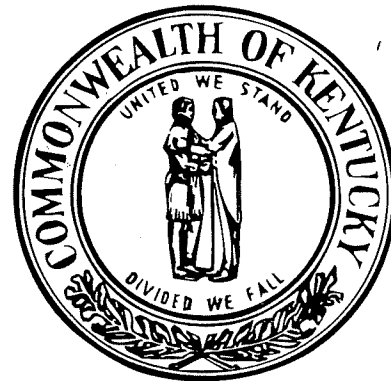


# ADMINISTRATIVE REGISTER OF KENTUCKY



LEGISLATIVE RESEARCH COMMISSION  
Frankfort, Kentucky

VOLUME 26, NUMBER 1  
THURSDAY, JULY 1, 1999

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The Administrative Regulation Review Subcommittee is **tentatively** scheduled to meet on July 13, 1999, at 10:30 a.m. in Room 149 of the Capitol Annex. See **tentative agenda** on pages 1-4 of this Administrative Register.

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

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

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

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**ADMINISTRATIVE REGULATION REVIEW SUBCOMMITTEE  
TENTATIVE AGENDA – July 13, 1999 at 10:30 a.m. in Room 149, Capitol Annex**

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- 11 KAR 5:130. Student application.

**Commonwealth Merit Scholarship Program**

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**Development Finance**

- 109 KAR 9:010. Area Development Fund. (Not Amended After Hearing) (Deferred from May)

**County Budget**

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Office of the Secretary**

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**GENERAL GOVERNMENT CABINET  
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**Board**

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**Board of Medical Licensure**

**Board**

- 201 KAR 9:041. Fee schedule.
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- 201 KAR 9:175. Physician assistants; certification and supervision. (Deferred from June)
- 201 KAR 9:310. Continuing medical education. (Deferred from June)
- 201 KAR 9:330 & E. Determination of death by a paramedic. (Deferred from April) (Emergency expired 5/20/99)
- 201 KAR 9:335 & E. Discontinuance of resuscitation by a paramedic. (Deferred from April) (Emergency expired 5/20/99)
- 201 KAR 9:340 & E. Training of paramedics in determination of death and discontinuance of resuscitation. (Deferred from April)

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**Board of Registration for Professional Engineers and Land Surveyors**

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- 201 KAR 18:050. Branches of professional engineering for testing.
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**PUBLIC PROTECTION AND REGULATION CABINET  
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**Petroleum Storage Tank Environmental Assurance Fund**

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- 418 KAR 1:030. State agency projects.
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**Department of Corrections**

**Office of the Secretary**

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**Department of State Police**

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**Department of Juvenile Justice**

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**Motorcycle and Bicycle Safety**

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**PUBLIC PROTECTION AND REGULATION CABINET  
Kentucky Board of Tax Appeals**

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**Certificate of Need**

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**Department for Public Health**

**Health Services and Facilities**

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902 KAR 20:160. Chemical dependency treatment services and facility specifications.  
902 KAR 20:240. Comprehensive physical rehabilitation hospital services.

**Kentucky Board of Family Health Care Providers**

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Department for Community-Based Services  
Division of Policy Development**

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**Day Care**

905 KAR 2:090. Child care facility licensure. (Deferred from February)

**CABINET FOR HEALTH SERVICES**

**Office of Inspector General**

906 KAR 1:110. Critical access hospital services.

**Department for Medicaid Services**

**Medicaid Services**

907 KAR 1:002. Definitions. (Deferred from February)  
907 KAR 1:013E. Payments for hospital inpatient services.  
907 KAR 1:019. Pharmacy services. (Amended After Hearing) (Deferred from February)  
907 KAR 1:021. Amounts payable for drugs. (Amended After Hearing) (Deferred from February)  
907 KAR 1:025E. Payments for nursing facility and intermediate care facility for the mentally retarded services. (Deferred from February)

**Payment and Services**

907 KAR 3:035. Criteria for certification for out-of-state residential services for Medicaid-eligible children under 21. (Public Hearing)  
907 KAR 3:090 & E. Acquired brain injury services.  
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**Kentucky Children's Health Insurance Program**

907 KAR 4:020 & E. Kentucky Children's Health Insurance Program. (Deferred from June)

**Department for Mental Health and Mental Retardation Services**  
**Division of Substance Abuse**

**Substance Abuse**

908 KAR 1:310. Certification standards and administrative procedures for driving under the influence programs. (Amended After Hearing) (Deferred from May)

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. (Deferred from July)

908 KAR 1:370. Licensing procedures and standards for persons and agencies operating alcohol and other drug abuse treatment programs. (Amended After Hearing) (Deferred from August)

**Division of Mental Health**

**Institutional Care**

908 KAR 3:160E. Policies and procedures of Kentucky Correctional Psychiatric Center. (Deferred from June)

**CABINET FOR FAMILIES AND CHILDREN**  
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**Division of Policy and Development**

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922 KAR 7:101. Repeal of 922 KAR 7:100.

922 KAR 7:251. Repeal of 922 KAR 7:250.

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**EDUCATION ASSESSMENT AND ACCOUNTABILITY REVIEW SUBCOMMITTEE**  
**TENTATIVE AGENDA - July 1, 1999, at 10:00 a.m. EST in Room 131 of the Capitol Annex**

**EDUCATION, ARTS, AND HUMANITIES CABINET**  
**Kentucky Board of Education**  
**Department of Education**  
**Bureau of Learning Support Services**

**Assessment and Accountability**

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703 KAR 5:070. Procedures for the inclusion of special populations in the state-required assessment and accountability programs.

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

**Notice of Intent**

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

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

**Filing and Publication**

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

**Public Hearing**

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

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

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

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

**Review Procedure**

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

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NOTICES OF INTENT TO PROMULGATE ADMINISTRATIVE REGULATIONS  
RECEIVED AS OF NOON, JUNE 15, 1999

PERSONNEL CABINET

April 13, 1999

(1) **101 KAR 2:160.** Kentucky Employee Assistance Program (KEAP).

(2) The Personnel Cabinet intends to promulgate an amendment to the administrative regulation governing the subject matter listed above.

(3) A public hearing to receive oral and written comments on the proposed amendment to the administrative regulation has been scheduled for July 21, 1999 at 1:30 p.m. at 200 Fair Oaks Lane, Suite 516, 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 July 21, 1999, the public hearing will be cancelled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Daniel F. Egbers, General Counsel, Kentucky Personnel Cabinet, 200 Fair Oaks Lane, Suite 516, Frankfort, Kentucky 40601, Telephone: (502) 564-4460, Fax: (502) 564-7603, e-mail: Dan.egbers@mail.state.ky.us.

(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 Personnel Cabinet at the address listed above.

(7) Information relating to the proposed amendment to the administrative regulation.

(a) The statutory authority for the promulgation of an administrative regulation relating to 101 KAR 2:160, Kentucky Employee Assistance Program (KEAP), is KRS 18A.025, 18A.030 18A.110 and 18A.155.

(b) The administrative regulation that the Personnel Cabinet intends to promulgate will amend 101 KAR 2:160, Kentucky Employee Assistance Program (KEAP). It will update the language of the regulation in conformity with House Bill 727.

(c) The necessity, function, and conformity of the proposed administrative regulation is to provide conformity with House Bill 727.

(d) The benefits expected from this administrative regulation are primarily technical corrections, but also clarify the confidentiality of the program.

(e) The administrative regulation will be implemented as follows: Upon review by the Personnel Board, the proposed changes will amend the State Safety Program for the classified service as soon as administratively feasible.

June 11, 1999

(1) **101 KAR 3:050.** Unclassified service; promotions, transfer and disciplinary actions.

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

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for July 21, 1999 at 9:30 p.m. at 200 Fair Oaks Lane, Suite 516, 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 July 21, 1999, the public hearing will be cancelled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Daniel F. Egbers, General Counsel, Kentucky Personnel Cabinet, 200 Fair Oaks Lane, Suite 516, Frankfort, Kentucky 40601, Telephone: (502) 564-4460, Fax: (502) 564-7603, e-mail: Dan.egbers@mail.state.ky.us.

(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 Personnel 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 unclassified service, promotions, transfer and disciplinary actions is KRS 18A.155.

(b) The administrative regulation that the Personnel Cabinet intends to promulgate will amend 101 KAR 3:050, Unclassified service; promotion, transfer and disciplinary actions. It will:

1. Update the language of the regulation in conformity with House Bill 727.
2. Require unclassified employees to meet the minimum qualifications for positions to which they are appointed.
3. Establish rules for interim employees.
4. Require prior approval for promotions and demotions made pursuant to KRS 12.040 and 12.050.
5. Clarify rules with respect to resignation, termination and retirement.
6. Incorporate certain rules governing the classified service and apply them to the unclassified service.

(c) The necessity, function, and conformity of the proposed administrative regulation is as follows: The Secretary of Personnel, with the approval of the Governor is required to promulgate comprehensive administrative regulations, consistent with the provisions of KRS Chapter 18A, which govern all employees in the unclassified service of state government. This new regulation amends 101 KAR 3:050 and provides rules for the unclassified service in accordance with statutory requirements in KRS 18A.155.

(d) The benefits expected from administrative regulation are stated in item 7(b)1 through 9, above.

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(e) The administrative regulation will be implemented as follows: Upon approval by the Governor the proposed changes will amend unclassified service; promotion, transfer and disciplinary actions as soon as administratively feasible.

**KENTUCKY BOARD OF PHARMACY**

June 8, 1999

(1) **201 KAR 2:015.** Continuing education.

(2) The Kentucky Board of Pharmacy intends to amend an administrative regulation, 201 KAR 2:015 relating to continuing education.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for July 27, 1999 at 9 a.m. local prevailing time, at 1024 Capital Center Drive, Suite 210-Board Room, Frankfort, Kentucky 40601.

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

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

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

(b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 10 days prior to July 27, 1999, the public hearing will be canceled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Michael A. Moné, Executive Director, Kentucky Board of Pharmacy, 1024 Capital Center Drive, Suite 210, Frankfort, Kentucky 40601, (502) 573-1580, FAX (502) 573-1582.

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

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

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

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

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

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of an administrative regulation relating to continuing education is found at KRS 315.191(1)(a).

(b) The amendment to the administrative regulation that the Board of Pharmacy intends to promulgate will address the manner by which a pharmacist receives continuing education from a provider.

(c) The necessity, function, and conformity of the proposed amendment to the administrative regulation is as follows: KRS 315.065 and 315.191(1)(a) authorize and require the Board of Pharmacy to promulgate administrative regulations to establish the parameters by which program approval shall be granted and to set forth the minimum requirements of courses to be completed to maintain a license to practice the profession of pharmacy.

(d) The benefit expected from the amendment to the administrative regulation is a greater certainty that the provider will meet minimum standards.

(e) The amendment to the administrative regulation will be implemented as follows: The board proposes to clarify the method of approval of providers of continuing education.

(8) Any person with a disability for which the Board of Pharmacy needs to make an accommodation in order for the person to participate in the public comment hearing should notify Michael A. Moné at the above-mentioned address no later than July 16, 1999.

June 8, 1999.

(1) **201 KAR 2:040.** Registration of pharmacist interns.

(2) The Kentucky Board of Pharmacy intends to amend an administrative regulation, 201 KAR 2:040 relating to the registration of interns.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for July 27, 1999 at 9:15 a.m. local prevailing time, at 1024 Capital Center Drive, Suite 210-Board Room, Frankfort, Kentucky 40601.

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

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

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

(b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 10 days prior to July 27, 1999, the public hearing will be canceled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Michael A. Moné, Executive Director, Kentucky Board of Pharmacy, 1024 Capital Center Drive, Suite 210, Frankfort, Kentucky 40601, (502) 573-1580, FAX (502) 573-1582.

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

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

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

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

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

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of an administrative regulation relating to continuing education is found at KRS 315.191(1)(a).

(b) The amendment to the administrative regulation that the Board of Pharmacy intends to promulgate will address the manner by which an intern certifies the academic practice experiences that count toward hours earned for internship and the forms that must be completed by the educational institution to document the academic experience.

(c) The necessity, function, and conformity of the proposed amendment to the administrative regulation is as follows: KRS 315.050 and 315.191(1)(a) authorize and require the Board of Pharmacy to promulgate administrative regulations to establish the parameters by which interns receive practical pharmacy experiences.

(d) The benefit expected from the amendment to the administrative regulation is a greater accuracy with the reporting of the academic practice experiences of a pharmacist intern.

(e) The amendment to the administrative regulation will be implemented as follows: The board proposes to incorporate by reference a form to document the hours earned through the academic practice experience and to define concurrent times for the award of internship credit

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during academic coursework.

(8) Any person with a disability for which the Board of Pharmacy needs to make an accommodation in order for the person to participate in the public comment hearing should notify Michael A. Moné at the above-mentioned address no later than July 16, 1999.

### KENTUCKY BOARD OF SPEECH-LANGUAGE PATHOLOGY AND AUDIOLOGY

June 11, 1999

(1) **201 KAR 17:011.** Requirements for interim licensure.

(2) The Kentucky Board of Speech-Language Pathology and Audiology 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 July 29, 1999 at 1 p.m., EST at the offices of the Division of Occupations and Professions, 700 Louisville Road, Frankfort, Kentucky.

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

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

2. A minimum of 5 persons, or the administrative body or association, agree, in writing, to be present at the 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 July 29, 1999 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: Ms. Nancy Black, Executive Director, Occupations and Professions, 700 Louisville Road, Frankfort, Kentucky 40601, Phone: (502) 564-3296, Fax: (502) 564-4818.

(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 an administrative body.

(b) Persons who wish to file this request may obtain a request form from Nancy Black at the Division of Occupations and Professions at the address above.

(7) Information relating to the proposed regulation.

(a) The statutory authority for the promulgation of an administrative regulation relating to the requirements for interim licensure is KRS 334A.080.

(b) The administrative regulation the Board of Speech-Language Pathologists and Audiologists intends to promulgate will define the criteria for interim licensure.

(c) The necessity and function of the proposed administrative regulation is to establish criteria for interim licensure for speech-language pathologists and audiologists as authorized by KRS 334A.050, as amended.

(d) The benefit expected from this administrative regulation is increased clarity of the regulations and statutes pertaining to the Board of Speech-Language Pathologists and Audiologists.

(e) The regulation will be implemented by the Division of Occupations and Professions. The implementing body will merely adhere to the criteria as outlined in the regulation.

June 11, 1999

(1) **201 KAR 17:012.** Requirements for licensure.

(2) The Kentucky Board of Speech-Language Pathology and Audiology 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 July 29, 1999 at 1 p.m., EST, at the offices of the Division of Occupations and Professions, 700 Louisville Road, Frankfort, Kentucky.

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

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

2. A minimum of 5 persons, or the administrative body or association, agree, in writing, to be present at the 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 July 29, 1999 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: Ms. Nancy Black, Executive Director, Occupations and Professions, 700 Louisville Road, Frankfort, Kentucky 40601, Phone: (502) 564-3296, Fax: (502) 564-4818.

(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 an administrative body.

(b) Persons who wish to file this request may obtain a request form from Nancy Black at the Division of Occupations and Professions at the address above.

(7) Information relating to the proposed regulation.

(a) The statutory authority for the promulgation of an administrative regulation relating to the requirements for licensure is KRS 334A.080.

(b) The administrative regulation the Board of Speech-Language Pathologists and Audiologists intends to promulgate will define the criteria for licensure.

(c) The necessity and function of the proposed administrative regulation is to establish criteria for licensure for speech-language pathologists and audiologists as authorized by KRS 334A.050, as amended.

(d) The benefit expected from this administrative regulation is increased clarity of the regulations and statutes pertaining to the Board of Speech-Language Pathologists and Audiologists.

(e) The regulation will be implemented by the Division of Occupations and Professions. The implementing body will merely adhere to the criteria as outlined in the regulation.

June 11, 1999

(1) **201 KAR 17:013.** Repeal of 201 KAR 17:010, 201 KAR 17:080, and 201 KAR 17:091.

(2) The Kentucky Board of Speech-Language Pathology and Audiology intends to promulgate the administrative regulation cited above.

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(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for July 29, 1999 at 1 p.m., EST, at the offices of the Division of Occupations and Professions, 700 Louisville Road, Frankfort, Kentucky.

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

1. It is requested, in writing, by at least 5 persons, or an administrative body, or an association having at least 5 members; and
2. A minimum of 5 persons, or the administrative body or association, agree, in writing, to be present at the 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 July 29, 1999 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: Ms. Nancy Black, Executive Director, Occupations and Professions, 700 Louisville Road, Frankfort, Kentucky 40601, Phone: (502) 564-3296, Fax: (502) 564-4818.

(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 an administrative body.

(b) Persons who wish to file this request may obtain a request form from Nancy Black at the Division of Occupations and Professions at the address above.

(7) Information relating to the proposed regulation.

(a) The statutory authority for the promulgation of an administrative regulation relating to the repeal of the aforementioned administrative regulations is KRS 334A.080(3).

(b) The administrative regulation the Board of Speech-Language Pathologists and Audiologists intends to promulgate will repeal those administrative regulations which are no longer required or needed by law.

(c) The necessity and function of the proposed administrative regulation is to repeal 201 KAR 17:010 because its provisions are either covered in KRS Chapter 334A or the administrative regulations promulgated thereunder. It is necessary to repeal 201 KAR 17:080 because the needed procedures are included in KRS Chapter 13B. It is necessary to repeal 201 KAR 17:091 because the needed provisions have been included in 201 KAR 17:090.

(d) The benefit expected from this administrative regulation is increased clarity of the regulations and statutes pertaining to the Board of Speech-Language Pathologists and Audiologists.

(e) The regulation will be implemented by the Division of Occupations and Professions. The implementing body will merely adhere to the criteria as outlined in the regulation.

June 11, 1999

(1) **201 KAR 17:015.** Board members, expenses.

(2) The Kentucky Board of Speech-Language Pathology and Audiology 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 July 29, 1999 at 1 p.m., EST, at the offices of the Division of Occupations and Professions, 700 Louisville Road, Frankfort, Kentucky.

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

1. It is requested, in writing, by at least 5 persons, or an administrative body, or an association having at least 5 members; and
2. A minimum of 5 persons, or the administrative body or association, agree, in writing, to be present at the 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 July 29, 1999 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: Ms. Nancy Black, Executive Director, Occupations and Professions, 700 Louisville Road, Frankfort, Kentucky 40601, Phone: (502) 564-3296, Fax: (502) 564-4818.

(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 an administrative body.

(b) Persons who wish to file this request may obtain a request form from Nancy Black at the Division of Occupations and Professions at the address above.

(7) Information relating to the proposed regulation.

(a) The statutory authority for the promulgation of an administrative regulation relating to board members, expenses is KRS 334A.080(3).

(b) The administrative regulation the Board of Speech-Language Pathologists and Audiologists intends to promulgate will define compensation for board members.

(c) The necessity and function of the proposed administrative regulation is to authorize board members to receive a per diem and travel expenses when conducting board-related business.

(d) The benefit expected from this administrative regulation is increased clarity of the regulations and statutes pertaining to the Board of Speech-Language Pathologists and Audiologists.

(e) The regulation will be implemented by the Division of Occupations and Professions. The implementing body will merely adhere to the criteria as outlined in the regulation.

June 11, 1999

(1) **201 KAR 17:025.** Requirements for an interim license as a speech-language pathology assistant.

(2) The Kentucky Board of Speech-Language Pathology and Audiology 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 July 29, 1999 at 1 p.m., EST, at the offices of the Division of Occupations and Professions, 700 Louisville Road, Frankfort, Kentucky.

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

1. It is requested, in writing, by at least 5 persons, or an administrative body, or an association having at least 5 members; and
2. A minimum of 5 persons, or the administrative body or association, agree, in writing, to be present at the 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 July 29, 1999 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: Ms.

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Nancy Black, Executive Director, Occupations and Professions, 700 Louisville Road, Frankfort, Kentucky 40601, Phone: (502) 564-3296, Fax: (502) 564-4818.

(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 an administrative body.

(b) Persons who wish to file this request may obtain a request form from Nancy Black at the Division of Occupations and Professions at the address above.

(7) Information relating to the proposed regulation.

(a) The statutory authority for the promulgation of an administrative regulation relating to requirements for an interim license as a speech-language pathology assistant is KRS 334A.080.

(b) The administrative regulation the Board of Speech-Language Pathologists and Audiologists intends to promulgate will establish the guidelines for licensure as a speech-language pathology assistant.

(c) The necessity and function of the proposed administrative regulation is the requirement in KRS 334A.035(2) that an applicant for licensure as a speech-language pathology assistant complete postgraduate professional experience. This regulation sets forth the necessary requirements for interim licensure.

(d) The benefit expected from this administrative regulation is increased clarity of the regulations and statutes pertaining to the Board of Speech-Language Pathologists and Audiologists.

(e) The regulation will be implemented by the Division of Occupations and Professions. The implementing body will merely adhere to the criteria as outlined in the regulation.

June 11, 1999

(1) **201 KAR 17:027.** Supervision requirements for a speech-language pathology assistant.

(2) The Kentucky Board of Speech-Language Pathology and Audiology 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 July 29, 1999 at 1 p.m., EST, at the offices of the Division of Occupations and Professions, 700 Louisville Road, Frankfort, Kentucky.

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

1. It is requested, in writing, by at least 5 persons, or an administrative body, or an association having at least 5 members; and
2. A minimum of 5 persons, or the administrative body or association, agree, in writing, to be present at the 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 July 29, 1999 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: Ms. Nancy Black, Executive Director, Occupations and Professions, 700 Louisville Road, Frankfort, Kentucky 40601, Phone: (502) 564-3296, Fax: (502) 564-4818.

(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 an administrative body.

(b) Persons who wish to file this request may obtain a request form from Nancy Black at the Division of Occupations and Professions at the address above.

(7) Information relating to the proposed regulation.

(a) The statutory authority for the promulgation of an administrative regulation relating to supervision requirements for speech-language pathology assistant is KRS 334A.080 and 334A.033.

(b) The administrative regulation the Board of Speech-Language Pathologists and Audiologists intends to promulgate will establish the supervision guidelines for speech-language pathology assistants.

(c) The necessity and function of the proposed administrative regulation is the requirement in KRS 334A.033 that a speech-language pathology assistant may only practice when under supervision. This regulation sets forth the supervision requirements.

(d) The benefit expected from this administrative regulation is increased clarity of the regulations and statutes pertaining to the Board of Speech-Language Pathologists and Audiologists.

(e) The regulation will be implemented by the Division of Occupations and Professions. The implementing body will merely adhere to the criteria as outlined in the regulation.

June 11, 1999

(1) **201 KAR 17:030.** License fees.

(2) The Kentucky Board of Speech-Language Pathology and Audiology 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 July 29, 1999 at 1 p.m., EST, at the offices of the Division of Occupations and Professions, 700 Louisville Road, Frankfort, Kentucky.

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

1. It is requested, in writing, by at least 5 persons, or an administrative body, or an association having at least 5 members; and
2. A minimum of 5 persons, or the administrative body or association, agree, in writing, to be present at the 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 July 29, 1999 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: Ms. Nancy Black, Executive Director, Occupations and Professions, 700 Louisville Road, Frankfort, Kentucky 40601, Phone: (502) 564-3296, Fax: (502) 564-4818.

(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 an administrative body.

(b) Persons who wish to file this request may obtain a request form from Nancy Black at the Division of Occupations and Professions at

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the address above.

(7) Information relating to the proposed regulation.

(a) The statutory authority for the promulgation of an administrative regulation relating to license fees is KRS 334A.080 and 334A.160.

(b) The administrative regulation the Board of Speech-Language Pathologists and Audiologists intends to promulgate will establish the license fees.

(c) The necessity and function of the proposed administrative regulation is the requirement in KRS 334A.160 which sets forth in detail all fees to be charged by the board.

(d) The benefit expected from this administrative regulation is increased clarity of the regulations and statutes pertaining to the Board of Speech-Language Pathologists and Audiologists.

(e) The regulation will be implemented by the Division of Occupations and Professions. The implementing body will merely adhere to the criteria as outlined in the regulation.

June 11, 1999

(1) **201 KAR 17:041.** Professional code of ethics.

(2) The Kentucky Board of Speech-Language Pathology and Audiology 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 July 29, 1999 at 1 p.m., EST, at the offices of the Division of Occupations and Professions, 700 Louisville Road, Frankfort, Kentucky.

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

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

2. A minimum of 5 persons, or the administrative body or association, agree, in writing, to be present at the 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 July 29, 1999 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: Ms. Nancy Black, Executive Director, Occupations and Professions, 700 Louisville Road, Frankfort, Kentucky 40601, Phone: (502) 564-3296, Fax: (502) 564-4818.

(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 an administrative body.

(b) Persons who wish to file this request may obtain a request form from Nancy Black at the Division of Occupations and Professions at the address above.

(7) Information relating to the proposed regulation.

(a) The statutory authority for the promulgation of an administrative regulation relating to the professional code of ethics is KRS 334A.080(3).

(b) The administrative regulation the Board of Speech-Language Pathologists and Audiologists intends to promulgate will set forth the code of ethics.

(c) The necessity and function of the proposed administrative regulation is the requirement in KRS 334A.080(3) which requires the board to adopt and publish a code of ethics.

(d) The benefit expected from this administrative regulation is increased clarity of the regulations and statutes pertaining to the Board of Speech-Language Pathologists and Audiologists.

(e) The regulation will be implemented by the Division of Occupations and Professions. The implementing body will merely adhere to the criteria as outlined in the regulation.

June 11, 1999

(1) **201 KAR 17:070.** Complaint procedure.

(2) The Kentucky Board of Speech-Language Pathology and Audiology 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 July 29, 1999 at 1 p.m., EST, at the offices of the Division of Occupations and Professions, 700 Louisville Road, Frankfort, Kentucky.

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

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

2. A minimum of 5 persons, or the administrative body or association, agree, in writing, to be present at the 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 July 29, 1999 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: Ms. Nancy Black, Executive Director, Occupations and Professions, 700 Louisville Road, Frankfort, Kentucky 40601, Phone: (502) 564-3296, Fax: (502) 564-4818.

(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 an administrative body.

(b) Persons who wish to file this request may obtain a request form from Nancy Black at the Division of Occupations and Professions at the address above.

(7) Information relating to the proposed regulation.

(a) The statutory authority for the promulgation of an administrative regulation relating to board members, expenses is KRS 334A.080(3).

(b) The administrative regulation the Board of Speech-Language Pathologists and Audiologists intends to promulgate will delineate the causes for which disciplinary action may be taken against a licensee.

(c) The necessity and function of the proposed administrative regulation is to establish procedures for the filing, evaluation, and disposition of administrative complaints.

(d) The benefit expected from this administrative regulation is increased clarity of the regulations and statutes pertaining to the Board of Speech-Language Pathologists and Audiologists.

(e) The regulation will be implemented by the Division of Occupations and Professions. The implementing body will merely adhere to the

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criteria as outlined in the regulation.

June 11, 1999

- (1) **201 KAR 17:090.** Continuing education requirements.
- (2) The Kentucky Board of Speech-Language Pathology and Audiology 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 July 29, 1999 at 1 p.m., EST, at the offices of the Division of Occupations and Professions, 700 Louisville Road, Frankfort, Kentucky.
- (4)(a) The public hearing will be held if:
  1. It is requested, in writing, by at least 5 persons, or an administrative body, or an association having at least 5 members; and
  2. A minimum of 5 persons, or the administrative body or association, agree, in writing, to be present at the 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 July 29, 1999 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: Ms. Nancy Black, Executive Director, Occupations and Professions, 700 Louisville Road, Frankfort, Kentucky 40601, Phone: (502) 564-3296, Fax: (502) 564-4818.
- (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 an administrative body.
- (b) Persons who wish to file this request may obtain a request form from Nancy Black at the Division of Occupations and Professions at the address above.
- (7) Information relating to the proposed regulation.
- (a) The statutory authority for the promulgation of an administrative regulation relating to continuing education requirements is KRS 334A.080.
- (b) The administrative regulation the Board of Speech-Language Pathologists and Audiologists intends to promulgate will delineate the requirements for continuing education.
- (c) The necessity and function of the proposed administrative regulation is to prescribe methods and standards for the accreditation of continuing education courses.
- (d) The benefit expected from this administrative regulation is increased clarity of the regulations and statutes pertaining to the Board of Speech-Language Pathologists and Audiologists.
- (e) The regulation will be implemented by the Division of Occupations and Professions. The implementing body will merely adhere to the criteria as outlined in the regulation.

### TOURISM CABINET Department of Fish and Wildlife Resources

June 6, 1999

- (1) **301 KAR 1:015.** Boats and outboard motors; restrictions.
- (2) The Department of Fish and Wildlife Resources intends to amend the administrative regulation cited above.
- (3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for July 21, 1999, at 9 a.m. in the Commission Room, Arnold L. Mitchell Building, at the Game Farm, five miles west of Frankfort on U.S. 60.
- (4)(a) The public hearing will be held if:
  1. It is requested, in writing, by at least five persons, or an administrative body, or an association having at least five members; and
  2. A minimum of five persons, or the administrative body or association agree, in writing, to be present at the public hearing.
- (b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least ten days prior to July 21, 1999, the public hearing will be canceled.
- (5)(a) Persons wishing to request a public hearing should mail their written request to John Wilson, Assistant Director, Public Affairs/Policy, Kentucky Department of Fish and Wildlife Resources, #1 Game Farm Road, Frankfort, Kentucky 40601, phone (502) 564-3400 or FAX (502) 564-6508.
- (b) In a request for a public hearing, a person shall state:
  1. "I agree to attend the public hearing"; or
  2. "I will not attend the public hearing."
- (6)(a) KRS Chapter 13A provides that persons who desire to be informed of the intent of an administrative body to promulgate an administrative regulation governing a specific subject matter may file a request to be informed by the administrative body.
- (b) Persons who wish to file this request may obtain a request from the department at the address listed above.
- (7) Information relating to the proposed administrative regulation.
- (a) The statutory authority for the promulgation of this administrative regulation is KRS 150.520.
- (b) The administrative regulation that the department intends to promulgate will amend 301 KAR 1:015 as follows: It will increase the maximum boat size on Lake Malone from 18-1/2 feet to 22 feet and will remove the prohibition of boat motors over 150 horsepower.
- (c) The necessity and function of the proposed administrative regulation is adjust the boat length and motor size limitations at Lake Malone to accommodate larger boats.
- (d) The benefits expected from the administrative regulation are to accommodate today's longer boats and larger horsepower engines.
- (e) The administrative regulation will be implemented as follows: Its provisions will be publicized through departmental publications and mass media outlets; it will be enforced by the department's Division of Law Enforcement.

June 6, 1999

- (1) **301 KAR 1:085.** Mussel shell harvesting.
- (2) The Department of Fish and Wildlife Resources intends to amend the administrative regulation cited above.
- (3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for July 21, 1999, at 9 a.m. in the Commission Room, Arnold L. Mitchell Building, at the Game Farm, five miles west of Frankfort on U.S. 60.
- (4)(a) The public hearing will be held if:

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1. It is requested, in writing, by at least five persons, or an administrative body, or an association having at least five members; and
2. A minimum of five persons, or the administrative body or association agree, in writing, to be present at the public hearing.
- (b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least ten days prior to July 21, 1999, the public hearing will be canceled.
- (5)(a) Persons wishing to request a public hearing should mail their written request to John Wilson, Assistant Director, Public Affairs/Policy, Kentucky Department of Fish and Wildlife Resources, #1 Game Farm Road, Frankfort, Kentucky 40601, phone (502) 564-3400 or FAX (502) 564-6508.
- (b) In a request for a public hearing, a person shall state:
  1. "I agree to attend the public hearing"; or
  2. "I will not attend the public hearing."
- (6)(a) KRS Chapter 13A provides that persons who desire to be informed of the intent of an administrative body to promulgate an administrative regulation governing a specific subject matter may file a request to be informed by the administrative body.
- (b) Persons who wish to file this request may obtain a request from the department at the address listed above.
- (7) Information relating to the proposed administrative regulation.
- (a) The statutory authority for the promulgation of this administrative regulation is KRS 150.520.
- (b) The administrative regulation that the department intends to promulgate will amend 301 KAR 1:085 as follows: It will raise the size limit on washboard mussels to 4 inches in annual increments of 1/16 inch.
- (c) The necessity and function of the proposed administrative regulation is to conserve washboard mussels by protecting them to a larger size.
- (d) The benefits expected from the administrative regulation are: Better management of the mussel resource with a minimal impact upon commercial musselers by phasing in the size limit increase over a period of 4 years.
- (e) The administrative regulation will be implemented as follows: Its provisions will be publicized through departmental publications and mass media outlets; it will be enforced by the department's Division of Law Enforcement.

June 4, 1999

- (1) **301 KAR 3:015.** Shooting ranges on wildlife management areas.
- (2) The Department of Fish and Wildlife Resources intends to promulgate an administrative regulation governing the subject matter listed above.
- (3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for July 21, 1999, at 9 a.m. in the Commission Room, Arnold L. Mitchell Building, at the Game Farm, five miles west of Frankfort on U.S. 60.
- (4)(a) The public hearing will be held if:
  1. it is requested, in writing, by at least five persons, or an administrative body, or an association having at least five members; and
  2. a minimum of five persons, or the administrative body or association agree, in writing, to be present at the public hearing.
- (b) If a request for a public hearing is not received from the required number of people at least ten days prior to July 21, 1999, the public hearing will be cancelled.
- (5)(a) Persons wishing to request a public hearing should mail their written request to John Wilson, Assistant Director, Public Affairs/Policy, Kentucky Department of Fish and Wildlife Resources, #1 Game Farm Road, Frankfort, Kentucky 40601, phone (502) 564-3400, FAX (502) 564-6508.
- (b) On the request for a public hearing, a person shall state:
  1. "I agree to attend the public hearing"; or
  2. "I will not attend the public hearing."
- (6)(a) KRS Chapter 13A provides that persons who desire to be informed of the intent of an administrative body to promulgate an administrative regulation governing a specific subject matter may file a request to be informed by the administrative body.
- (b) Persons who wish to file this request may obtain a request from the department at the address listed above.
- (7) Information relating to the proposed administrative regulation.
- (a) The statutory authority for the promulgation an administrative regulation governing shooting ranges on wildlife management areas is KRS 150.025(1) and 150.620
- (b) The administrative regulation that the department intends to promulgate will not amend an existing administrative regulation. It will establish requirements and procedures for the safe and equitable use of public shooting ranges on wildlife management areas.
- (c) The necessity and function of the proposed administrative regulation is to specify standards of conduct for a person using a departmental shooting range, to assure the safe and equitable use of the facility.
- (d) The benefits expected from the administrative regulation are providing facilities at wildlife management areas for target shooting, and assuring that these facilities are used safely.
- (e) The administrative regulation will be implemented as follows: Its provisions will be publicized through signs at shooting ranges, departmental publications and mass media outlets; it will be enforced by the department's Division of Law Enforcement.

June 4, 1996

- (1) **301 KAR 5:050.** Electronic sale of licenses and permits.
- (2) The Department of Fish and Wildlife Resources intends to promulgate an administrative regulation governing the subject matter listed above.
- (3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for July 21, 1999, at 9 a.m. in the Commission Room, Arnold L. Mitchell Building, at the Game Farm, five miles west of Frankfort on U.S. 60.
- (4)(a) The public hearing will be held if:
  1. it is requested, in writing, by at least five persons, or an administrative body, or an association having at least five members; and
  2. a minimum of five persons, or the administrative body or association agree, in writing, to be present at the public hearing.
- (b) If a request for a public hearing is not received from the required number of people at least ten days prior to July 21, 1999, the public hearing will be cancelled.
- (5)(a) Persons wishing to request a public hearing should mail their written request to John Wilson, Assistant Director, Public Affairs/Policy, Kentucky Department of Fish and Wildlife Resources, #1 Game Farm Road, Frankfort, Kentucky 40601, phone (502) 564-3400, FAX (502) 564-6508.
- (b) On the request for a public hearing, a person shall state:
  1. "I agree to attend the public hearing"; or
  2. "I will not attend the public hearing."

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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 department at the address listed above.
- (7) Information relating to the proposed administrative regulation.
- (a) The statutory authority for the promulgation an administrative regulation governing license and permit sales is KRS 150.195(1), (3) and (4).
- (b) The administrative regulation that the department intends to promulgate will not amend an existing administrative regulation. It will establish procedures and handling fees for purchasing hunting or fishing licenses and permits over the telephone or via the Internet. It will establish a system for issuing temporary authorization numbers to be used in lieu of the license until the actual license arrives in the mail; and will require a picture identification card to be carried with the authorization number when performing an act authorized by the license.
- (c) The necessity and function of the proposed administrative regulation is to establish the process by which a person may obtain a hunting or fishing license or permit by telephone or via the Internet.
- (d) The benefits expected from the administrative regulation are convenience and better service to the department's constituents by making licenses and permits instantly available at any time from any location.
- (e) The administrative regulation will be implemented as follows: Its provisions will be publicized through departmental publications and mass media outlets; it will be enforced by the department's Division of Law Enforcement.

### KENTUCKY JUSTICE CABINET

May 26, 1999

- (1) **502 KAR 31:020**, Sex Offender Registration System.
- (2) The Justice Cabinet has promulgated amendments to the administrative regulation governing the subject matter listed above.
- (3) A public hearing to receive oral and written comments on the proposed amended administrative regulation has been scheduled for July 22, 1999 at 11 a.m. at Justice Cabinet, 403 Wapping Street, 2nd Floor Bush Building, Conference Room, Frankfort, Kentucky 40601.
- (4)(a) The public hearing will be held if:
1. It is requested, in writing, by at least five persons, or an administrative body, or an association having at least five members; and
  2. A minimum of five persons, or the administrative body or association agree, in writing, to be present at the public hearing.
- (b) If a request for a public hearing is not received from the required number of people at least ten (10) days prior to July 22, 1999 the public hearing will be canceled.
- (5)(a) Persons wishing to request a public hearing should mail their written request to Barbara W. Jones, Justice Cabinet, 403 Wapping Street, 2nd Floor Bush Building, Frankfort, Kentucky 40601, phone (502) 564-3279, fax (502) 564-5244.
- (b) On this request for a public hearing, the person shall state either:
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 Justice Cabinet at the address listed in (5)(a) above.
- (7) Information relating to the proposed amended administrative regulation:
- (a) The statutory authority for the promulgation of amended administrative regulations governing the Sex Offender Registration System is KRS 15A.760 and 17.510.
- (b) The amended administrative regulation that the Justice Cabinet intends to promulgate will correct the sex offender notification and registration forms to reflect that an "authorized official" advises the sex offender of his duty to register in the Commonwealth and in any state where he might relocate, work or attend school.
- (c) The necessity and function of the proposed amended administrative regulation is to develop and implement a Sex Offender Registration System as statutorily required.
- (d) The benefits expected from the amended administrative regulation are the establishment of a uniform procedure of a Sex Offender Registration System and compliance with federal mandates.
- (e) The amended administrative regulation will be implemented by notifying all officers of the changes in the regulation and relevant forms.

