4) Recipient requests termination of the supported living grant.

(5) Recipient dies.

Section 7. Reconsideration Process for Supported Living Plan or Plan Amendments. (1) Recipients who disagree with a decision by the regional supported living coordinator or Regional Supported Living Council regarding a supported living plan or plan amendment may request reconsideration, in writing, or alternative format within thirty (30) days following the notification by the regional supported living coordinator of the Regional Supported Living Council's decision.

(2) A request for reconsideration shall contain the following information and shall be submitted to the regional supported living coordinator for review by the Regional Supported Living Council:

- (a) Name.
- (b) Address.
- (c) Telephone number.
- (d) Decision(s) to be reconsidered.
- (e) Reason(s) for decision to be reconsidered.
- (f) Documentation supporting request for reconsideration.
- (g) Signature of person requesting reconsideration.

(3) The request for reconsideration, and supporting documentation, shall be reviewed by the Regional Supported Living Council. The council shall issue a written or alternative format response to the recipient no later than seven (7) working days after a decision has been made.

(4) The recipient may request a reconsideration by the State Supported Living Council if the Regional Supported Living Council's decision does not satisfy their request concerning a supported living plan or plan amendment.

(a) A request for reconsideration shall contain the following information and shall be submitted to the regional supported living coordinator for review by the State Supported Living Council:

- 1. Name.
- 2. Address.
- 3. Telephone number.
- 4. Decision(s) to be reconsidered.
- 5. Reason(s) for decision to be reconsidered.

6. Documentation supporting request for reconsideration.

7. Signature of person requesting reconsideration.

(b) The request for reconsideration and supporting documentation shall be reviewed by the State Supported Living Council.

1. The reconsideration shall include three (3) members of the State Supported Living Council, one (1) of whom shall be the chairperson or their designee.

2. The reconsideration shall include the recipient or his designee.

3. The reconsideration shall include two (2) members of the Regional Supported Living Council, one (1) of whom shall be the chairperson or their designee.

4. The State Supported Living Council shall issue a written response to the recipient and the Regional Supported Living Council shall be notified of the decision and an explanation for the decision within thirty (30) days.

(5) The recipient may request an administrative hearing if the State Supported Living Council's decision does not satisfy their request concerning a supported living plan or plan amendment.

(6) If a recipient disagrees with the determination made by the State Supported Living Council, the recipient may request an administrative hearing. The request shall be submitted no later than thirty (30) days after the receipt of the decision of the State Supported Living Council.

Section 8. Nonfunded Supported Living Applications. (1) Persons applying for supported living services who have not been funded may appeal based only on evidence that the procedures referenced to in Section 3(1)(c), (d), (e), (f), and (g) of this administrative regulation were not followed.

(2) An administrative hearing must be requested no later than thirty (30) days after notification that the application was not funded.

Section 9. Request for Administrative Hearing. (1) Recipients of services disagreeing with determinations for reconsideration made by the State Supported Living Council and persons who did not receive funding based on criteria in Section 8 of this administrative regulation may request an administrative hearing. The request shall be submitted within thirty (30) days of receipt of notification. [The recipient may request an administrative hearing if the State Supported Living Council's decision does not satisfy their request concerning a supported living plan or plan amendment.]

(2) [If a recipient disagrees with the determination made by the State Supported Living Council, the recipient may request an administrative hearing. The request shall be submitted no later than thirty (30) days after the receipt of the decision of the State Supported Living Council.]

(3) The recipient of supported living services or the person whose application was not funded shall submit a written request for an administrative hearing to the Commissioner of the Department for Mental Health and Mental Retardation Services, 100 Fair Oaks Lane, 4E-E [275 East Main Street], Frankfort, Kentucky 40621 containing the following information:

(a) Name.

(b) Address.

(c) Telephone number.

(d) Decision(s) to be reconsidered.

(e) The reason(s) the recipient disagrees with the council's decision.

(f) Documentation supporting the recipient's disagreement.

(g) Signature of person requesting reconsideration.

(4) The administrative hearing process shall be in accordance with KRS Chapter 13B.

Section 10. [9:] Regional Supported Living Coordinator Responsibilities. The regional supported living coordinator shall:

(1) Provide support to the regional council to include making

arrangements for meetings, sending notices and agendas to members, providing budgetary information for them to make decisions on funding, maintaining a financial account of expenditures, maintaining minutes from meetings and arranging for reimbursement for members' expenses.

(2) Disseminate applications for supported living which include the evaluation criteria by which the applications shall be reviewed.

(3) Provide assistance in the completion of supported living applications upon request by an eligible applicant or individual on the applicant's behalf.

(4) Receive supported living applications, document date received, send notice of receipt of application, and maintain a database of funded applicants.

(5) Maintain a database of unfunded applicants to include name, address, phone number, county, services requested and amount of funding requested.

(6) Prescreen applications to determine completeness, compliance with the instructions, and conformity with KRS 210.770(5) and (6).

(7) Upon recommendation for funding by the regional council, meet with the recipient to finalize a supported living plan within thirty (30) days of the recommendation for funding.

(8) Provide information concerning recordkeeping, taxes, worker's compensation and unemployment insurance responsibilities the recipient has related to the supported living plan.

(9) Maintain supported living plans which are currently funded, including the receipt of bills, checking against the plan, approving for payment, and keeping a record of payments.

(10) Arrange for billing and payment directly to a vendor for one (1) time expenditures and follow-up either by visit or telephone, within ninety (90) days, to determine if the vendor delivered the service or equipment.

(11) Attend trainings and meetings for regional supported living coordinators.

(12) Submit quarterly reports to the Division of Mental Retardation Services regarding expenditures and activities.

(13) Contact the appropriate nominating agency as governed by KRS 210.775(2)(b) and 210.785 to notify them of the need for a nomination(s) to replace an individual on the Regional Supported Living Council.

Section 11. [10:] Contract Agency Responsibilities. The contract agency for supported living funds shall:

(1) Implement the supported living program in accordance with KRS 210.770.

(2) Assume fiscal accountability for the state funds designated for the program.

(3) Provide necessary administrative support personnel within the contract agency office.

(4) Provide liability insurance for the Regional Supported Living Council.

(5) Establish a cost center and record staff costs for working with the regional council, applicants, recipients and administrative duties.

(6) Establish a budget with the Regional Supported Living Council for council expenses on a fiscal year basis.

(7) Maintain files and records, including applications, recipient plans, and quarterly reports.

Section 12. [11:] Department for Mental Health/Mental Retardation Services Responsibilities. The Department for Mental Health/Mental Retardation Services shall:

(1) With the State Supported Living Council, establish deadlines, budgets and priorities for supported living funds.

(2) Maintain aggregate financial and programmatic data.

(3) Advocate for program expansion.

(4) Provide technical assistance and training for the supported

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living program.

(5) Regularly inform the nominating organizations per KRS 210.775(2)(b) and 210.785 of their responsibility to solicit nominations for both the State and Regional Supported Living Councils.

Section 13. [42:] Nominating Organizations' Responsibilities. Nominating organizations shall:

(1) Solicit nominations of qualified nominees per their designated category to serve on both the State and Regional Supported Living Councils in accordance with KRS 210.775.

(2) Submit the biography form to the Director, Division of Mental Retardation Services, 100 Fair Oaks Lane, 4E-E [275-East Main Street], Frankfort, Kentucky 40621.

Section 14. Material Incorporated by Reference. (1) Kentucky supported living application necessary for the implementation of the supported living program shall be herein incorporated by reference.

(2) Material incorporated by reference may be inspected and copied at the Department for Mental Health and Mental Retardation Services, Division of Mental Retardation Services, 100 Fair Oaks Lane, 4E-E, Kentucky 40621 between the hours of 8 a.m. through 4:30 p.m., eastern time, Monday through Friday.

ELIZABETH REHM WACHTEL, Commissioner

JOHN H. MORSE, Secretary

M. DEEP, Attorney

APPROVED BY AGENCY: May 7, 1998

FILED WITH LRC: May 7, 1998 at noon

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Elizabeth Rehm Wachtel, Ph.D., Commissioner

(1) Type and number of entities affected: There are 14 regional supported living councils which are affected. These councils are charged with the responsibility of administering the funds for this program. Benefits expected from the administrative regulation are to promote consistency and clarity of operating procedures and practices for the State Supported Living Council, regional supported living councils, supported living applicants and recipients in order to safeguard the principles and intent of KRS Chapter 210.

(2) Direct and indirect cost or savings to those affected:

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

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

(3) Effects on the promulgating administrative body: Minimal

(a) Direct and indirect cost or savings:

1. First year: There will be some costs providing technical assistance to the councils, but the cost will be minimal.

2. Continued cost or savings: Same as the first year.

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: Minimal

(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: Existing general and agency funds.

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

(a) Geographical area in which administrative regulation will be implemented: A public hearing was held on January 30, 1997 and no comments relating to economic impact from these administrative

regulations were received.

(b) Kentucky: A public hearing was held on January 30, 1997 and no comments relating to economic impact on Kentucky were received.

(7) Assessment of alternative methods; reasons why alternatives were rejected: Regulations are being promulgated to implement Section 1-6 of KRS Chapter 210 for the Supported Living Program.

(8) Assessment of expected benefits:

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

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

(c) if detrimental effect would result explain detrimental effect: None

(9) Identify any statute, administrative regulation or governmental policy which may be in conflict, overlapping, or duplication: There is no statute, administrative regulation, or governmental policy in conflict.

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

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

(10) Any additional information or comments: None

(11) TIERING: Is tiering applied? No. Tiering was not used since the requirements apply equally to all programs.

PROPOSED AMENDMENTS RECEIVED THROUGH NOON, MAY 15, 1998

KENTUCKY REAL ESTATE COMMISSION
(Amendment)

201 KAR 11:190. Rules of practice and procedure [for hearings] before the Kentucky Real Estate Commission.

RELATES TO: KRS Chapter 13B, 324.160

STATUTORY AUTHORITY: KRS 13A.100(3), (4), (5), 324.281

NECESSITY, FUNCTION, AND CONFORMITY: To set forth practices and procedures for hearings held before the Kentucky Real Estate Commission. These rules and of practice and procedures are designed to inform the complainants and the real estate licensees of the steps to be followed in processing complaints through an administrative hearing before the Kentucky Real Estate Commission. To bring this administrative regulation in compliance with KRS Chapter 13B, concerning the rules of practice applicable to administrative hearings before an administrative agency such as the Kentucky Real Estate Commission; make technical changes to the administrative regulation and to better enable the Kentucky Real Estate Commission to investigate cases through normal case processes.

Section 1. Complaint Review and Investigation. (1) An aggrieved party shall file a complaint with the commission within two (2) years from actual knowledge of the cause of action, or from such time as circumstances would reasonably have put the aggrieved party on notice of such cause of action.

(2) Any complaint filed with the commission that fails to set forth a legitimate issue under KRS Chapter 324 shall be dismissed by the commission without further investigation or hearing.

(3) [(2)] If a complaint filed with the commission sets forth an issue that, if proved, would entail a violation of KRS Chapter 324, that complaint shall be assigned to a commission investigator for investigation in accordance with KRS 324.150.

(4) The commission may investigate a case partially or entirely through discovery methods and the taking of depositions in accordance with 201 KAR 11:190, Section 4.

(5) [(3)] Upon receipt of the complaint and answer and upon completion of the investigation, the commission may dismiss a case without an administrative hearing if no factual controversy is presented that could result in a violation of KRS Chapter 324.

(6) [(4)] Upon receipt of the complaint and answer and upon completion of the investigation, the commission may dismiss a case, upon advice of its general counsel, if insufficient evidence is discovered during the investigation to justify further proceedings.

(7) [(5)] Upon receipt of the complaint and answer and upon completion of the investigation, the commission may set a case for hearing in accordance with KRS Chapter 13B, 324.151 and 324.170.

(8) The commission shall issue appropriate orders concerning its resolution of a pending complaint. Transmittal of such order may be sent by regular mail to the last known address of the party and the party's counsel.

(9) If the commission decides not to conduct an administrative hearing in response to a complaint, the commission shall notify the complainant and respondent of its decision in writing, with a brief statement of the commission's reasons.

Section 2. Intervention; Joinder of Additional Parties. (1) In all complaints filed before the commission, the commission, or a hearing officer appointed by the commission, shall grant a petition for intervention if:

(a) The petitioner has a statutory right pursuant to KRS 324.151 to initiate the proceeding in which he wishes to intervene; or

(b) The petitioner has an interest which is or may be adversely affected by the outcome of the proceeding.

(2) A petition for intervention shall be filed with the commission and copies mailed to all parties named in the complaint or in the notice of hearing, at least fourteen (14) days before the hearing. The parties shall have seven (7) days in which to file any response they may have to the petition to intervene. The motion for intervention will then stand submitted for decision by the commission or the hearing officer, if one has been appointed.

(3) A petition to intervene may be granted by the commission or hearing officer, if one has been appointed, after consideration of the following factors and a determination that intervention is in the interests of justice:

(a) The nature of the issues;

(b) The adequacy of representation of the petitioner's interest that will be provided by the existing parties to the proceeding;

(c) The ability of the petitioner to present relevant evidence and argument; and

(d) The effect of intervention on the commission's ability to implement its statutory mandate.

(4) If a petitioner qualifies for intervention under subsection (3) of this section, the commission or hearing officer may impose conditions upon the intervenor's participation in the proceedings, either at the time that the intervention was granted or any subsequent time. Conditions may include:

(a) Limiting the intervenor's participation to designated issues in which the intervenor has a particular interest demonstrated by the petition;

(b) Limiting the intervenor's use of discovery, cross-examination, and other procedures to promote the orderly and prompt conduct of the proceedings;

(c) Requiring two (2) or more intervenors to combine their presentations of evidence and argument, cross-examination, discovery, and other participation in the proceedings; or

(d) Any other condition which in the interests of justice will provide for the expedient resolution of a complaint, conduct of proceedings or a hearing.

(5) The commission or the hearing officer, if one has been appointed, shall, at least three (3) working days prior to a hearing, issue an order granting or denying each then pending petition for intervention, specifying any conditions for participation under subsection (4) of this section and briefly state the reasons for the order. The commission or the hearing officer shall promptly provide notice of an order granting, denying or modifying an intervention to the petitioner for intervention, and to all parties.

Section 3. Motions and Requests for Withdrawal of Complaints or Dismissal. (1) All motions of any nature must be in writing and filed with the Kentucky Real Estate Commission, and shall be served on every other party to the action and the hearing officer assigned to the case.

(2) The party filing a motion shall tender a proposed order granting the relief requested.

(3) The movant may file a brief memorandum supporting the motion, and opposing parties may file brief memoranda in reply. Further memoranda (e.g., reply to response) shall not be filed.

(4) Every motion and response, the grounds of which depend upon the existence of facts not appearing in evidence, shall be supported by affidavits demonstrating such facts.

(5) Every motion, the grounds of which depend upon the existence of facts which movant contends are shown in the evidence or are admitted by the pleadings, shall make reference to the point in the record where that evidence or admission is found.

(6) Motions to dismiss or other motions affecting a substantive issue must be considered by a quorum of the commission members. Procedural issues, including motions for continuances or discovery motions may be ruled upon by the chairperson [chairman] of the commission or the hearing officer appointed by the commission.

(7) [(2)] Motions for a continuance of a hearing shall only be granted for good cause. A scheduling conflict of a party, a witness or an attorney for a party shall not be good cause for a continuance unless the request for the continuance is received within ten (10) working days of receipt of the notice of hearing.

(8) [(3)] A complainant has the right to withdraw a complaint within twenty (20) days of the date [of] the complaint is filed, or prior to the commission's receipt of an answer filed in accordance with KRS 324.151, whichever is earlier. Complaints may be withdrawn subsequent to this deadline only upon a showing of good cause and with the approval of the commission.

Section 4. [3:] Discovery. (1) Discovery and the taking of depositions shall be in accordance with the provisions of Civil Rules 26 to 37, inclusive, except for Civil Rule 27, which shall not apply to practice before the commission or a hearing officer.

(2) In all cases [~~for a hearing before the commission;~~] discovery through written or oral depositions, interrogatories, or requests for admission shall be permitted; provided that:

(a) The time, place and method of discovery imposes no undue burden upon the witness and other parties;

(b) Any oral deposition must be taken where the witness resides or does business;

(c) All the discovery will be completed fifteen (15) days prior to the hearing date, unless otherwise ordered by the commission or hearing officer, if one (1) has been appointed [and transcribed prior to the hearing date]; and

(d) Copies of all discovery documents and depositions shall be filed [are] filed with the commission at the cost of the party requesting discovery on or before the date set for a hearing.

(3) The commission or the hearing officer, if one has been appointed, may issue subpoenas and discovery orders when requested by a party or on its own volition. When a subpoena is disobeyed, any party may apply to the Circuit Court of the Judicial Circuit in which the administrative hearing is to be held for an order requiring obedience. Failure to comply with an order of the Circuit Court shall be cause for punishment as a contempt of the court.

(4) Depositions may be taken by telephone provided the reporter administering the oath to the witness and reporting the deposition is physically present with the witness at the time the deposition is given. Notice of telephonic deposition must include the following information:

(a) That the deposition is to be taken by telephone;

(b) The address and telephone number from which the call will be placed to the witness;

(c) The address and telephone number of the place where the witness will answer the deposition call; and

(d) That all opposing parties may participate in the deposition either at the place where the deposition is being given, at the place the telephone call is placed to the witness, or by conference call. If a party elects to participate by conference call, that party must contribute proportionate costs of the conference call.

(5) [(2)] The chairperson [chairman] of the commission or the hearing office appointed in that case shall have the right to deny, limit, restrict or mandate discovery.

(6) [(3)] Any notice of deposition must be served on the general counsel of the commission and the general counsel shall have the right to attend and participate in all depositions or other discovery proceedings pertaining to a case before the commission.

(7) [(4)] The commission's general counsel may, in his discretion, allow the parties to a case before the commission to review the investigative file of that case. If disclosure of said file prior to the hearing may impede or obstruct the prosecution of that case, the

investigative file shall not be disclosed until the termination of the administrative proceedings.

Section 5. [4:] Prehearing Conferences and Settlement Agreements. (1) Any party or the general counsel for the commission may request and the chairperson [chairman] of the commission or appointed hearing officer may order that a prehearing conference take place in a given case. The commission may also order the convening of a prehearing conference on its own volition.

(2) A prehearing conference shall be convened and conducted by the commission or a hearing officer upon reasonable notice to all parties to deal with the exploration of jurisdictional and procedural matters, settlement possibilities or facilitation of settlement, preparation of stipulations, clarification of issues, rulings on motions and witnesses, taking of evidence, issuance of subpoenas and orders, and all other matters that will promote the orderly and prompt conduct of the hearing.

(3) Any [A] prehearing conference shall be attended by all parties, attorneys of record and the general counsel of the commission;

(4) The commission or hearing officer may conduct all or part of a prehearing conference by telephone, television, or other electronic means, if each party to the prehearing conference has an opportunity to hear, and, if technically feasible, to see the entire proceeding as it occurs, and if each party agrees.

(5) Upon conclusion of a prehearing conference, the hearing officer shall issue a prehearing order incorporating matters determined at the prehearing conference. If a prehearing conference is not held, the hearing officer may issue a prehearing order, based upon the pleadings, to regulate the conduct of the administrative hearing.

(6) A [; a hearing officer appointed by the commission may attend said conference.

(2) ~~The purpose of a prehearing conference shall be to explore the possibility of settlement, prepare stipulations, clarify issues, address procedural motions and such other matters as will promote the orderly and prompt conduct of the hearing.~~

(3) ~~settlement agreement may be negotiated between the general counsel for the commission, the complainant and the respondent. All settlement agreements must be in writing and clearly provide that the parties understand that they are waiving their right to an administrative hearing and that the settlement agreement, if accepted and adopted by the commission, will become a final order.~~

(7) The commission shall review all proposed settlement agreements. [(4) Upon reviewing a proposed settlement agreement,] The commission may accept or reject said proposed settlement [proposal] in its entirety; no alterations to [such] an agreement may become a final order without the agreement and consent of all parties to the case. If a proposed settlement agreement is rejected by the commission, the commission shall return the proposed agreement to the parties to the agreement. If a settlement agreement is accepted, the commission shall issue an order approving settlement.

Section 6. [5:] Hearings. (1) The chairperson [chairman] of the commission or the duly appointed hearing officer shall preside over all administrative hearings and shall have the authority to rule on all motions, to control the conduct [procedure] of the hearing and to admit or exclude testimony or other evidence.

(2) All hearings conducted pursuant to the provisions of KRS Chapter 324 and this administrative regulation, shall be in accordance with KRS Chapter 13B.

(3) Notice of an administrative hearing shall be provided pursuant to the provisions of KRS 13B.050.

(4) Evidence on behalf of the complainant shall be presented by the general counsel for the commission, unless the complainant chooses to employ a private attorney to present said evidence. In all cases, the general counsel shall have the right to question witnesses and offer evidence into the record.

(5) [(3)] Evidence may be admitted if it is of the type commonly

relied upon by reasonably prudent men and women in the conduct of their affairs. Irrelevant, immaterial or unduly repetitious evidence shall be excluded. Hearsay evidence, including affidavits, may be admitted for the purpose of supplementing competent evidence in the discretion of the chairperson [chairman] of the commission or the hearing officer appointed to conduct the hearing.

(6) [(4)] Two (2) or more proceedings under the act may be consolidated [joined] by the commission in its discretion.

(7) [(5)] All hearings before the commission or hearing officer shall proceed in the following order, wherever practical:

(a) Opening statements in the following order:

1. General counsel;
2. Complainants;
3. Respondents;

(b) Witnesses and evidence on behalf of the complainant;

(c) Additional witnesses and evidence presented by general counsel;

(d) Witnesses and evidence on behalf of respondent;

(e) Closing statements in the following order:

1. Respondents;
2. Complainants;
3. General counsel.

(8) [(6)] Testimony to be considered by the commission or hearing officer may be provided [taken] by deposition, in accordance with 201 KAR 11:190, Section 4. [KRS 324.190(3)-] A party or witness will be permitted [allowed] to testify by deposition, rather than attend the hearing, upon a showing of inability to attend or hardship, and that the other parties to the proceedings shall [will] have an opportunity to cross-examine the party or witness at said deposition.

Section 7. [6.] Posthearing Proceedings. (1) The hearing officer shall complete and submit to the commission, no later than sixty (60) days after receiving a copy of the official record of the proceeding, a written recommended order which shall include the hearing officer's findings of fact, conclusions of law and recommended disposition of the hearing, including recommended penalties, if any. The recommended order shall also include a statement fully advising the parties of their rights to file exceptions and their appeal rights.

(2) If an extension of time is needed by the hearing officer to complete and submit his recommended order to the commission, the hearing officer may be granted an extension, not to exceed thirty (30) days, by the chairperson of the commission, and based upon substantial proof that the extension of time is needed. The statement and order granting an extension shall be included in the record of the hearing, and notice of the extension shall be sent to all parties.

(3) A copy of the hearing officer's recommended findings of fact, conclusions of law and order, and recommended disposition of the hearing shall be sent to each party and their counsel, if represented, and each party shall have fifteen (15) days from the date the recommended order was mailed within which to file exceptions to the recommended findings of fact, conclusions of law and order and recommended disposition of the hearing with the commission. Transmittal of a recommended order may be sent by regular mail to the last known address of the party and the party's counsel. Exceptions must be received by the commission within the time denominated in this subsection, consistent with Civil Rule 6.01. The case shall thereafter stand submitted to the commission for its decision.

(4) The provisions of this section shall not apply to an administrative hearing where the hearing officer conducts the hearing in the presence of the commission, and the commission renders a decision without the recommendation of the hearing officer.

Section 8. Commission Action Upon Submission of a Case. (1) The commission shall deliberate on all cases in closed session. The specific findings of the commission shall be made in open session following the commission's deliberations.

(2) The commission shall consider the entirety of the record,

including the recommended findings of fact, conclusions of law and order and recommended disposition, and any exceptions duly filed to the recommended findings of fact, conclusions of law and order.

(3) The commission may accept the recommended order of the hearing officer and adopt it as the commission's final order, or it may reject or modify, in whole or in part, the recommended order, or it may remand the matter, in whole or in part, to the hearing officer for further proceedings.

(4) If a matter is remanded to the hearing officer for further proceedings, such remand shall be in writing, and shall state the reason for the remand, and include the proceedings or issues to be addressed by the hearing officer on remand. Following a remand, the matter will be returned to the commission for issuance of its final order.

(5) The final order of the commission shall be in writing, and stated in the record. If the final order differs from the recommended order of the hearing officer, the commission's order shall include separate statements of findings of fact and conclusions of law. The final order shall include the effective date of the order, fully advising the parties of their available appeal rights.

(6) The commission shall render a final order or order of remand in an administrative hearing within ninety (90) days after receipt of the official record of the hearing and submission of the hearing officer's recommended findings of fact, conclusions of law and order to the commission, unless the matter is remanded to the hearing officer for further proceedings, in which case the commission shall issue its final order within ninety (90) days after resubmission of the case for its decision.

(7) Unless waived by a party, a copy of the final order shall be transmitted to each party and to his attorney of record by certified mail, return receipt requested, sent to the last known address of the parties or their counsel, or by personal service. Service by mail shall be complete upon the date on which the commission receives the returned receipt or the returned notice.

(8) This section shall not apply to disposition of cases or settlements pursuant to KRS 13B.070(3) and Section 5 of this administrative regulation.

(9) The commission shall not reconsider any final order.

Section 9. Appeals. (1) Any party aggrieved by the action of the commission issuing a final order to a hearing, may appeal that decision pursuant to the provisions of KRS 13B.140.

(2) As a prerequisite to appeal, the aggrieved party shall first post a bond to secure the cost of the action and any award of damages, including restitution, or an award from the recovery fund, in an amount as may be approved by the clerk of the Circuit Court, with good and solvent surety.

ROBERT D. MASSEY, Chairman

JEFFREY C. BLAIR, General Counsel

APPROVED BY AGENCY: April 14, 1998

FILED WITH LRC: May 14, 1998 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on June 29, 1998, at 9 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 June 22, 1998, five work days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative

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tive 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 licensees with complaints pending before the Real Estate Commission.

(2) Direct and in direct 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 effect.

(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: May reduce costs to licensees when unnecessary hearings are eliminated.

(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 increase in this area will occur. Licensees currently provide documentation with regard to complaints directly to a commission investigator. The proposed change will allow the licensee to mail documentation directly to the commission. No other effect will occur in relation to reporting or paperwork required.

2. Second and subsequent years: No increase in this area will occur. Licensees currently provide documentation with regard to complaints directly to a commission investigator. The proposed change will allow the licensee to mail documentation directly to the commission. No other effect will occur in relation to reporting or paperwork required.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: This amendment will potentially result in significant cost reduction. The commission will be able to investigate some cases partially or entirely through discovery which will reduce investigative contractual costs. The commission may also be able to avoid unnecessary hearings as a result of the change. This reduction may be significant as the hearings cost the commission thousands of dollars.

2. Continuing costs or savings: This amendment will potentially result in significant cost reduction. The commission will be able to investigate some cases partially or entirely through discovery which will reduce investigative contractual costs. The commission may also be able to avoid unnecessary hearings as a result of the change. This reduction may be significant as the hearings cost the commission thousands of dollars.

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements: Licensees are required to submit documentation to commission investigators in current investigations. The proposed amendment will require the information be provided directly to the commission in response to discovery requests.

(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.

(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: No impact expected.

(7) Assessment of alternative methods; reasons why alternatives

were rejected: No other alternative methods available or 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.

(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: No 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: None

(11) TIERING: The proposed change will not require tiering as it will apply to all cases filed at the commission. No regulated class will be disproportionately impacted. The size and nonsize variables listed in KRS 13A.210(3) are inapplicable as are the methods listed in KRS 13A.210(2). As no tier modification is utilized, the variables to be monitored in KRS 13A.210(4) are inapplicable. This regulation does not effect small business concerns mentioned in KRS 13A.210(5).

GENERAL GOVERNMENT CABINET Kentucky Real Estate Appraisers Board (Amendment)

201 KAR 30:050. Examination, education, and experience requirement.

RELATES TO: KRS 324A.035(1), (3), 324A.040(2)

STATUTORY AUTHORITY: KRS 324A.020, 324A.035(1), (3), 324A.040(2)

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

Section 1. Examination. An applicant for certification as a certified general real property appraiser, certified residential real property appraiser, and licensed real property appraiser shall pass an examination that is specific for the certification or license applied for and has been approved by:

(1) The board; and

(2) The Appraiser Qualifications Board of the Appraisal Foundation.

Section 2. Required Hours of Instruction. (1) An applicant for the certified general real property appraiser examination shall have completed 180 [165] hours of approved instruction.

(2) An applicant for the certified residential real property appraiser examination shall have completed 120 hours of approved instruction.

(3) An applicant for the licensed real property appraiser examination shall have completed ninety (90) [~~seventy-five (75)~~] hours of approved instruction.

(4) An applicant for a license as a trainee real property appraiser shall have completed seventy-five (75) hours of approved instruction

[of which fifteen (15) hours shall relate to the Uniform Standards of Professional Appraisal Practice, incorporated by reference in 201 KAR 30:040].

(5)(a) Completed hours of instruction for one (1) type of appraiser may be credited to the number of hours of approved instruction required for another type of appraiser.

(b) Required hours of instruction shall have been completed prior to examination.

(6) The required hours of instruction for every applicant shall include at least fifteen (15) hours related to the Uniform Standards of Professional Appraisal Practice, incorporated by reference in 201 KAR 30:040.

Section 3. Approved Instruction. Approved instruction for certified general real property appraisers, certified residential real property appraisers, and licensed real property appraisers shall be subjects related to real estate appraisal that:

(1) Include coverage of the "Uniform Standards of Professional Appraisal Practice" of the Appraisal Standards Board of the Appraisal Foundation, incorporated by reference in 201 KAR 30:040; and

(2) For licensed real property appraisers and certified residential real property appraisers, place particular emphasis on the appraisal of one (1) to four (4) unit residential properties;

(3) For certified general real property appraisers, place particular emphasis on the appraisal of nonresidential properties; and

(4) Include coverage of:

- (a) Influences on real estate value;
- (b) Legal consideration in appraisal;
- (c) Types of value;
- (d) Economic principles;
- (e) Real estate markets and analysis;
- (f) Valuation process;
- (g) Property description;
- (h) Highest and best use analysis;
- (i) Appraisal statistical concepts;
- (j) Sales comparison approach;
- (k) Site value;
- (l) Cost approach; and
- (m) Income approach, including:
 - 1. Gross rent multiplier analysis;
 - 2. Estimation of income and expenses;
 - 3. Operating expense ratios; and
 - 4. Direct capitalization;
- (n) Valuation of partial interests;
- (o) Appraisal standards and ethics; and
- (p) Narrative report writing.

Section 4. Credit for Instruction. (1) Credit for instruction shall be granted if:

- (a) It is approved by the board;
- (b) It complies with the provisions of this administrative regulation;
- (c) It is documented by the applicant;
- (d) It is a course that requires at least fifteen (15) hours of instruction; and

(e) An applicant has passed a written examination of the subject matter of the course.

(2)(a) Credit toward the classroom hour requirement may be granted to a teacher of appraisal courses.

(b) A teacher of appraisal courses who wishes to receive credits shall:

- 1. File a written request with the board for receipt of credit;
- 2. Document the appraisal courses taught by title, date, place taught, and length of course; and

3. Elect to receive credit for either the:

- a. Classroom hour requirement; or
- b. Experience requirement.

(3) The board shall grant credit for courses to an applicant in

which:

(a) The applicant received credit from the course provider by challenge examination;

(b) The credit was granted by the course provider prior to July 1, 1990; and

(c) The board is satisfied with the quality of the challenge examination that was administered by the course provider.

Section 5. Approved Providers of Instruction. (1) Instruction may be obtained from approved:

- (a) Colleges or universities;
 - (b) Community or junior colleges;
 - (c) Real estate appraisal or real estate related organizations;
 - (d) State or federal agencies or commissions
 - (e) Proprietary schools; or
 - (f) Other providers.
- (2) A provider shall be approved by the board if the provider:
- (a) Applies to the board for approval on the "Appraisal Education Provider Application Form;" and
 - (b) Is determined by the board to be a qualified appraisal education provider.

Section 6. Required Experience. (1)(a) Prior to certification as a general real property appraiser [or a residential real property appraiser], an applicant shall have acquired 3,000 hours of [two-(2) calendar years] appraisal experience. This experience shall not be acquired in a period of fewer than thirty (30) calendar months.

(b) Prior to certification as a residential real property appraiser, an applicant shall have acquired 2,500 hours of appraisal experience. This experience shall not be acquired in a period of fewer than twenty-four (24) calendar months.

(c) Prior to licensure as a licensed real property appraiser, an applicant shall have acquired 2000 hours of appraisal experience. This experience shall not be acquired in a period of fewer than twenty-four (24) calendar months.

(d) [(b) 1,000 hours of appraisal experience acquired within a calendar year shall constitute a calendar year appraisal experience.

(e) The [two-(2) calendar years] appraisal experience required by this section may have been acquired in any [two-(2)] calendar years, whether or not the calendar years are consecutive. Hours may be treated as cumulative in order to achieve the necessary hours of appraisal experience.

(e) [(d)] For certification as a general real property appraiser, at least 1,500 hours [fifty-(50) percent] of the appraisal experience shall consist of nonresidential appraisal experience.

(2) [An applicant shall have acquired 2,000 hours of appraisal experience:

- (a) Prior to initial licensure; or
- (b) Within two (2) years of initial licensure for transitional licenses.

(3) [(a)] An applicant shall verify experience credit on forms approved and provided by the board.

(b) The board may request reports, file memoranda, and other documentation of appraisal experience.

(3) [(4)] Acceptable appraisal experience shall include:

- (a) Fee and staff appraisal;
- (b) Ad valorem tax appraisal;
- (c) Review appraisal;
- (d) Appraisal analysis;
- (e) Real estate counseling;
- (f) Highest and best use analysis;
- (g) Feasibility analysis or study; and
- (h) Teaching of appraisal courses as provided by this section.

Section 7. Continuing Education: Number of Hours Required. (1) Certified general real property appraisers, certified residential real property appraisers, and licensed real property appraisers shall:

- (a) Complete fourteen (14) [ten-(10)] hours of approved continuing

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education each license year; and

(b) Furnish the board with proof of compliance.

(2) Trainee real property appraisers who remain in this classification in excess of two (2) years shall be required in the third and successive years to:

(a) Complete fourteen (14) hours of approved continuing education before license renewal each license year; and

(b) Furnish the board with proof of compliance.

Section 8. Continuing Education. (1) Continuing education credit may be granted for ~~ten (10) hours~~:

(a) ~~Of~~ Approved continuing education courses; or

(b) For participation, other than as a student, in appraisal educational programs and processes.

(2) Appraisal educational programs and processes shall include:

(a) Teaching;

(b) Program development;

(c) Authorship of textbooks; or

(d) Similar activities that are determined by the board to be equivalent to obtaining continuing education.

(3) Continuing education credit shall be granted if a course:

(a) Is at least two (2) hours in duration;

(b) Subject ensures that an appraiser's skill, knowledge, and competency in real estate appraisal will be maintained or increased; and

(c) Has been approved by the board.

(4) Application for continuing education credit shall be submitted to the board in writing and documented by the approved provider of instruction.

Section 9. Material Incorporated by Reference. (1) "Appraisal Education Provider Application Form" (1992) is incorporated by reference.

(2) It may be inspected, copied, or obtained at the Kentucky Real Estate Appraisers Board, 2624 Research Park Drive, Room 308, Lexington, Kentucky 40511-8480, telephone: (606) 246-2017, Monday through Friday, 8 a.m. to 4:30 p.m.

JED DETERS, Chairman

JAMES J. GRAWIE, Assistant Attorney General

APPROVED BY AGENCY: March 27, 1998

FILED WITH LRC: May 15, 1998 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held the 23rd day of June, 1998, at 10 a.m. in Room 308, 2624 Research Park Drive, Lexington, Kentucky 40511-8480. Individuals interested in attending this hearing shall notify this agency in writing by the 16th day of June, 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: Sam Blackburn, Executive Director, Kentucky Real Estate Appraisers Board, 2624 Research Park, Room 308, Lexington, Kentucky 40511-8480, Telephone: (606) 246-2017, Facsimile: (606) 246-2020.

REGULATORY IMPACT ANALYSIS

Agency Contact: James J. Grawie

(1) Type and number of entities affected: Approximately 1300 licensed or certified appraisers 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 was amended to update the education, experience and continuing education requirements for licensed and certified appraisers. No other alternatives were deemed appropriate.

(8) Assessment of expected benefits:

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

(b) State whether a detrimental effect on environment and public health would result if not implemented: No detrimental effects on environment and public health would result if this administrative regulation were not implemented.

(c) If detrimental effect would result, explain detrimental effect: No detrimental effect would result.

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication:

(a) Necessity of proposed regulation if in conflict: No such statute, regulation, or policy exists.

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

(10) Any additional information or comments: There is no additional information or comments.

(11) TIERING: Is tiering applied? Tiering was not applied because all licensed and certified appraisers are treated uniformly under the law.

FEDERAL MANDATE ANALYSIS COMPARISON

(1) Federal statute or regulation constituting the federal mandate. 12 USC 3331, 3336, and 3339 and 12 CFR 225.64 and 225.65.

(2) State compliance standards. This administrative regulation institutes the education, experience and continuing education requirements that meet the standards promulgated by the Appraisal Qualification Board of the Appraisal Foundation.

(3) Minimum or uniform standards contained in the federal mandate. The federal mandate requires compliance with the minimum criteria for certification and licensure of real estate appraisers as promulgated by the Appraisal Qualification Board of the Appraisal Foundation.

(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 imposition of the stricter standard, or additional or different responsibilities or requirements. No stricter standard, or additional or different responsibilities or requirements imposed.

**TOURISM DEVELOPMENT CABINET
Department of Fish and Wildlife Resources
(Amendment)**

301 KAR 2:041. Shooting preserves and foxhound training enclosures.

RELATES TO: KRS 150.010, 150.170, 150.175, 150.180, 150.240, 150.630, 150.990

STATUTORY AUTHORITY: KRS ~~[13A.350;]~~ 150.170(1)(q), 150.240(2) ~~[-150.180]~~

NECESSITY, FUNCTION, AND CONFORMITY: KRS 150.170(1)(q) establishes a special license for nonresidents to hunt on shooting preserves and gives the department the authority to regulate commercial and private shooting preserves. KRS 140.240(2) authorizes the department to require shooting preserve permits. This administrative regulation is necessary to insure that detrimental exotic game species are not introduced, to insure uniformity of shooting preserve operating procedures, and to protect native wildlife.

Section 1. Definitions. (1) "Commercial shooting preserve" means a shooting preserve which is open to the public and charges fees for hunting.

(2) "Hoofed animal [animals]" means ungulate wildlife except wild hog and javelina.

(3) "Member" means a person whose name is ~~[Members" means persons whose names are]~~ included on a private shooting preserve membership list [lists] submitted to the department.

(4) "Private shooting preserve" means a shooting preserve which is open only to members.

(5) "Shooting preserve" means a place where animals are held or propagated in captivity and released to be taken by hunters.

Section 2. Shooting Preserve Hunting Seasons. (1) Quail - August 15 through May 15.

(2) Pheasant, chukar and mallard duck - year round.

(3) Hoofed animals - September 1 through May 15.

(4) Seasons for other species shall conform to those in effect where the preserve is located.

Section 3. Permits and Applications. (1) Without first obtaining a permit from the department, a person shall not operate:

(a) A shooting preserve; or

(b) A foxhound enclosure with field trial authorization to exempt a participant from hunting license requirements.

(2) An application:

(a) ~~[A person operating a commercial or private shooting preserve shall obtain a permit from the department.~~

(2) Applications for shooting preserve permits] Shall be made on a form ~~[standard forms]~~ supplied by the department;

(b) For a commercial shooting preserve permit or a foxhound training enclosure permit [-

~~(3) All applications for commercial shooting preserve permits]~~ shall be signed by each person ~~[all persons]~~ having a financial interest in the preserve.

(c) For a [(4) All applications for] private shooting preserve permit [permits] shall be:

1. Signed by the officers of the organization; and

2. Accompanied by a list of members. ~~[a list of members shall accompany the application. Officers shall submit updated membership lists as necessary to reflect current membership.]~~

(3) ~~[(5)]~~ The applicant for a [preserve] permit shall produce evidence that he is the owner or a bona fide lessee of record of the land where he proposes to establish a shooting preserve.

(4) ~~[(6)]~~ The department shall not issue a private shooting preserve permit to an organization with fewer than twenty (20) members.

(5) The operator of a private shooting preserve shall submit an updated membership list to the department as necessary to reflect current membership.

(6) An applicant for a foxhound enclosure permit shall provide evidence that he is the owner or operator of the enclosure.

(7) If the ownership or management of a foxhound training enclosure changes, the new owner or manager shall apply for a new permit.

Section 4. Nonresident Shooting Preserve Licenses. A commercial shooting [(1) Commercial] preserve operator [operators] wishing to sell nonresident shooting preserve licenses shall:

(1) Furnish the department with a surety bond in the amount of \$500.

(2) At the end of each month from September through May, ~~[the preserve operator shall]~~ send the department all money received from the sale of nonresident shooting preserve licenses.

Section 5. Shooting Preserve Size Requirements and Posting. (1) A shooting preserve shall not be larger than 2,000 acres. [Shooting preserves shall be 2000 acres or less.]

(2) The boundary of a [each] shooting preserve shall be marked with signs:

(a) At least eight (8) inches by twelve (12) inches;

(b) Having a white background with contrasting letters at least one (1) inch high;

(c) Reading "Shooting Preserve"; and

(d) Placed ~~[(3) Boundary signs shall]~~ not be more than 500 feet apart.

Section 6. Operating Requirements. (1) A person shall not hunt or carry a gun on a shooting preserve;

(a) Before checking in;

1. With the operator of a commercial shooting preserve; or

2. At a designated check station of a private shooting preserve.

(b) [(2) A person shall not hunt on a shooting preserve] Without a current Kentucky hunting license or shoot-to-retrieve field trial permit [unless exempted by KRS Chapter 150].

(2) A person [(3) Individuals] observing but not participating in a field trial shall not be [trials are not] required to possess a hunting license.

(3) A field trial [(4) Field trials] may be held throughout the year on a licensed shooting preserve [preserves].

[(5) Operators of commercial shooting preserves or members of private shooting preserves shall band bobwhite quail with a standard metal or plastic leg band before releasing the birds.

(6) Operators of commercial shooting preserves or members of private shooting preserves shall tag all game except banded bobwhite quail before the game is taken from the preserve.

(7) Operators of commercial shooting preserves or members of

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~~private shooting preserves shall clip the right hind toe of mallard ducks before releasing them.~~

~~(8) Properly tagged or banded game may be processed, transported or possessed.~~

~~(9) Tags or bands shall remain on game until it is prepared for cooking.~~

Section 7. Recordkeeping Requirements. (1) The permit holder shall maintain a daily record of hunting activities on the preserve showing the name, address and hunting license number of each person using the preserve.

~~(2) A commercial preserve operator [This record shall contain the names, addresses and hunting license numbers of all hunters using the preserve.~~

~~(3) Commercial preserve operators] shall obtain a receipt showing the number of game bird eggs or game birds purchased by species.~~

~~(3) A permit holder [(4) Permit holders] shall retain records and receipts for at least one (1) year.~~

~~(4) A member [(5) Members] hunting on a private shooting preserve shall have in his [their] possession;~~

~~(a) A bill of sale for birds released for hunting; or~~

~~(b) A copy of the preserve's commercial [pet and] propagation permit.~~

Section 8. Hoofed Animals. (1) A commercial shooting preserve permit holder shall not [may] release a [legally-acquired] hoofed animal unless:

~~(a) [animals on his preserve if] The preserve is;~~

~~1. A single block of land at least 300 acres; and~~

~~2. [is] Fenced to contain [all] released animals and to exclude native hoofed wildlife; and~~

~~(b) The hoofed animal was legally acquired.~~

~~(2) The permit holder shall:~~

~~(a) Keep a record of:~~

~~1. The number of each hoofed species released; and~~

~~2. The name, address, hunting license number [names, addresses, hunting license numbers] and game killed by species by each hunter.~~

~~(b) [(3)] At the end of each month from September through May, [the preserve operator shall] submit these records to the department.~~

Section 9. ~~[Commercial Foxhound Training Enclosure Permits. (1) Owners or operators of commercial foxhound training enclosures who wish field trial authorization to exempt participants from hunting license requirements shall obtain a commercial foxhound training enclosure permit.~~

~~(2) Applications for permits shall be made on standard forms supplied by the department and signed by all persons having a financial interest in the enclosure.~~

~~(3) The applicant shall produce evidence that he is the owner or operator of record of the enclosure.~~

~~(4) If ownership or management changes, the new owner or operator shall purchase a new permit.~~

Section 10. ~~Foxhound Training Enclosure Requirements. (1) To qualify for a permit, a foxhound training [an] enclosure shall be:~~

~~(a) At least 200 acres;~~

~~(b) [and] Fenced to enclose foxes; and~~

~~(c) Not [;~~

~~(2) The area shall not be] divided by an interior fence that [fences which limit or] restrict the range of foxes to less than 200 acres.~~

~~(2) [(3)] Two (2) or more enclosures under the same ownership or management may be licensed under the same permit if;~~

~~(a) Each is at least 200 acres; and~~

~~(b) The enclosures share [shares] a common fence.~~

~~(3) [(4)] The [owner or] operator shall provide;~~

~~(a) Proper food, water, and shelter from inclement weather for [all]~~

~~foxes within the enclosure.~~

~~(b) [(5) The owner or operator shall provide] At least one (1) natural or constructed den, box or hollow log per fifty (50) acres, sufficient to hold the [all] foxes within the enclosure, preventing their capture by hounds.~~

~~(c) If a fox is held [(6) Owners or operators who house foxes] for release into an enclosure, [shall provide] a cage;~~

~~1. Eight (8) feet long, four (4) feet wide and six (6) feet high;~~

~~2. With a shelf eighteen (18) inches wide, three (3) feet high and four (4) feet long; and~~

~~3. Containing an enclosed den box capable of housing a pair of foxes.~~

~~(4) A person [(7) An owner or operator] shall not hold more than one (1) pair of foxes or a pair and their young less than one (1) year old per cage.~~

Section 10. ~~[(11)] Operations and Licensing Requirements on Foxhound Training Enclosures. (1) A person shall not intentionally engage in an activity which would cause foxhounds to injure or kill a fox [foxes] in the enclosure.~~

~~(2) Fox chasing on permitted areas shall be considered [is] an authorized field trial if a fox is not [no foxes are] captured or killed.~~

~~(3) A person shall not take wildlife [may be taken] within an enclosure except under applicable administrative regulations and license requirements.~~

~~(4) An operator [Owners or operators] shall;~~

~~(a) Allow the department to inspect his [their] facilities; and~~

~~(b) [(5) Owners or operators shall] Comply with commercial pet and propagation permit requirements in obtaining and holding foxes.~~

~~[(6) No person shall purchase, barter, or trade live wild foxes taken in Kentucky.~~

~~(7) Foxes born in captivity may be purchased from licensed commercial propagators for release into foxhound training enclosures.~~

~~(8) Foxes obtained legally from another state may be transported into Kentucky if the purchaser first obtains required transportation permits and health certificates.~~

~~(9) Owners or operators may capture live foxes from the wild to release into commercial foxhound training enclosures only during the open furbearer season.]~~

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

~~(a) Commercial or Private Shooting Preserve Permit Application, 1998;~~

~~(b) Application for Commercial Foxhound Training Enclosure Permit, 1998.~~

~~(2) These forms may be inspected, copied or obtained at the Department of Fish and Wildlife Resources, #1 Game Farm Road, Frankfort, Kentucky 40601 Monday through Friday from 8 a.m. through 4:30 p.m.~~

C. THOMAS BENNETT, Commissioner

ANN R. LATTA, Secretary

MIKE BOATWRIGHT, Chairman

DOUGLAS SCOTT PORTER, Assistant Attorney General

APPROVED BY AGENCY: December 10, 1997

FILED WITH LRC: May 14, 1998 at 2 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on June 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 June 19, 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: In 1997, the department sold four foxhound training enclosure permits, 36 commercial shooting preserve permits and 133 private shooting preserve permits.

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

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

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: No public comment received. The amendment to this administrative regulation removes requirements that shooting preserve operators band or mark birds that are released. This should reduce the costs of doing business to the extent that these operators will not bear the expense of obtaining bands or paying the labor involved in applying them.

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

1. First year following implementation: This amended administrative regulation imposes no new paperwork or reporting requirements. Shooting preserve operators must report their activities to the department.

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: No increase in paperwork or reporting requirements.

(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: None

(b) Kentucky: None

(7) Assessment of alternative methods; reasons why alternatives were rejected: The alternative to removing the requirement that shooting preserve operators band or mark game birds was the perpetuation of a needless requirement.

(8) Assessment of expected benefits:

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

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

(c) If detrimental effect would result, explain detrimental effect: Not applicable.

(9) Identify any statute, administrative regulation or government

policy which may be in conflict, overlapping, or duplication: None have been identified.

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

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

(10) Any additional information or comments:

(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 (Amendment)

301 KAR 2:172. Deer hunting seasons and requirements.

RELATES TO: KRS 150.010, 150.170, 150.175, 150.180, 150.340, 150.360, 150.370, 150.390, 150.395, 150.990

STATUTORY AUTHORITY: 150.025(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 150.025 grants the department authority to set hunting seasons, bag limits, methods of taking and other matters necessary to carry out the purpose of KRS Chapter 150. This administrative regulation establishes deer hunting seasons, prescribes legal methods of taking and set forth tagging and checking requirements for deer hunting.

Section 1. Definitions. (1) "Adult" means an individual at least eighteen (18) years of age.

(2) "Antlered deer" means a deer with one (1) antler at least four (4) inches long, measured from the skin to the tip of the antler.

(3) "Antlerless deer" means a deer;

(a) Without antlers; or

(b) With both antlers less than four (4) inches long, measured from the skin to the tips of the antlers.

(4) "Any deer" means antlered or antlerless deer.

(5) "Archery equipment" means a long bow, recurve bow or compound bow [~~long bows, recurve bows or compound bows~~] incapable of holding an arrow at full or partial draw without aid from the archer.

(6) "Arrow" means the projectile fired from a bow or crossbow.

(7) "Barbed broadhead" means a point or portion of a blade projecting backward from a broadhead designed to hold an arrow within an animal.

(8) "Bonus antlerless archery permit" means a permit which, in conjunction with a statewide deer permit, allows the holder to take one (1) additional antlerless deer by archery.

(9) "Bonus antlerless zone one permit" means a permit which, in conjunction with a statewide deer permit, allows the holder to take one (1) additional antlerless deer in a zone one county.

(10) "Crossbow" means a bow designed or fitted with a device to hold an arrow at full or partial draw without aid from the archer.

(11) "Deer" means a white-tailed (*Odocoileus virginianus*).

(12) "Firearm" means a breech or muzzle-loading rifle, shotgun or handgun.

(13) "Fully automatic firearm" means a firearm which fires more than one (1) time with a single pull of the trigger.

(14) "License year" means the period from March 1 through the following last day of February.

(15) "Modern gun" means a rifle, handgun or shotgun which is loaded from the rear of the barrel.

(16) "Muzzle-loading gun" means a rifle, shotgun or handgun which is loaded from the discharging end of the barrel or discharging end of the cylinder.

(17) "Shotshell" means ammunition containing more than one (1) projectile.

(18) "Zone" means the grouping of counties or portions of

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counties as stipulated in 301 KAR 2:174, Deer hunting zones.

Section 2. Archery and Crossbow Season Dates. A deer hunter may use:

- (1) Archery equipment from the third Saturday in September through January 15.
- (2) A crossbow:
 - (a) For ten (10) days beginning the fourth Tuesday in November;
 - (b) During modern gun deer season; and
 - (c) During muzzle-loader seasons.

Section 3. Archery and Crossbow Zone Limits. (1) During the modern gun deer season or muzzle-loader seasons, a deer hunter using archery equipment or a crossbow shall observe the same limits as a hunter using a firearm.

(2) During the youth hunt as specified in Section 8 of this administrative regulation, a deer hunter using archery equipment may take any deer in Zones 1 through 6.

(3) During portions of archery or crossbow seasons not concurrent with the modern gun deer season or the muzzle-loader seasons a deer hunter:

- (a) May take any deer in Zones 1 through 6.
- (b) Shall not take antlerless deer in Zone 7.

Section 4. Muzzle-loading Gun Season Dates. A deer hunter may use a muzzle-loading gun:

(1) ~~[In 1997, for two (2) days beginning the third Saturday in October.~~

(2) ~~[In 1998 and subsequent years,] For two (2) days beginning the fourth Saturday in October.~~

(2) [(3)] For seven (7) days beginning the second Saturday in December.

(3) [(4)] During the modern gun deer season.

Section 5. Muzzle-loading Gun Season Zone Limits. During a season when a muzzle-loading gun is the only firearm ~~[seasons when muzzle-loaders are the only firearms]~~ allowed, a deer hunter using a muzzle-loading gun, archery equipment or a crossbow:

- (1) May take any deer in Zones 1 through 5.
- (2) Shall not take antlerless deer in Zones 6 or 7.

Section 6. Modern Gun Deer Season Dates. Beginning the second Saturday in November, a person may take deer with a firearm, archery equipment or a crossbow:

- (1) For ten (10) consecutive days in Zones 1 through 6.
- (2) For five (5) consecutive days in Zone 7.

Section 7. Zone Limits for the Modern Gun Deer Season. A deer hunter using firearms, archery equipment or crossbows during the modern gun deer season shall observe the following limits:

- (1) Zone 1: any deer for the entire ten (10) day season.
- (2) Zone 2: any deer the first five (5) days; antlered deer the last five (5) days.
- (3) Zone 3: any deer the first two (2) days; antlered deer the last eight (8) days.
- (4) Zone 4: antlered deer the first eight (8) days; any deer the last two (2) days.
- (5) Zones 5 and 6: antlered deer for the entire ten (10) day season.
- (6) Zone 7: antlered deer for the entire five (5) day season.

Section 8. Youth Hunt. (1) ~~[In 1997,] For two (2) consecutive days beginning on the third [fourth] Saturday in October, a person under the age of sixteen (16) may use a firearm to take:~~

- (a) Any deer in Zones 1 through 5.
- (b) Antlered deer in Zones 6 and 7.
- (2) ~~[In 1998 and subsequent years, the youth hunt shall be for two~~

~~(2) consecutive days beginning on the third Saturday in October.~~

(3) An adult accompanying a juvenile during the youth hunt shall:

- (a) Not carry a firearm ~~[firearms]~~; and
- (b) Comply with the hunter orange provisions of Section 12 of this administrative regulation.

Section 9. Use of Tags. A deer hunter:

- (1) Shall not tag an antlered deer with an "antlerless deer" tag.
- (2) May tag either antlered or antlerless deer with the "any deer" tag.

(3) Using a bonus antlerless archery permit or a bonus antlerless zone one permit shall:

- (a) Not take an antlered deer;
- (b) Have the receipt portion of a valid statewide deer permit in his possession; and
- (c) Tag and check deer as required by Sections 15 and 16 of this administrative regulation.

Section 10. Illegal Hunting Equipment. (1) A person shall not use or possess while deer hunting:

- (a) A device capable of taking a deer except a firearm, crossbow or archery equipment. ~~[firearms, archery equipment or crossbows;]~~
- (b) Rimfire ammunition.
- (c) A fully-automatic firearm. ~~[Fully-automatic firearms;]~~
- (d) A firearm ~~[Firearms]~~ with a magazine capacity greater than ten (10) rounds.
- (e) Steel jacketed ammunition.
- (f) Tracer bullet ammunition.
- (g) A shotgun shell containing more than one (1) projectile. ~~[Shot-shells;]~~
- (h) A broadhead smaller than seven-eighths (7/8) inch wide.
- (i) A barbed broadhead.
- (j) A crossbow without a working safety device.
- (k) A chemically treated arrow.
- (l) An arrow with a chemical attachment.
- (2) Except when a firearm is ~~[firearms are]~~ permitted for deer hunting, a person hunting deer with archery equipment or a crossbow shall not carry a firearm. ~~[firearms;]~~

Section 11. Season Limits. Except as provided in 301 KAR 2:178, 2:111 or 2:176, a person shall not take in one (1) license year more than:

- (1) One (1) antlered deer.
- (2) ~~Four (4) deer, provided that the person has purchased the appropriate bonus permits as provided in this administrative regulation. [Two (2) deer;]~~

Section 12. Hunter Orange. (1) During the modern gun deer season, muzzle-loader seasons or the youth hunt, a person hunting any species, and a person accompanying a hunter, shall display solid, unbroken hunter orange visible from all sides on the head, back and chest:

- (2) Subsection (1) of this section shall not apply to a person:
 - (a) Hunting migratory birds; or
 - (b) Hunting at night.
- (3) The hunter orange portions of a garment worn to fulfill the requirements of this section:
 - (a) May display a small section of another color.
 - (b) Shall not have mesh weave openings exceeding one-fourth (1/4) inch by any measurement.
- (4) A camouflage pattern hunter orange garment worn without additional solid hunter orange on the head, back and chest shall not meet the requirements of this section.

Section 13. Hunter Requirements, Shooting Hours, and Taking of Other Species. (1) An adult shall:

- (a) Accompany a person under sixteen (16) years old; and

(b) Remain in a position to take immediate control of the juvenile's firearm.

(2) An adult accompanying a juvenile hunter shall not be required to possess a hunting license or deer permit if the adult is not hunting.

(3) A deer hunter:

(a) May be in the woods or stands before or after daylight hours, but shall not take deer except during daylight hours.

(b) ~~May take wild hogs;~~

(c) ~~Shall check wild hogs at an official wildlife check station.~~

(d) Shall not use dogs.

(e) ~~Shall not take swimming deer.~~

(4) A hunter in a vehicle or boat, or on horseback, shall not take deer.

Section 14. License and Deer Permit Requirements. (1) Unless exempted by KRS 150.170(3), a person shall have a deer permit in his possession while hunting:

(a) Deer; or

(b) ~~Wild hogs; or~~

(c) ~~Coyotes~~ During seasons or wildlife management area hunts where firearms are allowed for deer hunting:

1. ~~Wild hogs; or~~

2. ~~Coyotes.~~

(2) ~~During a license year, a person [A person possessing an adult hunting license] shall use no more than;~~

(a) One (1) ~~statewide~~ ~~two (2) tag~~ deer permit; ~~[per license year];~~

(b) One (1) ~~bonus antlerless archery permit; and~~

(c) One (1) ~~bonus antlerless zone one permit.~~

(3) ~~In lieu of a statewide deer permit, a person possessing a valid junior statewide hunting license may use no more than two (2) junior deer hunting permits. [shall not use more than:~~

(a) ~~Two (2) individual junior deer hunting permits; or~~

(b) ~~One (1) two (2) tag permit.]~~

(4) A juvenile hunter shall use the tag accompanying a junior deer hunting permit as either the "antlerless" or "any deer" tag as appropriate to the season and zone.

(5) A person whose name does not appear on the permit shall not use any portion of the deer permit.

Section 15. Tagging Deer. (1) A person exempt from purchasing a deer permit by KRS 150.170(3) shall:

(a) Have a landowner/tenant carcass tag in his possession while hunting; and

(b) Tag deer as stipulated in subsection (2) of this section. [tag a deer removed from the property where it was taken by:

(a) Writing on a card the date when, and the county where, the deer was taken;

(b) Signing the card; and

(c) Attaching the tag to the carcass:

1. While transporting the carcass by vehicle; or

2. Whenever the hunter is not in physical possession of the carcass.]

(2) ~~After taking a deer, a person [required to possess a deer permit] shall:~~

(a) Immediately after taking a deer, and before moving the carcass, cut, punch, or mark with indelible ink the appropriate tag portion of the permit to indicate the day and month the deer was taken.

(b) Attach the tag portion of the permit to the carcass:

1. While transporting the carcass by vehicle; or

2. Whenever the hunter is not in physical possession of the carcass.

(3) ~~A person taking a deer during the September, 1997, portion of the archery season shall:~~

(a) ~~Write the word "Sept." on the tag with indelible ink; and~~

(b) ~~Cut, punch, or mark with indelible ink the appropriate portion of the permit to indicate the date the deer was taken.]~~

Section 16. Checking Deer. After taking a deer, a person shall check the deer by:

(1) Having [A person required to possess a deer permit shall:

(1) ~~Unless~~ an authorized employee of the department check [checks] the deer in the field; or

(2)(a) Calling the toll-free telephone number provided by the department;

(b) Providing the information requested by the automated check-in system; and

(c) Writing the authorization number given by the system on the appropriate carcass tag portion of the deer permit; or

(3)(a) Transporting [transport] the entire or field-dressed carcass to the nearest open check station by 9 a.m. on the day after the deer was taken.

(b) Giving [(2) Give] a completed game check card to the person checking the deer.

(c) Retaining [(3) Retain] the hunter's copy of the game check card until the deer is processed.

(d) Attaching [(4) Attach] the taxidermy portion of the game check card to any parts of the deer removed for mounting.

Section 17. Transporting and Processing Deer. (1) A person shall:

(a) Not transport unchecked deer out of Kentucky.

(b) Have proof that a deer or parts of deer brought into Kentucky were legally taken.

(c) Not submit deer taken outside Kentucky for Kentucky trophy deer listing.

(d) Not sell deer hides except to a licensed:

1. Fur buyer;

2. Fur processor; or

3. Taxidermist.

(2) A person who processes deer shall:

(a) Keep accurate records of the hunter's name, address and date received for each deer in his possession.

(b) Provide and affix to each deer a tag showing the hunter's name, address and date received. This tag shall remain on the carcass until it is processed.

(c) Not accept deer carcasses without proper owner identification.

C. THOMAS BENNETT, Commissioner

ANN R. LATTA, Secretary

MIKE BOATWRIGHT, Chairman

DOUGLAS SCOTT PORTER, Assistant Attorney General

APPROVED BY AGENCY: March 6, 1998

FILED WITH LRC: May 14, 1998 at 2 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on June 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 June 19, 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

ADMINISTRATIVE REGISTER - 2744

Contact Person: John Wilson

(1) Type and number of entities affected: An estimated 212,000 hunters will participate in white-tailed deer seasons provided for 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. This administrative regulation continues deer seasons in effect for many years and should have no impact on costs of living or employment.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: No public comments received. This administrative regulation will have no impact on the costs of doing business.

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

1. First year following implementation: This administrative regulation will impose a new requirement that landowners or tenants obtain a free carcass tag before hunting and check any deer taken. As in past years, deer hunters will be required to report deer harvested by checking the carcass at an official check station.

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

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: This administrative regulation will not cause the agency to incur additional costs or realize any additional savings.

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

3. Additional factors increasing or decreasing costs: None have been identified.

(b) Reporting and paperwork requirements: The department must collect, tabulate and analyze data from mandatory deer check stations. This is a continuing requirement which will impose no additional reporting or paperwork requirements on the agency.

(4) Assessment of anticipated effect on state and local revenues: State and local revenues will be positively affected by this activity, and by the purchase of required licenses and permits.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: The sale of hunting licenses and deer permits.

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

(a) Geographical area in which administrative regulation will be implemented: This administrative regulation applies to all geographical areas of the Commonwealth.

(b) Kentucky: Deer hunters expend money for equipment, transportation, food and lodging. These expenditures average approximately \$25 per hunter, for a positive direct economic impact of \$5,300,000.

(7) Assessment of alternative methods; reasons why alternatives were rejected: The only alternative to regulated hunting is closing the season. This alternative was rejected because white-tailed deer are a renewable natural resource and their numbers are at levels which can sustain regulated harvest by hunters.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: Regulated hunting controls deer populations and prevents the environmental damage to the landscape caused by deer overpopulation. Deer hunting provides outdoor recreation for over 200,000 Kentuckians annually.

(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:

Without hunting, deer populations grow unchecked, creating increasing levels of deer-vehicle collisions, crop depredations, and destruction of habitat.

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

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

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

(10) Any additional information or comments: None

(11) TIERING: Is tiering applied? Tiering is not appropriate because the administrative regulation applies equally to all individuals or entities it regulates. Disparate treatment of any persons of entity subject to this administrative regulation could raise questions of arbitrary action on the part of the agency. The "equal protection" and "due process" clauses of the Fourteenth Amendment of the U. S. Constitution may be implicated as well as Sections 2 and 3 of the Kentucky Constitution.

TOURISM DEVELOPMENT CABINET Department of Fish and Wildlife Resources (Amendment)

301 KAR 2:174. Deer hunting zones.

RELATES TO: KRS 150.010, 150.170, 150.175, 150.180, 150.340, 150.360, 150.370, 150.390, 150.395, 150.990

STATUTORY AUTHORITY: 150.025(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 150.025(1) gives the department the authority to make administrative regulations apply to a limited area or to the entire state. This administrative regulation zones the state for the purposes of controlling deer harvest and populations, and providing optimum opportunity for deer hunters.

Section 1. Definitions. "Zone" means counties or portions of counties grouped for deer hunting season dates and limits.

Section 2. Zone Assignments. (1) Zone 1 shall consist of Allen, Ballard, Boone, Butler, Carlisle, Christian, Crittenden, Fulton, Graves, Hancock, Hardin, Hickman, Hopkins, Jefferson, [Livingston,] Logan, Muhlenberg, Ohio, Oldham, Todd and Webster Counties.

(2) Zone 2 shall consist of Adair, [Allen, Ballard,] Barren, Boyd, [Butler,] Caldwell, [Carlisle,] Carroll, Carter, Elliott, Gallatin, Grayson, Greenup, Lawrence, Livingston, [Hancock, Hardin,] Lyon, McLean, Morgan, Owen, Rowan, Shelby, Trigg, and Trimble Counties.

(3) Zone 3 shall consist of Anderson, [Boyd,] Breckinridge, Calloway, Casey, [Carter,] Daviess, [Elliott,] Grant, [Graves, Grayson, Greenup,] Henderson, Henry, Marion, Marshall, McCracken, [Lawrence, McLean,] Meade, Metcalfe, Monroe, Nelson, [Morgan, Rowan, Shelby,] Simpson, Spencer, [Trigg,] Union, [and] Warren, Washington, and Woodford Counties.

(4) Zone 4 shall consist of [Adair, Anderson,] Bracken, Bullitt, [Calloway,] Campbell, [Casey,] Clinton, Cumberland, Edmonson, Fleming, Franklin, [Fulton,] Green, Harrison, Hart, Jessamine, [Henry, Hickman,] Kenton, Larue, Lewis, Mason, [McCracken, Marion, Marshall, Nelson,] Pendleton, Robertson, Russell, Scott, and Taylor [Spencer, Washington and Woodford] Counties.

(5) Zone 5 shall consist of Bath, Boyle, Clark, Fayette, Garrard, [Fleming, Franklin, Jessamine,] Johnson, Lincoln, Madison, [Lewis,] Martin, [Mason,] Menifee, Mercer, Montgomery, Nicholas, Pulaski, [Scott, Taylor and] Wayne, and Wolfe Counties.

(6) Zone 6 shall consist of Bourbon, Breathitt, Clay, [Clark, Fayette,] Floyd, [Garrard,] Jackson, Knott, Knox, Laurel, Lee, [Lincoln, Madison,] Magoffin, [Montgomery,] Powell, and Whitley [and Wolfe] Counties.

(7) Zone 7 shall consist of Bell, [Clay,] Estill, Harlan, Leslie, [Knox,] Letcher, McCreary, Owsley, Pike, and Rockcastle Counties.

Section 3. [~~Leslie and~~ Perry County [Counties] shall be closed to deer hunting.

C. THOMAS BENNETT, Commissioner
ANN R. LATTA, Secretary
MIKE BOATWRIGHT, Chairman
DOUGLAS SCOTT PORTER, Assistant Attorney General

APPROVED BY AGENCY: March 6, 1998

FILED WITH LRC: May 14, 1998 at 2 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on June 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 June 19, 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 212,000 hunters will participate in white-tailed deer seasons provided for 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. This administrative regulation continues deer seasons in effect for many years and should have no impact on costs of living or employment.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: No public comments received. This administrative regulation will have no impact on the costs of doing business.

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

1. First year following implementation: This administrative regulation will impose no new 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: This administrative regulation will not cause the agency to incur additional costs or realize any additional savings.

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

3. Additional factors increasing or decreasing costs: None have been identified.

(b) Reporting and paperwork requirements: The department must collect, tabulate and analyze data from mandatory deer check stations. This is a continuing requirement which will impose no additional reporting or paperwork requirements on the agency.

(4) Assessment of anticipated effect on state and local revenues: State and local revenues will be positively affected by this activity, and by the purchase of required licenses and permits.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: The sale of hunting licenses and deer permits.

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

(a) Geographical area in which administrative regulation will be implemented: This administrative regulation applies to all geographical areas of the Commonwealth. Placing counties in zones with more liberal or more restrictive harvest requirements may create slight economic impact.

(b) Kentucky: Deer hunters expend money for equipment, transportation, food and lodging. These expenditures average approximately \$25 per hunter, for a positive direct economic impact of \$5,300,000.

(7) Assessment of alternative methods; reasons why alternatives were rejected: The only alternative is a uniform season statewide. This alternative was rejected because such a uniform season would allow too many deer to be taken in some areas and not enough in others. It would neither provide optimal recreational opportunities nor meet deer population objectives.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: Regulated hunting controls deer populations and prevents the environmental damage to the landscape caused by deer overpopulation. Deer hunting provides outdoor recreation for over 200,000 Kentuckians annually.

(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: In some areas, deer populations could grow to levels which would create increasing incidents of deer-vehicle collisions, crop depredations, and destruction of habitat. In other areas, deer populations could be decreased or eliminated.

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

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

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

(10) Any additional information or comments: None

(11) TIERING: Is tiering applied? Tiering is applied to this administrative regulation. Each county of Kentucky was examined separately and placed in one of eight categories, depending upon deer population, last season's harvest and population objectives for the future.

TOURISM DEVELOPMENT CABINET Department of Fish and Wildlife Resources (Amendment)

301 KAR 2:176. Deer control tags.

RELATES TO: KRS 150.010, 150.105 150.170, 150.175, 150.340, 150.360, 150.390, 150.395, 150.990

STATUTORY AUTHORITY: KRS 150.105

NECESSITY, FUNCTION, AND CONFORMITY: KRS 150.015 allows the commissioner to authorize the destruction of wildlife that is causing damage. This administrative regulation is necessary to prescribe the conditions and procedures under which deer may be taken to alleviate localized agricultural and wildlife habitat damage until it is appropriate to apply deer herd stabilization or reduction measures on a county-wide basis through regular hunting seasons.

Section 1. Definitions. (1) "Damage to wildlife habitat" means:

(a) The existence of a browse line caused by deer; or

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(b) Damage to more than thirty-five (35) percent of native plant species preferred by deer.

(2) "Deer control tag [~~tags~~]" means a tag [~~special tags~~] issued by the department which authorizes a hunter [~~authorize hunters~~] to take antlerless deer during an open deer season.

(3) "Deer destruction permit [~~permits~~]" means written authorization from the department, pursuant to KRS 150.105, to take deer outside the regular hunting season framework.

(4) "Deer food plot" means a crop grown to attract and feed deer.

(5) "Department representative" means a department employee [~~person employed by the department~~] who is qualified and authorized by the commissioner to assess deer damage.

(6) "Landowner" means the person who has title to a particular property.

Section 2. Qualifying for Deer Control Tags. (1) A landowner [~~Landowners~~] with fewer than 1,000 contiguous acres shall qualify for deer control tags if:

(a) He has [~~They have~~] permitted deer hunting on the property during the previous deer season;

(b) Standard deterrent measures recommended by a department representative have proven ineffective or are impractical; and

(c) A department representative certifies deer damage to crops, gardens, property or wildlife habitat.

(2) A landowner with [~~Owners of~~] 1,000 contiguous acres or more shall qualify for deer control tags without evidence of damage if:

(a) He has [~~They have~~] permitted deer hunting on the property during the previous deer season;

(b) In the judgement of the department representative, regular deer seasons are inadequate to control deer populations on the property; and

(c) The landowner agrees to:

1. Follow the deer management practices recommended by the department representative; and

2. Supply the department with weight, age and condition data on deer taken from his property.

(3) A department representative shall make an on-site inspection of each property for which a request for deer control tags has been made, unless the property:

(a) Has been previously inspected by the department and the landowner affirms that deer damage still exists; or

(b) Is immediately adjacent to property assessed by a department representative as having severe deer damage.

(4) A landowner [~~Landowners~~] whose property is immediately adjacent to property assessed by a department representative as having severe deer damage shall [~~may~~] be issued damage control tags upon request of the landowner, even if there is no evidence of deer damage on their property.

(5) The department shall not issue deer control tags to a landowner [~~landowners~~] whose only damage is to a deer food plot [~~plots~~].

Section 3. Applying for Deer Control Tags. (1) A landowner [~~Landowners~~] wishing to apply for deer control tags shall contact the department through:

(a) A conservation officer;

(b) The appropriate district wildlife biologist; or

(c) The Division of Wildlife in Frankfort.

(2) If required by Section 2 of this administrative regulation, a department representative shall visit the property and assess the nature and extent of deer damage.

(3) A request for an assessment [~~Requests for assessments~~] shall be made on or before September 30 to be eligible for current year damage control tags.

(4) A request for an assessment [~~Requests for assessments~~] made after September 30 shall be considered for the following year.

Section 4. Number of Tags Issued. (1) The department shall determine the number of deer control tags to be issued for each landholding based on the recommendation of the department representative.

(2) Except as provided in Section 2(2) or (4) of this administrative regulation, the department shall not issue a deer control tag [~~tags~~] if:

(a) The county deer season is adequate to achieve the desired reduction in deer numbers; or

(b) [~~H~~] Crop or environmental damage is not present.

Section 5. Transfer of Deer Control Tags. (1) Deer control tags shall be issued in the landowner's name.

(2) A landowner [~~Landowners~~]:

(a) May transfer a deer control tag [~~their deer control tags~~] to another person [~~persons of their choice~~].

(b) Shall not issue more than four (4) [~~two (2)~~] deer control tags to an individual [~~hunter~~].

(c) Shall require hunters to sign a deer control tag [~~tags~~] at the time of transfer.

(d) Shall return unissued tags to the department before January 25.

Section 6. Use of Deer Control Tags. (1) A deer control tag: [~~Deer control tags~~]

(a) Shall not be valid except on the landholding for which it was [~~they were~~] issued.

(b) Shall expire after license year for which it was [~~they were~~] issued.

(2) A person using a deer control tag: [~~Hunters using deer control tags~~]

(a) Shall have in his [~~their~~] possession:

1. A deer control tag with his [~~their~~] signature; and

2. [~~A valid hunting license~~]. Unless exempt from license or permit requirements by KRS 150.170;

a. A valid hunting license; and

b. The receipt portion of a current deer permit; [~~-and~~

3. Unless exempted by KRS 150.170, the receipt portion of a current deer permit].

(b) May use deer control tags during archery, gun or muzzle-loader seasons to take antlerless deer.

(c) Shall not take more than four (4) [~~two (2)~~] deer per license year with deer control tags.

(d) Shall abide by the provisions of 301 KAR 2:172, except that he [~~they~~] shall:

1. Not take antlered deer;

2. Tag deer with the deer control tag rather than the carcass tag portion of the deer permit.

(3) Deer taken with a deer control tag [~~tags~~] shall not count toward the annual limit as specified in 301 KAR 2:172.

Section 7. Deer Destruction Permits. (1) The department may issue a deer destruction permit [~~permits~~]:

(a) To a landowner [~~landowners~~]:

1. Who continues [~~continue~~] to experience damage after being issued deer control tags; or

2. Whose property cannot legally be hunted.

(b) Where deer are posing a public safety or environmental threat.

(2) A deer destruction permit [~~permits~~] shall specify:

(a) The number and sex of deer to be destroyed;

(b) The method of destruction;

(c) The name of the person [~~names of the persons~~] who will destroy the deer; and

(d) The dates during which the destruction will take place.

(3) A deer destruction permit [~~Deer destruction permits~~] shall not be issued without the recommendation of a representative of the department and the approval of the commissioner.

(4) A person [~~Persons~~] destroying deer shall:

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- (a) Attach a disposal tag provided by the department to each carcass; and
- (b) Not remove the disposal tag until the carcass is processed or disposed of.

(5) A deer destruction permit [~~Deer destruction permits~~] shall not be used except as specified on the permit.

(6) Nothing in this administrative regulation shall prohibit a landowner or tenant from taking action to control deer that are posing a direct and immediate threat to life or property.

Section 8. Denial or Revocation or Deer Control Tags or Destruction Permits and Appeal Procedures. (1) The department may revoke deer control tags or destruction permits and deny future tags or permits to a person [~~persons~~] who:

(a) Fails [~~Fail~~] to comply with the requirements of this administrative regulation;

(b) Is [~~Are~~] convicted of a deer administrative regulation violation; or

(c) Otherwise abuses [~~abuse~~] the Deer Control Tag Program.

(2) An appeal [~~Appeals~~] of a revocation or a denial of eligibility shall be submitted in writing:

(a) To the commissioner:

(b) Within sixty (60) days of the date of the revocation or denial.

(3) An appeal [~~Appeals~~] of the commissioner's decision shall be made in writing to the Fish and Wildlife Resources Commission within sixty (60) days of the commissioner's decision.

(4) The Fish and Wildlife Resources Commission shall hear the appeal at its next regularly scheduled meeting.

C. THOMAS BENNETT, Commissioner

ANN R. LATTA, Secretary

MIKE BOATWRIGHT, Chairman

DOUGLAS SCOTT PORTER, Assistant Attorney General

APPROVED BY AGENCY: March 6, 1998

FILED WITH LRC: May 14, 1998 at 2 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on June 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 June 19, 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: The department makes approximately 600 damage assessments and issues 6,000 deer control tags annually. Destruction permits are issued to around 10 landowners annually.

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

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

of living.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: No public comments received. This administrative regulation will have on impact on costs doing business.

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

1. First year following implementation: This administrative regulation does not impose additional 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: This administrative regulation should create neither additional costs nor additional savings for the agency.

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

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements:

(4) Assessment of anticipated effect on state and local revenues: This administrative regulation should have no impact on state or local revenues.

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

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

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

(b) Kentucky: No public comments received. By providing methods for property owners to control deer damage to their property, this administrative regulation should create a positive economic impact by increasing yields from farmlands.

(7) Assessment of alternative methods; reasons why alternatives were rejected: The alternative of allowing deer damage to continue unabated is unacceptable to the department and to property owners; the alternative of liberalizing county deer seasons to accommodate damage complaints in specific areas is poor deer management, as is not controlling nor monitoring the destruction of depredating deer.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: Overpopulated deer herds can have serious deleterious effects upon natural ecosystems and on crops, orchards and forage.

(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: Localized but serious agricultural and ecosystem damage by excessive deer numbers.

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

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

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

(10) Any additional information or comments: This administrative regulation replaces and repeals 301 KAR 2:211. In addition to updating the wording and formatting to meet the requirements of KRS Chapter 13A, this administrative regulation stipulates a more detailed set of requirements for issuing deer control tags.

(11) TIERING: Is tiering applied? Tiering is used to the extent that individual properties are assessed for the nature and extent of deer damage and deer control tags are issued based upon those individual assessments. Tiering is not otherwise appropriate because the administrative regulation applies equally to all individuals or entities it regulates. Disparate treatment of any persons or entity subject to this

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administrative regulation could raise questions of arbitrary action on the part of the agency. The "equal protection" and "due process" clauses of the Fourteenth Amendment of the U. S. Constitution may be implicated as well as Sections 2 and 3 of the Kentucky Constitution.

TOURISM DEVELOPMENT CABINET Department of Fish and Wildlife Resources (Amendment)

301 KAR 2:178. Deer hunting on wildlife management areas.

RELATES TO: KRS 150.010, 150.170, 150.175, 150.180, 150.340, 150.360, 150.370, 150.390, 150.395, 150.990

STATUTORY AUTHORITY: 150.025(1), 150.620

NECESSITY, FUNCTION, AND CONFORMITY: KRS 150.025(1) and 150.620 grant the department authority to set hunting seasons, bag limits, methods of taking and other matters necessary to carry out the purpose of KRS Chapter 150 on wildlife management areas. This administrative regulation establishes deer hunting dates, application procedures and other matters pertaining to deer hunting on wildlife management areas that differ from statewide requirements.

Section 1. Definitions. (1) "Modern gun season" means the ten (10) consecutive-day period beginning the second Saturday in November.

(2) "Private inholding" means privately owned property completely surrounded by a WMA.

(3) "Quota hunt" means WMA deer hunts, including youth hunts, whose participants are selected by a random drawing.

(4) "Statewide deer requirements" means the season dates, zone descriptions and other requirements for deer hunting established in 301 KAR 2:172 and 2:174.

(5) "Wildlife management area" means a tract of land the department controls or manages through ownership, lease, license or cooperative agreement.

(6) "WMA" means a wildlife management area.

~~[(7) "WMA tag" means a carcass tag the department issues to hunters for use on WMA deer hunts.]~~

Section 2. General WMA Requirements. (1) Unless specified otherwise in this administrative regulation, statewide deer requirements apply to WMAs.

(2) If specific deer hunting dates are given for a WMA in this administrative regulation, persons shall hunt deer only on those dates.

(3) On WMAs, Westvaco Public Hunting Areas, the Daniel Boone National Forest, Reelfoot National Wildlife Refuge, Land Between the Lakes and the Big South Fork National River and Recreation Area, a person:

(a) Shall not use nails, spikes, screw-in devices, wire or tree climbers for attaching a tree stand [stands] or climbing a tree [trees].

(b) May use a portable stand or climbing device [stands and climbing devices] that does not injure a tree. [do not injure trees.]

(c) Shall not place a portable stand in a tree more than two (2) weeks before opening day, and shall remove them within one (1) week following the last day, of each hunting period.

(d) Shall plainly mark the portable stand with his name and address.

(e) Shall not use an existing permanent tree stand. [stands:]

(4) Limits. A hunter shall not take more than one (1) deer from each of the WMAs listed in Section 5 of this administrative regulation except that statewide limits shall apply to:

(a) A hunter may take two (2) deer from the] West Kentucky WMA;

(b) The Pioneer Weapons Area;

(c) Dewey Lake WMA;

(d) Higginson-Henry WMA;

(e) Westvaco WMA; or

(f) Yellowbank WMA.

~~[(b) A hunter shall not take more than one (1) deer from each of the other WMAs listed in Section 5 of this administrative regulation:]~~

(5) The owner of a private inholding or his guest:

(a) May hunt on the owner's lands without application;

(b) Shall follow all other requirements for the WMA which surrounds the inholding.

(6) A person shall not hunt on private inholdings when deer hunting is not allowed on the surrounding WMA.

(7) Except to travel through a WMA on established public roads or to use areas designated open by signs, a person without a valid quota hunt permit shall not enter a WMA during quota hunts on that area.

(8) A person hunting any species or a person accompanying a hunter shall wear hunter orange:

(a) Meeting the requirements specified in 301 KAR 2:272.

(b) On a WMA when firearms are permitted for deer hunting.

(9) A person shall not:

(a) Enter portions of WMAs marked by signs as closed to public access; or

(b) Hunt in portions of WMAs marked by signs as closed to hunting.

Section 3. [Quota Hunt Applications. (1) A person whose name is not drawn shall not hunt during quota hunts:

~~(2) A person wishing to participate in quota hunts shall apply on forms furnished by the department.~~

~~(3) More than one (1) person shall not apply per form.~~

~~(4) Four (4) or fewer persons may apply as a party by stapling their applications together and mailing them in the same envelope.~~

~~(5) A person over sixteen (16) years old shall not apply to more than one (1) quota hunt.~~

~~(6) A person at least ten (10) but not yet sixteen (16) years old by the scheduled hunt date may apply for:~~

~~(a) One (1) quota hunt;~~

~~(b) One (1) Ballard WMA youth hunt; and~~

~~(c) One (1) other youth hunt.~~

~~(7) An applicant who submits multiple applications or fails to meet application requirements shall be disqualified.~~

~~(8) An applicant shall stamp and self-address the application.~~

~~(9) An application shall be postmarked no later than August 31.~~

~~(10) The commissioner may extend the application deadline if the production or distribution of forms is delayed.~~

Section 4. [Quota Hunt Procedures. [(1)] A person selected by random drawing for a quota hunt:

~~(1) [(a)] Shall hunt on assigned dates and in assigned areas;~~

~~(2) [(b)] May use firearms, archery equipment or crossbows during the quota hunt.~~

~~[(c) Unless otherwise specified in Section 5 of this administrative regulation, a person shall check in before, and check out at the completion of, the quota hunt.~~

~~(d) If checking out is not required for a quota hunt, a person shall check his deer in accordance with the provisions of Section 16 of 301 KAR 2:172.~~

~~(2) When checking in, a person shall show:~~

~~(a) A hunting license, unless exempted from license requirements by KRS 150.170;~~

~~(b) A valid quota hunt permit;~~

~~(c) Proof of identity, including Social Security number; and~~

~~(d) A current deer permit with an unfilled tag valid for the hunt; or~~

~~(e) For youth hunts, a completed hunter's portion of a current deer season game check card.~~

~~(3) A person whose name does not appear on a quota hunt permit shall not use that permit.~~

(4) The youth hunt permit shall admit the person whose name appears on the permit and one (1) adult. The adult shall not be required to:

- (a) Possess a hunting license or deer permit; or
- (b) Apply in advance.
- (5) A quota youth hunt participant shall tag deer with WMA tags issued during check in.
- (6) Deer taken during quota youth hunts do not count toward season limits specified in 301 KAR 2:172.
- (7) A person drawn for quota hunts on Ballard, Higginson-Henry, Kleber, Taylorsville Lake and Yellowbank WMAs shall not apply to the same area quota hunt for the next three (3) seasons.]

Section 4. [5:] WMA Hunting Dates and Requirements. (1) Ballard WMA.

(a) Quota youth hunt [hunts], any deer or antlerless deer as determined by a random drawing [at check in]: two (2) consecutive days beginning[:

1.] the third Saturday in October.

[2. The fourth Saturday in October.]

(b) Quota hunt, any deer or antlerless deer as determined by a random drawing [at check in]: the fourth [first] Saturday and Sunday of October [November].

(c) Statewide deer requirements apply to the 300 acre tract south of Terrell Landing Road.

(d) A person shall check out before 6 [not hunt after 5:30] p.m.

(2) Beaver Creek WMA.

(a) Archery hunt, antlered deer: the third Saturday in September through January 15, except during the quota hunt.

(b) Quota hunt, antlered deer: two (2) consecutive days beginning the first Saturday in November.

(3) Buckhorn Lake WMA shall be open under Zone 7 requirements. [closed to deer hunting:]

(4) Cane Creek WMA.

(a) Archery hunt: Zone 6 archery season dates and harvest restrictions apply.

(b) Gun hunt, antlered deer: two (2) consecutive days beginning the second Saturday in November.

(5) Central Kentucky WMA.

(a) Archery hunt, any deer:

1. Wednesdays between the fourth week in September through December 17, except during scheduled field trials as posted on the area bulletin board.

2. December 18 through January 15.

(b) A deer hunter shall check in and check out.

(6) Clay WMA.

(a) Archery hunt, any deer: October 15 through January 15 [the day before the modern gun season], except during the quota hunt.

(b) Quota hunt, any [antlered] deer: the first Saturday and Sunday in November.

(c) Deer hunters shall check in and check out.

(7) Cyprus AMAX-Robinson Forest WMA.

(a) A person shall not hunt deer:

1. On the main block of Robinson Forest.

2. With a firearm during the modern gun season.

(b) Archery, muzzle-loader and youth hunt [and muzzle-loader] seasons shall correspond to statewide requirements[; except that a person shall not archery hunt during the youth quota hunt.

(c) Youth quota hunt, any deer: two (2) consecutive days beginning the fourth Saturday in October.

1. A juvenile hunter and the adult who will accompany him during the hunt shall participate in a training and safety seminar.

2. The department shall notify successful applicants of the time and place of the training and safety seminar].

(d) A deer hunter shall check in and out.

(8) Daviess County WMA shall be closed to deer hunting.

(9) Dewey Lake WMA.

(a) Archery hunts: any deer, the third Saturday in September through January 15, except persons shall not archery hunt during quota hunts.

(b) Youth quota hunt, any deer or antlerless deer as determined by a random drawing [at check in]: two (2) consecutive days beginning the first Saturday in November.

(c) Quota hunt, any deer or antlerless deer as determined by a random drawing at check in: two (2) consecutive days beginning the first Saturday in December.

(d) A deer hunter:

1. Shall check in and check out during quota hunts;

2. May take two (2) deer; and

3. Shall not take more than one (1) deer during a quota hunt.

(10) Fishtrap Lake WMA.

(a) Archery hunt, antlered deer: third Saturday in September through January 15, except during the quota hunt.

(b) Quota hunt, antlered deer: two (2) consecutive days beginning the fourth Saturday in November.

(11) Grayson Lake WMA.

(a) Youth quota hunts, any deer:

1. Two (2) consecutive days beginning the first Saturday in November.

2. Two (2) consecutive days beginning the first Saturday in December.

(b) Archery and crossbow hunt, any deer: the third Saturday in September through January 15.

(c) The portion of the area west of Route 1496 and east of Bruin Creek, the Bruin Creek fork of Grayson Lake, and Grayson Lake north of the Bruin Creek Fork is open to youth quota hunting and closed to archery and crossbow hunting.

(d) A deer hunter shall check in and shall check out.

(e) Quota hunters shall check out before 6 p.m.

(12) Green River Lake WMA.

(a) Quota hunt, antlered deer: two (2) consecutive days beginning the first Saturday in December.

(b) Archery hunt, any deer: the third Saturday in September through January 15, except during the quota hunt.

(c) An archery hunter shall check in and check out.

(13) Higginson-Henry WMA.

(a) Quota hunt, any deer or antlerless deer as determined by a random drawing [at check in]: two (2) consecutive days beginning the first Saturday in December.

(b) Archery hunts.

1. Antlerless deer, the third Saturday in September through October 15.

2. Any deer, October 16 through January 15 [December 31], except during the quota hunt.

(c) A deer hunter:

1. Shall check in and check out;

2. May take two (2) deer;

3. Shall not take more than one (1) deer during a quota hunt.

(14) Kentucky River WMA.

(a) Quota hunts, Zone 3 [4] harvest restrictions apply:

1. Five (5) consecutive days beginning the second Saturday in November.

2. Five (5) consecutive days beginning the day after the first quota hunt ends.

(b) Archery hunt, any deer: the third Saturday in September through January 15, except during the quota hunts.

(c) Quota hunters may hunt without checking in or out.

(d) Statewide deer requirements shall apply for muzzle-loader, crossbow, and youth hunt seasons.

(15) Kleber WMA.

(a) Quota hunt, any deer: two (2) consecutive days beginning the first Saturday in December.

(b) Archery hunt, any deer: the third Saturday in October through January 15, except during the quota hunt.

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- (c) Deer hunters shall check in and check out.
- (16) Lapland WMA.
- (a) Quota hunts, Zone 3 harvest restrictions apply:
1. Five (5) consecutive days beginning the second Saturday in November.
 2. Five (5) consecutive days beginning the day after the first quota hunt ends.
- (b) Archery hunt, any deer: the third Saturday in September through January 15, except during the quota hunts.
- (c) Quota hunters may hunt without checking in or out.
- (d) Statewide deer requirements shall apply for muzzle-loader, crossbow, and youth hunt seasons.
- (17) Curtis Gates Lloyd WMA.
- (a) Quota hunts, Zone 3 harvest restrictions apply:
1. Five (5) consecutive days beginning the second Saturday in November.
 2. Five (5) consecutive days beginning the day after the first quota hunt ends.
- (b) Archery hunt, any deer: the third Saturday in September through January 15, except during the quota hunts.
- (c) Quota hunters may hunt without checking in or out.
- (d) Statewide deer requirements shall apply for muzzle-loader, crossbow, and youth hunt seasons.
- (18) Mill Creek WMA.
- (a) Archery hunt, any deer: the third Saturday in September through January 15, except during the quota hunt.
- (b) Quota hunt, antlered deer: two (2) consecutive days beginning the first Saturday in November.
- (19) Mud Camp Creek WMA.
- (a) Quota hunts, Zone 4 harvest restrictions apply:
1. Five (5) consecutive days beginning the second Saturday in November.
 2. Five (5) consecutive days beginning the day after the first quota hunt ends.
- (b) Archery hunt, any deer: the third Saturday in September through January 15, except during the quota hunts.
- (c) Quota hunters may hunt without checking in or out.
- (d) Statewide deer requirements shall apply for muzzle-loader, crossbow, and youth hunt seasons.
- (20) Mullins WMA.
- (a) Quota hunts, Zone 3 [4] harvest restrictions apply:
1. Five (5) consecutive days beginning the second Saturday in November.
 2. Five (5) consecutive days beginning the day after the first quota hunt ends.
- (b) Archery hunt, any deer: the third Saturday in September through January 15, except during the quota hunts.
- (c) Quota hunters may hunt without checking in or out.
- (d) Statewide deer requirements shall apply for muzzle-loader, crossbow, and youth hunt seasons.
- (21) Obion Creek WMA.
- (a) Quota hunt, any deer: two (2) consecutive days beginning the first Saturday in November.
- (b) Archery hunt, any deer: the third Saturday in September through January 15, except during the quota hunt.
- (22) Paintsville Lake WMA.
- (a) Quota hunt, any [antlered] deer: two (2) consecutive days beginning the first Saturday in November.
- (b) Archery hunt, any deer: the third Saturday in September through January 15, except no archery hunting during the quota hunt.
- (c) A person participating in the quota hunt [deer hunter] shall check in and check out.
- (23) Peabody WMA.
- (a) Quota hunt, any deer: five (5) consecutive days beginning the second Saturday in November. Quota hunters may hunt without checking in or out.
- (b) Gun hunt, any deer: five (5) consecutive days beginning the day after the last day of the quota hunt.
- (c) Muzzleloader hunt, any deer: seven (7) consecutive days beginning the second Saturday in December.
- (d) Archery hunt, any deer: the third Saturday of September through January 15, except during quota hunt.
- (e) The youth hunt shall be open under statewide requirements.
- (24) Pennyrite WMA.
- (a) Quota hunt, any deer [antlered] or antlerless deer as determined by a random drawing [at-check-in]: two (2) consecutive days beginning the first Saturday in November.
- (b) Archery hunts:
1. Antlerless deer, the third Saturday in September through October 15.
 2. Any deer, October 16 through January 15, except during the quota hunt.
- (c) Quota hunters shall check out by 6 p.m. daily.
- (d) Archery hunters shall check in and check out.
- (25) Pioneer Weapons WMA. Statewide requirements apply except that a person:
- (a) Shall not use a breech-loading gun;
 - (b) May use a crossbow during the entire archery season.
- (26) Redbird WMA.
- (a) Archery hunt, antlered deer: the third Saturday in September through January 15, except during the gun hunt.
- (b) Gun hunt, antlered deer: two (2) consecutive days beginning the second Saturday in November.
- (c) Gun deer hunters shall check deer at the Redbird Ranger District Office.
- (27) Stewart Island WMA.
- (a) Quota hunt, any deer: two (2) consecutive days beginning on the last Saturday in October.
- (b) Quota hunt applicants shall be present at 10 a.m. central daylight time on the third Saturday of September in downtown Smithland to participate in a public drawing.
- (c) Archery hunt, any deer: the third Saturday in September through October 14.
- (28) Swan Lake WMA: closed to deer hunting.
- (29) R. F. Tarter.
- (a) Quota hunts, Zone 4 harvest restrictions apply:
1. Five (5) consecutive days beginning the second Saturday in November.
 2. Five (5) consecutive days beginning the day after the first quota hunt ends.
- (b) Archery hunt, any deer: the third Saturday in September through January 15, except during the quota hunts.
- (c) Quota hunters may hunt without checking in or out.
- (d) Statewide deer requirements shall apply for muzzle-loader, crossbow, and youth hunt seasons.
- (30) Taylorsville Lake WMA.
- (a) Archery hunt, any deer: the third Saturday in September through January 15, except during the quota hunts.
- (b) Quota hunt, any deer:
1. Two (2) consecutive days beginning the first Saturday in November.
 2. Two (2) consecutive days beginning the first Saturday in December.
- (c) Hunters shall check in and check out daily.
- (d) This area shall be open during the statewide youth hunt.
- (31) Tradewater WMA.
- (a) Quota hunt, any deer [antlered] or antlerless deer as determined by a random drawing [at-check-in]: two (2) consecutive days beginning the first Saturday in November.
- (b) Archery hunts:
1. Antlerless deer, the third Saturday in September through October 15.
 2. Any deer, October 16 through January 15, except during the quota hunt.

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(c) Quota hunters shall check out by 6 p.m. daily.

(d) Archery hunters shall check in and check out.

(32) Twin Knobs Campground. Quota hunt, any deer: the second Saturday in December for persons with a disability which impairs their mobility.

(33) West Kentucky WMA.

(a) Archery hunts, any deer, except that a person shall not archery hunt for nine (9) consecutive days beginning the Saturday following Thanksgiving, or the day before and during quota hunts:

1. The third Saturday in September through December 10 [14] on tracts one (1) through seven (7).

2. December 14 [15] through January 15 on tracts one (1) through seven (7) and in designated posted zones.

(b) Quota hunts, any deer.

1. Two (2) consecutive days beginning the third Saturday in November.

2. Two (2) consecutive days beginning the second Saturday in December.

(c) Youth quota hunt, any deer: two (2) consecutive days beginning the first Saturday in November.

(d) Crossbow hunt, any deer: the day following the youth [first] quota hunt for twelve (12) consecutive days.

(e) Gun hunters shall not use rifles or handguns.

(f) Persons shall not carry firearms in posted zones.

(g) A person shall not take more than two (2) deer from this WMA.

1. Two (2) deer may be taken by archery:

a. One (1) deer shall be antlerless and shall be tagged with a statewide tag.

b. The other deer may be antlered or antlerless and shall be tagged with a bonus quota hunt permit. [WMA tag issued on the area.]

2. One (1) deer may be taken by gun; it shall be tagged with a statewide tag or a bonus quota hunt permit. [state tag.]

3. A person shall not use more than one (1) bonus quota hunt permit on this area. [The department shall not issue more than one (1) WMA tag to an individual.]

(h) A deer hunter shall check in and check out.

(34) Westvaco public hunting areas. Statewide deer requirements apply; in addition, a person hunting on Westvaco property:

(a) Shall possess a Westvaco Hunting Permit.

(b) Shall not hunt from or place a tree stand within fifty (50) yards of the property line.

(c) The portion of the area south of Westvaco Road shall be closed to public access between November 1 and March 15.

(35) White City WMA.