### Department of Criminal Justice Training

May 21, 1999

- (1) **503 KAR 3:010**. Basic law enforcement training course trainee conduct requirements; procedures and penalties.
- (2) The Justice Cabinet, Department of Criminal Justice Training, 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 July 21, 1999, at 9 a.m., in Room 313, Funderburk Building, Richmond, Kentucky 40475-3137.
- (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 July 21, 1999, the public hearing will be canceled.
- (5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Stephanie C. Bingham, General Counsel, Department of Criminal Justice Training, Funderburk Building, Richmond, Kentucky 40475-3137; telephone - (606) 622-5897; FAX - (606) 622-2740.
- (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 Criminal Justice Training at the address listed above.

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(7) Information relating to the proposed administrative regulation:

(a) The statutory authority for the promulgation of this administrative regulation relating to the subject matter of this administrative regulation is KRS Chapter 13A and 15A.160.

(b) The administrative regulation that the Department of Criminal Justice Training intends to promulgate will amend 501 KAR 3:010, as follows:

1. Including probation as a penalty for disciplinary violations;
2. Modifying provisions related to weapons;
3. Updating summary action provision;
4. Updating conduct requirements, and enforcement and disciplinary procedures.

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

1. KRS 15A.160 authorizes the Secretary of the Justice Cabinet to promulgate administrative regulations in accordance with KRS Chapter 13A. KRS 15A.070 authorizes the Department of Criminal Justice Training to establish, supervise and coordinate training programs and schools for law enforcement personnel, and any other justice or nonlaw-enforcement-related personnel as prescribed by the secretary.

2. This administrative regulation updates operating procedures at the Department of Criminal Justice Training to comply with KRS Chapter 13A and to reflect current operating procedures.

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

(e) This administrative regulation will be implemented as follows: Staff and trainees of the Department of Criminal Justice Training will comply with operational procedures and standards noted in policy changes.

### Department of Juvenile Justice

June 15, 1999

(1) **505 KAR 1:040**, Department of Juvenile Justice Policies and Procedures Manual.

(2) The Department of Juvenile Justice 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 July 27, 1999, at 10 a.m. in the conference room at the Department of Juvenile Justice, 1025 Capital Center Drive, Building #3, Third Floor, 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 July 27, 1999, the public hearing will be cancelled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Keith Horn, Department of Juvenile Justice, Office of General Counsel, 1025 Capital Center Drive, Capital Complex East, Building #3, Third Floor, Frankfort, Kentucky, 40601. Phone (502) 573-2738. Fax (502) 573-0836.

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

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

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

(b) Persons who wish to file this request may obtain a request form from the Department of Juvenile Justice 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 505 KAR 1:040, Department of Juvenile Justice Policies and Procedures Manual, is KRS 15A.160, 15A.210, 605.150, 610.267, Chapter 635 et seq., 640.120, 645.250, and the requirements of a consent decree entered December 4, 1995, in *United States of America v. Commonwealth of Kentucky, et. al.*, Civil Action No. 3:95 CV-757-S (W.D. Ky. 1995), as well as EO 96-1576.

(b) The administrative regulation that the Department of Juvenile Justice intends to promulgate will amend 505 KAR 1:040. It will amend existing policies and procedures of the Department of Juvenile Justice as well as implementing new policies and procedures and some of the provisions of the voluntary consent decree entered into with the Department of Justice to improve conditions for youth housed in 13 residential treatment facilities.

(c) The necessity and function of the proposed administrative regulation is as follows: KRS 15A.160 authorizes the Department of Juvenile Justice 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. This administrative regulation is promulgated to incorporate into regulatory form, by reference, and update materials used by the department in the implementation of a statewide social service program.

(d) The benefits expected from the administrative regulation are: the department will have continued to establish regulatory authority for the current policies and procedures relating to management procedures, support services, benefits to families and children, and youth services, and will have continued to comply with some of the provisions of the voluntary consent decree entered into with the Department of Justice in December 1995 to improve conditions for youth housed in 13 residential treatment facilities.

(e) The administrative regulation will be implemented as follows: Staff will comply with the policies and procedures noted in policy changes.

### EDUCATION, ARTS, AND HUMANITIES CABINET Board of Education

June 5, 1999

(1) **702 KAR 3:075**, Substitute teacher's salary scheduling.

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

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for July 23, 1999, 10 a.m. in the State Board Room, 1<sup>st</sup> Floor, Capital Plaza Tower, 500 Mero Street, Frankfort, Kentucky 40601.

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

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

(c) If a request for a public hearing is not received from the required number of people at least 10 days prior to July 23, 1999, the public hearing will be canceled.

(5)(a) Persons wishing to request a public hearing should mail their written request to: Mr. Kevin Noland, General Counsel, Office of Legal Services, Kentucky Department of Education, 500 Mero Street, 1<sup>st</sup> Floor, Capital Plaza Tower, Frankfort, Kentucky 40601, phone: (502) 564-4474, fax: (502) 564-9321.

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

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

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

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

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the amendment of an administrative regulation relating to procedure for payment of employees is KRS 156.160.

(b) The administrative regulation that the Kentucky Board of Education intends to amend is 702 KAR 3:075.

(c) The necessity, function, and conformity of the proposed amendment to 702 KAR 3:075 is to no longer require the local school district to submit a substitute teacher salary schedule to the Department of Education.

(d) The benefit expected for the administrative regulation is to reduce reporting requirements by a local school district.

(e) The administrative regulation will be implemented as follows: The Department of Education will inform local school districts that they no longer must submit the substitute teacher salary schedule to the Department of Education.

June 9, 1999

(1) **702 KAR 3:120**, Uniform School Financial Accounting System.

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

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for July 23, 1999, at 10 a.m. in the State Board Room, 1<sup>st</sup> Floor, Capital Plaza Tower, 500 Mero Street, Frankfort, Kentucky 40601.

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

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

(c) If a request for a public hearing is not received from the required number of people at least 10 days prior to July 23, 1999, the public hearing will be canceled.

(5)(a) Persons wishing to request a public hearing should mail their written request to: Mr. Kevin Noland, General Counsel, Office of Legal Services, Kentucky Department of Education, 500 Mero Street, 1<sup>st</sup> Floor, Capital Plaza Tower, Frankfort, Kentucky 40601, fax (502) 564-9321.

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

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

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

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

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the amendment of an existing administrative regulation relating to Uniform School Financial Accounting System is KRS 156.160, 156.070, and 156.200.

(b) The administrative regulation that the Kentucky Board of Education intends to amend is 702 KAR 3:120.

(c) The necessity, function, and conformity of the proposed administrative regulation is to provide a uniform system of financial accounting and budgets for boards of education.

(d) The benefit expected from the administrative regulation is eliminating outdated language.

(e) The administrative regulation will be implemented as follows: The old version of the regulation was written to facilitate a transitional period from an old accounting system to the new. The transition is complete, and local districts will be informed of the amendments.

June 2, 1999

(1) **702 KAR 3:244**, Repeal of 702 KAR 3:245, School Council Allocation Formula: Kentucky Uniform School Financial Accounting System.

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

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for July 23, 1999, 10 a.m. in the State Board Room, 1<sup>st</sup> Floor, Capital Plaza Tower, 500 Mero Street, Frankfort, Kentucky 40601.

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

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

(c) If a request for a public hearing is not received from the required number of people at least 10 days prior to July 23, 1999, the public hearing will be canceled.

(5)(a) Persons wishing to request a public hearing should mail their written request to: Mr. Kevin Noland, General Counsel, Office of Legal Services, Kentucky Department of Education, 500 Mero Street, 1<sup>st</sup> Floor, Capital Plaza Tower, Frankfort, Kentucky 40601, phone: (502) 564-4474, fax: (502) 564-9321.

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

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

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

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

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the amendment of an existing administrative regulation relating to Uniform School Financial Accounting System is KRS 156.070 and 160.345.

(b) The administrative regulation that the Kentucky Board of Education intends to promulgate is 702 KAR 3:244.

(c) The necessity, function, and conformity of the proposed administrative regulation is to provide a uniform system of financial accounting and budgets for boards of education.

(d) The benefit expected for the administrative regulation is eliminating outdated language.

(e) The administrative regulation will be implemented as follows: The old version of the administrative regulation was written to facilitate a transitional period from an old accounting system to the new. The transition is complete, and local districts will be informed of the repeal.

June 9, 1999

(1) **703 KAR 5:080**, Administration Code for Kentucky's Educational Assessment Program.

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

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for July 23, 1999, 10 a.m. in the State Board Room, 1st Floor, Capital Plaza, 500 Mero Street, Frankfort, Kentucky 40601.

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

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

(c) If a request for a public hearing is not received from the required number of people at least 10 days prior to July 23, 1999, the public hearing will be canceled.

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

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

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

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

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

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

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of an administrative regulation relating to an administration code for Kentucky's Educational Assessment Program is KRS 156.070, 158.6453, and 158.6455.

(b) The administrative regulation that the Kentucky Board of Education intends to promulgate is 703 KAR 5:080.

(c) The necessity, function, and conformity of the proposed administrative regulation is KRS 158.6455 requires the Kentucky Board of Education to promulgate administrative regulations to establish a system of determining successful schools and a system of rewards and sanctions. KRS 158.6453 requires the KBE to create and implement a statewide assessment program. This administrative regulation is to establish appropriate administration practices for the statewide assessment program.

(d) The benefit expected from this administrative regulation is to establish appropriate testing practices for state required tests.

(e) The administrative regulation will be implemented as follows: Copies of the regulation and administration code will be distributed to all school districts and training will be offered to school district assessment coordinators and others.

June 9, 1999

(1) **703 KAR 5:112**, Repeal of 703 KAR 4:110, Code of ethics for state required testing.

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

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for July 23, 1999, 10 a.m. in the State Board Room, 1st Floor, Capital Plaza, 500 Mero Street, Frankfort, Kentucky 40601.

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

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

(c) If a request for a public hearing is not received from the required number of people at least 10 days prior to July 23, 1999, the public hearing will be canceled.

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

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

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

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

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

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

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of an administrative regulation relating to an administration code for Kentucky's educational assessment program is KRS 156.070, 158.6453 and 158.6455.

(b) The administrative regulation that the Kentucky Board of Education intends to promulgate is 703 KAR 5:112.

(c) The necessity, function, and conformity of the proposed administrative regulation is KRS 158.6455 requires that the Kentucky Board of Education promulgate administration regulations to establish a system of determining successful schools and a system of rewards and sanc-

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tions. Unlike other Kentucky Board of Education (KBE) administrative regulations that are reviewed by the LRC Administrative Regulation Review Subcommittee (ARRS), KRS 158.647 and 158.6471 provide that assessment and accountability administrative regulations shall be reviewed by the Education, Assessment, and Accountability Review Subcommittee (EAARS). LRC staff requested that KBE follow the procedure of repealing the existing administrative regulations, and then promulgating the revisions as new administration regulations under 703 KAR Chapter 5 to assist in routing those regulations to EAARS instead of ARRS. As a result, 703 KAR 4:110, regarding the Code of Ethics for state required testing, needs to be repealed, as the KBE is promulgating a new regulation in 703 KAR Chapter 5 on administration code for appropriate practices for state required tests. Additionally, the new administration code will provide clarification on appropriate assessment administration practices.

(d) The benefit expected from the repeal of the administrative regulation is to repeal the regulation and promulgate a new administration code in 703 KAR Chapter 5.

(e) The administrative regulation will be implemented as follows: This repeal of regulation will be provided upon request to local school districts.

### LABOR CABINET Department of Workplace Standards Division of Occupational Safety and Health Compliance Division of Occupational Safety and Health Education and Training

June 15, 1999

(1) **803 KAR 2:300.** General.

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

(3) A public hearing to receive oral and written comments on the proposed amendment to the administrative regulation has been scheduled for July 29, 1999, at 10 a.m. (ET), in the Bay 3 Conference Room at 1047 U.S. 127 South, Frankfort, Kentucky 40601.

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

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

2. A minimum of 5 persons, or the administrative body or association, or 1 person representing the administrative body or association, agrees to be present at the public hearing.

(b) If a request for a public hearing is not received from the required number of people at least 10 days prior to July 29, 1999, the public hearing will be canceled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Mr. William L. Ralston, Safety Standards Specialist, Kentucky Labor Cabinet, OSH Standards Office, 1047 U.S. 127 South, Suite 4, Frankfort, Kentucky 40601, telephone (502) 564-3070, or facsimile the request to (502) 564-1682.

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

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

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

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

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

(7) Information relating to the proposed administrative regulation.

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

(b) The administrative regulation that the Occupational Safety and Health Standards Board intends to promulgate will amend is 803 KAR 2:300, as follows: This revision will incorporate changes to the federal standards, formerly incorporated by the present regulation. The change revises paragraphs (b), (e) and (q) of 29 CFR 1910.6, "Incorporation by Reference," to update references to consensus standards. The change to this administrative regulation incorporates changes to federal regulations, as published in the Federal Register, Volume 64, Number 55, March 23, 1999, and are a part of the changes to 803 KAR 2:306 and 803 KAR 2:307 which rewrite the standards regulating dipping and coating operations in plain language, consolidate the former requirements in sequential sections, and update the standards to increase compliance options to employers.

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

(d) The benefits expected from the proposed amendment to the administrative regulation are: The incorporation of this revision assures conformity with the Code of Federal Regulations, assuring that the regulations of the Kentucky program in this area are as effective as those of the Occupational Safety and Health Administration.

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

June 15, 1999

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

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

(3) A public hearing to receive oral and written comments on the proposed amendment to the administrative regulation has been scheduled for July 29, 1999, at 10 a.m. (ET), in the Bay 3 Conference Room at 1047 U.S. 127 South, Frankfort, Kentucky 40601.

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

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

2. A minimum of 5 persons, or the administrative body or association, or 1 person representing the administrative body or association, agrees to be present at the public hearing.

(b) If a request for a public hearing is not received from the required number of people at least 10 days prior to July 29, 1999, the public hearing will be canceled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Mr. William L. Ralston, Safety Standards Specialist, Kentucky Labor Cabinet, OSH Standards Office, 1047 U.S. 127 South, Suite 4, Frankfort, Kentucky 40601, telephone (502) 564-3070, or facsimile the request to (502) 564-1682.

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

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

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

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

(7) Information relating to the proposed administrative regulation.

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

(b) The administrative regulation that the Occupational Safety and Health Standards Board intends to promulgate will amend is 803 KAR 2:301, as follows: This regulation will incorporate, by reference, a Federal Register publication, dated December 1, 1998, which advises those affected that powered industrial truck operator training for public sector maritime operations can be found in 29 CFR 1910.178 (incorporated into Kentucky regulations by 803 KAR 2:313), and updates the reference date of the Code of Federal Regulations to 1998.

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

(d) The benefits expected from the proposed amendment to the administrative regulation are: The incorporation of this revision assures conformity with the Code of Federal Regulations, assuring that the regulations of the Kentucky program in this area are as effective as those of the Occupational Safety and Health Administration.

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

June 15, 1999

(1) **803 KAR 2:306.** Occupational health and environmental control.

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

(3) A public hearing to receive oral and written comments on the proposed amendment to the administrative regulation has been scheduled for July 29, 1999, at 10 a.m. (ET), in the Bay 3 Conference Room at 1047 U.S. 127 South, Frankfort, Kentucky 40601.

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

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

2. A minimum of 5 persons, or the administrative body or association, or 1 person representing the administrative body or association, agrees to be present at the public hearing.

(b) If a request for a public hearing is not received from the required number of people at least 10 days prior to July 29, 1999, the public hearing will be canceled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Mr. William L. Ralston, Safety Standards Specialist, Kentucky Labor Cabinet, OSH Standards Office, 1047 U.S. 127 South, Suite 4, Frankfort, Kentucky 40601, telephone (502) 564-3070, or facsimile the request to (502) 564-1682.

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

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

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

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

(7) Information relating to the proposed administrative regulation.

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

(b) The administrative regulation that the Occupational Safety and Health Standards Board intends to promulgate will amend is 803 KAR 2:306, as follows: This revision will incorporate changes to the federal standards, formerly incorporated by the present regulation, regulating dipping and coating operations. The change removes paragraph (d) of 29 CFR 1910.94, "Ventilation," which addresses ventilation for open surface tanks. This condition will be covered by changes to 803 KAR 2:307. The changes to this regulation incorporate federal changes to the standards regulating dipping and coating operations, as published in the Federal Register, Volume 64, Number 55, March 23, 1999, which rewrite the standards in plain language, consolidate the former requirements in sequential sections and update the standards to increase compliance options to employers.

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

(d) The benefits expected from the proposed amendment to the administrative regulation are: The incorporation of this revision assures conformity with the Code of Federal Regulations, assuring that the regulations of the Kentucky program in this area are as effective as those of the Occupational Safety and Health Administration.

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

June 15, 1999

(1) **803 KAR 2:307.** Hazardous materials.

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

(3) A public hearing to receive oral and written comments on the proposed amendment to the administrative regulation has been scheduled for July 29, 1999, at 10 a.m. (ET), in the Bay 3 Conference Room at 1047 U.S. 127 South, Frankfort, Kentucky 40601.

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

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

2. A minimum of 5 persons, or the administrative body or association, or 1 person representing the administrative body or association, agrees to be present at the public hearing.

(b) If a request for a public hearing is not received from the required number of people at least 10 days prior to July 29, 1999, the public

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hearing will be canceled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Mr. William L. Ralston, Safety Standards Specialist, Kentucky Labor Cabinet, OSH Standards Office, 1047 U.S. 127 South, Suite 4, Frankfort, Kentucky 40601, telephone (502) 564-3070, or facsimile the request to (502) 564-1682.

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

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

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

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

(7) Information relating to the proposed administrative regulation.

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

(b) The administrative regulation that the Occupational Safety and Health Standards Board intends to promulgate will amend is 803 KAR 2:307, as follows: The revisions will incorporate changes to the federal standards, formerly incorporated by the present regulation, regulating dipping and coating operations. These changes remove and reserve 29 CFR 1910.108, "Dip Tanks Containing Flammable and Combustible Liquids," and add sections 29 CFR 1910.122, "Table of Contents - Dipping and Coating Operations," 29 CFR 1910.123, "Dipping and Coating Operations - Coverage and Definitions," 29 CFR 1910.124, "General Requirements for Dipping and Coating Operations," 29 CFR 1910.125, "Additional Requirements for Dipping and Coating Operations that Use Flammable or Combustible Liquids," and 29 CFR 1910.126, "Additional Requirements for Special Dipping and Coating Applications. The changes in this regulation will incorporate the changes to federal standards regulating dipping and coating operations, as published in the Federal Register, Volume 64, Number 55, March 23, 1999, which rewrite the standards in plain language, consolidate the former requirements in sequential sections and update the standards to increase compliance options to employers.

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

(d) The benefits expected from the proposed amendment to the administrative regulation are: The incorporation of this revision assures conformity with the Code of Federal Regulations, assuring that the regulations of the Kentucky program in this area are as effective as those of the Occupational Safety and Health Administration.

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

June 15, 1999

(1) **803 KAR 2:309.** General environmental controls.

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

(3) A public hearing to receive oral and written comments on the proposed amendment to the administrative regulation has been scheduled for July 29, 1999, at 10 a.m. (ET), in the Bay 3 Conference Room at 1047 U.S. 127 South, Frankfort, Kentucky 40601.

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

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

2. A minimum of 5 persons, or the administrative body or association, or 1 person representing the administrative body or association, agrees to be present at the public hearing.

(b) If a request for a public hearing is not received from the required number of people at least 10 days prior to July 29, 1999, the public hearing will be canceled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Mr. Timothy P. Chancellor, Health Standards Specialist, Kentucky Labor Cabinet, OSH Standards Office, 1047 U.S. 127 South, Suite 4, Frankfort, Kentucky 40601, telephone (502) 564-3070, or facsimile the request to (502) 564-1682.

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

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

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

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

(7) Information relating to the proposed administrative regulation.

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

(b) The administrative regulation that the Occupational Safety and Health Standards Board intends to promulgate will amend is 803 KAR 2:309, as follows: This revision will incorporate changes to the federal standards formerly incorporated by the present regulation. The change revises 29 CFR 1910.146, "Permit-Required Confined Spaces," to provide for enhanced employee participation in the employers permit space program, to provide authorized entrants or their authorized representatives with the opportunity to observe any testing or monitoring of permit spaces, and strengthens and clarifies the criteria employers must satisfy when preparing for the timely rescue of incapacitated permit space entrants. These changes will incorporate the changes made to the federal standard regulating entry into confined spaces which were published in the Federal Register, Volume 63, Number 230, December 1, 1998.

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

(d) The benefits expected from the proposed amendment to the administrative regulation are: The incorporation of this revision assures conformity with the Code of Federal Regulations, assuring that the regulations of the Kentucky program in this area are as effective as those of the Occupational Safety and Health Administration.

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

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June 15, 1999

- (1) **803 KAR 2:313.** Materials handling and storage.
- (2) The Kentucky Occupational Safety and Health Standards Board intends to amend the regulation cited above.
- (3) A public hearing to receive oral and written comments on the proposed amendment to the administrative regulation has been scheduled for July 29, 1999, at 10 a.m. (ET), in the Bay 3 Conference Room at 1047 U.S. 127 South, Frankfort, Kentucky 40601.
- (4)(a) The public hearing will be held if:
  1. It is requested, in writing, by at least 5 persons, or an administrative body, or an association having at least 5 members; and
  2. A minimum of 5 persons, or the administrative body or association, or 1 person representing the administrative body or association, agrees to be present at the public hearing.
- (b) If a request for a public hearing is not received from the required number of people at least 10 days prior to July 29, 1999, the public hearing will be canceled.
- (5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Mr. William L. Ralston, Safety Standards Specialist, Kentucky Labor Cabinet, OSH Standards Office, 1047 U.S. 127 South, Suite 4, Frankfort, Kentucky 40601, telephone (502) 564-3070, or facsimile the request to (502) 564-1682.
- (b) On a request for public hearing, a person shall state:
  1. "I agree to attend the public hearing."; or
  2. "I will not attend the public hearing."
- (6)(a) KRS Chapter 13A provides that persons who desire to be informed of the intent of an administrative body to promulgate an administrative regulation governing a specific subject matter may file a request to be informed by the administrative body.
- (b) Persons who wish to file this request may obtain a request form from the Labor Cabinet at the address listed above.
- (7) Information relating to the proposed administrative regulation.
- (a) The statutory authority for the promulgation of an administrative regulation relating to occupational safety and health is KRS Chapter 338.
- (b) The administrative regulation that the Occupational Safety and Health Standards Board intends to promulgate will amend is 803 KAR 2:313, as follows: This revision will incorporate changes to the federal standards formerly incorporated by the present regulation. The change revises paragraph (l) of 29 CFR 1910.178, "Powered Industrial Trucks," to improve and clarify training requirements for operators of powered industrial trucks, published in the Federal Register, Volume 63, Number 230, December 1, 1998, and a correction to this publication, published in the Federal Register April 27, 1999.
- (c) The necessity and function of the proposed administrative regulation is: Kentucky's Occupational Safety and Health Program is mandated by federal law to be at least as effective as the federal program. Kentucky does not have an effective alternative to this revision; accordingly, in order to maintain its state program as effective as the federal program, Kentucky must incorporate these federal requirements.
- (d) The benefits expected from the proposed amendment to the administrative regulation are: The incorporation of this revision assures conformity with the Code of Federal Regulations, assuring that the regulations of the Kentucky program in this area are as effective as those of the Occupational Safety and Health Administration.
- (e) The administrative regulation will be implemented as follows: The proposed amendment to the administrative regulation will be implemented by the Division of OSH Education and Training through its training sessions and seminars and its voluntary surveys, and by the Division of Compliance through its enforcement investigations.

June 15, 1999

- (1) **803 KAR 2:414.** Adoption of 29 CFR Part 1926.600-.606.
- (2) The Kentucky Occupational Safety and Health Standards Board intends to amend the regulation cited above.
- (3) A public hearing to receive oral and written comments on the proposed amendment to the administrative regulation has been scheduled for July 29, 1999, at 10 a.m. (ET), in the Bay 3 Conference Room at 1047 U.S. 127 South, Frankfort, Kentucky 40601.
- (4)(a) The public hearing will be held if:
  1. It is requested, in writing, by at least 5 persons, or an administrative body, or an association having at least 5 members; and
  2. A minimum of 5 persons, or the administrative body or association, or 1 person representing the administrative body or association, agrees to be present at the public hearing.
- (b) If a request for a public hearing is not received from the required number of people at least 10 days prior to July 29, 1999, the public hearing will be canceled.
- (5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Mr. William L. Ralston, Safety Standards Specialist, Kentucky Labor Cabinet, OSH Standards Office, 1047 U.S. 127 South, Suite 4, Frankfort, Kentucky 40601, telephone (502) 564-3070, or facsimile the request to (502) 564-1682.
- (b) On a request for public hearing, a person shall state:
  1. "I agree to attend the public hearing."; or
  2. "I will not attend the public hearing."
- (6)(a) KRS Chapter 13A provides that persons who desire to be informed of the intent of an administrative body to promulgate an administrative regulation governing a specific subject matter may file a request to be informed by the administrative body.
- (b) Persons who wish to file this request may obtain a request form from the Labor Cabinet at the address listed above.
- (7) Information relating to the proposed administrative regulation.
- (a) The statutory authority for the promulgation of an administrative regulation relating to occupational safety and health is KRS Chapter 338.
- (b) The administrative regulation that the Occupational Safety and Health Standards Board intends to promulgate will amend is 803 KAR 2:500, as follows: These revisions will incorporate changes to the federal standards, formerly incorporated by the present regulation, and revise the regulation to meet KRS Chapter 13A considerations. The revision to 29 CFR 1926.602, "Material Handling Equipment," which were published in the Federal Register, Volume 63, Number 230, December 1, 1998, will refer the reader to 29 CFR 1910.178 (incorporated into Kentucky regulations by 803 KAR 2:313) for operator training requirements.
- (c) The necessity and function of the proposed administrative regulation is: Kentucky's Occupational Safety and Health Program is mandated by federal law to be at least as effective as the federal program. Kentucky does not have an effective alternative to this revision; accordingly, in order to maintain its state program as effective as the federal program, Kentucky must incorporate these federal requirements.
- (d) The benefits expected from the proposed amendment to the administrative regulation are: The incorporation of this revision assures conformity with the Code of Federal Regulations, assuring that the regulations of the Kentucky program in this area are as effective as those of the Occupational Safety and Health Administration.
- (e) The administrative regulation will be implemented as follows: The proposed amendment to the administrative regulation will be imple-

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mented by the Division of OSH Education and Training through its training sessions and seminars and its voluntary surveys, and by the Division of Compliance through its enforcement investigations.

June 15, 1999

- (1) **803 KAR 2:500**. Maritime employment.
- (2) The Kentucky Occupational Safety and Health Standards Board intends to amend the regulation cited above.
- (3) A public hearing to receive oral and written comments on the proposed amendment to the administrative regulation has been scheduled for July 29, 1999, at 10 a.m. (ET), in the Bay 3 Conference Room at 1047 U.S. 127 South, Frankfort, Kentucky 40601.
- (4)(a) The public hearing will be held if:
  1. It is requested, in writing, by at least 5 persons, or an administrative body, or an association having at least 5 members; and
  2. A minimum of 5 persons, or the administrative body or association, or 1 person representing the administrative body or association, agrees to be present at the public hearing.
- (b) If a request for a public hearing is not received from the required number of people at least 10 days prior to July 29, 1999, the public hearing will be canceled.
- (5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Mr. William L. Ralston, Safety Standards Specialist, Kentucky Labor Cabinet, OSH Standards Office, 1047 U.S. 127 South, Suite 4, Frankfort, Kentucky 40601, telephone (502) 564-3070, or facsimile the request to (502) 564-1682.
- (b) On a request for public hearing, a person shall state:
  1. "I agree to attend the public hearing."; or
  2. "I will not attend the public hearing."
- (6)(a) KRS Chapter 13A provides that persons who desire to be informed of the intent of an administrative body to promulgate an administrative regulation governing a specific subject matter may file a request to be informed by the administrative body.
- (b) Persons who wish to file this request may obtain a request form from the Labor Cabinet at the address listed above.
- (7) Information relating to the proposed administrative regulation.
- (a) The statutory authority for the promulgation of an administrative regulation relating to occupational safety and health is KRS Chapter 338.
- (b) The administrative regulation that the Occupational Safety and Health Standards Board intends to promulgate will amend is 803 KAR 2:500, as follows: These revisions will incorporate changes to the federal standards formerly incorporated by the present regulation and update the reference to the Code of Federal Regulations. The revisions of 29 CFR 1915.120, 29 CFR 1917.1, and 29 CFR 1918.1, which were published in the Federal Register, Volume 63, Number 230, December 1, 1998, will refer the reader to 29 CFR 1910.178 (incorporated into Kentucky regulations by 803 KAR 2:313) for operator training requirements.
- (c) The necessity and function of the proposed administrative regulation is: Kentucky's Occupational Safety and Health Program is mandated by federal law to be at least as effective as the federal program. Kentucky does not have an effective alternative to this revision; accordingly, in order to maintain its state program as effective as the federal program, Kentucky must incorporate these federal requirements.
- (d) The benefits expected from the proposed amendment to the administrative regulation are: The incorporation of this revision assures conformity with the Code of Federal Regulations, assuring that the regulations of the Kentucky program in this area are as effective as those of the Occupational Safety and Health Administration.
- (e) The administrative regulation will be implemented as follows: The proposed amendment to the administrative regulation will be implemented by the Division of OSH Education and Training through its training sessions and seminars and its voluntary surveys, and by the Division of Compliance through its enforcement investigations.

### PUBLIC PROTECTION AND REGULATION CABINET Department of Insurance

June 11, 1999

- (1) **806 KAR 17:210**, Reporting requirements for the Kentucky Guaranteed Acceptance Program.
- (2) The Department of Insurance intends to promulgate an administrative regulation governing the subject matter listed above.
- (3) A public hearing to receive written and oral comments on the proposed administrative regulation has been scheduled for July 22, 1999, at 2 p.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 a 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 July 22, 1999, 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. Phone - (502) 564-6032. Fax - (502) 564-1456.
- (b) On a request for a public hearing, a person shall state:
  1. "I agree to attend the public hearing"; or
  2. "I will not attend the public hearing".
- (6)(a) KRS Chapter 13A provides that persons who desire to be informed of the intent of an administrative body to promulgate an administrative regulation governing a specific subject matter may file a request to be informed by the administrative body.
- (b) Persons who wish to file this request may obtain a request form from the 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 304.17A-460(1).
- (b) The administrative regulation that the department intends to promulgate will amend an existing regulation. It will amend GAPQT-1 to specify that the premiums to be reported refer to premiums for a health benefit plan. In addition, the proposed amendment to 806 KAR 17:210 will eliminate the requirement that GAP participating insurers file an annual report. The GAP participating insurers' monthly reporting requirement will be changed to a GAP participating insurers' quarterly reporting requirement. Lastly, the information required in the ERF-1 will be expanded to require the submission of the information from the annual report and other additional information.
- (c) The necessity and function of the proposed administrative regulation is as follows: As currently promulgated, GAPQT-1 refers to health benefits. In order to clarify the information that is to be reported on GAPQT-1, it is necessary for the department to insert the word "plan" after

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the term "health benefit." In addition, the department has determined that the annual report from GAP participating insurers is not necessary and therefore, will be eliminated. However, in order to eliminate the annual report, the GAP participating insurer will be required to file additional information on a quarterly basis.

(d) The benefits expected from the administrative regulation are as follows: The amendment to 806 KAR 17:210 will clarify the department's intent for those who are required to report information to the department on form GAPQT-1. In addition, the GAP participating insurers will no longer be required to file an annual ERF-3 GAP report or a monthly report. Instead, GAP participating insurers will be required to file the ERF-1 report on a quarterly basis.

(e) The administrative regulation will be implemented as follows: Insurers will be required to report, on a quarterly basis, the information required by GAPQT-1 regarding health benefit plans. In addition, GAP participating insurers will be required to file the information required by ERF-1 on a quarterly basis. The ERF-3 annual report will no longer be required.

### CABINET FOR FAMILIES AND CHILDREN Department for Community-Based Services

June 15, 1999

(1) **921 KAR 1:380**, Child Support Program application process.

(2) Cabinet for Families and Children, Department for Community-Based 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 9 a.m., July 30, 1999, 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 one person representing 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, July 30, 1999, 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, Cabinet for Families and Children, Regulation Coordinator, Office of the General Counsel, 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 Judy Trigg, Administrative Regulation Coordinator, Department for Community-Based Services, Division of Policy Development, Third Floor West, CHR Building, 275 East Main, Frankfort, Kentucky 40621.

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

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of an administrative regulation relating to the child support application process is KRS 194B.050(1), 205.705, 205.710 to 205.800, 405.520, 42 USC 651 et seq., EO 98-731.

(b) The administrative regulation that the Department for Community-Based Services intends to promulgate will amend 921 KAR 1:380, Child Support Program application process, to make medical support services a mandatory child support service in nonpublic assistance cases and will revise the application form accordingly. It will also revise the Non-K-TAP Fact Sheet and update the fee information to correspond with the previous fee reduction.

(c) The necessity, function and conformity of the proposed administrative regulation is as follows: This administrative regulation is necessary because an interim final rule from the federal Office of Child Support Enforcement eliminated federal regulations now obsolete due to the Personal Responsibility and Work Opportunity Reconciliation Act of 1996. As a result, medical support services are no longer optional for non-K-TAP clients. To bring Kentucky into compliance with federal requirements, amendments to the administrative regulation will make medical support services mandatory for non-K-TAP clients.

(d) The benefits expected from administrative regulation are: The amendments to this administrative regulation will bring the cabinet into compliance with federal mandates of the Personal Responsibility and Work Opportunity Reconciliation Act and thus prevent the loss of federal funds. The Cabinet for Families and Children is required to include the mandatory provisions of 42 USC 651 et seq. in the child support state plan.

(e) The administrative regulation will be implemented as follows: The Cabinet for Families and Children, the Department for Community-Based Services will be responsible for implementing the administrative regulation.

EMERGENCY ADMINISTRATIVE REGULATIONS NOW IN EFFECT

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

STATEMENT OF EMERGENCY  
502 KAR 31:020E

This emergency amended administrative regulation corrects the sex offender notification and registration forms to reflect that an "authorized official" advises the sex offender of his duty to register in the Commonwealth and in any state where he might relocate, work, or study. The Commonwealth must file a final compliance report with the United States Justice Department no later than July 12, 1999 to demonstrate its compliance with Megan's Law and the "Wetterling Act" and these changes must be made in order to comply with the federal mandates. The emergency amended administrative regulation shall be replaced by an ordinary amended administrative regulation. The Notice of Intent for 502 KAR 31:010 was filed with the Regulations Compiler on May 26, 1999.

PAUL E. PATTON, Governor  
ROBERT F. STEPHENS, Secretary

JUSTICE CABINET  
DEPARTMENT OF STATE POLICE

502 KAR 31:020E. Sex Offender Registration System.

RELATES TO: KRS 17.510, 17.520, 17.530

STATUTORY AUTHORITY: KRS 15A.160, 17.080, 17.500, 17.510

EFFECTIVE: May 26, 1999

NECESSITY, FUNCTION, AND CONFORMITY: KRS 15A.160 and 17.080 provide that the Secretary of the Justice Cabinet may promulgate such administrative regulations as are necessary to properly administer the cabinet. KRS 17.510 and federal law 42 USC 1407, the Jacob Wetterling Crimes Against Children and Sexually Violent Offender Registration Act, requires the Justice Cabinet to develop and implement a Sex Offender Registration System. This administrative regulation establishes the definitions, defines the processes, and establishes the forms necessary for the administration of the Sex Offender Registration System.

Section 1. Definitions. (1) "Authorizing witness" means an official identified in KRS 17.510(3), (4), and (5).

(2) "Cabinet" means the Justice Cabinet.

(3) "Department" means the Department of State Police.

(4) "LINK" means the Law Enforcement Information Network of Kentucky.

(5) "NCIC" means the National Crime Information Computer.

(6) "SORS" means the Sex Offender Registration System.

(7) "Sex offender information" means the specific information set forth in KRS 17.500(3) and shall include:

(a) The date of release from custody;

(b) Maximum date of sentence or supervision, whichever is longer;

(c) Date of registry expiration;

(d) Name of person completing the form, if registrant is assisted;

(e) Office phone number of the releasing entity;

(f) Signature of the registrant;

(g) Signature of the authorizing witness; [and]

(h) The date the form is signed;

(i) Fingerprints; and

(j) Photograph.

(5) "SORS" means the Sex Offender Registration System.

Section 2. Sex Offender Duty to Register Notification Form. (1) A person as described in KRS 17.510 shall provide the information required by KRS 17.500(3), 17.510 and this administrative regulation on the Sex Offender Duty to Register Notification Form #JC-4.

(2) Completion of Sex Offender Duty to Register Notification Form #JC-4.

(a) Probation and parole shall complete the Notification Form #JC-4 for the sentencing court.

(b) A person defined in KRS 17.510 shall, in the presence of the sentencing judge, sign the Notification Form #JC-4 in the "defendant's signature" block, in ink.

(c) A copy of the completed form shall be provided to the offender.

Section 3. SORS Registration Forms. A person described in KRS 17.510 shall provide the information required by KRS 17.500(3), 17.510 and this administrative regulation on one (1) of the following sex offender registry entry forms:

(1) Three (3) Sex Offender Registry Entry Forms have been established:

(a) Sex Offender Registry Entry Form is to be completed by all persons required to register pursuant to KRS 17.510(2) or (3).

(b) Sex Offender Registry Entry Form is to be completed by all persons required to register pursuant to KRS 17.510(6).

(c) Sex Offender Registry Entry Form is to be completed by all persons required to register pursuant to KRS 17.510(7).

(2) Completion of Sex Offender Registry Entry Registration Form.

(a) The Entry Form shall be completed either in the presence of or by the authorizing witness.

(b) In the presence of the authorizing witness, the offender shall read the Entry Form.

(c) The offender shall sign the Entry Form in the "signature of offender" block of the form in ink.

(d) The authorizing witness shall sign the Entry Form in the "authorizing witness" block of the Entry Form.

(e) The authorizing witness shall mail one (1) copy of the completed Entry Form to the department on the day the form is completed.

(3) An Entry Form shall not be considered complete if:

(a) It does not contain the information required by KRS 17.500(3) and this administrative regulation; or

(b) It contains erroneous or false information; or

(d) The offender or authorizing witness fails to sign the appropriate block.

(4) If the department determines that an Entry Form is incomplete pursuant to the provisions of this administrative regulation, the department shall notify the submitting authorizing witness, without entry into the SORS, of:

(a) The reason the Entry Form was determined to be incomplete; and

(b) The action required to complete the Entry Form prior to inclusion to the SORS.