(a) Archery hunt, any deer: the third Saturday in September through January 15, except during the quota hunts.

(b) Quota hunts, any deer.

1. Five (5) consecutive days beginning the second Saturday in November.

2. Five (5) consecutive days immediately following the first quota hunt.

(c) A quota hunter may hunt without checking in or out.

(36) Yatesville WMA. Statewide deer requirements apply except:

(a) A person shall not take antlerless deer during the first two (2) days of the modern gun season.

(b) A deer hunter shall check in and shall check out.

(37) Yellowbank WMA.

(a) The area shall be open during statewide archery and youth hunts. [Quota youth hunt, antlered or antlerless deer as determined by a random drawing at check in: two (2) consecutive days beginning the first Saturday in November.

(b) Archery hunts:

1. Antlered deer: the third Saturday in September through October 14.

2. Any deer: October 15 through January 15, except during the

quota hunt.]

(b) [(e)] A deer hunter shall check in and check out.

(c) The sex of deer to be taken during the youth hunt shall be determined by a random drawing at check in.

(d) Zone 3 harvest restrictions shall apply.

(38) Zilpo Campground. Quota hunt, any deer: the second Saturday in December for persons with a disability which impairs their mobility.

[Section 6-Incorporation by Reference. (1) "Application for Quota Hunt", (October, 1996 edition), Department of Fish and Wildlife Resources, is incorporated by reference.

(2) It may be inspected, copied, or obtained at Department of Fish and Wildlife Resources, Arnold L. Mitchell Building, #1 Game Farm Road, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.]

C. THOMAS BENNETT, Commissioner

ANN R. LATTA, Secretary

MIKE BOATWRIGHT, Chairman

DOUGLAS SCOTT PORTER, Assistant Attorney General

APPROVED BY AGENCY: March 6, 1998

FILED WITH LRC: May 14, 1998 at 2 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on June 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 June 19, 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 212,000 hunters will participate in white-tailed deer seasons provided for 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. This administrative regulation continues deer seasons in effect on wildlife management areas for many years and should have no impact on costs of living or employment.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: No public comments received. This administrative regulation will have no impact on the costs of doing business.

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

1. First year following implementation: This administrative regulation will impose no new reporting or paperwork requirements. As in past years, deer hunters will be required to check in and out at

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an official check station on most wildlife management areas, as well as submit applications for quota hunts.

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

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: This administrative regulation will not cause the agency to incur additional costs or realize any additional savings.

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

3. Additional factors increasing or decreasing costs: None have been identified.

(b) Reporting and paperwork requirements: The department must collect, tabulate and analyze data from deer check stations. This is a continuing requirement which will impose no additional reporting or paperwork requirements on the agency.

(4) Assessment of anticipated effect on state and local revenues: State and local revenues will be positively affected by this activity, and by the purchase of required licenses and permits.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: The sale of hunting licenses and deer permits.

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

(a) Geographical area in which administrative regulation will be implemented: This administrative regulation applies to all geographical areas of the Commonwealth.

(b) Kentucky: Deer hunters expend money for equipment, transportation, food and lodging. These expenditures average approximately \$25 per hunter, for a positive direct economic impact of \$5,300,000.

(7) Assessment of alternative methods; reasons why alternatives were rejected: The only alternative to regulated hunting is closing the season. This alternative was rejected because white-tailed deer are a renewable natural resource and their numbers are at levels which can sustain regulated harvest by hunters.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: Regulated hunting controls deer populations and prevents the environmental damage to the landscape caused by deer overpopulation. Deer hunting provides outdoor recreation for over 200,000 Kentuckians annually.

(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: Without hunting, deer populations grow unchecked, creating increasing levels of deer-vehicle collisions, crop depredations, and destruction of habitat.

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

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

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

(10) Any additional information or comments: None

(11) TIERING: Is tiering applied? Tiering is applied in this administrative regulation to the extent that each wildlife management area was examined for hunter density, deer population levels and other biological or social factors before applying specific season dates or other hunter requirements on these areas.

TOURISM DEVELOPMENT CABINET Department of Fish and Wildlife Resources (Amendment)

301 KAR 2:230. Shoot to retrieve field trial permits and procedures.

RELATES TO: KRS 150.025(1), 150.170, 150.175(1)(p), [150.235, 150.237, 150.305,] 150.330[, 150.360, 150.990]

STATUTORY AUTHORITY: KRS [13A-350,] 150.025(1), 150.175(1)(p)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 150.175(1)(p) authorizes the department to require permits for shoot-to-retrieve field trials. KRS 150.025(1) authorizes the department to set seasons and limits, and to promulgate administrative regulations necessary to carry out the provisions of KRS Chapter 150. This administrative regulation establishes seasons, permit application procedures, game bird marking, and other requirements for conducting a shoot-to-retrieve field trial. [This administrative regulation is necessary to control hunting seasons and conditions governing shoot to retrieve field trials on private and government-owned lands and the game bird species allowed. The function of this administrative regulation is to provide additional hunting and dog training opportunities and to control the introduction of exotic game birds that may be detrimental to native species or the department's experimental game bird releases. It also insures that native game birds are harvested only during the regular small game hunting season. The purpose of this amendment is to create a category of licensure for single day shoot to retrieve field trials that do not have a license requirement exemption.]

Section 1. Definitions. (1) "Field trial" means an organized event at which hunting dogs are worked and judged.

(2) "Game birds" means quail, chukar, mallard duck or pheasant species.

(3) "Shoot to retrieve field trial" means a field trail where game birds are taken. [trials] are those in which domestically or pen-raised game birds are killed or taken by hunters or shooters participating in the event.]

(4) "Take" is defined by KRS 150.010(37).

Section 2. (1) A person may conduct a shoot-to-retrieve field trial:

(a) From August 15 through May 15 for quail;

(b) Year-round for other game birds.

(2) Daily bag or possession limits shall not apply to birds taken during a shoot-to retrieve field trial.

Section 3. A person conducting a shoot-to retrieve field trial shall:

(1) Apply for a permit at least thirty (30) days before the event;

(a) To:

1. The department law enforcement officer in the county where the event will be conducted; or

2. The department's law enforcement captain in the wildlife district where the event will be conducted.

(b) On a form provided by the department; and

(c) Include:

1. The fee specified in 301 KAR 3:022; and

2. Written permission from the:

a. Landowner; or

b. Manager of public land where the event will be conducted.

(2) Provide pen-raised game birds for the trial.

(3) If the date or location of the trial changes:

(a) Notify the person from whom the permit application was obtained; and

(b) If the location changes, submit written permission to hold the trial at the new location.

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Section 4. A person participating in a shoot-to-retrieve field trial shall not:

- (1) Knowingly take a game bird that was not:
 - (a) Raised in captivity; and
 - (b) Provided by the organizer of the event.
- (2) Hunt on land not specified in the permit.

Section 5. Incorporation by Reference. (1) Shoot-to-Retrieve Field Trial Application, 5/98 edition, is incorporated by reference.

(2) It may be copied, inspected or obtained 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.

~~[Section 2. Hunting Seasons and Game Birds Allowed. Domestically reared and banded quails, August 15 through May 15 inclusive; and year round for domestically reared and banded chukar, pheasant and mallard duck on private and government-owned lands under a shoot-to-retrieve field trial permit issued by the department. The use of other domestically reared game birds may be authorized by the department upon written request.~~

~~Section 3. Bag and Possession Limits. There are no bag and possession limits.~~

~~Section 4. Banding Requirements. All domestically reared game birds listed in Section 2 of this administrative regulation must be leg banded prior to release, except mallards which must have a right hind toe clipped. Mallards must be tagged prior to transport. Bands or tags may be obtained at cost from the department at the time of application for the permit.~~

~~Section 5. Field Trial Permits, Applications and Fees. (1) At least thirty (30) days in advance, application for a shoot to retrieve field trial must be made through the conservation officer in whose county the trial is to be held or through the regional supervisor. Written permission of the private landowner or appropriate government authority must be obtained and submitted with the application. The permit will be issued through the department office in Frankfort. Application may be for either a four (4) day or single day field trial permit. With the four (4) day permit, all participants, whether residents or nonresidents, shall not be required to possess any other license to participate in the event for which the permit was issued. The permit shall expire four (4) days after the date on which the event began. With the single day permit, participants must have in their possession either a resident or nonresident annual Kentucky hunting license.~~

~~(2) See 301 KAR 3:021 for the fee amount which must be submitted with the permit application.~~

~~(3) A permit is not required to conduct shoot to retrieve field trials on licensed shooting preserves during the appropriate season as specified in other administrative regulation(s). All participants, however, must be licensed according to the provisions of other administrative regulations.~~

~~Section 6. Transporting and Possession of Game Birds. Birds harvested under this administrative regulation must remain banded until prepared for cooking.~~

~~Section 7. Rescheduling and Cancellations. A scheduled shoot to retrieve field trial date or place may be changed by notifying the conservation officer, regional supervisor or appropriate government authority on or prior to the original opening date. If the place is changed, written permission of the private landowner or appropriate government authority must be submitted to the conservation officer or regional supervisor. Fees for cancelled field trials will not be refunded.~~

~~Section 8. Bird Replacement and Out-of-bounds Birds. (1)~~

~~Unbanded quail harvested outside of the regular small game hunting season dates must be replaced at the end of the trial by releasing an equal number of live quail.~~

~~(2) Field trial game birds may be hunted only on the land described in the permit.]~~

C. THOMAS BENNETT, Commissioner

ANN R. LATTA, Secretary

MIKE BOATWRIGHT, Chairman

DOUGLAS SCOTT PORTER, Assistant Attorney General

APPROVED BY AGENCY: March 6, 1998

FILED WITH LRC: May 14, 1998 at 2 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on June 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 June 19, 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: The department issued 29 shoot-to-retrieve field trial permits in 1997. It is not known how many individuals participated in these events.

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

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

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: No public comments received. This administrative regulation will have no impact on the cost of doing business.

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

1. First year following implementation: The purpose of amending this administrative regulation is to remove a requirement that field trial operators band or otherwise mark birds to be released, and to replace unbanded birds taken during the event. Removing this requirement will decrease slightly to costs of conducting field trials.

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: Same as first year.

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements: None

(4) Assessment of anticipated effect on state and local revenues:

None

(5) Source of revenue to be used for implementation and

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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: None

(b) Kentucky: None

(7) Assessment of alternative methods; reasons why alternatives were rejected: The alternative to removing the requirement that field trial operators band or mark birds and replace unmarked birds taken during the trial would perpetuate a requirement that is no longer necessary.

(8) Assessment of expected benefits:

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

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

(c) If detrimental effect would result, explain detrimental effect: Not applicable.

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

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

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

(10) Any additional information or comments:

(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 (Amendment)

301 KAR 3:022. License, tag and permit fees.

RELATES TO: KRS 150.175, 150.195, 150.225, 150.235, 150.240, 150.280, 150.290, 150.485, 150.525, 150.603, 150.520, 150.660

STATUTORY AUTHORITY: KRS 150.195(4)(f), 150.225, 1998 RS HB 654

NECESSITY, FUNCTION, AND CONFORMITY: KRS 150.225 requires the department to prescribe reasonable license fees relating to hunting, fishing, and trapping. KRS 150.195(4)(f) requires the department to promulgate an administrative regulation establishing the license and permit terms and the expiration date of licenses and permits. 1998 RS HB 654 establishes the senior/disabled combination license. This administrative regulation establishes fees and terms for licenses and the expiration dates for the licenses.

Section 1. Licenses, tags, and permits listed in this section shall be valid from March 1 through the last day of February the following year.

(1) Sport fishing licenses:

(a) Statewide fishing license (resident): twelve (12) dollars and fifty (50) cents;

(b) Statewide fishing license (nonresident): thirty (30) dollars;

(c) Joint statewide fishing license (resident): twenty-two (22) dollars and fifty (50) cents;

(d) Trout permit (resident or nonresident): five (5) dollars.

(2) Commercial fishing licenses:

(a) Commercial fishing license (resident) plus ten (10) resident commercial gear tags: \$100;

(b) Commercial fishing license (nonresident) plus ten (10) nonresident commercial gear tags: \$500.

(3) Commercial fishing gear tags (not to be sold singly):

(a) Commercial fishing gear tags (resident) block of 10 tags: ten (10) dollars;

(b) Commercial fishing gear tags (nonresident) block of ten (10) tags: seventy-five (75) dollars.

(4) Hunting licenses:

(a) Statewide hunting license (resident): twelve (12) dollars and fifty (50) cents;

(b) Statewide hunting license (nonresident): ninety-five (95) dollars;

(c) Statewide junior hunting license (resident or nonresident): six (6) dollars and twenty-five (25) cents;

(d) Statewide waterfowl permit (resident or nonresident): seven (7) dollars and fifty (50) cents;

(e) Migratory game bird permit (resident or nonresident): four (4) dollars.

(5) Combination hunting and fishing license (resident): twenty (20) dollars.

(6) Senior/disabled combination hunting and fishing license (resident): five (5) dollars.

(7) Trapping licenses:

(a) Trapping license (resident): fifteen (15) dollars;

(b) Trapping license (resident/landowner/tenant): seven (7) dollars and fifty (50) cents;

(c) Trapping license (nonresident): \$115.

(8) [(7)] Big game permits:

(a) Big game permit, deer (resident or nonresident): twenty-one (21) dollars;

(b) Junior big game permit, deer (resident or nonresident): twelve (12) dollars and fifty (50) cents;

(c) Bonus Zone 1 deer permit (resident or nonresident): ten (10) dollars;

(d) Bonus archery only deer permit (resident or nonresident): ten (10) dollars;

(e) Bonus quota hunt deer permit (resident or nonresident): ten (10) dollars;

(f) Big game permit, turkey (resident or nonresident): seventeen (17) dollars and fifty (50) cents;

(g) [(d)] Big game permit, fall firearm turkey (resident or nonresident): ten (10) dollars;

(h) [(e)] Big game permit, fall archery turkey (resident or nonresident): ten (10) dollars.

(9) [(8)] Peabody or Cyprus AMA-Robinson Forest individual permit: ten (10) dollars.

(10) [(9)] Commercial mussel licenses:

(a) Musseling license (resident): \$300;

(b) Musseling license (nonresident): \$1,500;

(c) Mussel buyer's license (resident): \$500;

(d) Mussel buyer's license (nonresident): \$1,500.

Section 2. Licenses, tags and permits, listed in this section shall be valid for the calendar year in which they are issued.

(1) Live fish and bait dealer's licenses:

(a) Live fish and bait dealer's license (resident): thirty (30) dollars;

(b) Live fish and bait dealer's license (nonresident): sixty (60) dollars.

(2) Commercial taxidermist license: \$100.

(3) Commercial guide licenses:

(a) Commercial guide license (resident): \$100;

(b) Commercial guide license (nonresident): \$250.

(4) Nonresident hunting preserve license: ten (10) dollars.

(5) Shooting preserve permit: \$100.

(6) Commercial fox hound training enclosure permit: \$250.

(7) Collecting permits:

(a) Educational wildlife collecting permit: ten (10) dollars;

(b) Scientific wildlife collecting permit: \$200.

(8) Food permits:

(a) Food permit for selling bobwhite quail from propagation farms

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only: \$150;

(b) Retail food permit for propagated quail: five (5) dollars.

(9) Pay lake license:

(a) First two (2) acres or less: \$100.

(b) Per additional acre or part of acre: twenty (20) dollars.

(10) Commercial wildlife pet and propagation permit: fifty (50) dollars.

(11) Commercial fish propagation permit: fifty (50) dollars.

Section 3. Licenses, tags and permits listed in this section shall be valid for three (3) years from the date of issue.

(1) Falconry permit: forty-five (45) dollars.

(2) Noncommercial wildlife pet and propagation permit: seventy-five (75) dollars.

Section 4. Licenses, tags and permits listed in this section shall be valid for the date or dates specified on each.

(1) Short-term nonresident licenses:

(a) Three (3) day fishing license: twelve (12) dollars and fifty (50) cents;

(b) Fifteen (15) day fishing license: twenty (20) dollars;

(c) Five (5) day hunting license (not valid for big game): twenty-seven (27) dollars and fifty (50) cents;

(d) Three (3) day fur bearer's license: forty (40) dollars.

(2) Wildlife transportation permit: twenty-five (25) dollars.

(3) Special commercial fishing permit: \$500.

(4) Commercial waterfowl shooting area permit: \$100.

(5) Shoot to retrieve field trial permits:

(a) Per trial (maximum four (4) days): fifty (50) dollars;

(b) Single day: fifteen (15) dollars.

(6) Boat dock permits (per year): five (5) dollars.

(7) Peabody or Cyprus AMAX-Robinson Forest event permit: twenty-five (25) dollars.

Section 5. Licenses, tags and permits listed in this section shall be valid on a per unit basis as specified.

(1) ~~[Bird bands (each): twenty-five (25) cents:~~

~~(2) Ballard waterfowl hunt (per person, per day): fifteen (15) dollars.~~

(2) ~~(3)~~ Horse stall rental (per space, per day): two (2) dollars.

(3) ~~(4)~~ Dog kennel rental (per dog, per day): fifty (50) cents.

(4) ~~(5)~~ Pond stocking fee (per stocking): twenty-five (25) dollars.

Section 6. The following licenses shall be valid from April 1 through March 31 of the following year:

(1) Fur processor's license (resident): \$150.

(2) Fur buyer's license (resident): fifty (50) dollars.

(3) Fur buyer's license (nonresident): \$230.

~~[Section 7. These fees shall apply to all licenses, tags and permits issued with an effective beginning date on or after January 1, 1998:]~~

C. THOMAS BENNETT, Commissioner

ANN R. LATTA, Secretary

MIKE BOATWRIGHT, Chairman

DOUGLAS SCOTT PORTER, Assistant Attorney General

APPROVED BY AGENCY: March 6, 1998

FILED WITH LRC: May 14, 1998 at 2 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on June 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 June 19, 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: Approximately one million sport and commercial license and permit buyers will be affected by this administrative regulation. This amendment establishes new bonus deer permits that may be purchased after a hunter has taken two deer on a regular permit, and sets the price for a senior citizen/disabled license authorized by the 1998 General Assembly. It is not known at this time how many deer hunters will avail themselves of the opportunity to purchase the additional bonus permits. An estimated 75,000 to 100,000 senior/disabled licenses will be sold annually.

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

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

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: No public comments received. This administrative regulation as amended should have no impact on costs of doing business.

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

1. First year following implementation: The amendment to this administrative regulation will add three new deer permits. These will be required in addition to the two-deer permit now available. They will be issued by license agents through the Kentucky Direct Sales System. Because this system is automated, there will be no additional paperwork or reporting.

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

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: The amendment to this administrative regulation will increase revenue to the department by the sale of bonus deer permits. It is not known at this time how many hunters will purchase these permits. The senior/disabled license, plus the increase in federal aid funds (based on license sales) will increase departmental revenues by approximately \$1 million annually.

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

3. Additional factors increasing or decreasing costs: No additional factors have been identified.

(b) Reporting and paperwork requirements: This administrative regulation imposes no additional reporting or paperwork requirements.

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

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

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

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

(b) Kentucky: No public comments received. No economic impact anticipated.

(7) Assessment of alternative methods; reasons why alternatives were rejected: Remaining with a two-deer per year limit was rejected because the continued growth of Kentucky's deer herd offers the opportunity for increased harvest. Increasing the number of deer tags issued with each permit, at an increased cost of the permit, was rejected because those hunters who did not want to take more than two deer would nevertheless pay more for their permit. The cost of the senior/disabled license was recommended by the Legislative Task Force for Funding Wildlife Conservation and no viable alternative exists.

(8) Assessment of expected benefits: Bonus deer permits will provide additional opportunity for hunters to take deer and will help in keeping deer populations within acceptable levels. The senior/disabled license will increase Kentucky's share of federal aid for fisheries and wildlife restoration substantially.

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

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

(c) If detrimental effect would result, explain detrimental effect: Not applicable.

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

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

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

(10) Any additional information or comments: None

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

TOURISM DEVELOPMENT CABINET
Department of Fish and Wildlife Resources
(Amendment)

301 KAR 3:030. Year-round season for some birds and animals.

RELATES TO: KRS 150.010, 150.025, 150.330, 150.360, 150.370, 150.990

STATUTORY AUTHORITY: KRS 150.025(1), 150.360(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 150.360(1) stipulates that a person shall not take wildlife except during the open season prescribed by the department; KRS 150.025(1) grants the department authority to establish seasons and other administrative regulations necessary to carry out the purpose of KRS Chapter 150. This administrative regulation is necessary to establish hunting requirements for species that can be taken year-round, and to specify species that are unprotected. The purpose of this amendment is to eliminate the closed season on certain species from November 1 through the gun deer season and to bring this administrative regulation into compliance with the formatting and wording requirements of KRS Chapter 13A.

Section 1. (1) Except as specified in subsection (2) of this section, a person may take coyote, wild hog, English sparrow or starling [coyotes, woodchucks, English sparrows or starlings] year round.

(2) In McCreary County, a person shall not take wild hog except:
(a) During an open deer season using legal deer hunting methods; or

(b) From January 16 through the last day of February.

(3) A person taking coyote, wild hog, woodchuck, English sparrow

or starling [coyotes, woodchucks, English sparrows or starlings]:

(a) Unless exempted by KRS 150.170, shall possess:

1. A hunting license; and

2. A deer permit if he is hunting:

a. During a firearm deer [modern-gun-deer] season in a county or portion of a county open to deer hunting; or

b. During a wildlife management deer hunt where a firearm is [modern, breech-loading firearms are] allowed.

(b) May use a hand or mouth operated call.

(c) Shall not use an electronic or mechanical call except during daylight hours.

Section 2. (1) Except for rare, threatened or endangered species protected by federal laws, a person may take or possess:

(a) Moles, mice, rats or shrews.

(b) Snakes, except the copperbelly water snake (*Nerodia erythrogaster neglecta*), for which there shall be no open season.

(c) Lizards.

(d) Terrestrial invertebrates.

(2) A person may take or possess the species listed in subsection (1) of this section without:

(a) A hunting license; or

(b) A pet permit.

Section 3. Nothing in this administrative regulation shall prohibit landowners or tenants from taking the species listed in Section 1(1) of this administrative regulation which are posing an immediate threat to body or other persons, or causing damage to property which they own or where they reside.

C. THOMAS BENNETT, Commissioner

ANN R. LATTA, Secretary

MIKE BOATWRIGHT, Chairman

DOUGLAS SCOTT PORTER, Assistant Attorney General

APPROVED BY AGENCY: March 6, 1998

FILED WITH LRC: May 14, 1998 at 2 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on June 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 June 19, 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 21,400 Kentuckians hunt woodchuck and 13,000 hunt coyotes. An unknown number of people take snakes, rats mice and other species declared unprotected 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

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received. This administrative regulation should have no impact 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 received. This administrative regulation should have no impact on the costs of doing business.

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

1. First year following implementation: This administrative regulation imposes no additional paperwork requirements.

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

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: No additional costs or savings are anticipated.

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

3. Additional factors increasing or decreasing costs: None have been identified.

(b) Reporting and paperwork requirements: This administrative regulation imposes no additional paperwork or reporting requirements.

(4) Assessment of anticipated effect on state and local revenues: This administrative regulation should have no impact on state or local revenues.

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

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

(a) Geographical area in which administrative regulation will be implemented: No public comments received. No anticipated change in economic impacts.

(b) Kentucky:

(7) Assessment of alternative methods; reasons why alternatives were rejected: KRS 360(1) prohibits the taking of any wildlife except during the open season for that particular species. To allow the taking of certain species year-round, there are not alternatives to this administrative regulation.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: This administrative regulation could provide some increase in recreational opportunities statewide.

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

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

(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 was not applied to this administrative regulation because all hunters are regulated the same statewide.

and administrative regulations by which the state aid to local fairs program shall be administered. It explains to the Department of Agriculture, Division of Shows and Fairs, and to the local fairs their responsibilities in the program.

Section 1. General Administration. (1) The Director of the Division of Shows and Fairs in the Department of Agriculture shall only make premium allocations to the authorized agent of an incorporated local fair board that conducts a qualified local agricultural fair in compliance with KRS 247.220.

(2) Local fair boards applying for state funds shall see that a reasonable effort is made by local fair officials to develop a program that will supplement agricultural educational and promotional activities that coincide with the objectives of agencies officially charged with these responsibilities.

(3) Local fair boards seeking state assistance shall plan and conduct a qualified local agricultural fair with educational exhibits running for at least three (3) consecutive days (thirty-six (36) hours of exhibition). All fair events shall be held on consecutive days with the following exceptions:

(a) Fairs may be closed on Sundays, if the local board desires; and

(b) Fairs may conduct certain events, such as harness horse racing, on separate dates providing the local board files a request to conduct the event with the Division of Shows and Fairs and that request is approved by the Kentucky Fair Council at the next regular meeting and thereafter transmitted to the Commissioner of Agriculture with a recommendation by the Kentucky Fair Council that the Commissioner of Agriculture approve or reject the local board's request.

(4) Local boards shall establish premiums related to the economic importance of the commodity in the area, the relative value of the exhibit and the difficulty in preparing for and showing the entry. Local boards shall establish classes based upon the Kentucky State Aid to Local Agricultural Fairs Program, Kentucky Department of Agriculture, Division of Shows and Fairs, Uniform Classes List.

(5) State funds shall be limited to crops, foods, domestic livestock, poultry, 4-H, FFA and FHA projects, harness horse racing and other horse events, if they have a good potential for profitable expansion or the improvement of the agriculture economy of the area.

(6) Ribbon colors at each local fair shall be as follows:

(a) Blue for first place;

(b) Red for second;

(c) White for third;

(d) Pink for fourth;

(e) Yellow for fifth;

(f) Green for sixth;

(g) Light green for seventh;

(h) Brown for eighth;

(i) Gray for ninth; and

(j) Light blue for tenth.

(7) Fair boards seeking state funds shall provide adequate health facilities for exhibitors tending exhibits and for fair attendants.

(8) Fair events held at a location other than the fairgrounds may qualify for aid if such an event is held during corresponding consecutive dates with the fair and publicized in the fair's catalog as being a fair event.

Section 2. Records. (1) Requests for state assistance shall be made annually on an Initial Request for State Aid to Local Agricultural Fairs Form and mailed to the Division of Shows and Fairs by March 1. The Commissioner of Agriculture may allow a fair to enter the program after the application deadline has passed for good cause shown.

(2) Kentucky State Aid to Local Agricultural Fairs Program, Kentucky Department of Agriculture, Division of Shows and Fairs, Open Class and Beef Show Information Form (1995) concerning the

DEPARTMENT OF AGRICULTURE Division of Shows and Fairs (Amendment)

302 KAR 15:010. Administration; state aid to local fairs.

RELATES TO: KRS 247.220

STATUTORY AUTHORITY: KRS 247.220

NECESSITY, FUNCTION, AND CONFORMITY: Provides rules

fair's beef and dairy shows shall be mailed to the Division of Shows and Fairs by May 1.

(3) Fairs shall submit a draft copy of their catalog to the Division of Shows and Fairs at least forty-five (45) days before their fair. This shall include the same information required in the printed catalog, excluding advertisements. A printed copy of the fair's catalog shall be submitted no later than thirty (30) days before the start of the fair. No payment shall be made before the printed catalog is received by the Division of Shows and Fairs.

(4) A complete financial statement for events previously requesting state funds shall be submitted to the Department of Agriculture prior to the second fair payment. This payment shall include the second agricultural premium payment, the second harness racing payment, and the payment for horse events. This annual financial statement shall cover all crops, foods, domestic livestock, poultry, harness horse racing, other horse events, and other agricultural classes that may qualify for aid. It shall be complete and prepared in detail showing receipts and disbursements as well as the number of exhibitors and premiums awarded by fair departments. This certified, notarized statement shall be presented to the Director of the Division of Shows and Fairs within forty-five (45) days following the event and no statement shall be accepted for payment after December 1.

Section 3. Entries. (1) Fairs qualifying for state funds shall provide for adult and youth divisions. Youth exhibits shall include 4-H, FFA, FHA, and may include other official groups recognized by the extension service or the Office of Secondary Vocational Education. All projects approved by these official groups may be approved for state funds. Fair boards may restrict youth participation to a particular district, county, or trade area.

(2) All exhibitors, adult and youth, shall have equal opportunity to enter open classes.

(3) Local fair boards receiving state money shall see that exhibits eligible in more than one (1) class or section are exhibited only in the class or section for which it best qualifies. Under no circumstances may an exhibitor show the same kind of animal or the same entry in both FFA and 4-H classes or in classes for other organized junior organizations.

(4) No more than two (2) exhibits shall be made from a household in any one (1) class except official 4-H or FFA projects and where purebred animals are registered to other members of the household.

(5) All domestic livestock, poultry, and horse entries shall meet the specifications of the health administrative regulations of the State Board of Agriculture as set forth in 302 KAR 20:065 relating to the exhibition of livestock in Kentucky.

Section 4. Catalog. (1) All qualified fairs shall have an official fair catalog. A rough copy of the catalog including premium lists and classes, excluding advertisements, shall be submitted to be approved by the Division of Shows and Fairs at least forty-five (45) days prior to the opening of the fair. The finished catalog shall be submitted to the Director of the Department of Agriculture's Division of Shows and Fairs no later than thirty (30) days before the fair is held.

(2) Classes advertised in the catalog shall be reviewed annually by the local fair board to make certain that competitive events are being held and that premiums offered are not out of balance with entries.

(3) The official fair catalog shall contain the following information:

(a) A list of fair officials and their assigned responsibilities with the following organizations being represented on the agriculture advisory board:

1. Vocational Agriculture.
2. Extension Service.
3. Farm Bureau.
4. Local Livestock Association (if one exists).
5. Local Horsemen's Association (if one exists).

(b) A schedule of events planned as a part of the fair.

(c) Local fair rules and administrative regulations including a statement to the effect that "open classes are open to all exhibitors unless otherwise specified."

(d) General information by fair departments showing classes and premium lists.

(e) Health administrative regulations by types of livestock to be exhibited.

(f) A rule to the effect that "entries made in 4-H, FFA and FHA classes shall have been produced in conjunction with an approved project sponsored by these organizations."

(4) Catalogs shall be mailed and distributed by the local fair board no later than thirty (30) days prior to the opening of the fair.

Section 5. Judges. (1) To assist with the educational objectives of each event, judges shall be encouraged to present reasons for their evaluations and decisions.

(2) No person shall be an exhibitor or act as an agent in any division or department for which he serves as a judge.

Section 6. State Allocation. (1) The Department of Agriculture's agricultural premium money shall be allocated to all approved local fairs on the basis of total money offered for approved classes in the catalog and total money spent in approved classes taken from the fair's financial statement available as indicated by fair records including catalogs. In no instance shall the total agricultural premium payment for one (1) or more fairs held annually in a single county exceed \$4,500 [4,000]. In addition, state money for each class shall not exceed fifty (50) percent of the total premiums awarded. The first agricultural premium payment to each fair shall be made after the printed catalog is received and may be up to one-fourth (1/4) of the amount of money offered in approved classes by the local fair up to a maximum of \$2,250 [2,125]. The second agricultural premium payment shall be made after the fair's financial statement is received provided all remaining requirements have been met and the necessary records submitted, and shall be based on the amount of money paid for premiums and awards in approved agricultural classes up to a maximum of \$4,500 [4,250] less the amount of the first agricultural premium payment. The combination of county fairs or community fairs of a number of counties shall not be approved to justify a larger state premium payment.

(2) An additional \$2,000 [1,750] grant may be made to a qualified local agricultural fair to be used for horse events' premiums and awards. This grant is on an equal matching fund basis and is based completely on the amount of money paid in premiums and awards for horse events' classes. The payment of this grant shall come after the financial statement of the fair is received by the Department of Agriculture and shall be included in the fair's second fair payment. The qualified fair shall submit with its financial statement, records of premiums paid, number of exhibitors, and number of entries for these horse events.

(3) The Department of Agriculture shall make available to a qualified agriculture fair, up to \$7,000 on an equal matching basis for harness horse racing, with a maximum of \$750 per race being matched by the department. To qualify, a fair shall meet the regulations and specifications set for by 811 KAR Chapter 1. Harness racing payments shall also be disbursed in two (2) payments, the first being one-fourth (1/4) the amount of purses offered in the printed catalog, up to a maximum of \$3,500. This payment shall be combined with the fair's first agricultural payment. The second harness racing payment shall be based on the amount of money spent in harness racing purses, up to a maximum of \$7,000 less the first harness racing payment, and shall be included in the second fair payment, providing the fair has included sufficient information on their financial statement in regard to the harness racing results.

(4) The director of the department's show and fair program shall provide from the appropriation for county fairs an attractive trophy that will be rotated and engraved and presented annually to the local fair

that has made the most progress in twelve (12) months. In addition, appropriate engraved plaques shall be presented to the first, second, and third placed fairs making the most progress in the twelve (12) months period and also for the most outstanding new fair in the program for that year. The presentation shall be made by the Department of Agriculture's Fair Council based on records submitted to the department and substantiated by other evidence.

Section 7. Building Program. (1) A qualified local agricultural fair may make application for an additional \$3,000 grant of state funds to be used for the establishment of new buildings and facilities or for improvement to existing facilities. Applications for the building program are due in the Division of Shows and Fairs' office no later than June 1 of the year that the work is to be completed, and it shall be preceded by a request for state aid application. Grants shall be on an equal matching basis with the local fair board matching the amount of the state grant. The application form Request for State Aid for the Building Program is incorporated by reference. The form is effective October 12, 1990, and may be obtained at the Division of Shows and Fairs, 100 Fair Oaks, Suite 252, [A-3 Suburban Park,] Frankfort, Kentucky 40601, during regular working hours (from 8 a.m. to 4:30 p.m.). Payments for facilities shall not result in a decrease in the approved agricultural classes or premiums being offered in the fair catalog.

(2) The buildings and facilities shall be used primarily in conjunction with the qualified local agricultural fair and shall either be constructed on land owned by the local fair board or on land that the fair group holds a renewable lease.

(a) Some suggested items that may qualify are:

1. The purchase of land for a fairground or the purchase of land adjoining the original grounds;
2. The construction of new buildings;
3. Repair of any existing facilities on the fairgrounds;
4. Grandstands or bleachers used to seat people during the fair;
5. Grading and improvement work done to an existing track or show ring; and
6. Loading chutes, wash racks or tie-outs for livestock.

(b) Other items not listed in paragraph (a) of this subsection may qualify for state assistance provided the local fair provides evidence to the Department of Agriculture that the item meets the minimum requirements and is justifiable.

(3) Application for state assistance shall be made in writing by the qualified local agricultural fair to the Division of Shows and Fairs, Department of Agriculture, by June 1 of the year that the work is to be completed. The application shall include a description of the proposed buildings or improvements to be made, use to be made of these improvements, itemized list of approximate cost, and the date to be completed. Applications shall be available from the Department of Agriculture, Division of Shows and Fairs, and shall be distributed after fair program applications are received or upon request.

(4) Upon acceptance of a qualified local fair's request for assistance by the Department of Agriculture, the local fair shall be supplied a financial report form. The financial report shall contain a description of the buildings or improvements and an itemized cost. This notarized report shall be presented to the Division of Shows and Fairs within forty-five (45) days following the completion of the building or repair work. No report shall be accepted for payment after December 1.

(5) Building program payments shall be disbursed in two (2) payments, with the first payment representing one-fourth (1/4) of the total amount submitted on the fair's building report up to a maximum of \$1,500. The second building program payments shall be made after all financial statements and building reports have been received in the office of the Division of Shows and Fairs and the total amount required for all grants is known. The second building payment amount shall be adjusted on an equal basis to bring the total grants in line with the funds available in the Aid to Fairs Program budget.

Section 8. Effect of Overspending of Fair Program Budget. If the local agricultural fair program payments exceed the amount of money budgeted for the total fair program, reductions shall be made in payments as recommended by the fair council and as determined by the Commissioner of Agriculture.

Section 9. (1) The following documents are incorporated by reference:

(a) Kentucky State Aid to Local Agricultural Fairs Program, Kentucky Department of Agriculture, Division of Shows and Fairs, Uniform Classes List;

(b) Initial Request for State Aid to Local Agricultural Fairs Form (1995);

(c) Kentucky State Aid to Local Agricultural Fairs Program, Kentucky Department of Agriculture, Division of Shows and Fairs, Open class and Beef Show Information Form; and

(d) 1993 Charter Bylaws, Rules and regulations of the U.S. Trotting Association.

(2) The documents referred to in subsection (1) of this section may be inspected, copied or obtained at the Office of the Department of Agriculture, Commissioner's Office, Capital Plaza Tower, Frankfort, Kentucky 40601, from 8 a.m. to 4:30 p.m., Monday through Friday.

BILLY RAY SMITH, Commissioner

MARK FARROW, General Counsel

APPROVED BY AGENCY: May 15, 1998

FILED WITH LRC: May 15, 1998 at 9 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation will be held on Monday, June 22, 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 Monday, June 15, 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: Wendell Bruce, Director

(1) Type and number of entities affected: All local fairs in Kentucky.

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

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: No public comments received.

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

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

1. First year following implementation: No new requirements.

2. Second and subsequent years: No additional requirements.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: Increase in funds to local fairs.

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2. Continuing costs or savings: Same as for the first year.
3. Additional factors increasing or decreasing costs: None
- (b) Reporting and paperwork requirements: No additional paperwork required.
- (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 currently budgets for implementing this program.
- (6) To the extent available from the public comments received, the economic impact, including effects of economic activities arising from administrative regulation on:
 - (a) Geographical area in which administrative regulation will be implemented: No public comments received.
 - (b) Kentucky: No comments.
- (7) Assessment of alternative methods; reasons why alternatives were rejected: No alternative methods.
- (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: N/A
 - (b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: N/A
 - (10) Any additional information or comments: None
 - (11) TIERING: Is tiering applied? No. All local firms will be eligible to participate in program.

TRANSPORTATION CABINET (Amendment)

600 KAR 6:050. Procurement bulletins and advertisement for selection of professional firms for engineering or related services.

RELATES TO: KRS 45A.800 through 45A.835, 23 CFR 172, 49 CFR 18, 23 USC

STATUTORY AUTHORITY: KRS 13A.100(1), 45A.800 through 45A.835, 23 CFR 172, 49 CFR 18, 23 USC

NECESSITY, FUNCTION, AND CONFORMITY: This administrative regulation sets forth the procedure to be used by the Transportation Cabinet when issuing public notice of the need for professional engineering or related services while implementing the provisions of KRS 45A.800 to 45A.835.

Section 1. Preparation of a Procurement Bulletin. (1) When the Transportation Cabinet has need of engineering or related services, it shall prepare a procurement bulletin announcing its intentions.

(2) A procurement bulletin prepared by the cabinet shall include a request for proposal for each project anticipated being contracted during a specified period of time which includes the following:

- (a) The general scope of the project as provided by the user division;
- (b) A discussion of procedures to follow for submission of a proposal on the project;
- (c) An anticipated project schedule as provided by the user division;
- (d) Any requirements for DBE utilization;
- (e) Deadline for filing responses;
- (f) The evaluation factors and their relative weights on which the responses will be evaluated by the Selection Committee;

(g) A timetable for the selection committee's meetings for the project;

(i) A list of all firms prequalified pursuant to 600 KAR 6:040 in each applicable category as of the date of the bulletin;

(i) A list of the firms prequalified pursuant to 600 KAR 6:040 and certified as a DBE as of the date of the bulletin;

(j) In certain circumstances deemed appropriate by the State Highway Engineer, the maximum fee for consultant services for the project;

(k) When appropriate, the item numbers from the "six (6) year plan"; and

(l) The items required by KRS 45A.825(2)(b).

(3) A copy of the procurement bulletin shall be made available [mailed] to each firm prequalified in any category to perform engineering or related services for the cabinet.

(4) If deemed appropriate by the State Highway Engineer, the procurement bulletin may indicate the maximum fee for a particular proposed project or require the initial solicitation of a complete work price and qualification proposal.

(5) A procurement bulletin for statewide engineering or related services may specify that more than one (1) firm be selected to provide the services requested in the bulletin.

(6)(a) The user division or office shall recommend the evaluation factors and relative weights to the Transportation Cabinet Secretary. Unless unique or particularly complex circumstances exist, the evaluation factors shall be selected from the list set forth below. The Transportation Cabinet Secretary shall approve the evaluation factors and relative weighting placed on each of the factors that appear in a procurement bulletin for selection of professional firms for engineering or related services.

1. Relative experience of professional personnel assigned to the project team[;

a.] with highway projects or projects on another mode of transportation or intermodal transportation projects for the Kentucky Transportation Cabinet or [; and

b. With highway projects or projects on another mode of transportation or intermodal transportation projects] for federal, local or other state governmental agencies;

2. Capacity to comply with the project schedule;

3. Past record of performance on a project of similar type and complexity;

4. Project approach and proposed procedures to accomplish the services for the project;

5. Location where the work will be performed;

6. Special or unique expertise;

7. Special or unique equipment; and

8. Familiarity with geographic areas and resources.

(b) The weighting of each factor shall be published in the announcement for the specific project.

(7) Each time a procurement bulletin is published, the cabinet may [shall] place an advertisement of the cabinet's need for engineering or related services and availability of the procurement bulletin in at least two (2) newspapers of general, multicounty circulation and one (1) newspaper which has minorities as its targeted readership.

Section 2. Response to Procurement Bulletin. (1) A prequalified firm responding to a procurement bulletin for engineering or related services shall submit to the Division of Professional Services the following:

(a) The specified number of copies of a completed Response to Announcement for Engineering or Related Services as Prime Consultant, form TC 40-15 revised July 1994. Form TC 40-15 is incorporated by reference in Section 3 of this administrative regulation; and

(b) The letter required by KRS 45A.825(3).

(2) A prequalified firm responding to a procurement bulletin for construction-related engineering services shall submit to the Division

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of Professional Services, in addition to the items in subsection(4)(a) of this section, the Supplemental Information in Response to Announcement for Construction Services, form TC 40-7 revised June 1992. Form TC 40-7 is incorporated by reference in Section 3 of this administrative regulation.

(3) A prequalified firm which proposes to employ a subconsultant when responding to a procurement bulletin shall submit to the Division of Professional Services, in addition to the other items required by this section, the Subconsultant Qualifications for Response to Advertisement for Engineering and Related Services, form TC 40-15-SUB revised July 1994. Form TC 40-15-SUB is incorporated by reference in Section 3 of this administrative regulation.

(4) A firm or proposed subconsultant shall be prequalified in the specified areas of prequalification prior to the response due date published in the announcement of the need for engineering or related services for a particular project or shall not be considered for selection.

(5)(a) The Director, Division of Professional Services, shall certify the list of firms that responded to the procurement bulletin in a timely manner to the appropriate Professional Engineering Services Selection Committee.

(b) Responses received after the deadline shall be returned to the firm and shall not be listed for consideration to perform the project.

(c) Responses received with fewer copies of the response than required shall be returned to the firm and shall not be listed for consideration to perform the project.

(d) The list of responses to the procurement bulletin shall be confidential until the contract is negotiated and the Division of Professional Services receives notification [a copy of the transmittal sheet] indicating that the LRC Personal Service Contract Review Subcommittee has received the contract and project information for review as set forth in 600 KAR 6:070.

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

(a) "Response to Announcement for Engineering or Related Services as Prime Consultant," Form TC 40-15, July 1994 edition;

(b) "Supplemental Information in Response to Announcement for Construction Services," Form TC 40-7, June 1992 edition; and

(c) "Subconsultant Qualifications for Response to Advertisement for Engineering and Related Services," Form TC 40-15-SUB, July 1994 edition.

(2) The incorporated material may be inspection, copied or obtained at the Division of Professional Services, 6th Floor State Office Building, 501 High Street, Frankfort, Kentucky 40622 between the hours of 8 a.m. and 4:30 p.m., Monday through Friday.

J.M. YOWELL, P.E., State Highway Engineer
JAMES C. CODELL, III, Secretary

TODD SHIPP, Office of General Counsel

APPROVED BY AGENCY: May 15, 1998

FILED WITH LRC: May 15, 1998 at noon

PUBLIC HEARING: A public comment hearing on this administrative regulation will be held on June 26, 1998 at 1:30 p.m. local prevailing time in the Transportation Cabinet, 4th Floor Hearing and Conference Room, 501 High Street, Frankfort, Kentucky 40622. Any person who intends to attend this meeting must in writing by June 19, 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 June 19, 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. If the hearing is held, written comments will be accepted until the close of the hearing. If the hearing is canceled, written comments will only be accepted until June 26, 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, Mail Code 10-13, 501 High Street, Frankfort, Kentucky 40622, (502) 564-7650, Fax: (502) 564-5238.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Sandra Pullen Davis

(1) Type and number of entities affected: There are 250 firms prequalified to perform professional engineering or related services each year. These are the same firms which provide proposals on projects and ultimately negotiate contracts.

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

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

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: A complete proposal for a particular project will also cost each firm making a proposal to the Transportation Cabinet approximately \$3000 to \$5000 per proposal. The actual cost of preparing a proposal depends on the complexity of the project.

(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 sets for the requirements for submitting a proposal to the Transportation Cabinet.

2. Second and subsequent years: Same

(3) Effects on the promulgating administrative body: The Transportation Cabinet is required to review the 1200 proposals on projects each year. Not only is the entire staff of the Contract Negotiating Branch of Division of Professional Services constantly involved in this process, but also the user divisions are required to involve significant amounts of man-hours in the reviews and evaluations.

(a) Direct and indirect costs or savings: The annual budget for the Contract Negotiating Branch of the Division of Professional Services is \$300,000. At least double that cost is incurred collectively by the user divisions each year. However, these values are the total cost of the requirements set forth in 600 KAR Chapter 6.

1. First year: The total cost to the Transportation Cabinet is approximately \$900,000.

2. Continuing costs or savings: Same each year.

3. Additional factors increasing or decreasing costs: Without a process like this, the public could not be assured of getting the best possible product. Therefore, there is an ultimate savings to the Commonwealth.

(b) Reporting or paperwork requirements: Review and evaluation of all proposals submitted on projects.

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

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: State Road Fund as authorized in the Transportation Cabinet budget.

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

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

(b) Kentucky: None

(7) Assessment of alternative methods; reasons why alternatives were rejected: Rather than specifically placing long and complicated

advertisements in a newspaper for each project proposal requested, the Transportation Cabinet has elected to issue a procurement bulletin approximately four times each year. This bulletin will provide all of the information that would appear in an advertisement plus other information that is beneficial to firms when preparing proposals. The cabinet will mail these bulletins to every prequalified firm as well as placing newspaper advertisements regarding the availability of the bulletin. This procedure was adopted at the request of the professional engineering community in Kentucky. This procedure will save approximately \$80,000 per 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 environment and public health would result if not implemented: No

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

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

(a) Necessity of proposed administrative regulation if in conflict:

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

(10) Any additional information or comments:

(11) Tiering: Was tiering applied? No. The bulletin/advertising document is the same for all types of projects.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. Title 23 of the United States Code and 23 CFR 172.5.

2. State compliance standards. The state has promulgated this administrative regulation setting forth the method of procurement it is utilizing for soliciting proposals for prospective consultants.

3. Minimum or uniform standards contained in the federal mandate. The federal mandate specifies that the contracting agency shall prepare written procedures for each method of procurement it proposes to utilize. These procedures are required to set forth each step used in the solicitation of proposals from prospective consultants.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? The method for soliciting proposals is extended to all projects regardless of the source of funding for a particular project.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. KRS Chapter 45A imposes virtually the same requirements on state-funded projects as 23 CFR 172.5 does on federally-funded projects.

TRANSPORTATION CABINET (Amendment)

600 KAR 6:060. Professional Engineering Service Selection Committee.

RELATES TO: KRS 45A.800 through 45A.835, 23 CFR 172, 49 CFR 18, 23 USC

STATUTORY AUTHORITY: KRS 13A.100(1), 45A.800 through 45A.835, 23 CFR 172, 49 CFR 18, 23 USC

NECESSITY, FUNCTION, AND CONFORMITY: This administrative regulation sets forth the procedure to be used by the Transportation Cabinet when selecting professional engineering or related services while implementing the provisions of KRS 45A.800 to 45A.835.

Section 1. Establishing a Professional Engineering Services Selection Committee. (1) A Professional Engineering Services Selection Committee shall be selected as set forth in KRS 45A.810(5)

and (6).

(2)(a) The Transportation Cabinet Secretary shall annually request voluntary applications from the professional engineering staff in the cabinet for availability to serve in the pool of six (6) professional engineers required by KRS 45A.810(5)(a).

(b) The Transportation Cabinet Secretary, or his designee, shall review all applications [and submit a list of ten (10) applications] from which the secretary shall select six (6) to serve in the pool for a period of one (1) year.

(c) Only persons who are employees of the cabinet and registered professional engineers of the Commonwealth shall be appointed to the pool.

(d) A person serving on the Professional Engineering Services Selection Committee from this pool shall not be eligible to also serve on the same selection committee as a representative of a user division as specified KRS 45A.810(5)(b).

(3)(a) The director of the user division responsible for monitoring the professional services shall appoint two (2) professional engineers from either the user division or the same functional area from the highway district offices where the project is located.

(b) If the user division does not have two (2) professional engineering merit employees or if the services in the announcement are for nonengineering but related services, the director shall appoint two (2) employees who have familiarity and experience related to the services that are being contracted.

(c) The director may appoint himself to the committee.

(d) If there are two (2) user divisions with approximately equal or separate responsibilities for the project, upon approval of the Director of the Division of Professional Services, each co-user division shall appoint one (1) member to the selection committee.

(e) If the cabinet is procuring professional engineering or related services in conjunction with another agency or governmental entity or state, that unit outside the cabinet may be designated as a co-user division and be eligible to appoint one (1) member of the selection committee.

(4) An employee of the cabinet shall not be required to involuntarily serve as a member of a Professional Engineering Services Selection Committee.

(5) Each member of a Professional Engineering Services Selection Committee shall execute the forms incorporated by reference in Section 3(1)(a) to (d) of this administrative regulation:

(a) Certificate of Understanding of Restrictions for Members of Professional Engineering Services Selection Committee, form TC 40-9 effective May 1994;

(b) "Ex Parte Disclosure Form," Form TC 40-6 as effective May 1994;

(c) "Certificate of Confidentiality Form," Form TC 40-4 as effective May 1994; and

(d) "Certificate of Conformity with Procurement Process," Form TC 40-10 as effective May 1994.

(6)(a) If the individual, randomly selected to serve on a selection committee in accordance with KRS 45A.810(5)(c), is an employee of a consulting firm, that consulting firm shall not be considered for any projects which are reviewed by that selection committee.

(b) If a firm submitted a response under this circumstance, the firm's response for that project shall be returned by the selection committee with a letter of explanation.

(7) After issuing [written] approval to advertise for a consultant to perform professional engineering or related services, the secretary of the cabinet, or his designee, shall establish a Professional Engineering Services Selection Committee for each project.

(8) The Division of Professional Services shall provide each Professional Engineering Services Selection Committee with the necessary administrative and technical support and office supplies.

(9)(a) Each member of a Professional Engineering Services Selection Committee shall comply with the Executive Branch Code of Ethics established in KRS Chapter 11A.

(b) Each member of a selection committee shall scrupulously comply with both the letter and the spirit of the cabinet's Official Order Number 94902 regarding Conflict of Interest which was issued on May 21, 1993. This Official Order is incorporated by reference in Section 3 of this administrative regulation.

(c) Each Transportation Cabinet member of a Selection Committee shall be considered an officer as defined in KRS 11A.010(7), [file an annual statement of financial disclosure pursuant to KRS 11A.050.]

Section 2. Operation of a Professional Engineering Services Selection Committee. (1)(a) The initial meeting of a Professional Engineering Services Selection Committee shall be called by the Division of Professional Services.

(b) A quorum for the initial meeting shall be three (3) of the five (5) voting members unless only one (1) meeting is anticipated, when a quorum shall be four (4) of the five (5) voting members.

(2) Subsequent meetings [(a) Meetings] of a Professional Engineering Services Selection Committee may be called;

(a) By the chairperson at a mutually convenient time; or

(b) [during normal working hours with at least one (1) week's notice.

(b) Special meetings may also be called] Upon a consensus of four (4) of the five (5) voting members of the selection committee.

(c) A motion or decision of the selection committee shall require a simple majority affirmative vote of all members present for passage.

(d) A quorum for all but the initial meeting shall be constituted by four (4) of the five (5) voting members present.

(e) Voting by proxy shall not be allowed.

(3)(a) The Professional Engineering Services Selection Committee shall give fair and impartial consideration to all responses certified in accordance with KRS 45A.825(6).

(b) The selection committee shall utilize the evaluation factors and weights indicated in the announcement for each project to screen all certified firm responses.

(c) Prior to the [second meeting of the] selection committee determining [to determine and rank] the three (3) most qualified firms, each voting selection committee member shall review all certified responses and preliminarily evaluate and numerically rate each firm using the weighted evaluation factors that appeared in the procurement bulletin. These evaluations and ratings are preliminary and therefore confidential working documents.

(4) In an executive session [at its second meeting], the selection committee shall determine the three (3) best qualified firms and develop a ranking of the three (3) by considering the weighted evaluation factors that appeared in the procurement bulletin.

(5)(a) Each committee member shall list all firms in his top three (3) rankings.

(b) All firms included on any of these lists shall be placed on the short list of firms.

(6)(a) All firms included on the short list shall be individually discussed by the committee with regard to their qualifications, the quality of their proposals, and the evaluation factors.

(b) Each committee member shall be given the opportunity to provide insight into why each firm should or should not be selected for the project.

(c) Any firm may be eliminated from further consideration by consensus of the selection committee members.

(7)(a) Each firm remaining under consideration after the discussion period set forth in subsection (6) of this section shall be individually ranked by the committee members using secret ballots.

(b) A new listing of short-listed firms based on the composite rankings of the secret ballots shall be discussed by the selection committee.

(c) Any firm may be eliminated from further consideration by consensus of the selection committee members.

(8) If at the end of the process set forth in subsection (8) [(7)] of this section, more than three (3) firms remain under consideration, the

process set forth in subsection (8) [(7)] of this section shall be repeated until only three (3) firms remain for consideration by the selection committee.

(9) Each of the three (3) firms identified in subsection (9) [(8)] of this section shall be individually ranked by the committee members using secret ballots.

(10)(a) Unless there is a tie between two (2) of the firms, the results of subsection (9) of this section shall determine the ranked order of the three (3) best qualified firms.

(b) If there is a tie ranking and if one of the firms has indicated that more of its work tasks will be performed in Kentucky, that firm shall be ranked higher than the other with which it had tied.

(c) If there is a tie ranking and if the work tasks to be performed in Kentucky are equal, the selection committee shall again perform the functions set forth in subsection (7) of this section until the tie is broken.

(11) If the selection committee elects, it may interview any of the responding firms to aid in its determination of the best qualified firm.

(12) For selection committee reviews involving statewide services advertised in accordance with Section 1(4) of 600 KAR 6:050, the committee shall rank the number of top-ranked firms as specified in the procurement bulletin and may select a second and third ranked firm, but a minimum of three (3) firms shall be ranked.

(13) The evaluations and ratings of the individual selection committee members shall be considered preliminary and confidential working documents and shall not be available to the public.

(14)(a) The Chairperson [Chairman] of the Professional Engineering Services Selection Committee shall notify the Director of the Division of Professional Services of the firms determined by the committee to be the three (3) best qualified and the order of their ranking.

(b) The Division of Professional Services shall send the letters required in KRS 45A.825(7)(c).

(c) The Division of Professional Services shall immediately notify by letter the top-ranked firm of its selection for the advertised project.

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

(a) "Certificate of Understanding of Restrictions for Members of Professional Engineering Services Selection Committee," Form TC 40-9, May 1994 edition;

(b) "Ex Parte Disclosure Form," Form TC 40-6, May 1994 edition;

(c) "Certificate of Confidentiality Form," Form TC 40-4, May 1994 edition;

(d) "Certificate of Conformity with Procurement Process," Form TC 40-10, May 1994 edition; and

(e) The Transportation Cabinet's Official Order Number 94902 regarding Conflict of Interest, May 21, 1993 edition.

(2) The material incorporated by reference may be inspection, copied, or obtained at the Division of Professional Services, 6th Floor State Office Building, 501 High Street, Frankfort, Kentucky 40622 between the hours of 8 a.m. and 4:30 p.m., Monday through Friday.

J.M. YOWELL, P.E., State Highway Engineer

JAMES C. CODELL, III, Secretary

TODD SHIPP, Office of General Counsel

APPROVED BY AGENCY: May 15, 1998

FILED WITH LRC: May 15, 1998 at noon

PUBLIC HEARING: A public comment hearing on this administrative regulation will be held on June 26, 1998 at 1:30 p.m. local prevailing time in the Transportation Cabinet, 4th Floor Hearing and Conference Room, 501 High Street, Frankfort, Kentucky 40622. Any person who intends to attend this meeting must in writing by June 19, 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 June 19, 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. If the hearing is held, written comments will be accepted until the close of the hearing. If the hearing is canceled, written comments will only be accepted until June 26, 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, Mail Code 10-13, 501 High Street, Frankfort, Kentucky 40622, (502) 564-7650, Fax: (502) 564-5238.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Sandra Pullen Davis

(1) Type and number of entities affected: There are 250 firms prequalified to perform professional engineering or related services each year. These are the same firms which provide proposals on projects and ultimately negotiate contracts. Approximately 50 Transportation Cabinet employees are required to follow the procedures set forth in this administrative regulation for the selection of consulting firms.

(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: There is an expense to each firm which averages \$1000 to prepare and submit the required prequalification forms each year. In addition, a complete proposal for a particular project will also cost each firm making a proposal to the Transportation Cabinet approximately \$3000 - \$5000 per proposal. This administrative regulation actually has no direct or indirect costs or savings to anyone since it just sets forth the additional procedures for the operation of the Consultant Selection Committee which were not set forth in KRS 45A.800 et seq.

(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 sets forth the requirements for submitting a proposal to the Transportation Cabinet.

2. Second and subsequent years: Same

(3) Effects on the promulgating administrative body: The basic process relating to the Consultant Selection Committee is set forth in KRS 45A.800 et seq. This administrative regulation just "fleshes" out the process and therefore has no real effect on the Transportation Cabinet. The Transportation Cabinet is required to review the 1200 proposals on projects each year. Not only is the entire staff of the Contract Negotiating Branch of Division of Professional Services constantly involved in this process, but also the user divisions are required to involve significant amounts of man-hours in the reviews and evaluations.

(a) Direct and indirect costs or savings: The annual budget for the Contract Negotiating Branch of the Division of Professional Services is \$300,000. At least double that cost is incurred collectively by the user divisions each year. However, these values are the total cost of the requirements set forth in 600 KAR Chapter 6.

1. First year: The total cost to the Transportation Cabinet is approximately \$900,000.

2. Continuing costs or savings: Same each year.

3. Additional factors increasing or decreasing costs: Without a process like this, the public could not be assured of getting the best

possible product. Therefore, there is an ultimate savings to the Commonwealth.

(b) Reporting or paperwork requirements: Review and evaluation of all proposals submitted on projects.

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

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: State Road Fund as authorized in the Transportation Cabinet budget.

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

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

(b) Kentucky: None

(7) Assessment of alternative methods; reasons why alternatives were rejected: Rather than specifically requiring at least two meetings of a Consultant Selection Committee, the administrative regulation has been amended to allow the committee to meet only one time if the proposal is a simple one or there are very few proposals received. The concept of requiring at least two meetings is unnecessary at times.

(8) Assessment of expected benefits:

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

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

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

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

(a) Necessity of proposed administrative regulation if in conflict:

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

(10) Any additional information or comments:

(11) Tiering: Was tiering applied? No. The basic consultant selection procedure is set forth in KRS Chapter 45A. Therefore, this administrative regulation is necessary only to flesh out the procedure. There can be no tiering of the selection process since it is set forth in state law.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. Title 23 of the United States Code and 23 CFR 172.5.

2. State compliance standards. The state has promulgated this administrative regulation setting forth the method of evaluation of proposals and the ranking/selection of consultants.

3. Minimum or uniform standards contained in the federal mandate. The federal mandate specifies that the contracting agency shall prepare written procedures for each method of procurement it proposes to utilize. These procedures are required to set forth each step used in the evaluation of proposals and the ranking/selection of consultants.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? The method for evaluating proposals and the ranking/selection of consultants is extended to all projects regardless of the source of funding for a particular project.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. KRS Chapter 45A imposes virtually the same requirements on state-funded projects as 23 CFR 172.5 does on federally-funded projects.

TRANSPORTATION CABINET
(Amendment)

600 KAR 6:080. Financial records and audits of firms.

RELATES TO: KRS 45A.800 through 45A.835, 23 CFR 172, 48 CFR 30, 31, 49 CFR 18, 23 USC

STATUTORY AUTHORITY: KRS 45A.807(2) [13A-100(1); 45A.800 through 45A.835, 23 CFR 172, 48 CFR, 49 CFR 18, 23 USC]

NECESSITY, FUNCTION, AND CONFORMITY: This administrative regulation sets forth the procedure to be used by the Transportation Cabinet when auditing professional engineering or related services providers while implementing the provisions of KRS 45A.800 to 45A.835. It further sets the standards firms are to follow in the keeping of their financial records. All engineering and related projects which are funded with U.S. Department of Transportation funds are subject to the cost principles or accounting standards set forth in 48 CFR 30 and 31. Because an engineering or related services firm may have both a federally funded and state-only funded project, these federal regulations are imposed on all firms contracting with or prequalified by the Transportation Cabinet.

Section 1. Financial Records of Firms. (1) A firm which has requested prequalification or which has been prequalified shall allow the cabinet access to:

(a) All financial or other information necessary to determine or verify the firm's direct wage rates, indirect cost rates, overhead, and direct project charges which are not included in overhead rates;

(b) All other information necessary to verify the firm's application for prequalification or renewal of prequalification; and

(c) {:

(2)(a) ~~A prequalified firm shall maintain all financial records including Payroll time records for all employees including the firm's principals [in accordance with 48 CFR Part 31].~~

(2) (b) A specific incurred cost or expense shall ~~not~~ be considered either ~~both~~ a direct cost or ~~an~~ and indirect cost.

(3) When a firm is notified by the Transportation Cabinet of a pending on-site audit, the firm shall collect the following information to be given to the auditor when he arrives on-site. The auditor may request that a portion of the information which can be readily and easily reproduced be mailed to him prior to arriving on site.

(a) Chart of accounts;

(b) The latest fiscal or calendar year financial statement of the firm. If one is available which was compiled, reviewed, or audited by an independent CPA, it shall also be made available to the auditor;

(c) Income tax returns for the audit year;

(d) Statement of company policies to include but not be limited to personnel policies, personal leave time, vacation time, sick leave, overtime, pay raise, travel, subsistence reimbursement, bonuses, employment, or retirement plans;

(e) Copy of a current proposal for a project, if available;

(f) General ledger;

(g) Cash disbursements and accounts payable journals;

(h) Copies of all leases to include but not be limited to leases on office space, buildings, machinery, copiers, and motor vehicles;

(i) Schedule of current personnel by classification;

(j) Most current payroll register;

(k) Quarterly federal payroll tax forms;

(l) Billing statements;

(m) List of bonuses to individual employees and the date paid;

(n) Copy of the pension or retirement plan of the firm and the contributions made on behalf of each employee;

(o) List of officers and principals of the company which includes their salaries and other compensations paid during the audit year and the amount of time they work direct;

(p) All contracts which were active during the audit year; and

(q) Minutes from the directors or stockholders meetings.

(4)(a) Except for the items set forth in subsection (3)(c) and (q) of this section, the firm shall provide the auditor with copies of the items set forth in subsection (3) of this section.

(b) The auditor may review the items set forth in subsection (3)(c) and (q) of this section but shall not remove them from the premises of the firm.

(5) A direct cost shall be determined by the provisions of 48 CFR 31.202 and not by whether it is reimbursable.

Section 2. Limitations on Overhead, Direct Costs, and Indirect Costs. (1) The maximum direct salary for a principal or partner of a firm shall be \$100,000 per year.

(2) In the calculation of indirect costs for overhead, the maximum salary for administrative purposes shall be:

(a) \$100,000 a year for a principal or partner of a firm; or

(b) \$90,000 a year for a nonprincipal or nonpartner of a firm.

(3) The maximum direct salary shall be:

(a) \$100,000 per year for a principal or partner of a firm; or

(b) \$90,000 per year for a nonprincipal or nonpartner of a firm;

(4)(a) The lobbying portion of dues paid to organizations shall not be allowed in the computation of indirect costs.

(b) If an organization has not separated the lobbying portion of its dues in the billing statement, the organization shall be contacted by the auditor for the information.

(c) If the amount of the dues attributable to lobbying is not made available to the auditor, the total amount of dues paid to the organization shall not be allowed in computation of indirect costs.

(5) To compute the average hourly pay rate for any salaried job classification at a firm, the number of available annual working hours per year shall be 2080.

(6) As a reasonableness test for indirect labor charges, indirect labor charges, including but not limited to bonuses and temporary help, shall not exceed sixty-seven (67) percent of the direct labor base of the firm.

Section 3. Approved Audits. (1) If the cabinet has not audited the firm in the previous twelve (12) months, the last available audit may be used for determination of the fee specified in the contract with the understanding that a contract modification shall be processed if an audit by the cabinet reveals substantial differences in overhead rates, wage rates or direct project expenses.

(2)(a) If the firm has a current audit of sufficient detail prepared by a Defense Contract Audit Agency, an independent certified public accountant, or other audit accepted by a federal, state, or local governmental agency and desires the Transportation Cabinet to utilize that audit for establishment of its overhead rate, the firm shall provide in a timely manner the audit report to the Transportation Cabinet prior to the scheduled audit.

(b) The External Audit Branch of the Transportation Cabinet shall review any audit submitted to the Transportation Cabinet pursuant to the provisions of paragraph (a) of this subsection. If necessary for an adequate review, the firm shall provide a copy of the audit work papers in addition to the audit report.

(c) The External Audit Branch of the Transportation Cabinet may approve the audit for use, disapprove the audit for use, or approve the audit based on limitations imposed by the Transportation Cabinet pursuant to 600 KAR 6:070.

(d) 1. Subject to the review performed in paragraph (b) of this subsection and any adjustments made based on limitations imposed by the Kentucky Transportation Cabinet pursuant to 600 KAR 6:070, the negotiation unit may use the overhead rates, wage rates, and direct project expenses from an audit submitted pursuant to paragraph (a) of this subsection in negotiating a fee.

2. This shall only be done with the understanding that a contract modification shall be processed if an audit by the cabinet reveals substantial differences in overhead rates, wage rates, or direct project

expenses and if an overhead submission packet is received in a timely manner allowing the Division of Professional Services' External Audit Branch sufficient time to perform or verify the overhead audit.

(3) Quarterly, the Division of Professional Services shall select a minimum of thirty (30) percent of the [one (1) and a maximum of three (3)] lump sum contracts that have been completed during the previous three (3) months and shall request an audit from the External Audit Branch.

Section 4. Audit Standards. (1) The Transportation Cabinet, when auditing a firm, shall abide by the accounting and auditing standards contained in the following:

(a) The material [adopted without change or] incorporated by reference in Section 6(1) [and (2)] of this administrative regulation; and

(b) The federal regulations adopted in Section 6(2)(a), (b), (c), and (d) of this administrative regulation.

(2) The term "common control" or "related parties" as used in Number 57 of the "Original Pronouncements, Accounting Standards as of June 1, 1995, Volume I and Volume II" shall be determined to exist when the relationship between a consultant firm and another company which is involved in real property renting, leasing arrangements, or joint ventures is such that:

(a) A principal or person with management responsibilities or significant influence in the consultant firm owns twenty (20) percent or more of the other company; or

(b) A principal or person with management responsibilities or significant influence in the consultant firm is also a principal or person with management responsibilities or significant influence in the other company; or

(c) A principal or person with management responsibilities or significant influence in the consultant firm has a family member whom he might control or influence because of the family relationship and who is a principal or has management responsibilities or significant influence in the other company; or

(d) A principal or person with management responsibilities or significant influence in the consultant firm has a family member who might control or influence him because of the family relationship and who is a principal in or has management responsibilities or significant influence in the other company.

[(2) The term "common control" as it is used in 48 CFR Part 31 shall be determined to exist when the companies or the principals of the company involved in real property renting, leasing arrangements, or joint ventures share common ownership of twenty (20) percent or more.]

(3)(a) Prior to the issuance of a final audit report, the auditor from the Transportation Cabinet shall present the draft audit findings to the firm either in an exit conference or in written correspondence to the firm.

(b) If the auditor provides the draft audit findings in writing, he shall notify the firm that within one (1) week of the mailing of the draft audit findings, the firm may request a copy of the auditor's work papers for review. Any comments the firm submits in writing within fifteen (15) days of the mailing of the work papers shall be taken into consideration in the issuance of the final audit report.

(c) If the auditor and the firm hold an exit conference, the auditor shall allow the firm to review or copy the work papers. The firm may submit any additional comments in writing within fifteen (15) days of the exit conference. These additional comments shall be taken into consideration in the issuance of the final audit report.

Section 5. Appeal of Audit Findings. (1) If a firm disagrees with the final results of an audit performed or approved by the Transportation Cabinet, the firm may request a review of the audit within thirty (30) days of the date the final audit report is transmitted to the firm. The request for a review shall be in writing and clearly state all of the concerns with the audit and the reasons for the concern.

(2) The Audit Review Committee shall consist of the following:

(a) Commissioner of the Department of Fiscal Management, Chair;

(b) Deputy State Highway Engineer for Project Development; and

(c) General counsel.

(3) A committee member may appoint a proxy to serve on this committee.

(4) The Audit Review Committee shall discuss the findings of the audit and the request for review. The Audit Review Committee may request the firm or the auditor to answer questions in person, by electronic communication, or in writing.

(5) If the firm is not satisfied with the decision of the Audit Review Committee, he may further appeal to the Secretary of the Transportation Cabinet within thirty (30) days of transmittal of the committee's decision to the firm. An administrative hearing to hear the appeal shall be held pursuant to the provisions of KRS Chapter 13B.

Section 6. Material Incorporated by Reference. (1) The following material is incorporated by reference:

(a) "Government Auditing Standards, 1994 Revision" by the Comptroller General of the United States;

(b) "Codification of Statements on Auditing Standards, (Including Statements on Standards for Attestation Engagements)," copyright 1995 by the American Institute of Certified Public Accountants, Inc.; and

(c) "Original Pronouncements, Accounting Standards as of June 1, 1995, Volume I and Volume II" published by the Financial Accounting Standards Board.

(2) The following federal regulations are adopted without change:

(a) 48 CFR Part 31, "Contract Cost Principles and Procedures," as effective October 1, 1997 [1995];

(b) 48 CFR Part 30, "Cost Accounting Standards Administration," as effective October 1, 1997 [1995], but only as it relates to 48 CFR Part 31;

(c) 48 CFR Chapter 99, Subchapter B, "Procurement Practices and Cost Accounting Standards," as effective October 1, 1997 [March 30, 1995]; and

(d) 26 CFR Part 1.167, "Depreciation," as effective July 18, 1995, but only when the firm does not have an acceptable depreciation schedule in effect; and

(3) All material incorporated by reference as a part of this administrative regulation may be obtained, viewed, or copied at the External Audit Branch, 3rd Floor State Office Building, 501 High Street, Frankfort, Kentucky 40622. The telephone number is (502) 564-7008. The office hours are 8 a.m. to 4:30 p.m. eastern time on weekdays.

J.M. YOWELL, P.E., State Highway Engineer

JAMES C. CODELL, III, Secretary

TODD SHIPP, Office of General Counsel

APPROVED BY AGENCY: May 15, 1998

FILED WITH LRC: May 15, 1998 at noon

PUBLIC HEARING: A public comment hearing on this administrative regulation will be held on June 26, 1998 at 1:30 p.m. local prevailing time in the Transportation Cabinet, 4th Floor Hearing and Conference Room, 501 High Street, Frankfort, Kentucky 40622. Any person who intends to attend this meeting must in writing by June 19, 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 June 19, 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. If the hearing is held, written comments will be accepted until the close of the hearing. If the hearing is canceled, written comments will only be accepted until June 26, 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, Mail Code 10-13, 501 High Street, Frankfort, Kentucky 40622, (502) 564-7650, Fax: (502) 564-5238.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Sandra Pullen Davis

(1) Type and number of entities affected: There are 250 firms prequalified to perform professional engineering or related services each year. These are the same firms which provide proposals on projects and ultimately negotiate contracts. Therefore, all of these firms must maintain their records and have their books audited in accordance with the provisions of 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: 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: The only cost to the firms is of the audit and the administrative requirements associated with the audit.

(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 firms are required to maintain their records in accordance with 48 CFR Part 31.

2. Second and subsequent years: Same

(3) Effects on the promulgating administrative body: The Transportation Cabinet is required to perform many audits each year.

(a) Direct and indirect costs or savings: The annual cost for the External Audit Branch to perform this function is approximately \$200,000.

1. First year: The total cost to the Transportation Cabinet is approximately \$200,000.

2. Continuing costs or savings: Same each year.

3. Additional factors increasing or decreasing costs: Without a process like this, the public could not be assure of getting the best possible product. Therefore, there is an ultimate savings to the Commonwealth.

(b) Reporting or paperwork requirements: Performance of the audit and preparation of the audit documents.

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

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: State Road Fund as authorized in the Transportation Cabinet budget.

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

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

(b) Kentucky: None

(7) Assessment of alternative methods; reasons why alternatives were rejected: The alternative of not setting forth much of the audit criteria was rejected because the consultant community needs to know what restrictions will apply and what standards will be followed in the performance of the audit.

(8) Assessment of expected benefits:

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

(b) State whether a detrimental effect on environment and public

health would result if not implemented: No

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

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

(a) Necessity of proposed administrative regulation if in conflict:

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

(10) Any additional information or comments:

(11) Tiering: Was tiering applied? No. All recordkeeping and audits must be done according to the same standards.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. Title 23 of the United States Code and 48 CFR Parts 30 and 31 and Chapter 99.

2. State compliance standards. The state has mandated that both the Transportation Cabinet and its consultants comply with the federal acquisition regulations.

3. Minimum or uniform standards contained in the federal mandate. The federal mandates specify the accounting procedures the firms must use and the auditing procedures the Transportation Cabinet must follow.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? The accounting procedures are extended to all prequalified firms regardless of the source of funding for a particular project since any prequalified consultant will be able to submit a proposal on a federally-funded project.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. A prequalified firm may be selected for a federally-funded project at any time. Therefore, even if it has only previously been selected for state-funded projects, it has to maintain its financial records in accordance with the federal mandate.

WORKFORCE DEVELOPMENT CABINET Department for Employment Services Division of Unemployment Insurance (Amendment)

787 KAR 1:210. Employer contribution rates.

RELATES TO: KRS 341.270

STATUTORY AUTHORITY: KRS 151B.020, 341.115

NECESSITY, FUNCTION, AND CONFORMITY: KRS 341.270 requires the Secretary for Workforce Development to determine the rate schedule for employer's contributions. The rate schedule in effect for each calendar year is determined by the "trust fund balance" as of December 31 of the preceding year. This administrative regulation applies the mathematical computation required by KRS 341.270 and sets forth the applicable rates to be in effect for the calendar year.

Section 1. Trust Fund Balance. The secretary finds the following to exist:

(1) The "trust fund balance" as of December 31, 1997 [4996] was \$571,366,293.68 [501,303,542.69].

(2) There was no outstanding loan from the Federal Unemployment Trust Fund as of December 31, 1997 [4996].

Section 2. Rate Schedule. On the basis of the findings in Section 1, and in accordance with KRS 341.270, Schedule A of Table A shall be in effect for calendar year 1998 [4997], because the "trust fund balance" equals or exceeds \$350,000,000 on December 31, 1997

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[1996]. Rates listed in Schedule A of Table A are listed below.

Employer Reserve Ratio	Rate Schedule
8.0% and over	0.30%
7.0% but under 8.0%	0.40%
6.0% but under 7.0%	0.50%
5.0% but under 6.0%	0.70%
4.6% but under 5.0%	1.00%
4.2% but under 4.6%	1.30%
3.9% but under 4.2%	1.50%
3.6% but under 3.9%	1.80%
3.2% but under 3.6%	2.00%
2.7% but under 3.2%	2.10%
2.0% but under 2.7%	2.20%
1.3% but under 2.0%	2.30%
0.0% but under 1.3%	2.40%
-0.5% but under -0.0%	6.50%
-1.0% but under -0.5%	6.75%
-1.5% but under -1.0%	7.00%
-2.0% but under -1.5%	7.25%
-3.0% but under -2.0%	7.50%
-4.0% but under -3.0%	7.75%
-6.0% but under -4.0%	8.25%
-8.0% but under -6.0%	8.50%
Less than -8.0%	9.00%

CHERYL D. KING, Acting Secretary
MARGARET WHITTET, Commissioner
SUE SIMON, Acting General Counsel

APPROVED BY AGENCY: April 29, 1998

FILED WITH LRC: April 30, 1998 at 1 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on Tuesday, June 23, 1998, at 9:30 a.m. at the Health Services Cabinet Auditorium, 275 East Main Street, First Floor, Health Services Building, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by, Tuesday, June 16, 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: Sue Simon, Acting General Counsel, Workforce Development Cabinet, Capital Plaza Tower, 2nd Floor, Frankfort, Kentucky 40601, Telephone: (502) 564-6606, Fax: (502) 564-7916.

REGULATORY IMPACT ANALYSIS

Contact Person: Sue Simon

(1) Type and number of entities affected: 79,000 Kentucky employers.

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

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

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

(c) Compliance, reporting, and paperwork requirements, including

factors increasing or decreasing costs (note any effects upon competition) for the:

1. First year following implementation: None

2. Second and subsequent years: None

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings: : None resulting from this administrative regulation.

1. First year: None

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: None

(4) Assessment of anticipated effect on state and local revenues: Possible increase in unemployment insurance trust fund receipts due only to natural wage increases and increased number of employers.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: U.S. Department of Labor administrative funding.

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

(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: Not applicable.

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

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

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

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

(a) Necessity or 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? Tiering was not applied because all taxing employers are treated equally.

FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? Yes

2. State what unit, part or division of local government this administrative regulation will affect. Either all or part of a local government could be affected. Entities such as county health departments, water districts, libraries, etc., could be affected based upon their independent exercise of unemployment reporting options.

3. State the aspect or service of local government to which this administrative regulation relates. This administrative regulation affects the unemployment tax assessed based on the payroll of those local governments which have elected to make quarterly unemployment tax payments.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a local government for the first full year the regulation is to be in effect. If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):

Expenditures (+/-):

Other Explanation: The great majority of local governments have elected to reimburse any unemployment benefits attributable to their employment. However, approximately 700 governmental entities have elected to pay quarterly unemployment taxes. By specifying the tax

rate schedule in effect for 1998, this regulation determines in part the amount of tax which will be due from these tax paying entities. The tax rate schedule set forth in this regulation remains the same as the previous year.

PUBLIC PROTECTION AND REGULATION CABINET
Department of Housing, Buildings, and Construction
Division of Building Codes Enforcement
(Amendment)

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

RELATES TO: KRS 198B.010, 198B.040, 198B.050, 198B.060, 198B.080, 198B.110, 198B.260, 198B.990

STATUTORY AUTHORITY: KRS 198B.040(7), 198B.050

NECESSITY, FUNCTION, AND CONFORMITY: KRS 198B.040(7) requires the board to adopt a mandatory uniform state building code to establish standards for the construction of all buildings in the state. This administrative regulation incorporates by reference the Kentucky Building Code, Seventh Edition 1997.

Section 1. Incorporation by Reference. (1) "The Kentucky Building Code", (Seventh Edition - 1997), as amended January 6, 1998 and April 16, 1998 [~~October 16, 1997~~], by the Kentucky Board of Housing, Buildings and Construction, is incorporated by reference.

(2) It may be inspected, copied, or obtained at the Kentucky Department of Housing, Buildings, and Construction, 1047 U.S. 127 South, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

CHARLES A. COTTON, Commissioner

LAURA M. DOUGLAS, Secretary

JUDITH G. WALDEN, Office of General Counsel

APPROVED BY AGENCY: April 29, 1998

FILED WITH LRC: May 6, 1998 at 10 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on Tuesday, June 23, 1998, at 10 a.m., local time, in the office of the Department of Housing, Buildings and Construction, 1047 U.S. 127 South, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by June 16, 1998, (five work days prior to the hearing) of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made in which case the person requesting the transcript shall have the responsibility of paying for same. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation by the above date to the contact person.

Contact person: Judith G. Walden, Office of General Counsel, Department of Housing, Buildings and Construction, The 127 Building, 1047 U.S. 127 South, Frankfort, Kentucky 40601, Telephone: (502) 564-8044, Fax: (502) 564-6799.

REGULATORY IMPACT ANALYSIS

Contact person: Judith G. Walden, General Counsel

(1) Type and number of entities affected: Contractors, architects, engineers, design professionals.

(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 costs or

savings involved because administrative regulation only establishes acceptability and sets standards.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented: No costs or savings involved as stated above.

(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 to users of KBC.

2. Second and subsequent years: None

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: Cost of printing KBC but this is recouped by the sale of the Code books.

2. Continuing costs or savings: Cost of printing revised or updated pages.

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements: Paperwork requirements to agency involve updating code by reprinting and distributing to purchasers.

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

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

(6) Economic impact, including effects of economic activities arising from administrative regulation, on:

(a) Geographical area in which administrative regulation will be implemented: Kentucky Building Code is used and enforced state-wide.

(b) Kentucky: Statewide

(7) Assessment of alternative methods; reasons why alternatives were rejected: No alternative option available; Board of Housing adopts or amends material within defined limits.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: Public safety concerns.

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

(c) If detrimental effect would result, explain detrimental effect: Without a building code, construction would not conform to the latest safety standards listed and confusion over some provisions would make design more difficult.

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication:

(a) Necessity of proposed regulation if in conflict: No known conflict of statute or policy.

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

(10) Any additional information or comments:

(11) TIERING: Is tiering applied? Yes. Tiering was applied in that the mandatory requirements for buildings are different depending upon the occupancy type and number of persons occupying a building; building size and construction type.

FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? Yes

2. State what unit, part or division of local government this administrative regulation will affect. This administrative regulation will affect a part of local government.

3. State the aspect or service of local government to which this administrative regulation relates. This administrative regulation will affect local government where there is a local building inspection program. KRS 198B.060 requires local government to provide for

building officials to enforce the Kentucky Building Code.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a local government for the first full year the regulation is to be in effect. If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):

Expenditures (+/-):

Other Explanation: There is no increased fiscal impact created by this regulation, nor does it increase the number of persons needed by local government. State revenues are neither increased nor decreased by this administrative regulation.

CABINET FOR HEALTH SERVICES
Department for Public Health
Division of Public Health Protection and Safety
(Amendment)

902 KAR 100:010. Definitions.

RELATES TO: KRS 211.842 to 211.852, 211.990(4), 10 CFR 20.1003-20.1005

STATUTORY AUTHORITY: KRS 194.050, 211.090, 211.844, 10 CFR 20.1003-20.1005

NECESSITY, FUNCTION, AND CONFORMITY: KRS 211.844 authorizes the Cabinet for Health Services [~~Human Resources~~] to provide by administrative regulation for the registration and licensing of the possession or use of sources of ionizing or electronic product radiation and the handling and disposal of radioactive waste. This administrative regulation provides definitions as applicable to 902 KAR Chapters 100 and 105.

Section 1. Definitions. As used in these administrative regulations, these terms have the definitions set forth below:

(1) "A₁" and "A₂."

(a) "A₁" means the maximum activity of special form radioactive material permitted in a Type A package;

(b) "A₂" means the maximum activity of radioactive material, other than special form radioactive material, permitted in a Type A package;

(c) These values are listed in 902 KAR 100:070, Section 21, or may be derived under the procedure prescribed in 902 KAR 100:070, Section 20.

(2) "Absorbed dose" means the energy imparted by ionizing radiation per unit mass of irradiated material. The units of absorbed dose are the rad and the gray (Gy).

(3) "Accelerator" means a machine capable of accelerating electrons, protons, deuterons, or other charged particles in a vacuum and of discharging the resultant particulate or other radiation into a medium at energies usually in excess of one (1) MeV, such as the cyclotron, synchrotron, synchrocyclotron, betatron, linear accelerator, and Van de Graaff electrostatic generator.

(4) "Accessible surface" means the external surface of the enclosure or housing provided by the manufacturer.

(5) "Act" means KRS 211.842 to 211.852.

(6) "Activity" means the rate of disintegration (transformation) or decay of radioactive material. The units of activity are the curie (Ci) and the becquerel (Bq).

(7) "Address of use" means the building or buildings that are identified on the license and where radioactive material may be received, used or stored.

(8) "Adult" means an individual eighteen (18) or more years of age.

(9) "Agreement state" means a state with which the United States Nuclear Regulatory Commission or the United States Atomic Energy Commission has entered into an effective agreement under subsection 274 b. of the Atomic Energy Act of 1954, as amended (73 Stat.

689).

(10) "Airborne radioactive material" means radioactive material dispersed in the air in the form of dusts, fumes, particulates, mists, vapors, or gases.

(11) "Airborne radioactivity area" means a room, enclosure, or area in which airborne radioactive material, composed wholly or partly of radioactive material, exists in concentrations:

(a) In excess of the derived air concentrations (DACs) specified in 902 KAR 100:019, Section 44; or

(b) To a degree that an individual is present in the area without respiratory protective equipment may exceed during the hours an individual is present in a week, an intake of six-tenths (0.6) percent of the annual limit on intake (ALI) or twelve (12) DAC-hours.

(12) "Aluminum equivalent" means the thickness of type 1100 (ninety-nine (99.0) percent minimum aluminum, 0.12 percent copper) aluminum affording the same attenuation, under specified conditions, as the material in question.

(13) "Analytical x-ray systems" means a system which utilizes x-rays for the examination of the structure of materials, such as x-ray diffraction and spectrographic equipment.

(14) "Annual limit on intake (ALI)" means the derived limit for the amount of radioactive material taken into the body of an adult worker by inhalation or ingestion in a year. ALI is the smaller value of intake of a given radionuclide in a year by the reference man that would result in a committed effective dose equivalent of five (5) rems (0.05 Sv) or a committed dose equivalent of fifty (50) rems (five-tenths (0.5) Sv) to an individual organ or tissue. (ALI values for intake by ingestion and by inhalation of selected radionuclides are given in 902 KAR 100:019, Section 44, Table I, Columns 1 and 2.)

(15) "Area of use" means a portion of a physical structure that has been set aside for the purpose of receiving, using or storing radioactive material.

(16) "As low as reasonably achievable (ALARA)" means making every reasonable effort to maintain exposures to radiation as far below the dose limits in 902 KAR 100:019 as practical, consistent with the purpose for which the licensed activity is undertaken. ALARA shall take into account the state of technology, the economics of improvement in relation to benefits to the public health and safety, and other societal and socioeconomic considerations, in relation to the utilization of nuclear energy and radioactive materials in the public interest.

(17) "Attenuation" means the reduction of exposure rate upon passages of radiation through matter.

(18) "Attenuation block" means a block or stack, having dimensions twenty (20) cm by twenty (20) cm by three and eight-tenths (3.8) cm, of type 1100 aluminum alloy or other materials having equivalent attenuation.

(19) "Authorized nuclear pharmacist" means a pharmacist who is:

(a) Board certified as a nuclear pharmacist by the Board of Pharmaceutical Specialties; or

(b) Identified as an authorized nuclear pharmacist on a cabinet, Agreement State or U.S. Nuclear Regulatory license that authorizes the use of radioactive material in the practice of nuclear pharmacy.

(20) "Automatic exposure control" means a device which automatically controls one (1) or more technique factors in order to obtain at a preselected location a required quantity of radiation.

(21) "Authorized user" means a physician, dentist, or podiatrist, identified as an authorized user on a cabinet, U.S. Nuclear Regulatory Commission, or another agreement state license that authorizes the medical use of radioactive material.

(22) "Background radiation" means radiation from cosmic sources, naturally occurring radioactive materials, including radon (except as a decay product of source or special nuclear material), and global fallout as it exists in the environment from the testing of nuclear explosive devices or from past nuclear accidents such as Chernobyl that contribute to background radiation and are not under the control of the license. Background radiation shall not include radiation from radioactive materials regulated by the Cabinet for Human Resources.

(23) "Beam axis" means a line from the source through the centers of the x-ray fields.

(24) "Beam limiting device" (collimator) means a device which provides a means to restrict the dimensions of the x-ray field.

(25) "Beam monitoring system" means a system designed to detect and measure the radiation present in the useful beam.

(26) "Becquerel" means a unit, in the International System of Units (SI), of measurement of radioactivity equal to one (1) transformation per second.

(27) "Bioassay (radiobioassay)" means the determination of kinds, quantities or concentrations, and, in some cases, the locations of radioactive material in the human body, by direct measurement (in vivo counting) or by analysis and evaluation of materials excreted or removed from the human body.

(28) "Brachytherapy" means a method of radiation therapy in which an encapsulated source or group of sources is utilized to deliver [beta or gamma] radiation at a distance of up to a few centimeters, by surface, intracavitary, or interstitial application.

(29) "Broker" (waste broker) means a person who takes possession of low-level waste solely for the purposes of consolidation and shipment.

(30) "By-product material" means:

(a) Radioactive material (except special nuclear material) yielded in or made radioactive by exposure to the radiation incident to the process of producing or utilizing special nuclear material; and

(b) The tailings or wastes produced by the extraction or concentration of uranium or thorium from ore processed primarily for its source material content, including discrete surface wastes resulting from uranium solution extraction processes. Underground ore bodies depleted by these solution extraction operations shall not constitute by-product material within this definition.

(31) "Cabinet" means Cabinet for Human Resources, or its duly authorized representatives.

(32) "Cabinet radiography" means industrial radiography conducted in an enclosure or cabinet shielded so that radiation levels at every location on the exterior meet the limitations specified in 902 KAR 100:019, Section 11.

(33) "Cabinet x-ray systems" means an x-ray system with the x-ray tube installed or used in a permanent enclosure in which the enclosure is intended to contain at least that portion of the material being irradiated. The enclosure may be the architectural structure or may be independent of the architectural structure, but regardless, the structure of the enclosure shall provide attenuation of the radiation to meet the requirements of 902 KAR 100:105, relating to the possession, use, and operation of x-ray systems, and shall exclude personnel from its interior during the generation of x-radiation. This definition shall not include x-ray systems used by licensed practitioners of the healing arts.

(34) "Calendar quarter" means not less than twelve (12) consecutive weeks nor more than fourteen (14) consecutive weeks. The first calendar quarter of each year shall begin in January and subsequent calendar quarters shall be arranged so that no day is included in more than one (1) calendar quarter and no day in a one (1) year period is omitted from inclusion within a calendar quarter. No licensee or registrant shall change the method observed of determining calendar quarters except at the beginning of a calendar year.

(35) "Calibration" means the determination of:

(a) The response or reading of an instrument relative to a series of known radiation values over the range of the instrument; or

(b) The strength of a source of radiation relative to a standard.

(36) "Carrier" means a person engaged in the transportation of passengers or property by land or water as a common, contract, or private carrier, or by civil aircraft.

(37) "Cephalometric device" means a device intended for the radiographic visualization and measurement of the dimensions of the human head.

(38) "Certified cabinet x-ray system" means an x-ray system

which has been certified under 21 CFR 1010.2 as being manufactured and assembled according to the provisions of 21 CFR 1020.40.

(39) "Certified components" means components of x-ray systems which shall be subject to regulations promulgated under 21 CFR Subchapter J.

(40) "Certified system" means an x-ray system which has one (1) or more certified component.

~~[(38) "Certified cabinet x-ray system" means an x-ray system which has been certified under 21 CFR 1010.2 as being manufactured and assembled according to the provisions of 21 CFR 1020.40.]~~

(41) "CFR" means Code of Federal Regulations.

(42) "Changeable filters" means a filter, exclusive of inherent filtration, which can be removed from the useful beam through an electronic, mechanical, or physical process.

(43) "Class (or lung class or inhalation class)" means a classification scheme for inhaled material according to its rate of clearance from the pulmonary region of the lung. Materials shall be classified as D, W, or Y, which applies to a range of clearance half-times: for Class D (Days) of less than ten (10) days, and for Class W (Weeks) from ten (10) to 100 days, and for Class Y (Years) of greater than 100 days.

(44) "Collective dose" means the sum of the individual doses received in a given period of time by a specified population from exposure to a specified source of radiation.

(45) "Collimator" means a device used to limit the size, shape, and direction of the primary radiation beam.

(46) "Commission" means the Nuclear Regulatory Commission or its duly authorized representatives.

(47) "Committed dose equivalent (H_{T50})" means the dose equivalent to organs or tissues of reference (T) that will be received from an intake of radioactive material by an individual during the fifty (50) year period following the intake.

(48) "Committed effective dose equivalent (H_{E50})" means the sum of the products of the weighting factors applicable to each of the body organs or tissues that are irradiated and the committed dose equivalent to these organs or tissues ($H_{E50} = \sum W_T H_{T50}$).

(49) "Computed tomography (CT)" means the production of a tomogram by the acquisition and computer processing of x-ray transmission data.

(50) "Constraint (dose constraint)" means a value above which specified licensee actions are required.

(51) "Contact therapy system" means an x-ray system used for therapy with the x-ray tube port placed in contact with or within five (5) centimeters of the surface being treated.

(52) "Control panel" means that part of the x-ray control upon which are mounted the switches, knobs, push buttons, and other hardware necessary for manually setting the technique factors.

(53) "Controlled area" means an area, outside of a restricted area but inside the site boundary, to which access can be limited by the licensee or registrant for a reason.

(54) "Cooling curve" means the graphical relationship between heat units stored and cooling time.

(55) "Curie" means a quantity of radioactivity. One (1) curie (Ci) is that quantity of radioactive material which decays at the rate of 3.7×10^{10} disintegrations per second (dps). Commonly used submultiples of the curie are the millicurie and the microcurie. One (1) millicurie (mCi) = 0.001 curie = 3.7×10^7 dps. One (1) microcurie (uCi) = 0.000001 curie = 3.7×10^4 dps.

(56) "Dead man switch" means a switch so constructed that a circuit closing contact can be maintained only by continuous pressure on the switch by the operator.

(57) "Declared pregnant woman" means a woman who has voluntarily informed her employer, in writing, of her pregnancy and the estimated date of conception.

(58) "Decommission" means to remove, as a facility, safely from service and reduce residual radioactivity to a level that permits release of the property for unrestricted use and termination of license.

(59) "Dedicated check source" means a radioactive source that is used to assure the constant operation of a radiation detection or measurement device over several months or years. The source may also be used for other purposes.

(60) "Deep-dose equivalent (H_d)" which applies to external whole-body exposure, means the dose equivalent at a tissue depth of one (1) centimeter (cm) (1000 mg/cm²).

(61) "Depleted uranium" means the source material uranium in which the isotope uranium-235 is less than 0.711 weight percent of the total uranium present. Depleted uranium does not include special nuclear material.

(62) "Derived air concentration (DAC)" means the concentration of a given radionuclide in air which, if breathed by the reference man for a working year of 2,000 hours under conditions of light work (inhalation rate one and two-tenths (1.2) cubic meters of air per hour), results in an intake of one (1) ALI. DAC values are given in 902 KAR 100:019, Section 44, Table I, Column 3.

(63) "Derived air concentration-hour (DAC-hour)" means the product of the concentration of radioactive material in air (expressed as a fraction or multiple of the derived air concentration for each radionuclide) and the time of exposure to that radionuclide, in hours. A licensee may take 2,000 DAC-hours to represent one (1) ALI, equivalent to a committed effective dose equivalent of five (5) rems (0.05 Sv).

(64) "Diagnostic clinical procedure manual" means a collection of written procedures that describes each method, and other instructions and precautions, by which the licensee performs diagnostic clinical procedures where each diagnostic clinical procedure has been approved by the authorized user and includes the radiopharmaceutical, dosage, and route of administration.

(65) "Diagnostic source assembly" means the tube housing assembly with a beam-limiting device attached.

(66) "Diagnostic-type protective tube housing" means an x-ray tube housing so constructed that the leakage radiation measured at a distance of one (1) meter from the source cannot exceed 100 milliroentgens in one (1) hour if the tube is operated at its maximum continuous rated current for the maximum tube potential.

(67) "Diagnostic x-ray system" means an x-ray system designed for irradiation of a part of the human body for the purpose of diagnosis or visualization.

(68) "Direct scatter radiation" means that scattered radiation which has been deviated in direction only by materials irradiated by the useful beam. (See also "scattered radiation").

(69) "Disposal" means the disposition of waste as authorized by 902 KAR 100:021.

(70) "Dose" or "radiation dose" is a generic term that means absorbed dose, dose equivalent, effective dose equivalent, committed dose equivalent, committed effective dose equivalent, or total effective dose equivalent.

(71) "Dose commitment" means the total radiation dose to a part of the body that results from retention in the body of radioactive material. For purposes of estimating the dose commitment, it is assumed that from the time of intake the period of exposure to retained material shall not exceed fifty (50) years.

(72) "Dose equivalent (H_T)" means the product of the absorbed dose in tissue, quality factor, and other necessary modifying factors at the location of interest. The units of dose equivalent are the rem and sievert (Sv).

(73) "Dosimetry processor" means an individual or an organization that processes and evaluates individual monitoring equipment in order to determine the radiation dose delivered to the equipment [$(H_{E50} = W_T H_{T50})$].

(74) "Effective dose equivalent (H_E)" means the sum of the products of the dose equivalent to the organ or tissue (H_T) and the weighting [weighing] factors (W_T) applicable to each of the body organs or tissues that are irradiated ($H_E = \sum W_T H_T$).

(75) "Embryo or fetus" means the developing human organism

from conception until the time of birth.

(76) "Entrance or access point" means a location through which an individual may gain access to radiation areas or to radioactive materials. This includes entry or exit portals of sufficient size to permit human entry, irrespective of their intended use.

(77) "Entrance exposure rate" means the roentgens per unit time at the point the center of the useful beam enters the patient.

(78) "Exclusive use" (also referred to in other administrative regulations as "sole use" or "full load") means the sole use of a conveyance by a single consignor in which initial, intermediate, and final loading and unloading are carried out under the direction of the consignor or consignee.

(79) "Exposure" means being exposed to ionizing radiation or to radioactive material.

(80) "Exposure rate" means the exposure per unit of time, such as roentgen per minute and milliroentgen per hour.

(81) "External dose" means that portion of the dose equivalent received from radiation sources outside the body.

(82) "Extremity" means hand, elbow, arm below the elbow, foot, knee, or leg below the knee.

(83) "Eye dose equivalent" means to the external exposure of the lens of the eye and means the dose equivalent at a tissue depth of three-tenths (0.3) centimeter (300 mg/cm²).

(84) "Facility" means the location at which one (1) or more devices or sources are installed or located within one (1) building, vehicle, or under one (1) roof and are under the same administrative control.