(5) Upon notification of the corrected deficiencies as described above, the department shall enter the record into the SORS, LINK and NCIC.

Section 4. Sex Offender Registry Modification Form. A person as described in KRS 17.510 shall provide any change in the information required by KRS 17.500(3), KRS 17.510 and this administrative regulation on the Sex Offender Registry Modification Form.

(1) Completion of Sex Offender Registry Modification Form.

(a) The Modification Form shall be completed either in the presence of or by the authorizing witness.

(b) In the presence of the authorizing witness, the offender shall read the Modification Form.

(c) The offender shall sign the Modification Form in the "signature of offender" block of the form, in ink.

(d) The authorizing witness shall sign the Modification Form in

the "authorizing witness" block of the Modification Form.

(e) The authorizing witness shall mail one (1) copy of the completed Modification Form to the department on the day the form is completed.

(2) A Modification Form shall not be considered complete if:

(a) It does not contain the information required by KRS 17.500(3) and this administrative regulation; or

(b) It contains erroneous or false information; or

(c) An item on the form cannot be read or understood; or

(d) The offender or authorizing witness fails to sign in the appropriate block.

(3) If the department determines that a Modification Form is incomplete pursuant to the provisions of this administrative regulation, the department shall notify the submitting authorizing witness of:

(a) The reason the Modification Form was determined to be incomplete; and

(b) The action required to properly complete the Modification Form before that information may be included in the SORS.

(4) Upon notification of the corrected deficiencies, as described above, the department shall enter the corrected information into that offender's SORS record, LINK and NCIC.

Section 5. Sex Offender Registry Information Verification Form. A person sentenced as described in KRS 17.510 shall verify the accuracy of the information contained in the SORS on the Sex Offender Registry Information Verification Form #SOR 1.

(1) Annually, the department shall mail, no later than fourteen (14) days prior to the anniversary date of each "low and moderate" risk registrant, a Verification Form #SOR 1 to the last known address of the registrant.

(2) Quarterly, the department shall mail a Verification Form #SOR1 to the last known address of each "high risk" registration.

(3) Completion of Sex Offender Registry Information Verification Form #SOR 1. A person defined in KRS 17.510 shall:

(a) Complete the Verification Form #SOR 1, and sign the Verification Form #SOR 1 in the "registrant signature" block, in ink; and

(b) Shall mail the completed Verification Form #SOR 1 to the department on the day the form is completed.

(4) [(3)] A Verification Form #SOR 1 shall not be considered complete if:

(a) It does not contain the information required by KRS 17.500(3) and this administrative regulation; or

(b) It contains erroneous or false information; or

(c) An item on the form cannot be read or understood; or

(d) The registrant fails to sign in the appropriate block.

(5) [(4)] If the department determines that a Verification Form #SOR 1 is incomplete pursuant to the provisions of this administrative regulation, the department shall return the form to the submitting registrant notifying the submitting registrant of:

(a) The reason the Verification Form #SOR 1 was returned; and

(b) The action required by the registrant to properly complete the Verification Form #SOR 1 prior to validation thereof.

Section 6. Incorporation by Reference. (1) The following forms are incorporated by reference:

(a) The Sex Offender Duty to Register Form #JC-4;

(b) The Sex Offender Registry Entry Forms #P:225; #P:227; and #P:228;

(c) The Sex Offender Registry Modification Form # P:226; and

(d) The Sex Offender Registry Information Verification Form #SOR 1.

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

ROBERT F. STEPHENS, Secretary

BARBARA W. JONES, General Counsel

APPROVED BY AGENCY: May 24, 1999

FILED WITH LRC: May 26, 1999 at 10 a.m.

Contact Person: Barbara W. Jones

(1) Type and number of entities affected: 235 probation and parole officers, 5 data processing staff of the Kentucky State Police and Department of Information Systems, the Administrative Office of the Courts, all circuit clerks, the judiciary and the existing 630 registrants that reside in the Sex Offender Registry as well as the undetermined number of sex offenders that will be registered in the future.

(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 are received: None

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

1. First year following implementation: None

2. Second and subsequent years: None

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: None

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs: Analysis, program development, and other technical tasks required by federal or state legislative mandates.

(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 is the funds budgeted for this 1994 - 1996 biennium. N/A

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

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

(b) Kentucky: None

(7) Assessment of alternative methods; reasons why alternatives were rejected: None

(8) Assessment of expected benefits:

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

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

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

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

(a) Necessity of proposed regulation if in conflict: None

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

(10) Any additional information or comments: None

(11) TIERING: Was tiering applied: No. Tiering was not appropriate in this administrative regulation because the regulation applies equally to all those individuals that will be listed in the Sex Offender Registry.

#### FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. The federal mandate for the filing of this emergency amendment is found at 42 USC Section 14071 and by the Federal Register 69 FR 69652, December 17, 1998. The United States Justice Department monitors compliance with this statute and the guidelines promulgated to implement Megan's Law and the Jacob Wetterling Crimes Against Children and Sexually Violent Offender Registration Act ("The Wetterling Act"). The Pam Lynchner Sexual Offender Tracking and Identification Act of 1996, and Section 115 of the General Provisions of Title I of the Departments of Commerce, Justice, and State,

The Judiciary and related Agencies Appropriations Act (The "CJSA") amended section 42 USC 14071 which contains the "Wetterling Act" and "Megan's Law". Kentucky must file a final report with the United States Justice Department no later than July 12, 1999 to establish compliance with the federal statutes and guidelines.

2. State compliance standards. The state compliance standards are found in KRS 17.500 through 17.991 and 502 KAR 31:020.

3. Minimum or uniform standards contained in the federal mandate. The proposed amendment contains no minimum or uniform standards.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, that those required by the federal mandate? No

5. Justification for the imposition of the stricter requirements, or additional or different responsibilities or requirements. This amendment does not impose stricter standards, responsibilities or requirements.

#### STATEMENT OF EMERGENCY 803 KAR 2:300E

This emergency administrative regulation incorporates, by reference, a Federal Register publication, Volume 64, Number 55, dated March 23, 1999, pp. 13908-13912, which updates references to national consensus standards incorporated into the standards, updates the reference date to the Code of Federal Regulations to 1998, and reformats a definition and amends the "Necessity, Function and Conformity" paragraph to meet KRS Chapter 13A considerations. It is necessary to promulgate this emergency administrative regulation to comply with federal mandate, 29 CFR 1953.23, which requires implementation of the federal standard, or one (1) more stringent, within six (6) months of the date of promulgation of the new federal standard, and to keep the state program as effective as the federal program. This emergency administrative regulation shall be replaced by an ordinary administrative regulation. The "Notice of Intent to Promulgate Administrative Regulation" shall be filed with the Regulations Compiler, June 15, 1999.

PAUL E. PATTON, Governor  
JOE NORSWORTHY, Chairman

#### LABOR CABINET Department of Workplace Standards Division of Occupational Safety and Health Compliance Division of Occupational Safety and Health Education and Training

#### 803 KAR 2:300E. General.

RELATES TO: KRS 338.051, 338.061, 29 CFR 1910

STATUTORY AUTHORITY: KRS 338.051(3), 338.061, 29 CFR 1910

EFFECTIVE: June 15, 1999

NECESSITY, FUNCTION, AND CONFORMITY: KRS 338.051 and 338.061 authorize the Kentucky Occupational Safety and Health Standards Board to adopt and promulgate occupational safety and health administrative regulations. KRS 338.061(2) provides that the board may (Express authority to) incorporate by reference established federal standards and national consensus standards [is also given to the board]. The following administrative regulation contains those standards to be enforced by the Division of Occupational Safety and Health Compliance in the area of general industry.

Section 1. Definitions Applicable to This Part. (1) "Act" means KRS Chapter 338.

(2) "Assistant Secretary of Labor" means the Secretary of Labor, Commonwealth of Kentucky.

(3) "Employee" means any person employed except those employees excluded in KRS 338.021.

(4) "Employer" means any entity for whom a person is employed except those employers excluded in KRS 338.021.

(5) "Established federal standard" means any operative occupa-

tional safety and health standard established by any agency of the United States Government.

(6) "National consensus standard" means any occupational safety and health standard or modification thereof which has been adopted and promulgated by a nationally recognized standards-producing organization.

(7) "Standard" means a standard which requires conditions or the adoption or use of one (1) or more practices, means, methods, operations, or processes, reasonably necessary or appropriate to provide safe and healthful employment. "Standard" has the same meaning as and includes the words "regulation" and "rule".

(8) "U.S. Department of Labor" shall mean the U.S. Department of Labor or the Kentucky Labor Cabinet, U.S. 127 South, Frankfort, Kentucky 40601. [An employer, required under these standards to report information to the U.S. Department of Labor, or any subsidiary thereof, shall instead report such information to the Kentucky Labor Cabinet, U.S. 127 South, Frankfort, Kentucky 40601.]

Section 2. Purpose and Scope. The provisions of this administrative regulation adopt and extend the applicability of established federal standards contained in 29 CFR 1910 to all employers, employees, and places of employment throughout the Commonwealth except those excluded in KRS 338.021.

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

(a) 9 CFR 1910.3-.7 of the Code of Federal Regulations revised as of July 1, 1998 [1995], published by the Office of the Federal Register, National Archives and Records Services, General Services Administration is hereby incorporated by reference;

(b) The revisions to 29 CFR 1910.6, "Incorporation by Reference", as published in the Federal Register, Volume 64, Number 55, March 23, 1999, are incorporated by reference. [61, Number 46, March 7, 1996, are incorporated by reference.]

(2) This material may be inspected, obtained, and copied at: Kentucky Labor Cabinet, Division of Education and Training, U.S. 127 South, Frankfort, Kentucky 40601. Office hours are 8 a.m. - 4:30 p.m. (ET), Monday through Friday.

JOE NORSWORTHY, Chairman  
KEMBRA SEXTON TAYLOR, Attorney  
APPROVED BY AGENCY: June 3, 1999  
FILED WITH LRC: June 15, 1999 at 9 a.m.

#### REGULATORY IMPACT ANALYSIS

Agency Contact: Kembra S. Taylor, T. P. Chancellor

(1) Type and number of entities affected: The amendments to this regulation affect all employers in general industry within the jurisdiction of the Kentucky Occupational Safety and Health Program.

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

(a) Cost of living and employment in the geographic area in which the administrative regulation will be implemented: There will be no effect on the cost of living and employment by implementation of these changes.

(b) Cost of doing business in the geographic area in which the administrative regulation will be implemented: There are no costs or savings resulting from the promulgation of these proposed amendments, as these changes incorporate, by reference, a Federal Register publication, Volume 64, Number 55, dated March 23, 1999, pp. 13908-13912, which updates references to national consensus standards incorporated into the standards, update the reference date to the Code of Federal Regulations to 1998, and reformat a definition and amend the "Necessity, Function and Conformity" paragraph to meet KRS Chapter 13A considerations.

(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 factors regarding these revisions will increase or decrease costs. There will be no effect on competition. These amendments will not entail any reporting or additional paperwork requirements.

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2. Second and subsequent years: See above.

(3) Effects on the promulgating administrative body: The promulgating body will not be affected by the promulgation of these revisions.

(a) Direct and indirect costs or savings:

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements: There will be no reporting or paperwork requirements as a result of these changes.

(4) Assessment of anticipated effect on state and local revenues: These revisions will have no anticipated effect on state and local revenues.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Current state and federal funding.

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

(a) Geographic area in which administrative regulation will be implemented: Undetermined; no public comments were received.

(b) Kentucky: Undetermined; no public comments were received.

(7) Assessment of alternative methods; reasons why alternative were rejected: Alternative methods were not considered as these changes incorporate, by reference, a Federal Register publication, Volume 64 Number 55, dated March 23, 1999, pp. 13908-13912, which updates references to national consensus standards incorporated into the standards, update the reference to the Code of Federal Regulations to 1998, and reformat a definition and amend the "Necessity, Function and Conformity" paragraph to meet KRS Chapter 13A considerations.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographic area in which implemented and on Kentucky: These proposed amendments will enhance worker safety throughout Kentucky.

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

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

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: There is no conflicting, overlapping, or duplication as a result of adoption of these proposed amendments.

(a) Necessity of proposed regulation if in conflict:

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

(10) Any additional information or comments:

(11) TIERING: Was tiering applied? No. Kentucky's Occupational Safety and Health Program regulations affect all employers with one or more employees. Inspections are conducted at the facilities of those industries or firms that pose higher risks to worker safety and health, those employers from which the KYOSH Program has received worker complaints or referrals, or where a workplace fatality (or accident resulting in the hospitalization of three or more employees) has occurred.

### FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. PL 91-596 (Occupational Safety and Health Act of 1970, Section 18(c)(2)).

2. State compliance standards. These changes incorporate, by reference, a Federal Register publication, Volume 64 Number 55, dated March 23, 1999, pp. 13908-13912, which updates references to national consensus standards incorporated into the standards, update the reference to the Code of Federal Regulations to 1998, and reformat a definition and amend the "Necessity, Function and Conformity" paragraph to meet KRS Chapter 13A considerations.

3. Minimum or uniform standards contained in the federal mandate. These changes incorporate, by reference, a Federal Register publication, Volume 64 Number 55, dated March 23, 1999, pp. 13908-13912, which updates references to national consensus

standards incorporated into the standards and update the reference to the Code of Federal Regulations to 1998.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? This proposed amended revision incorporates the federal regulation.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. These revisions impose no stricter, additional or different responsibilities than federal standards.

### FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? Yes

2. State whether this administrative regulation will affect the local government or only a part or division of the local government. These amendments affect all local government entities with employees.

3. State the aspect or service of local government to which this administrative regulation relates. This proposed change does not affect an aspect or service of local government, as the change updates reference information contained in the Federal Register and reformats a definition and amends the "Necessity, Function and Conformity" paragraph to meet KRS Chapter 13A considerations.

4. How does this administrative regulation affect the local government or any service it provides? The purpose of these amendments is to comply with federal regulations relating to occupational safety and health. There will be no increase or decrease in local government revenues or significant expenditures. These proposed amendments will not affect the number of local government employees.

### STATEMENT OF EMERGENCY 803 KAR 2:301E

This emergency administrative regulation incorporates, by reference, a Federal Register publication, dated December 1, 1998, which advises those affected that powered industrial truck operator training for public sector maritime operations can be found in 29 CFR 1910.178 (incorporated into Kentucky administrative regulations by 803 KAR 2:313), and updates the reference date of the Code of Federal Regulations to 1998. It is necessary to promulgate this emergency administrative regulation to comply with federal mandate, 29 CFR 1953.23, which requires implementation of the federal standard, or one (1) more stringent, within six (6) months of the date of promulgation of the new federal standard, and to keep the state program as effective as the federal program. This emergency administrative regulation shall be replaced by an ordinary administrative regulation. The "Notice of Intent to Promulgate Administrative Regulation" shall be filed with the Regulations Compiler, June 15, 1999.

PAUL E. PATTON, Governor  
JOE NORSWORTHY, Chairman

**LABOR CABINET**  
**Department of Workplace Standards**  
**Division of Occupational Safety and Health Compliance**  
**Division of Occupational Safety and Health Education and Training**

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

RELATES TO: KRS 338.051, 338.061, 29 CFR 1910  
STATUTORY AUTHORITY: KRS 338.051(3), 338.061, 29 CFR 1910

EFFECTIVE: June 15, 1999

NECESSITY, FUNCTION, AND CONFORMITY: KRS 338.051(3) authorize the Kentucky Occupational Safety and Health Standards

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Board to adopt and promulgate occupational safety and health administrative regulations. KRS 338.061(2) provides that the board may incorporate by reference established federal standards and national consensus standards. The following administrative regulation contains those standards to be enforced by the Division of Occupational Safety and Health Compliance in the area of general industry.

Section 1. Definitions. (1) "Act" means KRS Chapter 338.

(2) "Assistant Secretary of Labor" means the Secretary of Labor, Commonwealth of Kentucky.

(3) "Employee" means any person employed except those employees excluded in KRS 338.021.

(4) "Employer" means any entity for whom a person is employed except those employers excluded in KRS 338.021.

(5) "Established federal standard" means any operative occupational safety and health standard established by any agency of the United States Government.

(6) "National consensus standard" means any occupational safety and health standard or modification thereof which has been adopted and promulgated by a nationally-recognized standards-producing organization.

(7) "Standard" means the same as regulation or federal rule which requires conditions or the adoption or use of one (1) or more practices, means, methods, operations, or processes, reasonably necessary or appropriate to provide safe and healthful employment.

(8) "U.S. Department of Labor" means Kentucky Labor Cabinet, U.S. 127 South, Frankfort, Kentucky 40601, or the U.S. Department of Labor.

Section 2. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) 29 CFR 1910.11-.19 of the Code of Federal Regulations revised as of July 1, 1998 [1997], published by the Office of the Federal Register, National Archives and Records Services, General Services Administration are incorporated by reference.

(b) The revision to 29 CFR 1910.16, "Longshoring and Marine Terminals", as published in the Federal Register, Volume 63, Number 230, December 1, 1998, [62, Number 143, July 25, 1997.]

(2) This material may be inspected, obtained, and copied at: Kentucky Labor Cabinet, Division of Education and Training, U.S. 127 South, Frankfort, Kentucky 40601. Office hours are 8 a.m. - 4:30 p.m. (ET), Monday through Friday.

JOE NORSWORTHY, Chairman

KEMBRA SEXTON TAYLOR, Attorney

APPROVED BY AGENCY: June 3, 1999

FILED WITH LRC: June 15, 1999 at 9 a.m.

### REGULATORY IMPACT ANALYSIS

Agency Contact: Kembra S. Taylor, W. L. Ralston

(1) Type and number of entities affected: The amendments to this regulation affect all employers in the Commonwealth engaged in public sector maritime operations.

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

(a) Cost of living and employment in the geographic area in which the administrative regulation will be implemented: The cost of living and employment in the state will not be affected by implementation of the amendments to this administrative regulation.

(b) Cost of doing business in the geographic area in which the administrative regulation will be implemented: The changes updating the reference to the Code of Federal Regulations will entail no additional costs or savings. The change in Section 2 incorporates the Federal Register notice of December 1, 1998, (pp. 66270-66274), which directs those affected that the requirements for powered industrial truck operator training for public sector maritime operations is now covered by 29 CFR 1910.178 (incorporated into Kentucky regulations by 803 KAR 2:313). The Occupational Safety and Health Administration (OSHA) estimates the average annualized cost to each employer affected by the change clarifying the acceptable training operators of powered industrial trucks, to be 0.0001 percent of sales which will likely be offset by the savings to the average employer due to reduced worker compensation costs and reduced

property damage.

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

1. First year following implementation: There are no additional factors regarding these revisions which will increase or decrease costs. There will be no effect on competition. Reporting and paperwork requirements: The employer will be required to certify that each operator of a powered industrial truck has been properly trained to safely operate the vehicle and keep the certification record on file.

2. Second and subsequent years: See (a) above.

(3) Effects on the promulgating administrative body: The promulgating body will not be affected by the adoption of these revisions.

(a) Direct and indirect costs or savings:

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements: There are no additional reporting or paperwork requirements for the promulgating body.

(4) Assessment of anticipated effect on state and local revenues: These revisions will have no anticipated effect on state and local revenues.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Current state and federal funding.

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

(a) Geographic area in which administrative regulation will be implemented: Undetermined; no public comments were received.

(b) Kentucky: Undetermined; no public comments were received.

(7) Assessment of alternative methods; reasons why alternative were rejected: Alternative methods were not considered as these proposed regulations incorporate, by reference, federal regulations published in the Federal Register.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographic area in which implemented and on Kentucky: These proposed amendments will enhance worker safety throughout Kentucky.

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

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

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: There is no conflicting, overlapping, or duplication as a result of adoption of these proposed amendments.

(a) Necessity of proposed regulation if in conflict:

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

(10) Any additional information or comments:

(11) TIERING: Was tiering applied? No. Kentucky's Occupational Safety and Health Program regulations affect all employers with one or more employees. Inspections are conducted at the facilities of those industries or firms that pose higher risks to worker safety and health, those employers from which the KYOSH Program has received worker complaints or referrals, or where a workplace fatality (or accident resulting in the hospitalization of three or more employees) has occurred.

### FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. PL 91-596 (Occupational Safety and Health Act of 1970, Section 18(c)(2)).

2. State compliance standards. These amendments incorporate federal regulations which clarify training requirements for operators of powered industrial trucks in public sector maritime operations.

3. Minimum or uniform standards contained in the federal mandate. The amendments adopt revisions, as published in the Federal Register, Volume 63, Number 230, December 1, 1998, pp. 66270-

66274, which revise the standards dealing with powered industrial truck operator training in public sector maritime operations, referring the user to 29 CFR 1910.178 (incorporated into Kentucky regulations by 803 KAR 2:313).

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? This proposed amended revision incorporates the federal regulation and updates the reference date of the Code of Federal Regulations.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. These revisions impose no stricter, additional or different responsibilities than federal standards.

#### FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? Yes

2. State whether this administrative regulation will affect the local government or only a part or division of the local government. These amendments affect local government entities engaged in public sector maritime operations.

3. State the aspect or service of local government to which this administrative regulation relates. The proposed regulations affect the safety and health of employees of local government engaged in public sector maritime operations.

4. How does this administrative regulation affect the local government or any service it provides? The purpose of these amendments is to comply with federal regulations relating to occupational safety and health. There will be no increase or decrease in local government revenues or significant expenditures. These proposed amendments will not affect the number of local government employees.

#### STATEMENT OF EMERGENCY 803 KAR 2:306E

This emergency administrative regulation updates the reference date of the Code of Federal Regulations to 1998, incorporates by reference a publication in the Federal Register, dated March 23, 1999, which removes paragraph (d) of 29 CFR 1910.94, dealing with open surface tanks, and amends the "Necessity, Function and Conformity" paragraph to meet KRS Chapter 13A considerations. It is necessary to promulgate this emergency administrative regulation to comply with federal mandate, 29 CFR 1953.23, which requires implementation of the federal standard, or one (1) more stringent, within six (6) months of the date of promulgation of the new federal standard, and to keep the state program as effective as the federal program. This emergency administrative regulation shall be replaced by an ordinary administrative regulation. The "Notice of Intent to Promulgate Administrative Regulation" shall be filed with the Regulations Compiler, June 15, 1999.

PAUL E. PATTON, Governor  
JOE NORSWORTHY, Chairman

#### LABOR CABINET Department of Workplace Standards Division of Occupational Safety and Health Compliance Division of Occupational Safety and Health Education and Training

**803 KAR 2:306E. Occupational health and environmental control.**

RELATES TO: KRS 338.051(3), 338.061, 29 CFR 1910  
STATUTORY AUTHORITY: KRS 338.051(3), 338.061, 29 CFR 1910

EFFECTIVE: June 15, 1999

NECESSITY, FUNCTION, AND CONFORMITY: KRS 338.051 and 338.061 authorize the Kentucky Occupational Safety and Health

Standards Board to adopt and promulgate occupational safety and health administrative regulations. KRS 338.061(2) provides that the board may incorporate by reference established federal standards and national consensus standards. The following administrative regulation contains those standards to be enforced by the Division of Occupational Safety and Health Compliance in the area of general industry.

Section 1. Definitions. (1) "Act" means KRS Chapter 338.

(2) "Assistant Secretary of Labor" means the Secretary of Labor, Commonwealth of Kentucky.

(3) "Employee" means any person employed except those employees excluded in KRS 338.021.

(4) "Employer" means any entity for whom a person is employed except those employers excluded in KRS 338.021.

(5) "Established federal standard" means any operative occupational safety and health standard established by any agency of the United States Government.

(6) "National consensus standard" means any occupational safety and health standard or modification thereof which has been adopted and promulgated by a nationally recognized standards-producing organization.

(7) "Standard" means a standard which requires conditions or the adoption or use of one (1) or more practices, means, methods, operations, or processes, reasonably necessary or appropriate to provide safe and healthful employment. "Standard" has the same meaning as and includes the words "regulation" and "rule".

(8) "U.S. Department of Labor" means Kentucky Labor Cabinet, U.S. 127 South, Frankfort, Kentucky 40601, or the U.S. Department of Labor.

Section 2. Occupational Noise Exposure. (1) The language relating to audiometric test requirements for occupational noise exposure in subsection (2) of this section shall apply in lieu of 29 CFR 1910.95(h)(1).

(2) 29 CFR 1910.95(h)(1) is amended to read: Audiometric tests shall be pure tone, air conduction, hearing threshold examinations with test frequencies including as a minimum 500, 1,000, 2,000, 3,000, 4,000, and 6,000 Hz. Testing at 8,000 Hz must be included in the audiometric tests for employers using audiometers with that capacity and all audiometric tests must include 8,000 Hz after January 15, 1985.

(3) The language relating to audiometric test requirements for occupational noise exposure in subsection (4) of this section shall apply in lieu of 29 CFR 1910.95(h)(4).

(4) 29 CFR 1910.95(h)(4) is amended to read: Audiometric examinations shall be administered in a room meeting the requirements listed in Appendix D: Audiometric Test Rooms. When an audiometric test room is located in a mobile test van, background sound pressure level measurements shall be taken at each testing location.

(5) The language relating to audiometric test requirements for occupational noise exposure in subsection (6) of this section shall apply in lieu of 29 CFR 1910.95(h)(5)(ii).

(6) 29 CFR 1910.95(h)(5)(ii) shall read: Audiometer calibration shall be checked acoustically at least annually in accordance with Appendix E: Acoustic Calibration of Audiometers. Test frequencies below 500 Hz and above 8,000 Hz (6,000 Hz until January 15, 1985 for audiometers without 8,000 Hz capability) may be omitted from this check. Deviations of fifteen (15) decibels or greater require an exhaustive calibration.

(7) The language relating to audiometric test requirements for occupational noise exposure in subsection (8) of this section shall apply in lieu of 29 CFR 1910.95(h)(5)(iii).

(8) 29 CFR 1910.95(h)(5)(iii) is amended to read: An exhaustive calibration shall be performed at least every two (2) years in accordance with sections 4.1.2; 4.1.3; 4.1.4.3; 4.2; 4.4.1; 4.4.2; 4.4.3; and 4.5 of the American National Standard Specification for Audiometers, S3.6-1969. Test frequencies below 500 Hz and above 8,000 Hz (6,000 Hz until January 15, 1985 for audiometers without 8,000 Hz capability) may be omitted from this calibration.

(9) The language relating to access to information and training materials requirements for occupational noise exposure in subsection (10) of this section shall apply in lieu of 29 CFR 1910.95(l)(1).

(10) 29 CFR 1910.95(l)(1) is amended to read: The employer shall

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make available to affected employees or their representatives copies of this standard and shall also post a notice of the availability of this standard in the workplace.

(11) The language relating to exemptions to the regulation for occupational noise exposure requirements in subsection (12) of this section shall apply in lieu of 29 CFR 1910.95(o).

(12) 29 CFR 1910.95(o) is amended to read: Paragraphs (c) through (n) of this section shall not apply to employers engaged in oil and gas well drilling and servicing operations, agriculture, or construction.

(13) The language relating to acoustical calibration of audiometers for occupational noise exposure in subsection (14) of this section shall apply in lieu of 29 CFR 1910.95 Appendix E.

(14) 29 CFR 1910.95 Appendix E shall read: Acoustic Calibration of Audiometers.

This Appendix is Mandatory.

Audiometer calibration shall be checked acoustically, at least annually, according to the procedures described in this Appendix. The equipment necessary to perform these measurements is a sound level meter, octave-band filter set, and a National Bureau of Standards 9A coupler. In making these measurements, the accuracy of the calibrating equipment shall be sufficient to determine that the audiometer is within the tolerances permitted by American Standard Specification for Audiometers, S3.6-1969.

(a) Sound pressure output check.

1. Place the earphone coupler over the microphone of the sound level meter and place the earphone on the coupler.

2. Set the audiometer's hearing threshold level (HTL) dial to seventy (70) dB.

3. Measure the sound pressure level of the tones that each test frequency from 500 Hz through 8,000 Hz (6,000 Hz until January 15, 1985 for audiometers without 8,000 Hz capability) for each earphone.

4. At each frequency the readout on the sound level meter should correspond to the levels in Table E-1 or Table E-2, as appropriate, for the type of earphone, in the column entitled "sound level meter reading".

(b) Linearity check.

1. With the earphone in place, set the frequency to 1,000 Hz and the HTL dial on the audiometer to seventy (70) dB.

2. Measure the sound levels in the coupler at each ten (10) dB decrement from seventy (70) dB to ten (10) dB, noting the sound level meter reading at each setting.

3. For each ten (10) dB decrement on the audiometer the sound level meter should indicate a corresponding ten (10) dB decrease.

4. This measurement may be made electrically with a voltmeter connected to the earphone terminals.

(c) Tolerances. When any of the measured sound levels deviate from the levels in Table E-1 or Table E-2 plus or minus three (3) dB at any test frequency between 500 and 3,000 Hz, four (4) dB at 4,000 Hz, or five (5) dB at 6,000 Hz and 8,000 Hz, an exhaustive calibration is advised. An exhaustive calibration is required if the deviations are greater than ten (10) dB at any test frequency.

TABLE E-1 - REFERENCE THRESHOLD LEVELS FOR TELEPHONICS-TDH-39 EARPHONES

Frequency, Hz	Reference threshold level for TDH-39 earphones, dB	Sound level meter level meter reading dB
500	11.5	81.5
1000	7.07	7.0
2000	9.07	9.0
3000	10.0	80.0
4000	9.57	9.5
6000	15.5	85.5
8000	13.0	83.0

TABLE E-2 - REFERENCE THRESHOLD LEVELS FOR TELEPHONICS-TDH-49 EARPHONES

Frequency, Hz	Reference threshold level for TDH-49 earphones, dB	Sound level meter level meter reading dB
500	13.5	83.5

1000	7.5	77.5
2000	11.0	81.0
3000	9.5	79.5
4000	10.5	80.5
6000	13.5	83.5
8000	13.0	83.0

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

(a) The material in paragraphs 1 through 7 of this subsection, published by the Office of the Federal Register, National Archives and Records Services, General Services Administration, revised as of July 1, 1998 [1997], is incorporated by reference:

1. 29 CFR 1910.94 through 1910.95(g)(10)(ii);
2. 29 CFR 1910.95(h)(2) through 29 CFR 1910.95(h)(3);
3. 29 CFR 1910.95(h)(5)(i) through 29 CFR 1910.95(h)(5)(ii);
4. 29 CFR 1910.95(i)(1) through 29 CFR 1910.95(k)(2)(iii);
5. 29 CFR 1910.95(l)(2) through 29 CFR 1910.95(n)(2);
6. 29 CFR 1910.95(q) through 29 CFR 1910.95 Appendix D;
7. 29 CFR 1910.95 Appendix F through 29 CFR 1910.100.

(b) The revisions to 29 CFR 1910.94, "Ventilation", as published in the Federal Register, Volume 64, Number 55, March 23, 1999 [63, Number 5, January 8, 1998], are incorporated by reference.

(2) The language relating to audiometric testing in Section 2(2) of this administrative regulation shall apply in lieu of 29 CFR 1910.95(h)(1).

(3) The language relating to audiometric testing in Section 2(4) of this administrative regulation shall apply in lieu of 29 CFR 1910.95(h)(4).

(4) The language relating to audiometric testing in Section 2(6) of this administrative regulation shall apply in lieu of 29 CFR 1910.95(h)(5)(ii).

(5) The language relating to audiometric testing in Section 2(8) of this administrative regulation shall apply in lieu of 29 CFR 1910.95(h)(5)(iii);

(6) The language relating to access to information and training materials requirements for occupational noise exposure in subsection (10) of this section shall apply in lieu of 29 CFR 1910.95(l)(1);

(7) 29 CFR 1910.95(o) is amended to read: Paragraphs (c) through (n) of this section shall not apply to employers engaged in oil and gas well drilling and servicing operations, agriculture, or construction.

(8) The language relating to acoustical calibration of audiometers for occupational noise exposure in subsection (14) of this section shall apply in lieu of 29 CFR 1910.95 Appendix E;

(9) This material may be inspected, obtained, and copied at: Kentucky Labor Cabinet, Division of Education and Training, U.S. 127 South, Frankfort, Kentucky 40601. Office hours are 8 a.m. - 4:30 p.m. (ET), Monday through Friday.

JOE NORSWORTHY, Chairman

KEMBRA SEXTON TAYLOR, Attorney

APPROVED BY AGENCY: June 3, 1999

FILED WITH LRC: June 15, 1999 at 9 a.m.

## REGULATORY IMPACT ANALYSIS

Agency Contact: Kembra S. Taylor, T. P. Chancellor

(1) Type and number of entities affected: The amendments to this regulation affect all employers in general industry within the jurisdiction of the Kentucky Occupational Safety and Health Program.

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

(a) Cost of living and employment in the geographic area in which the administrative regulation will be implemented: There will be no effect on the cost of living and employment by implementation of these changes.

(b) Cost of doing business in the geographic area in which the administrative regulation will be implemented: There are no costs or savings resulting from the promulgation of these proposed amendments, as these changes update the reference to the Code of Federal Regulations, amend the "Necessity, Function and Conformity" paragraph to meet KRS Chapter 13A considerations, and incorpo-

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rate by reference a publication in the Federal Register, dated March 23, 1999, which removes paragraph (d) of 29 CFR 1910.94, dealing with open surface tanks.

(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 factors regarding these revisions will increase or decrease costs. There will be no effect on competition. These amendments will not entail any reporting or additional paperwork requirements.

2. Second and subsequent years: See above.

(3) Effects on the promulgating administrative body: The promulgating body will not be affected by the promulgation of these revisions.

(a) Direct and indirect costs or savings:

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements: There will be no reporting or paperwork requirements as a result of these changes.

(4) Assessment of anticipated effect on state and local revenues: These revisions will have no anticipated effect on state and local revenues.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Current state and federal funding.

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

(a) Geographic area in which administrative regulation will be implemented: Undetermined; no public comments were received.

(b) Kentucky: Undetermined; no public comments were received.

(7) Assessment of alternative methods; reasons why alternative were rejected: Alternative methods were not considered as these changes update, in Section 3(1)(a), the reference to the Code of Federal Regulations, and in Section 3(1)(b) incorporate, by reference, a publication in the Federal Register, dated March 23, 1999, which removes paragraph (d) of 29 CFR 1910.94, dealing with open surface tanks.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographic area in which implemented and on Kentucky: These proposed amendments will enhance worker safety throughout Kentucky.

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

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

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: There is no conflicting, overlapping, or duplication as a result of adoption of these proposed amendments.

(a) Necessity of proposed regulation if in conflict:

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

(10) Any additional information or comments:

(11) TIERING: Was tiering applied? No. Kentucky's Occupational Safety and Health Program regulations affect all employers with one or more employees. Inspections are conducted at the facilities of those industries or firms that pose higher risks to worker safety and health, those employers from which the KYOSH Program has received worker complaints or referrals, or where a workplace fatality (or accident resulting in the hospitalization of three or more employees) has occurred.

### FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. PL 91-596 (Occupational Safety and Health Act of 1970, Section 18(c)(2)).

2. State compliance standards. These changes update, in Section 3(1)(a), the reference to the Code of Federal Regulations, and in Section 3(1)(b) incorporate, by reference, a publication in the

Federal Register, dated March 23, 1999, which removes paragraph (d) of 29 CFR 1910.94, dealing with open surface tanks.

3. Minimum or uniform standards contained in the federal mandate. These changes incorporate, by reference, a Federal Register publication, Volume 64 Number 55, dated March 23, 1999, pp. 13908-13912, which updates removes paragraph (d) of 29 CFR 1910.94, dealing with open surface tanks.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? This proposed amended revision incorporates the federal regulation.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. These revisions impose no stricter, additional or different responsibilities than federal standards.

### FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? Yes

2. State whether this administrative regulation will affect the local government or only a part or division of the local government. The amendment affect all local government entities with employees who are exposed to the hazards of open surface tanks.

3. State the aspect or service of local government to which this administrative regulation relates. This change affects only those aspects or services of local government where the employees are exposed to the hazards of open surface tanks.

4. How does this administrative regulation affect the local government or any service it provides? The purpose of these amendments is to comply with federal regulations relating to occupational safety and health. There will be no increase or decrease in local government revenues or significant expenditures. These proposed amendments will not affect the number of local government employees.

### STATEMENT OF EMERGENCY 803 KAR 2:307E

This emergency administrative regulation updates the reference date of the Code of Federal Regulations to 1998, incorporates, by reference, a publication in the Federal Register, dated March 23, 1999, which adds 29 CFR 1910.121-126, dealing with dipping and coating operations, to the requirements, and amends the "Necessity, Function and Conformity" paragraph to meet KRS Chapter 13A considerations. It is necessary to promulgate this emergency administrative regulation to comply with federal mandate, 29 CFR 1953.23, which requires implementation of the federal standard, or one (1) more stringent, within six (6) months of the date of promulgation of the new federal standard, and to keep the state program as effective as the federal program. This emergency administrative regulation shall be replaced by an ordinary administrative regulation. The "Notice of Intent to Promulgate Administrative Regulation" shall be filed with the Regulations Compiler, June 15, 1999.

PAUL E. PATTON, Governor  
JOE NORSWORTHY, Chairman

**LABOR CABINET**  
**Department of Workplace Standards**  
**Division of Occupational Safety and Health Compliance**  
**Division of Occupational Safety and**  
**Health Education and Training**

**803 KAR 2:307E. Hazardous materials.**

RELATES TO: KRS 338.051(3), 338.061, 29 CFR 1910

STATUTORY AUTHORITY: KRS 338.051(3), 338.061, 29 CFR 1910

EFFECTIVE: June 15, 1999

NECESSITY, FUNCTION, AND CONFORMITY: KRS 338.051

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and 338.061 authorize the Kentucky Occupational Safety and Health Standards Board to adopt and promulgate occupational safety and health administrative regulations. KRS 338.061(2) provides that the board may incorporate by reference established federal standards and national consensus standards [is also given to the board]. The following administrative regulation contains those standards to be enforced by the Division of Occupational Safety and Health Compliance in the area of general industry.

Section 1. Definitions Applicable to this Part. (1) "Act" means KRS Chapter 338.

(2) "Assistant Secretary of Labor" means the Secretary of Labor, Commonwealth of Kentucky.

(3) "Employee" means any person employed except those employees excluded in KRS 338.021.

(4) "Employer" means any entity for whom a person is employed except those employers excluded in KRS 338.021.

(5) "Established federal standard" means any operative occupational safety and health standard established by any agency of the United States Government.

(6) "National consensus standard" means any occupational safety and health standard or modification thereof which has been adopted and promulgated by a nationally recognized standards-producing organization.

(7) "Standard" means a standard which requires conditions or the adoption or use of one (1) or more practices, means, methods, operations, or processes, reasonably necessary or appropriate to provide safe and healthful employment. "Standard" has the same meaning as and includes the words "regulation" and "rule".

(8) "U.S. Department of Labor" means Kentucky Labor Cabinet, U.S. 127 South, Frankfort, Kentucky 40601, or the U.S. Department of Labor.

Section 2. Automotive Service Station (Service Station). (1) The language relating to automotive service stations (service stations) in subsection (2) of this section shall apply in lieu of 29 CFR 1910.106(a)(3).

(2) 29 CFR 1910.106(a)(3) is amended to read: The term automotive service station, or service stations, shall mean that portion of property where flammable or combustible liquids used as motor fuel are stored and dispensed from fixed equipment and into the fuel tanks of motor vehicles and shall include any facilities available for the sale and servicing of tires, batteries, accessories and for minor automotive maintenance work and shall also include private stations not accessible or open to the public such as those used by commercial, industrial or governmental establishments. This section shall not apply to agriculture.

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

(a) The material in subparagraphs 1 through 2 of this paragraph, published by the Office of the Federal Register, National Archives and Records Services, General Services Administration, revised as of July 1, 1998 [1997], is incorporated by reference:

1. 29 CFR 1910.101 through 1910.106(a)(2);

2. 29 CFR 1910.106(a)(4) through 29 CFR 1910.120.

(b) The removal of 29 CFR 1910.108, "Dip Tanks Containing Flammable or Combustible Liquids", as published in the Federal Register, Volume 64, Number 55, March 23, 1999, is incorporated by reference.

(c) The additions of 29 CFR 1910.121-126, dealing with dipping and coating operations, as published in the Federal Register, Volume 64, Number 55, March 23, 1999, are incorporated by reference. [The revisions to 29 CFR 1910.109, "Explosives and Blasting Agents", as published in the Federal Register, Volume 63, Number 117, June 18, 1998, are incorporated by reference]

(e) The revisions to 29 CFR 1910.110, "Storage and Handling of Liquefied Petroleum Gases", as published in the Federal Register, Volume 63, Number 117, June 18, 1998, are incorporated by reference

(d) The revisions to 29 CFR 1910.111, "Storage and Handling of Anhydrous Ammonia", as published in the Federal Register, Volume 63, Number 5, January 8, 1998, are incorporated by reference.

(e) The revisions to 29 CFR 1910.111, "Storage and Handling of Anhydrous Ammonia", as published in the Federal Register, Volume 63, Number 117, June 18, 1998, are incorporated by reference.]

(2) The language relating to automotive service stations (service stations) in Section 2(2) of this administrative regulation shall apply in lieu of 29 CFR 1910.106(a)(3).

(3) This material may be inspected, obtained, and copied at: Kentucky Labor Cabinet, Division of Education and Training, U.S. 127 South, Frankfort, Kentucky 40601. Office hours are 8 a.m. - 4:30 p.m. (ET), Monday through Friday.

JOE NORSWORTHY, Chairman

KEMBRA SEXTON TAYLOR, Attorney

APPROVED BY AGENCY: June 3, 1999

FILED WITH LRC: June 15, 1999 at 9 a.m.

### REGULATORY IMPACT ANALYSIS

Agency Contact: Kembra S. Taylor, T. P. Chancellor

(1) Type and number of entities affected: The amendments to this regulation affect all employers in general industry within the jurisdiction of the Kentucky Occupational Safety and Health Program.

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

(a) Cost of living and employment in the geographic area in which the administrative regulation will be implemented: There will be no affect on the cost of living and employment by implementation of these changes.

(b) Cost of doing business in the geographic area in which the administrative regulation will be implemented: There are no costs or savings resulting from the promulgation of these proposed amendments, as these changes update the reference to the Code of Federal Regulations, amend the "Necessity, Function and Conformity" paragraph to meet KRS Chapter 13A considerations, and incorporate, by reference, a publication in the Federal Register, dated March 23, 1999, which adds 29 CFR 1910.121-126, dealing with dipping and coating operations. These requirements rewrite the former standards in plain language, consolidate the former requirements in sequential sections, and update the former standards to increase the compliance options available to employers. The regulatory burden of employers has not been increased nor has employee protection been reduced.

(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 factors regarding these revisions will increase or decrease costs. There will be no affect on competition. These amendments will not entail any reporting or additional paperwork requirements.

2. Second and subsequent years: See above.

(3) Effects on the promulgating administrative body: The promulgating body will not be affected by the promulgation of these revisions.

(a) Direct and indirect costs or savings:

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements: There will be no reporting or paperwork requirements as a result of these changes.

(4) Assessment of anticipated effect on state and local revenues: These revisions will have no anticipated effect on state and local revenues.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Current state and federal funding.

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

(a) Geographic area in which administrative regulation will be implemented: Undetermined; no public comments were received.

(b) Kentucky: Undetermined; no public comments were received.

(7) Assessment of alternative methods; reasons why alternative

were rejected: Alternative methods were not considered as these changes update, in Section 3(1)(a), the reference to the Code of Federal Regulations, and in Section 3(1)(b) incorporate, by reference, a publication in the Federal Register, dated March 23, 1999, which removes paragraph (d) of 29 CFR 1910.94, dealing with open surface tanks.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographic area in which implemented and on Kentucky: These proposed amendments will enhance worker safety throughout Kentucky.

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

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

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: There is no conflicting, overlapping, or duplication as a result of adoption of these proposed amendments.

(a) Necessity of proposed regulation if in conflict:

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

(10) Any additional information or comments:

(11) TIERING: Was tiering applied? No. Kentucky's Occupational Safety and Health Program regulations affect all employers with one or more employees. Inspections are conducted at the facilities of those industries or firms that pose higher risks to worker safety and health, those employers from which the KYOSH Program has received worker complaints or referrals, or where a workplace fatality (or accident resulting in the hospitalization of three or more employees) has occurred.

#### FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. PL 91-596 (Occupational Safety and Health Act of 1970, Section 18(c)(2)).

2. State compliance standards. These changes update the reference date of the Code of Federal Regulations to 1998, amend the "Necessity, Function and Conformity" paragraph to meet KRS Chapter 13A considerations, and incorporate, by reference, a publication in the Federal Register, dated March 23, 1999, which adds 29 CFR 1910.121-126, dealing with dipping and coating operations. These requirements rewrite the former standards in plain language, consolidate the former requirements in sequential sections, and update the former standards to increase the compliance options available to employers. The regulatory burden of employers has not been increased nor has employee protection been reduced.

3. Minimum or uniform standards contained in the federal mandate. These changes incorporate, by reference, a Federal Register publication, Volume 64 Number 55, dated March 23, 1999, pp. 13908-13912.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? This proposed amended revision incorporates the federal regulation.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. These revisions impose no stricter, additional or different responsibilities than federal standards.

#### FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? Yes

2. State whether this administrative regulation will affect the local government or only a part or division of the local government. The amendment affect all local government entities with employees who are exposed to the hazards of dipping and coating operations.

3. State the aspect or service of local government to which this administrative regulation relates. This change affects only those aspects or services of local government where the employees are exposed to the hazards of dipping and coating operations.

4. How does this administrative regulation affect the local government or any service it provides? The purpose of these amendments is to comply with federal regulations relating to occupational safety and health. There will be no increase or decrease in local government revenues or significant expenditures. These proposed amendments will not affect the number of local government employees.

#### STATEMENT OF EMERGENCY 803 KAR 2:309E

This emergency administrative regulation incorporates, by reference, a Federal Register publication, Volume 63, Number 230, dated December 1, 1998, pp. 66038-66040, which revises the confined space entry standard to provide that the affected employees, or their authorized representatives, have more participation in the confined space entry program, allowing them to observe any testing or monitoring of the permit space, and also strengthens and clarifies the criteria employers must satisfy when preparing for the timely rescue of space entrants, updates the reference to the Code of Federal Regulations to 1998, and amends the "Necessity, Function and Conformity" paragraph to meet KRS Chapter 13A considerations. It also restores a requirement mistakenly removed in a previous amendment. It is necessary to promulgate this emergency administrative regulation to comply with federal mandate, 29 CFR 1953.23, which requires implementation of the federal standard, or one (1) more stringent, within six (6) months of the date of promulgation of the new federal standard, and to keep the state program as effective as the federal program. This emergency administrative regulation shall be replaced by an ordinary administrative regulation. The "Notice of Intent to Promulgate Administrative Regulation" shall be filed with the Regulations Compiler, June 15, 1999.

PAUL E. PATTON, Governor  
JOE NORSWORTHY, Chairman

#### LABOR CABINET Department of Workplace Standards Division of Occupational Safety and Health Compliance Division of Occupational Safety and Health Education and Training

#### 803 KAR 2:309E. General environmental controls.

RELATES TO: KRS 338.051(3), 338.061, 29 CFR 1910

STATUTORY AUTHORITY: KRS 338.051(3), 338.061, 29 CFR 1910

EFFECTIVE: June 15, 1999

NECESSITY, FUNCTION, AND CONFORMITY: KRS 338.051 and 338.061 authorize the Kentucky Occupational Safety and Health Standards Board to adopt and promulgate occupational safety and health administrative regulations. KRS 338.061(2) provides that the board may incorporate by reference established federal standards and national consensus standards [is also given to the board]. The following administrative regulation contains those standards to be enforced by the Division of Occupational Safety and Health Compliance in the area of general industry.

Section 1. Definitions Applicable to this Part. (1) "Act" means KRS Chapter 338.

(2) "Assistant Secretary of Labor" means the Secretary of Labor, Commonwealth of Kentucky.

(3) "Employee" means any person employed except those employees excluded in KRS 338.021.

(4) "Employer" means any entity for whom a person is employed except those employers excluded in KRS 338.021.

(5) "Established federal standard" means any operative occupational safety and health standard established by any agency of the United States Government.

(6) "National consensus standard" means any occupational safety and health standard or modification thereof which has been adopted and promulgated by a nationally recognized standards-producing

organization.

(7) "Standard" means a standard which requires conditions or the adoption or use of one (1) or more practices, means, methods, operations, or processes, reasonably necessary or appropriate to provide safe and healthful employment. "Standard" has the same meaning as and includes the words "regulation" and "rule".

(8) "U.S. Department of Labor" means the Kentucky Labor Cabinet or U.S. Department of Labor.

Section 2. Construction of Water Closets. (1) The language relating to construction of water closets in subsection (2) of this section shall apply in lieu of 29 CFR 1910.141(c)(2)(I).

(2) 29 CFR 1910.141(c)(2)(I) is amended to read: Each water closet shall occupy a separate compartment with walls or partitions between fixtures sufficiently high to assure privacy.

Section 3. Lockout. (1) The language relating to utilization of lockout procedures in subsection (2) of this section shall apply in lieu of 29 CFR 1910.147(c)(2)(ii).

(2) 29 CFR 1910.147(c)(2)(ii) is amended to read: If an energy isolating device is capable of being locked out, the employer's energy control program under paragraph (c) 1 of this subsection shall utilize lockout.

(3) The language relating to tag location in subsection (4) of this section shall apply in lieu of 29 CFR 1910.147(c)(3).

(4) 29 CFR 1910.147(c)(3)(i) is amended to read: Full employee protection. When a tagout device is used on an energy isolating device which is incapable of being locked out, the tagout device shall be attached at the same location that the lockout device would have been attached, and the employer shall demonstrate that the tagout program will provide a level of safety equivalent to that obtained by using a lockout program. Where tagout devices are used with energy isolating devices designed with the incapability of being locked, the tag attachment will be fastened at the same point at which the lock would have been attached.

Section 4. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) The material in subparagraphs 1 through 4 of this paragraph, published by the Office of the Federal Register, National Archives and Records Services, General Services Administration, revised as of July 1, 1998 [1997], is incorporated by reference:

1. 29 CFR 1910.141 through 1910.141(c)(1)(iii);
2. 29 CFR 1910.141(d)(1) through 29 CFR 1910.147(c)(2)(I);
3. 29 CFR 1910.147(c)(2)(iii);
4. 29 CFR 1910.147(c)(3)(ii) through 29 CFR 1910.150.

(b) The revisions to 29 CFR 1910.146, "Permit-required Confined Spaces", as published in the Federal Register, Volume 63, Number 230, December 1, 1998, are incorporated by reference.

(2) The language relating to the construction of water closets in Section 2(2) of this administrative regulation shall apply in lieu of 29 CFR 1910.141(c)(2)(I).

(3) [1910.41, "Sanitation", as published in the Federal Register, Volume 63, Number 117, June 18, 1998, are incorporated by reference.

(c) The revisions to 29 CFR 1910.142, "Temporary Labor Camps", as published in the Federal Register, Volume 63, Number 117, June 18, 1998, are incorporated by reference.

(d) The language relating to utilization of lockout procedures in Section 3(2) of this administrative regulation shall apply in lieu of 29 CFR 1910.147(c)(2)(ii).

(4) [(e)] The language relating to tag location in Section 3(4) of this administrative regulation shall apply in lieu of 29 CFR 1910.147(c)(3)(I).

(5) [(2)] This material may be inspected, obtained, and copied at: Kentucky Labor Cabinet, Division of Education and Training, U.S. 127 South, Frankfort, Kentucky 40601. Office hours are 8 a.m. - 4:30 p.m. (ET), Monday through Friday.

JOE NORSWORTHY, Chairman

KEMBRA SEXTON TAYLOR, Attorney

APPROVED BY AGENCY: June 3, 1999

FILED WITH LRC: June 15, 1999 at 9 a.m.

## REGULATORY IMPACT ANALYSIS

Agency Contact: Kembra S. Taylor, W. L. Ralston

(1) Type and number of entities affected: The amendments to this regulation affect all employers in general industry within the jurisdiction of the Kentucky Occupational Safety and Health Program.

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

(a) Cost of living and employment in the geographic area in which the administrative regulation will be implemented: The cost of living and employment in the state should not be affected by the implementation of the amendments to this administrative regulation.

(b) Cost of doing business in the geographic area in which the administrative regulation will be implemented: The Occupational Safety and Health Administration (OSHA) estimates the annual costs of the average employer for increased employee involvement in the confined space program to be \$24, or a total of \$5,838,807 nationwide.

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

1. First year following implementation: There are no additional factors regarding these revisions will increase or decrease costs. There will be no effect on competition. These amendments will not entail any reporting or additional paperwork requirements.

2. Second and subsequent years: See above.

(3) Effects on the promulgating administrative body: The promulgating body will not be affected by the adoption of these revisions.

(a) Direct and indirect costs or savings:

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements: There will be no reporting or paperwork requirements as a result of these changes for the promulgating body.

(4) Assessment of anticipated effect on state and local revenues: These revisions will have no anticipated effect on state and local revenues.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Current state and federal funding.

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

(a) Geographic area in which administrative regulation will be implemented: Undetermined; no public comments were received.

(b) Kentucky: Undetermined; no public comments were received.

(7) Assessment of alternative methods; reasons why alternative were rejected: Alternative methods were not considered as these proposed regulations incorporate, by reference, federal regulations published in the Federal Register, and update the reference to the current Code of Federal Regulations.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographic area in which implemented and on Kentucky: These proposed amendments will enhance worker safety throughout Kentucky.

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

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

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: There is no conflicting, overlapping, or duplication as a result of adoption of these proposed amendments.

(a) Necessity of proposed regulation if in conflict:

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

(10) Any additional information or comments:

(11) TIERING: Was tiering applied? No. Kentucky's Occupational Safety and Health Program regulations affect all employers with one or more employees. Inspections are conducted at the facilities of those industries or firms that pose higher risks to worker

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safety and health, those employers from which the KYOSH Program has received worker complaints or referrals, or where a workplace fatality (or accident resulting in the hospitalization of 3 or more employees) has occurred.

### FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. PL 91-596 (Occupational Safety and Health Act of 1970, Section 18(c)(2)).

2. State compliance standards. These amendments update the reference to the current Code of Federal Regulations to the 1998 Code, amend the "Necessity, Function and Conformity" paragraph to meet KRS Chapter 13A considerations, and incorporate revisions, as published in the Federal Register, December 1, 1998, which revise the confined space entry standard to provide that the affected employees, or their authorized representatives, have more participation in the confined space entry program, allowing them to observe any testing or monitoring of the permit space, and also strengthens and clarifies the criteria employers must satisfy when preparing for the timely rescue of space entrants.

3. Minimum or uniform standards contained in the federal mandate. The amendments adopt revisions to the previously adopted regulations, 29 CFR 1910.146, "Permit-required Confined Spaces," as published in the Federal Register, Volume 63, Number 230, December 1, 1998.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? This proposed amended revision incorporates the federal regulation.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. These revisions impose no stricter, additional or different responsibilities than federal standards.

### FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? Yes

2. State whether this administrative regulation will affect the local government or only a part or division of the local government. These amendments affect local government entities with employees that enter confined spaces.

3. State the aspect or service of local government to which this administrative regulation relates. The proposed changes relate to local governments that have employees who enter confined spaces.

4. How does this administrative regulation affect the local government or any service it provides? The purpose of these amendments is to comply with federal regulations relating to occupational safety and health. There will be no increase or decrease in local government revenues or significant expenditures. These proposed amendments will not affect the number of local government employees.

### STATEMENT OF EMERGENCY 803 KAR 2:313E

This emergency administrative regulation incorporates, by reference, a Federal Register publication, Volume 63, Number 230, dated December 1, 1998, pp. 66270-66274 which details and clarifies the requirements dealing with powered industrial truck operator training, updates the reference to the Code of Federal Regulations to the 1998 publication, and amends the "Necessity, Function and Conformity" paragraph to meet KRS Chapter 13A considerations. A correction to the publication published in the Federal Register April 27, 1999 is also incorporated. It is necessary to promulgate this emergency administrative regulation to comply with federal mandate, 29 CFR 1953.23, which requires implementation of the federal standard, or one (1) more stringent, within six (6) months of the date of promulgation of the new federal standard, and to keep the state program as effective as the federal program. This emergency ad-

ministrative regulation shall be replaced by an ordinary administrative regulation. The "Notice of Intent to Promulgate Administrative Regulation" shall be filed with the Regulations Compiler, June 15, 1999.

PAUL E. PATTON, Governor  
JOE NORSWORTHY, Chairman

### LABOR CABINET Department of Workplace Standards Division of Occupational Safety and Health Compliance Division of Occupational Safety and Health Education and Training

#### 803 KAR 2:313E. Materials handling and storage.

RELATES TO: KRS 338.051(3), 338.061, 29 CFR 1910

STATUTORY AUTHORITY: KRS 338.051(3), 338.061, 29 CFR 1910

EFFECTIVE: June 15, 1999

NECESSITY, FUNCTION, AND CONFORMITY: KRS 338.051 and 338.061 authorize the Kentucky Occupational Safety and Health Standards Board to adopt and promulgate occupational safety and health administrative regulations. KRS 338.061(2) provides that the board may incorporate by reference established federal standards and national consensus standards. The following administrative regulation contains those standards to be enforced by the Division of Occupational Safety and Health Compliance in the area of general industry.

Section 1. Definitions Applicable to this Part. (1) "Act" means KRS Chapter 338.

(2) "Assistant Secretary of Labor" means the Secretary of Labor, Commonwealth of Kentucky.

(3) "Employee" means any person employed except those employees excluded in KRS 338.021.

(4) "Employer" means any entity for whom a person is employed except those employers excluded in KRS 338.021.

(5) "Established federal standard" means any operative occupational safety and health standard established by any agency of the United States Government.

(6) "National consensus standard" means any occupational safety and health standard or modification thereof which has been adopted and promulgated by a nationally recognized standards-producing organization.

(7) "Standard" means a standard which requires conditions or the adoption or use of one (1) or more practices, means, methods, operations, or processes, reasonably necessary or appropriate to provide safe and healthful employment. "Standard" has the same meaning as and includes the words "regulation" and "rule".

(8) "U.S. Department of Labor" means the Kentucky Labor Cabinet or the U.S. Department of Labor.

Section 2. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) 29 CFR 1910.176-.190, Subpart N, "Materials Handling and Storage", revised as of July 1, 1998 [1997], published by the Office of the Federal Register, National Archives and Records Services, General Services Administration.

(b) The revision to 29 CFR 1910.178, "Powered Industrial Trucks", as published in the Federal Register, Volume 63, Number 230, December 1, 1998, is incorporated by reference.

(c) The revision to 29 CFR 1910.178, "Powered Industrial Trucks", as published in the Federal Register, Volume 64, Number 80, April 27, 1999, is incorporated. [1910.183, "Helicopters", as published in the Federal Register, Volume 63, Number 117, June 18, 1998, is incorporated by reference.]

(2) This material may be inspected, obtained, and copied at: Kentucky Labor Cabinet, Division of Education and Training, U.S. 127 South, Frankfort, Kentucky 40601. Office hours are 8 a.m. - 4:30 p.m. (ET), Monday through Friday.

JOE NORSWORTHY, Chairman  
KEMBRA SEXTON TAYLOR, Attorney

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APPROVED BY AGENCY: June 14, 1999  
FILED WITH LRC: June 15, 1999 at 9 a.m.

### REGULATORY IMPACT ANALYSIS

Agency Contact: Kembra S. Taylor, W. L. Ralston

(1) Type and number of entities affected: The amendment to this regulation affects all employers in general industry within the jurisdiction of the Kentucky Occupational Safety and Health Program.

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

(a) Cost of living and employment in the geographic area in which the administrative regulation will be implemented: The cost of living and employment in the state will not be affected by implementation of the amendments to this administrative regulation.

(b) Cost of doing business in the geographic area in which the administrative regulation will be implemented: The changes updating the reference to the Code of Federal Regulations and amending the "Necessity, Function and Conformity" paragraph to meet KRS Chapter 13A considerations will entail no additional costs or savings. The Occupational Safety and Health Administration (OSHA) estimates the average annualized cost to each employer affected by the change clarifying the acceptable training operators of powered industrial trucks, incorporated in the Federal Register notice of December 1, 1998, (pp. 66270-66274), to be 0.0001 percent of sales which will likely be offset by the savings to the average employer due to reduced worker compensation costs and reduced property damage. A correction to the publication published in the Federal Register April 27, 1999 is also incorporated.

(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 factors regarding these revisions will increase or decrease costs. There will be no effect on competition.

2. Reporting and paperwork requirements: The employer will be required to certify that each operator of a powered industrial truck has been properly trained to safely operate the vehicle and keep the certification records on file.

3. Second and subsequent years: See (a) above.

(3) Effects on the promulgating administrative body: The promulgating body will not be affected by the adoption of these revisions.

(a) Direct and indirect costs or savings:

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements: There will be no reporting or paperwork requirements as a result of these changes.

(4) Assessment of anticipated effect on state and local revenues: These revisions will have no anticipated effect on state and local revenues.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Current state and federal funding.

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

(a) Geographic area in which administrative regulation will be implemented: Undetermined; no public comments were received.

(b) Kentucky: Undetermined; no public comments were received.

(7) Assessment of alternative methods; reasons why alternative were rejected: Alternative methods were not considered. This regulation incorporates, by reference, a Federal Register publication, Volume 63, Number 230, dated December 1, 1998, pp. 66270-66274 which details and clarifies the requirements dealing with powered industrial truck operator training, updates the reference to the Code of Federal Regulations to the 1998 publication, and amends the "Necessity, Function and Conformity" paragraph to meet KRS Chapter 13A considerations. A correction to the publication published in the Federal Register April 27, 1999 is also incorporated.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of

the geographic area in which implemented and on Kentucky: This proposed amendment will enhance worker safety throughout Kentucky.

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

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

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: There is no conflicting, overlapping, or duplication as a result of adoption of this proposed amendment.

(a) Necessity of proposed regulation if in conflict:

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

(10) Any additional information or comments:

(11) TIERING: Was tiering applied? No. Kentucky's Occupational Safety and Health Program regulations affect all employers with one or more employees. Inspections are conducted at the facilities of those industries or firms that pose higher risks to worker safety and health, those employers from which the KYOSH Program has received worker complaints or referrals, or where a workplace fatality (or accident resulting in the hospitalization of three or more employees) has occurred.

### FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. PL 91-596 (Occupational Safety and Health Act of 1970, Section 18(c)(2)).

2. State compliance standards. This regulation incorporates, by reference, a Federal Register publication, Volume 63, Number 230, dated December 1, 1998, pp. 66270-66274, which details and clarifies the requirements dealing with powered industrial truck operator training, updates the reference to the Code of Federal Regulations to the 1998 publication, and amends the "Necessity, Function and Conformity" paragraph to meet KRS Chapter 13A considerations. A correction to the publication published in the Federal Register April 27, 1999 is also incorporated.

3. Minimum or uniform standards contained in the federal mandate. The amendment adopts a revision to the previously adopted regulation, 29 CFR 1910.178 "Powered Industrial Trucks," as published in the Federal Register, Volume 63, Number 230, December 1, 1998.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? This proposed amended revision incorporates the federal regulation.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. This revision imposes no stricter, additional or different responsibilities than federal standards.

### FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? Yes

2. State whether this administrative regulation will affect the local government or only a part or division of the local government. This amendment affects local government entities that use powered industrial trucks.

3. State the aspect or service of local government to which this administrative regulation relates. The proposed regulation affects the safety and health of employees of local government who use powered industrial trucks.

4. How does this administrative regulation affect the local government or any service it provides? The purpose of this amendment is to comply with federal regulations relating to occupational safety and health. There will be no increase or decrease in local government revenues or significant expenditures. This proposed amendment will not affect the number of local government employees.

**STATEMENT OF EMERGENCY**  
**803 KAR 2:414E**

This emergency administrative regulation incorporates, by reference, a Federal Register publication, dated December 1, 1998, which revises the standards dealing with powered industrial truck operator training in the construction industry, referring the user to 29 CFR 1910.178 (incorporated into Kentucky regulations by 803 KAR 2:313), updates the reference to the Code of Federal Regulations, and amends the "Necessity, Function and Conformity" paragraph to meet KRS Chapter 13A considerations. It is necessary to promulgate this emergency administrative regulation to comply with federal mandate, 29 CFR 1953.23, which requires implementation of the federal standard, or one (1) more stringent, within six (6) months of the date of promulgation of the new federal standard, and to keep the state program as effective as the federal program. This emergency administrative regulation shall be replaced by an ordinary administrative regulation. The "Notice of Intent to Promulgate Administrative Regulation" shall be filed with the Regulations Compiler, June 15, 1999.

PAUL E. PATTON, Governor  
JOE NORSWORTHY, Chairman

**LABOR CABINET**  
**Department of Workplace Standards**  
**Division of Occupational Safety and Health Compliance**  
**Division of Occupational Safety and**  
**Health Education and Training**

**803 KAR 2:414E. Motor vehicles, mechanized equipment, and marine operations. [Adoption of 29 CFR Part 1926.600-.606.]**

RELATES TO: KRS 338.051, 338.061, 29 CFR 1926 [Chapter 338]

STATUTORY AUTHORITY: KRS 338.051(3), 338.061, 29 CFR 1926 [Chapter 13A]

EFFECTIVE: June 15, 1999

NECESSITY, FUNCTION, AND CONFORMITY: KRS 338.051(3) authorizes [and 338.061 authorize] the Kentucky Occupational Safety and Health Standards Board to adopt and promulgate occupational safety and health [rules:] administrative regulations[, and standards]. KRS 338.061(2) provides that the board may [Express authority to] incorporate by reference established federal standards and national consensus standards [is also given to the board]. The following administrative regulation contains those standards to be enforced by the Division of Occupational Safety and Health Compliance in the area of construction. [The standards are arranged in numerical order in order to facilitate reference to 29 CFR 1926.]

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

(a) Chapter 29, Part 1926.600-.606 of the Code of Federal Regulations, revised as of July 1, 1998, published by the Office of the Federal Register, National Archives and Records Services, General Services Administration;

(b) The revision to 29 CFR 1926.602 "Material Handling Equipment", as published in the Federal Register, Volume 63, Number 230, December 1, 1998, is incorporated by reference.

(2) This material may be inspected, copied, or obtained at Kentucky Labor Cabinet, Division of Education and Training, 1047 U.S. 127 South, Frankfort, Kentucky 40601. Office hours are 8 a.m. - 4:30 p.m. (ET), Monday through Friday. [The Occupational Safety and Health Standards Board hereby adopts Chapter 29, Part 1926.600-.606 of the Code of Federal Regulations, revised as of July 1, 1986, published by the Office of the Federal Register, National Archives and Records Services, General Services Administration. These standards are hereby incorporated by reference with the following additions, exceptions, and deletions:

(1) The revision to 29 CFR 1926.600, "Equipment", as published in the Federal Register, Volume 58, Number 124, June 30, 1993, is incorporated by reference.

(2) Revoke paragraph "514 - Warning Device" of ANSI B56.1-

1969 - Safety Standards for Powered Industrial Trucks and adopt paragraph "512 - Warning Device" of ANSI B56.1 - 1975 - Low Lift and High Lift Trucks for standard reference as specified in 29 CFR 1926.602(c)(1)(vi); effective July 1, 1979.

(3) The revision to 29 CFR 1926.602, "Material Handling Equipment", as published in the Federal Register, Volume 58, Number 124, June 30, 1993, is incorporated by reference.

Section 2. Public Notice. (1) In accordance with KRS 13A-224(3)(c), this material may be inspected and copied at: Kentucky Labor Cabinet, Division of Education and Training, U.S. 127 South, Frankfort, Kentucky 40601.

(2) Office hours are 8 a.m. - 4:30 p.m. (EST), Monday through Friday.]

JOE NORSWORTHY, Chairman  
KEMBRA SEXTON TAYLOR, Attorney  
APPROVED BY AGENCY: June 3, 1999  
FILED WITH LRC: June 15, 1999 at 9 a.m.

**REGULATORY IMPACT ANALYSIS**

Agency Contact: Kembra S. Taylor, W. L. Ralston

(1) Type and number of entities affected: The amendments to this regulation affect all employers in the Commonwealth engaged in construction work.

(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: The cost of living and employment in the state will not be affected by implementation of the amendments to this administrative regulation.

(b) Cost of doing business in the geographic area in which the administrative regulation will be implemented: The changes updating the reference date of the Code of Federal Regulations and the changes made to the regulation to meet KRS Chapter 13A considerations will entail no additional costs or savings. The Occupational Safety and Health Administration (OSHA) estimates the average annualized cost to each employer affected by the change clarifying the acceptable training operators of powered industrial trucks, incorporated in the Federal Register notice of December 1, 1998, (pp. 66270-66274) to be 0.0001 percent of sales which will likely be offset by the savings to the average employer due to reduced worker compensation costs and reduced property damage.

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

1. First year following implementation: There are no additional factors regarding these revisions which will increase or decrease costs. There will be no effect on competition. Reporting and paperwork requirements: The employer will be required to certify that each operator of a powered industrial truck has been properly trained to safely operate the vehicle and keep the certification record on file.

2. Second and subsequent years: See (a) above.

(3) Effects on the promulgating administrative body: The promulgating body will not be affected by the adoption of these revisions.

(a) Direct and indirect costs or savings:

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements: There are no additional reporting or paperwork requirements for the promulgating body.

(4) Assessment of anticipated effect on state and local revenues: These revisions will have no anticipated effect on state and local revenues.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Current state and federal funding.

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

(a) Geographic area in which administrative regulation will be implemented: Undetermined; no public comments were received.

(b) Kentucky: Undetermined; no public comments were received.

(7) Assessment of alternative methods; reasons why alternative were rejected: Alternative methods were not considered as these proposed regulations incorporate, by reference, federal regulations published in the Federal Register.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographic area in which implemented and on Kentucky: These proposed amendments will enhance worker safety throughout Kentucky.

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

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

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: There is no conflicting, overlapping, or duplication as a result of adoption of these proposed amendments.

(a) Necessity of proposed regulation if in conflict:

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

(10) Any additional information or comments:

(11) TIERING: Was tiering applied? No: Kentucky's Occupational Safety and Health Program regulations affect all employers with one or more employees. Inspections are conducted at the facilities of those industries or firms that pose higher risks to worker safety and health, those employers from which the KYOSH Program has received worker complaints or referrals, or where a workplace fatality (or accident resulting in the hospitalization of three or more employees) has occurred.

#### FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. PL 91-596 (Occupational Safety and Health Act of 1970, Section 18(c)(2)).

2. State compliance standards. These amendments incorporate federal regulations which clarify training requirements for operators of powered industrial trucks in the construction industry.

3. Minimum or uniform standards contained in the federal mandate. The amendments adopt revisions, as published in the Federal Register, Volume 63, Number 230, December 1, 1998, pp. 66270-66274, which revise the standards dealing with powered industrial truck operator training in the construction industry, referring the user to 29 CFR 1910.178 (incorporated into Kentucky regulations by 803 KAR 2:313).

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? This proposed amended revision incorporates the federal regulation, updates the reference date of the Code of Federal Regulations, and revises the regulation to meet KRS Chapter 13A considerations.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. These revisions impose no stricter, additional or different responsibilities than federal standards.

#### FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? Yes

2. State whether this administrative regulation will affect the local government or only a part or division of the local government. These amendments affect local government entities engaged in construction activities.

3. State the aspect or service of local government to which this administrative regulation relates. The proposed regulations affect the safety and health of employees of local government engaged in construction activities.

4. How does this administrative regulation affect the local government or any service it provides? The purpose of these amendments is to comply with federal regulations relating to occupational

safety and health. There will be no increase or decrease in local government revenues or significant expenditures. These proposed amendments will not affect the number of local government employees.

#### STATEMENT OF EMERGENCY 803 KAR 2:500E

This emergency administrative regulation, in Section 2 incorporates, by reference, a Federal Register publication, dated December 1, 1998, which revises the standards dealing with powered industrial truck operator training in public sector shipyard employment, referring the user to 29 CFR 1910.178 (incorporated into Kentucky regulations by 803 KAR 2:313), and updates the reference to the Code of Federal Regulations. It is necessary to promulgate this emergency administrative regulation to comply with federal mandate, 29 CFR 1953.23, which requires implementation of the federal standard, or one (1) more stringent, within six (6) months of the date of promulgation of the new federal standard, and to keep the state program as effective as the federal program. This emergency administrative regulation shall be replaced by an ordinary administrative regulation. The "Notice of Intent to Promulgate Administrative Regulation" shall be filed with the Regulations Compiler, June 15, 1999.

PAUL E. PATTON, Governor  
JOE NORSWORTHY, Chairman

#### LABOR CABINET Department of Workplace Standards Division of Occupational Safety and Health Compliance Division of Occupational Safety and Health Education and Training

#### 803 KAR 2:500E. Maritime employment.

RELATES TO: KRS 338.051, 338.061, 29 CFR 1915, 1917, 1918, 1919

STATUTORY AUTHORITY: KRS 338.051(3), 338.061, 29 CFR 1915, 1917, 1918, 1919

EFFECTIVE: June 15, 1999

NECESSITY, FUNCTION, AND CONFORMITY: KRS 338.051(3) authorizes the Kentucky Occupational Safety and Health Standards Board to adopt and promulgate occupational safety and health administrative regulations. KRS 338.061(2) provides that the board may incorporate by reference established federal standards and national consensus standards. The following administrative regulation contains those standards to be enforced by the Division of Occupational Safety and Health Compliance in the area of Maritime employment.

Section 1. Definitions. As used in the material incorporated by reference in Section 2 of this administrative regulation:

(1) "Administration" means the Kentucky Occupational Safety and Health Program, Frankfort, Kentucky;

(2) "Area director" means Director, Division of Occupational Safety and Health, Kentucky Labor Cabinet;

(3) "Assistant secretary" means Secretary of Labor, Kentucky Labor Cabinet;

(4) "U.S. Department of Labor" means Kentucky Labor Cabinet or U.S. Department of Labor.

Section 2. Incorporation by Reference. (1) The following is incorporated by reference:

(a) Chapter 29, Part 1915 of the Code of Federal Regulations, revised as of July 1, 1998 [1997], published by the Office of the Federal Register, National Archives and Records Services, General Services Administration.

(b) The revision to 29 CFR 1915.120, "Powered Industrial Truck Operator Training", as published in the Federal Register, Volume 63, Number 230, December 1, 1998, is incorporated by reference. [revisions to 29 CFR 1915.1001, "Asbestos", as published in the Federal Register, Volume 63, Number 124, June 29, 1998.]

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(c) Chapter 29 Part 1917 of the Code of Federal Regulations, revised as of July 1, 1998 [1997], published by the Office of the Federal Register, National Archives and Records Services, General Services Administration.

1. The revisions to 29 CFR 1917.1, "Scope and Applicability", as published in the Federal Register, Volume 62, Number 143, July 25, 1997.

2. The revisions to 29 CFR 1917.2, "Definitions", as published in the Federal Register, Volume 62, Number 143, July 25, 1997.

3. The revisions to 29 CFR 1917.3, "Incorporation by Reference", as published in the Federal Register, Volume 62, Number 143, July 25, 1997.

4. The revisions to 29 CFR 1917.11, "Housekeeping", as published in the Federal Register, Volume 62, Number 143, July 25, 1997.

5. The revisions to 29 CFR 1917.13, "Slings", as published in the Federal Register, Volume 62, Number 143, July 25, 1997.

6. The revisions to 29 CFR 1917.17, "Railroad Facilities", as published in the Federal Register, Volume 62, Number 143, July 25, 1997.

7. The revisions to 29 CFR 1917.20, "Interference with Communications", as published in the Federal Register, Volume 62, Number 143, July 25, 1997.

8. The revisions to 29 CFR 1917.23, "Hazardous Atmospheres and Substances (See also 1917.2(r))", as published in the Federal Register, Volume 62, Number 143, July 25, 1997.

9. The revisions to 29 CFR 1917.24, "Carbon Monoxide", as published in the Federal Register, Volume 62, Number 143, July 25, 1997.

10. The revisions to 29 CFR 1917.25, "Fumigants, Pesticides, Insecticides, and Hazardous Preservatives (See also 1917.2(p))", as published in the Federal Register, Volume 62, Number 143, July 25, 1997.

11. The revisions to 29 CFR 1917.26, "First Aid and Lifesaving Facilities", as published in the Federal Register, Volume 62, Number 143, July 25, 1997.

12. The revisions to 29 CFR 1917.27, "Personnel", as published in the Federal Register, Volume 62, Number 143, July 25, 1997.

13. The revisions to 29 CFR 1917.28, "Hazard Communication (See also 1917.1(a)(2)(vi))", as published in the Federal Register, Volume 62, Number 143, July 25, 1997.

14. The revisions to 29 CFR 1917.30 "Emergency Action Plans", as published in the Federal Register, Volume 62, Number 143, July 25, 1997.

15. The revisions to 29 CFR 1917.42, "Miscellaneous Auxiliary Gear", as published in the Federal Register, Volume 62, Number 143, July 25, 1997.

16. The revisions to 29 CFR 1917.43, "Powered Industrial Trucks", as published in the Federal Register, Volume 62, Number 143, July 25, 1997.

17. The revisions to 29 CFR 1917.44, "General Rules Applicable to Vehicles", as published in the Federal Register, Volume 62, Number 143, July 25, 1997.