(85) "Field emission equipment" means equipment which uses an x-ray tube in which electron emission from the cathode is due solely to the action of an electric field.

(86) "Field station" means a facility where radioactive sources may be stored or used and from which equipment is dispatched to temporary job sites.

(87) "Filter" means the material in the useful beam which usually absorbs preferentially the less penetrating radiations.

(a) "Inherent filtration" means the filter permanently in the useful beam. It includes the window of the x-ray tube and the permanent tube enclosure.

(b) "Added filter" means the filter added to the inherent filtration.

(c) "Total filter" means the sum of the inherent and added filters.

(88) "Fissile material" means special nuclear material consisting of or containing one (1) or more fissile radionuclides. Fissile radionuclides are plutonium-238, plutonium-239, plutonium-241, uranium-233, and uranium-235. Neither natural or depleted uranium is fissile material. (Cabinet jurisdiction extends only to special nuclear material if quantities are not sufficient to form a critical mass as defined in this administrative regulation.)

(a) Fissile Class I: a package which may be transported in unlimited numbers and in an unspecified arrangement, and which requires no nuclear criticality safety controls during transportation. A transport index is not assigned for purposes of nuclear criticality safety, but may be required because of external radiation levels.

(b) Fissile Class II: a package which may be transported together with other packages in an unspecified arrangement but, for criticality control, in numbers which do not exceed an aggregate transport index of fifty (50). These shipments require no other nuclear criticality safety control during transportation. Individual packages may have a transport index not less than 0.1 and not more than ten (10).

(89) "Fluoroscopic imaging assembly" means a component which comprises a reception system in which x-ray photons produce a fluoroscopic image. It includes equipment housings, electrical interlocks if present, the primary protective barrier, and structural material providing linkage between the image receptor and the diagnostic source assembly.

(90) "Focal spot" means the area projected on the anode of the x-ray tube by the electrons accelerated from the cathode and from which the useful beam originates.

(91) "Former U.S. Atomic Energy Commission (AEC) or U.S. Nuclear Regulatory Commission (NRC) licensed facilities" means nuclear reactors, nuclear fuel reprocessing plants, uranium enrichment plants, or critical mass experimental facilities where AEC or NRC licenses have been terminated.

(92) "General purpose radiographic x-ray system" means a radiographic x-ray system which, by design, is not limited to radiographic examination of specific anatomical regions.

(93) "Generally applicable environmental radiation standards" means standards issued by the Environmental Protection Agency (EPA) under the authority of 42 USC § 2011 et seq. that impose limits on radiation exposures or levels, or concentrations or quantities of radioactive material, in the general environment outside the boundaries of locations under the control of persons possessing or using radioactive material.

(94) "Generator" (waste generator) means a person who produces or possesses low-level radioactive waste in the course of or incident to manufacturing, power generation, processing, medical diagnosis and treatment, research, education or other activity.

(95) "Gonad shield" means a protective barrier for the testes or ovaries.

(96) "Gray (Gy)" means the SI unit of absorbed dose. One (1) gray shall be equal to an absorbed dose of one (1) Joule/kilogram (100 rads).

(97) "Half-value layer (HVL)" means the thickness of specified material which attenuates the beam of radiation to an extent that the exposure rate is reduced to one-half (1/2) of its original value. In this definition, the contribution of scattered radiation, other than that which might be present initially in the beam concerned, shall be deemed to be excluded.

(98) "Healing arts screening" means the testing of human beings using x-ray machines for the detection or evaluation of health indications if these tests are not specifically and individually ordered by a licensed practitioner of the healing arts legally authorized to prescribe these x-ray tests for the purpose of diagnosis or treatment.

(99) "Heat unit" means a unit of energy equal to the product of the peak kilovoltage, milliamperes, and seconds, such as kVp x mA x seconds.

(100) "High radiation area" means an area, accessible to individuals, in which radiation levels may result in an individual receiving a dose equivalent in excess of one-tenth (0.1) rem (1m Sv) in one (1) hour at thirty (30) centimeters from the radiation source or from a surface that the radiation penetrates.

(101) "Human use" means the internal or external administration of radiation or radioactive materials to human beings.

(102) "Image intensifier" means a device which converts instantaneously by means of photoemissive surfaces and electronic circuitry an x-ray pattern into a light pattern of greater intensity than would have been produced by the original x-ray pattern.

(103) "Image receptor" means a device as a fluorescent screen or radiographic film which transforms incident radiation into a visual image or into another form which can be made into a visual image by further transformations.

(104) "Image receptor support" means for mammographic systems, that part of the system designed to support the image receptor in a horizontal plane during a mammographic examination.

(105) "Individual" means a human being.

(106) "Individual monitoring" means the assessment of:

(a) Dose equivalent by the use of devices designed to be worn by an individual;

(b) Committed effective dose equivalent by bioassay (see bioassay) or by determination of the time-weighted air concentrations to which an individual has been exposed, such as DAC-hours; or

(c) Dose equivalent by the use of survey data.

(107) "Individual monitoring devices (individual monitoring equipment)" means devices designed to be worn by a single individual for the assessment of dose equivalent, such as film badges,

thermoluminescent dosimeters (TLDs), pocket ionization chambers, and personal ("lapel") air sampling devices.

(108) "Industrial radiography" means the examination of the macroscopic structure of materials by nondestructive methods utilizing sources of radiation.

(109) "Injection tool" means a device used for controlled subsurface injection of radioactive tracer material.

(110) "Inspection" means an examination or observation, such as tests, surveys, and monitoring, to determine compliance with rules, administrative regulations, orders, and requirements of the cabinet.

(111) "Interlock" means a device arranged or connected so that the occurrence of an event or condition is required before a second event or condition can occur or continue to occur.

(112) "Internal dose" means that portion of the dose equivalent received from radioactive material taken into the body.

(113) "Irradiation" means the exposure of matter to ionizing radiation.

(114) "Kilovolt peak (kVp)" means the crest value in kilovolts of the potential difference of a pulsating potential generator. If only one-half (1/2) of the wave is used, the value refers to the useful half of the wave.

(115) "Lead equivalent" means the thickness of lead affording the same attenuation, under specified conditions, as the material in question.

(116) "Leakage radiation" means radiation emanating from the diagnostic or therapeutic source assembly except for the useful beam.

(117) "Leakage technique factors" means the technique factors associated with the tube housing assembly which are used in measuring leakage radiation. They shall be defined as follows:

(a) For capacitor energy storage equipment, the maximum rated number of exposures in an hour for operation at the maximum rated peak tube potential with the quantity of charge per exposure being ten (10) milliamperes seconds (mAs) or the minimum obtainable from the unit, whichever is larger.

(b) For field emission equipment rated for pulsed operation, the maximum rated number of x-ray pulses in an hour for operation at the maximum rated peak tube potential.

(c) For all other equipment, the maximum rated continuous tube current for the maximum rated peak tube potential.

(118) "License" means a license issued by the cabinet under 902 KAR Chapter 100.

(119) "Licensed material" means radioactive material received, possessed, used, transferred, or disposed under a general or specific license issued by the cabinet under 902 KAR Chapter 100.

(120) "Licensee" means the holder of a license.

(121) "Limits (dose limits)" means the permissible upper bounds of radiation doses.

(122) "Lixiscope" means a portable light-intensified imaging device using a sealed source.

(123) "Logging assistant" means an individual who, under the personal supervision of a logging supervisor, handles sealed sources or tracers that are not in logging tools or shipping containers or who uses survey instruments in well-logging activities.

(124) "Logging supervisor" means the individual who provides personal supervision of the utilization of sources of radiation at the well site.

(125) "Logging tool" means a device used subsurface to perform well-logging.

(126) "Lost or missing licensed material" means licensed material whose location is unknown. It includes material that has been shipped but has not reached its destination and whose location cannot be readily traced in the transportation system.

(127) "Low-level radioactive waste" means radioactive waste not classified as high-level radioactive waste, transuranic waste, spent nuclear fuel, or by-product material as defined in Section 11e(2) of the Atomic Energy Act of 1954 (42 USC 2014).

(128) "Low specific activity material" means:

(a) Uranium or thorium ores and physical or chemical concentrates of those ores;

(b) Unirradiated natural or depleted uranium or unirradiated natural thorium;

(c) Tritium oxide in aqueous solutions provided the concentration does not exceed five (5.0) millicuries per milliliter; or

(d) Material in which the radioactivity is essentially uniformly distributed and in which the estimated average concentration per gram of contents shall not exceed:

1. 0.0001 millicurie of radionuclides for which the A_2 quantity in 902 KAR 100:070 is not more than 0.05 curie;

2. 0.005 millicurie of radionuclides for which the A_2 quantity in 902 KAR 100:070 is more than 0.05 curie, but not more than one (1) curie; or

3. 0.3 millicurie of radionuclides for which the A_2 quantity in 902 KAR 100:070 is more than one (1) curie; or

(e) Objects of nonradioactive material externally contaminated with radioactive material, if the radioactive material is not readily dispersible and the surface contamination, averaged over an area of one (1) square meter, does not exceed 0.0001 millicurie (220,000 disintegrations per minute) per square centimeter of radionuclides for which the A_2 quantity in 902 KAR 100:070 is not more than 0.05 curie, or 0.001 millicurie (2,200,000 disintegrations per minute) per square centimeter for other radionuclides.

(129) "mA" means milliampere.

(130) "Management" means the chief executive officer or that individual's designee.

(131) "mAs" means milliampere second.

(132) "Medical institution" means an organization in which several medical disciplines are practiced.

(133) "Medical use" means the intentional internal or external administration of radioactive material, or the radiation therefrom, to patients or human research subjects under the supervision of an authorized user. [~~humans in the practice of the healing arts.~~]

(134) "Member of the public" means an individual ~~except when~~ [in a controlled or unrestricted area. An individual shall not be a member of the public during a period in which] the individual is receiving [receives] an occupational dose.

(135) "Microscopic analytical x-ray equipment" means a device which utilizes x-rays for examining the microscopic structure of materials. This includes x-ray diffraction and spectrographic equipment.

(136) "Mineral logging" means logging performed for the purpose of mineral exploration other than oil or gas.

(137) "Minor" means an individual less than eighteen (18) years of age.

(138) "Misadministration" means the administration of:

(a) A radiopharmaceutical dosage greater than thirty (30) microcuries of sodium iodide I-125 or I-131:

1. Involving the wrong patient or human research subject or wrong radiopharmaceutical; or

2. If both the administered dosage differs from the prescribed dosage by more than twenty (20) percent of the prescribed dosage and the difference between the administered dosage and prescribe dosage exceeds thirty (30) microcuries.

(b) A therapeutic radiopharmaceutical dosage, other than sodium iodide I-125 or I-131:

1. Involving the wrong patient, or human research subject, radiopharmaceutical, or route of administration; or

2. If the administered dosage differs from the prescribed dosage by more than twenty (20) percent of the prescribed dosage.

(c) A gamma stereotactic radiosurgery radiation dose:

1. Involving the wrong patient or human research subject or treatment site; or

2. If the calculated total administered dose differs from the total prescribed dose by more than ten (10) percent of the total prescribed dose.

(d) A teletherapy radiation dose:

1. Involving the wrong patient, or human research subject, mode of treatment, or treatment site;

2. If the treatment consists of three (3) or fewer fractions and the calculated total administered dose differs from the total prescribed dose by more than ten (10) percent of the total prescribed dose;

3. If the calculated weekly administered dose is thirty (30) percent greater than the weekly prescribed dose; or

4. If the calculated total administered dose differs from the total prescribed dose by more than twenty (20) percent of the total prescribed dose.

(e) A brachytherapy radiation dose:

1. Involving the wrong patient or human research subject, radioisotope, or treatment site (excluding permanent implant seeds that were implanted in the correct site but migrated outside the treatment site);

2. Involving a sealed source that is leaking;

3. If, for a temporary implant, one (1) or more sealed sources are not removed upon completion of the procedure; or

4. If the calculated administered dose differs from the prescribed dose by more than twenty (20) percent of the prescribed dose.

(f) A diagnostic radiopharmaceutical dosage, other than quantities greater than thirty (30) microcuries of sodium iodide I-125 or I-131:

1. Involving the wrong patient or human research subject, radiopharmaceutical, route of administration, or if the administered dosage differs from the prescribed dosage; and

2. If the dose to the patient or human research subject exceeds five (5) rems effective dose equivalent or fifty (50) rems dose equivalent to an individual organ.

(139) "Mobile nuclear medicine service" means the transportation and medical use of radioactive material.

(140) "Monitoring (radiation monitoring, radiation protection monitoring)" means the measurement of radiation levels, concentrations, surface area concentrations or quantities of radioactive material and the use of the results of these measurements to evaluate potential exposures and doses.

(141) "Nonstochastic effect" means health effects, the severity of which varies with the dose and for which a threshold is believed to exist. Radiation-induced cataract formation is an example of a nonstochastic effect (also called a deterministic effect).

(142) "Normal form radioactive material" means radioactive material which has not been demonstrated to quality as "special form radioactive material."

(143) "NRC" means the Nuclear Regulatory Commission or its duly authorized representatives.

(144) "Occupational dose" means dose received by [~~exposure of~~] an individual [to radiation:

(a) In a restrictive area; or

(b)] in the course of employment in which the individual's assigned duties for the licensee or registrant involve exposure to [~~radiation and to radioactive material from licensed and unlicensed~~] sources of radiation, whether in the possession of the licensee, registrant, or other person. Occupational dose shall not include dose received from background radiation as a patient from medical practices, from voluntary participation in medical research programs, [~~or~~] as a member of the [~~general~~] public or from exposure to individuals administered radioactive material and released in accordance with 902 KAR 100:073, Section 25.

(145) "Output" means the exposure rate, dose rate, or a quantity related in a known manner to these rates from a teletherapy unit for a specified set of exposure conditions.

(146) "Operating procedures" means detailed written instructions, such as the normal operation of equipment and movable shielding, closing of interlock circuits, manipulation of controls, radiation monitoring procedures for personnel and areas, testing of interlocks, and recordkeeping requirements.

(147) "Package" means the packaging together with its radioac-

tive contents as presented for transport.

(148) "Packaging" means the assembly of components necessary to ensure compliance with the packaging requirements of 902 KAR 100:070. It may consist of one (1) or more receptacles, absorbent materials, spacing structures, thermal insulation, radiation shielding, and devices for cooling or absorbing mechanical shocks. The vehicle, tie-down system, and auxiliary equipment may be designated as part of the packaging.

(149) "Patient" means an individual subjected to healing arts examination, diagnosis, or treatment.

(150) "Peak tube potential" means the maximum value of the potential difference across the x-ray tube during an exposure.

(151) "Permanent radiographic installation" means an installation or structure designed or intended for radiography and in which radiography is regularly performed.

(152) "Person" means an individual, corporation, partnership, firm, association, trust, estate, public or private institution, group, agency, political subdivision of this state or other state, or political subdivision or agency thereof, and a legal successor, representative, agent or agency of the foregoing.

(153) "Personal supervision" means guidance and instruction by the supervisor who is physically present at the job site and watching the performance of the operation in proximity so that contact can be maintained and immediate assistance given as required.

(154) "Personnel monitoring equipment" means a device designed to be worn or carried by an individual for the purpose of estimating the dose received by the individual, such as film badges, pocket dosimeters, and thermoluminescent dosimeters (TLD).

(155) "Phantom" means a volume of material behaving in a manner similar to tissue with respect to the attenuation and scattering of radiation.

(156) "Phototimer" means a method for controlling radiation exposures to image receptors by the amount of radiation which reaches a radiation monitoring device. The radiation monitoring device is part of an electronic circuit which controls the duration of time the tube is activated (see "automatic exposure control").

(157) "Physician" means an individual licensed to practice medicine or osteopathy in this state.

(158) "Planned special exposure" means an infrequent exposure to radiation, separate from and in addition to the annual dose limits.

(159) "Position indicating device" means a device on dental x-ray equipment used to indicate the beam position and to establish a definite source-surface (skin) distance. It may or may not incorporate or serve as a beam-limiting device.

(160) "Preregistrant" means a person who is preregistered with the cabinet for the intent of obtaining a radiation producing machine registerable under 902 KAR 100:110.

(161) "Preregistration" means preregistration with the cabinet as specified in 902 KAR 100:110.

(162) "Prescribed dosage" means the quantity of radiopharmaceutical activity as documented:

(a) In a written directive;

(b) In the diagnostic clinical procedures manual; or

(c) In an appropriate record in accordance with the directions of the authorized user for diagnostic procedures.

(163) "Prescribed dose" means:

(a) For gamma stereotactic radiosurgery, the total dose as documented in the written directive;

(b) For teletherapy, the total dose and dose per fraction as documented in the written directive; or

(c) For brachytherapy, the total source strength and exposure time or the total dose, as documented in the written directive.

(164) "Primary dose monitoring system" means a system which monitors the useful beam during irradiation and which terminates irradiation if a preselected number of dose monitor units have been acquired.

(165) "Protective apron" means an apron made of radiation

absorbing materials of at least 0.25 mm lead equivalency. This requirement may be assumed to have been met if the HVL of the apron is not less than 0.25 mm lead at normal operating voltages.

(166) "Protective barrier" means a barrier of radiation absorbing material used to reduce radiation exposure.

(a) "Primary protective barrier" means a barrier sufficient to attenuate the useful beam to the required degree.

(b) "Secondary protective barrier" means a barrier sufficient to attenuate the stray radiation to the required degree.

(167) "Protective glove" means a glove made of radiation absorbing materials of at least 0.25 mm lead equivalency. This requirement may be assumed to have been met if the HVL of the glove is not less than 0.25 mm lead at normal operating voltages.

(168) "Public dose" means the dose received by a member of the public from sources of ~~exposure to~~ radiation from licensed or registered operations ~~[and to radioactive material released by a licensee, or to another source of radiation within a licensee's controlled area or in unrestricted areas]~~. It shall not include occupational dose or doses received from background radiation, as a patient from medical practices, ~~[or]~~ from voluntary participation in medical research programs, or from exposure to individuals administered radioactive material and released in accordance with 902 KAR 100:073, Section 25.

(169) "Qualified expert" means an individual who has demonstrated to the satisfaction of the cabinet that he possesses the knowledge and training to measure ionizing radiation, to evaluate safety techniques, and to advise regarding radiation protection needs.

(170) "Quality factor (Q)" means the modifying factor that is used to derive dose equivalent from absorbed dose.

(a) Quality factors and absorbed dose equivalencies:

Type of Radiation	Quality Factor (Q)	Absorbed Dose Equal to a Unit Dose Equivalent ^a
X-, gamma, or beta radiation	1	1
Alpha particles, multiple-charged particles, fission fragments, and heavy particles of unknown charge	20	0.05
Neutrons of unknown energy	10	0.1
High-energy protons	10	0.1

^aAbsorbed dose in rad equal to one (1) rem or the absorbed dose in gray equal to one (1) sievert.

(b) If it is more convenient to measure the neutron fluence rate than to determine the neutron dose equivalent rate in rems per hour or sieverts per hour, as provided in paragraph (a) of this subsection, one (1) rem (0.01 sievert) of neutron radiation of unknown energies may, for purposes of the regulations in this part, be assumed to result from a total fluence of twenty-five (25) million neutrons per square centimeter incident upon the body. If sufficient information exists to estimate the approximate energy distribution of the neutrons, the licensee may use the fluence rate per unit dose equivalent or the appropriate Q value from paragraph (c) of this subsection to convert a measured tissue dose in rads to dose equivalent in rems.

(c) Mean quality factors, Q, and fluency per unit dose equivalent for monoenergetic neutrons:

Neutron Energy (MeV)	Quality Factor ^a (Q)	Fluency per Unit Dose Equivalent ^b (neutrons cm ⁻² rem ⁻¹)
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(thermal) 2.5×10^{-9}	2	980×10^6
1×10^{-7}	2	980×10^6
1×10^{-6}	2	810×10^6
1×10^{-5}	2	810×10^6
1×10^{-4}	2	840×10^6
1×10^{-3}	2	980×10^6
1×10^{-2}	2.5	1010×10^6
1×10^{-1}	7.5	170×10^6
5×10^{-1}	11	39×10^6
1	11	27×10^6
2.5	9	29×10^6
5	8	23×10^6
7	7	24×10^6
10	6.5	24×10^6
14	7.5	17×10^6
20	8	16×10^6
40	7	14×10^6
60	5.5	16×10^6
1×10^2	4	20×10^6
2×10^2	3.5	19×10^6
3×10^2	3.5	16×10^6
4×10^2	3.5	14×10^6

^aValue of quality factor (Q) at the point at which the dose equivalent is maximum in a thirty (30)-cm diameter cylinder tissue-equivalent phantom.

^bMonoenergetic neutrons incident normally on a thirty (30)-cm diameter cylinder tissue-equivalent phantom.

(171) "Quarter" means a period of time equal to one-fourth (0.25) of the year observed by the licensee (approximately thirteen (13) consecutive weeks), providing that the beginning of the first quarter in a year coincides with the starting date of the year and that no day is omitted or duplicated in consecutive quarters.

(172) "Rad" means the special unit of absorbed dose. One (1) rad equals an absorbed dose of 0.01 joule per kilogram (0.01 gray) or 100 ergs per gram.

(173) "Radiation" means ionizing radiation which includes the following: gamma rays, x-rays, alpha particles, beta particles, high speed electrons, neutrons, high-speed protons, and other atomic particles capable of producing ions. This definition shall not include nonionizing radiations, such as sound, microwaves, radiowaves, or visible, infrared, or ultraviolet light.

(a) "Leakage radiation" means radiation coming from within the tube or source housing except the useful beam.

(b) "Scattered radiation" means radiation that, during passage through matter, has been deviated in direction. It may also have been modified by a decrease in energy.

(c) "Useful radiation" means radiation which passes through the window, aperture, cone, or other beam limiting device of the tube or source housing. Sometimes called "primary beam."

(d) "Stray radiation" means the sum of leakage and scattered radiation.

(174) "Radiation area" means an area, accessible to individuals, in which there exists radiation at levels that an individual may receive in excess of five (5) millirems (0.05 mSv) in one (1) hour at thirty (30) centimeters from the radiation source or from a surface that the radiation penetrates.

(175) "Radiation machine" means a device capable of producing radiation except devices which produce radiation only from radioactive material.

(176) "Radiation safety officer" means one who has the knowledge and responsibility to apply appropriate radiation protection administrative regulations.

(177) "Radiation therapy simulation system" means a fluoroscopic or radiographic x-ray system intended for localizing the volume to be exposed during radiation therapy and confirming the position and size of the therapeutic irradiation field.

(178) "Radioactive marker" means radioactive material placed subsurface or on a structure intended for subsurface use for the purpose of depth determination or direction orientation.

(179) "Radioactive material" means a solid, liquid, or gas, which emits radiation spontaneously.

(180) "Radioactivity" means the disintegration of unstable atomic nuclei by the emission of radiation.

(181) "Radiograph" means an image receptor on which the image is created directly or indirectly by an x-ray pattern and results in a permanent record.

(182) "Radiographer" means an individual who performs or who, in attendance at the site where sources of radiation are being used, personally supervises industrial radiographic operations and who is responsible to the licensee or registrant for assuring compliance with the requirements of these administrative regulations and license conditions.

(183) "Radiographer's assistant" means an individual who, under the personal supervision of a radiographer, uses sources of radiation, related handling tools, or survey instruments in industrial radiography.

(184) "Radiographer instructor" means a radiographer who has been authorized by the cabinet to provide on-the-job training to radiographer trainees under 902 KAR 100:100, Section 11(1).

(185) "Radiographer trainee" means an individual who, under the personal supervision of a radiographer instructor, uses sources of radiation, related handling tools, or radiation survey instruments during the course of instruction.

(186) "Radiographic exposure device" means an instrument containing a sealed source fastened or contained therein, in which the sealed source or shielding thereof may be moved, or otherwise changed, from a shielded to unshielded position for purposes of making a radiographic exposure.

(187) "Radiographic imaging system" means a system whereby a permanent or semipermanent image is recorded on an image receptor by the action of ionizing radiation.

(188) "Radiographic personnel" means a radiographer, radiographer instructor, or radiographer trainee.

(189) "Rating" means the operating limits as specified by the component manufacturer.

(190) "Recordable event" means the administration of:

(a) A radiopharmaceutical or radiation without a written directive if a written directive is required;

(b) A radiopharmaceutical or radiation if a written directive is required without daily recording of each administered radiopharmaceutical dosage or radiation dose in the appropriate record;

(c) A radiopharmaceutical dosage greater than thirty (30) microcuries of sodium iodide I-125 or I-131 if:

1. The administered dosage differs from the prescribed dosage by more than ten (10) percent of the prescribed dosage, and

2. The difference between the administered dosage and prescribed dosage exceeds fifteen (15) microcuries;

(d) A therapeutic radiopharmaceutical dosage, other than sodium iodide I-125 or I-131, if the administered dosage differs from the prescribed dosage by more than ten (10) percent of the prescribed dosage;

(e) A teletherapy radiation dose if the calculated weekly administered dose is fifteen (15) percent greater than the weekly prescribed dose; or

(f) A brachytherapy radiation dose if the calculated administered dose differs from the prescribed dose by more than ten (10) percent of the prescribed dose.

(191) "Recording" means producing a permanent form of an image resulting from x-ray photons.

(192) "Reference man" means a hypothetical aggregation of human physical and physiological characteristics arrived at by international consensus. These characteristics may be used by researchers and public health workers to standardize results of experiments and to relate biological insult to a common base.

(193) "Registrant" means a person who is registered with the cabinet and is legally obligated to register with the cabinet under 902 KAR 100:110.

(194) "Registration" means registration with the cabinet under 902 KAR 100:110.

(195) "Regulations of the U.S. Department of Transportation" means the regulations in 49 CFR Parts 100-189.

(196) "Rem" means a special unit of quantities expressed as dose equivalent. The dose equivalent in rems is equal to the absorbed dose in rads multiplied by the quality factor (one (1) rem = 0.01 sievert).

(197) "Research and development" means:

(a) Theoretical analysis, exploration, or experimentation; or

(b) The extension of investigative findings and theories of a scientific or technical nature into practical application for experimental and demonstration purposes, including the experimental production and testing of models, devices, equipment, materials, and processes. Research and development does not include the internal or external administration of radiation or radioactive material to human beings.

(198) "Residential location" means an area where structures in which people lodge or live are located, and the grounds on which structures are located, such as houses, apartments, condominiums, and garages.

(199) "Respiratory protective device" means an apparatus used to reduce the individual's intake of airborne radioactive materials, such as a respirator.

(200) "Restricted area" means an area access to which is limited by the licensee or registrant for purposes of protection of individuals against undue risks from exposure to radiation and radioactive materials. A restricted area shall not include areas used as residential quarters, although a separate room or rooms in a residential building may be set apart as a restricted area.

(201) "Roentgen" means the special unit of exposure. One (1) roentgen (R) equals 2.58×10^{-4} coulombs per kilogram of air (see "Exposure").

(202) "Sanitary sewerage" means a system of public sewers for carrying off waste, water, and refuse, but excludes sewage treatment facilities, septic tanks, and leach fields owned or operated by the licensee.

(203) "Sealed source" means radioactive material that is permanently bonded or fixed in a capsule or matrix designed to prevent leakage or escape of the radioactive material.

(204) "Secondary dose monitoring system" means a system which terminates irradiation upon failure of the primary system.

(205) "Secretary" means the Secretary of the Cabinet for Human Resources.

(206) "Shallow-dose equivalent (H_s)", means the external exposure of the skin or an extremity, means the dose equivalent at a tissue depth of 0.007 centimeter (seven (7) mg/cm²) averaged over an area of one (1) square centimeter.

(207) "Shielded position" means the location within the radiographic exposure device or storage container which, by manufacturer's design, is the proper location for storage of the sealed source.

(208) "Shielded-room radiography" means industrial radiography conducted in a room shielded so that radiation levels at every location on the exterior meet the limitations specified in 902 KAR 100:019, Section 10.

(209) "Shutter" means a device attached to the tube housing assembly which can totally intercept the useful beam and which has a lead equivalency not less than that of the tube housing assembly.

(210) "Sievert" means:

(a) The International System (SI) unit of quantities expressed as dose equivalent. The dose equivalent in sieverts is equal to the absorbed dose in grays multiplied by the quality factor (1 Sv=100 rems).

(b) As used in this administrative regulation, the quality factors for converting absorbed dose to dose equivalent are shown in the table

listed in subsection 164 of this section.

(211) "Site boundary" means that line beyond which the land or property is not owned, leased, or otherwise controlled by the licensee.

(212) "Source" means the focal spot of the x-ray tube.

(213) "Source changer" means a device designed and used for replacement of sealed sources in radiographic exposure devices, including those source changers also used for transporting and storage of sealed sources.

(214) "Source holder" means a housing or assembly into which a radioactive source is placed for the purpose of facilitating the handling and use of the source.

(215) "Source image receptor distance (SID)" means the distance from the source to the center of the input surface of the image receptor.

(216) "Source material" means:

(a) Uranium or thorium, or a combination thereof, in a physical or chemical form; or

(b) Ores which contain by weight one-twentieth (1/20) of one (1) percent (0.05 percent) or more of:

1. Uranium;

2. Thorium; or

3. Combination thereof.

(c) Source material does not include special nuclear material.

(217) "Source of radiation" means a radioactive material or device or equipment emitting or capable of producing radiation.

(218) "Special form" means radioactive material which satisfies the following conditions:

(a) It is a single solid piece or is contained in a sealed capsule that can be opened only by destroying the capsule;

(b) The piece or capsule has at least one (1) dimension not less than five (5) millimeters (0.197 inch); and

(c) It satisfies the test requirements specified by the U.S. Nuclear Regulatory Commission (NRC). A special form encapsulation designed under the NRC requirements in effect on June 30, 1983, and constructed prior to July 1, 1985, may continue to be used. A special form encapsulation designed or constructed after June 30, 1985 shall meet requirements of this definition applicable if it is designed or constructed.

(219) "Special nuclear material" means:

(a) Plutonium, uranium 233, uranium enriched in the isotope U-233 or in the isotope U-235, and other material which the Governor declares by order to be special nuclear material after the United States Nuclear Regulatory Commission, or successor thereto, has determined the material to be special nuclear material, but does not include source material; or

(b) Material artificially enriched by one (1) of the foregoing, but does not include source material.

(220) "Special nuclear material in quantities not sufficient to form a critical mass" means uranium enriched in the isotope U-235 in quantities not exceeding 350 grams of contained U-235; U-233 in quantities not exceeding 200 grams; plutonium in quantities not exceeding 200 grams; or a combination of them as specified by the following formula: for each kind of special nuclear material, determine the ratio between the quantity of that special nuclear material and the quantity specified above for the same kind of special nuclear material. The sum of these ratios for the different kinds of special nuclear material in combination shall not exceed one (1). For example, the following quantities in combination would not exceed the limitation and are within the formula:

$$\frac{175 \text{ (grams contained U-235)}}{350} + \frac{50 \text{ (grams U-233)}}{200} + \frac{50 \text{ (grams Pu)}}{200} = 1$$

(221) "Special purpose x-ray system" means a radiographic x-ray

system which, by design, is limited to radiographic examination of a specific anatomical region.

(222) "Specific activity" means the radioactivity of the radionuclide per unit mass of that nuclide. The specific activity of a material in which the radionuclide is essentially uniformly distributed is the radioactivity per unit mass of the material.

(223) "Spot check" means a procedure which is performed to assure that a previous calibration continues to be valid.

(224) "Spot film" means a radiograph which is made during a fluoroscopic examination to permanently record conditions which exist during that fluoroscopic procedure.

(225) "Spot-film device" means a device intended to transport or position a radiographic image receptor between the x-ray source and fluoroscopic image receptor. It includes a device intended to hold a cassette over the input end of an image intensifier for the purpose of making a radiograph.

(226) "SSD" means the distance between the source and the skin of the patient.

(227) "Stochastic effects" means health effects that occur randomly and for which the probability of the effect occurring, rather than its severity, is assumed to be a linear function of dose with threshold, such as hereditary effects and cancer incidence.

(228) "Storage" (waste storage) means the holding of waste for treatment or disposal for a period of twenty-four (24) hours or more.

(229) "Storage area" means a location, facility, or vehicle which is used to store, transport, or secure a radiographic exposure device, a storage container, or a sealed source if it is not in use and which is locked or has a physical barrier to prevent accidental exposure, tampering with, or unauthorized removal of the device, container, or source.

(230) "Storage container" means a device in which sealed sources are transported or stored.

(231) "Stray radiation" means the sum of leakage and scattered radiation.

(232) "Subsurface tracer study" means the release of a substance tagged with radioactive material for the purpose of tracing the movement or position of the tagged substance in the well-bore or adjacent formation.

(233) "Survey" means an evaluation of the radiological conditions and potential hazards [hazardous] incident to the production, use, transfer, release, disposal, or presence of sources of radiation. If appropriate, the evaluation shall include a minimum of a physical survey of the location of sources of radiation and measurements or calculations of levels of radiation or concentrations or quantities of radioactive material present.

(234) "Technique factors" means the conditions of operation. They are specified as follows:

(a) For capacitor energy storage equipment, peak tube potential in kV and quantity of charge in mAs.

(b) For field emission equipment rated for pulsed operation, peak tube potential in kV and number of x-ray pulses.

(c) For CT x-ray systems designed for pulsed operation, peak tube potential in kV, scan time in seconds, and either tube current in mA, x-ray pulse width in seconds, and the number of x-ray pulses per scan, or the product of tube current, x-ray pulse width, and the number of x-ray pulses in mAs;

(d) For CT x-ray systems not designed for pulsed operation, peak tube potential in kV, and either tube current in mA and scan time in seconds, or the product of tube current and exposure time in mAs and the scan time if the scan time and exposure time are equivalent; and

(e) For other equipment, peak tube potential in kV and tube current in mA and exposure time in seconds or the product of tube current and exposure time in mAs.

(235) "Teletherapy" means therapeutic irradiation in which the source of radiation is at a distance from the body.

(236) "Teletherapy physicist" means the individual identified as the teletherapy physicist on a cabinet license.

(237) "Temporary job site" means a location to which radioactive material has been dispatched to perform a job, operation, or study other than the location listed in a specific license or certificate of registration.

(238) "Termination of irradiation" means the stopping of irradiation in a fashion which does not permit continuance of irradiation without the resetting of operating conditions at the control panel.

(239) "Tests" means the process of verifying compliance with an applicable regulation.

(240) "Therapeutic-type protective tube housing" means:

(a) For x-ray therapy equipment not capable of operating at 500 kVp or above, the following definition applies: an x-ray tube housing so constructed that the leakage radiation at a distance of one (1) meter from the target does not exceed one (1) roentgen in one (1) hour if the tube is operated at its maximum rated tube potential;

(b) For x-ray therapy equipment capable of operating at 500 kVp or above, the following definition applies: an x-ray tube housing so constructed that the leakage radiation at a distance of one (1) meter from the target does not exceed one-tenth (0.1) percent of the useful beam exposure rate at one (1) meter from the target, for its operating conditions;

(c) Small areas of reduced protection are acceptable providing the average reading over a 100 square centimeter area at one (1) meter distance from the target does not exceed the values given above.

(241) "Tomogram" means the depiction of the x-ray attenuation properties of a section through the body.

(242) "Total effective dose equivalent (TEDE)" means the sum of the deep-dose equivalent (for external exposures) and the committed effective dose equivalent (for internal exposures).

(243) "Traceable to a national standard" means that a quantity or a measurement has been compared to a national standard directly or indirectly through one (1) or more intermediate steps and that comparisons have been documented.

(244) "Transport container" means a package that is designed to provide radiation safety and security if sealed sources are transported and which meets the requirements of the 49 CFR 173, Subpart I.

(245) "Transport index" means the dimensionless number (rounded up to the first decimal place) placed on the label of a package to designate the degree of control to be exercised by the carrier during transportation. The transport index is the number expressing the maximum radiation level in millirem per hour at one (1) meter from the external surface of the package.

(246) "Treatment" (waste treatment) means a method, technique, or process, including storage for radioactive decay, designed to change the physical, chemical, or biological characteristics or composition of a waste in order to render the waste for transport, storage or disposal, amendable to recovery, convertible to another usable material, or reduced in volume.

(247) "Tube" means an x-ray tube, unless otherwise specified.

(248) "Tube housing assembly" means the tube housing with tube installed. It includes high-voltage or filament transformers and other appropriate elements if they are contained within the tube housing.

(249) "Tube rating chart" means the set of curves which specify the rated limits of operation of the tube in terms of the technique factors.

(250) "Type A quantity" means a quantity of radioactive material, the aggregate radioactivity of which does not exceed A_1 for special form radioactive material or A_2 for normal form radioactive material, where A_1 and A_2 are given in 902 KAR 100:070, Section 21, or may be determined by procedures described in 902 KAR 100:070, Section 20.

(251) "Type B package" means a Type B packaging together with its radioactive contents. A Type B package design is designated as B(U) or B(M). B(U) refers to the need for unilateral approval of international shipments; B(M) refers to the need for multilateral approval. There is no distinction made in how packages with these designations may be used in domestic transportation. To determine

their distinction for international transportation, refer to U.S. Department of Transportation regulations in 49 CFR Part 173. A Type B package approved prior to September 6, 1983, was designated only as Type B. Limitations on its use are specified in 902 KAR 100:070, Section 7.

(252) "Type B packaging" means a packaging designed to retain the integrity of containment and shielding required by U.S. Nuclear Regulatory Commission regulations if subjected to the normal conditions of transport and hypothetical accident test conditions set forth in 10 CFR Part 71.

(253) "Type B quantity" means a quantity of radioactive material greater than a Type A quantity.

(254) "U.S. Department of Energy" means the Department of Energy established by 42 USC 7101 et seq., to the extent that the department exercises functions formerly vested in the U.S. Atomic Energy Commission, its chairman, members, officers and components and transferred to the U.S. Energy Research and Development Administration and to the Administrator thereof and retransferred to the Secretary of Energy in 42 USC 7151, effective October 1, 1977.

(255) "Unrefined and unprocessed ore" means ore in its natural form prior to processing, such as grinding, roasting, beneficiating, or refining.

(256) "Unrestricted area" means an area access to which is not controlled or limited by the licensee or registrant for purposes of protection of individuals from exposure to radiation and radioactive material, ~~and areas used for residential quarters~~.

(257) "Uranium fuel cycle" means the operations of milling of uranium ore, chemical conversion of uranium, isotopic enrichment of uranium, fabrication of uranium fuel, generation of electricity by a light-water-cooled nuclear power plant using uranium fuel, and reprocessing of spent uranium fuel to the extent that these activities directly support the production of electrical power for public use. Uranium fuel cycle shall not include mining operations, operations at waste disposal sites, transportation of radioactive material in support of these operations, and the reuse of recovered nonuranium special nuclear and byproduct materials from the cycle.

(258) "Useful beam" means the radiation which passes through the tube housing port and the aperture of the beam limiting device if the exposure switch or timer is activated.

~~[(254) "Uranium fuel cycle" means the operations of milling of uranium ore, chemical conversion of uranium, isotopic enrichment of uranium, fabrication of uranium fuel, generation of electricity by a light-water-cooled nuclear power plant using uranium fuel, and reprocessing of spent uranium fuel to the extent that these activities directly support the production of electrical power for public use. Uranium fuel cycle shall not include mining operations, operations at waste disposal sites, transportation of radioactive material in support of these operations, and the reuse of recovered nonuranium special nuclear and byproduct materials from the cycle.]~~

(259) "User" means an individual who personally utilizes or manipulates a source of radiation.

(260) "Variable-aperture beam limiting device" means a beam limiting device which has capacity for stepless adjustment of the x-ray field size at a given SID.

(261) "Vendor" means for the purposes of 902 KAR 100:110 a person who sells for profit radiation producing machines or accelerators registerable with the cabinet as specified by 902 KAR 100:110.

(262) "Vendor registrant" means a vendor who is registered with the cabinet.

(263) "Vendor registration" means registration of a vendor with the cabinet described by 902 KAR 100:110.

~~[(259) "Vendor registrant" means a vendor who is registered with the cabinet.]~~

(264) "Very high radiation area" means an area, accessible to individuals, in which radiation levels may result in an individual receiving an absorbed dose in excess of 500 rads (five (5) grays) in

one (1) hour at one (1) meter from a radiation source or from a surface that the radiation penetrates. At very high doses received at high dose rates, units of absorbed dose (such as rads and grays) are appropriate, rather than units of dose equivalent (such as rems and sieverts).

(265) "Visible area" means that portion of the input surface of the image receptor over which incident x-ray photons are producing a visible image.

(266) "Visiting authorized nuclear pharmacist" means a nuclear pharmacist who is not identified on the license of the licensee being visited.

(267) "Visiting authorized user" means an authorized user who is not identified on the license of the licensee being visited.

(268) "Waste" (see "low-level radioactive waste").

(269) "Wedge filter" means an added filter effecting continuous progressive attenuation on the useful beam or a part thereof.

(270) "Week" means seven (7) consecutive days starting on Sunday.

(271) "Weighting [Weighing] factor (W_T)", for an organ or tissue (T) means the proportion of the risk of stochastic effects resulting from irradiation of that organ or tissue to the total risk of stochastic effects if the whole body is irradiated uniformly. For calculating the effective dose equivalent, the values of (W_T) are:

Organ Dose Weighing Factors

Organ or tissue	W_T [F]
Gonads	0.25
Breast	0.15
Red bone marrow	0.12
Lung	0.12
Thyroid	0.03
Bone surfaces	0.03
Remainder	¹ 0.30
Whole Body	² 1.00

¹0.30 results from 0.06 for each of five (5) "remainder" organs (excluding the skin and the lens of the eye) that receive the highest doses.

²For the purpose of weighing the external whole body dose (for adding it to the internal dose), a single weighing factor, $W_T=1.0$, has been specified. The use of other weighing factors for external exposure will be approved on a case-by-case basis until a time as specific guidance is issued.

(272) "Well-bore" means a drilled hole in which wire line service operations and subsurface tracer studies are performed.

(273) "Well-logging" means the lowering and raising of measuring devices or tools which may contain sources of radiation in well-bores or cavities for the purpose of obtaining information about the well or adjacent formations.

(274) "Whole body" means, for purposes of external exposure, head, trunk (including male gonads), arms above the elbow, or legs above the knee.

(275) "Wire line" means a cable containing one (1) or more electrical conductors which is used to lower and raise logging tools in the well-bore.

(276) "Wire line service operation" means an evaluation or mechanical service which is performed in the well-bore using devices on a wire line.

(277) "Worker" means an individual engaged in activities licensed or registered by the cabinet and controlled by a licensee or registrant, but does not include the licensee or registrant.

(278) "Working level (WL)" means a combination of short-lived radon daughters (for radon-222: polonium-218, lead-214, bismuth-214, and polonium-214; and for radon-220: polonium-216, lead-212,

bismuth-212, and polonium-212) in one (1) liter of air that results in the ultimate emission of 1.3×10^5 MeV of potential alpha particle energy.

(279) "Working level month (WLM)" means an exposure to one (1) working level for 170 hours (2,000 working hours per year/twelve (12) months per year = approximately 170 hours per month).

(280) "Written directive" means an order in writing for a specific patient or human research subject, dated and signed by an authorized user prior to the administration of a radiopharmaceutical or radiation, except as specified in paragraph (f) of this subsection, and containing the following information:

(a) For an administration of quantities greater than thirty (30) microcuries of sodium iodide I-125 or I-131: the dosage;

(b) For a therapeutic administration of a radiopharmaceutical other than sodium iodide I-125 or I-131: the radiopharmaceutical, dosage, and route of administration;

(c) For gamma stereotactic radiosurgery: target coordinates, collimator size, plug pattern, and total dose;

(d) For teletherapy: the total dose, dose per fraction, treatment site, and overall treatment period;

(e) For high-dose-rate remote afterloading brachytherapy: the radioisotope, treatment site, and total dose; or

(f) For all other brachytherapy:

1. Prior to implementation: the radioisotope, number of sources, and source strengths; and

2. After implantation, but prior to completion of the procedure: the radioisotope, treatment site, and total source strength and exposure time (or, equivalently, the total dose).

(281) "X-ray control" means a device which controls input power to the x-ray high-voltage generator or the x-ray tube. It includes timers, phototimers, automatic brightness stabilizers, and similar devices which control the technique factors of an x-ray exposure.

(282) "X-ray equipment" means an x-ray system, subsystem, or component thereof. X-ray equipment may be used as:

(a) "Mobile" means x-ray equipment mounted on a permanent base with wheels or casters for moving while completely assembled.

(b) "Portable" means x-ray equipment designed to be hand-carried.

(c) "Stationary" means x-ray equipment which is installed in a fixed location.

(d) "Transportable" means x-ray equipment installed in a vehicle or trailer.

(283) "X-ray field" means that area of the intersection of the useful beam and one (1) of the set of planes parallel to and including the plane of the image receptor, whose perimeter is the locus of points at which the exposure rate is one-fourth (1/4) of the maximum in the intersection.

(284) "X-ray high-voltage generator" means a device which transforms electrical energy from the potential supplied by the x-ray control to the tube operating potential. The device may also include means for transforming alternating current to direct current, filament transformers for the x-ray tube, high-voltage switches, electrical protective devices, and other appropriate elements.

(285) "X-ray subsystem" means a combination of two (2) or more components of an x-ray system.

(286) "X-ray system" means an assemblage of components for the controlled production of x-rays. It includes minimally an x-ray high-voltage generator, an x-ray control, a tube housing assembly, a beam-limiting device, and the necessary supporting structures. Additional components which function with the system are considered integral parts of the system.

~~[(281) "X-ray system" means an assemblage of components for the controlled production of x-rays, such as an x-ray high-voltage generator, an x-ray control, a tube housing assembly, a beam-limiting device and the necessary supporting structures. Additional components which function with the system shall be considered integral parts of the system.]~~

(287) "X-ray tube" means an electron tube which is designed to be used primarily for the production of x-rays.

(288) "Year" means the period of time beginning in January used to determine compliance with the provisions of 902 KAR Chapter 100. The licensee or registrant may change the starting date of the year used to determine compliance by the licensee or registrant provided the change is made at the beginning of the year and that no day is omitted or duplicated in consecutive years.

RICE C. LEACH, M.D., Commissioner

JOHN H. MORSE, Secretary

JOHN H. WALKER, Attorney

APPROVED BY AGENCY: May 5, 1998

FILED WITH LRC: May 13, 1998 at 9 a.m.

PUBLIC HEARING: A public hearing on this regulation will be held June 22, 1998 at 9 a.m. in the Cabinet for Health Services Auditorium, 1st floor, Health Services Building, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending shall notify this agency in writing by June 15, 1998. If no notice of intent to attend the hearing is received by that date, the hearing may be canceled. The hearing is opened to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notice of intent to attend the public hearing or written comments to: Mae B. Lewis, Cabinet Regulation Coordinator, Cabinet for Health Services, Office of the Counsel, 275 East Main Street - 4th Floor West, Frankfort, Kentucky 40621, Phone: (502) 564-7905, Fax: (502) 564-7573.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: John A. Volpe, Ph.D.

(1) Type and number of entities affected: Approximately 400 radioactive material licensees and 3200 x-ray registrants will be impacted by amending this regulation which provides updated definitions to correspond to 902 KAR Chapters 100 and 105.

(2) Direct and indirect costs or savings to those affected:

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: No public hearing was requested and no comments were received.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: No public hearing was requested and no comments were received.

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

1. First year following implementation: None

2. Second and subsequent years: None

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: None

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: None

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

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Fees from the licensing of radioactive material users.

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

(a) Geographical area in which administrative regulation will be implemented: No comments were received.

(b) Kentucky: No comments were received.

(7) Assessment of alternative methods: reasons why alternatives were rejected: Amendment necessary to maintain compatibility with the U.S. Nuclear Regulatory Commission's requirements.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: The amended regulation provides definitions for use in applying regulatory requirements in administrative regulations found in 902 KAR Chapters 100 and 105. Using amended definitions provides for maximum protection of public health and the environment.

(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: Licensees and registrants would not use the amended definitions in applying the standards of the regulations. This could result in inadequate protection of public health and the environment.

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: No conflict with statutes or administrative regulations.

(a) Necessity of regulation if in conflict:

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

(10) Any additional information or comments: Not applicable.

(11) TIERING: Is tiering applied? No, this regulation applies to all radioactive material licensees and all x-ray registrants.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. The Atomic Energy Act of 1954, as amended, and 10 CFR 20, 30 and 35, as promulgated by the U.S. Nuclear Regulatory Commission.

2. State compliance standards. This administrative regulation provides definitions applicable to 902 KAR Chapters 100 and 105.

3. Minimum or uniform standards contained in the federal mandate. This amendment will bring about compatibility with U.S. Nuclear Regulatory Commission's requirements.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Not applicable.

NEW ADMINISTRATIVE REGULATIONS RECEIVED THROUGH NOON, MAY 15, 1998

KENTUCKY LOTTERY CORPORATION
(New Administrative Regulation)

202 KAR 3:010. Code of ethics.

RELATES TO: KRS 154A.060(2)(a)

STATUTORY AUTHORITY: KRS 154A.050(1)(d), 154A.060(2)(e)

NECESSITY, FUNCTION, AND CONFORMITY: Pursuant to KRS 154A.060(2)(e), the Kentucky Lottery Corporation is required to adopt by administrative regulation a code of ethics for officers and employees of the corporation. This administrative regulation adopts by administrative regulation the Code of Ethics of the Kentucky Lottery Corporation.

Section 1. Code of Ethics. On May 22, 1997, and January 30, 1998, the Board of Directors of the Kentucky Lottery Corporation promulgated the Code of Ethics of the Kentucky Lottery Corporation.