18. The revisions to 29 CFR 1917.45, "Cranes and Derricks (See also 1917.50)", as published in the Federal Register, Volume 62, Number 143, July 25, 1997.

19. The revisions to 29 CFR 1917.46, "Load Indicating Devices", as published in the Federal Register, Volume 62, Number 143, July 25, 1997.

20. The revisions to 29 CFR 1917.48, "Conveyors", as published in the Federal Register, Volume 62, Number 143, July 25, 1997.

21. The revisions to 29 CFR 1917.50, "Certification of Marine Terminal Material Handling Devices (See also mandatory Appendix IV, Part 1918 of this Chapter)", as published in the Federal Register, Volume 62, Number 143, July 25, 1997.

22. The revisions to 29 CFR 1917.71, "Terminals Handling Intermodal Containers or Roll-On/Roll-Off Operations", as published in the Federal Register, Volume 62, Number 143, July 25, 1997.

23. The revisions to 29 CFR 1917.73, "Terminal Facilities Handling Menhaden and Similar Species of Fish (See also 1917.2, Definition of Hazardous Cargo, Materials, Substance, or Atmosphere)", as published in the Federal Register, Volume 62, Number 143, July 25, 1997.

24. The revisions to 29 CFR 1917.91, "Eye and Face Protection", as published in the Federal Register, Volume 62, Number 143, July 25, 1997.

25. The revisions to 29 CFR 1917.93, "Head Protection", as published in the Federal Register, Volume 62, Number 143, July 25, 1997.

26. The revisions to 29 CFR 1917.94, "Foot Protection", as published in the Federal Register, Volume 62, Number 143, July 25, 1997.

27. The revisions to 29 CFR 1917.95, "Other Protective Measures", as published in the Federal Register, Volume 62, Number 143, July 25, 1997.

28. The revisions to 29 CFR 1917.112, "Guarding of Edges", as published in the Federal Register, Volume 62, Number 143, July 25, 1997.

29. The revisions to 29 CFR 1917.118, "Fixed Ladders", as published in the Federal Register, Volume 62, Number 143, July 25, 1997.

30. The revisions to 29 CFR 1917.119, "Portable Ladders", as published in the Federal Register, Volume 62, Number 143, July 25, 1997.

31. The revisions to 29 CFR 1917.121, "Spiral Stairways", as published in the Federal Register, Volume 62, Number 143, July 25, 1997.

32. The revisions to 29 CFR 1917.124, "Dockboards (Car and Bridge Plates)", as published in the Federal Register, Volume 62, Number 143, July 25, 1997.

33. The revisions to 29 CFR 1917.126, "River Banks", as published in the Federal Register, Volume 62, Number 143, July 25, 1997.

34. The revisions to 29 CFR 1917.152, "Welding, Cutting and Heating (Hot Work) (See also 1917.2, Definition of Hazardous Cargo, Materials, Substance, or Atmosphere)", as published in the Federal Register, Volume 62, Number 143, July 25, 1997.

35. The revisions to 29 CFR 1917.153, "Spray Painting (See also 1917.2, Definitions of Hazardous Cargo, Materials, Substance, or Atmosphere)", as published in the Federal Register, Volume 62, Number 143, July 25, 1997.

36. The revisions to 29 CFR 1917.156, "Fuel Handling and Storage", as published in the Federal Register, Volume 62, Number 143, July 25, 1997.

37. The revisions to 29 CFR 1917.157, "Battery Charging and Changing", as published in the Federal Register, Volume 62, Number 143, July 25, 1997.]

(d) The revision to 29 CFR Part 1917.1, "Scope and Application", as published in the Federal Register, Volume 63, Number 230, December 1, 1998, is incorporated by reference.

(e) Chapter 29 Part 1918 of the Code of Federal Regulations, revised as of July 1, 1998, published by the Office of the Federal Register, National Archives and Records Services, General Services Administration.

(f) The revision to 29 CFR Part 1918.1, "Scope and Application", as published in the Federal Register, Volume 63, Number 230, December 1, 1998 is incorporated by reference.

(g) Chapter 29 Part 1919 of the Code of Federal Regulations, revised as of July 1, 1998, published by the Office of the Federal Register, National Archives and Records Services, General Services Administration. [The revisions to 29 CFR Part 1918, "Safety and Health Regulations for Longshoring", as published in the Federal Register, Volume 62, Number 143, July 25, 1997.

(e) Chapter 29 Part 1919 of the Code of Federal Regulations, revised as of July 1, 1997, published by the Office of the Federal Register, National Archives and Records Services, General Services Administration.]

(2) This material may be inspected, copied, or obtained at Kentucky Labor Cabinet, Division of Education and Training, 1047 U.S. 127 South, Frankfort, Kentucky 40601. Office hours are 8 a.m. - 4:30 p.m. (ET), Monday through Friday.

JOE NORSWORTHY, Chairman

KEMBRA SEXTON TAYLOR, Attorney

APPROVED BY AGENCY: June 3, 1999

FILED WITH LRC: June 15, 1999 at 9 a.m.

### REGULATORY IMPACT ANALYSIS

Agency Contact: Kembra S. Taylor, W. L. Ralston

(1) Type and number of entities affected: The amendments to this regulation affect all public sector employers in the Commonwealth engaged in shipyard employment.

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(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: The cost of living and employment in the state will not be affected by implementation of the amendments to this administrative regulation.

(b) Cost of doing business in the geographic area in which the administrative regulation will be implemented: The changes updating the reference to the Code of Federal Regulations will entail no additional costs or savings. Nationally, the Occupational Safety and Health Administration (OSHA) estimates the average annualized cost to each employer affected by this change incorporating the Federal Register notice (pp. 66270-66274) to be 0.0001 percent of sales which will likely be offset by the savings to the average employer due to reduced worker compensation costs and reduced property damage.

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

1. First year following implementation: There are no additional factors regarding these revisions which will increase or decrease costs. There will be no affect on competition. Reporting and paperwork requirements: The employer will be required to certify that each operator of a powered industrial truck has been properly trained to safely operate the vehicle and keep the certification records on file.

2. Second and subsequent years: See (a) above.

(3) Effects on the promulgating administrative body: The promulgating body will not be affected by the adoption of these revisions.

(a) Direct and indirect costs or savings:

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements: There will be no reporting or paperwork requirements as a result of these changes.

(4) Assessment of anticipated effect on state and local revenues: These revisions will have no anticipated effect on state and local revenues.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Current state and federal funding.

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

(a) Geographic area in which administrative regulation will be implemented: Undetermined; no public comments were received.

(b) Kentucky: Undetermined; no public comments were received.

(7) Assessment of alternative methods; reasons why alternative were rejected: Alternative methods were not considered as these proposed regulations incorporate, by reference, federal regulations published in the Federal Register.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographic area in which implemented and on Kentucky: These proposed amendments will enhance worker safety throughout Kentucky.

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

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

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: There is no conflicting, overlapping, or duplication as a result of adoption of these proposed amendments.

(a) Necessity of proposed regulation if in conflict:

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

(10) Any additional information or comments:

(11) TIERING: Was tiering applied? No. Kentucky's Occupational Safety and Health Program regulations affect all employers with one or more employees. Inspections are conducted at the facilities of those industries or firms that pose higher risks to worker safety and health, those employers from which the KYOSH Program has received worker complaints or referrals, or where a workplace fatality (or accident resulting in the hospitalization of three or more

employees) has occurred.

### FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. PL 91-596 (Occupational Safety and Health Act of 1970, Section 18(c)(2)).

2. State compliance standards. These amendments incorporate federal regulations which clarify training requirements for operators of powered industrial trucks in public sector maritime operations.

3. Minimum or uniform standards contained in the federal mandate. The amendments adopt revisions, as published in the Federal Register, Volume 63, Number 230, December 1, 1998, pp. 66270-66274, which revises the standards dealing with powered industrial truck operator training in public sector shipyard employment, referring the user to 29 CFR 1910.178 (incorporated into Kentucky regulations by 803 KAR 2:313).

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? This proposed amended revision incorporates the federal regulation and updates the reference date of the Code of Federal Regulations.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. These revisions impose no stricter, additional or different responsibilities than federal standards.

### FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? Yes

2. State whether this administrative regulation will affect the local government or only a part or division of the local government. These amendments affect local government entities engaged in shipyard industry work.

3. State the aspect or service of local government to which this administrative regulation relates. The proposed regulations affect the safety and health of employees of local government engaged in shipyard industry work.

4. How does this administrative regulation affect the local government or any service it provides? The purpose of these amendments is to comply with federal regulations relating to occupational safety and health. There will be no increase or decrease in local government revenues or significant expenditures. These proposed amendments will not affect the number of local government employees.

ADMINISTRATIVE REGULATIONS AS AMENDED BY PROMULGATING AGENCY  
AND REVIEWING SUBCOMMITTEE

ARRS = Administrative Regulation Review Subcommittee

FINANCE AND ADMINISTRATION CABINET  
Office of Financial Management and Economic Analysis  
(As Amended at ARRS, June 8, 1999)

200 KAR 21:010. Procedure for prequalification of underwriters and bond counsel for state bond issues.

RELATES TO: KRS 45A.853

STATUTORY AUTHORITY: KRS ~~[45A.853]~~ 45A.879

NECESSITY, FUNCTION, AND CONFORMITY: KRS 45A.853(1)(a) provides that a firm shall not be considered for providing underwriting or bond counsel services to the Commonwealth unless the Office of Financial Management and Economic Analysis has qualified [prequalified] the firm prior to the issuance [advertised notice] of the request for proposals. KRS 45A.879 authorizes the Office of Financial Management and Economic Analysis to promulgate administrative regulations to carry out these requirements by January 1, 1995. This administrative regulation establishes the procedure for prequalifying underwriting and bond counsel firms.

Section 1. General Requirements for Prequalification of Underwriters and Bond Counsel. (1) The office ~~[of Financial Management and Economic Analysis]~~ shall determine ~~[annually]~~, in consultation with each bond issuing agency, the need for issuing requests for proposals for underwriting and bond counsel services for bond issuing agencies ~~[for the following fiscal year]~~.

(2) Based on the determination of need ~~[by the Office of Financial Management and Economic Analysis]~~, the office shall draft a request [requests] for qualifications for underwriting and bond counsel services for a [the] bond issuing agency [agencies] which needs the [need those] services.

(3) A request [All requests] for qualifications shall include ~~[at a minimum]~~ the following:

(a) A description of the bond issuing agency for which the request for qualifications is being issued;

(b) A requirement that the firm disclose ~~[any]~~ information which would impair the firm's ability to provide the level and type of services needed by the bond issuing agency;

(c) A requirement that the firm certify, by ~~[pursuant to a]~~ sworn statement, that the firm has complied with campaign finance laws established in ~~[pursuant to]~~ KRS 121.015 to 121.056, 121.150, 121.310, 121.320, 121.330 and 121A.050;

(d) A requirement that the firm certify that it has complied with and is not prohibited by the Executive Branch Code of Ethics, KRS 11A.001 to 11A.990, from entering into a contract with the Commonwealth of Kentucky;

(e) A requirement that the firm certify that it has complied with KRS 45A.485;

(f) A statement that the firm is not prohibited by KRS 45A.863 from entering into a contract with the Commonwealth of Kentucky;

(g) A statement that the Commonwealth shall not be liable for ~~[any]~~ costs associated with a firm's preparation and submission of a response to a request for qualifications; and

(h) A description of the process by which a response [responses] to the request for qualifications shall be evaluated by the office ~~[of Financial Management and Economic Analysis]~~.

Section 2. Request for Qualifications for Underwriter Services. (1) If the nature of the requested underwriting services requires the inclusion of information in addition to the requirements established in Section 1 of this administrative regulation, the following elements shall be included: [In addition to the requirements set forth in Section 1 of this administrative regulation, a request for qualifications for underwriter services may, depending on the nature of the underwriting services required, request the following information:]

(a) A description of the history and organization of the firm and its

municipal finance department;

(b) If applicable, a summary of the relevant financial advisory experience of the firm;

(c) The audited financial statements of the firm for the previous ~~[two (2)]~~ fiscal year or ~~[for]~~ years ~~[prior if applicable]~~ [years];

(d) A list of the relevant underwriter experience of the firm on negotiated municipal bond transactions of issuers of similar type as that of the state bond issuing agencies;

(e) A list of experience and qualifications of the firm representatives proposed to ~~[who would]~~ work on issues of the bond issuing agency;

(f) If applicable, a list of the relevant comanaging underwriter experience of the firm on negotiated municipal bond transactions;

(g) If applicable, identification of the lead banker or contact person at the firm and description of his or her experience and qualifications;

(h) Identification of the person in the firm proposed to ~~[who would]~~ perform cash flow and debt structuring analyses and a description of his or her experience and qualifications; and

(i) Specific references for the firm's experience [firm] and the lead or principal contact person.

(2) If a request for qualifications is for a Kentucky comanaging underwriter [underwriters], the request for qualifications shall [may] require the firm to ~~[state]~~:

(a) State the authority of the firm's office located in the Commonwealth to commit capital to an underwriting, independent of some other office of the firm, and the dollar limit, if any;

(b) Identify the firm's underwriter who has responsibility for ~~[The underwriter of the firm whose responsibilities include]~~ competitive bond sales in the Commonwealth, and a description of his or her experience and qualifications; ~~[The emphasis the firm's office(s) located in the Commonwealth places on selling the Commonwealth's bonds to retail buyers located in the Commonwealth;]~~

(c) Specific references for the firm's experience [firm] and the underwriter in the office ~~[office(s)]~~ located in the Commonwealth; ~~[The underwriter in the office of the firm located in the Commonwealth and a description of his or her experience and qualifications; and]~~

(d) Provide evidence that the firm has bid on twenty (20) percent of School Facilities Construction Commission supported debt issues and twenty (20) percent of the 100 percent locally-funded school bond issues, within the previous calendar year. ~~[The firm has participated to a specified level in the competitive bid process for School Facilities Construction Commission supported debt issues; [Specific references for the firm and the underwriter in the office(s) located in the Commonwealth;]~~

(e) The firm can demonstrate a specified level for 100 percent locally-funded school bond issues; and]

(f) Describe ~~[(f)]~~ the emphasis the firm's office ~~[office(s)]~~ located in the Commonwealth places on selling the Commonwealth's bonds to retail buyers located in the Commonwealth.

Section 3. Request for Qualifications for Bond Counsel Services. If the nature of the requested bond counsel services requires the inclusion of information in addition to the requirements established in Section 1 of this administrative regulation, the following elements shall be included: [In addition to the requirements set forth in Section 1 of this administrative regulation, a request for qualifications for bond counsel services may request the following information:]

(1) A description of the history and organization of the firm and its municipal finance and tax law department;

(2) A statement of the relevant bond counsel experience of the firm in applicable areas of finance as required by the bond issuing agency for which the request for qualifications is being issued;

(3) A statement of the experience and qualifications of the firm's personnel proposed to ~~[who would]~~ work on bond issues of the bond issuing agency;

(4) Proof that the firm is listed as a "municipal bond attorney" in

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the most recently published edition of "The Bond Buyer's Municipal Marketplace";

(5) A statement of professional liability insurance coverage showing the limits of the coverage;

(6) A certification as to whether the firm's principal place of business is located in Kentucky as defined by KRS 45A.873(3); and

(7) A statement of specific references for the experience of the firm and personnel proposed to [of the firm who would] work on the bond issues of the bond issuing agency.

Section 4. Advertisement and Mailing of Requests for Qualifications. (1) The office [of Financial Management and Economic Analysis] shall advertise the request [all requests] for qualifications in a financial newspaper or financial publication with national circulation.

(2)(a) A request [Requests] for qualifications shall be mailed to:

1. [all] Firms that were [which have been] prequalified during [by the Office of Financial Management and Economic Analysis] the prior period; [year] and

2. Firms that have [to any firm which has] requested, in writing, a request for qualifications from the office.

(b) A firm shall notify the office of a change in mailing address. [of Financial Management and Economic Analysis. It shall be the responsibility of each firm to keep all mailing information current.]

(3) An interested firm [Interested firms] shall file a written response to the request for qualifications prior to the deadline designated [for filing a written response established] in the request for qualifications. A firm that [which] fails to meet the deadline shall be prohibited [barred] from participating in the prequalification process for that qualification period [one (1) year].

(4) The office shall inform each responding firm, in writing, [Firms will receive written notification] of the results of the prequalification process.

Section 5. Certification of Prequalification. (1) A master list [Master lists] of [prequalified] firms prequalified for providing underwriter and bond counsel services shall be certified and maintained by the office [of Financial Management and Economic Analysis].

(2) The office shall conduct the prequalification process on at least a biennial basis. [The prequalification process shall be conducted at least biennially [annually].]

(3) The office shall accept prequalification applications for consideration outside of the scheduled prequalification period from a firm that, since the last prequalification period:

(a) Has been newly incorporated; or

(b) Has opened a new office in the Commonwealth. [Only underwriter or bond counsel firms which have been newly incorporated or which have opened a new office in the Commonwealth since the last prequalification shall be eligible to apply to the Office of Financial Management and Economic Analysis for prequalification, independent of the annual prequalification process.]

JOHN P. MCCARTY, Secretary

KAREN POWELL, Attorney

APPROVED BY AGENCY: April 12, 1999

FILED WITH LRC: April 12, 1999 at 4 p.m.

FINANCE AND ADMINISTRATION CABINET

Office of Financial Management and Economic Analysis

(As Amended at ARRS, June 8, 1999)

200 KAR 21:030. Calculating the preference for Kentucky bond counsel firms for state bond issues.

RELATES TO: KRS 45A.843, 45A.853, 45A.873

STATUTORY AUTHORITY: KRS 45A.873(1)(b), 45A.879

NECESSITY, FUNCTION, AND CONFORMITY: KRS 45A.873(1)(a) requires that in the competition for the Commonwealth's bond counsel business awarded pursuant to KRS 45A.840 to 45A.879, a bond counsel firm with its principal place of business located in Kentucky shall receive a preference over a bond counsel firm with its principal place of business located outside Kentucky. KRS 45A.873(1)(b) requires [further provides the preference, if any, shall

be equal to the preference that the out-of-state firm receives in its state of origin when that firm as an in-state firm competes against out-of-state firms for state bond counsel business.] the Office of Financial Management and Economic Analysis to calculate [is responsible for calculating] this preference. This administrative regulation establishes the procedure for calculation [sets forth the manner in which the preference shall be calculated].

Section 1. Calculation of Preference for Kentucky Bond Counsel.

(1)(a) The office [of Financial Management and Economic Analysis] shall, on a biennial [an annual] basis and [;] in conjunction with the prequalification process mandated by KRS 45A.853, issue a letter to the state government debt management office or similar governmental agency of each [every] state from which a bond counsel firm [firms] requesting to be prequalified has its [have their] principal place of business.

(b) The letter shall request [requesting] that the agency provide the office [of Financial Management and Economic Analysis] with a written copy of that state's statute, administrative regulation, or [written] policy, if any, regarding [any] preference given to in-state bond counsel firms in competition for state bond counsel business.

(2)(a) The office shall use written evidence of statutes, administrative regulations, or policies as the basis to determine a firm's eligibility for preference and to calculate the preference.

(b) If a written response is not received from a state within thirty (30) days, the [Office of Financial Management and Economic Analysis] shall accept only written responses to the request for information issued pursuant to subsection (1) of this section and shall only utilize written evidence of statutes, administrative regulations or written policies to calculate the preference, if any, due a firm. If a written response is not received within a reasonable amount of time established by the Office of Financial Management and Economic Analysis, then the state's failure to respond shall be deemed [as] an indication that the state does not give a [any] preference to an in-state firm [firms] competing for state bond counsel business.

(c) If a state supplies written evidence demonstrating that the authority required in paragraph (a) of this subsection was implemented outside of the scheduled prequalification period, the office shall consider the matter of preference for a firm with a principal place of business in that state. [The Office of Financial Management and Economic Analysis shall accept written evidence that statutes, administrative regulations or written policies of other states regarding state bond counsel preference have been implemented or amended independent of the annual prequalification process if supplied or requested by such states.]

(3)(a) The office [of Financial Management and Economic Analysis] shall compile a list of [all] bond counsel firms qualified to [which shall] receive a preference [in the selection process] and the corresponding calculation or formula for the preference [to be given by the selection committees] [states responding to the request for information and resulting responses].

(b) The [This] list shall be provided to the selection committee reviewing responses to requests for qualifications.

(c) The office shall forward to the selection committees any amendment to the list made necessary by the receipt of information pursuant to subsection (2)(c) of this section. [submitted pursuant to 200 KAR 21:010. Any additions or deletions to the list created pursuant to receipt of additional information independent of the annual prequalification process shall be forwarded by the Office of Financial Management and Economic Analysis to all selection committees established pursuant to KRS 45A.843.]

JOHN P. MCCARTY, Secretary

KAREN POWELL, Attorney

APPROVED BY AGENCY: April 12, 1999

FILED WITH LRC: April 12, 1999 at 4 p.m.

**TOURISM DEVELOPMENT CABINET**  
**Department of Fish and Wildlife Resources**  
**(As Amended at ARRS, June 8, 1999)**

**301 KAR 2:049. Small game and furbearer hunting on public areas.**

RELATES TO: KRS 150.010, 150.025(1), 150.370(1), 150.399, 150.400, 150.410, 150.620, 150.990

STATUTORY AUTHORITY: KRS 150.025(1), 150.620

NECESSITY, FUNCTION, AND CONFORMITY: KRS 150.025(1) authorizes the department to set seasons, limits and other requirements for hunting, and to make these requirements apply statewide or to a limited area; KRS 150.620 authorizes the department to regulate the lands it has acquired for public recreation. This administrative regulation is necessary to specify exceptions on wildlife management areas to statewide small game and furbearer hunting regulations.

Section 1. The provisions of 301 KAR 2:251 shall apply on a wildlife management area unless specified otherwise by this administrative regulation.

Section 2. On a wildlife management area owned or managed by the department:

(1) A person shall wear hunter orange as specified in Section 12 of 301 KAR 2:172 when a firearm is allowed for deer hunting.

(2) The hunter orange requirement in subsection (1) of this section shall not apply to a person hunting:

- (a) Waterfowl; or
- (b) Raccoon or opossum at night.

(3) When deer hunting with a breech-loading firearm is allowed, a person shall not:

- (a) Hunt small game or furbearers;
- (b) Trap; or
- (c) Allow an unleashed dog.

(4) A person may hunt small game or a furbearer during the modern gun deer season on a wildlife management area where gun deer hunting is not permitted during the modern gun deer season.

~~[(5) Unless specified otherwise in Section 3 of this administrative regulation, a person shall not allow a dog to be unleashed from March 1 until the third Saturday in August, except an unleashed dog shall be permitted:~~

- ~~(a) At a department authorized field trial field trials; or~~
- ~~(b) By a squirrel hunter during an open spring squirrel season.]~~

Section 3. Exceptions on Specific Wildlife Management Areas. (1) Barren River Wildlife Management Area.

(a) Quail and rabbit: closed after December 31.

(b) On the Peninsula Unit, including Narrows, Goose and Grass Islands, a person shall not:

- 1. Hunt with a breech-loading firearm;
- 2. Except as authorized by the department, carry a breech-loading firearm with ammunition in the chamber or magazine; or
- 3. Hunt small game with shot larger than number two (#2).

(2) Beaver Creek Wildlife Management Area, including private inholdings.

(a) Grouse: October 1 through December 31.

(b) Quail and rabbit: closed after December 31.

(c) Furbearer: December 5 through December 31. A trapper shall complete a harvest survey.

(3) Big South Fork National River and Recreation Area, McCreary County.

(a) Grouse: October 1 through December 31.

(b) Quail and rabbit: closed after December 31.

(4) Cane Creek Wildlife Management Area, including private inholdings.

(a) Grouse: October 1 through December 31.

(b) Quail and rabbit: closed after December 31.

(c) Furbearer: December 5 through December 31. A trapper shall complete a harvest survey.

(5) Central Kentucky Wildlife Management Area.

(a) Closed to small game and furbearer hunting except squirrels.

(b) A person shall not allow a dog to be unleashed:

1. April 1 until the third Saturday in August, except as provided in Section 2(5) of this administrative regulation; or

2. At other times of the year, except on a Tuesday, Thursday, Saturday, Sunday, or during an authorized field trial.

(c) A trapper shall obtain prior written permission from the area manager.

(d) A hunter or dog trainer shall check in and out daily at the designated check station.

(6) Clay Wildlife Management Area.

(a) Quail and rabbit: closed after December 31.

(b) Grouse: October 1 through December 31.

(c) A hunter or dog trainer shall check in and out daily at the designated check station.

(7) Curtis Gates Lloyd/Mullins Wildlife and Recreation Area.

(a) Quail and rabbit: closed after December 31.

(b) A person shall not allow a dog to be unleashed from April 1 until the third Saturday in August, except as provided in Section 2(5) of this administrative regulation.

(c) A hunter or dog trainer shall check in and out daily at the designated check station.

(8) Daviess County Wildlife Management Area. Closed to hunting and trapping for small game and furbearers.

(9) Dewey Lake Wildlife Management Area.

~~(a) [Grouse: October 1 through December 31.~~

~~(b)] Quail and rabbit: closed after December 31.~~

~~(b) [(c)] Furbearers: closed after December 31.~~

(10) Fishtrap Lake Wildlife Management Area.

~~(a) [Grouse: October 1 through December 31.~~

~~(b)] Quail and rabbit: closed after December 31.~~

~~(b) [(c)] Furbearers: closed after December 31.~~

(11) Fleming Wildlife Management Area.

(a) Quail and rabbit: closed after December 31.

(b) Grouse: October 1 through December 31.

(12) Grayson Lake Wildlife Management Area.

(a) Quail and rabbit: closed after December 31.

~~(b) [Grouse: October 1 through December 31.~~

~~(c)] A hunter or dog trainer shall check in and out daily at a designated check station.~~

(13) Green River Lake Wildlife Management Area.

(a) Quail and rabbit: closed after December 31.

(b) Grouse: closed to hunting and trapping.

(c) A hunter or dog trainer shall check in and out daily at a designated check station.

(14) Higginson-Henry Wildlife Management Area.

(a) Quail and rabbit: closed after December 31.

(b) A hunter or dog trainer shall check in and out daily at the designated check station.

(15) Kleber Wildlife Management Area.

(a) Quail and rabbit: closed after December 31.

(b) A hunter or dog trainer shall check in and out daily at the designated check station.

(16) Lake Cumberland Wildlife Management Area.

(a) Grouse: October 1 through December 31.

(b) Quail and rabbit: closed after December 31.

(17) Mill Creek Wildlife Management Area, including private inholdings.

(a) Grouse: October 1 through December 31.

(b) Quail and rabbit: closed after December 31.

(c) Furbearer: December 5 through December 31. A trapper shall complete a harvest survey.

(18) Nolin Lake Wildlife Management Area. Quail and rabbit: closed after December 31.

(19) Paintsville Lake Wildlife Management Area.

~~(a) [Grouse: October 1 through December 31.~~

~~(b)] Quail and rabbit: closed after December 31.~~

~~(b) [(c)] Furbearers: closed after December 31.~~

(20) Peal Wildlife Management Area.

(a) Furbearer hunting: twenty (20) day season beginning the day after the modern gun deer season.

(b) Furbearer trapping: December 1 through 10, water sets only. Trappers shall be selected by drawing conducted by the area manager.

(c) Quail and rabbit: closed after December 31.

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(21) Pennyryle Forest Wildlife Management Area. Grouse: December 1 through December 31; daily limit, two (2).

(22) Pioneer Weapons Wildlife Management Area. A person shall not:

(a) Hunt with a breech-loading firearm.

(b) Except as authorized by the department, carry a breech-loading firearm with ammunition in the chamber or magazine; or

(c) Hunt small game with shot larger than number two (#2).

(23) Redbird Wildlife Management Area.

(a) ~~Grouse: October 1 through December 31.~~

(b) Quail and rabbit: closed after December 31.

(b) ~~(e)~~ Furbearers: closed after December 31.

(24) Robinson Forest Wildlife Management Area. Hunting is permitted under the requirements of 301 KAR 4:200.

(25) Taylorsville Lake Wildlife Management Area.

(a) The area east of Van Buren Boat Ramp shall be closed to public access from November 1 through the last day of February ~~[the day after the deer quota hunt through March 15].~~

(b) Quail and rabbit: closed after December 31.

(c) A hunter or dog trainer shall check in and out daily at a designated check station.

(26) Tradewater Wildlife Management Area. Grouse: December 1 through December 31; daily limit, two (2).

(27) West Kentucky Wildlife Management Area, McCracken County.

(a) A person shall not hunt on a tract designated by numbers followed by the letter "A".

(b) Quail and rabbit:

1. Tracts 2, 3, 6 and 7: closed after December 31.

2. Tracts 1, 4 and 5: January 1 through 10, unless maximum acceptable harvest levels have been reached prior to January 10 as determined from hunter use data.

3. If a tract is closed before January 10, a sign announcing closure shall be posted at the hunter check station at least twenty-four (24) hours prior to the closure.

(c) A hunter or dog trainer shall check in and out daily at the designated check station.

(d) A person shall not:

1. Use a rifle or ball or slug ammunition;

2. Allow an unleashed dog except as provided in Section 2(5) of this administrative regulation; or

3. Operate a vehicle on Tract 6 from February 1 through April 16.

(28) Westvaco Public Hunting Areas. A person hunting on a Westvaco Public Hunting Area shall possess a valid Westvaco Hunting Permit.

(29) White City Wildlife Management Area. Quail and rabbit: closed after December 31.

(30) Yatesville Wildlife Management Area.

(a) A person shall not hunt grouse.

(b) A hunter or dog trainer shall check in and out daily at a designated check station.

(31) Yellowbank Wildlife Management Area.

(a) Quail and rabbit: closed after December 31.

(b) A hunter or dog trainer shall check in and out daily at the designated check station.

C. THOMAS BENNETT, Commissioner

MIKE BOATWRIGHT, Chairman

ANN R. LATTA, Secretary

DOUGLAS SCOTT PORTER, Assistant Attorney General

APPROVED BY AGENCY: February 26, 1999

FILED WITH LRC: April 15, 1999 at 11 a.m.

TOURISM DEVELOPMENT CABINET  
Department of Fish and Wildlife Resources  
(As Amended at ARRS, June 8, 1999)

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 five (5) or ten (10) consecutive-day period beginning the second Saturday in November when breech-loading firearms may be used to take deer.

(2) "Private inholding" means privately owned property completely surrounded by a WMA.

(3) "Quota hunt" means a WMA deer hunt [hunts], including a youth hunt, where a participant is [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 or WMA" means a tract of land the department controls or manages through ownership, lease, license or cooperative agreement.

Section 2. General WMA Requirements. (1) Unless specified otherwise in this administrative regulation, statewide deer requirements shall apply to a WMA [WMAs].

(2) If specific deer hunting dates are given for a WMA in this administrative regulation, a person [persons] shall not hunt deer except [only] on those dates.

(3) On a WMA, Westvaco Public Hunting Area, 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 a nail, spike, screw-in device, wire or tree climber [nails, spikes, screw-in devices, wire or tree climbers] for attaching a tree stand or climbing a tree.

(b) May use a portable stand or climbing device that does not injure a tree.

(c) Shall not place a portable stand in a tree more than two (2) weeks before opening day, and shall remove it 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.

(4) Limits. A hunter shall not take more than one (1) deer from each of the WMAs listed in Section 4 [5] of this administrative regulation except:

(a) Statewide [that statewide] limits shall apply to:

1. Adair WMA;

2. Barren River WMA;

3. The Pioneer Weapons Area;

4. Stewart Island;

5. [2. Dewey Lake WMA;

3. Westvaco public hunting area; and

6. [4.] Yatesville WMA;

(b) A person shall not take more than two (2) deer on:

1. West Kentucky WMA;

2. Higginson-Henry WMA;

3. Dewey Lake WMA;

4. Taylorsville Lake WMA; or

5. [4.] Yellowbank WMA.

[(a) West Kentucky WMA;

(b) The Pioneer Weapons Area;

(c) Dewey Lake WMA;

(d) Higginson-Henry WMA;

(e) Westvaco public hunting areas; or

(f) Yellowbank WMA;

(g) Yatesville Lake WMA.]

(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 a private inholding [inholdings]

when deer hunting is not allowed on the surrounding WMA.

(7) Except to travel through a WMA on an established public road [roads] or to use an area [areas] designated open by a sign [signs], a person without a valid quota hunt permit shall not enter a WMA during a quota hunt [hunts] on that area.

(8) Except if waterfowl hunting or hunting at night, 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 a WMA marked by signs as closed to public access; or~~
- ~~(b) Hunt in portions of a WMA marked by signs as closed to hunting;~~

Section 3. Quota Hunt Procedures. (1) A person selected [by random drawing] for a quota hunt:

(a) ~~[(1)] Shall hunt on the assigned date and in the assigned area [dates and in assigned areas];~~

(b) ~~[(2)] May use a firearm [firearms], archery equipment or a crossbow [crossbows] during the quota hunt.~~

(2) A person whose name is not selected pursuant to this administrative regulation shall not hunt during a quota hunt listed in this administrative regulation or in 301 KAR 2:179.

(3) A person shall apply for a quota hunt drawing through an automated telephone system by calling 1-877-868-4868 from a touch-tone telephone between August 1 and August 31 and:

- (a) Providing his Social Security number;
- (b) Indicating his first and second choice of hunts; and
- (c) Paying a three (3) dollar application fee for each application

by:

- 1. Check;
- 2. Money order;
- 3. Visa; or
- 4. MasterCard.

(4) Five (5) or fewer persons may apply as a party by providing a Social Security number and paying the application fee for each person.

(5) A person shall not apply more than one (1) time.

(6) The department shall select hunters by a random drawing of all applicants.

(7) A person checking in for a quota hunt shall show:

- (a) His Social Security number;
- (b) A valid Kentucky hunting, combination or senior/disabled license; and

(c) If he possesses a hunting or combination license:

- 1. A valid deer permit with an unused carcass tag; or
- 2. The receipt portion of a valid deer permit and:

- a. A bonus quota hunt deer permit;
- b. If the quota hunt is in a Zone 1 county as defined by 301 KAR 2:174, a bonus Zone 1 antlerless deer permit; or
- c. If the person will hunt with bow or crossbow, a bonus antlerless archery deer permit.

(d) If he possesses a senior/disabled license, the hand-made cards as specified in 301 KAR 2:172.

(8) A person who was not selected and applies to hunt the following year shall be given one (1) preference point for each year he was not selected.

(9) A random selection of those with preference points shall be made for each year's quota hunts before those without preference points are chosen.

(10) The commissioner may extend the application deadline if technical difficulties with the automated application system prevent applications from being accepted for one (1) or more days during the application period.

(11) A person shall check in and out daily for a quota hunt, except as otherwise specified in this administrative regulation.

(12) If checking out is required by this administrative regulation, a person who does not check out by 8 p.m. shall not be eligible to quota hunt the following year.

(13) Unless specified otherwise in Section 4 of this administrative regulation, a wildlife management area in two (2) or more

deer hunting zones as specified in 301 KAR 2:174 shall be governed by the most liberal zone requirements of the zones in which it lies. [A person who does not check out of a quota hunt as required by this administrative regulation shall not be eligible to quota hunt the following year.]

Section 4. WMA Hunting Dates and Requirements. (1) Adair WMA. A person shall not hunt deer with a firearm.

(2) Ballard WMA.

(a) Quota youth hunt, any deer or antlerless deer as determined by a random drawing: two (2) consecutive days beginning the fourth [third] Saturday in October.

(b) Quota hunt, any deer or antlerless deer as determined by a random drawing: the first [fourth] Saturday and Sunday of November [October].

(c) Statewide deer requirements shall apply to the 300 acre tract south of Terrell Landing Road.

~~[(d) A person shall check out before 6 p.m.]~~

(3) Barren River Wildlife Management Area. On the Peninsula Unit, including Narrows, Goose and Grass Islands, a person:

(a) Shall not:

- 1. Hunt deer with a breech-loading firearm;
- 2. Except as authorized by the department, carry a breech-loading firearm with ammunition in the chamber or magazine;

(b) May hunt deer with a crossbow.

(4) [(2)] Beaver Creek WMA.

(a) Archery hunt, antlered deer: the third Saturday in September through the third Monday in 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.]~~

(5) [(4)] Cane Creek WMA.

(a) Archery hunt: Zone 4 [6] archery season dates and harvest restrictions shall apply.

(b) Gun hunt, antlered deer: two (2) consecutive days beginning the second Saturday in November.

(6) [(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 the third Monday in January [15].

(b) A deer hunter shall check in and check out.

(7) [(6)] Clay WMA.

(a) Archery hunt, any deer: October 15 through the third Monday in January [15], except during the quota hunt.

(b) Quota hunt, any deer: the first Saturday and Sunday in November.

(c) Youth hunt, any deer: open during the statewide youth hunt.

(d) Deer hunters shall check in and check out.

(8) [(7)] Cyprus AMAX-Robinson Forest WMA.

(a) A person shall not hunt deer:

1. On the main block of Robinson Forest; or

2. With a firearm during the modern gun deer season.

(b) Archery, muzzle-loader and youth hunt seasons shall correspond to Zone 5 harvest requirements.

(c) A deer hunter shall check in and check out.

~~[(a) A person shall not hunt deer on the main block of Robinson Forest.]:~~

1. On the main block of Robinson Forest:

2. With a firearm during the modern gun season:

~~(b) Archery, muzzle-loader and youth hunt seasons shall correspond to statewide requirements.]~~

~~[(d)] A deer hunter shall check in and out.]~~

(9) [(8)] Daviess County WMA shall be closed to deer hunting.

(10) [(9)] Dewey Lake WMA.

(a) Archery hunts: any deer, the third Saturday in September through the third Monday in January [15], except during a quota hunt [persons shall not archery hunt during quota hunts].

(b) Youth hunt, any deer: open during statewide youth hunt, [quota hunt, any deer: two (2) consecutive days beginning the first

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~~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.

(11) [(10)] Fishtrap Lake WMA.

(a) Archery hunt, antlered deer: third Saturday in September through the third Monday in January [15], except during the quota hunt.

(b) Quota hunt, antlered deer: two (2) consecutive days beginning on the Saturday before Thanksgiving. ~~(the fourth Saturday in November.)~~

(c) Youth hunt, antlered deer: open during statewide youth hunt.

(12) [(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 the third Monday in 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 shall be:

1. Open to youth quota hunting; and
  2. Closed to archery and crossbow hunting.
- (d) A deer hunter shall check in and shall check out.

~~[(e) A quota hunter [Quota hunters] shall check out before 6 p.m.]~~

(13) [(12)] Green River Lake WMA.

(a) Quota hunt, antlered deer: two (2) consecutive days beginning the first Saturday in November [December].

(b) Archery hunt, any deer: the third Saturday in September through the third Monday in January [15], except during the quota hunt.