Section 2. (1) The "Kentucky Lottery Corporation Code of Ethics, as promulgated on May 22, 1997, and January 30, 1998" is incorporated herein by reference.

(2) The "Kentucky Lottery Corporation Code of Ethics, as promulgated on May 22, 1997, and January 30, 1998" may be inspected, copied, or obtained from Camille Bathurst, General Counsel, at the corporate offices of Kentucky Lottery Corporation, 1011 West Main Street, Louisville, Kentucky 40202-2623, Monday through Friday, from 8 a.m. to 5 p.m.

ARTHUR L. GLEASON, Jr., President and CEO

CAMILLE BATHURST, General Counsel

APPROVED BY AGENCY: April 30, 1998

FILED WITH LRC: May 1, 1998 at 10 a.m.

PUBLIC HEARING: A public hearing on this proposed administrative regulation shall be held on June 30, 1998, at 10 a.m., at the Corporate Headquarters of the Kentucky Lottery Corporation, 1011 West Main Street, Louisville, Kentucky 40202-2326. Persons interested in attending the hearing shall notify the agency representative designated below, in writing, by June 23, 1998, five workdays prior to the hearing, of their intent to attend the public hearing. If no notification of intent to attend is received by that date, the hearing may be canceled. The hearing will be open to the public, and 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 it is requested in writing, with the cost of the transcript to be borne by the requesting party. If you do not wish to attend the public hearing, you may still 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 Michael J. Denney, Attorney, Kentucky Lottery Corporation, 1011 West Main Street, Louisville, Kentucky 40202-2623, (502) 560-1577.

REGULATORY IMPACT ANALYSIS

Contract Person: Michael J. Denney, Attorney

(1) Type and number of entities affected: This regulation will affect the Kentucky Lottery Corporation (KLC), its Board of Directors, officers and employees.

(2) Direct or 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 or indirect costs or savings on the cost of living and employment in the geo-

graphical area in which the administrative regulation will be implemented are anticipated. No public comments have yet been received, and no public hearing has yet taken place regarding the proposed 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 direct or indirect costs or savings on the cost of doing business in the geographical area in which the administrative regulation will be implemented are anticipated. No public comments have yet been received, and no public hearing has yet taken place regarding this proposed administrative regulation.

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

1. First year following implementation: The regulation provides that officers, directors and employees of the Kentucky Lottery Corporation shall be required to complete annual and periodic disclosure forms in connection with the code of ethics.

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

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: The Human Resources Department will be responsible for implementation and enforcement of the disclosure program, including the training of new and existing employees as to their obligations under the code of ethics. The department will be able to perform its obligations with existing resources.

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

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: See (3)(a)(1), above.

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

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: The administrative regulation will be implemented and enforced with agency funds.

(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 public comments have yet been received, and no public hearing has yet taken place regarding this proposed administrative regulation. However, no economic impact is expected.

(b) Kentucky: No public comments have yet been received, and no public hearing has yet taken place regarding this proposed administrative regulation. However, no economic impact is expected.

(7) Assessment of alternative methods; reasons why alternatives were rejected: No alternative methods were assessed.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: No effects on public health and environmental welfare are expected in the geographical area in which the proposed environmental regulation will be implemented or in Kentucky.

(b) State whether a detrimental effect on environment and public health would result if not implemented: No detrimental effect on the environment and public health would result if the proposed administrative regulation is not implemented.

(c) If detrimental effect would result, explain the detrimental effect: Does not apply.

(9) Identify any statute, rule, administrative regulation or governmental policy which may be in conflict, overlapping, or duplication: No statute, rule, administrative regulation or governmental policy appear to conflict, overlap or duplicate the proposed administrative regulation.

- (a) Necessity of proposed regulation if in conflict: Does not apply.
- (b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: Does not apply.
- (10) Any additional information or comments: None
- (11) TIERING: Is tiering applied? Tiering was not applied. The proposed administrative regulation only applies to the Kentucky Lottery Corporation and its employees.

KENTUCKY LOTTERY CORPORATION
(New Administrative Regulation)

202 KAR 3:030. Retailer administrative regulations.

RELATES TO: KRS 154A.060(2)(a)

STATUTORY AUTHORITY: KRS 154A.050(1)(d), 154A.400(1)(a), (b)

NECESSITY, FUNCTION, AND CONFORMITY: Pursuant to KRS 154A.400(1)(a), the Kentucky Lottery Corporation is required to develop and maintain a statewide network of lottery retailers that will serve the public convenience or promote the sale of lottery tickets, while insuring the integrity of the lottery. To govern the selection of lottery retailers, KRS 154A.400(1)(b) provides that the Board of Directors of the Kentucky Lottery Corporation shall, by administrative regulation, develop a list of objective criteria upon which the selection of lottery retailers shall be based. This administrative regulation adopts by administrative regulation the retailer administrative regulations of the Kentucky Lottery Corporation by which lottery retailers shall be governed.

Section 1. Retailer Administrative Regulations. On January 30, 1998, the Board of Directors of the Kentucky Lottery Corporation promulgated the retailer administrative regulations for the Kentucky Lottery Corporation and further approved revisions to the administrative regulations on April 24, 1998.

Section 2. (1) The "Kentucky Lottery Corporation Retailer Administrative Regulations, as promulgated on January 30, 1998, and revised on April 24, 1998" are incorporated herein by reference.

(2) The "Kentucky Lottery Corporation Retailer Administrative Regulations, as promulgated on January 30, 1998, and revised on April 24, 1998" may be inspected, copied, or obtained from Camille Bathurst, General Counsel, at the corporate offices of Kentucky Lottery Corporation, 1011 West Main Street, Louisville, Kentucky 40202-2623, Monday through Friday, from 8 a.m. to 5 p.m.

ARTHUR L. GLEASON, Jr., President and CEO
CAMILLE BATHURST, General Counsel

APPROVED BY AGENCY: April 30, 1998

FILED WITH LRC: May 1, 1998 at 10 a.m.

PUBLIC HEARING: A public hearing on this proposed administrative regulation shall be held on June 29, 1998, at 10 a.m., at the Corporate Headquarters of the Kentucky Lottery Corporation, 1011 West Main Street, Louisville, Kentucky 40202-2326. Persons interested in attending the hearing shall notify the agency representative designated below, in writing, by June 22, 1998, five workdays prior to the hearing, of their intent to attend the public hearing. If no notification of intent to attend is received by that date, the hearing may be canceled. The hearing will be open to the public, and 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 it is requested in writing, with the cost of the transcript to be borne by the requesting party. If you do not wish to attend the public hearing, you may still 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 Michael J. Denney, Attorney,

Kentucky Lottery Corporation, 1011 West Main Street, Louisville, Kentucky 40202-2623, (502) 560-1577.

REGULATORY IMPACT ANALYSIS

Contract Person: Michael J. Denney, Attorney

(1) Type and number of entities affected: This regulation will affect the Kentucky Lottery Corporation (KLC), retailers licensed by the KLC, retailer applicants, and owners of retailers and retailer applicants.

(2) Direct or 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 or indirect costs or savings on the cost of living and employment in the geographical area in which the administrative regulation will be implemented are anticipated. No public comments have yet been received, and no public hearing has yet taken place regarding the proposed 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 direct or indirect costs or savings on the cost of doing business in the geographical area in which the administrative regulation will be implemented are anticipated. No public comments have yet been received, and no public hearing has yet taken place regarding this proposed administrative regulation.

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

1. First year following implementation: The regulations provide that the KLC shall commence a program of relicensing of all retailers with the new licensing forms promulgated in conjunction with the adoption of the retailer regulations. Thereafter, the KLC shall institute a program of continuous renewal of all retailer licenses, renewing 1/8 of all retailer licenses each calendar quarter, with the ultimate goal of renewing every retailer license not longer than once every 2 years. To be relicensed and to receive a renewal of a retailer license, each retailer shall be required to complete, execute and submit new licensing documents, successfully pass new background and financial investigations and inquiries with the Kentucky Revenue Cabinet, and pay a renewal or relicensing fee as the same may be established from time to time by the President of the Lottery, which fee shall initially be \$25 per retail location.

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

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: The regulations provide that the KLC shall commence a program of relicensing of all retailers with the new licensing forms promulgated in conjunction with the adoption of the retailer regulations. Thereafter, the KLC shall institute a program of continuous renewal of all retailer licenses, renewing 1/8 of all retailer licenses each calendar quarter, with the ultimate goal of renewing every retailer license not longer than once every 2 years. To be relicensed and to receive a renewal of a retailer license, each retailer shall be required to complete, execute and submit new licensing documents, successfully pass new background and financial investigations and inquiries with the Kentucky Revenue Cabinet, and pay a renewal or relicensing fee as the same may be established from time to time by the President of the Lottery, which fee shall initially be \$25 per retail location. Since it is anticipated that the cost to renew or relicense each retailer will be in excess of the \$25 charged to the retailer, the Kentucky Lottery Corporation will be responsible for the difference in the cost of the relicensing program.

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

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: See (3)(a)(1), above.

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(4) Assessment and anticipated effect on state and local revenues: According to KRS 154A.130(1), surplus net revenues of the Kentucky Lottery Corporation are required to be transferred to the General Fund; therefore, any increase in costs to the corporation could reduce transfer of dividends to the Commonwealth. However, the increased costs of the regulation are expected to be minimal and to have no impact on state revenues.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: The administrative regulation will be implemented and enforced with agency funds.

(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 public comments have yet been received, and no public hearing has yet taken place regarding this proposed administrative regulation. However, no economic impact is expected.

(b) Kentucky: No public comments have yet been received, and no public hearing has yet taken place regarding this proposed administrative regulation. However, no economic impact is expected.

(7) Assessment of alternative methods; reasons why alternatives were rejected: No alternative methods were assessed.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: No effects on public health and environmental welfare are expected in the geographical area in which the proposed environmental regulation will be implemented or in Kentucky.

(b) State whether a detrimental effect on environment and public health would result if not implemented: No detrimental effect on the environment and public health would result if the proposed administrative regulation is not implemented.

(c) If detrimental effect would result, explain the detrimental effect: Does not apply.

(9) Identify any statute, rule, administrative regulation or governmental policy which may be in conflict, overlapping, or duplication: No statute, rule, administrative regulation or governmental policy appear to conflict, overlap or duplicate the proposed administrative regulation.

(a) Necessity of proposed regulation if in conflict: Does not apply.

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

(10) Any additional information or comments: None

(11) TIERING: Is tiering applied? Tiering was not applied. The proposed administrative regulation only applies to the Kentucky Lottery Corporation, retailers licensed by the KLC, retailer applicants, and owners of retailers and retailer applicants.

**TRANSPORTATION CABINET
Department of Vehicle Regulation
Division of Motor Vehicle Licensing
Division of Driver Licensing
Department of Administrative Services
(New Administrative Regulation)**

601 KAR 2:020. Drivers's privacy protection.

RELATES TO: KRS 61.870 through 61.884, 187.310, 18 USC Chapter 123

STATUTORY AUTHORITY: KRS 61.874

NECESSITY, FUNCTION, AND CONFORMITY: The 1994 National Crime Prevention Act included a section called "The Drivers' Privacy Protection Act" codified as 18 USC Chapter 123 which mandates the information which can and cannot be included in information sold or otherwise distributed about motor vehicle operators or owners. This administrative regulation is the means used by the Department of Vehicle Regulation to establish under what

circumstances and conditions the personal information will be distributed or sold.

Section 1. Definitions. "Personal information" means information that identifies an individual including the following:

- (1) Name;
- (2) Address, excluding the zip code;
- (3) Social Security Number;
- (4) Date of birth;
- (5) Driver identification number;
- (6) Telephone number;
- (7) Photograph; and
- (8) Medical or disability information.

Section 2. (1) In the Driver Licensing Computer Information System the following shall not be considered personal information:

- (a) Driver status; and
- (b) Violation or conviction of a traffic law.

(2) The information included in the Driver Licensing Computer System shall not be distributed or sold contrary to KRS 187.310.

Section 3. Personal information in the Driver Licensing Computer Information System or the Automated Vehicle Information System may be released for the following reasons:

(1) For use by a government agency, including a court or law enforcement agency, in carrying out its functions, or a private person or entity acting on behalf of a federal, state, or local agency in carrying out its functions;

(2) For use in connection with matters relating to the following:

- (a) Motor vehicle or driver safety;
- (b) Motor vehicle theft;
- (c) Motor vehicle emissions;
- (d) Motor vehicle product alterations, recalls, or advisories;
- (e) Performance monitoring of motor vehicles, motor vehicle parts, or dealers;

(f) Motor vehicle market research activities, including survey research; and

(g) Removal of nonowner records from the original owner records of motor vehicle manufacturers;

(3) For use in the normal course of business by a legitimate business or its agent, employee, or contractor, but only:

(a) To verify the accuracy of personal information submitted by the individual to the business or its agent, employee, or contractor; or

(b) If the submitted information is not correct or is no longer correct, to obtain the correct information, but only for the purpose of preventing fraud by pursuing legal remedies against, or recovering on a debt or security interest against the individual;

(4) For use in connection with a civil, criminal, administrative, or arbitral proceeding in any federal, state, or local court or agency or before any self-regulatory body, including the service of process, investigation in anticipation of litigation, and the execution or enforcement of judgments and orders, or pursuant to an order of a federal, state, or local court;

(5) If the personal information is not published, redisclosed, or used to contact an individual, for use in:

- (a) Research activities; or
- (b) Producing statistical reports.

(6) For use by any insurer or insurance support organization, or by a self-insured entity, or its agent, employee, or contractor, in connection with claims investigation activities, antifraud activities, rating, or underwriting;

(7) For use in providing notice to the owner of a towed or impounded vehicle;

(8) For use by any licensed investigative agency or licensed security service for a purpose permitted under this subsection;

(9) For use by an employer or its agent or insurer to obtain or verify information relating to a holder of a commercial driver's license

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that is required under the Commercial Motor Vehicle Safety Act of 1986 (49 USC App.2710 et seq.);

(10) For use in connection with operation of a private toll transportation facility; or

(11) For use by any requester, if the requester demonstrates he has obtained the written consent of the individual to whom the information pertains.

Section 4. A person wishing pursuant to Section 3 of this administrative regulation to obtain a record which includes personal information, shall complete one (1) of the following or its preapproved electronic equivalent:

(1) If the record is in the Driver Licensing Computer Information System:

(a) Transportation Cabinet form TC 94-1, "Request for Driver Licensing Records which Include Personal Information"; or

(b) Transportation Cabinet form TC 94-2, "Motor Vehicle Insurer's Request for Driver Licensing Records which Include Personal Information"; or

(2) If the record is in the Automated Vehicle Information System, Transportation Cabinet form TC 96-16, "Request for Motor Vehicle Record which Includes Personal Information".

Section 5. (1) In addition to Section 3 of this administrative regulation, the selling of information from the Automated Vehicle Information System relating to a motor vehicle registered or titled in the Commonwealth of Kentucky shall be allowed if the information is to be used, rented, or sold solely for bulk distribution for surveys, marketing, or solicitations.

(2) The surveys, marketing, or solicitations shall not be directed at an individual who has requested that they not be directed at him pursuant to Section 6 of this administrative regulation.

(3) A person requesting information pursuant to this section shall sign an agreement with the Transportation Cabinet in order to apply for this information. This request shall be on Transportation Cabinet Form TC 10-300, "Agreement" which relates to use of information requested from the Automated Vehicle Information System.

Section 6. (1) A person who does not wish to have surveys, marketing, or solicitations directed at himself from information obtained from the Automated Vehicle Information System shall complete and file a copy of Transportation Cabinet Form TC 96-320 "Request to Withhold Personal Information" with the Division of Motor Vehicle Licensing.

(2) The motor vehicle licensing office of each county clerk shall prominently display a sign explaining that an individual is allowed to complete this form in order that his personal information not be included in a commercial bulk sale.

(3) If a person renews his motor vehicle registration by mail pursuant to KRS 186.020(5) the county clerk shall include in the package which contains the renewed registration form for each individual a copy of Transportation Cabinet form TC 96-320.

Section 7. Retention of Records. A form completed pursuant to Section 4 or 5 of this administrative regulation shall be retained by the agency or office providing the record containing personal information for a minimum of six (6) months.

Section 8. Incorporation by Reference. (1) The following material is incorporated by reference as a part of this administrative regulation:

(a) Transportation Cabinet form TC 94-1 "Request for Driver Licensing Records which Include Personal Information" effective August 1997;

(b) Transportation Cabinet form TC 94-2 "Motor Vehicle Insurer's Request for Driver Licensing Records which Include Personal Information" effective May 1998;

(c) Transportation Cabinet form TC 96-16 "Request for Motor

Vehicle Record which Includes Personal Information" effective October 1997;

(d) Transportation Cabinet form TC 96-320, "Request to Withhold Personal Information" effective October 1997; and

(e) Transportation Cabinet form TC 10-300, "Agreement" effective September 1997.

(2) The material incorporated by reference in this administrative regulation may be viewed, copied, or obtained from the following offices within the Transportation Cabinet. The office hours of each office are 8 a.m. to 4:30 p.m., local prevailing time on weekdays.

(a) TC 96-320 and TC 96-16 from the Department of Vehicle Regulation, Division of Motor Vehicle Licensing, 501 High Street, Frankfort, Kentucky 40622, telephone number is (502) 564-5301.

(b) TC 94-1 and TC 94-2 from the Department of Vehicle Regulation, Division of Driver Licensing, 501 High Street, Frankfort, Kentucky 40622, telephone number is (502) 564-6800.

(c) TC 10-300 from the Department of Administrative Services, 501 High Street, Frankfort, Kentucky 40622, telephone number is (502) 564-3670.

ED ROBERTS, Commissioner

ED LOGSDON, Commissioner

JAMES C. CODELL, III, Secretary

TODD SHIPP, Office of General Counsel

APPROVED BY AGENCY: May 14, 1998

FILED WITH LRC: May 15, 1998 at noon

PUBLIC HEARING: A public comment hearing on this administrative regulation will be held on June 26, 1998 at 10 a.m. local prevailing time in the Transportation Cabinet, 4th Floor Hearing and Conference Room, 501 High Street, Frankfort, Kentucky 40622. Any person who intends to attend this meeting must in writing by June 19, 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 requester's expense. If you have a disability for which the Transportation Cabinet needs to provide accommodations, please notify us of your requirements by June 19, 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. If the hearing is held, written comments will be accepted until the close of the hearing. If the hearing is canceled, written comments will only be accepted until June 26, 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, Mail Code 10-13, 501 High Street, Frankfort, Kentucky 40622, (502) 564-7650, Fax: (502) 564-5238.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Sandra Pullen Davis

(1) Type and number of entities affected: 3 million vehicle operators and owners in Kentucky.

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

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: Emergency regulation. Public comment hearing has not yet been held. However, the larger Kentucky industries such as Toyota and Ford have indicated that the ability to make bulk mailings to the citizens of Kentucky is critical to their continued economic well-being.

(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:

(c) Compliance, reporting, and paperwork requirements, including

factors increasing or decreasing costs (note any effects upon competition) for the:

1. First year following implementation: Each time an entity wishes to purchase information from the motor vehicle/operator records maintained by the Transportation Cabinet, it will have to complete a form stating the proposed use of the information.

2. Second and subsequent years: Same

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings: While \$50,000 in name sales will no longer be made from the Driver Licensing Computer System each year, the cost of administering the program and preparing data requests will be eliminated. The net result should be \$0. There should be no changes in the Automated Motor Vehicle Licensing System in regard to costs/income. However, the cabinet will have to absorb the cost of printing and distributing form and posters relating to the program. Based on information from other states, we expect 50,000 people to request that their information not be sold for commercial purposes. This information will have to be entered into the computer.

1. First year: A net cost of approximately \$50,000 each year.

2. Continuing costs or savings: Same

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements: None

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

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: The Kentucky Road Fund as appropriated to the Departments of Vehicle Regulation and Administrative Services.

(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 cabinet strongly considered not selling information for commercial purposes at all. However, several of the larger industries in Kentucky objected pointing out that the information they purchase from the Automated Vehicle Information System is critical to their marketing efforts and therefore economic well-being.

(8) Assessment of expected benefits:

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

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

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

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication:

(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 used in that there is more paperwork required of an entity wishing to obtain personal information for use in commercial purposes. Those persons wishing to use the information for a noncommercial, legitimate purpose can quickly complete the required form.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 18 USC Chapter 123, commonly called "National Drivers' Privacy Protection Act".

2. State compliance standards. As required for the sale or distribution of personal information from a motor vehicle or driver licensing data base, Kentucky is offering each person who registers

or titles a motor vehicle in Kentucky the opportunity to opt-out of the sale or distribution of his personal information. Any person who wishes to obtain personal information from one of the Department of Vehicle Regulation's computer data bases will be required to identify the use to be made of the personal information. If the use is one of the uses set forth in 18 USC as being an acceptable use of the personal information, the requestor will also have to affirm that no other use will be made of the information. If the personal information is to be used, rented, or sold solely for bulk distribution for surveys, marketing, or solicitations, the requestor will have to execute an agreement with the Transportation Cabinet guaranteeing no additional use of the information.

3. Minimum or uniform standards contained in the federal mandate. The federal mandate defines "personal information" and requires that the sale or distribution of personal information from a motor vehicle or driver licensing data base be limited to certain uses. If the personal information is to be used, rented, or sold solely for bulk distribution for surveys, marketing, and solicitations, the federal mandate requires that each affected person be given the opportunity to opt-out of the sale or distribution of his personal information.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? Yes

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. The federal mandate specifically establishes that a driver's status, conviction for a violation of a traffic law, and an accident report are not to be considered "personal information", therefore, placing no restrictions on the sale or distribution of this information. However, KRS 187.310 does place restrictions and time limits on the distribution of this information. Therefore, the administrative regulation acknowledges the existence of KRS 187.310 and does not allow the information on the actual accident report to be given out. The administrative regulation is also stricter than the federal mandate in not allowing name sales for bulk marketing purposes from the Driver Licensing Computer Information System. The decision was made to restrict those name sales in the interest of the protection of personal information. Unlike with the sales from the Automated Vehicle Information System which almost always cover thousands of persons and from which the applicant is not able to select persons based on age or sex, the sales from the Kentucky Driver Licensing Computer Information System in the past have largely been aimed at a particular age group or gender. To the Transportation Cabinet, this seemed to be too selective, allowing someone to submit a request for a list of persons meeting very specific criteria. The misuse of such lists was the reason the National Driver's Privacy Protection Act was passed. Therefore, the Transportation Cabinet chose to limit the use of the information in the Driver Licensing Computer Information.

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. The motor vehicle registration office of the County Clerk and the Driver Licensing Issuance Office of the Circuit Clerk.

3. State the aspect or service of local government to which this administrative regulation relates. As an agent for the Transportation Cabinet, the County Clerks register and title the motor vehicles based in Kentucky. This service is affected by this administrative regulation. As an agent for the Transportation Cabinet, the Circuit Clerks issue operator's licenses to eligible persons. They have access to the Driver Licensing Computer Information System and are therefore subject to the provisions of this administrative regulation.

4. Estimate the effect of this administrative regulation on the

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expenditures and revenues of a local government for the first full year the regulation is in effect. If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):

Expenditures (+/-):

Other Explanation: There will be additional time required for the motor vehicle personnel in the office of each County Clerk in order to place Transportation Cabinet form TC 96-320 in the return package for each person who renews his motor vehicle registration by mail. In addition, the personnel will be required to post the public information sign required by this administrative regulation and make Transportation Cabinet form TC 96-320 available to vehicle owners who are in the office. The Circuit Clerks will have almost no change in their area of responsibility and work load.

CABINET FOR WORKFORCE DEVELOPMENT Department of Vocational Rehabilitation (New Administrative Regulation)

781 KAR 1:061. Repeal of 781 KAR 1:060.

RELATES TO: KRS 151B.190

STATUTORY AUTHORITY: KRS 151B.195

NECESSITY, FUNCTION, AND CONFORMITY: KRS 151B.195

directs the Commissioner, Department of Vocational Rehabilitation to promulgate administrative regulations governing services, personnel, and administration of the state vocational rehabilitation program. This administrative regulation established criteria for the provision of services by community facilities. 781 KAR 1:060 is no longer necessary because many of the community rehabilitation programs governed by the administrative regulation no longer exist. The department now purchases services as needed from private not-for-profit community rehabilitation programs.

Section 1. 781 KAR 1:060 is hereby repealed.

SAM SERRAGLIO, Commissioner

SUE SIMON, Acting General Counsel

APPROVED BY AGENCY: May 14, 1998

FILED WITH LRC: May 14, 1998 at 4 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation has been scheduled on June 24, 1998 at 10 a.m. eastern time in the DVR Training Room, 209 St. Clair Street, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency by June 17, 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 the contact person.

CONTACT PERSON: George Parsons, Department of Vocational Rehabilitation, 209 St. Clair Street, Frankfort, Kentucky 40601, (800) 372-7172 (V/TDD), (502) 564-6745 (FAX).

The Department of Vocational Rehabilitation does not discriminate on the basis of race, color, national origin, sex, disability, age, religion or marital status in training, activities or employment practices in accordance with Title VI of the Civil Rights Act of 1964, Title IX of the Education Amendment of 1972, Section 504 of the Rehabilitation Act of 1973, Title VII of the Civil Rights Act of 1964 and the Americans With Disabilities Act of 1990. The meeting facility is accessible to

people with disabilities. The department 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 George Parsons at the address above.

REGULATORY IMPACT ANALYSIS

Contact person: George Parsons

(1) Type and number of entities affected: None

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

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

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

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

1. First year following implementation: None

2. Second and subsequent years: None

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings: 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 will be 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: No revenue implications.

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

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

(b) Kentucky: None

(7) Assessment of alternative methods; reasons why alternatives were rejected: No alternative methods were considered. The administrative regulation is being repealed.

(8) Assessment of expected benefits:

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

(b) State whether a detrimental effect on environment and public health would result if not implemented: Not applicable.

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

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

(a) Necessity of proposed regulation if in conflict:

(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. The administrative regulation is being repealed.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 34 CFR 361 July 1, 1997.

2. State compliance standards. This administrative regulation set standards for state owned and operated community rehabilitation facilities. The department no longer operates community rehabilitation facilities and the regulation is not necessary.

3. Minimum or uniform standards contained in federal mandate. NA
4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? NA
5. Justification or imposition of the stricter standards, or additional or different responsibilities or requirements. NA

**CABINET FOR HEALTH SERVICES
Department For Medicaid Services
Division of Administration and Development
(New Administrative Regulation)**

907 KAR 1:595. Model Waiver II services and payments.

RELATES TO: KRS 314.011, 42 CFR 440.70, 440.185, 42 USC 1396

STATUTORY AUTHORITY: KRS 194.050, 205.520, 42 USC 1315, HB 132 of 1998 GA

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health Services, Department for Medicaid Services, has responsibility to administer the Medicaid Program. KRS 205.520 authorizes the cabinet, by administrative regulation, to comply with any requirement that may be imposed or opportunity presented, by federal law for the provision of medical assistance to Kentucky's indigent citizenry. This administrative regulation establishes the coverage provisions relating to Model Waiver II services provided to a Medicaid-eligible recipient. These services are provided pursuant to a waiver granted by the U. S. Department for Health and Human Services in accordance with 42 USC 1396n(c).

Section 1. Definitions. (1) "Department" means the Department for Medicaid Services and its designated agent or representative.

(2) "Home health agency" means a facility licensed by the Office of the Inspector General to provide home health services.

(3) "Model Waiver II services" means community-based waiver in-home ventilator services provided to a Medicaid-eligible recipient who:

- (a) Is dependent on a ventilator; and
- (b) Would otherwise require a nursing facility (NF) level of care in a hospital based NF which will accept a recipient who is dependent on a ventilator.

(4) "Registered nurse" (RN) is defined in KRS 314.011.

(5) "Licensed practical nurse" (LPN) is defined in KRS 314.011.

(6) "Respiratory therapist" (RT) means an individual who:

- (a) Has successfully completed a training program accredited by the American Medical Association's Committee on Allied Health Education and Accreditation in collaboration with the Joint Review Committee for Respiratory Therapy Education; and

(b) Who is certified or registered by successfully completing the registry examination for respiratory therapists administered by the National Board for Respiratory Care, Inc.

(7) "Ventilator dependent" means the condition or state of an individual who requires the aid of a ventilator (respiration stimulating mechanism) for his respiratory function.

Section 2. General Coverage Provisions. (1) Services shall be provided to a Medicaid eligible recipient:

- (a) Who meets the NF level-of-care determination for ventilator dependency; and
 - (b) For whom the cost of Model Waiver II services does not exceed the cost of traditional institutional ventilator care.
- (2) The peer review organization (PRO) designated by the department shall make the level-of-care determination.
- (3) A Medicaid eligible recipient may choose Model Waiver II services as an alternative to traditional institutional services.
- (4) A Medicaid eligible recipient requesting to receive Model

Waiver II services shall choose a qualified home health agency which has obtained a valid provider number for provision of services.

Section 3. Provider Participation. A home health agency participating in the Model Waiver II Program shall meet the applicable certification requirements for providing home- and community-based waiver services in accordance with 907 KAR 1:671, 907 KAR 1:672, 907 KAR 1:675 and 907 KAR 1:030.

Section 4. Covered Services. (1) The following shall be covered Model Waiver II services:

- (a) Skilled nursing provided by:
 1. A registered nurse (RN);
 2. A licensed practical nurse (LPN); or
- (b) Respiratory therapy (RT).

(2) Model Waiver II services shall be provided by a qualified individual employed by or under contract through the home health agency as a:

- (a) Registered nurse (RN);
- (b) Licensed practical nurse (LPN); or
- (c) Respiratory therapist.

Section 5. Prior Authorization for a Service. (1) Prior to authorizing a Model Waiver II service the Department shall ensure that:

- (a) Client ventilator-dependent status is met;
- (b) Service is available to meet the need of a recipient; and
- (c) The service does not exceed the cost of traditional institutional ventilator care.

(2) An evaluation of the need for continuation of service (MAP-9) and a signed plan of treatment by a physician shall be completed every two (2) months, not to exceed sixty (60) days.

Section 6. Payment for Services. (1) The department shall reimburse a participating home health agency for the provision of covered Model Waiver II services as follows:

(a) Reimbursement shall be based on a fixed fee for a unit of service provided for each covered service defined in Section 4 of this administrative regulation with one (1) hour equal to one (1) unit of service.

(b) The fixed fee for skilled nursing services provided by:

1. A registered nurse (RN) shall be thirty-one (31) dollars and ninety-eight (98) cents for each unit of service.
2. A licensed practical nurse (LPN) shall be twenty-nine (29) dollars and ten (10) cents for each unit of service.
3. A respiratory therapist (RT) shall be twenty-seven (27) dollars and forty-two (42) cents for each unit of service.

(c) Reimbursement shall not exceed sixteen (16) units of service per day.

(d) Payment shall not be made for services to any individual for whom it can reasonably be expected that the cost of the home- and community-based services furnished under this administrative regulation would exceed the cost of these services if provided in a hospital-based NF.

Section 7. Appeal Rights. (1) An appeal of a negative action regarding a Medicaid recipient shall be appealed in accordance with 907 KAR 1:563.

(2) An appeal of a negative action regarding a Medicaid beneficiary's eligibility shall be appealed in accordance with 907 KAR 1:560.

(3) An appeal of a negative action regarding a Medicaid provider shall be appealed in accordance with 907 KAR 1:671.

Section 8. Incorporation by Reference. (1) MAP-9, "Prior Authorization for Health Services", December 1995 edition, is incorporated by reference.

(2) It may be inspected, copied, or obtained at the Department for Medicaid Services, 275 East Main Street, Frankfort, Kentucky, 40621,

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Monday through Friday, 8 a.m. to 4:30 p.m.

LARRY MCCARTHY, Deputy Commissioner
JOHN H. MORSE, Secretary
JOHN H. WALKER, Attorney

APPROVED BY AGENCY: April 21, 1998

FILED WITH LRC: April 22, 1998 at 2 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on June 22, 1998 at 9 a.m. in the Health Services Auditorium, Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by June 15, 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. The hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: Mae B. Lewis, Cabinet Regulation Coordinator, Cabinet for Health Services, Office of the Counsel, 275 East Main Street - 4W-C, Frankfort, Kentucky 40621, (502) 564-7905, (502) 564-7573 (Fax).

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Trish Howard, Karen Doyle

(1) Type and number of entities affected: 100 recipients who are dependent on a ventilator.

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

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

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

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

1. First year following implementation: None

2. Second and subsequent years: None

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: \$814,828.00 (Costs)

2. Continuing costs or savings: Second year: \$2,910,102 (Costs);

Third year: \$1,746,061 (Costs); Fourth year: \$1,164,041 (Costs).

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: None

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

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Federal and state matching funds. *Based on our review expenditures will increase in conformity with the following phase-in schedule:

FYE	Projected Increased Expense	Federal Funds 70.37%	State Funds 29.63%
06/30/98	\$814,828	\$573,394	\$241,434
06/30/99	2,910,102	2,047,839	862,263
06/30/00	1,746,061	1,228,703	517,358
06/30/01	1,164,041	819,136	344,905

Source of revenue to be used for implementation and enforcement of

administrative regulation are Federal and state matching funds. Federal matching funds of 70.37% and state matching funds of 29.63% as outlined above State revenues will come from the general fund or the agency fund enacted in the current budget.

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

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

(b) Kentucky: None

(7) Assessment of alternative methods; reasons why alternatives were rejected: No viable alternatives were identified.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: Recipient's health would improve; A decrease in hospitalizations may occur; A decrease in morbidity may occur.

(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: A rise in recipients who are dependent on a ventilator in nursing facility admissions will result in a need for the construction of more facilities for persons who are dependent on ventilators.

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: 1396a(a)(10)(B) and (C)(i)(III).

(a) Necessity of proposed regulation if in conflict:

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: A waiver of the sections identified in (9) was requested from the Health Care Financing Administration and was granted.

(10) Any additional information or comments: None

(11) TIERING: Is tiering applied? Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it. Disparate treatment of any person or entity subject to this administrative regulation could raise questions of arbitrary action on the part of the agency. The "equal protection" and "due process" clauses of the Fourteenth Amendment of the U.S. Constitution may be implicated as well as Sections 2 and 3 of the Kentucky Constitution.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. Pursuant to 42 USC 1396a et seq., the Commonwealth of Kentucky has exercised the option to establish a Medicaid Program for indigent Kentuckians. Having elected to offer Medicaid coverage, the state must comply with federal requirements contained in 42 USC 1396 et seq.

2. State compliance standards. This administrative regulation does not set compliance standards.

3. Minimum or uniform standards contained in the federal mandate. This administrative regulation does not set minimum or uniform standards.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No. This administrative regulation does not set stricter requirements.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. No additional standard or responsibilities are imposed.

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CABINET FOR HEALTH SERVICES Department for Medicaid Services Division of Administration and Development (New Administrative Regulation)

907 KAR 3:030. Coverage and payments for Impact Plus services.

RELATES TO: KRS 205.520, 42 CFR 431.615, 440.130, 447 Subpart B, 42 USC 1396a, d, 1396s

STATUTORY AUTHORITY: KRS 194.050, HB 132 of 1998 GA NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health Services, Department for Medicaid Services, has responsibility to administer the Medicaid Program. KRS 205.520 authorizes the cabinet, by administrative regulation, to comply with any requirement that may be imposed or opportunity presented, by federal law for the provision of medical assistance to Kentucky's indigent citizenry. This administrative regulation provides for coverage and payments for Impact Plus services provided through an agreement with the state Title V agency, the Department for Public Health.

Section 1. Definitions. (1) "Department" means the Department for Medicaid Services.

(2) "Impact Plus" means the program of behavioral health services provided through an agreement with the state Title V agency.

(3) "Licensed practitioners of the healing arts" means a practitioner of the healing arts who is licensed in accordance with KRS 311.271 or who is otherwise exempt from licensure pursuant to KRS 335.010(4).

(4) "Rehabilitative services" means medical or remedial services recommended by a physician or other licensed practitioner of the healing arts, within the scope of his practice under state law, for maximum reduction of a behavioral disability and restoration and maintenance of a recipient to his highest possible functional level.

(5) "Targeted case management services" means a set of activities which assist an individual in accessing needed medical, social, educational, and other support services.

(6) "Title V agency" means the Department for Public Health.

Section 2. Interagency Agreement. Services provided pursuant to Section 3 of this administrative regulation shall be in accordance with an interagency agreement between the department and the Title V agency.

Section 3. Coverage. Services provided shall be those that meet the terms of the agreement between the department and the Title V agency, which are appropriate for the reduction of behavioral disability and restoration of a recipient to his highest possible functional level, and which shall be within the following general areas:

(1) Targeted case management services provided to:

(a) A Medicaid-eligible child under the age of twenty-one (21) who meets the conditions and circumstances of the Department for Social Services to be defined as a child:

1. In the custody of the state;
2. Under the supervision of the state; or
3. At risk of being in the custody of the state; and
4. In an institution; or
5. At risk of institutionalization.

(b) A Medicaid eligible child under age twenty one (21) who is:

1. In an institution; or
2. At risk of institutionalization.

(2) Rehabilitative services provided to:

(a) A Medicaid-eligible child under the age of twenty-one (21) who meets the conditions and circumstances of the Department for Social Services to be defined as a child:

1. In the custody of the state;
2. Under the supervision of the state; or

3. At risk of being in the custody of the state; and
4. In an institution; or
5. At risk of institutionalization.

(b) A Medicaid eligible child under age twenty one (21) who is:

1. In an institution; or
2. At risk of institutionalization.

(3) A service covered as a rehabilitative service shall be one (1) of the following:

- (a) Individual services;
- (b) Group services;
- (c) Collateral services;
- (d) After school and summer program services;
- (e) Day treatment services;
- (f) Partial hospitalization services;
- (g) Intensive out-patient services;
- (h) Therapeutic foster care services;
- (i) Therapeutic group residential care services;
- (j) Residential crisis stabilization services; or
- (k) Wilderness camp.

Section 4. Provider Qualifications and Conditions for Participation. The following provider qualifications and conditions for participation shall be applicable for services provided pursuant to Section 3 of this administrative regulation.

(1) The Title V agency shall provide a service:

(a) Directly;

(b) Through agreement with the Kentucky Department for Social Services as the state agency responsible for the provision of child and adult protective services; or

(c) Through agreement with the Kentucky Department for Mental Health and Mental Retardation Services as the agency responsible for oversight of mental health and substance abuse services in the state.

(2) A service which is provided directly by the Title V agency or by the Departments for Social Services or Mental Health and Mental Retardation Services or their subcontractors shall meet requirements established in the Impact Plus Manual for the service and shall include:

(a) A plan of care;

(b) Documentation of supervision of staff as appropriate;

(c) Documentation of services provided; and

(d) Reports as established by the department regarding utilization, services, expenditures and outcome data.

(3) A provider or subcontractor shall maintain records to document services provided for not less than five (5) years or until any audit dispute or issue is resolved if beyond five (5) years.

Section 5. Access to Records, Providers, and Recipients. (1) A provider or subcontractor shall be required to provide to the department and representatives of agencies or offices referenced in subsection (4) of this section, upon request:

(a) Information maintained by the provider to document the service provided;

(b) Information regarding payments claimed by the provider for furnishing services; and

(c) Information documenting the cost of the service.

(2) Inspection may be on site or through the submittal of written or electronic materials as determined to be appropriate by the department.

(3) The department shall have the right to interview:

(a) Current or previous provider or subcontractor staff with regard to services provided pursuant to Section 3 of this administrative regulation; and

(b) Recipients of targeted case management or rehabilitative services with regard to services received pursuant to Section 3 of this administrative regulation.

(4) Access to provider or subcontractor records relating to services provided shall be required for:

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- (a) A representative of the United States Department of Health and Human Services;
- (b) The United States Attorney General's Office;
- (c) The state Attorney General's Office;
- (d) The state Auditor's Office; and
- (e) The Office of the Inspector General.

Section 6. Reimbursement. Reimbursement shall be the documented cost for the direct provision of the services as specified in this section. The administrative and indirect overhead costs to the Departments for Public Health, Mental Health and Mental Retardation Services and Social Services shall not be reimbursed by the department.

(1) A payment shall be based on actual expenditures incurred for the provision of the service by the Title V agency or the Departments for Mental Health and Mental Retardation Services and Social Services.

(2) For a service provided directly by the Title V agency or by the Departments for Social Services or Mental Health and Mental Retardation Services, the appropriate agency shall be required to maintain service and cost records to document that payments do not exceed cost.

(3) For a service provided through a subcontractor, the applicable state agency shall maintain records showing payments made to subcontractors on an individual client per service basis.

(4) Payment rates for a subcontractor-provided service shall be negotiated between the provider and the subcontractor.

(a) Negotiated rates for a subcontracted service shall not be effective unless approved by the department.

(b) To facilitate the negotiated rate approval process the department's representative may participate directly in the negotiation process and review proposed subcontractor payment amounts prior to approval.

(5) Depending on the service provided, a billable unit of service shall be in increments of:

- (a) Fifteen (15) minutes;
- (b) One (1) hour;
- (c) One (1) day; or
- (d) One (1) month.

Section 7. Incorporation by Reference. (1) "Impact Plus Manual", Department for Medicaid Services, May 1998, is incorporated by reference.

(2) It may be inspected, copied, or obtained at the Department for Medicaid Services, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m.

DENNIS BOYD, Commissioner

JOHN H. MORSE, Secretary

JOHN H. WALKER, Attorney

APPROVED BY AGENCY: May 13, 1998

FILED WITH LRC: May 14, 1998

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on June 22, 1998 at 9 a.m. in the Health Services Auditorium, Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by June 15, 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. The hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: Mae B. Lewis, Cabinet

Regulation Coordinator, Cabinet for Health Services, Office of the Counsel, 275 East Main Street 4W-C, Frankfort, Kentucky 40621, (502) 564-7905, (502) 564-7573 (Fax).

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Trish Howard, Karen Doyle

(1) Type and number of entities affected: 2000-4000 Medicaid eligible children expected to receive Impact Plus services; all psychiatric hospitals providing services to Medicaid eligible children; all mental health centers in the state.

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

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: No comments received.

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

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

1. First year following implementation: Providers will be required to provide data to the department on a per request basis to track utilization of services, expenditures and outcome data.

2. Second and subsequent years: Providers will be required to provide data to the department on a per request basis to track utilization, services, expenditures and outcome data.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: \$0

2. Continuing costs or savings: \$0

3. Additional factors increasing or decreasing costs: This action will be budget neutral. It is expected that Impact Plus expenditures will be in the range of \$10 million annually, with this cost to be offset against current expenditures for in-state and out-of-state placements of children in psychiatric facilities, and against savings realized from a reduction of length of stay or intensity level of in-state children in psychiatric facilities.

(b) Reporting and paperwork requirements: None

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

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Federal and state matching funds. The revenue needed to fund this program will come from appropriated funds currently available to the Medicaid Program.

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

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

(b) Kentucky: No comments were received regarding the effects of this administrative regulation.

(7) Assessment of alternative methods; reasons why alternatives were rejected: No viable alternatives were identified.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: To assure that medically necessary targeted case management and rehabilitative services are available to Medicaid eligible children.

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

(c) If detrimental effect would result, explain detrimental effect: May pose an imminent threat to the public health, safety, or welfare of Medicaid recipients by not providing medically necessary services to Medicaid eligible children who are at risk of institutionalization or at risk of being in the custody of the State.

(9) Identify any statute, administrative regulation or government

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policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict:

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

(10) Any additional information or comments: None

(11) TIERING: Is tiering applied? Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it. Disparate treatment of any person or entity subject to this administrative regulation could raise questions of arbitrary action on the part of the agency. The "equal protection" and "due process" clauses of the Fourteenth Amendment of the U.S. Constitution may be implicated as well as Sections 2 and 3 of the Kentucky Constitution.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. Pursuant to 42 USC 1396a et seq., the Commonwealth of Kentucky has exercised the option to establish a Medicaid Program for indigent Kentuckians. Having elected to offer Medicaid coverage, the state must comply with federal requirements contained in 42 USC 1396 et seq.

2. State compliance standards. This administrative regulation does not set compliance standards.

3. Minimum or uniform standards contained in the federal mandate. This administrative regulation does not set minimum or uniform standards.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No. This administrative regulation does not set stricter requirements.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. No additional standard or responsibilities are imposed.

ADMINISTRATIVE REGULATION REVIEW SUBCOMMITTEE

Minutes of May 11, 1998

The May meeting of the Administrative Regulation Review Subcommittee was held on Monday, May 11, 1998 at 10 a.m. in Room 149 of the Capitol Annex. Representative James Bruce, Acting Chairman, called the meeting to order, and the roll call was taken. The minutes of the April 15, 1998 meeting were approved.

Present were:

Members: Representative James Bruce, Acting Chairman; Senators Joey Pendleton, and Dick Roeding; Representative Woody Allen.

LRC Staff: Greg Karambellas, Stephen Lynn, Donna Little, Susan Wunderlich, Angela Phillips, Donna Valencia, Kim Burch, Jennifer Marsh, Biff Baker.

Guests: Jerry W. Herndon, Board of Examiners and Registration of Architects; Larry Hatfield, Bobbie Butler, Mark Farrow, Allen Kyle, John McCauley, Jack R. Custer, Lanny Arnold, Department of Agriculture; Mark O. Board, Finance Cabinet; Jim Villines, Allen Luttrell, Ronald Mills, John Hornback, Mark Mangeot, Roy A. Massey, Carl Millanti, Diana K. Maxwell, Millie Ellis, Bruce Williams, Natural Resources and Environmental Protection Cabinet; Edward Sue Perkins, Lt. Joe England, Charlie Harman, Transportation Cabinet; Betty Edwards, Robert Sherman, Rhonda L. Sims, Agnes D. Durbin, Carol D. Hanley, Department of Education; Kevin Noland, Board of Education; Donna Elsen Floyd, Carla H. Montgomery, Department of Workers' Claims; Kembra Taylor, Larry L. Roberts, Labor Cabinet; Sharron S. Burton, Department of Insurance; Bernard J. Hettel, Calvert Bratton, Rena Elswick Strevels, Kentucky Racing Commission; Ann Gordon, Eric Friedlander, Cabinet for Health Services; John Rogers, Kentucky Association of Chiropractors; Jerry Deaton, Kentucky League of Cities; Mike Helton, MMLEK; Marie Alagia Cull; J. K. Henshaw, Sam Crawford, Kentucky Farm Bureau; Steve Cawood, Nally and Hamilton Enterprises; Bill Caylor, Kentucky Coal Association; Monty Parrish, KFACA; Tod Griffin, Jan Gould, Kentucky Retail Federation.

The Subcommittee determined that the following administrative regulations, as amended by the promulgating agency and the Subcommittee, complied with statutory requirements:

General Government Cabinet: State Board of Examiners and Registration of Architects

201 KAR 19:087. Continuing education. Jerry Herndon, Executive Director, represented the Board.

In response to questions by Senator Roeding, Mr. Herndon stated that the emeritus status designation: (1) required a registrant to be at least sixty-five years old; and (2) was a new designation that the Board had not previously recognized.

This administrative regulation was amended as follows: (1) the RELATES TO paragraph was amended to list the citations in numerical order; (2) As required by KRS 13A.222(4)(a), Section 1(1) was amended to clearly designate that "clock time" refers to taking an examination; (3) Section 7 was amended to incorporate by reference the "license renewal application form"; (4) Sections 1, 3, 4, and 5 were amended to comply with the drafting requirements of KRS 13A.222(4); and (5) Sections 1 and 3 were amended to comply with the formatting requirements of KRS 13A.220(4).

201 KAR 19:095. Professional practice standards; violations, penalties. In response to questions by Senator Roeding, Mr. Herndon stated that: (1) during the two years since the General Assembly authorized the implementation of continuing education requirements, the Board had: (a) held four regional meetings across Kentucky; (b) notified all architects in Kentucky about those meetings; and (c) encouraged input from all architects; and (2) an architect had 180 days to make up continuing education requirements.

This administrative regulation was amended as follows: (1) the STATUTORY AUTHORITY paragraph was amended to correct statutory citations; (2) the NECESSITY, FUNCTION, AND CONFORMITY paragraph was amended to clearly state the necessity for and function served by the administrative regulation as required by KRS 13A.220(3)(f); (3) Pursuant to KRS 13A.222(4)(a), Section 4 was amended to delete provisions that repeated Section 3(3)(b); (4) Sections 1, 3, 5, 6, and 7 were amended to comply with the drafting requirements of KRS 13A.222(4); and (5) Sections 1, 5, and 6 were amended to comply with the formatting requirements of KRS 13A.220(4).

Department of Agriculture: Division of Regulation and Inspections: Egg Marketing

302 KAR 10:100. Refrigeration of eggs and temperature requirements. Mark Farrow, General Counsel; Larry Hatfield, Director; and Bobbie Butler, Program Administrator, represented the Department.

In response to a question by Senator Roeding, Mr. Farrow stated that since this administrative regulation required a carton of eggs to be labeled "keep refrigerated at or below 45 degrees Fahrenheit", a label stamped on a carton of eggs provided adequate notice to a person taking possession of the eggs that the requirements of this administrative regulation had been met.

In response to questions by Representative Allen, Mr. Farrow stated that this administrative regulation: (1) did not govern the sale of fresh eggs by a farmer; and (2) was required to conform Kentucky's temperature requirements to FDA and federal government requirements.