(c) An archery hunter shall check in and check out.

(14) [(13)] Higginson-Henry WMA.

(a) Quota hunt, any deer or antlerless deer as determined by a random drawing: 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 the third Monday in January [15], 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.

(15) [(14)] Kentucky River WMA.

(a) Quota hunts, Zone 1 [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 the third Monday in January [15], except during a quota hunt ~~[the quota hunts]~~.

(c) A quota hunter [Quota hunters] may hunt without checking in or out.

(d) Statewide deer requirements shall apply for muzzle-loader, crossbow, and youth hunt seasons.

(16) [(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 September ~~(October)~~ through the third Monday in January [15], except during the quota hunt.

(c) Deer hunters shall check in and check out.

(17) [(16)] Lapland WMA.

(a) Quota hunts, Zone 2 [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 the third Monday in January [15], except during the quota hunts.

(c) A quota hunter [Quota hunters] may hunt without checking in or out.

(d) Statewide deer requirements shall apply for muzzle-loader, crossbow, and youth hunt seasons.

(18) [(17)] Curtis Gates Lloyd WMA.

(a) Quota hunts, Zone 2 [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 the third Monday in January [15], except during a quota hunt ~~[the quota hunts]~~.

(c) A quota hunter [Quota hunters] may hunt without checking in or out.

(d) Statewide deer requirements shall apply for muzzle-loader, crossbow, and youth hunt seasons.

(19) [(18)] Mill Creek WMA.

(a) Archery hunt, any deer: the third Saturday in September through the third Monday in January [15], except during the quota hunt.

(b) Quota hunt, antlered deer: two (2) consecutive days beginning the first Saturday in November.

(20) [(19)] Mud Camp Creek 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 the third Monday in January [15], except during the quota hunts.

(c) A quota hunter [Quota hunters] may hunt without checking in or out.

(d) Statewide deer requirements shall apply for muzzle-loader, crossbow, and youth hunt seasons.

(21) [(20)] Mullins WMA.

(a) Quota hunts, Zone 2 [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 the third Monday in January [15], except during the quota hunts.

(c) A quota hunter [Quota hunters] may hunt without checking in or out.

(d) Statewide deer requirements shall apply for muzzle-loader, crossbow, and youth hunt seasons.

(22) [(21)] Obion Creek WMA.

(a) Quota hunt, Zone 1 harvest restrictions apply:

1. Five (5) consecutive days beginning the second Saturday in November; and

2. Five (5) consecutive days beginning the day after the first quota hunt ends. ~~[any deer: two (2) consecutive days beginning the first Saturday in November.]~~

(b) Archery hunt, any deer: the third Saturday in September through the third Monday in January [15], except during a ~~[the]~~ quota hunt.

(c) A quota hunter shall not be required to check in or check out.

(23) [(22)] Paintsville Lake 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 the third Monday in January [15], except no archery hunting

during the quota hunt.

(c) Youth hunt, any deer: open during the statewide youth hunt.

(d) A person participating in the quota hunt shall check in and check out.

(24) [(23)] Peabody WMA.

(a) Quota hunt, any deer: five (5) consecutive days beginning the second Saturday in November. A quota hunter [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 the third Monday in January [15], except during quota hunt.

(e) The youth hunt shall be open under statewide requirements.

(25) [(24)] Pennyrile WMA.

(a) Quota hunt, any deer or antlerless deer as determined by a random drawing: 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 the third Monday in January [15], except during the quota hunt.

(c) A quota hunter [Quota-hunters] shall check out by 6 p.m. daily.

(d) An archery hunter [Archery-hunters] shall check in and check out.

(26) [(25)] Pioneer Weapons WMA. Statewide requirements shall apply except that a person:

(a) Shall not use a breech-loading gun;

(b) May use a crossbow during the entire archery season.

(27) [(26)] Redbird WMA.

(a) Archery hunt, antlered deer: the third Saturday in September through the third Monday in January [15], except during the gun hunt.

(b) Gun hunt, antlered deer: two (2) consecutive days beginning the second Saturday in November.

(c) A gun deer hunter [Gun-deer-hunters] shall check his deer at the Redbird Ranger District Office.

(28) Dr. James R. Rich 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 September through the third Monday in January, except during the quota hunt.

(29) [(27)] Stewart Island WMA.

(a) Muzzle-loader hunt, any deer: two (2) days beginning the fourth Saturday in October. [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-day-light time on the third Saturday of September in downtown Smithland to participate in a public drawing.]

(b) [(e)] Archery hunt, any deer: the third Saturday in September through October 14.

(30) [(28)] Swan Lake WMA: closed to deer hunting.

(31) [(29)] R. F. Tarter.

(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 the third Monday in 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.

(32) [(30)] Taylorsville Lake WMA.

(a) Archery hunt, any deer: the third Saturday in September through the third Monday in 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 De-

cember.

(c) Youth hunt, any deer: open during the statewide youth hunt.

(d) Hunters shall check in and check out daily.

(e) A person:

1. May take two (2) deer; and

2. Shall not take more than one (1) deer during a quota hunt.

[(d)] This area shall be open during the statewide youth hunt;]

(33) [(31)] Tradewater WMA.

(a) Quota hunt, any deer or antlerless deer as determined by a random drawing: 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 the third Monday in January [15], except during the quota hunt.

(c) A quota hunter [Quota-hunters] shall check out by 6 p.m. daily:

(d) An archery hunter [Archery-hunters] shall check in and check out.

(34) [(32)] Twin Knobs Campground. Quota hunt, any deer: the second Saturday in December for persons with a disability which impairs their mobility.

(35) [(33)] West Kentucky WMA.

(a) Archery hunts, any deer, the third Saturday in September through the third Monday in January, 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 on tracts one (1) through seven (7);

2. December 14 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 quota hunt for eleven (11) [twelve (12)] consecutive days.

(e) A gun hunter shall not use a breech-loading rifle or breech-loading handgun.

(f) A person shall not carry a firearm 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;]

2. No more than one (1) deer shall [may] be taken by gun; it shall be tagged with a statewide tag or a bonus quota hunt permit.

3. A person shall not use more than one (1) bonus quota hunt permit on this area.]

(h) A deer hunter shall check in and check out.

(36) [(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.

(37) [(35)] White City WMA.

(a) Archery hunt, any deer: the third Saturday in September through the third Monday in 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.

(38) [(36)] Yatesville WMA. Statewide deer requirements apply except:

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(a) A person shall not take antlerless deer with a firearm during the modern gun deer season. [~~during the first five (5) days of the modern gun season.~~]

(b) A deer hunter shall check in and shall check out.

(39) [(37)] Yellowbank WMA.

(a) Youth quota hunt: the first weekend in November. [~~The area shall be open during statewide archery and youth hunts.~~]

(b) Archery hunt, any deer: the third Saturday in September through the third Monday in January.

(c) A deer hunter shall check in and check out.

(d) [(e)] The sex of deer to be taken during the youth hunt shall be determined by a random drawing at check in.

(e) A person shall not take more than:

1. Two (2) deer from this area; or

2. One (1) deer during the youth quota hunt.

[(d) Zone 3 harvest restrictions shall apply;

(e) A person shall not take more than one (1) deer during the youth hunt.]

(40) [(38)] Zilpo Campground. Quota hunt, any deer: the second Saturday in December for persons with a disability which impairs their mobility.

C. THOMAS BENNETT, Commissioner

MIKE BOATWRIGHT, Chairman

ANN R. LATTA, Secretary

DOUGLAS SCOTT PORTER, Assistant Attorney General

APPROVED BY AGENCY: February 26, 1999

FILED WITH LRC: April 15, 1999 at 11 a.m.

**TOURISM DEVELOPMENT CABINET**  
**Department of Fish and Wildlife Resources**  
**(As Amended at ARRS, June 8, 1999)**

**301 KAR 2:179. State park deer hunts.**

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

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

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

Section 1. Hunting for [either antlered or antlerless] deer shall be allowed:

(1) On the first Saturday and Sunday of December [5 and 6, 1998;] at:

(a) Grayson Lake State Park, for antlered or antlerless deer; and

(b) Taylorsville Lake State Park, for antlerless deer. **Open to a person with a disability which impairs his mobility.**

(2) On the third Tuesday and Wednesday of December for antlered or antlerless deer at Lake Cumberland State Resort Park. A person shall:

(a) Not use a firearm or crossbow on this area; [or]

(b) Wear hunter orange as specified in 301 KAR 2:172, Section 12, on a tract designated by the park superintendent; and

(c) Remain in his assigned area.

(3) On the first Tuesday and Wednesday of January for antlered or antlerless deer [5 and 6, 1999;] at:

(a) Lake Barkley [Barren River Lake] State Resort Park;

(b) Dale Hollow State Resort Park;

(c) Greenbo Lake State Resort Park; and

[(d) Lake Cumberland State Resort Park.

(3) On January 12 and 13, 1999, at Dale Hollow State Resort Park].

Section 2. A person shall not hunt on a state park unless he:

(1) Was selected by a random drawing pursuant to 301 KAR 2:178 [2:181E]; or

(2) Is a member of the successful applicant's hunting party.

Section 3. (1) A person shall:

(a) Check in:

1. Between 4 p.m. and 10 p.m. on the day before the hunt; or

2. After 5 a.m. on the day of the hunt;

(b) Furnish at check-in:

1. The authorization number as specified in 301 KAR 2:181, showing that he was a successful applicant for the hunt; and

2. A driver's license or other form of personal identification.

(2) A member of the successful applicant's party shall check in with the applicant.

(3) When checking in, a successful applicant or a member of his party shall show:

(a) A valid:

1. Current [1998] deer permit with an unfilled carcass tag; [or]

2. Quota hunt deer permit with an unused carcass tag; or

3. If hunting with a senior/disabled license, the hand-made cards required by 301 KAR 2:172; and

(b) [Unless exempt from licensing requirements by KRS 150.170;] **Unless exempt from licensing requirements by KRS 150.170(5),** a valid Kentucky:

1. Resident hunting license;

2. Resident combination hunting and fishing license; [or]

3. Annual nonresident hunting license; or

4. Senior/disabled license.

Section 4. A person participating in the hunt:

(1) Shall:

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

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

(c) Check out **by 8 p.m.** [before leaving the park]; and

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

(2) Shall not:

(a) Use a firearm, archery equipment or crossbow prohibited by 301 KAR 2:172;

(b) Take more than one (1) deer;

(c) Take a white deer at Dale Hollow State Resort Park;

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

(e) Injure a tree by using:

1. A tree stand except a portable stand;

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

3. Climbing spikes.

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

(h) Hunt:

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

2. Outside the park boundaries.

(3) A person who does not check out as required by this administrative regulation shall not be eligible to apply for a quota hunt the following year.

C. THOMAS BENNETT, Commissioner

MIKE BOATWRIGHT, Chairman

ANN R. LATTA, Secretary

DOUGLAS SCOTT PORTER, Assistant Attorney General

APPROVED BY AGENCY: February 26, 1999

FILED WITH LRC: April 15, 1999 at 10 a.m.

**TOURISM DEVELOPMENT CABINET**  
**Department of Fish and Wildlife Resources**  
**(As Amended at ARRS, June 8, 1999)**

**301 KAR 6:060. Safe boating certification.**

RELATES TO: KRS 235.280, 235.285(7)

STATUTORY AUTHORITY: KRS 235.280, 235.285(7)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 235.280 authorizes the department to promulgate administrative regulations necessary to carry out the purposes of KRS Chapter 235. KRS 235.285(7) requires that a person twelve (12) through seventeen (17) years of age operating a personal watercraft or motorboat of over ten (10) horsepower have a safe boating certificate. This administrative regulation is necessary to establish the procedures for acquiring a safe boating certificate.

Section 1. To obtain a safe boating certificate, a person shall:

(1) Answer correctly at least eighty (80) percent of the questions on an examination approved by the department; and

(2) Take the examination in the presence of a person authorized by the department to provide instruction in safe boating and administer the examination.

Section 2. There shall not be a:

- (1) Mandatory waiting period before retaking the examination; or
- (2) Limit on the number of times a person may retake the exam.

Section 3. (1) Examination questions shall be taken from the publication, "Kentucky Boating Basics, A Guide to Responsible Boating."

(2) A person may obtain a current schedule of times and locations of examinations by calling 1-800-858-1549.

Section 4. Incorporation by Reference. (1) "Kentucky Boating Basics, A Guide to Responsible Boating" 1999 edition, is incorporated by reference.

(2) This material may be inspected, copied or obtained at the Department of Fish and Wildlife Resources, #1 Game Farm Road, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. until 4:30 p.m.

C. THOMAS BENNETT, Commissioner

MIKE BOATWRIGHT, Chairman

ANN R. LATTA, Secretary

DOUGLAS SCOTT PORTER, Assistant Attorney General

APPROVED BY AGENCY: April 14, 1999

FILED WITH LRC: April 15, 1999 at 10 a.m.

**NATURAL RESOURCES AND  
ENVIRONMENTAL PROTECTION CABINET  
Department for Environmental Protection  
Division for Air Quality  
(As Amended at ARRS, June 8, 1999)**

**401 KAR 57:002. 40 CFR Part 61 national emission standards for hazardous air pollutants.**

RELATES TO: KRS 224.10-100, 224.20-100, 224.20-110, 224.20-120, 40 CFR 61.01 to 61.139, 61.160 to 61.358, 42 USC 7401, 7412, 7414, 7416, 7601

STATUTORY AUTHORITY: KRS 224.10-100, 224.20-100, 224.20-110, 224.20-120, 40 CFR 61.01 to 61.139, 61.160 to 61.358, 42 USC 7401, 7412, 7414, 7416, 7601

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.10-100 requires the Natural Resources and Environmental Protection Cabinet to prescribe administrative regulations for the prevention, abatement, and control of air pollution. This administrative regulation incorporates by reference the National Emission Standards for Hazardous Air Pollutants (NESHAP) codified in 40 CFR 61.01 to 61.139, 61.160 to 61.358. Delegation of implementation and enforcement authority for the federal NESHAP program from the United States Environmental Protection Agency to the Commonwealth of Kentucky is provided under 42 USC 7412(l).

Section 1. ~~[Definitions. Terms used in this administrative regulation shall have the meaning given in this section unless the context clearly indicates otherwise.]~~

(1) For purposes of 40 CFR Part 61, "Part 61 NESHAP" shall be the [means] National Emission Standards for Hazardous Air

Pollutants codified in 40 CFR 61.01 to 61.139 and 61.160 to 61.358 (Subparts A to L and N to FF).

(2) For purposes of ["Administrator"-as-used-in] 40 CFR 61.01 to 61.139 and 61.160 to 61.358 (Subparts A to L and N to FF), the "administrator" shall be [means] the Secretary of the Natural Resources and Environmental Protection Cabinet unless a specific provision of the Part 61 NESHAP states that the United States Environmental Protection Agency shall retain enforcement authority.

Section 2. Applicability. This administrative regulation shall apply to sources that are subject to 40 CFR 61.01 to 61.139 and 61.160 to 61.358 (Subparts A to L and N to FF). These sources shall comply with the following:

(1) The applicable provisions in 40 CFR 61.01 to 61.19 (Subpart A), General Provisions, which is incorporated by reference in Section 3 of this administrative regulation;

(2) The applicable methods, procedures, and reporting requirements contained in 40 CFR Part 61, Appendices A through E, which are incorporated by reference in Section 3 of this administrative regulation; and

(3) The applicable Part 61 NESHAP incorporated by reference in Section 3 of this administrative regulation.

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

(a) 40 CFR 61.01 to 61.19 (Subpart A), "General Provisions", as published in the Code of Federal Regulations, 40 CFR Parts 61 to 62, July 1, 1998 [1997];

(b) 40 CFR 61.20 to 61.26 (Subpart B), "National Emission Standards for Radon Emissions from Underground Uranium Mines", as published in the Code of Federal Regulations, 40 CFR Parts 61 to 62, July 1, 1998 [1997];

(c) 40 CFR 61.30 to 61.34 (Subpart C), "National Emission Standard for Beryllium", as published in the Code of Federal Regulations, 40 CFR Parts 61 to 62, July 1, 1998 [1997];

(d) 40 CFR 61.40 to 61.44 (Subpart D), "National Emission Standard for Beryllium Rocket Motor Firing", as published in the Code of Federal Regulations, 40 CFR Parts 61 to 62, July 1, 1998 [1997];

(e) 40 CFR 61.50 to 61.56 (Subpart E), "National Emission Standard for Mercury", as published in the Code of Federal Regulations, 40 CFR Parts 61 to 62, July 1, 1998 [1997];

(f) 40 CFR 61.60 to 61.71 (Subpart F), "National Emission Standard for Vinyl Chloride", as published in the Code of Federal Regulations, 40 CFR Parts 61 to 62, July 1, 1998 [1997];

(g) 40 CFR 61.90 to 61.97 (Subpart H), "National Emission Standards for Emissions of Radionuclides Other Than Radon from Department of Energy Facilities", as published in the Code of Federal Regulations, 40 CFR Parts 61 to 62, July 1, 1998 [1997];

(h) 40 CFR 61.100 to 61.108 (Subpart I), "National Emission Standards for Radionuclide Emissions from Federal Facilities Other Than Nuclear Regulatory Commission Licensees and Not Covered by Subpart H", as published in the Code of Federal Regulations, 40 CFR Parts 61 to 62, July 1, 1998 [1997];

(i) 40 CFR 61.110 to 61.112 (Subpart J), "National Emission Standard for Equipment Leaks (Fugitive Emission Sources) of Benzene", as published in the Code of Federal Regulations, 40 CFR Parts 61 to 62, July 1, 1998 [1997];

(j) 40 CFR 61.120 to 61.127 (Subpart K), "National Emission Standards for Radionuclide Emissions from Elemental Phosphorus Plants", as published in the Code of Federal Regulations, 40 CFR Parts 61 to 62, July 1, 1998 [1997];

(k) 40 CFR 61.130 to 61.139 (Subpart L), "National Emission Standard for Benzene Emissions from Coke By-Product Recovery Plants", as published in the Code of Federal Regulations, 40 CFR Parts 61 to 62, July 1, 1998 [1997];

(l) 40 CFR 61.160 to 61.165 (Subpart N), "National Emission Standard for Inorganic Arsenic Emissions from Glass Manufacturing Plants", as published in the Code of Federal Regulations, 40 CFR Parts 61 to 62, July 1, 1999 [1997];

(m) 40 CFR 61.170 to 61.177 (Subpart O), "National Emission Standard for Inorganic Arsenic Emissions from Primary Copper Smelters", as published in the Code of Federal Regulations, 40 CFR

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Parts 61 to 62, July 1, 1998 [1997];

(n) 40 CFR 61.180 to 61.186 (Subpart P), "National Emission Standard for Inorganic Arsenic Emissions from Arsenic Trioxide and Metallic Arsenic Production Facilities", as published in the Code of Federal Regulations, 40 CFR Parts 61 to 62, July 1, 1998 [1997];

(o) 40 CFR 61.190 to 61.193 (Subpart Q), "National Emission Standards for Radon Emissions from Department of Energy Facilities", as published in the Code of Federal Regulations, 40 CFR Parts 61 to 62, July 1, 1998 [1997];

(p) 40 CFR 61.200 to 61.210 (Subpart R), "National Emission Standards for Radon Emissions from Phosphogypsum Stacks", as published in the Code of Federal Regulations, 40 CFR Parts 61 to 62, July 1, 1998 [1997];

(q) 40 CFR 61.220 to 61.226 (Subpart T), "National Emission Standards for Radon Emissions from the Disposal of Uranium Mill Tailings", as published in the Code of Federal Regulations, 40 CFR Parts 61 to 62, July 1, 1998 [1997];

(r) 40 CFR 61.240 to 61.247 (Subpart V), "National Emission Standard for Equipment Leaks (Fugitive Emission Sources)", as published in the Code of Federal Regulations, 40 CFR Parts 61 to 62, July 1, 1998 [1997];

(s) 40 CFR 61.250 to 61.256 (Subpart W), "National Emission Standards for Radon Emissions from Operating Mill Tailings", as published in the Code of Federal Regulations, 40 CFR Parts 61 to 62, July 1, 1998 [1997];

(t) 40 CFR 61.270 to 61.277 (Subpart Y), "National Emission Standard for Benzene Emissions from Benzene Storage Vessels", as published in the Code of Federal Regulations, 40 CFR Parts 61 to 62, July 1, 1998 [1997];

(u) 40 CFR 61.300 to 61.306 (Subpart BB), "National Emission Standard for Benzene Emissions from Benzene Transfer Operations", as published in the Code of Federal Regulations, 40 CFR Parts 61 to 62, July 1, 1998 [1997];

(v) 40 CFR 61.340 to 61.358 (Subpart FF), "National Emission Standard for Benzene Waste Operations", as published in the Code of Federal Regulations, 40 CFR Parts 61 to 62, July 1, 1998 [1997];

(w) "Appendix A to Part 61, National Emission Standards for Hazardous Air Pollutants, Compliance Status Information", as published in the Code of Federal Regulations, 40 CFR Parts 61 to 62, July 1, 1998 [1997];

(x) "Appendix B to Part 61, Test Methods", as published in the Code of Federal Regulations, 40 CFR Parts 61 to 62, July 1, 1998 [1997];

(y) "Appendix C to Part 61, Quality Assurance Procedures", as published in the Code of Federal Regulations, 40 CFR Parts 61 to 62, July 1, 1998 [1997];

(z) "Appendix D to Part 61, Methods for Estimating Radionuclide Emissions", as published in the Code of Federal Regulations, 40 CFR Parts 61 to 62, July 1, 1998 [1997]; and

(aa) "Appendix E to Part 61, Compliance Procedures Methods for Determining Compliance with Subpart I", as published in the Code of Federal Regulations, 40 CFR Parts 61 to 62, July 1, 1998 [1997].

(2) This material may be inspected, copied, or obtained 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, 8020 Ewing Boulevard, Suite 110 [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

BARBARA A. FOSTER, General Counsel

APPROVED BY AGENCY: April 6, 1999

FILED WITH LRC: April 7, 1999 at 3 p.m.

### NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET Department for Environmental Protection Division for Air Quality (As Amended at ARRS, June 8, 1999)

#### 401 KAR 60:005. 40 CFR Part 60 standards of performance for new stationary sources.

RELATES TO: KRS 224.10-100, 224.20-100, 224.20-110, 224.20-120, 40 CFR 60.1 to 60.19, 60.40b to 60.54, 60.60 to 60.506, 60.540 to 60.668, 60.680 to 60.759, 42 USC 7411

STATUTORY AUTHORITY: KRS 224.10-100, 224.20-100, 224.20-110, 224.20-120, 40 CFR 60.1 to 60.19, 60.40b to 60.54, 60.60 to 60.506, 60.540 to 60.668, 60.680 to 60.759, 42 USC 7411

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.10-100 requires the Natural Resources and Environmental Protection Cabinet to prescribe administrative regulations for the prevention, abatement, and control of air pollution. This administrative regulation incorporates by reference the Standards of Performance for New Stationary Sources (NSPS) codified in 40 CFR 60.1 to 60.19, 60.40b to 60.54, 60.60 to 60.506, 60.540 to 60.668, and 60.680 to 60.759. Delegation of implementation and enforcement authority for the federal NSPS program from the United States Environmental Protection Agency to the Commonwealth of Kentucky is provided under 42 USC 7411(c)(1).

Section 1. ~~[Definitions. Terms used in this administrative regulation shall have the meaning given in this section unless the context clearly indicates otherwise.]~~

(1) **For purposes of 40 CFR Part 60, "Part 60 NSPS" shall be the [means]** Standards of Performance for New Stationary Sources codified in 40 CFR 60.1 to 60.19, 60.40b to 60.54, 60.60 to 60.506, 60.540 to 60.668, and 60.680 to 60.759 (Subparts A, Db to E, F to XX, BBB to NNN, and PPP to WWW).

(2) **For purposes of ["Administrator", as used in]** 40 CFR 60.1 to 60.19, 60.40b to 60.54, 60.60 to 60.506, 60.540 to 60.668, and 60.680 to 60.759 (Subparts A, Db to E, F to XX, BBB to NNN, and PPP to WWW), **the "administrator" shall be [means]** the Secretary of the Natural Resources and Environmental Protection Cabinet unless a specific provision of a Part 60 NSPS states that the United States Environmental Protection Agency shall retain enforcement authority.

Section 2. Applicability. This administrative regulation shall apply to sources that are subject to 40 CFR 60.1 to 60.19, 60.40b to 60.54, 60.60 to 60.506, 60.540 to 60.668, and 60.680 to 60.759 (Subparts A, Db to E, F to XX, BBB to NNN, and PPP to WWW). These sources shall comply with the following:

(1) The applicable provisions in 40 CFR 60.1 to 60.19 (Subpart A), General Provisions, which is incorporated by reference in Section 3 of this administrative regulation;

(2) The applicable methods, procedures, and reporting requirements contained in 40 CFR Part 60, Appendices A through F, which are incorporated by reference in Section 3 of this administrative regulation; and

(3) The applicable Part 60 NSPS incorporated by reference in Section 3 of this administrative regulation.

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

(a) 40 CFR 60.1 to 60.19 (Subpart A), "General Provisions", as published in the Code of Federal Regulations, 40 CFR Part 60, July

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1, 1998 [1997];

(b) 40 CFR 60.40b to 60.49b (Subpart Db), "Standards of Performance for Industrial-Commercial-Institutional Steam Generating Units", as published in the Code of Federal Regulations, 40 CFR Part 60, July 1, 1998 [1997];

(c) 40 CFR 60.40c to 60.48c (Subpart Dc), "Standards of Performance for Small Industrial-Commercial-Institutional Steam Generating Units", as published in the Code of Federal Regulations, 40 CFR Part 60, July 1, 1998 [1997];

(d) 40 CFR 60.50 to 60.54 (Subpart E), "Standards of Performance for Incinerators", as published in the Code of Federal Regulations, 40 CFR Part 60, July 1, 1998 [1997];

(e) 40 CFR 60.60 to 60.66 (Subpart F), "Standards of Performance for Portland Cement Plants", as published in the Code of Federal Regulations, 40 CFR Part 60, July 1, 1998 [1997];

(f) 40 CFR 60.70 to 60.74 (Subpart G), "Standards of Performance for Nitric Acid Plants", as published in the Code of Federal Regulations, 40 CFR Part 60, July 1, 1998 [1997];

(g) 40 CFR 60.80 to 60.85 (Subpart H), "Standards of Performance for Sulfuric Acid Plants", as published in the Code of Federal Regulations, 40 CFR Part 60, July 1, 1998 [1997];

(h) 40 CFR 60.90 to 60.93 (Subpart I), "Standards of Performance for Hot Mix Asphalt Facilities", as published in the Code of Federal Regulations, 40 CFR Part 60, July 1, 1998 [1997];

(i) 40 CFR 60.100 to 60.109 (Subpart J), "Standards of Performance for Petroleum Refineries", as published in the Code of Federal Regulations, 40 CFR Part 60, July 1, 1998 [1997];

(j) 40 CFR 60.110 to 60.113 (Subpart K), "Standards of Performance for Storage Vessels for Petroleum Liquids for Which Construction, Reconstruction, or Modification Commenced After June 11, 1973, and Prior to May 19, 1978", as published in the Code of Federal Regulations, 40 CFR Part 60, July 1, 1998 [1997];

(k) 40 CFR 60.110a to 60.115a (Subpart Ka), "Standards of Performance for Storage Vessels for Petroleum Liquids for Which Construction, Reconstruction, or Modification Commenced After May 18, 1978, and Prior to July 23, 1984", as published in the Code of Federal Regulations, 40 CFR Part 60, July 1, 1998 [1997];

(l) 40 CFR 60.110b to 60.117b (Subpart Kb), "Standards of Performance for Volatile Organic Liquid Storage Vessels (Including Petroleum Liquid Storage Vessels) for Which Construction, Reconstruction, or Modification Commenced after July 23, 1984", as published in the Code of Federal Regulations, 40 CFR Part 60, July 1, 1998 [1997];

(m) 40 CFR 60.120 to 60.123 (Subpart L), "Standards of Performance for Secondary Lead Smelters", as published in the Code of Federal Regulations, 40 CFR Part 60, July 1, 1998 [1997];

(n) 40 CFR 60.130 to 60.133 (Subpart M), "Standards of Performance for Secondary Brass and Bronze Production Plants", as published in the Code of Federal Regulations, 40 CFR Part 60, July 1, 1998 [1997];

(o) 40 CFR 60.140 to 60.144 (Subpart N), "Standards of Performance for Primary Emissions from Basic Oxygen Process Furnaces for Which Construction is Commenced After June 11, 1973", as published in the Code of Federal Regulations, 40 CFR Part 60, July 1, 1998 [1997];

(p) 40 CFR 60.140a to 60.145a (Subpart Na), "Standards of Performance for Secondary Emissions from Basic Oxygen Process Steelmaking Facilities for Which Construction is Commenced after January 20, 1983", as published in the Code of Federal Regulations, 40 CFR Part 60, July 1, 1998 [1997];

(q) 40 CFR 60.150 to 60.156 (Subpart O), "Standards of Performance for Sewage Treatment Plants", as published in the Code of Federal Regulations, 40 CFR Part 60, July 1, 1998 [1997];

(r) 40 CFR 60.160 to 60.166 (Subpart P), "Standards of Performance for Primary Copper Smelters", as published in the Code of Federal Regulations, 40 CFR Part 60, July 1, 1998 [1997];

(s) 40 CFR 60.170 to 60.176 (Subpart Q), "Standards of Performance for Primary Zinc Smelters", as published in the Code of Federal Regulations, 40 CFR Part 60, July 1, 1998 [1997];

(t) 40 CFR 60.180 to 60.186 (Subpart R), "Standards of Performance for Primary Lead Smelters", as published in the Code of Federal Regulations, 40 CFR Part 60, July 1, 1998 [1997];

(u) 40 CFR 60.190 to 60.195 (Subpart S), "Standards of Per-

formance for Primary Aluminum Reduction Plants", as published in the Code of Federal Regulations, 40 CFR Part 60, July 1, 1998 [1997];

(v) 40 CFR 60.200 to 60.204 (Subpart T), "Standards of Performance for the Phosphate Fertilizer Industry: Wet-Process Phosphoric Acid Plants", as published in the Code of Federal Regulations, 40 CFR Part 60, July 1, 1998 [1997];

(w) 40 CFR 60.210 to 60.214 (Subpart U), "Standards of Performance for the Phosphate Fertilizer Industry: Superphosphoric Acid Plants", as published in the Code of Federal Regulations, 40 CFR Part 60, July 1, 1998 [1997];

(x) 40 CFR 60.220 to 60.224 (Subpart V), "Standards of Performance for the Phosphate Fertilizer Industry: Diammonium Phosphate Plants", as published in the Code of Federal Regulations, 40 CFR Part 60, July 1, 1998 [1997];

(y) 40 CFR 60.230 to 60.234 (Subpart W), "Standards of Performance for the Phosphate Fertilizer Industry: Triple Superphosphate Plants", as published in the Code of Federal Regulations, 40 CFR Part 60, July 1, 1998 [1997];

(z) 40 CFR 60.240 to 60.244 (Subpart X), "Standards of Performance for the Phosphate Fertilizer Industry: Granular Triple Superphosphate Storage Facilities", as published in the Code of Federal Regulations, 40 CFR Part 60, July 1, 1998 [1997];

(aa) 40 CFR 60.250 to 60.254 (Subpart Y), "Standards of Performance for Coal Preparation Plants", as published in the Code of Federal Regulations, 40 CFR Part 60, July 1, 1998 [1997];

(bb) 40 CFR 60.260 to 60.266 (Subpart Z), "Standards of Performance for Ferroalloy Production Facilities", as published in the Code of Federal Regulations, 40 CFR Part 60, July 1, 1998 [1997];

(cc) 40 CFR 60.270 to 60.276 (Subpart AA), "Standards of Performance for Steel Plants: Electric Arc Furnaces Constructed After October 21, 1974, and On or Before August 17, 1983", as published in the Code of Federal Regulations, 40 CFR Part 60, July 1, 1998 [1997];

(dd) 40 CFR 60.270a to 60.276a (Subpart AAa), "Standards of Performance for Steel Plants: Electric Arc Furnaces and Argon-Oxygen Decarburization Vessels Constructed After August 7, 1983", as published in the Code of Federal Regulations, 40 CFR Part 60, July 1, 1998 [1997];

(ee) 40 CFR 60.280 to 60.285 (Subpart BB), "Standards of Performance for Kraft Pulp Mills", as published in the Code of Federal Regulations, 40 CFR Part 60, July 1, 1998 [1997];

(ff) 40 CFR 60.290 to 60.296 (Subpart CC), "Standards of Performance for Glass Manufacturing Plants", as published in the Code of Federal Regulations, 40 CFR Part 60, July 1, 1998 [1997];

(gg) 40 CFR 60.300 to 60.304 (Subpart DD), "Standards of Performance for Grain Elevators", as published in the Code of Federal Regulations, 40 CFR Part 60, July 1, 1998 [1997];

(hh) 40 CFR 60.310 to 60.316 (Subpart EE), "Standards of Performance for Surface Coating of Metal Furniture", as published in the Code of Federal Regulations, 40 CFR Part 60, July 1, 1998 [1997];

(ii) 40 CFR 60.330 to 60.335 (Subpart GG), "Standards of Performance for Stationary Gas Turbines", as published in the Code of Federal Regulations, 40 CFR Part 60, July 1, 1998 [1997];

(jj) 40 CFR 60.340 to 60.344 (Subpart HH), "Standards of Performance for Lime Manufacturing Plants", as published in the Code of Federal Regulations, 40 CFR Part 60, July 1, 1998 [1997];

(kk) 40 CFR 60.370 to 60.374 (Subpart KK), "Standards of Performance for Lead-Acid Battery Manufacturing Plants", as published in the Code of Federal Regulations, 40 CFR Part 60, July 1, 1998 [1997];

(ll) 40 CFR 60.380 to 60.386 (Subpart LL), "Standards of Performance for Metallic Mineral Processing Plants", as published in the Code of Federal Regulations, 40 CFR Part 60, July 1, 1998 [1997];

(mm) 40 CFR 60.390 to 60.398 (Subpart MM), "Standards of Performance for Automobile and Light-Duty Truck Surface Coating Operations", as published in the Code of Federal Regulations, 40 CFR Part 60, July 1, 1998 [1997];

(nn) 40 CFR 60.400 to 60.404 (Subpart NN), "Standards of Performance for Phosphate Rock Plants", as published in the Code of Federal Regulations, 40 CFR Part 60, July 1, 1998 [1997];

(oo) 40 CFR 60.420 to 60.424 (Subpart PP), "Standards of

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Performance for Ammonium Sulfate Manufacture", as published in the Code of Federal Regulations, 40 CFR Part 60, July 1, 1998 [1997];

(pp) 40 CFR 60.430 to 60.435 (Subpart QQ), "Standards of Performance for the Graphic Arts Industry: Publication Rotogravure Printing", as published in the Code of Federal Regulations, 40 CFR Part 60, July 1, 1998 [1997];

(qq) 40 CFR 60.440 to 60.447 (Subpart RR), "Standards of Performance for Pressure Sensitive Tape and Label Surface Coating Operations", as published in the Code of Federal Regulations, 40 CFR Part 60, July 1, 1998 [1997];

(rr) 40 CFR 60.450 to 60.456 (Subpart SS), "Standards of Performance for Industrial Surface Coating: Large Appliances", as published in the Code of Federal Regulations, 40 CFR Part 60, July 1, 1998 [1997];

(ss) 40 CFR 60.460 to 60.466 (Subpart TT), "Standards of Performance for Metal Coil Surface Coating", as published in the Code of Federal Regulations, 40 CFR Part 60, July 1, 1998 [1997];

(tt) 40 CFR 60.470 to 60.474 (Subpart UU), "Standards of Performance for Asphalt Processing and Asphalt Roofing Manufacture", as published in the Code of Federal Regulations, 40 CFR Part 60, July 1, 1998 [1997];

(uu) 40 CFR 60.480 to 60.489 (Subpart VV), "Standards of Performance for Equipment Leaks of VOC in the Synthetic Organic Chemicals Manufacturing Industry", as published in the Code of Federal Regulations, 40 CFR Part 60, July 1, 1998 [1997];

(vv) 40 CFR 60.490 to 60.496 (Subpart WW), "Standards of Performance for the Beverage Can Surface Coating Industry", as published in the Code of Federal Regulations, 40 CFR Part 60, July 1, 1998 [1997];

(ww) 40 CFR 60.500 to 60.506 (Subpart XX), "Standards of Performance for Bulk Gasoline Terminals", as published in the Code of Federal Regulations, 40 CFR Part 60, July 1, 1998 [1997];

(xx) 40 CFR 60.540 to 60.548 (Subpart BBB), "Standards of Performance for the Rubber Tire Manufacturing Industry", as published in the Code of Federal Regulations, 40 CFR Part 60, July 1, 1998 [1997];

(yy) 40 CFR 60.560 to 60.566 (Subpart DDD), "Standards of Performance for Volatile Organic Compound (VOC) Emissions from the Polymer Manufacturing Industry", as published in the Code of Federal Regulations, 40 CFR Part 60, July 1, 1998 [1997];

(zz) 40 CFR 60.580 to 60.585 (Subpart FFF), "Standards of Performance for Flexible Vinyl and Urethane Coating and Printing", as published in the Code of Federal Regulations, 40 CFR Part 60, July 1, 1998 [1997];

(aaa) 40 CFR 60.590 to 60.593 (Subpart GGG), "Standards of Performance for Equipment Leaks of VOC in Petroleum Refineries", as published in the Code of Federal Regulations, 40 CFR Part 60, July 1, 1998 [1997];

(bbb) 40 CFR 60.600 to 60.604 (Subpart HHH), "Standards of Performance for Synthetic Fiber Production Facilities", as published in the Code of Federal Regulations, 40 CFR Part 60, July 1, 1998 [1997];

(ccc) 40 CFR 60.610 to 60.618 (Subpart III), "Standards of Performance for Volatile Organic Compound (VOC) Emissions From the Synthetic Organic Chemical Manufacturing Industry (SOCMI) Air Oxidation Unit Processes", as published in the Code of Federal Regulations, 40 CFR Part 60, July 1, 1998 [1997];

(ddd) 40 CFR 60.620 to 60.625 (Subpart JJJ), "Standards of Performance for Petroleum Dry Cleaners", as published in the Code of Federal Regulations, 40 CFR Part 60, July 1, 1998 [1997];

(eee) 40 CFR 60.630 to 60.636 (Subpart KKK), "Standards of Performance for Equipment Leaks of VOC From Onshore Natural Gas Processing Plants", as published in the Code of Federal Regulations, 40 CFR Part 60, July 1, 1998 [1997];

(fff) 40 CFR 60.640 to 60.648 (Subpart LLL), "Standards of Performance for Onshore Natural Gas Processing: SO<sub>2</sub> Emissions", as published in the Code of Federal Regulations, 40 CFR Part 60, July 1, 1998 [1997];

(ggg) 40 CFR 60.660 to 60.668 (Subpart NNN), "Standards of Performance for Volatile Organic Compound (VOC) Emissions From Synthetic Organic Chemical Manufacturing Industry (SOCMI) Distillation Operations", as published in the Code of Federal Regulations,

40 CFR Part 60, July 1, 1998 [1997];

(hhh) 40 CFR 60.680 to 60.685 (Subpart PPP), "Standards of Performance for Wool Fiberglass Insulation Manufacturing Plants", as published in the Code of Federal Regulations, 40 CFR Part 60, July 1, 1998 [1997];

(iii) 40 CFR 60.690 to 60.699 (Subpart QQQ), "Standards of Performance for VOC Emissions From Petroleum Refinery Wastewater Systems", as published in the Code of Federal Regulations, 40 CFR Part 60, July 1, 1998 [1997];

(jjj) 40 CFR 60.700 to 60.708 (Subpart RRR), "Standards of Performance for Volatile Organic Compound Emissions from Synthetic Organic Chemical Manufacturing Industry (SOCMI) Reactor Processes", as published in the Code of Federal Regulations, 40 CFR Part 60, July 1, 1998 [1997];

(kkk) 40 CFR 60.710 to 60.718 (Subpart SSS), "Standards of Performance for Magnetic Tape Coating Facilities", as published in the Code of Federal Regulations, 40 CFR Part 60, July 1, 1998 [1997];

(lll) 40 CFR 60.720 to 60.726 (Subpart TTT), "Standards of Performance for Industrial Surface Coating: Surface Coating of Plastic Parts for Business Machines", as published in the Code of Federal Regulations, 40 CFR Part 60, July 1, 1998 [1997];

(mmm) 40 CFR 60.730 to 60.737 (Subpart UUU), "Standards of Performance for Calciners and Dryers in Mineral Industries", as published in the Code of Federal Regulations, 40 CFR Part 60, July 1, 1998 [1997];

(nnn) 40 CFR 60.740 to 60.748 (Subpart VVV), "Standards of Performance for Polymeric Coating of Supporting Substrates Facilities", as published in the Code of Federal Regulations, 40 CFR Part 60, July 1, 1998 [1997];

(ooo) 40 CFR 60.750 to 60.759 (Subpart WWW), "Standards of Performance for Municipal Solid Waste Landfills", as published in the Code of Federal Regulations, 40 CFR Part 60, July 1, 1998 [1997];

(ppp) "Appendix A, Test Methods", as published in the Code of Federal Regulations, 40 CFR Part 60, July 1, 1998 [1997];

(qqq) "Appendix B, Performance Specifications", as published in the Code of Federal Regulations, 40 CFR Part 60, July 1, 1998 [1997];

(rrr) "Appendix C, Determination Of Emission Rate Change", as published in the Code of Federal Regulations, 40 CFR Part 60, July 1, 1998 [1997];

(sss) "Appendix D, Required Emission Inventory Information", as published in the Code of Federal Regulations, 40 CFR Part 60, July 1, 1998 [1997];

(ttt) "Appendix F, Quality Assurance Procedures", as published in the Code of Federal Regulations, 40 CFR Part 60, July 1, 1998 [1997].