This administrative regulation was amended as follows: (1) the NECESSITY, FUNCTION, AND CONFORMITY paragraph was amended to clearly state the necessity for and function served by the administrative regulation, as required by KRS 13A.220(3)(f); and (2) Section 1 was amended to comply with the: (a) format requirements of KRS 13A.220(4); and (b) drafting requirements of KRS 13A.222(4).

Natural Resources and Environmental Protection Cabinet: Department for Environmental Protection: Division for Air Quality: General Standards of Performance

401 KAR 63:640. National emission standards for hazardous air pollutants from petroleum refineries. John Hornbeck, Director, and Carl Millanti, Regulation Development, represented the Division.

This administrative regulation was amended as follows: the RELATES TO paragraph and Section 2(1) was amended to correct statutory citations.

401 KAR 63:741. National emission standards for aerospace manufacturing and rework facilities. In response to a question by Senator Roeding, Mr. Hornbeck stated that: (1) this administrative regulation complied with federal requirements; and (2) the Division would conduct outreach programs to businesses and industries: (a) that were affected by: 1. this administrative regulation; and 2. other applicable 401 KAR Chapter 63 administrative regulations; and (b) to ensure that regulated entities were fully aware of the requirements.

In response to a question by Representative Bruce, Mr. Hornbeck stated that the requirements in this administrative regulation were the same requirements imposed in other states.

This administrative regulation was amended as follows: the RELATES TO paragraph and Section 2(1) was amended to correct statutory citations.

Department for Surface Mining Reclamation and Enforcement: Permits

405 KAR 8:001. Definitions for 405 KAR Chapter 8. Ronald Mills, Attorney; Allen Luttrell, Deputy Commissioner; and Jim Villines, Regulations Development, represented the Department.

This administrative regulation was amended as follows: (1) the RELATES TO and STATUTORY AUTHORITY paragraphs were amended to correct statutory citations; (2) the NECESSITY, FUNCTION, AND CONFORMITY paragraph was amended to clearly state the necessity for and function served by the administrative regulation, as required by KRS 13A.220(3)(f); (3) a new subsection, Section 1(3), was created to include the definition of "Acquisition", pursuant to KRS 13A.222(4); (4) pursuant to KRS 13A.110 and 13A.221(2), a new Section 2 was created to incorporate by reference the "ASTM Standard D 388-77"; and (5) Sections 1(19), 1(23), 1(45), 1(59), and 1(107) were amended to comply with the: (a) drafting requirements of KRS 13A.222(4); and (b) formatting requirements of KRS 13A.220(4).

405 KAR 8:030. Surface coal mining permits. In response to questions by Senator Roeding, Mr. Villines stated that: (1) the Cabinet did not believe that the requirement for submitting a copy of the final approved plan from the Mine Safety and Health Administration (MSHA) to the Cabinet was more stringent than the federal requirements; (2) because the federal and state regulations required that a copy of the MSHA application be submitted to the state, this administrative regulation required that an applicant or permittee submit to the Cabinet: (a) a copy of the final approved plan by MSHA; and (b) the technical documentation that MSHA relied on for its approval; (3) the Cabinet relied on MSHA approval to reduce the amount of: (a) technical and overlapping review; and (b) confusion to the applicant that would result from duplicate review; and (4) the Cabinet: (a) established this requirement after receiving a written suggestion during the Notice of Intent process to eliminate duplicate reviews; and (b) believed the requirement would make the process easier for the Cabinet and the affected industry.

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) pursuant to KRS 13A.110 and 13A.221(2), a new Section 38 was created to incorporate by reference the following material: (a) Standard Methods for the Examination of Water and Wastewater; (b) Corps of Engineers Wetlands Delineation Manual; (c) U.S. Army Corps of Engineers Regulatory Guidance Letter No. 90-7; (d) National Lists of Plant Species that Occur in Wetlands and Biological Reports and Summary; and (e) List of Hydric Soils of the United States, All Kentucky Counties; (3) Sections 3, 4, 11, 13, 14, 15, 23, 24, 26, 27, 34, and 37 were amended to comply with the drafting requirements of KRS 13A.222(4); and (4) Sections 12 and 20 were amended to comply with the formatting requirements of KRS 13A.220(4).

405 KAR 8:040. Underground coal mining permits. In response to a question by Senator Roeding, Mr. Villines stated that: (1) this administrative regulation differed from the federal regulations; and (2) while the federal regulation for subsidence control required that a presubsidence survey be conducted on water supplies and structures before a permit was issued, this administrative regulation authorized presubsidence surveys to be conducted on structures: (a) after the permit was issued; and (b) when the mining actually approached the structure.

Senator Roeding stated that he was glad the Cabinet was making an effort to ease the requirements for permittees.

This administrative regulation was amended as follows: (1) Section 26 was amended to require a water survey to be filed with the mining permit application; (2) pursuant to KRS 13A.110 and 13A.221(2), a new Section 39 was created to incorporate by reference the following material: (a) Standard Methods for the Examination of Water and Wastewater; (b) Corps of Engineers Wetlands Delineation Manual; (c) U.S. Army Corps of Engineers Regulatory Guidance Letter No. 90-7; (d) National Lists of Plant Species that Occur in Wetlands and Biological Reports and Summary; and (e) List of Hydric Soils of the United States, All Kentucky Counties; (3) the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 4, 11, 13, 14, 15, 24, 26, 34, and 37 were amended to comply with the

drafting requirements of KRS 13A.222(4); and (4) Section 20(3) was amended to comply with the formatting requirements of KRS 13A.220(4).

Performance Standards for Surface Mining Activities

405 KAR 16:001. Definitions for 405 KAR Chapter 16. In response to a question by Senator Roeding, Mr. Villines stated that: (1) a previously mined area: (a) concerned an area eligible for incentives established by administrative regulation for remining operations; and (b) included an abandoned mineland that met the eligibility requirements; (2) to qualify for an incentive, the area was required to have been affected by mining that occurred prior to August 3, 1977, which was the date the federal law passed; (3) this administrative regulation was amended to adopt the federal definition of a previously mined area.

In response to questions by Representative Allen, Mr. Villines stated that: (1) if an area was mined under the permit program and properly reclaimed, an operator did not have to reclaim the land unless he: (a) re-mined in the same area; and (b) re-disturbed the land; and (2) this administrative regulation: (a) did not require a person to reclaim land; (b) established requirements for qualifying for benefits established in administrative regulations for re-mining; and (c) made it easier for a person who possessed land that had been torn up to: 1. re-mine the area; and 2. restore the area pursuant to the requirements established in the administrative regulation.

In response to a question by Representative Allen, Mr. Luttrell stated that: (1) this administrative regulation would not affect land that had been reclaimed unless the land was disturbed prior to 1977; (2) land that was disturbed before 1977 would be eligible for the benefits established in this administrative regulation; (3) while the Cabinet did not know the number of acres mined before 1977 that the state had not reclaimed, there was a substantial amount of disturbed acreage; and (4) this administrative regulation served as an incentive for coal companies to: (a) re-disturb land; (b) remove the coal; and (c) reclaim the land.

This administrative regulation was amended as follows: (1) the STATUTORY AUTHORITY paragraph was amended to correct statutory citations; (2) the NECESSITY, FUNCTION, AND CONFORMITY paragraph was amended to clearly state the necessity for and function served by the administrative regulation, as required by KRS 13A.220(3)(f); (3) a new subsection, Section 1(3), was created to include the definition of "Acquisition", pursuant to KRS 13A.222(4); (4) Section 1(64) was amended to clearly define "noxious plant" pursuant to KRS 13A.222(4); (5) pursuant to KRS 13A.110 and 13A.221(2), a new Section 2 was created to incorporate by reference the following material: (a) ASTM Standard D 388-77; and (b) Method of Determination of Slake Durability Index; and (6) Sections 1(31), 1(45), 1(52), 1(59), 1(98) and 1(108) were amended to comply with the: (a) drafting requirements of KRS 13A.222(4); and (b) formatting requirements of KRS 13A.220(4).

405 KAR 16:090. Sedimentation ponds. In response to a question by Senator Roeding, Mr. Villines stated that: (1) this was a very detailed administrative regulation; (2) he thought this administrative regulation was the same as the federal regulations; (3) if there were differences, the Cabinet listed them in the: (a) federal mandate comparison; and (b) NECESSITY, FUNCTION, AND CONFORMITY paragraph.

In response to a question by Subcommittee Staff, Mr. Villines stated that he did not think that the requirements of this administrative regulation were more stringent than those in federal regulations.

This administrative regulation was amended as follows: (1) the NECESSITY, FUNCTION, AND CONFORMITY paragraph was amended to clearly state the necessity for and function served by the administrative regulation, as required by KRS 13A.220(3)(f); and (2) Sections 3 and 5 were amended to comply with drafting requirements of KRS 13A.222(4).

405 KAR 16:100. Permanent and temporary impoundments. This administrative regulation was amended as follows: (1) the NECES-

SITY, FUNCTION, AND CONFORMITY paragraph was amended to clearly state the necessity for and function served by the administrative regulation, as required by KRS 13A.220(3)(f); and (2) Section 1 was amended to comply with drafting requirements of KRS 13A.222(4).

405 KAR 16:160. Coal mine waste dams and impoundments. This administrative regulation was amended as follows: (1) the NECESSITY, FUNCTION, AND CONFORMITY paragraph was amended to clearly state the necessity for and function served by the administrative regulation, as required by KRS 13A.220(3)(f); and (2) Section 3(1)(a) was amended, pursuant to KRS 13A.222(4), to provide for greater spillway capacity if warranted by safety concerns.

Performance Standards for Underground Mining Activities

405 KAR 18:001. Definitions for 405 KAR Chapter 18. This administrative regulation was amended as follows: (1) the STATUTORY AUTHORITY paragraph was amended to correct statutory citations; (2) the NECESSITY, FUNCTION, AND CONFORMITY paragraph was amended to clearly state the necessity for and function served by the administrative regulation, as required by KRS 13A.220(3)(f); (3) A new subsection, Section 1(3), was created to include the definition of "Acquisition", pursuant to KRS 13A.222(4); (4) Section 1(67) was amended, pursuant to KRS 13A.222(4), to clearly define "noxious plant"; (5) Pursuant to KRS 13A.110 and 13A.221(2), a new Section 2 was created to incorporate by reference the following material: (a) ASTM Standard D 388-77; and (b) Method of Determination of Slake Durability Index; and (6) Sections 1(19), 1(23), 1(34), 1(48), 1(54), 1(60), 1(100), and 1(109) were amended to comply with the: (a) drafting requirements of KRS 13A.222(4); and (b) format requirements of KRS 13A.220(4).

405 KAR 18:090. Sedimentation ponds. In response to a question by Senator Roeding, Mr. Villines stated that: (1) the requirement for design inspection, construction, and certification by a registered engineer had been required by this administrative regulation for a long time; (2) the amended language related to abolishing engineering safety inspections for small impoundments that: (a) did not have an embankment; and (b) could not fail; and (3) the substantive changes on inspections dealt with a relaxation of requirements if the inspection did not serve a safety need.

This administrative regulation was amended as follows: (1) the NECESSITY, FUNCTION, AND CONFORMITY paragraph was amended to clearly state the necessity for and function served by the administrative regulation, as required by KRS 13A.220(3)(f); and (2) Sections 3 and 5 were amended to comply with drafting requirements of KRS 13A.222(4).

405 KAR 18:100. Permanent and temporary impoundments. This administrative regulation was amended as follows: (1) the NECESSITY, FUNCTION, AND CONFORMITY paragraph was amended to clearly state the necessity for and function served by the administrative regulation, as required by KRS 13A.220(3)(f); and (2) Section 1 was amended to comply with drafting requirements of KRS 13A.222(4).

405 KAR 18:160. Coal mine waste dams and impoundments. In response to a question by Representative Bruce, Mr. Villines stated that this administrative regulation contained provisions that addressed the size of a spillway for a large impoundment that: (1) did not have an emergency channel spillway; and (2) relied entirely on a spillway pipe to carry away water that came from a maximum precipitation storm.

This administrative regulation was amended as follows: (1) the NECESSITY, FUNCTION, AND CONFORMITY paragraph was amended to clearly state the necessity for and function served by the administrative regulation, as required by KRS 13A.220(3)(f); and (2) Section 3(1)(a) was amended, pursuant to KRS 13A.222(4), to provide for greater spillway capacity if warranted by safety concerns.

405 KAR 18:210. Subsidence control. 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) the STATUTORY AUTHORITY paragraph was amended to correct statutory citations; (3) Section 1(4) was amended to delete provisions relating to a water supply; (4) Section 2 was amended to permit an exception to the requirement that mining not be conducted prior to ninety (90) days public notice; and (5) Sections 1, 2, 3, and 4 were amended to comply with the: (a) drafting requirements of KRS 13A.222(4); and (b) formatting requirements of KRS 13A.220(4).

Education, Arts and Humanities Cabinet: Kentucky Board of Education: Kentucky Department of Education: Office of Instruction

704 KAR 3:303. Required program of studies. Kevin Noland, General Counsel, represented the Department.

In response to a question by Senator Roeding, Mr. Noland stated that the Program of Studies incorporated by reference in this administrative regulation: (1) previously: (a) described 360 courses that could be offered in high schools in Kentucky; and (b) listed the course description and the certification required for the teacher for each of the 360 courses; and (2) was amended to: (a) reflect the new high school graduation requirements approved last year; (b) describe the fifteen courses that were now required as a condition for high school graduation; and (c) permit local districts to fashion electives and other courses at the local level without state approval.

This administrative regulation was amended as follows: (1) Various sections of the material incorporated by reference were amended to: (a) provide more clarity; and (b) make the document more helpful to teachers; (2) the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Section 1 was amended to comply with the (a) format requirements of KRS 13A.220(4); and (b) drafting requirements of KRS 13A.222(4); and (3) Section 1 was amended to clarify that before graduating from a Kentucky high school, a student shall meet the minimum content requirements established in the Program of Studies.

Labor Cabinet: Department of Workers' Claims

803 KAR 25:096. Selection of physicians, treatment plans and statements for medical services. Donna Floyd, Staff Attorney, and Carla Montgomery, Staff Attorney, represented the Department.

In response to a question by Representative Bruce, Ms. Floyd stated that: (1) this administrative regulation did not address the situation of dueling physicians in which: (a) an employee's doctor said there was a medical problem; and (b) the insurance company's doctor said there was not a medical problem; (2) a 1996 law established programs at the University of Kentucky and the University of Louisville, that were: (a) designed as the gold standard of independent medical evaluations; and (b) intended to alleviate the dueling physician situations; and (3) the Department was not able to evaluate the success of those programs until information was received from university evaluations on the program's effects.

In response to questions by Senator Roeding, Ms. Floyd stated that this administrative regulation: (1) did not raise or have a significant impact on fees; and (2) established: (a) requirements for the manner in which fees were billed and collected; and (b) time considerations for the payment of the fees.

This administrative regulation was amended as follows: (1) Sections 1, 3, 5, 7, 8, 9, and 10 were amended to comply with the (a) format requirements of KRS 13A.220(4); and (b) drafting requirements of KRS 13A.222(4); (2) Sections 3(5) and 8(2)(b) were amended to correct statutory citations; and (3) Section 8(2)(d) was amended to delete language that conflicted with 803 KAR 25:190.

803 KAR 25:101. Provision of workers' compensation rehabilitation services. This administrative regulation was amended as follows: (1) the NECESSITY, FUNCTION, AND CONFORMITY paragraph was amended to clearly state the necessity for and function served by the administrative regulation, as required by KRS 13A.220(3)(f); (2)

Sections 1 through 4 were amended to comply with the: (a) format requirements of KRS 13A.220(4); and (b) drafting requirements of KRS 13A.222(4); and (3) Section 4(5) was amended to cross-reference the applicable administrative regulation.

803 KAR 25:190. Utilization review and medical bill audit. This administrative regulation was amended as follows: (1) Section 1 was amended to correct a statutory citation; (2) Sections 1 and 3 through 8 were amended to comply with the: (a) format requirements of KRS 13A.220(4); and (b) drafting requirements of KRS 13A.222(4); and (3) Section 8(2) was amended to provide that if a utilization review denial is upheld upon reconsideration, an aggrieved party may request further review by: (a) a board eligible or certified physician in the appropriate specialty or subspecialty; or (b) a chiropractor qualified pursuant to KRS 312.200(3) and 201 KAR 21:095.

Department of Insurance: Health Insurance Contracts

806 KAR 17:110&E. Establishment of the Kentucky Risk Assessment and Risk Adjustment System. Sharron Burton, Counsel, and DJ Wasson, Commissioner's Office, represented the Department.

In response to a question by Senator Roeding, Ms. Burton stated that: (1) because 1996 health care legislation required the Department to implement the risk adjustment administrative regulation that had previously been implemented by the Health Policy Board, the Department had contracted with Coopers and Lybrand to develop a formula that utilized the different rating criteria that were promulgated as a result of the 1996 legislation; (2) it took quite a bit of time to produce the formula because: (a) it took a lot of time for Coopers and Lybrand to get this information from the companies; and (b) the Department had to subpoena the information from the companies; and (3) an emergency administrative regulation was required because: (a) the formula was developed at the end of 1997; (b) the Department foresaw new legislation on risk adjustment in 1998; and (c) the Department needed to finish and collect the assessment for 1997 before the 1998 Regular Session.

In response to questions by Senator Roeding, Ms. Wasson stated that: (1) the surcharge imposed on each health benefit plan: (a) was agreed to and paid by the insurance companies; and (b) had been in effect for some time; (2) the risk adjustment system: (a) did not make money; and (b) was based on the established risk for doing business in a modified community rated market; (3) the calculations were based on: (a) a comparison of the plans offered by each company; and (b) how much risk should be assumed by premium volume; (4) money was collected to offset carriers who assumed too much risk; (5) this administrative regulation would be amended in the future to address changes that were made during the 1998 Regular Session; and (6) the demographic risk assessment factor matrix reflected: (a) how the Department calculated the amount of risk a plan should generate or should assume due to their premium volume; and (b) a comparison of the plans against the other plans that were operating in Kentucky.

This administrative regulation was amended as follows: Sections 1, 7, 8, 9, 11, and 12 were amended to comply with the drafting requirements of KRS 13A.222(4).

Kentucky Racing Commission: Thoroughbred Racing

810 KAR 1:018. Medication; testing procedures. Bernie Hettel, Executive Director; Calvert Bratton, Deputy Commissioner, and Rena Strevels, Executive Secretary Senior, represented the Commission.

This administrative regulation was amended as follows: (1) the RELATES TO, STATUTORY AUTHORITY, and NECESSITY, FUNCTION, AND CONFORMITY paragraphs were amended to correct statutory citations; (2) various sections were amended to comply with the drafting and format requirements of KRS 13A.220 and 13A.222; (3) various sections were amended to establish consistent terms for prohibited substances; (4) all sections were amended to clearly establish requirements and conditions; (5) Sections 4, 5, and 8 were amended to clearly establish reporting

requirements, including forms; and (6) a new section was created to incorporate by reference required forms.

10 KAR 1:026. Racing associations. In response to a question by Senator Roeding, Mr. Hettel stated that: (1) this administrative regulation required all exercise people to wear a safety vest; (2) the jockeys were required by a separate section to wear a safety vest; and (3) a safety vest weighed less than two pounds.

In response to a question by Representative Allen, Mr. Hettel stated that: (1) a safety vest was a protective device that: (a) fit over the torso; (b) was similar to the inside of a football helmet; (c) had air shock protection; and (d) was designed specifically to protect internal organs; and (2) the vests had been widely used, but not required, in the community.

This administrative regulation was amended as follows: (1) the NECESSITY, FUNCTION, AND CONFORMITY paragraph and all sections were amended to comply with drafting and format requirements of KRS 13A.222; (2) Sections 1, 4, 5, 7, 10, 12, 14, 16, 19, 21, 23, 26, 28, 29, and 30 were amended to clearly establish requirements relating to required accounts, facilities, security, and equipment; and (3) Sections 26 and 27 were amended to establish the specific reporting forms required.

Harness Racing

811 KAR 1:085. Conduct of racing. In response to a question by Senator Roeding, Mr. Hettel stated that nerving was: (1) a veterinary procedure to de-nerve the hoof area of a horse's foot; and (2) an accepted surgery procedure performed by a licensed veterinarian.

This administrative regulation was amended as follows: (1) a new section was created to establish definitions relating to: (a) nerved horses; and (b) the nerving of horses; (2) Section 2 was amended to: (a) clearly establish prohibited conduct; and (b) delete vague or overly broad language; (3) Sections 5, 6, 7, and 10 were amended to clearly establish requirements relating to: (a) prohibited acts with regard to wagers by drivers and bribes; and (b) exclusions; (4) Section 11 was amended to clearly establish restrictions on, and reporting requirements relating to, nerving and nerved horses; and (5) various sections were amended to comply with the drafting and format requirements of KRS 13A.220 and 13A.222.

The Subcommittee determined that the following administrative regulations complied with statutory requirements:

Natural Resources and Environmental Protection Cabinet: Department for Environmental Protection: Division for Air Quality: General Standards of Performance

401 KAR 63:060. List of hazardous air pollutants, petitions process, lesser quantity designations and source category list. John Hornbeck, Director, and Carl Millanti, Regulation Development, represented the Division.

In response to a question by Senator Roeding, Mr. Hornbeck stated that these administrative regulations: (1) adopted the federal requirements; and (2) were not more stringent than federal requirements.

401 KAR 63:100. General provisions.

401 KAR 63:104. National emission standards for oil-water separators and organic-water separators.

401 KAR 63:541. National emission standards for hazardous air pollutants from secondary lead smelting.

401 KAR 63:560. National emission standards for marine tank vessel loading operations.

401 KAR 63:680. National emission standards for hazardous air pollutants from off-site waste and recovery operations. In response to a question by Senator Roeding, Mr. Millanti stated that an example of an off-site waste and recovery operation was a recycler of hazardous waste.

401 KAR 63:780. National emission standards for shipbuilding and ship repair (surface coating).

401 KAR 63:800. National emission standards for wood furniture

manufacturing operations. In response to a question by Senator Roeding, Mr. Hornbeck stated that: (1) this administrative regulation governed the painting operations associated with wood furniture manufacturing; (2) because the federal government imposed these requirements nationally, the requirements did apply to Kentucky sources; and (3) while he would not characterize this administrative regulation as a help to that industry, this administrative regulation did establish standards for the types of coatings and capture equipment for air pollution control purposes.

401 KAR 63:820. National emission standards for the printing and publishing industry.

401 KAR 63:900. National emission standards for tanks - Level 1.

401 KAR 63:920. National emission standards for containers.

401 KAR 63:940. National emission standards for surface impoundments.

401 KAR 63:960. National emission standards for individual drain systems. In response to a question by Senator Roeding, Mr. Hornbeck stated that this administrative regulation governed an individual drain system that: (1) included oily, industrial sewer systems; (2) was required to control emissions by the use of: (a) enclosures; or (b) sealed drain systems; and (3) would generally be found in refineries.

Transportation Cabinet: Department of Vehicle Regulation: Division of Motor Vehicle Enforcement: Division of Motor Carriers

601 KAR 1:005. Safety administrative regulations. Charles Harman, Joe England, and Sue Perkins represented the Cabinet.

In response to a question by Senator Roeding, Mr. England stated that this administrative regulation: (1) adopted the federal requirements; and (2) did not establish fees.

Mr. Harman stated that this administrative regulation adopted 49 CFR 385.

Department of Highways: Permits Branch: Right-of-Way

603 KAR 4:040. TODS signs; placement on public roads other than interstates or parkways.

The Subcommittee and promulgating administrative bodies agreed to defer consideration of the following administrative regulations to the June, 1998 meeting of the Subcommittee:

Department of Agriculture: Division of Regulation and Inspections: Pesticides

302 KAR 31:040. Storage and handling of pesticides and bulk fertilizer.

Natural Resources and Environmental Protection Cabinet: Department for Surface Mining Reclamation and Enforcement: Performance Standards for Surface Mining Activities

405 KAR 16:060. General hydrologic requirements. Ronald Mills, Attorney, Allen Luttrell, Deputy Commissioner, and Jim Villines, Regulations Development, Department for Surface Mining, represented the Natural Resources Cabinet. Bill Caylor, Kentucky Coal Association, and Steve Cawood appeared before the Subcommittee in opposition to this administrative regulation.

Mr. Luttrell stated that: (1) this administrative regulation resulted from the passage of the 1992 federal energy policy act; (2) since the permanent program began in 1982, Kentucky had had administrative regulations governing: (a) subsidence control; (b) repair or compensation for subsidence damage; and (c) water replacement; (3) House Bill 338, enacted during the 1994 Regular Session of the General Assembly, subjected underground mines to the same water replacement requirements to which surface mines had been subjected since 1982; (4) in March, 1995, the Office of Surface Mining revised the federal regulations requiring: (a) subsidence control; and (b) water replacement; (5) in June, 1996, OSM formally advised the Cabinet that Kentucky's requirements had to be changed to make them

consistent with the 1992 energy policy act; (6) Kentucky was required to submit: (a) changes or proposed changes; and (b) a timeline on implementing this administrative regulation; and (7) this administrative regulation was a direct result.

In response, Mr. Caylor stated that: (1) the Association: (a) worked with the Department on other issues; and (b) resolved many of the issues satisfactorily to both sides; (2) a sentence in 405 KAR 16:060, Section 8(1) and 405 KAR 18:060, Section 12(1)(b) required the Cabinet to: (a) issue a notice of noncompliance to a permittee or operator; and (b) order replacement of the water supply if a protected water supply was: 1. contaminated; 2. diminished; or 3. interrupted by the mining operation; (3) the Association objected to the issuance of a notice of violation before the operator had an opportunity to replace the water supply; (4) under its interpretation of Kentucky law it was: (a) not a violation to impact someone's water supply; and (b) a violation to impact the water supply only if the operator failed to promptly replace the water supply after notification by the cabinet; (5) three (3) statutes addressed this issue: (a) KRS 350.060 applied to the: 1. probable hydrologic balance; and 2. permit; (b) KRS 350.420 addressed: 1. minimizing disturbances; and 2. restoring the recharge capacity of the mined area to the approximate premining condition; and (c) KRS 350.421 required the replacement of water if it was impacted; (6) these statutory provisions clearly: (a) did not prohibit impacting the hydrologic regime; (b) anticipated that the operation would: 1. impact; and 2. minimize that impact; (7) as an example, a mountain top removal operation could not be conducted without: (a) taking a lot of aquifers that are present; and (b) creating new aquifers when the head of hollow fill was created nearby; (8) a coal mining operation of any type could not be conducted without impacting the aquifers in some way; (9) many of these impacts would be temporary until mining ceased and the groundwater came back up; (10) the Association opposed the requirement that the notice of violation be issued forty-eight (48) hours too soon; (11) the Association believed that a violation should be issued only if: (a) water had been impacted; and (b) an operator did not provide an emergency water supply within forty-eight (48) hours of cabinet notification; (12) a violation of the statute was: (a) the failure to promptly replace the water supply; and (b) not the initial impact on the hydrologic regime; and (13) the Association did not believe this administrative regulation complied with legislative intent.

In response to questions by Senator Roeding, Mr. Mills stated that: (1) if the Cabinet issued a notice of non-compliance: (a) it was an administrative action very similar to a speeding ticket; and (b) a person had violated the: 1. administrative regulations; or 2. terms of the permit; (2) a notice of non-compliance set out time lines for remediate the results of the actions that had occurred; (3) if the permittee or coal company did not remediate or absolve the problem: (a) it could be issued a cessation order telling it to cease mining; and (b) this could: 1. lead to a permit block; and 2. prevent future mining in the Commonwealth; (4) a fine would not automatically be levied if a violation was issued; (5) the Cabinet had a system that assessed several factors, including: (a) the willingness of the operator to cooperate; (b) whether the violation was intentional; and (c) the extent of the damage; (6) in seventy (70) percent of the issued violations, a penalty or fine was not levied; (7) the violation had to be identified and assessed to determine whether or not there would a penalty would be imposed; (9) surface mining violations were issued on a daily and weekly basis; (10) an applicant understood that: (a) there was a violation; and (b) he must remediate the violation; (11) in some of cases, an administrative hearing was not held or requested; (12) if there was an administrative hearing, it would probably have been requested because the applicant: (a) disagreed that a violation had occurred; or (b) felt that the fine imposed was excessive.

In response to a question by Representative Bruce, Mr. Mills stated that the Cabinet: (1) interpreted the statute and the language in the preamble to the federal regulations to be a violation, if a water supply had been destroyed; and (2) did not believe that a coal mining

operation had a legal right to destroy a person's water supply.

Mr. Caylor stated that: (1) he fully agreed that a permittee or operator did not have the right to destroy someone's water supply; and (2) the destruction often could not be anticipated.

Mr. Mills stated that the Cabinet believed that it was a violation if an operator destroyed someone's water supply.

In response to a question by Senator Pendleton, Mr. Mills stated that: (1) one of the worst things that could happen to a family would be to have their water supply destroyed by a mining operation; (2) if the Cabinet made this change: (a) it would allow a coal mining operation to: 1. intentionally mine through someone's well casing; and 2. destroy their water supply; and (b) the operator could not be cited for it unless he failed to replace the water supply; and (3) the Cabinet interpreted and proposed to implement the law to deter the destruction of a water supply.

Mr. Caylor stated that: (1) it was not the intention to deliberately mine through someone's water supply; (2) it would be expensive if it happened and was something the permittees and operators tried to avoid; (3) a violation should: (a) not be issued unless there was a failure to promptly replace a water supply; (b) be issued if an emergency water supply had not been provided within forty-eight (48) hours; (4) there were many times that: (a) a citizen contacted a coal company to tell it that his water had been impacted; (b) the company drilled a new well; and (c) the coal company did not even notify the Cabinet of the impact; (5) this administrative regulation obligated the Cabinet to issue a violation after the fact, even if the Cabinet was notified a month later; (6) the issuance of a violation was important to a coal company because: (a) the Cabinet kept histories of violations; and (b) the history and pattern of violations affected the amount of a fine that was levied against a coal operator.

In response to questions by Representative Allen, Mr. Luttrell stated that: (1) there were a variety of different water replacement issues; (2) surface mining could: (a) affect particular aquifers; and (b) impact the: 1. hydrologic balance; and 2. groundwater tables; (3) occasionally, underground mining operations had problems maintaining a well if they mined through a well casing; (4) many coal seams in Kentucky were associated with aquifers or groundwater reservoirs; (5) another type of replacement was associated with blasting and ground vibration; (6) historically, water replacement dealt more with underground mining than surface mining; (7) coal operators were still required to apply for a permit to mine coal; (8) the Cabinet did attempt at the beginning of the permit process to identify hydrology and groundwater concerns; and (9) if a coal or land company owned the rights to a coal seam, and another individual owned the surface rights, the applicant was required to make an extensive demonstration of the: (a) impact of the particular mining method; and (b) area to be mined.

In response to a question by Representative Allen, Mr. Mills stated that while this administrative regulation addressed surface mines, there was a similar administrative regulation for strip mining.

Representative Allen stated that: (1) even if an operator or company owned the coal, it would have to get permission from the land or surface owner; (2) he assumed that if he owned the surface, and a company wanted to mine the coal, he had to be paid for damage; and (3) he did not understand why the problem was not taken care of before: (a) it started; or (b) the Cabinet issued the permit.

In response to a request by Representative Bruce, Subcommittee staff stated that: (1) in the compiler's notes to KRS 350.421, regarding the May, 1982 amendment, the provisions of that section were made operative when the conditional approval granted by the United States Secretary of the Interior appeared in the Federal Register; and (2) the notes led to a question by Representative Bruce of the specific federal regulation or statute that was contrary to the provisions of KRS 350.421.

Representative Bruce requested that the Cabinet: (1) agree to defer this administrative regulation, and 405 KAR 18:060, until the

June, 1998, meeting; and (2) be better prepared to answer questions raised by the Subcommittee.

Cabinet personnel agreed to defer this administrative regulation.

Senator Roeding: (1) stated that: (a) there seemed to be a problem with the interpretation of the statute; (b) he could not understand the impasse over forty-eight (48) hours; and (2) urged the parties to get together on the interpretation.

Performance Standards for Underground Mining Activities

405 KAR 18:060. General hydrologic requirements. (See discussion of this administrative regulation in the discussion of 405 KAR 18:060.)

Justice Cabinet: Kentucky Parole Board

501 KAR 1:030&E. Determining parole eligibility.

Division of Adult Institutions: Office of the Secretary

501 KAR 6:020&E. Corrections policies and procedures.

501 KAR 6:080&E. Department of Corrections manuals.

Department of State Police: Sex Offender Registration System

502 KAR 31:010E. Sex Offender Registration System.

Transportation Cabinet: Department of Vehicle Regulation: Division of Motor Vehicle Enforcement: Administration

601 KAR 2:020E. Drivers' privacy protection.

Workforce Development Cabinet: Department for Employment Services: Unemployment Insurance

787 KAR 1:210E. Employer contribution rates.

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. Adoption and extension of established federal standards.

803 KAR 2:320. Air contaminants.

803 KAR 2:500. Maritime employment.

Office of Labor Management Relations and Mediation: Collective Bargaining and Arbitration

803 KAR 3:050. Arbitration. Kembra Taylor, General Counsel, and Larry Roberts, Labor Management Relations and Mediation, represented the Cabinet.

In response to questions by Senator Roeding, Ms. Taylor stated that: (1) the fees established in this administrative regulation had not been changed since 1986 when the law governing mediation was enacted; (2) in 1986, the fee was \$200 per day, not to exceed \$1000 per case; (3) the fees were: (a) not paid by the Commonwealth; and (b) paid by the parties who requested arbitration; and (4) the proposed new rates were: (a) \$400 per day not to exceed \$2000 per case; and (b) considerably lower than the average.

In response to questions by Senator Roeding, Mr. Roberts stated that: (1) this administrative regulation affected primarily parties that engaged in collective bargaining, including companies and unions that had collective bargaining agreements; (2) these parties were required to select an arbitrator from: (a) the panel established under this administrative regulation; (b) the American Arbitration Association; or (c) the Federal Mediation and Conciliation Service; (3) this administrative regulation was intended to provide an alternative source of arbitrators: (a) at a lower rate; and (b) with time limit restrictions for issuing a decision; (4) the 1986 rates were lower than the average rate that existed at that time; (5) while the proposed rates brought that level up, the rates were still lower than the average amount charged by the American Arbitration Association and the Federal Mediation and Conciliation Service; and (6) the arbitrators were: (a) not paid or employed by the state; and (b) attorneys, mediators, or arbitrators that were generally self-employed.

Ms. Taylor stated that the Regulatory Impact Analysis stated that the rate increase was required to keep qualified people as arbitrators,

because people were not willing to serve for the lower rate.

Mr. Roberts stated that: (1) according to a 1996 survey that looked at the surrounding states of Ohio, Indiana, and Kentucky, the average rate: (a) was \$500 or higher per day; and (b) did not limit what could be charged per case; (2) he did not know what the rate was in Tennessee, South Carolina, or other Southern states; (3) he had compared Kentucky's rate to: (a) states that had similar activities in collective bargaining; and (b) Indiana and Ohio; (4) the Department was having problems maintaining a panel of qualified people; (5) when the panel was initially established in 1986, people who served as arbitrators on other panels for higher rates agreed to serve on the Department's panel: (a) at the \$200 a day or \$1000 per case rates; and (b) to allow for the panel to be established as an alternate source of arbitrators; (6) because some of the arbitrators were removing their name from the panel, the Department thought the rates should be raised in order to: (a) remain competitive; and (b) provide a source of arbitrators; and (7) the proposed higher rates: (a) were cheaper than the rates charged by the American Arbitration Association and the Federal Mediation and Conciliation Service; and (b) still allowed employers and unions to save money.

Senator Roeding stated that he did not have enough information to decide if the rates should be increased because he had not heard from anyone other than the Department.

Representative Bruce asked Senator Roeding if he wanted to request that this administrative regulation be deferred to allow the Department an opportunity to provide the Subcommittee with more information.

Ms. Taylor stated that: (1) the Department had not received complaints or comments from anyone; and (2) because it had been twelve years since the rates were established, the increase in the rates seemed appropriate under the circumstances.

Senator Roeding stated that he wanted to request that this administrative regulation be deferred until the June meeting because most people in Kentucky did not know about this administrative regulation or the administrative regulation process.

In response to a question by Ms. Taylor, Mr. Roberts stated that the advisory council was not presented with information on this administrative regulation.

Representative Bruce stated that it would be beneficial: (1) to defer this administrative regulation; and (2) submit additional information to the Subcommittee.

Representative Allen stated that: (1) if this administrative regulation was deferred, he wanted to know the rates in some of the Southern states; (2) Ohio and Indiana had a much higher rate per capita than Kentucky; (3) while the increase may be in line, he did not know many occupations that doubled their salary every ten years; and (4) he wanted to know what was charged in West Virginia, South Carolina, and Tennessee.

Representative Bruce stated that the requested information should be sent to each of the members and Subcommittee staff before the next Subcommittee meeting.

In response to a question by Representative Bruce, Ms. Taylor stated that: (1) the Department would agree to defer consideration of this administrative regulation; (2) the arbitrators were required to meet certain requirements to be placed on a panel; and (3) the parties selected an arbitrator from among the names of several people listed on the panel.

Without objection, this administrative regulation was deferred.

Department of Financial Institutions: Securities

808 KAR 10:010. Forms for application, registration; notice filing; reporting and compliance.

808 KAR 10:020. Capital, records and reporting requirements of broker-dealers.

808 KAR 10:030. Conduct of broker-dealers and employees; investment advisers and representatives.

808 KAR 10:040. Dishonest or unethical practice defined.

808 KAR 10:080. Guidelines for issuers.

808 KAR 10:090. Issuer's reports.

808 KAR 10:130. Amendments to registration statement.

808 KAR 10:141. Repeal of 808 KAR 10:140, 10:190, 10:220, 10:230, and 10:270.

808 KAR 10:150. Registration exemptions.

808 KAR 10:160. Definitions.

808 KAR 10:170. Exemption claims from securities registration; form.

808 KAR 10:200. Investment advisers' minimum liquid capitalization

808 KAR 10:210. Registration exemptions - Federal Regulation D.

808 KAR 10:225. Administrative hearing procedures.

808 KAR 10:240. Registration exemptions - sale of business.

808 KAR 10:260. Examination requirements for individuals advising the public on securities.

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

808 KAR 10:310. Broker-dealer agent de minimis rules

808 KAR 10:320. Broker-dealer books and records requirements.

808 KAR 10:330. Notice filing requirements for covered advisers.

808 KAR 10:340. Registration exemption for certain limited offerings made exclusively to accredited investors.

808 KAR 10:350. Internet advertising.

808 KAR 10:360. Safe harbor for limited liability company membership interests.

808 KAR 10:370. Securities offered on the internet but not sold in Kentucky.

808 KAR 10:380. Solicitations of interest prior to the filing of a registration statement.

808 KAR 10:390. Confidentially disclosed documents.

Department of Housing, Buildings and Construction: Heating, Ventilation, and Air Conditioning Licensing Requirements

815 KAR 8:045E. "Limited" licenses for journeyman HVAC mechanics.

Cabinet for Health Services: Office of Inspector General: Health Services and Facilities

902 KAR 20:026. Operations and services; skilled nursing facilities.

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

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

902 KAR 20:180. Psychiatric hospitals; operation and services.

Division for Public Health Protection and Safety: Milk and Milk Products

902 KAR 50:031. Standards for producer eligibility for manufacturing grade milk.

902 KAR 50:032. Standards for farm requirements for manufacturing grade milk.

902 KAR 50:033. Standards for enforcement procedures for manufacturing grade milk.

Cabinet for Families and Children: Department for Social Insurance: Division of Management and Development: Public Assistance

904 KAR 2:015E. Supplemental programs for persons who are aged, blind, or have a disability.

Cabinet for Health Services: Department for Medicaid Services: Medicaid Services

907 KAR 1:022E. Nursing facility and intermediate facility for the mentally retarded services.

907 KAR 1:025E. Payment for nursing facility and intermediate facility for the mentally retarded services.

907 KAR 1:560E. Medicaid hearing and appeals regarding eligibility.

ADMINISTRATIVE REGISTER - 2800

907 KAR 1:563E. Medicaid covered services hearing appeals process for recipients.

907 KAR 1:755E. Preadmission screening and resident review (PASRR) program.

Payment and Services

907 KAR 3:030E. Coverage and payments for Impact Plus services.

The Subcommittee adjourned at 11:30 a.m. until June 9, 1998, at 10 a.m. in Room 149 of the Capitol Annex.

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OTHER COMMITTEE REPORTS

COMPILER'S NOTE: In accordance with KRS 13A.290(9), the following reports were forwarded to the Legislative Research Commission by the appropriate jurisdictional committees and are hereby printed in the Administrative Register. The administrative regulations listed in each report became effective upon adjournment of the committee meeting at which they were considered.

INTERIM JOINT COMMITTEE ON AGRICULTURE AND NATURAL RESOURCES Meeting of May 13, 1998

Administrative regulations were available for consideration by the Interim Joint Committee on Agriculture and Natural Resources during its meeting of May 13, 1998 having been referred to the Committee on April 17, 1998 pursuant to KRS 13A.290(6).

The following administrative regulations were found to comply with KRS Chapter 13A:

Department of Agriculture

302 KAR 20:240

Department of Fish and Wildlife Resources

301 KAR 2:221 & E

301 KAR 2:222 & E

The following administrative regulations were found to be deficient pursuant to KRS 13A.290(7) and 13A.030(2): None

The Committee rationale for each finding of deficiency is attached to and made a part of this memorandum.

The following administrative regulations were approved as amended at the Committee meeting pursuant to KRS 13A.320: None

The wording of the amendment of each such administrative regulation is attached to and made a part of this memorandum.

The following administrative regulation was deferred pursuant to KRS 13A.300: None

The following administrative regulation was reviewed but no action was taken: None

Committee activity in regard to review of the above-referenced administrative regulations is reflected in the minutes of the May 13, 1998 meeting, which are hereby incorporated by reference. Additional committee findings, recommendations, or comments, if any, are attached hereto.

ADMINISTRATIVE REGISTER - L1

CUMULATIVE SUPPLEMENT

Locator Index - Effective Dates L2

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 L13

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 L23

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 - L2

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

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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)

12 KAR 4:170E	2326	4-7-98
31 KAR 4:120E	2575	4-22-98
200 KAR 14:011E	485	8-15-97
Replaced	1645	2-10-98
200 KAR 14:081E	487	8-15-97
Replaced	1647	2-10-98
200 KAR 14:200E	489	8-15-97
Replaced	1649	2-10-98
200 KAR 15:010E	2327	4-7-98
200 KAR 23:010E	307	6-25-97
Replaced	1055	10-22-97
201 KAR 20:370E	1481	12-9-97
Replaced	2112	4-13-98
301 KAR 2:221E	1219	10-15-97
Replaced	2358	5-13-98
301 KAR 2:222E	1221	10-15-97
Replaced	2359	5-13-98
301 KAR 2:225E	842	8-21-97
Replaced	1670	2-17-98
301 KAR 2:290E	1482	12-5-97
Withdrawn		1-21-98
302 KAR 20:040E	2330	4-3-98
401 KAR 5:002E	2576	4-17-98
401 KAR 5:008E	1029	9-18-97
Replaced	1899	4-13-98
401 KAR 5:009E	2588	4-17-98
501 KAR 1:030E	1625	1-8-98
501 KAR 6:020E	1631	1-8-98
501 KAR 6:080E	1633	1-8-98
501 KAR 6:180E	1225	11-13-97
Replaced	1878	3-16-98
502 KAR 31:010E	2076	2-27-98
502 KAR 45:145E	26	6-3-97
Replaced	1076	11-14-97
505 KAR 1:040E	844	9-15-97
Expired		3-29-98
601 KAR 2:020E	1863	2-13-98
603 KAR 5:070E	27	5-19-97
Expired		12-18-97
704 KAR 20:015E	1484	12-12-97
Replaced	2368	5-18-98
704 KAR 20:021E	1486	12-12-97
Replaced	2369	5-18-98
704 KAR 20:022E	1487	12-12-97
Replaced	2370	5-18-98
704 KAR 20:045E	1489	12-12-97
Replaced	2371	5-18-98
704 KAR 20:060E	1490	12-12-97
Replaced	2372	5-18-98
704 KAR 20:305E	491	8-11-97
Replaced	1508	1-12-98
780 KAR 2:130E	308	7-14-97
Expired		1-16-98
787 KAR 1:200E	310	6-27-97
Replaced	1510	1-12-98

787 KAR 1:210E	2078	3-10-98
803 KAR 2:301E	493	8-14-97
Replaced	1148	1-12-98
803 KAR 2:320E	495	8-14-97
Replaced	1512	1-12-98
803 KAR 2:403E	501	8-14-97
Replaced	1156	1-12-98
803 KAR 2:411E	503	8-14-97
Expired		2-18-98
803 KAR 2:425E	504	8-14-97
Replaced	1159	1-12-98
803 KAR 2:500E	506	8-14-97
Replaced	1161	1-12-98
803 KAR 6:010E	2333	3-20-98
806 KAR 6:100E	1227	10-24-97
806 KAR 17:110E	1492	12-12-97
806 KAR 17:141E	2601	4-15-98
806 KAR 17:150E	2602	4-15-98
815 KAR 8:045E	2079	2-27-98
900 KAR 6:050E	510	7-21-97
Expired		3-20-98
902 KAR 17:041E	517	7-23-97
Expired		3-20-98
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
Expired		12-18-97
904 KAR 2:006E	518	8-14-97
Replaced	1884	3-16-98
904 KAR 2:015	1634	1-12-98
904 KAR 2:016E	528	8-14-97
Replaced	1724	3-16-98
904 KAR 2:017E	311	7-14-97
Expired		2-15-98
904 KAR 2:035E	42	5-30-97
Expired		12-18-97
904 KAR 2:040E	45	5-30-97
Expired		1-18-98
904 KAR 2:046E	47	5-30-97
Expired		1-18-98
904 KAR 2:050E	49	5-30-97
Withdrawn		8-14-97
Resubmitted	538	8-14-97
Expired		2-18-98
904 KAR 2:055E	52	5-30-97
Expired		1-18-98
904 KAR 2:060E	55	5-30-97
Expired		12-18-97
904 KAR 2:370E	320	7-11-97
Expired		2-15-98
904 KAR 2:410E	1233	10-31-97
Replaced	2380	5-18-98
904 KAR 3:025E	1041	10-1-97
Replaced	1791	4-13-98
905 KAR 1:360E	1044	10-1-97
Expired		4-20-98
905 KAR 2:150E	1947	10-1-97
Withdrawn		4-20-98
905 KAR 2:160E	2605	4-20-98

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Regulation Number	24 Ky.R Page No.	Effective Date	Regulation Number	24 Ky.R Page No.	Effective Date
906 KAR 1:120E	540	7-25-97	103 KAR 15:050		
Replaced	1687	2-17-98	Amended	388	
907 KAR 1:006E	2337	4-6-98	As Amended	853	9-25-97
907 KAR 1:011E	2339	4-6-98	103 KAR 31:030		
907 KAR 1:022E	542	8-14-97	Amended	920	
Withdrawn		2-18-98	Amended	1522	
Resubmitted	2080	2-18-98	As Amended	1643	2-10-98
907 KAR 1:025E	547	8-14-97	106 KAR 2:010		
Withdrawn		2-18-98	Recodified as 201-37:010		10-20-97
Resubmitted	2086	2-18-98	200 KAR 2:006		
907 KAR 1:026E	2612	4-24-98	Amended	922	11-11-97
907 KAR 1:145E	845	9-11-97	200 KAR 5:021		
Expired		4-20-98	Amended	926	
907 KAR 1:151E	848	9-11-97	Amended	1294	1-12-98
Expired		3-20-98	200 KAR 5:302		
907 KAR 1:155E	849	9-11-97	Amended	927	11-11-97
Expired		4-20-98	200 KAR 5:306		
907 KAR 1:560E	2093	2-18-98	Amended	929	11-11-97
907 KAR 1:563E	2097	2-18-98	200 KAR 6:050		
907 KAR 1:605E	2344	4-6-98	Expired		4-15-98
907 KAR 1:626E	2614	4-24-98	200 KAR 14:011		
907 KAR 1:640E	2346	4-6-98	Amended	1353	
907 KAR 1:645E	2350	4-6-98	As Amended	1645	2-10-98
907 KAR 1:725E	1238	11-14-97	200 KAR 14:081		
Withdrawn		2-24-98	Amended	1355	
907 KAR 1:755E	554	8-14-97	As Amended	1647	2-10-98
Withdrawn		2-18-98	200 KAR 14:200	1422	
Resubmitted	2100	2-18-98	As Amended	1649	2-10-98
907 KAR 1:765E	557	8-14-97	200 KAR 17:070		
Expired		2-18-98	As Amended	855	9-25-97
907 KAR 3:030E	1639	12-19-97	200 KAR 22:040		
908 KAR 2:210E	2352	4-6-98	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 1:300		
			Amended	2406	
			201 KAR 2:030		
			Amended	1115	
			As Amended	1865	3-16-98
			201 KAR 8:390		
			Amended	931	
			As Amended	1650	2-17-98
			201 KAR 8:400		
			Amended	934	
			As Amended	1243	
			Withdrawn		12-3-97
			Amended	2409	
			201 KAR 8:410		
			Repealed	991	11-19-97
			201 KAR 8:411	991	11-19-97
			201 KAR 10:010		
			Amended	131	
			As Amended	561	11-14-97
			201 KAR 10:040		
			Amended	132	
			As Amended	561	11-14-97
			201 KAR 10:070		
			Amended	133	
			As Amended	563	11-14-97
			201 KAR 10:080		
			Amended	134	
			As Amended	563	11-14-97
ORDINARY ADMINISTRATIVE REGULATIONS:					
11 KAR 5:130					
Amended	1538				
As Amended	1865	3-16-98			
11 KAR 6:010					
Amended	914				
As Amended	1241	12-4-97			
13 KAR 2:045					
Amended	2136				
Amended	2705				
13 KAR 2:060					
Amended	916				
Amended	1291				
As Amended	1498	1-12-98			
31 KAR 4:020					
Amended	128				
As Amended	559	9-15-97			
101 KAR 1:325					
Amended	1749				
As Amended	2105	4-13-98			
101 KAR 1:335					
Amended	1751				
As Amended	2106	4-13-98			
101 KAR 1:365					
Amended	387				
As Amended	852	10-13-97			
102 KAR 1:175					
Amended	129				
As Amended	559	9-4-97			