(2) This material may be inspected, copied, or obtained 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, 8020 Ewing Boulevard, Suite 110 [~~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

## VOLUME 26, NUMBER 1 – JULY 1, 1999

BARBARA A. FOSTER, General Counsel  
APPROVED BY AGENCY: April 6, 1999  
FILED WITH LRC: April 7, 1999 at 3 p.m.

**NATURAL RESOURCES AND  
ENVIRONMENTAL PROTECTION CABINET**  
Department for Environmental Protection  
Division for Air Quality  
(As Amended at ARRS, June 8, 1999)

**401 KAR 63:002. 40 CFR Part 63 national emission standards for hazardous air pollutants.**

RELATES TO: KRS 224.10-100, 224.20-100, 224.20-110, 224.20-120, 40 CFR 63.1 to 63.15, 63.70 to 63.81, 63.100 to [63.528, 63.701 to 63.708, 63.1310 to] 63.1335, 42 USC 7401, 7412, 7414, 7416, 7601

STATUTORY AUTHORITY: KRS 224.10-100, 224.20-100, 224.20-110, 224.20-120, 40 CFR 63.1 to 63.15, 63.70 to 63.81, 63.100 to [63.528, 63.701 to 63.708, 63.1310 to] 63.1335, 42 USC 7401, 7412, 7414, 7416, 7601

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.10-100 requires the Natural Resources and Environmental Protection Cabinet to prescribe administrative regulations for the prevention, abatement, and control of air pollution. This administrative regulation incorporates by reference the National Emission Standards for Hazardous Air Pollutants (NESHAP) codified in 40 CFR 63.1 to 63.15, 63.70 to 63.81, and 63.100 to [63.528, 63.701 to 63.708, 63.1310 to] 63.1335. Delegation of implementation and enforcement authority for the federal NESHAP program from the United States Environmental Protection Agency to the Commonwealth of Kentucky is provided under 42 USC 7412(l).

Section 1. [Definitions. Terms used in this administrative regulation shall have the meaning given in this section unless the context clearly indicates otherwise.]

(1) **For purposes of 40 CFR Part 63, "Part 63 NESHAP" shall be the [means]** National Emission Standard for Hazardous Air Pollutants codified in 40 CFR 63.1 to 63.15, 63.70 to 63.81, and 63.100 to [63.528, 63.701 to 63.708, and 63.1310 to] 63.1335 (Subparts A, D, and F to [I, F to W, EE, and] JJJ).

(2) **For purposes of ["Administrator", as used in] 40 CFR 63.1 to 63.15, 63.70 to 63.81, and 63.100 to [63.528, 63.701 to 63.708, and 63.1310 to] 63.1335 (Subparts A, D, and F to [I, F to W, EE, and] JJJ), the "administrator" shall be [means]** the Secretary of the Natural Resources and Environmental Protection Cabinet unless a specific provision of the Part 63 NESHAP states that the United States Environmental Protection Agency shall retain enforcement authority.

Section 2. Applicability. This administrative regulation shall apply to sources that are subject to 40 CFR 63.1 to 63.15, 63.70 to 63.81, and 63.100 to [63.528, 63.701 to 63.708, and 63.1310 to] 63.1335 (Subparts A, D, and F to [I, F to W, EE, and] JJJ). These sources shall comply with the following:

(1) The applicable provisions in 40 CFR 63.1 to 63.15 (Subpart A), General Provisions, which is incorporated by reference in Section 3 of this administrative regulation;

(2) For sources that applied for early reduction credit and wish to extend the deadline for compliance demonstration, the applicable provisions in 40 CFR 63.70 to 63.81 (Subpart D), Regulations Governing Compliance Extensions for Early Reductions of Hazardous Air Pollutants, which is incorporated by reference in Section 3 of this administrative regulation;

(3) The applicable test methods, procedures, and other provisions contained in 40 CFR Part 63, Appendices A through D, which are incorporated by reference in Section 3 of this administrative regulation; and

(4) The applicable Part 63 NESHAP incorporated by reference in Section 3 of this administrative regulation.

Section 3. Incorporation by Reference. (1) The following material

is incorporated by reference:

(a) 40 CFR 63.1 to 63.15 (Subpart A), "General Provisions", as published in the Code of Federal Regulations, 40 CFR Part 63, July 1, 1998 [Parts 63 to 71, July 1, 1997];

(b) 40 CFR 63.70 TO 63.81 (Subpart D), "Regulations Governing Compliance Extensions for Early Reductions of Hazardous Air Pollutants", as published in the Code of Federal Regulations, 40 CFR Part 63, July 1, 1998 [Parts 63 to 71, July 1, 1997];

(c) 40 CFR 63.100 to 63.106 (Subpart F), "National Emission Standards for Organic Hazardous Air Pollutants From the Synthetic Organic Chemical Manufacturing Industry", as published in the Code of Federal Regulations, 40 CFR Part 63, July 1, 1998 [Parts 63 to 71, July 1, 1997];

(d) 40 CFR 63.110 to 63.152 (Subpart G), "National Emission Standards for Organic Hazardous Air Pollutants From the Synthetic Organic Chemical Manufacturing Industry for Process Vents, Storage Vessels, Transfer Operations, and Wastewater", as published in the Code of Federal Regulations, 40 CFR Part 63, July 1, 1998 [Parts 63 to 71, July 1, 1997];

(e) 40 CFR 63.160 to 63.182 (Subpart H), "National Emission Standards for Organic Hazardous Air Pollutants for Equipment Leaks", as published in the Code of Federal Regulations, 40 CFR Part 63, July 1, 1998 [Parts 63 to 71, July 1, 1997];

(f) 40 CFR 63.190 to 63.193 (Subpart I), "National Emission Standards for Organic Hazardous Air Pollutants for Certain Processes Subject to the Negotiated Regulations for Equipment Leaks", as published in the Code of Federal Regulations, 40 CFR Part 63, July 1, 1998 [Parts 63 to 71, July 1, 1997];

(g) 40 CFR 63.300 to 63.313 (Subpart L), "National Emission Standards for Coke Oven Batteries", as published in the Code of Federal Regulations, 40 CFR Part 63, July 1, 1998 [Parts 63 to 71, July 1, 1997];

(h) 40 CFR 63.320 to 63.325 (Subpart M), "National Perchloroethylene Air Emission Standards for Dry Cleaning Facilities", as published in the Code of Federal Regulations, 40 CFR Part 63, July 1, 1998 [Parts 63 to 71, July 1, 1997];

(i) 40 CFR 63.340 to 63.347 (Subpart N), "National Emission Standards for Chromium Emissions From Hard and Decorative Chromium Electroplating and Chromium Anodizing Tanks", as published in the Code of Federal Regulations, 40 CFR Part 63, July 1, 1998 [Parts 63 to 71, July 1, 1997];

(j) 40 CFR 63.360 to 63.367 (Subpart O), "Ethylene Oxide Emissions Standards for Sterilization Facilities", as published in the Code of Federal Regulations, 40 CFR Part 63, July 1, 1998 [Parts 63 to 71, July 1, 1997];

(k) 40 CFR 63.400 to 63.406 (Subpart Q), "National Emission Standards for Hazardous Air Pollutants for Industrial Process Cooling Towers", as published in the Code of Federal Regulations, 40 CFR Part 63, July 1, 1998 [Parts 63 to 71, July 1, 1997];

(l) 40 CFR 63.420 to ~~63.429~~ [62.429] (Subpart R), "National Emission Standards for Gasoline Distribution Facilities (Bulk Gasoline Terminals and Pipeline Breakout Stations)", as published in the Code of Federal Regulations, 40 CFR Part 63, July 1, 1998 [Parts 63 to 71, July 1, 1997];

(m) 40 CFR 63.440 to 63.459 (Subpart S), "National Emission Standards for Hazardous Air Pollutants from the Pulp and Paper Industry", as published in the Code of Federal Regulations, 40 CFR Part 63, July 1, 1998;

(n) [(m)] 40 CFR 63.460 to 63.469 (Subpart T), "National Emission Standards for Halogenated Solvent Cleaning", as published in the Code of Federal Regulations, 40 CFR Part 63, July 1, 1998 [Parts 63 to 71, July 1, 1997];

(o) [(n)] 40 CFR 63.480 to 63.506 (Subpart U), "National Emission Standards for Hazardous Air Pollutant Emissions: Group I Polymers and Resins", as published in the Code of Federal Regulations, 40 CFR Part 63, July 1, 1998 [Parts 63 to 71, July 1, 1997];

(p) [(o)] 40 CFR 63.520 to 63.528 (Subpart W), "National Emission Standards for Hazardous Air Pollutants for Epoxy Resins Production and Nonnylon Polyamides Production", as published in the Code of Federal Regulations, 40 CFR Part 63, July 1, 1998 [Parts 63 to 71, July 1, 1997];

(q) 40 CFR 63.541 to 63.550 (Subpart X), "National Emission Standards for Hazardous Air Pollutants from Secondary Lead

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Smelting", as published in the Code of Federal Regulations, 40 CFR Part 63, July 1, 1998;

(r) 40 CFR 63.560 to 63.567 (Subpart Y), "National Emission Standards for Marine Tank Vessel Loading Operations", as published in the Code of Federal Regulations, 40 CFR Part 63, July 1, 1998;

(s) 40 CFR 63.640 to 63.654 (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, 1998;

(t) 40 CFR 63.680 to 63.698 (Subpart DD), "National Emission Standards for Hazardous Air Pollutants from Off-Site Waste and Recovery Operations", as published in the Code of Federal Regulations, 40 CFR Part 63, July 1, 1998;

(u) [(p)] 40 CFR 63.701 to 63.708 (Subpart EE), "National Emission Standards for Magnetic Tape Manufacturing Operations", as published in the Code of Federal Regulations, 40 CFR Part 63, July 1, 1998 [Parts 63 to 71, July 1, 1997];

(v) 40 CFR 63.741 to 63.753 (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, 1998;

(w) 40 CFR 63.780 to 63.788 (Subpart II), "National Emission Standards for Shipbuilding and Ship Repair (Surface Coating)", as published in the Code of Federal Regulations, 40 CFR Part 63, July 1, 1998;

(x) 40 CFR 63.800 to 63.808 (Subpart JJ), "National Emission Standards for Wood Furniture Manufacturing Operations", as published in the Code of Federal Regulations, 40 CFR Part 63, July 1, 1998;

(y) 40 CFR 63.820 to 63.831 (Subpart KK), "National Emission Standards for the Printing and Publishing Industry", as published in the Code of Federal Regulations, 40 CFR Part 63, July 1, 1998;

(z) 40 CFR 63.840 to 63.853 (Subpart LL), "National Emission Standards for Hazardous Air Pollutants for Primary Aluminum Reduction Plants", as published in the Code of Federal Regulations, 40 CFR Part 63, July 1, 1998;

(aa) 40 CFR 63.900 to 63.907 (Subpart OO), "National Emission Standards for Tanks - Level 1", as published in the Code of Federal Regulations, 40 CFR Part 63, July 1, 1998;

(bb) 40 CFR 63.920 to 63.928 (Subpart PP), "National Emission Standards for Containers", as published in the Code of Federal Regulations, 40 CFR Part 63, July 1, 1998;

(cc) 40 CFR 63.940 to 63.948 (Subpart QQ), "National Emission Standards for Surface Impoundments", as published in the Code of Federal Regulations, 40 CFR Part 63, July 1, 1998;

(dd) 40 CFR 63.960 to 63.966 (Subpart RR), "National Emission Standards for Individual Drain Systems", as published in the Code of Federal Regulations, 40 CFR Part 63, July 1, 1998;

(ee) 40 CFR 63.1040 to 63.1049 (Subpart VV), "National Emission Standards for Oil-Water Separators and Organic-Water Separators", as published in the Code of Federal Regulations, 40 CFR Part 63, July 1, 1998;

(ff) 40 CFR 63.1211 to 63.1216 (Subpart EEE), "National Emission Standards for Hazardous Air Pollutants from Hazardous Waste Combustors", as published in the Code of Federal Regulations, 40 CFR Part 63, July 1, 1998;

(gg) [(q)] 40 CFR 63.1310 to 63.1335 (Subpart JJJ), "National Emission Standards for Hazardous Air Pollutant Emissions: Group IV Polymers and Resins", as published in the Code of Federal Regulations, 40 CFR Part 63, July 1, 1998 [Parts 63 to 71, July 1, 1997];

(hh) [(r)] "Appendix A to Part 63, Test Methods", as published in the Code of Federal Regulations, 40 CFR Part 63, July 1, 1998 [Parts 63 to 71, July 1, 1997];

(ii) [(s)] "Appendix B to Part 63, Sources Defined for Early Reduction Provisions", as published in the Code of Federal Regulations, 40 CFR Part 63, July 1, 1998 [Parts 63 to 71, July 1, 1997];

(jj) [(t)] "Appendix C to Part 63, Determination of the Fraction Biodegraded (Fbio) in a Biological Treatment Unit", as published in the Code of Federal Regulations, 40 CFR Part 63, July 1, 1998 [Parts 63 to 71, July 1, 1997]; and

(kk) [(u)] "Appendix D to Part 63, Alternative Validation Proce-

dures for EPA Waste and Wastewater Methods", as published in the Code of Federal Regulations, 40 CFR Part 63, July 1, 1998 [Parts 63 to 71, July 1, 1997].

(2) This material may be inspected, copied, or obtained 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;

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(c) Bowling Green Regional Office, 1508 Westen Avenue, Bowling Green, Kentucky 42104, (502) 746-7475;

(d) Florence Regional Office, 8020 Ewing Boulevard, Suite 110 [~~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

BARBARA A. FOSTER, General Counsel

APPROVED BY AGENCY: April 6, 1999

FILED WITH LRC: April 7, 1999 at 3 p.m.

### JUSTICE CABINET Kentucky Law Enforcement Council (As Amended at ARRS, June 8, 1999)

#### 503 KAR 1:140. Peace officer professional standards.

RELATES TO: KRS 15.330(1)(g)

STATUTORY AUTHORITY: KRS 15.330(1)(g); 15A.160

NECESSITY, FUNCTION, AND CONFORMITY: KRS 15A.560 authorizes the Secretary of the Justice Cabinet to promulgate administrative regulations. This administrative regulation establishes the guidelines and procedures necessary to implement and administer peace officer certification.

Section 1. Approval of agency's validated job task analysis and associated agency testing.

(1) Application. If an agency desires to use its own job task analysis and any associated agency testing, the agency shall submit to POPS completed KLEC POPS Forms J and Q, and a copy of the proposed job task analysis. The agency shall supply the name of the entity who completed the analysis, the date when the analysis was completed, a curricula vitae or resume, or a company profile of the entity who completed the analysis, and a listing of all job task analyses previously completed by the entity including the dates of the analyses.

(2) Criteria for assessment. The submitted job task analysis shall be assessed based upon the following criteria:

(a) Credentials and history of the entity conducting the analysis.

1. Education, with a preference given to degrees in law enforcement, statistics, or a related area.

2. Work experience, with a preference given to emphasis in law enforcement, statistics, or a related area.

3. Number and quality of job task analyses completed.

(b) Methodological approach.

1. Reasonable, standardized format of the study and the report.

2. Relative reliability and validity of the study's sampling techniques and practice.

3. Other considerations that reflect sound practice of the scientific method.

4. Specificity of the analysis. The job task analysis shall estab-

lish minimum entry qualifications, specific training requirements and description of duties of officers.

(3) Initial review. Within five (5) business days of receipt of the application POPS shall mail a notification to the agency that either:

(a) The application has been received and is complete; or

(b) The application is incomplete and the specific information which shall be supplemented in order to process the application. POPS shall receive the necessary information within ten (10) business days of the agency's receipt of the notice of insufficiency. If the agency fails to submit the supplementary information within the specified time period, the application shall be considered abandoned and the agency shall resubmit an application for consideration of their job task analysis and associated agency testing.

(c) POPS Recommendation. Within thirty (30) days of their receipt of the completed application, POPS shall forward the application to KLEC along with a recommendation to approve or reject the job task analysis and associated agency tests, and the specific reasons supporting a recommendation to reject.

(d) KLEC Review. The KLEC Committee on Certification shall review the application and POPS' recommendation and forward their recommendation to KLEC for final review. Within sixty (60) days of their receipt of the application KLEC shall issue written notice to the agency indicating whether the application has been approved or **found to be insufficient or erroneous.**

**(e) If an application is found to be insufficient or erroneous, the KLEC shall notify the agency of:**

**1. The reasons for the finding; and**

**2. The requirement that the council file a declaratory action in accordance with KRS 15.394(1). [rejected, and the specific reasons supporting the rejection.]**

Section 2. Agency Testing Procedures. (1) POPS shall receive completed KLEC POPS Form Q from each agency participating in certification as of December 1, 1998 prior to any applicant testing. If an agency initiates participation in certification after December 1, 1998, KLEC POPS Form Q shall be submitted to POPS with KLEC POPS Form E.

(2) Initial review. Within fifteen (15) business days of receipt of KLEC POPS Form Q POPS shall mail a notification to the agency that either:

(a) The form has been received and is complete; or

(b) The form is incomplete and the specific information which shall be supplemented in order to process the form. POPS shall receive the necessary information within ten (10) business days of the agency's receipt of the notice of insufficiency. No applicants shall be tested or certified by KLEC until the form is complete.

(3) POPS review of requests for agency testing. Within thirty (30) days of receipt of the completed form, POPS shall review requests for agency testing from those agencies without a validated job task analysis to determine if the proposed tests are consistent with the minimum standards for KLEC testing as established in Section 4 of this administrative regulation. POPS shall mail a notice to the agency if the proposed testing is acceptable. If POPS determines that the minimum standards are not met, POPS shall forward the form to KLEC, along with the specific reasons supporting a recommendation to reject the agency testing.

(4) KLEC Review. The KLEC Committee on Certification shall review the form and POPS' recommendation and forward their recommendation to KLEC for final review. Within sixty (60) days of their receipt of the form KLEC shall issue written notice to the agency indicating whether the request for agency testing has been approved or rejected, and the specific reasons supporting the rejection.

**(5)(a) An agency may appeal a decision made by KLEC to reject an agency test by filing a written notice of appeal:**

**1. With the Secretary of the Justice Cabinet; and**

**2. Within thirty (30) days of receipt of the notice of rejection.**

**(b) The notice of appeal shall be submitted:**

**1. On KLEC POPS Form S; and**

**2. With a copy of the notice of rejection of agency testing attached.**

**(c) A copy of the notice of appeal shall be mailed to POPS by certified mail.**

**(d) The Secretary of the Justice Cabinet shall schedule a**

**hearing within thirty (30) days of receipt of the notice of appeal.**

**(e) The administrative hearing shall be conducted in accordance with KRS Chapter 13B. [Appeal: An agency may appeal a decision made by KLEC to reject an agency test by filing a written notice of appeal to the Secretary of the Justice Cabinet. The notice shall be filed within thirty (30) days of receipt of the notice of rejection. The notice of appeal shall be submitted on KLEC POPS Form S with a copy of the notice of rejection of agency testing attached. A copy of the notice of appeal shall be delivered to POPS by certified mail. The Secretary of the Justice Cabinet shall render an opinion within sixty (60) days of receipt of the notice of appeal.]**

Section 3. Certification of Exempt Officers. (1) Officers exempted from certification requirements pursuant to KRS 15.380(5) who are requesting certification shall submit KLEC POPS Form E to POPS.

(2) State peace officers employed pursuant to KRS Chapter 18A who have had certification requirements adopted pursuant to KRS 15.380(2) shall submit KLEC POPS Form E to POPS.

(3) An agency may request that agency officers exempted pursuant to KRS 15.380(4) participate in certification by submitting KLEC POPS Form E to POPS.

(4) Officers entitled to certified status pursuant to the grandfather provision of KRS 15.400(1) shall submit KLEC POPS Form C.

Section 4. Suitability Minimum Requirements: The following minimum requirements and procedures are established for KLEC testing: (1) The background investigation as specified in KRS 15.382(12) shall consist of the following minimum requirements:

(a) Biographical history;

(b) Family history;

(c) Education;

(d) Employment history;

(e) Interview with the applicant's references;

(f) Criminal history including domestic violence protective orders;

(g) Credit history.

(h) [(2)] Fingerprinting. An applicant shall be fingerprinted and a criminal background check shall be conducted as specified in KRS 15.382(5) through the following procedure: The agency shall submit two (2) completed FD 258 FBI Fingerprint Cards and all required fees to the Kentucky State Police, who shall complete a state records check, then forward the card to the FBI. The FBI shall forward the results of its records check to the employing agency. Final certification shall not be issued until results consistent with certification requirements and acceptable to the agency are received from the FBI. The agency may employ the peace officer contingent upon the pending FBI results.

(i) [(3)] Psychological screening as specified in KRS 15.382(15) shall consist of the following minimum requirements:

**1. [(a)] Screening shall measure a broad spectrum of abilities, personality characteristics, and related constructs such as integrity, conscientiousness, and vocational preference, which are relevant to job related duties;**

**2. [(b)] Screening shall contain a minimum of two (2) independent and objectively scored psychometric measures which shall be constructed and validated in accordance with the "Standards for Educational and Psychological Testing", Part IV - Standards for Administrative Procedures, (1985 Edition), American Psychological Association;**

**3. [(c)] Assessment results and predictions shall include a recommendation and summary statement regarding the applicant's overall suitability for employment as a peace officer. The summary statement shall classify applicants as "suitable", "not suitable", or borderline. In the case of borderline and not suitable the report shall contain specific concerns and negative indicators for investigation and reconciliation by the employing agency;**

**4. [(d)] Screening shall be administered in accordance with the "Standards for Educational and Psychological Testing", Part IV - Standards for Administrative Procedures, (1985 Edition), American Psychological Association.**

**(2) [(4)] Physical agility testing as specified in KRS 15.382(12) shall consist of the following minimum requirements:**

(a) The applicant shall successfully complete each of the fol-

lowing events as instructed and evaluated by KLEC personnel who shall administer the test in conformity with the Validation of Physical Fitness Standards for the Kentucky Department of Criminal Justice Training, Appendix I - Procedures for Physical Fitness Testing Procedures for Mandatory Physical Fitness Tests, September 25, 1998, Fitness Intervention Technologies:

1. One and five-tenths (1.5) mile run in seventeen (17) minutes twelve (12) seconds;
2. 300 meter run in sixty-five (65) seconds;
3. Twenty (20) push ups;
4. Sixteen (16) inch vertical jump;
5. One (1) bench press equal to sixty-four (64) percent of the applicant's body weight;
6. Eighteen (18) sit ups in one (1) minute.

(b) If an applicant passes all events when participating in the physical agility test in its entirety, he shall have met the physical agility minimum requirements.

(c) If an applicant passes at least one (1) event when participating in the physical agility test in its entirety:

1. He may retest in the failed events no sooner than forty-eight (48) hours and no later than sixty (60) days from the date of the initial test.

2. All failed events shall be retested on the same date.

3. If the applicant passes all previously failed events on the date of the retest, he shall have met the physical agility minimum requirements.

4. If the applicant does not pass all previously failed events on the date of the retest, he shall repeat the physical agility test in its entirety and shall receive no credit for events which were passed during previous tests or retests. The applicant may repeat the physical agility test no sooner than forty-eight (48) hours from the date of the retest.

(d) If an applicant fails all events when participating in the physical agility test in its entirety, he shall repeat the physical agility test in its entirety and shall receive no credit for events which were passed during previous tests or retests.

(e) An applicant may participate in the physical agility test in its entirety, four (4) times in a one (1) year period, which shall be calculated from the first date of testing.

(f) An applicant may participate in one (1) physical agility retest for each physical agility test taken in its entirety.

(3) [(5)] Medical screening as specified in KRS 15.382(10) shall consist of the following minimum requirements: The applicant shall complete KLEC POPS Form G-2, Medical History Statement, which along with KLEC POPS Form G-3, Medical Guidelines Implementation Manual, shall be provided to the physician, duly licensed to practice in the Commonwealth of Kentucky, who shall examine the applicant in conformity with the guidelines. The physician shall complete KLEC POPS Form G-1, Medical Examination Report and forward it to the employing agency.

(4) [(6)] Drug screening as specified in KRS 15.382(11) shall consist of the following minimum requirements: The applicant shall execute KLEC POPS Form K-1 and submit a urine sample that shall be screened for: marijuana, amphetamines, cocaine, opiates, phenylcyclidine, barbiturates, benzodiazepines, propoxyphene, methadone, and methaqualone. The integrity of the urine sample shall be documented on KLEC POPS Form K-2, Drug Screening Chain of Custody. The testing shall be done in compliance with Federal DOT Work Place Standards, 49 CFR §40, subparts A and B.

(5) [(7)] Polygraph examination as specified in KRS 15.382(17) shall consist of the following minimum requirements: The applicant shall complete KLEC POPS Form I-1, Polygraph Waiver, and KLEC POPS Form I-2, Polygraph Applicant Questionnaire, which shall be provided to the polygraph examiner, duly licensed in the Commonwealth of Kentucky, who shall perform a polygraph examination of the applicant consisting of the questions as listed in KLEC POPS Form I-3, Polygraph Test Questions.

Section 5. KLEC Administered Testing Procedures. (1) An applicant shall execute all releases required for KLEC testing, including KLEC POPS Forms I-1 - Polygraph Waiver; K-1 - Drug Screening Applicant Consent Form; T-1 - Medical Release - Phase I Testing, and T-2 - **Health Confirmation [Liability Waiver]** - Phase I Testing.

(2) Testing schedule. POPS shall mail to all law enforcement agencies in the Commonwealth a list of sites and dates for KLEC administered testing. Testing sites shall be statewide and accommodations shall be made where reasonable to insure testing sites are accessible based upon need. Advance notice of the schedule shall be made public at least three (3) months prior to the testing. KLEC shall reschedule testing if cancellation is necessary due to inclement weather or other unforeseen circumstances. Emergency testing shall be made available when possible at the Richmond POPS office as needed.

(3) Registration for KLEC administered testing. POPS shall receive KLEC POPS Forms A from the employing agency at least five (5) business days prior to testing.

(a) Applicants shall provide current photographic identification at the time of testing.

(b) Applicants shall bring a completed copy of KLEC POPS Form H-2 at time of psychological testing.

(c) POPS shall receive the completed polygraph questionnaire KLEC POPS Form I-2 at the time of testing.

Section 6. Test Reporting. (1) Results of drug and psychological screening provided through KLEC shall be forwarded directly to the employing agency head by the entity administering the test. All other tests provided by or through KLEC will be forwarded to the employing agency head by POPS.

(2) The agency shall certify that the applicant has met all suitability requirements by submitting KLEC POPS Form D.

(3) Length of test result validity.

(a) Physical agility: results shall be considered current and valid one (1) year from the passing date of the test.

(b) Psychological screening: results shall be considered current and valid for one (1) year from the date of the screening. If the applicant experiences a significant life change during the one (1) year period, the applicant shall notify the employing agency who shall schedule a new psychological screening for the applicant.

(c) Polygraph examination: results shall be considered current and valid for a period of one (1) year from the date of the examination. If the applicant experiences a significant life change during the one (1) year period, the applicant shall notify the employing agency who shall schedule a new polygraph examination for the applicant.

(d) Drug screening: results shall be considered current and valid only for the agency that requested or performed the test and only during that employment process. An applicant that leaves and re-enters the testing process for preselection screening shall be required to submit to another drug screening.

(4) Updating test results. It shall be the responsibility of the employing agency to update test results when necessary by submitting KLEC POPS Form D to POPS.

(5) Agency access to prior test results. It shall be at the applicant and individual agency's discretion to allow another employing agency access and use of the initial agency's certification testing which is still current and valid. If agencies enter into such an agreement with the written permission of the applicant, the new employing agency shall receive the medical, psychological and polygraph results directly from the entity administering the examination. Costs incurred for duplicate KLEC test results shall be the responsibility of the agency obtaining the results.

Section 7. KLEC Administered Testing Costs. (1) The employing agency shall reimburse KLEC within sixty (60) days of receipt of the invoice for the cost of KLEC administered testing provided at the agency's request as follows:

(a) Fifty (50) dollars for each psychological screening;

(b) \$100 for each polygraph examination;

(c) Sixteen (16) dollars for each drug screening.

(2) If an agency has scheduled KLEC testing for an applicant who fails to appear or complete the testing, the agency shall be responsible for fifty (50) percent of the cost of the test had it been completed.

(3) Financial hardship.

(a) Application. An employing agency may apply for a waiver of costs for KLEC testing pursuant to KRS 15.384(1) by demonstrating undue financial hardship. The agency shall submit to POPS the

actual approved budget of the governmental unit for the current and the preceding year, the number of certification applicants for the current and preceding year, the actual revenue receipts of the governmental unit for the current and the preceding year, and a detailed explanation of why the governmental unit cannot meet the cost of providing the testing, including the reason that inadequate funding was not budgeted to cover the cost of testing.

(b) Initial Review. Within five (5) business days of receipt of the application POPS shall mail a notification to the agency that either:

1. The application has been received and is complete; or

2. The application is incomplete and the specific information which shall be supplemented in order to process the application. POPS shall receive the necessary information within ten (10) business days of the agency's receipt of the notice of insufficiency. If the agency fails to submit the supplementary information within the specified time period, the application shall be considered abandoned and the agency shall resubmit an application for financial hardship.

(c) Recommendation. Within thirty (30) days of their receipt of the completed application, POPS shall forward the application to KLEC, along with a recommendation to approve or reject the application for financial hardship, and the specific reasons supporting a recommendation to reject.

(d) KLEC review. The KLEC Committee on Certification shall review the application and POPS' recommendation and forward their recommendation to KLEC for final review. Within sixty (60) days of their receipt of the application KLEC shall issue written notice to the agency indicating whether the application has been approved or rejected, and the specific reasons supporting the rejection.

(e) Appeal. An agency may appeal a decision made by KLEC to reject an agency's application for financial hardship by filing a written notice of appeal to the Secretary of the Justice Cabinet. The notice shall be filed within thirty (30) days of receipt of the notice of rejection. The notice of appeal shall be submitted on KLEC POPS Form S with a copy of the notice of rejection of financial hardship attached. A copy of the notice of appeal shall be delivered to POPS by certified mail. The Secretary of the Justice Cabinet shall render an opinion within sixty (60) days of receipt of the notice of appeal.

(4) If an agency knowingly employs or appoints a person who fails to meet minimum certification standards pursuant to KRS 15.396(1) POPS shall immediately notify DOCJT.

Section 8. Employment Changes. Pursuant to KRS 15.392, when a certified peace officer leaves an agency, the agency shall submit KLEC POPS Form F. If the officer is reemployed by another agency as a peace officer the employing agency shall submit KLEC POPS Form F within five (5) business days of the employment or appointment.

Section 9. Records. (1) Records retention. KLEC shall retain all certification records in electronic or original medium consistent with the Records Retention Schedule established by the Kentucky Department of Library and Archives. KLEC shall devise and maintain a database management system that organizes records adequately to the tasks of associated with certification.

(2) Security. KLEC and employing agencies shall maintain records in a manner to insure their security.

(3) Agencies shall retain all documentation pertaining to certification for five (5) years following the cessation of certification of the peace officer, regardless of where the certified peace officer is employed in the Commonwealth.

(4) An agency that knowingly discloses confidential information in violation of KRS 15.400(3) may be denied participation in KLEC polygraph and psychological examinations.

Section 10. Applicant Conduct and Behavior. (1) An applicant who has engaged in behavior constituting dishonesty, cheating, falsification of documents, or any other fraudulent behavior for the purpose of wrongfully receiving certification shall be removed from the testing process and shall be barred from further consideration for certification.

(2) Use of alcohol or other intoxicants.

(a) An applicant shall not possess, consume nor be under the influence of alcoholic beverages, controlled substances, or other

intoxicating substances not therapeutically prescribed by a physician while participating in the testing process.

(b) If an applicant has taken a controlled substance as prescribed by a physician or has taken any other medication, whether prescribed or not, he shall not participate in physical agility testing if he is under the influence thereof to the extent that the applicant may be impaired or may endanger himself or other persons or property. An applicant shall advise the KLEC test administrator in writing of the use of controlled substance or medication whether or not it has been prescribed by a physician.

(3) Termination of a dangerous or disruptive situation. If the conduct or condition of an applicant constitutes an immediate danger or an immediate threat of danger to self or others, or is disruptive of, or is an immediate threat to be disruptive of testing, a KLEC staff member may take all reasonable steps necessary to terminate the situation, including removal of the applicant from testing.

(4) A copy of KLEC POPS Form R shall be mailed to the applicant and the employing agency within five (5) days following the removal stating that the applicant has been removed or barred from testing, the supporting reasons and circumstances of the removal, and whether the agency may reschedule testing.

Section 11. Compliance. (1) Inspection. Test results, testing procedures and all other certification documentation shall be retained by the agency and be available for inspection and audit at any time by agents authorized by KLEC.

(2) KLEC may initiate an inspection and audit of an agency's certification documentation randomly to assure routine compliance or to investigate a specific complaint.

(3) KLEC shall have access to the services of the DOCJT Compliance and Audit Section, as coordinated through the DOCJT Commissioner, in order to audit specific applicants and agencies to assure compliance with certification requirements.

(4) If during the course of an audit conducted by the DOCJT Compliance and Audit Section a violation of certification is detected, the DOCJT Compliance and Audit Section shall report the possible violation to KLEC.

(5) Denial of Participation in KLEFPF. If KLEC determines that an agency has knowingly employed or appointed a person who fails to meet minimum certification standards, KLEC shall immediately notify the administrator of KLEFPF.

Section 12. Issuance of Certification. All identification cards issued to a peace officer verifying certification remain the property of KLEC and shall be returned to POPS upon the peace officer's loss of certification.

Section 13. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Standards for Educational and Psychological Testing", Part IV - Standards for Administrative Procedures, (1985 Edition), American Psychological Association;

(b) Federal DOT Work Place Standards, 49 CFR §40, subparts A and B;

(c) KLEC POPS Form A - Attesting to Minimum Standards/Testing Registration;

(d) KLEC POPS Form B - Basic Training Completed (non-DOCJT);

(e) KLEC POPS Form C - Grandfather Information;

(f) KLEC POPS Form D - All Standards Met;

(g) KLEC POPS Form E - Request for Certification for Exempt Officers;

(h) KLEC POPS Form F - Status Update/Recertification;

(i) KLEC POPS Form G-1 - Medical Examination Report;

(j) KLEC POPS Form G-2 - Medical History Statement;

(k) KLEC POPS Form G-3 - Medical Guidelines Implementation Manual;

(l) KLEC POPS Form H-1 - Background Investigation;

(m) KLEC POPS Form H-2 - Personal History Statement;

(n) KLEC POPS Form I-1 - Polygraph Consent Form;

(o) KLEC POPS Form I-2 - Polygraph Applicant Questionnaire;

(p) KLEC POPS Form I-3 - Polygraph Test Questions;

(q) KLEC POPS Form J - JTA Submission;

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- (r) KLEC POPS Form K-1 - Drug Screening Applicant Consent Form;
- (s) KLEC POPS Form K-2 - Drug Screening Chain of Custody;
- (t) KLEC POPS Form L-1 - Code of Ethics;
- (u) KLEC POPS Form L-2 - Canon of Ethics;
- (v) KLEC POPS Form Q - Agency Submission Form;
- (w) KLEC POPS Form R - Removal from Testing;
- (x) KLEC POPS Form S - Notice of Appeal;
- (y) KLEC POPS Form T-1 - Medical Release - Phase I Testing;
- (z) KLEC POPS Form T-2 - Health Confirmation [Liability Waiver] - Phase I Testing.