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Regulation Number	24 Ky.R Page No.	Effective Date	Regulation Number	24 Ky.R Page No.	Effective Date
201 KAR 11:011			201 KAR 20:390		
Amended	1539		Amended	1116	
As Amended	2108	4-13-98	As Amended	1502	1-12-98
Amended	2410		201 KAR 20:411	425	
201 KAR 11:147			As Amended	859	
Amended	2412		201 KAR 23:010		
201 KAR 11:170			Repealed		10-13-97
Amended	2413		201 KAR 23:030		
201 KAR 11:175			Repealed		10-13-97
Amended	2414		201 KAR 23:040		
201 KAR 11:190			Repealed		10-13-97
Amended	2733		201 KAR 23:060		
201 KAR 11:230			As Amended	860	10-13-97
Amended	2415		201 KAR 23:070		
201 KAR 11:350			As Amended	861	10-13-97
Amended	2417		201 KAR 23:080		
201 KAR 12:200			As Amended	864	10-13-97
Amended	1357		201 KAR 23:100		
As Amended	1653		Repealed	10-13-97	
Reprinted	2061	2-26-98	201 KAR 23:110		
201 KAR 12:210	1423		Repealed		10-13-97
As Amended	1654	2-26-98	201 KAR 23:140		
201 KAR 13:080			As Amended	866	10-13-97
As Amended	858	10-13-97	201 KAR 26:145		
201 KAR 16:060			Amended	1117	
Amended	641		As Amended	1655	2-17-98
As Amended	1055	11-14-97	201 KAR 26:155		
201 KAR 16:070			Amended	1121	
Repealed	791	11-14-97	As Amended	1658	2-17-98
201 KAR 16:071	791	11-14-97	201 KAR 26:160		
201 KAR 18:130			Amended	1123	
Repealed	1581	3-12-98	As Amended	1660	2-17-98
201 KAR 18:132	1581	3-12-98	201 KAR 26:171		
201 KAR 18:150			Amended	1124	
Amended	1540		As Amended	1661	2-17-98
As Amended	1866		201 KAR 26:175		
Reprint	2062	3-12-98	Amended	1127	
201 KAR 18:160			As Amended	1664	2-17-98
Repealed	1581	3-12-98	201 KAR 26:180		
201 KAR 18:162	1581	3-12-98	Amended	1129	
201 KAR 19:087	2241		As Amended	1666	2-17-98
As Amended	2617		201 KAR 26:185		
201 KAR 19:095			Amended	1130	
Amended	2141		As Amended	1666	2-17-98
As Amended	2619		201 KAR 26:215		
201 KAR 20:056			Amended	1131	
Amended	2421		As Amended	1667	2-17-98
201 KAR 20:070			201 KAR 26:230		
Amended	1752		Amended	1132	
As Amended	2108	4-13-98	As Amended	1667	2-17-98
201 KAR 20:110			201 KAR 26:250	1182	
Amended	1754		As Amended	1669	2-17-98
As Amended	2110	4-13-98	201 KAR 26:260	1582	
201 KAR 20:162			As Amended	1870	3-16-98
Amended	1755		201 KAR 30:050		
As Amended	2111	4-13-98	Amended	2736	
201 KAR 20:240			201 KAR 32:030		
Amended	391		Amended	642	
As Amended	1057	11-14-97	As Amended	1132	11-14-97
201 KAR 20:370			201 KAR 37:010		
Amended	1757		Recodified from 106-2:010		10-20-97
As Amended	2112	4-13-98	Amended	1544	
			As Amended	1871	3-16-98
			202 KAR 3:010	2782	

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Regulation Number	24 Ky.R Page No.	Effective Date	Regulation Number	24 Ky.R Page No.	Effective Date
202 KAR 3:030	2783		302 KAR 10:070		
301 KAR 1:085			Amended	1764	
Amended	1759		As Amended	2115	4-13-98
Withdrawn		3-10-98	302 KAR 10:100	2242	
301 KAR 1:192	1424		As Amended	2620	
As Amended	1669	2-17-98	302 KAR 15:010		
301 KAR 1:201			Amended	2757	
Amended	392		302 KAR 20:076		
As Amended	866	10-8-97	Repealed	1795	4-13-98
301 KAR 1:300	1583		302 KAR 20:077	1795	4-13-98
As Amended	1872	3-16-98	302 KAR 20:240	1795	
301 KAR 1:310	1584		As Amended	2363	5-13-98
As Amended	1872	3-16-98	302 KAR 31:040	795	
301 KAR 2:041			Withdrawn		11-19-97
Amended	2739		Resubmitted	2243	
301 KAR 2:082	427		302 KAR 40:010		
As Amended	869	10-8-97	As Amended	1062	11-12-97
301 KAR 2:111			401 KAR 5:001		
Amended	138		Amended	1547	4-13-98
As Amended	567	9-10-97	Expired		4-15-98
301 KAR 2:125			401 KAR 5:008	1585	
Amended	140		Amended	1899	4-13-98
As Amended	568	9-10-97	Expired		4-15-98
301 KAR 2:140			401 KAR 8:030		
Amended	643		As Amended	70	
As Amended	1058	11-12-97	As Amended	332	
301 KAR 2:142	792		401 KAR 46:005	221	
As Amended	1060	11-12-97	Died*		9-12-97
301 KAR 2:144	794		401 KAR 46:010	223	
As Amended	1061	11-12-97	Died*		9-12-97
301 KAR 2:172			401 KAR 46:020	225	
Amended	2741		Died*		9-12-97
301 KAR 2:174			401 KAR 46:030	228	
Amended	2744		Died*		9-12-97
301 KAR 2:176			401 KAR 46:040	230	
Amended	2745		Died*		9-12-97
301 KAR 2:178			401 KAR 46:050	234	
Amended	2748		Died*		9-12-97
301 KAR 2:221			401 KAR 46:060		
Amended	1914		Amended	142	
As Amended	2358	5-13-98	Died*		9-12-97
301 KAR 2:222			401 KAR 46:070		
Amended	1916		Amended	145	
As Amended	2359	5-13-98	Died*		9-12-97
301 KAR 2:225			401 KAR 47:150		
Amended	1359		Amended	149	
As Amended	1670	2-17-98	Died*		9-12-97
301 KAR 2:230			401 KAR 50:012		
Amended	2752		Amended	648	11-12-97
301 KAR 2:240			401 KAR 50:032	1425	
Amended	1762		Amended	1911	
As Amended	2114	4-13-98	As Amended	2116	4-13-98
301 KAR 3:010			401 KAR 50:066	800	
Amended	2422		As Amended	1244	11-12-97
301 KAR 3:022			401 KAR 51:010		
Amended	646	11-12-97	Amended	650	11-12-97
Amended	2754		401 KAR 58:001	2039	
301 KAR 3:030			Withdrawn		5-7-98
Amended	2756		401 KAR 58:005		
302 KAR 10:060			Amended	1920	
Amended	1546		Amended	2710	
As Amended	1873	3-16-98	401 KAR 58:025		
			Amended	1927	
			Amended	2717	

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Regulation Number	24 Ky.R Page No.	Effective Date	Regulation Number	24 Ky.R Page No.	Effective Date
401 KAR 59:174	802		402 KAR 4:160		
Amended	1295		Expired		4-15-98
As Amended	1503	1-12-98	402 KAR 4:170		
401 KAR 60:750	1427		Expired		4-15-98
As Amended	2117	4-13-98	402 KAR 4:180		
401 KAR 61:036	1429		Expired		4-15-98
As Amended	2118	4-13-98	402 KAR 4:190		
401 KAR 63:005			Expired		4-15-98
Amended	654		402 KAR 4:200		
Amended	1299	1-12-98	Expired		4-15-98
401 KAR 63:060			405 KAR 8:001		
Amended	1765		Amended	667	
401 KAR 63:100			As Amended	2622	
Amended	1770		405 KAR 8:030		
401 KAR 63:104	1798		Amended	675	
401 KAR 63:541	1800		Amended	1313	
401 KAR 63:560	1801		As Amended	2628	
401 KAR 63:640	1803		405 KAR 8:040		
As Amended	2621		Amended	687	
401 KAR 63:680	1805		Amended	1325	
401 KAR 63:741	1806		As Amended	2639	
As Amended	2621		405 KAR 16:001		
401 KAR 63:780	1808		Amended	704	
401 KAR 63:800	1810		As Amended	2652	
401 KAR 63:820	1811		405 KAR 16:060		
401 KAR 63:900	1813		Amended	710	
401 KAR 63:920	1814		Amended	1341	
401 KAR 63:940	1816		405 KAR 16:090		
401 KAR 63:960	1818		Amended	716	
401 KAR 65:010			As Amended	2658	
Amended	656		405 KAR 16:100		
Amended	1302	1-12-98	Amended	719	
402 KAR 4:010			As Amended	2660	
Expired		4-15-98	405 KAR 16:160		
402 KAR 4:020			Amended	723	
Expired		4-15-98	As Amended	2663	
402 KAR 4:030			405 KAR 18:001		
Expired		4-15-98	Amended	725	
402 KAR 4:035			As Amended	2664	
Expired		4-15-98	405 KAR 18:060		
402 KAR 4:040			Amended	732	
Expired		4-15-98	Amended	1347	
402 KAR 4:050			405 KAR 18:090		
Expired		4-15-98	Amended	738	
402 KAR 4:060			As Amended	2670	
Expired		4-15-98	405 KAR 18:100		
402 KAR 4:070			Amended	741	
Expired		4-15-98	As Amended	2672	
402 KAR 4:080			405 KAR 18:160		
Expired		4-15-98	Amended	745	
402 KAR 4:090			As Amended	2675	
Expired		4-15-98	405 KAR 18:210		
402 KAR 4:100			Amended	747	
Expired		4-15-98	As Amended	2676	
402 KAR 4:110			500 KAR 11:001		
Expired		4-15-98	Amended	151	
402 KAR 4:120			As Amended	871	9-12-97
Expired		4-15-98	500 KAR 11:025		
402 KAR 4:130			Amended	152	
Expired		4-15-98	As Amended	873	9-12-97
402 KAR 4:140			500 KAR 11:080		
Expired		4-15-98	Amended	154	
402 KAR 4:150			As Amended	874	9-12-97
Expired		4-15-98			

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Regulation Number	24 Ky.R Page No.	Effective Date	Regulation Number	24 Ky.R Page No.	Effective Date
500 KAR 11:090			600 KAR 6:060		
Amended	155		Amended	2762	
As Amended	874		600 KAR 6:070		
Expired		4-15-98	Amended	1378	
501 KAR 1:030			Amended	1693	2-19-98
Amended	2143		600 KAR 6:080		
501 KAR 6:020			Amended	2765	
As Amended	569	9-15-97	601 KAR 1:005		
Amended	755		Amended	1932	
Withdrawn		11-10-97	Amended	2392	
Amended	1361		601 KAR 1:025		
As Amended	1873	3-16-98	Amended	1384	
Amended	2149		Amended	1699	2-19-98
501 KAR 6:030			601 KAR 1:146	1183	
Amended	1364	3-16-98	Amended	1524	
501 KAR 6:040			As Amended	2365	5-18-98
Amended	935	12-15-97	601 KAR 1:147	1185	
Amended	1366	3-16-98	Amended	1525	
501 KAR 6:050			As Amended	2366	5-18-98
Amended	156	9-15-97	601 KAR 2:020	2784	
501 KAR 6:060			601 KAR 9:135		
Amended	1134	2-17-98	Amended	398	
501 KAR 6:080			Amended	909	11-4-97
Amended	2152		601 KAR 11:040		
501 KAR 6:090			Amended	1387	
Amended	757	12-15-97	Amended	1702	2-19-98
Amended	1367	3-16-98	603 KAR 3:080		
501 KAR 6:110			Amended	157	
Amended	396	9-16-97	Amended	612	
Amended	1368		As Amended	875	
As Amended	1875	3-16-98	As Amended	1076	10-7-97
501 KAR 6:120			603 KAR 4:040		
Amended	1370		Amended	1936	
As Amended	1876	3-16-98	Amended	2395	
Amended	1929	5-18-98	603 KAR 5:050		
501 KAR 6:170			Amended	403	10-2-97
Amended	1136		603 KAR 5:070		
As Amended	1506	1-12-98	Amended	1390	
Amended	1372	3-16-98	As Amended	1671	1-22-98
501 KAR 6:180	1597		603 KAR 5:230		
As Amended	1878	3-16-98	Amended	1137	
501 KAR 6:999	1431		Amended	1527	
As Amended	1879	3-16-98	As Amended	1675	1-22-98
Amended	1932	5-18-98	701 KAR 5:110		
501 KAR 13:010 (deficiency removed)		4-15-98	Amended	2425	
502 KAR 31:010	429		702 KAR 3:110		
Withdrawn		10-13-97	Amended	1565	
502 KAR 45:145			As Amended	2118	4-13-98
Amended	759		702 KAR 7:065		
As Amended	1076	11-14-97	Amended	174	
505 KAR 1:020	236		As Amended	573	9-4-97
As Amended	572	9-15-97	703 KAR 3:060		
505 KAR 1:040	1598	4-13-98	Amended	1566	
600 KAR 4:010			As Amended	2118	4-13-98
Amended	1559		703 KAR 4:110		
As Amended	1880	2-19-98	Amended	1570	
600 KAR 6:010			As Amended	2122	4-13-98
Amended	1373		704 KAR 3:303		
Amended	1689	2-19-98	Amended	1941	
600 KAR 6:040			Amended	2401	
Amended	1375		As Amended	2681	
Amended	1691	2-19-98	704 KAR 3:455		
600 KAR 6:050			Amended	760	
Amended	2760		As Amended	1093	11-6-97

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Regulation Number	24 Ky.R Page No.	Effective Date	Regulation Number	24 Ky.R Page No.	Effective Date
704 KAR 7:130	238	9-4-97	781 KAR 1:040		
704 KAR 20:015			Amended	2433	
Amended	1942		781 KAR 1:061	2787	
As Amended	2368	5-18-98	785 KAR 1:010		
704 KAR 20:021			Amended	407	
Amended	1944		As Amended	894	10-2-97
As Amended	2369	5-18-98	785 KAR 1:020		
704 KAR 20:022	2040		Amended	409	
As Amended	2370	5-18-98	As Amended	895	10-2-97
704 KAR 20:045			787 KAR 1:200		
Amended	1946		Amended	1144	
As Amended	2371	5-18-98	As Amended	1510	1-12-98
704 KAR 20:060			787 KAR 1:210		
Amended	1947		Amended	2767	
As Amended	2372	5-18-98	803 KAR 2:060		
704 KAR 20:082	2481		Amended	1145	
704 KAR 20:084			As Amended	1510	1-12-98
Amended	937		803 KAR 2:301		
As Amended	1245	12-4-97	Amended	1148	1-12-98
704 KAR 20:165			Amended	2152	
Amended	176		803 KAR 2:320		
As Amended	574	9-4-97	Amended	1150	
704 KAR 20:210			As Amended	1512	1-12-98
Amended	1140		Amended	2154	
As Amended	1507	1-12-98	803 KAR 2:403		
704 KAR 20:305			Amended	1156	1-12-98
Amended	1141		803 KAR 2:411		
As Amended	1508	1-12-98	Amended	1158	
704 KAR 20:420			As Amended	1518	4-15-98
Amended	1949		803 KAR 2:425		
As Amended	2373	5-18-98	Amended	1159	1-12-98
704 KAR 20:475			803 KAR 2:500		
Amended	1950		Amended	1161	1-12-98
As Amended	2374	5-18-98	Amended	2160	
704 KAR 20:670			803 KAR 3:050		
Amended	404		Amended	2163	
As Amended	892	10-2-97	803 KAR 25:010		
Amended	2426		Amended	2436	
704 KAR 20:696			803 KAR 25:012		
Amended	1952	5-18-98	Amended	939	
704 KAR 20:700			As Amended	1260	12-15-97
Amended	1958		803 KAR 25:015		
As Amended	2375	5-18-98	Amended	1571	3-16-98
704 KAR 20:710			803 KAR 25:096		
Amended	177		Amended	942	12-15-97
As Amended	575	9-4-97	Amended	2166	
725 KAR 2:080	2482		As Amended	2681	
750 KAR 2:010			803 KAR 25:101		
Amended	179		Amended	2169	
As Amended	576	9-4-97	As Amended	2684	
780 KAR 2:130			803 KAR 25:120		
Repealed	1678	2-17-98	Amended	1395	
780 KAR 2:131	1432		Amended	1705	3-16-98
As Amended	1678	2-17-98	803 KAR 25:130	1187	
780 KAR 3:070			As Amended	1518	1-12-98
As Amended	1237		803 KAR 25:175	807	
Withdrawn		12-2-97	Amended	1113	
780 KAR 3:080			As Amended	1262	12-15-97
As Amended	1253		803 KAR 25:190		
Withdrawn		12-2-97	Amended	1771	
780 KAR 6:060			Amended	2124	
As Amended	1255	12-4-97	As Amended	2686	
781 KAR 1:020					
Amended	2429				

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Regulation Number	24 Ky.R Page No.	Effective Date	Regulation Number	24 Ky.R Page No.	Effective Date
805 KAR 1:180			808 KAR 10:340	2266	
As Amended	92		808 KAR 10:350	2268	
As Amended	1263	11-12-97	808 KAR 10:360	2269	
806 KAR 6:100	2248		808 KAR 10:370	2270	
Amended	2719		808 KAR 10:380	2271	
806 KAR 13:130	431		808 KAR 10:390	2273	
As Amended	895	10-13-97	810 KAR 1:001		
806 KAR 13:140	432		Amended	2445	
As Amended	896	10-13-97	810 KAR 1:009		
806 KAR 17:110	2257		Amended	2447	
As Amended	2689		810 KAR 1:015		
806 KAR 17:140			Amended	2450	
Repealed	2601	4-15-98	810 KAR 1:016		
806 KAR 38:090	239	9-15-97	Amended	2452	
806 KAR 39:070			810 KAR 1:018		
Amended	764		Amended	1776	
As Amended	1264	12-15-97	As Amended	2694	
806 KAR 40:020	433	10-13-97	810 KAR 1:026		
807 KAR 5:002			Amended	1779	
Repealed	2042	5-18-98	As Amended	2698	
807 KAR 5:004	2042	5-18-98	811 KAR 1:085		
807 KAR 5:063			Amended	1782	
As Amended	367		As Amended	2702	
As Amended	896	8-27-97	811 KAR 1:090		
807 KAR 5:069			Amended	180	
Amended	1774		As Amended	577	9-12-97
As Amended	2122	4-13-98	Amended	2454	
808 KAR 10:010			811 KAR 1:215		
Amended	2172		Amended	2456	
808 KAR 10:020			811 KAR 1:220		
Amended	2173		Amended	1784	
808 KAR 10:030			Withdrawn		5-1-98
Amended	2174		815 KAR 7:013		
808 KAR 10:040			Repealed	1679	2-17-98
Amended	2176		815 KAR 7:014	1433	
808 KAR 10:080			As Amended	1679	2-17-98
Amended	2177		815 KAR 7:070		
808 KAR 10:090			Amended	945	12-15-97
Amended	2178		815 KAR 7:105		
808 KAR 10:110			Amended	949	
Amended	2179		As Amended	1267	12-15-97
Amended	2728		Amended	2769	
808 KAR 10:130			815 KAR 8:010		
Amended	2180		Amended	950	12-15-97
808 KAR 10:141	2262		815 KAR 8:020		
808 KAR 10:150			Amended	952	12-15-97
Amended	2181		815 KAR 8:045	2483	
808 KAR 10:160			815 KAR 15:027		
Amended	2182		Amended	954	12-15-97
808 KAR 10:170			815 KAR 15:080		
Amended	2183		Amended	956	12-15-97
808 KAR 10:200			815 KAR 20:020		
Amended	2185		Amended	957	12-15-97
808 KAR 10:210			Amended	2460	
Amended	2186		815 KAR 20:030		
808 KAR 10:225			Amended	960	
Amended	2188		Withdrawn		12-9-97
808 KAR 10:240			815 KAR 20:055		
Amended	2190		Amended	2463	
808 KAR 10:260			815 KAR 20:120		
Amended	2190		Amended	2465	
808 KAR 10:310	2263		815 KAR 20:130		
808 KAR 10:320	2264		Amended	962	12-15-97
808 KAR 10:330	2265				

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Regulation Number	24 Ky.R Page No.	Effective Date	Regulation Number	24 Ky.R Page No.	Effective Date
815 KAR 30:060			902 KAR 20:330		
Amended	1397		Amended	1978	5-18-98
As Amended	1679	2-17-98	902 KAR 50:031		
815 KAR 35:015			Amended	1573	
Amended	767		902 KAR 50:032		
As Amended	1097	11-5-97	Amended	1575	
900 KAR 6:050	1188		902 KAR 55:033		
Amended	1706	4-13-98	Amended	1578	
902 KAR 8:040			902 KAR 55:095		
Amended	2192		Amended	1165	1-12-98
902 KAR 8:060			902 KAR 100:010		
Amended	2194		Amended	2770	
902 KAR 8:070			902 KAR 100:019		
Amended	2197		Amended	1982	5-18-98
902 KAR 8:080			902 KAR 100:073		
Amended	2200		Amended	195	
902 KAR 8:090			As Amended	580	8-20-97
Amended	2204		902 KAR 100:165		
902 KAR 8:100			Amended	771	11-14-97
Amended	2206		904 KAR 2:006		
902 KAR 8:110			Amended	1400	
Amended	2208		Amended	1715	
902 KAR 8:120			As Amended	1884	3-16-98
Amended	2210		904 KAR 2:015		
902 KAR 8:130			Amended	2472	
Amended	2215		904 KAR 2:016		
902 KAR 8:140			Amended	1409	
Amended	2216		Amended	1724	3-16-98
902 KAR 13:120			904 KAR 2:017		
Amended	965	11-19-97	Amended	1166	
902 KAR 14:084	435		Amended	1733	3-16-98
As Amended	898	10-13-97	904 KAR 2:035		
902 KAR 14:100	241		Amended	978	
As Amended	903	10-13-97	As Amended	1519	1-12-98
902 KAR 17:041	1433		904 KAR 2:040		
Amended	1714	4-13-98	Amended	981	
902 KAR 20:008			Amended	1529	
Amended	1786		As Amended	1682	2-17-98
As Amended	2378	5-18-98	904 KAR 2:046		
902 KAR 20:016			Amended	983	
Amended	969		Amended	1531	
As Amended	1268	11-19-97	As Amended	1683	2-17-98
902 KAR 20:026			904 KAR 2:050		
Amended	2218		Amended	1419	3-16-98
902 KAR 20:036			904 KAR 2:055		
Amended	190	8-20-97	Amended	985	
902 KAR 20:048			Amended	1533	
Amended	410		As Amended	1684	2-17-98
Died*		9-5-97	904 KAR 2:060		
Amended	2226		Amended	988	
902 KAR 20:051			As Amended	1520	1-12-98
Amended	418		904 KAR 2:370		
Died*		9-5-97	Amended	1175	
Amended	2233		Amended	1742	
902 KAR 20:058			As Amended	1892	3-16-98
Amended	1959	5-18-98	904 KAR 2:410		
902 KAR 20:091			Amended	2033	
Amended	1788		As Amended	2380	5-18-98
As Amended	2378	5-18-98	904 KAR 3:020		
902 KAR 20:180			Amended	209	
Amended	1962		As Amended	594	8-20-97
As Amended	2401		904 KAR 3:025		
902 KAR 20:320			Amended	1791	4-13-98
Amended	1966	5-18-98			

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Regulation Number	24 Ky.R Page No.	Effective Date	Regulation Number	24 Ky.R Page No.	Effective Date
904 KAR 3:042					
Amended	215				
As Amended	600	8-20-97			
904 KAR 3:060					
Amended	774	11-14-97			
905 KAR 1:180					
Amended	777	11-14-97			
905 KAR 1:360					
Amended	2477				
906 KAR 1:120	1196				
As Amended	1687	2-17-98			
907 KAR 1:003	247	8-20-97			
907 KAR 1:004					
Repealed	247	8-20-97			
907 KAR 1:140					
Repealed	848	9-11-97			
907 KAR 1:145	1819				
Amended	2126				
As Amended	2384	5-18-98			
907 KAR 1:150					
Repealed	848	9-11-97			
907 KAR 1:155	1822				
Amended	2129				
As Amended	2386	5-18-98			
907 KAR 1:160					
Amended	779				
As Amended	1101	11-14-97			
907 KAR 1:170					
Amended	782				
As Amended	1103	11-14-97			
907 KAR 1:428					
Repealed	808	11-14-97			
907 KAR 1:429	808	11-14-97			
907 KAR 1:432					
Repealed	808	11-14-97			
907 KAR 1:560					
Amended	784				
As Amended	1104	11-14-97			
907 KAR 1:595	2788				
907 KAR 1:645					
As Amended	605	8-20-97			
907 KAR 1:655					
As Amended	607	8-20-97			
907 KAR 1:665					
As Amended	610	8-20-97			
907 KAR 1:710					
Amended	629				
As Amended	1276	11-19-97			
907 KAR 1:720	809				
As Amended	1108	11-14-97			
907 KAR 3:030	2790				
908 KAR 1:311	2484				
908 KAR 1:370	2485				
908 KAR 1:380	1824				
Amended	2131				
As Amended	2387	5-18-98			
908 KAR 2:190	2043				
Amended	2729				
908 KAR 2:200	811				
As Amended	1109	11-14-97			

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	101 KAR 1:365	138.4631	601 KAR 1:146
	201 KAR 11:190		601 KAR 1:147
	201 KAR 20:162	139.260	103 KAR 31:030
	803 KAR 25:015	139.400	103 KAR 31:030
	808 KAR 10:225	139.710	103 KAR 31:030
	907 KAR 1:560E	141.042	103 KAR 15:050
	907 KAR 1:563E	141.160	103 KAR 15:050
16.040	502 KAR 45:145	141.170	103 KAR 15:050
16.080	502 KAR 45:145	141.300	103 KAR 15:050
17.500	502 KAR 31:010E	141.444	201 KAR 37:010
18A.075	101 KAR 1:325	147A.050	907 KAR 1:710
	101 KAR 1:335	150.010	301 KAR 2:041
	101 KAR 1:365		301 KAR 2:082
18A.0751	101 KAR 1:325		301 KAR 2:125
	101 KAR 1:335		301 KAR 2:172
	101 KAR 1:365		301 KAR 2:174
18A.095	101 KAR 1:365		301 KAR 2:176
18A.111	101 KAR 1:325		301 KAR 2:178
18A.115	101 KAR 1:335		301 KAR 2:221
18A.430	200 KAR 22:041		301 KAR 2:222
40.460	201 KAR 37:010		301 KAR 3:030
41.600-41.620	200 KAR 14:200	150.025	301 KAR 1:085
42.500	200 KAR 14:011		301 KAR 1:192
	200 KAR 14:081		301 KAR 2:111
42.520	200 KAR 14:011		301 KAR 2:125
	200 KAR 14:081		301 KAR 2:221
42.525	200 KAR 14:011		301 KAR 2:222
	200 KAR 14:081		301 KAR 2:225
44.060	200 KAR 2:006		301 KAR 2:230
45.101	200 KAR 2:006		301 KAR 2:240
Chapter 45A	200 KAR 5:021		301 KAR 3:010
	200 KAR 5:302		301 KAR 3:030
45A.080	200 KAR 5:306	150.092	301 KAR 2:125
45A.095	907 KAR 1:710	150.105	301 KAR 2:171
45A.690-45A.725	907 KAR 1:710	150.110	301 KAR 1:085
45A.800-45A.835	600 KAR 6:050	150.170	301 KAR 1:085
	600 KAR 6:010		301 KAR 1:300
	600 KAR 6:040		301 KAR 1:310
	600 KAR 6:060		301 KAR 2:041
	600 KAR 6:070		301 KAR 2:111
	600 KAR 6:080		301 KAR 2:172
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56.863	200 KAR 23:010		301 KAR 2:176
61.870-61.884	601 KAR 2:020		301 KAR 1:178
61.872	907 KAR 1:710		301 KAR 2:230
61.874	201 KAR 20:240		301 KAR 2:240
	907 KAR 1:710	150.175	301 KAR 1:085
61.876	907 KAR 1:710		301 KAR 2:041
Chapter 96A	600 KAR 4:010		301 KAR 2:140
103.200	200 KAR 15:010E		301 KAR 2:142
103.2101	200 KAR 15:010E		301 KAR 2:144
103.286	200 KAR 15:020E		301 KAR 2:172
117.045	31 KAR 4:120E		301 KAR 2:174
117.343	31 KAR 4:020		301 KAR 2:176
131.081	103 KAR 15:050		301 KAR 2:178
131.170	103 KAR 15:050		301 KAR 2:230
131.340	601 KAR 1:147		301 KAR 3:022
136.100	103 KAR 15:050	150.180	301 KAR 2:041
Chapter 138	601 KAR 1:005		301 KAR 2:082
138.462	601 KAR 1:146		301 KAR 2:172
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150.195	301 KAR 3:022	150.520	301 KAR 1:085
150.225	301 KAR 3:022	150.525	301 KAR 3:022
150.235	301 KAR 1:300	150.600	301 KAR 2:221
	301 KAR 1:310		301 KAR 2:222
	301 KAR 3:022	150.603	301 KAR 2:225
150.240	301 KAR 2:041		301 KAR 3:022
	301 KAR 3:022	150.620	301 KAR 1:192
150.250	301 KAR 2:125		301 KAR 2:225
150.280	301 KAR 2:082		301 KAR 3:010
	301 KAR 3:022		301 KAR 3:022
150.290	301 KAR 2:082	150.630	301 KAR 2:041
	301 KAR 3:022	150.640	301 KAR 3:010
150.305	301 KAR 2:082	150.660	301 KAR 3:022
	301 KAR 2:140	150.680	301 KAR 2:125
	301 KAR 2:142	150.990	301 KAR 1:201
	301 KAR 2:144		301 KAR 2:041
	301 KAR 2:221		301 KAR 2:125
	301 KAR 2:222		301 KAR 2:140
150.320	301 KAR 2:225		301 KAR 2:142
150.330	301 KAR 2:221		301 KAR 2:144
	301 KAR 2:222		301 KAR 2:172
	301 KAR 2:225		301 KAR 2:174
	301 KAR 2:230		301 KAR 2:176
	301 KAR 3:030		301 KAR 2:178
150.340	301 KAR 2:172		301 KAR 2:221
	301 KAR 2:174		301 KAR 2:222
	301 KAR 2:176		301 KAR 3:030
	301 KAR 2:178	151.100	405 KAR 16:090
	301 KAR 2:221		405 KAR 16:100
	301 KAR 2:222		405 KAR 16:160
	301 KAR 2:225		405 KAR 18:090
150.360	301 KAR 2:140		405 KAR 18:100
	301 KAR 2:142		405 KAR 18:160
	301 KAR 2:144	151.250	405 KAR 16:090
	301 KAR 2:172		405 KAR 16:100
	301 KAR 2:174		405 KAR 16:160
	301 KAR 2:176		405 KAR 18:090
	301 KAR 2:178		405 KAR 18:100
	301 KAR 2:225		405 KAR 18:160
	301 KAR 2:240	151B.023	785 KAR 1:010
	301 KAR 3:030		785 KAR 1:020
150.370	301 KAR 2:111	151B.025	780 KAR 2:130E
	301 KAR 2:125		780 KAR 2:131
	301 KAR 2:172	151B.035	780 KAR 6:060
	301 KAR 2:174	151B.040	780 KAR 6:060
	301 KAR 2:178	151B.085	780 KAR 6:060
	301 KAR 2:240	151B.110	780 KAR 2:130E
	301 KAR 3:030		780 KAR 2:131
150.390	301 KAR 2:111		785 KAR 1:010
	301 KAR 2:140		785 KAR 1:020
	301 KAR 2:142	151B.125	785 KAR 1:010
	301 KAR 2:144		785 KAR 1:020
	301 KAR 2:172	151B.150	780 KAR 2:130E
	301 KAR 2:174		780 KAR 2:131
	301 KAR 2:176	151B.190	781 KAR 1:020
	301 KAR 2:178		781 KAR 1:040
150.395	301 KAR 2:172		781 KAR 1:061
	301 KAR 2:174	154A.060	202 KAR 3:010
	301 KAR 2:176		202 KAR 3:030
	301 KAR 2:178	156.070	702 KAR 7:065
150.399	301 KAR 2:240		704 KAR 3:303
150.400	301 KAR 2:240	156.160	702 KAR 3:110
150.410	301 KAR 2:240		704 KAR 3:303
150.4111	301 KAR 2:240	156.400-156.476	704 KAR 3:455
150.470	301 KAR 1:201	156.670	701 KAR 5:110

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157.060	702 KAR 3:110	164.001	13 KAR 2:060
157.100-157.190	704 KAR 3:455	164.020	13 KAR 2:045
157.3175	704 KAR 20:084		13 KAR 2:060
157.390	704 KAR 20:015	164.030	13 KAR 2:045
	704 KAR 20:021	164.744	11 KAR 6:010
	704 KAR 20:022	164.744-164.753	11 KAR 5:130
157.650	701 KAR 5:110	164.748	11 KAR 6:010
157.655	701 KAR 5:110	164.753	11 KAR 6:010
157.660	701 KAR 5:110	164.7535	11 KAR 5:130
157.665	701 KAR 5:110	164.780	11 KAR 5:130
158.645	703 KAR 3:060	164.785	11 KAR 5:130
	703 KAR 4:110	164A.330	13 KAR 2:045
158.6451	703 KAR 3:060	171.221	725 KAR 2:080
	703 KAR 4:110	Chapter 174	600 KAR 4:010
	704 KAR 3:303	174.400-174.425	601 KAR 1:025
	704 KAR 20:670	Chapter 176	600 KAR 4:010
158.6453	703 KAR 3:060	Chapter 177	600 KAR 4:010
	703 KAR 4:110	177.830-177.890	603 KAR 3:080
158.6455	703 KAR 3:060	177.0771	603 KAR 5:230
	703 KAR 4:110	Chapter 183	600 KAR 4:010
160.160	701 KAR 5:110	186.005	601 KAR 1:147
	703 KAR 3:060	186.020	601 KAR 9:135
160.290	704 KAR 3:303	186.021	806 KAR 39:070
160.345	704 KAR 3:455	186.050	601 KAR 9:135
160.380	704 KAR 7:130		603 KAR 5:070
161.010	704 KAR 20:015	186.281	601 KAR 1:147
161.020	704 KAR 20:021	186.655	603 KAR 5:070
	704 KAR 20:045	186A.040	806 KAR 39:070
	704 KAR 20:060	186A.095	806 KAR 39:070
	704 KAR 20:084	187.310	601 KAR 2:020
	704 KAR 20:165	189.222	603 KAR 5:070
	704 KAR 20:210	189.230	603 KAR 5:230
	704 KAR 20:420	189.337	603 KAR 4:040
	704 KAR 20:475		603 KAR 5:050
	704 KAR 20:670	194.050	904 KAR 3:020
	704 KAR 20:710		904 KAR 3:042
	704 KAR 20:710		908 KAR 1:311
161.027	704 KAR 20:021	194.060	505 KAR 1:040
161.028	704 KAR 20:045		904 KAR 2:035
	704 KAR 20:060		905 KAR 1:180
	704 KAR 20:165	Chapter 196	501 KAR 6:020
	704 KAR 20:210		501 KAR 6:030
	704 KAR 20:305		501 KAR 6:040
	704 KAR 20:420		501 KAR 6:050
	704 KAR 20:475		501 KAR 6:060
	704 KAR 20:670		501 KAR 6:080
	704 KAR 20:696		501 KAR 6:090
	704 KAR 20:700		501 KAR 6:110
	704 KAR 20:710		501 KAR 6:120
161.030	704 KAR 20:021		501 KAR 6:170
	704 KAR 20:045	196.030	501 KAR 6:999
	704 KAR 20:060	196.171	501 KAR 6:180
	704 KAR 20:084	Chapter 197	501 KAR 6:020
	704 KAR 20:165		501 KAR 6:030
	704 KAR 20:210		501 KAR 6:040
	704 KAR 20:305		501 KAR 6:050
	704 KAR 20:420		501 KAR 6:060
	704 KAR 20:475		501 KAR 6:080
	704 KAR 20:670		501 KAR 6:090
	704 KAR 20:696		501 KAR 6:110
	704 KAR 20:700		501 KAR 6:120
	704 KAR 20:710		501 KAR 6:170
161.095	704 KAR 20:015		501 KAR 6:999
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161.100	704 KAR 20:210		

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197.055	501 KAR 6:180	907 KAR	1:145
198B.010	815 KAR 7:105	907 KAR	1:151E
198B.040	815 KAR 7:070	907 KAR	1:155
	815 KAR 7:105	907 KAR	1:160
198B.050	815 KAR 7:070	907 KAR	1:170
	815 KAR 7:105	907 KAR	1:429
198B.060	815 KAR 7:014	907 KAR	1:560E
	815 KAR 7:105	907 KAR	1:563E
198B.080	815 KAR 7:105	907 KAR	1:605E
198B.090	815 KAR 7:070	907 KAR	1:626E
198B.110	815 KAR 7:105	907 KAR	1:640E
198B.260	815 KAR 7:105	907 KAR	1:645E
198B.650-198B.689	815 KAR 8:010	907 KAR	1:710
	815 KAR 8:020	907 KAR	1:720
198.658	815 KAR 8:045	907 KAR	1:755
198B.666	815 KAR 8:045	907 KAR	3:030
198B.990	815 KAR 7:105	907 KAR	1:710
199.420-199.990	505 KAR 1:040	904 KAR	2:410
	905 KAR 1:180	907 KAR	1:710
199.640-199.670	905 KAR 1:360	907 KAR	1:710
199.892-199.896	905 KAR 2:160E	505 KAR	1:040
200.020	907 KAR 1:710	905 KAR	1:180
200.080-200.120	505 KAR 1:040	505 KAR	1:040
	905 KAR 1:180	905 KAR	1:180
200.503	907 KAR 1:710	907 KAR	1:710
200.509	907 KAR 1:710	908 KAR	1:311
200.650-200.676	907 KAR 1:720	907 KAR	1:710
202A.011	907 KAR 1:710	907 KAR	1:710
202A.028	907 KAR 1:710	907 KAR	1:710
202A.041	907 KAR 1:710	902 KAR	20:091
202A.051	907 KAR 1:710	908 KAR	2:190
202A.061	907 KAR 1:710	902 KAR	8:040
205.010	904 KAR 2:006	902 KAR	8:060
205.170	904 KAR 2:060	902 KAR	8:070
205.175	904 KAR 2:035	902 KAR	8:080
205.177	904 KAR 2:035	902 KAR	8:090
205.200	904 KAR 2:006	902 KAR	8:100
	904 KAR 2:016	902 KAR	8:110
	904 KAR 2:017	902 KAR	8:120
	904 KAR 2:035	902 KAR	8:130
	904 KAR 2:040	902 KAR	8:140
	904 KAR 2:046	907 KAR	1:710
205.201-205.204	505 KAR 1:040	902 KAR	100:010
	905 KAR 1:180	902 KAR	100:019
205.210	904 KAR 2:016	902 KAR	100:073
205.211	904 KAR 2:016	902 KAR	100:165
	904 KAR 2:017	902 KAR	14:084
205.220	904 KAR 2:050	902 KAR	13:120
205.231	904 KAR 2:055	902 KAR	13:120
	907 KAR 1:560E	902 KAR	100:010
205.237	904 KAR 2:055	902 KAR	100:019
	907 KAR 1:560E	902 KAR	100:073
	907 KAR 1:563E	902 KAR	100:165
205.245	904 KAR 2:015	902 KAR	14:100
	904 KAR 2:035	902 KAR	8:040
	904 KAR 2:040	902 KAR	8:060
	904 KAR 2:046	902 KAR	8:070
205.275	904 KAR 2:035E	902 KAR	8:080
205.277	904 KAR 2:035E	902 KAR	8:090
205.455-205.465	505 KAR 1:040	902 KAR	8:100
	905 KAR 1:180	902 KAR	8:110
205.520	907 KAR 1:003	902 KAR	8:120
	907 KAR 1:011E	902 KAR	8:130
	907 KAR 1:022E	902 KAR	8:140
	907 KAR 1:025E	902 KAR	8:040
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		205.6334	
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		205.8451	
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		210.370-210.460	
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		210.770-210.795	
		211.170	
		211.463	
		211.842-211.852	
		211.950-211.956	
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	902 KAR 8:080		401 KAR 63:005
	902 KAR 8:090		401 KAR 63:060
	902 KAR 8:100		401 KAR 63:100
	902 KAR 8:110		401 KAR 63:104
	902 KAR 8:120		401 KAR 63:541
214.175	902 KAR 20:016		401 KAR 63:560
215.550	501 KAR 6:180		401 KAR 63:640
216.2925	902 KAR 20:008		401 KAR 63:680
216B.010-216B.130	900 KAR 6:050		401 KAR 63:741
	902 KAR 17:041		401 KAR 63:780
	902 KAR 20:008		401 KAR 63:800
	902 KAR 20:016		401 KAR 63:820
	902 KAR 20:036		401 KAR 63:900
	902 KAR 20:048		401 KAR 63:920
	902 KAR 20:051		401 KAR 63:940
	902 KAR 20:058		401 KAR 63:960
	902 KAR 20:091		401 KAR 65:010
	902 KAR 20:320	224.10-110	401 KAR 5:002E
	902 KAR 20:330	224.16-050	401 KAR 5:002E
216B.010-216B.131	902 KAR 20:026	224.16-060	401 KAR 5:002E
	902 KAR 20:180	224.20-100	401 KAR 50:066
216B.015	902 KAR 14:084		401 KAR 51:010
216B.105	902 KAR 14:084		401 KAR 58:005
216B.410	902 KAR 14:084		401 KAR 58:025
216B.450-216B.459	902 KAR 20:320		401 KAR 59:174
	902 KAR 20:330		401 KAR 60:750
216B.455	900 KAR 6:050		401 KAR 61:036
216B.990	900 KAR 6:050		401 KAR 63:005
	902 KAR 14:084		401 KAR 63:100
	902 KAR 20:008		401 KAR 63:104
	902 KAR 20:016		401 KAR 63:541
	902 KAR 20:026		401 KAR 63:560
	902 KAR 20:036		401 KAR 63:640
	902 KAR 20:048		401 KAR 63:680
	902 KAR 20:051		401 KAR 63:741
	902 KAR 20:058		401 KAR 63:780
	902 KAR 20:091		401 KAR 63:800
	902 KAR 20:180		401 KAR 63:820
	902 KAR 20:320		401 KAR 63:900
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217.005-217.215	902 KAR 50:031		401 KAR 63:940
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Chapter 217B	302 KAR 31:040	224.20-110	401 KAR 50:032
217C.010-217C.990	902 KAR 50:031		401 KAR 50:066
	902 KAR 50:032		401 KAR 51:010
	902 KAR 50:033		401 KAR 58:005
218A.070	902 KAR 55:095		401 KAR 58:025
218A.180	902 KAR 55:095		401 KAR 59:174
218A.200	902 KAR 55:095		401 KAR 60:750
222.211	908 KAR 1:311		401 KAR 61:036
	908 KAR 1:380		401 KAR 63:005
222.231	908 KAR 1:311		401 KAR 63:060
	908 KAR 1:370		401 KAR 63:100
224.01-010	401 KAR 5:002E		401 KAR 63:104
	401 KAR 59:174		401 KAR 63:541
224.10	401 KAR 5:009E		401 KAR 63:560
224.10-100	401 KAR 5:002E		401 KAR 63:640
	401 KAR 50:012		401 KAR 63:680
	401 KAR 50:032		401 KAR 63:741
	401 KAR 50:066		401 KAR 63:780
	401 KAR 58:005		401 KAR 63:800
	401 KAR 58:025		401 KAR 63:820
	401 KAR 59:174		401 KAR 63:900
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304.05-140	907 KAR 1:710	314.071	201 KAR 20:162
304.1-010-304.1-070	907 KAR 1:710		201 KAR 20:240
304.3-120	806 KAR 3:190		201 KAR 20:370
304.3-140	806 KAR 3:190	314.073	201 KAR 20:240
304.3-240	806 KAR 6:100	314.091	201 KAR 20:162
304.6	806 KAR 3:190	314.142	201 KAR 20:411
304.6-070	806 KAR 6:100	314.161	201 KAR 20:056
304.6-150	806 KAR 6:100		201 KAR 20:162
304.6-155	806 KAR 6:100		201 KAR 20:240
304.6-171	806 KAR 6:100	314.991	201 KAR 20:162
304.6-180	806 KAR 6:100	315.210	201 KAR 2:030
304.7	806 KAR 3:190	315.191	201 KAR 2:030
304.13-011	806 KAR 13:130	317A.050	201 KAR 12:200
304.13-057	806 KAR 13:130		201 KAR 12:210
	806 KAR 13:140	Chapter 318	815 KAR 20:055
304.13-091	806 KAR 13:130	318.010	815 KAR 20:020
304.13-161	806 KAR 13:140		815 KAR 20:120
304.13-415	806 KAR 13:130		815 KAR 20:130
	806 KAR 13:140	318.015	815 KAR 20:020
304.17A-095	806 KAR 17:150E		815 KAR 20:130
304.17A-110	907 KAR 1:710	318.130	815 KAR 20:020
304.17A-130	806 KAR 17:110		815 KAR 20:120
304.17A-160	806 KAR 38:090		815 KAR 20:130
304.17A-300	907 KAR 1:710	318.150	815 KAR 20:020
304.17A.310	907 KAR 1:710		815 KAR 20:120
304.24-350	806 KAR 3:190		815 KAR 20:130
304.33	806 KAR 3:190	318.165	815 KAR 20:120
304.38-030	907 KAR 1:710	318.200	815 KAR 20:020
304.38-035	907 KAR 1:710		815 KAR 20:120
304.38-060	907 KAR 1:710		815 KAR 20:130
304.38-080	806 KAR 38:090	319.010	201 KAR 26:260
304.39-080	806 KAR 39:070	319.015	201 KAR 26:215
304.39-083	806 KAR 39:070	319.032	201 KAR 26:145
304.39-085	806 KAR 39:070		201 KAR 26:171
304.39-090	806 KAR 39:070		201 KAR 26:175
304.39-117	806 KAR 39:070		201 KAR 26:180
304.40-075	806 KAR 40:020		201 KAR 26:185
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311.241-311.247	902 KAR 20:016		201 KAR 26:250
311.623	907 KAR 1:710	319.050	201 KAR 26:155
311.625	907 KAR 1:710		201 KAR 26:160
311.627	907 KAR 1:170		201 KAR 26:171
311.629	907 KAR 1:170		201 KAR 26:175
311.631	907 KAR 1:170		201 KAR 26:230
311.990	902 KAR 20:016		201 KAR 26:260
313.022	201 KAR 8:400	319.056	201 KAR 26:260
313.160	201 KAR 8:411		201 KAR 26:171
313.220	201 KAR 8:390	319.064	201 KAR 26:155
314.011	201 KAR 20:056		201 KAR 26:160
	201 KAR 20:162		201 KAR 26:171
	201 KAR 20:390		201 KAR 26:175
	907 KAR 1:595		201 KAR 26:230
314.025	201 KAR 20:390		201 KAR 26:250
314.026	201 KAR 20:390		201 KAR 26:260
314.027	201 KAR 20:390	319.071	201 KAR 26:160
314.031	201 KAR 20:162	319.082	201 KAR 26:145
314.041	201 KAR 20:070		201 KAR 26:171
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	201 KAR 20:370	321.235	201 KAR 16:060
314.042	201 KAR 20:056		201 KAR 16:071
	201 KAR 20:240	321.240	201 KAR 16:071
314.051	201 KAR 20:070	321.351	201 KAR 16:060
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	201 KAR 18:162	342.340	803 KAR 25:175
323.095	201 KAR 19:095	342.395	803 KAR 25:130
323.120	201 KAR 19:087	342.710	803 KAR 25:010
	201 KAR 19:095		803 KAR 25:101
323.210	201 KAR 19:087	342.715	803 KAR 25:010
323A.040	201 KAR 10:040	342.732	803 KAR 25:120
323A.050	201 KAR 10:040	342.735	803 KAR 25:012
323A.060	201 KAR 10:040	342.760	803 KAR 25:010
323A.070	201 KAR 10:040	342.990	803 KAR 25:015
323A.080	201 KAR 10:070	Chapter 350	405 KAR 8:001
323A.210	201 KAR 10:010		405 KAR 16:001
	201 KAR 10:080		405 KAR 18:001
Chapter 324	201 KAR 11:350	350.020	405 KAR 16:090
324.010	201 KAR 11:011		405 KAR 18:090
	201 KAR 11:175		405 KAR 18:210
324.046	201 KAR 11:011	350.028	405 KAR 18:210
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