(2) This material may be inspected, copied, or obtained at Kentucky Law Enforcement Council, Office of Peace Officer Professional Standards, 415 Funderburk Building, Eastern Kentucky University, 521 Lancaster Road, Richmond, Kentucky 40475-3102, Monday through Friday, 8 a.m. to 4:30 p.m.

PAMELA J. MURPHY, Acting Secretary  
STEPHANIE C. BINGHAM, General Counsel  
APPROVED BY AGENCY: April 15, 1999  
FILED WITH LRC: April 15, 1999 at 11 a.m.

TRANSPORTATION CABINET  
Department of Highways  
Division of Traffic

(As Amended at ARRS, May 11, 1999, and at  
IJC on Transportation, June 1, 1999)

**603 KAR 4:035. Logo signs; placement along fully-controlled  
and partially-controlled access highways.**

RELATES TO: KRS 177.0734 through 177.0738

STATUTORY AUTHORITY: KRS 177.0736, 177.0738

NECESSITY, FUNCTION, AND CONFORMITY: KRS 177.0734 through 177.0738 require the Commissioner of Highways to prescribe by administrative regulations reasonable standards for the erection of specific information panels within highway rights-of-way to provide directional information for business establishments offering goods and services in the interest of the traveling public. This administrative regulation sets forth the criteria to be followed in the erection and maintenance of specific motorist signing designed to inform motorists where travel related goods and services are available.

Section 1. Definitions. (1) "Business sign" means a separately attached sign mounted on the specific information panel to show the name, brand name or trademark of a qualified motorist service available near the interchange.

(2) "Clear zone" means the area between the edge of the driving-lane of a fully controlled or partially-controlled access highway and an imaginary line running parallel to the highway but thirty (30) feet (9.15 meters) away from the highway.

(3) "[Combination-specific information sign] means a specific information sign with more than one (1) of the services "gas", "food", "lodging", "camping", or "tourist activities" listed on it.

(4) "Contractor" means the entity selected by the Department of Highways pursuant to KRS Chapter 45A and 600 KAR 6:070 to administer the specific information signing program in Kentucky. The activities of the contractor shall include marketing; determination of business eligibility; maintenance, erection, and removal of the specific information panels and installation and removal of business signs.

(4) [(5)] "Contract year" means July 1 through the following June 30.

(5) [(6)] "Cover" means place a protective shield over a business sign to prohibit viewing of the sign.

(6) [(7)] "Double exit interchange" means a grade-separated crossing of roadways having two (2) mainline off-ramps in one (1) direction to provide access to the crossroad.

(7) [(8)] "Fully controlled access highway" means as defined in KRS 177.0734(1).

(8) [(9)] "Highway guide sign" means an official highway sign which is erected by the Department of Highways to:

- (a) Give directions;

(b) [(to)] Furnish advance notice of the approach to an intersection or interchange; [~~intersections or interchanges~~];

(c) [(to)] Direct drivers into appropriate lanes;

(d) [(to)] identify routes and directions on the [~~those~~] routes;

(e) [(to)] Show distances to destinations;

(f) [(to)] Indicate access to general:

1. Motorist services;

2. Rest areas;

3. Scenic areas; or

4. [~~and~~] Recreational area [~~areas~~]; and

(g) [(to)] Provide other information of assistance [~~value~~] to the traveling public.

(9) [(10)] "Interchange" means a junction of two (2) or more highways by a system of separate levels that permit traffic to pass from one to another without the crossing of traffic streams.

[(11)] "Intersection" means a junction of two (2) roads at the same grade level;

(10) [(12)] "Logo" means as defined in KRS 177.0734(2).

(11) [(13)] "Motorist service" means a place of business providing gas, food, lodging, tourist activities, or camping facilities or a combination thereof.

(12) "MUTCD" means Manual on Uniform Traffic Control Devices.

(13) "Partially-controlled access highway" is defined in KRS 177.0734(4).

(14) "Ramp sign" means a sign that is placed along the ramp or at the ramp terminal for service facilities which have business logos displayed along the main roadway.

(15) "Single exit interchange" means a grade-separated crossing of roadways having one (1) mainline off-ramp per direction to provide access to the crossroad.

(16) "Specific information panel" means an official sign placed within the highway right-of-way with:

(a) The following words:

1. "GAS";

2. "FOOD";

3. "LODGING";

4. "CAMPING";

5. "TOURIST ACTIVITIES"; or

6. A combination of the words listed in subparagraphs 1 through 5 of this paragraph; and

(b) Space for one (1) or more individual business signs that may be attached to the panel. [~~the words "GAS", "FOOD", "LODGING", "CAMPING", or "TOURIST ACTIVITIES" or combinations thereof, and space for one (1) or more individual business signs which may be attached to the panel;~~]

(17) "Tourist activities" means activities or locations that are:

(a) Natural phenomena;

(b) Historic;

(c) Cultural;

(d) Scientific;

(e) Educational; [~~and~~]

(f) Religious;

(g) [~~sites; or areas~~] Of natural beauty or naturally suited for outdoor recreation; or

(h) Similar activities of interest to the traveling public. [~~These activities are deemed to be in the interest of the traveling public.~~]

(18) "Trailblazing sign" means a sign similar to a ramp sign used on nonfully controlled access highways from which a service is available to indicate the direction to the service.

[(19)] "Partially-controlled access highway" means as defined in KRS 177.0734(4);

Section 2. General Provisions. (1) The Commissioner, Department of Highways, shall authorize the placement of specific information panels with business signs within the right-of-way of fully controlled and partially-controlled access highways.

(2) The Department of Highways shall control the erection and maintenance of panels and signs in accordance with the "Manual on Uniform Traffic Control Devices" (MUTCD) as incorporated by reference in 603 KAR 5:050 and with the provisions of this administrative regulation.

Section 3. Application and Contracts for Specific Information

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Signs. (1) Application for a business to place a logo relating to gas, food, lodging, camping, or tourist activities on a specific information panel shall be on "Application for Highway Logo Signing" forms [prepared by Kentucky Logos, Inc. in March 1997].

(2) [The notice by the business to the Department of Highways' contractor of the number, type and placement of each logo sign shall be on "Logo Program Billing Information" forms prepared by Kentucky Logos, Inc. in January 1997.]

~~{3} The contract to be entered into between the participating business and the Department of Highways' contractor shall be the "Highway Logo Program Agreement" form [prepared by Kentucky Logos, Inc. as revised March 1997]. Addenda to this form may be included in the contract where appropriate.~~

### Section 4. Location and Erection of Specific Information Panels.

(1) A specific information panel bearing separately attached business signs shall not be erected less than 800 feet (244 meters) in advance of the exit direction sign at the interchange where motorist services are available.

(2) Spacing between each specific information panel shall be at a minimum of 800 feet (244 meters) and shall be spaced at least 800 feet (244 meters) from any other highway guide signs in existence or proposed for that area.

(3) A specific information panel shall not be erected:

~~(a) If there is insufficient [sufficient] space between the previous interchange and the interchange where the motorist services are available for the required highway guide signs and a specific information panel.~~

~~(b) At an interchange which intersects another limited access facility.~~

~~(c) At an intersection which does not have a convenient reentry in the same direction of travel. [if there is insufficient space between the previous interchange and the interchange where the motorist services are available for the required highway guide signs and a specific information panel.]~~

~~(4) [A specific information panel shall not be erected at an interchange [or intersection] which intersects another limited access facility.~~

~~(5) A specific information panel shall not be erected at any interchange [or intersection] which does not have a convenient reentry in the same direction of travel.~~

(6)(a) Except as provided in subsection (9) of this section, there shall not be more than one (1) specific information panel erected in each direction of an interchange or intersection for the following:

1. "GAS";
2. "FOOD";
3. "LODGING";
4. "CAMPING"; or
5. "TOURIST ACTIVITIES".

(b) There shall not be more than four (4) specific informational panels erected in one (1) direction of travel for an interchange or intersection.

(c) In one (1) direction of travel, the successive panels shall be erected in the order of "TOURIST ACTIVITIES" or "CAMPING," "LODGING," "FOOD," and "GAS" unless a combination specific information sign is erected in accordance with Section 5(9) or (10) of this administrative regulation.

(d) At an interchange with insufficient space available in a single direction for four (4) specific information panels, or at an interchange with requests for all five (5) type services, service signing preference shall be in the order "gas," "food," "lodging," "camping," and "tourist activities," with "gas" having the highest priority.

(5) [(7)] The specific information panels shall be located to:

(a) Take advantage of natural terrain;

(b) Have the least impact on the scenic environment; and

(c) Avoid visual conflict with other signs within the highway right-of-way.

(6) [(8)] Unprotected sign panel supports located within the clear zone shall be of a breakaway design.

(7) [(9)](a) If a specific information panel has at least two (2) unused display spaces, and if another of the specific information panels is full but there is an additional eligible business requesting logo space for that panel or service, the panel with the unused space may be

converted to a combination specific information sign to include the additional service.

(b) A qualified motorist service logo displayed as a result of the creation of a combination specific service information sign in paragraph (a) of this subsection shall have a lower priority than a qualified motorist service of the type initially displayed on the panel.

### Section 5. Interchange Specific Information Panel Composition.

(1) A specific information panel shall have a blue background with a white reflectorized border.

(2) The directional arrows and all letters and numbers used in the name of the type of service and the directional legend shall be white and reflectorized.

(3) All letters used in the name of service and the directional legend shall be ten (10)-inch (254-millimeter) capital letters.

(4) All numbers shall be ten (10) inches (254 millimeters) in height.

(5) The size of the specific information panel shall comply with the requirements of the MUTCD.

(6) An average measured retroreflectivity of fifty (50) percent or greater shall be maintained on each specific information panel.

(7)(a) For single exit interchanges, a standard full-size specific information panel shall accommodate a maximum of six (6) business signs.

(b) If the number of businesses does not warrant a full-size panel, a half-size or combination panel may be used.

(8)(a) At a double exit interchange, the specific information panel shall consist of two (2) sections, one (1) for each exit, mounted on the same base.

(b) The top section shall display business signs for the first exit and the lower section shall display business signs for the second exit.

(c) Each section shall accommodate a maximum of four (4) business signs for each service per exit, with the total number of signs not to exceed six (6).

(d) If a type of motorist service is to be signed for only one (1) exit, one (1) section of the specific information panel may be omitted or a single exit interchange sign may be used.

(9) Business signs for two (2) types of services may be displayed on the same combination specific information sign under the following conditions:

(a) For the two (2) types of services there is a total of not more than six (6) qualified businesses at the interchange unless as set forth in Section 4(9) of this administrative regulation;

(b) Up to four (4) business signs may be displayed for a type of service in combination on a panel;

(c) If four (4) business signs are displayed for one (1) type of service on a combination specific information sign, more than two (2) business signs for the other type of service shall not be displayed on the combination specific information sign; and

(d) The name of each type of service shall be displayed above its respective business signs.

(10) Business signs shall not be combined on a panel as described in subsection (9) of this section if:

(a) It is anticipated that additional service businesses shall become available in the near future; or

(b) It becomes necessary to display more than a total of six (6) business signs for the two (2) types of services displayed in combination.

(11)(a) Except at an unnumbered exit, the exit number shall be displayed above the name of the type of service; and

(b) At an unnumbered exit, the legend "NEXT RIGHT" or "NEXT LEFT" shall be displayed above the name of the type of service.

Section 6. Ramp Signs. (1) At a single-exit interchange, an exit ramp sign shall be installed except that the logo for a facility visible from the ramp terminal may be omitted.

(2) The business sign on a ramp sign shall be a duplicate of the corresponding logo installed along the main roadway, but reduced in size.

(3) A ramp sign for a service facility not visible from the ramp terminal may include the distance to the service facility. Direction to the service facility shall be indicated by an arrow.

(4) Ramp signing may be used on ramps at double-exit interchanges.

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Section 7. Business Signs. (1) Each business sign shall have a legend and border. However, if the business identification symbol or trademark is used alone for a business sign, the border may be omitted.

(2) Each business sign on the specific information panel shall be contained within a forty-eight (48)-inch (1219.2-millimeter) wide and thirty-six (36)-inch (914.4-millimeter) high rectangular background area which includes the border, if required.

(3) The principal legend shall be legible from the main traveled way of the highway under normal driving conditions.

(4) A symbol or trademark shall be reproduced in the colors and general shape consistent with customary use and an integral legend shall be in proportionate size.

(5) A message, symbol, or trademark which resembles any official traffic control device shall be prohibited.

(6) The vertical and horizontal spacing between business signs on specific information panels shall not exceed eight (8) inches (203.2 millimeters) and twelve (12) inches (304.8 millimeters), respectively.

(7) The reflectivity, material composition, and adhesiveness of a business sign shall comply with "LOGO PROGRAM SPECIFICATIONS" form 99.133. [The required reflectivity, material composition, and adhesiveness of the business signs are set forth in the "LOGO PROGRAM SPECIFICATIONS" form 99-133 last revised by the Kentucky Transportation Cabinet in April 1991.]

(8) If a business ceases to exist or is not in operation for thirty (30) days, the business sign shall be immediately covered or removed as circumstances of each closing or cessation of business dictate.

(9) Any business which operates on a seasonal basis shall make provisions for removing or covering business signs during the off season. A business of this type shall notify the Department of Highways' contractor in writing thirty (30) days before the opening or closing occurs.

(10) In the absence of an official trademark or logo, the official name as indicated in partnership agreements, incorporation documents, or otherwise documented may be substituted on the business sign.

(11)(a) With the exception of "Open 24 Hours" or "24 Hours," descriptive advertising words, phrases or slogans shall not be allowed on a business sign; i.e., "Joe's 24-Hour Market," "Free Coffee," "Credit Cards Accepted," etc.

(b) Descriptive words which are part of the official name of the business shall be permitted on a business sign; i.e., "hotel," "motel," "inn," "lodge," "restaurant," "cafe," "cafeteria," "diner," or others with a similar meaning.

(c) The word "Diesel" on a "GAS" business sign shall be permitted.

(12) If there is more than one (1) eligible business at an interchange with the same business symbol, brand, trademark or logo, more than one (1) business symbol, brand, trademark or logo with the same design may be placed on a specific information panel or on a ramp sign to indicate the distances to the individual businesses.

(13)(a) The Transportation Cabinet shall review and approve the design of a "TOURIST ACTIVITIES" business sign prior to its placement on a panel.

(b) The Transportation Cabinet shall not approve the design of a business sign which would be difficult to comprehend by the traveling public at highway speeds and under normal atmospheric conditions.

Section 8. Business Criteria, Eligibility, and Priority. (1) motorist service business located at, or conveniently accessible from, an interchange or intersection of a fully-controlled and partially-controlled access highway shall be eligible for placement of a business sign on a specific information panel if it qualifies under the following conditions:

(a) Each business shall offer written assurance that it conforms with all applicable laws and administrative regulations concerning the provision of public accommodations with regard to race, religion, color, sex, age, disability, or national origin.

(b) To qualify for a "GAS" business sign, a business shall:

1. Be in operation seven (7) days a week, and continuously open for sixteen (16) hours a day; and

2. Have motor vehicle fuel, oil, water, drinking water, restroom facilities, and a telephone available for use by the traveling public.

(c) To qualify for a "FOOD" business sign, a business shall:

1. Be licensed in accordance with KRS Chapter 219;

2. Be in continuous operation to serve three (3) meals a day, seven (7) days a week;

3. Have a seating capacity for a minimum of six (6) guests at sit-down, eat-in service; and

4. Have a telephone and restroom available for use by the traveling public.

(d) To qualify for a "LODGING" business sign, a facility shall:

1. Be licensed in accordance with KRS Chapter 219;

2. Have a minimum of two (2) rooms available for sleeping accommodations; and

3. Have a telephone available for use by the persons staying at the facility.

(e) To qualify for a "CAMPING" business sign, a facility shall:

1. Be licensed in accordance with KRS Chapter 219; and

2. Have a minimum of ten (10) parking accommodations which have modern sanitary facilities and drinking water.

(f) To qualify for a "TOURIST ACTIVITIES" business sign, a facility shall:

1. Be an activity or location that is one (1) or more of the following:

a. Natural phenomena;

b. Historic site;

c. Cultural site;

d. Scientific site;

e. Educational site;

f. Religious site;

g. Area of natural beauty; or

h. Area naturally suited for outdoor recreation.

2. Maintain regular hours for that type of establishment;

3. Be licensed in accordance with KRS Chapter 219, if applicable;

4. Have restroom facilities available for use by the traveling public;

5. Have drinking water available for the traveling public;

6. Have an on-premise or nearby public telephone available for use by the traveling public; and

7. Have adequate parking to accommodate its traffic with a minimum of ten (10) spaces.

(2)(a) The eligible business making application for a logo of a specific service which is located nearest to the interchange or intersection shall receive first priority in the selection process.

(b) Subsequent proximities to the interchange or intersection shall establish subsequent priorities.

(c) A business further than fifteen (15) miles (24.15 kilometers) from the interchange shall not be eligible to qualify for placement of a business sign. However, any business at a distance greater than fifteen (15) miles (24.15 kilometers) from the interchange with a business sign in place on January 1, 1994, may continue to display the business sign until the business fails to meet another criterion of this administrative regulation or is bumped pursuant to Section 9 of this administrative regulation.

(3)(a) A qualifying food business which is open sixteen (16) hours a day beginning no later than 7 a.m. each day shall have priority over another qualifying food business which does not provide service for this entire time period.

(b) Distance from the interchange shall only be considered in determining priority after the business hours for a qualifying food business have been considered.

(4) A business with an outdoor advertising device determined by the Transportation Cabinet pursuant to 603 KAR 3:080 to be in violation of KRS 177.830 through 177.890 shall not be eligible to qualify for a business sign until the violation has been removed.

(5) A business with an advertisement on an outdoor advertising device determined by the Transportation Cabinet pursuant to 603 KAR 3:080 to be in violation of KRS 177.830 through 177.890 shall not be eligible to qualify for a business sign until the violation has been removed.

(6) An activity which is identified at an interchange by a highway guide sign pursuant to Chapter 2F of the "MUTCD [Manual on Uniform Traffic Control Devices]" may also be identified with a logo, but shall have a lower priority for selection than any other eligible business with the same activity.

(7) A business offering more than one (1) motorist service shall not be eligible to display more than one (1) business sign with the same logo at an interchange or intersection unless no other eligible

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business has applied for use of the available space on the second specific information panel.

Section 9. Bumping. (1) An eligible business with a higher priority, pursuant to Section 8 of this administrative regulation, shall be permitted to display its sign at the beginning of the next contract year, in the place of a currently displayed, lower priority business if:

- (a) The information panel is fully utilized; and
- (b) It files an application by April 1;

(2) The business with the lowest priority shall have its business sign removed at the end of the current contract year.

Section 10. Fees. (1) The qualifying business shall pay to the department's contractor an annual fee of \$600, in advance, for each business sign placed on the fully controlled access highway for gas, food, and lodging and \$300 for camping and tourist activities.

(b) The annual fee for the first year shall accompany the initial application.

(c) If the first contract is for less than one (1) year, the first year's annual fee shall be prorated on a monthly basis with each portion of a month the business sign is up requiring payment of one-twelfth (1/12) of the fee.

(d) The yearly renewal fee and application for renewal shall be due forty-five (45) days prior to the annual renewal date.

(e) The payment of this fee guarantees that the business sign will be displayed for one (1) contract year or portion of the first contract year as long as the business does not violate any part of its agreement with the Department of Highways' contractor.

(2) If a sign for a business is removed or covered for any reason, a fee of \$100 shall be charged for the reinstallation or uncovering of the sign for each business at each interchange.

(3) The qualifying business shall be responsible for damage to its business sign caused by an act of vandalism or natural causes requiring repair or replacement of a business sign.

(4) A business sign shall provide a new or renovated business sign if the displayed sign:

- (a) Would misinform the traveling public; or
- (b) Is unsightly, badly faded, or in a state of dilapidation.

Section 11. Trailblazing Signs For Campgrounds. (1) Only those campgrounds within fifteen (15) miles (24.15 kilometers) of the centerline of a fully controlled access highway shall be eligible for new trailblazing signs.

(2) Only one (1) specific service trailblazing sign shall be erected for each business with a logo. This sign shall be placed a minimum of 300 feet (91.5 meters) in advance of the intersection from which the camping service is available.

(3) A trailblazing sign shall not be erected or displayed if the business is visible from a point on the fully controlled access highway within 300 feet (91.5 meters) prior to intersection.

Section 12. Measurements. (1) Measurements in the selection of qualified businesses for business signs shall be from the juncture of the center line, measured between the center edges of the main traveled way of the fully controlled or partially-controlled access road and the center line of a nonlimited access crossroad.

(2) Selection of businesses for display of business signs shall begin at the point of measurement described in subsection (1) of this section to the nearest point of vehicle travel to the exit from the crossroad or public thoroughfare to the particular motorist service.

Section 13. Business Sign Contract. (1)(a) A Highway Logo Program Agreement between a participating business and the department's contractor shall be approved by the Transportation Cabinet prior to the erection of a business sign.

(b) Each business sign and contract shall be subject to review by the Transportation Cabinet at any time.

(c) Failure to comply with any of the requirements set forth herein including nonpayment by the participating business shall be cause for the revocation of a business sign contract.

(d) If the contract is revoked for cause, the prepaid fees for a contract year or portion thereof, shall not be refunded.

(2) If the Department of Highways or its contractor determines that

a contract, business, or business sign does not comply with the requirements of this administrative regulation, the Department of Highways' contractor shall notify the business in writing of the violation.

(3) If the business fails to comply with the requirements of this administrative regulation within fifteen (15) days after receiving the notification, the Department of Highways' contractor shall take immediate action to cancel the contract and remove, replace, or cover the business signs.

(4) If, in a single contract year, a business has been issued a notice pursuant to subsection (2) of this section and is again in non-compliance with this administrative regulation, the Department of Highways' contractor shall take immediate action to cancel the contract and remove, replace, or cover the business signs.

Section 14. Appeal to the Commissioner of Highways for Exemption. (1) The Commissioner of Highways may grant an exemption to a business from the necessity of complying with a requirement set forth in this administrative regulation if [provided]:

(a) It is determined by the commissioner that the exemption is in the public interest;

(b) The business conforms to the Federal Highway Administration standards for specific information signs; and

(2) [(c)-That] A business which conforms to all the requirements set forth in this administrative regulation shall be given a preference over a business not conforming to all of the requirements in qualifying for placement of a business sign on a specific information panel.

(3) [(2)] An appeal of the denial of a request for an exemption by a business to the Commissioner of Highways shall be filed in the form of an appeal as prescribed for in Section 16 of this administrative regulation.

Section 15. Encroachment Permits. The Department of Highways' contractor shall apply for an encroachment permit pursuant to 603 KAR 5:150 for each new specific information panel proposed to be erected, modified, or removed from state-owned right-of-way.

Section 16. Appeal of Department of Highways Action. (1) A business or person aggrieved by the action taken by the Department of Highways or its contractor in administering this administrative regulation may request a formal hearing before the Commissioner of the Department of Highways.

(2) The request for the formal hearing shall:

(a) Be filed in writing with the Commissioner, Department of Highways, 501 High Street, Frankfort, Kentucky 40622; and

(b) Set forth the nature of the complaint and the grounds for the appeal.

(3)(a) Upon receipt of a request for a hearing, the general counsel of the Transportation Cabinet shall assign the matter to a hearing examiner.

(b) The hearing officer shall issue his recommended order to the Commissioner of the Department of Highways.

(c) The Commissioner of the Department of Highways shall issue the final order of the department in this matter.

(4) A party aggrieved by the final order of the Department of Highways may appeal pursuant to the provisions of KRS 13B.140.

Section 17. Material Incorporated by Reference. (1) The following material is incorporated by reference as part of this administrative regulation:

(a) "Application for Highway Logo Signing" forms prepared by Kentucky Logos, Inc. in March 1997;

(b) [~~"Logo Program Billing Information" forms prepared by Kentucky Logos, Inc. in January 1997;~~

(c)] [~~"Highway Logo Program Agreement" form prepared by Kentucky Logos, Inc. in March 1997; and~~

(d)] [~~"Logo Program Specifications" form 99-133 last revised by the Kentucky Transportation Cabinet in April 1991.~~

(2) The material incorporated by reference may be viewed, copied, or obtained from the Kentucky Logos, Inc., Suite 6, State National Bank Building, 305 Ann Street, Frankfort, Kentucky 40601. The telephone number is 1-800-469-5646 or (502) 227-0802. The fax number is (502) 227-7286. The forms may also be viewed, copied, or obtained from the Transportation Cabinet, Department of Highways, Division of

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Traffic [Permits Branch,] 501 High Street, [Mail Code 11-2,] Frankfort, Kentucky 40622. The telephone number is (502) 564-4105. The hours of operation are 8 a.m. through 4:30 p.m. eastern time on weekdays.

J.M. YOWELL, P.E., State Highway Engineer  
JAMES C. CODELL, III, Secretary  
E. JEFFREY MOSLEY, Executive Director  
APPROVED BY AGENCY: January 19, 1999  
FILED WITH LRC: January 19, 1999 at noon

**CABINET FOR WORKFORCE DEVELOPMENT  
Department for Adult Education and Literacy  
(As Amended at ARRS, June 8, 1999)**

**785 KAR 1:010. Testing program.**

RELATES TO: KRS 151B.023, [151B.110,] 151B.125, EO 98-837 [151B.110]

STATUTORY AUTHORITY: KRS 151B.023, [151B.110,] 151B.125, EO 98-837 [151B.110]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 151B.023 [151B.110] requires the Department [State Board] for Adult [and Technical] Education and Literacy to be responsible for adult education programs and services in Kentucky. EO 98-837 grants the Commissioner of the Department for Adult Education and Literacy (commissioner) authority to promulgate administrative regulations and administer all adult education and literacy programs. [KRS 151B.023(4) provides that the Department for Adult Education and Literacy shall be the agency solely designated for the purposes of adopting state plans required for federal adult education programs and services in Kentucky.] KRS 151B.125 recognizes the General Educational Development (GED) test for high school equivalency purposes in Kentucky. This administrative regulation establishes the procedure for testing an adult at an official GED testing center to determine his eligibility for receiving a high school equivalency diploma.

Section 1. (1) The GED test shall provide a valid means of measuring the educational achievement of an adult who is a nonhigh school graduate and of comparing the adult's competency with that of high school graduates. The test shall be a high school level battery consisting of five (5) comprehensive examinations:

- (a) Test 1: Writing Skills Test (Parts I and II);
- (b) Test 2: Social Studies Test;
- (c) Test 3: Science Test;
- (d) Test 4: Interpreting Literature and the Arts Test; and
- (e) Test 5: Mathematics Test.

(2)(a) Except as provided in paragraph (b) of this subsection, an applicant shall be certified as test-ready by a local adult education provider. To be certified as test-ready, an applicant shall:

1. Contact a local Department for Adult Education and Literacy adult education provider; and

2. Successfully complete the Official GED Practice Test, which shall require:

a. A standard score of at least forty (40) on each subtest; and

b. An average of forty-five (45) on the practice test.

(b) [An applicant shall be certified as test-ready:] An applicant presenting a GED-on-TV voucher from Kentucky Educational Television study shall not be required to meet the test-readiness prerequisite.

(3) Except as provided in subsection (4), (5), or (6) of this section, the GED test shall be administered to an applicant with a Kentucky address who has officially withdrawn from public or private school as certified by the local school district; and

(a) Has reached his 19th birthday;

(b) Is at least seventeen (17) years of age, if:

1. His last enrolled class has graduated; or

2. He has been out of formal instruction for a period of one

(1) year; or

(c) Is sixteen (16) years of age, if the applicant has:

1. Been committed or placed in a state correctional facility;

or

2. Completed the Job Corps Program of Instruction. [The GED test shall be administered to an applicant with a Kentucky address, officially withdrawn from public or private school as certified by the local school district, who has reached his 19th birthday. An officially withdrawn applicant who is at least seventeen (17) years of age and whose last enrolled class has graduated or who has been out of formal instruction [classroom] for a period of one (1) year may be administered the GED test. An applicant, officially withdrawn from school, who is sixteen (16) years of age shall meet one (1) of the following criteria:

(a) Committed or placed in state correctional facility; or

(b) Completed Job Corps Program of instruction.]

(4)(a) An applicant at least sixteen (16) years of age who believes exigent circumstances exist and who does not meet the conditions of subsection (3)(c)1 or 2 [(a) or (b)] of this section may request an exemption from the local school superintendent or designee in the district where the applicant resides.

(b) An exemption granted on the basis of exigent circumstances or a denial shall be in writing. A copy of the decision shall be mailed or faxed within five (5) working days to the state GED administrator. Dissatisfaction resulting from a denial may be appealed to the commissioner [of the Department for Adult Education and Literacy].

(c) Exigent circumstances shall include:

1. Sentenced by a court to an educational program and program completed; or

2. Admission to a postsecondary program which is contingent upon earning a high school equivalency diploma (GED).

(5) The GED test shall be administered to an applicant with a Kentucky address who has not officially withdrawn from school if the applicant:

(a) Is considered a state agency child, as defined by KRS 158.135(1)(a);

(b) Is at least sixteen (16) years of age; and

(c) Has received approval for the GED test from his interdisciplinary team.

(6) The GED test shall be administered to an applicant with a Kentucky address who has not officially withdrawn from school if the applicant:

(a) Is at least sixteen (16) years of age;

(b) Is detained in a juvenile detention center or juvenile holding facility;

(c) Is at least one (1) year behind academically from his graduating class;

(d) Has a minimum stay in detention of thirty (30) days; and

(e) Is approved for the GED test by the local school superintendent. [The GED test may be administered to an applicant with a Kentucky address, not officially withdrawn from school, but considered to be a state agency child (SAC) as defined in 905 KAR 7:250, and who has reached his 16th birthday. The SAC shall have approval from his interdisciplinary team and be certified as test ready. By virtue of identification as a SAC, the eligible GED SAC applicant shall not need approval for GED testing from the local school superintendent.]

(6)(a) The GED test may be administered to an applicant with a Kentucky address, not officially withdrawn from school, who has reached his 16th birthday, and meets the following criteria:

1. Detained in a juvenile detention center or juvenile holding facility;

2. At least one (1) year behind academically from his graduating class; and

3. Minimum stay in detention of thirty (30) days;

(b) The eligible applicant shall be certified as test ready;

(c) It will be necessary for the local school superintendent to approve an applicant who meets the above criteria.]

(7) An official GED testing center shall be established under contract with the GED Testing Service of the Commission on Accreditation with the location authorized by the commissioner [State Board for Adult and Technical Education]. A GED testing service for an individual confined to a state correctional or health institution shall be approved by the commissioner [State Board for Adult and Technical Education].

(8) [(6)] The testing fee shall be a uniform fee of thirty (30) dollars

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or six (6) dollars per subtest. The Department for Adult Education and Literacy shall not charge a fee for testing services provided for an individual confined to a state correctional or health institution.

(9)(a) [(7)] An applicant seeking a high school equivalency diploma shall complete the **GED Testing Application Form** [appropriate application form provided for this purpose] prior to taking the GED test. This form shall be available from a local adult education provider, local school superintendent or the Department for Adult Education and Literacy.

(b) Military personnel shall:

1. Not be required to complete the **GED Testing Application Form** prior to taking the test; and

2. [Military personnel shall] Complete the **Military GED Application Form (Form 300-M)** [an application form] before a high school equivalency diploma shall be issued. [Military personnel may use the Military GED Application (Form 300-M).]

(10) [(8)] If an applicant passes the five (5) subtests with a minimum standard test score of forty (40) but does not attain an average standard score of forty-five (45), he shall be eligible to retake a subtest in an attempt to raise the overall standard score. The testing center proctor shall recommend which subtest may be retaken.

Section 2. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "GED Testing Application (DAEL-6)", revised 7/1/99 [10/96] edition, Cabinet for Workforce Development, Department for Adult Education and Literacy; and

(b) "Application for High School Equivalency Diploma or Certificate (Military GED Application) (Form 300-M)", revised 7/85 edition, GED Testing Service, Washington, D.C.

(2) This material may be inspected, copied, or obtained at the Department for Adult Education and Literacy, Capital Plaza Tower, Third Floor, 500 Mero Street, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

REECIE D. STAGNOLIA, Acting Commissioner

SARAH M. JACKSON, General Counsel

APPROVED BY AGENCY: April 12, 1999

FILED WITH AGENCY: April 15, 1999 at noon

**PUBLIC PROTECTION AND REGULATION CABINET**  
**Department of Alcoholic Beverage Control**  
**(As Amended at ARRS, June 8, 1999)**

**804 KAR 4:210. Supplemental bar license.**

RELATES TO: KRS 243.030(8), 244.330

STATUTORY AUTHORITY: KRS 241.060(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 241.060(1) authorizes the board to promulgate administrative regulations governing the application for licenses and governing the sale of alcoholic beverages. This administrative regulation limits the number of supplemental bar licenses that a retail licensee must purchase. [Due to modern business practices and the large interior areas of some licensees, it may be necessary to provide more than one (1) bar within a license premises to effectively serve the patrons at such premises. After a review of the laws of other states in this particular area of ABC regulation, particularly New York, it has been determined that a supplemental bar should be allowed as an additional license [existing licensees], if such licensees can show this board the need for such supplemental bar and upon payment of an additional fee.]

Section 1. (1) A supplemental bar license(s) may be issued to the holder of a retail liquor drink license upon application [a showing] to the Distilled Spirits and Wine Administrator [of good cause and need for the supplemental bar(s)] [license, and upon payment of a fee equivalent to the amount of the annual license fee paid by the licensee. This supplemental license may only be issued for use on the premises for which the applicants of existing retail drink license was issued.]

(2) The licensee shall pay the fee enumerated in KRS

243.030(8) for each supplemental bar license issued up to a maximum of five (5) such licenses.

(3) A retail licensee who has been issued five (5) supplemental bar licenses may request approval from the Distilled Spirits Administrator for issuance of additional supplemental bar licenses without additional payments. Such requests shall be made in writing and addressed to Distilled Spirits Administrator, Department of Alcoholic Beverage Control, 1003 Twilight Trail, Suite A-2, Frankfort, Kentucky 40601.

(4) The supplemental license(s) may only be issued for use on the premises for which the applicants existing retail liquor drink license was issued.

**Section 2. Incorporation by Reference. (1) "Application for Supplemental Bar Liquor License", 1993 Edition, Department of Alcoholic Beverage Control, is incorporated by reference.**

**(2) It may be inspected, copied, or obtained at Department of Alcoholic Beverage Control, 1003 Twilight Trail, Suite A-2, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.**

**Section 3. This administrative regulation shall expire on adjournment of the next regular session of the General Assembly.**

RICHARD N. JOHNSTONE, Commissioner

REBECCA W. GOODMAN, General Counsel

APPROVED BY AGENCY: March 15, 1999

FILED WITH LRC: March 15, 1999 at 1 p.m.

**CABINET FOR HEALTH SERVICES**  
**Office of Inspector General**  
**Division of Licensing and Regulation**  
**(As Amended at ARRS, June 8, 1999)**

**902 KAR 20:140. Operation and services; hospice.**

RELATES TO: KRS 216B.010, 216B.015, 216B.042 [216B.030], 216B.105, 216B.155 to 216B.170, 216B.990 [to 216B.130; 216B.990(1), (2)]

STATUTORY AUTHORITY: KRS [216B.010], 216B.042(1) [; 216B.105]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 216B.042 requires [and 216B.105 require [mandate] that] the Cabinet for Health Services to [Human Resources] regulate health facilities and health services. This administrative regulation establishes [provides] [for the] licensure requirements for [the operation of a hospice and the services to be provided by a] hospice operation and services.

Section 1. Definitions. (1) "Administrator" means a person who has:

(a) Served as a hospice administrator under a state approved hospice program; or

(b) [has at least] A Bachelor of Arts or Bachelor of Science degree in a health care, human services, or administrative curriculum; or

(c) [area or has] Equivalent administrative work experience in a health care facility.

(2) "Bereavement" means the period of time during which a person [(or group of people)] experiences, responds emotionally, [to] and adjusts to the loss by death of another person.

(3) "Palliative care" means care directed at reducing or abating pain and other troubling symptoms of the disease process in order to achieve relief of distress.

(4) "Supplemental service" is a hospice service provided under the health care facility's existing license.

[(4) "Palliative care" means care directed at reducing or abating pain and other troubling symptoms of the disease process in order to achieve relief of distress.]

(5) "Terminally ill" means a person who is experiencing a fatal condition [an illness] for which therapeutic strategies directed toward care and control [of disease] are no longer effective.

(6) "Volunteer" means a [lay or professional] person who contrib-

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utes time and talent to the hospice program without economic remuneration [(e.g., physician, concerned citizens, clergy)].

Section 2. Scope of Operation and Services. A hospice is a centrally administered program of palliative and supportive services, including skilled nursing services, intended to meet the physical, psychological, social, and spiritual needs of a terminally ill person [persons] and his family [their families] on a twenty-four (24) hour, seven (7) day- [days] a-week, on-call basis. Services are provided in the home or in an inpatient health care facility as a supplemental service by a medically supervised, interdisciplinary team of professional and lay personnel during the final stages of illness, at death, and through bereavement.

Section 3. Administration and Organization. (1) A hospice program shall seek licensure to operate as:

- (a) A freestanding hospice; or
- (b) A hospice operated by a hospital, long term care facility, home health agency, or health maintenance organization, or other licensed health care facility or service.
- (2) The licensee shall be legally responsible for the operation of the hospice and for compliance with federal, state, and local law [laws and regulations] pertaining to the operation of the service.
- (3) The licensee shall have permanent facilities for the administration of the program and storage of the patient records.
- (4) The licensee shall establish policies for the administration and operation of the service. The policies shall include:
  - (a) Acceptance of patients;
  - (b) Development of a plan of care through the interdisciplinary team;
  - (c) Quality care audits for direct service;
  - (d) Personnel policy and procedure to include:
    1. A description of each personnel position;
    2. Wage and salary range for each position;
    3. A description of the lines of authority;
    4. Personnel benefits;
    5. Evaluation and grievance procedure; and
    6. Orientation and training program information; and [policies and procedures which include position descriptions, a description of lines of authority, wage and salary ranges, benefits, evaluation and grievance procedures, and orientation and training programs; and]
  - (e) Use of volunteers, volunteer [voluntary] selection criteria, training, and roles in the hospice program.
- (5) Contracted services. If a hospice contracts for services, the contract [such contracts] shall be in writing and shall:
  - (a) Designate clearly the services to be provided;
  - (b) Describe how the personnel under contract will provide the service and how they will be supervised;
- (c) Require hospice staff to provide training, to participate in personnel, about hospice care [Provide education about hospice care, for participating personnel, conducted by the hospice staff]; and
- (d) Describe the process of coordination for medical recordkeeping, patient evaluation and care planning.
- (6) Contracted services with health care facilities.
  - (a) A contract between a hospice and an inpatient service provider or a health facility, as defined at KRS 216B.015(10), shall:
    1. Comply with the requirements established in subsection (5) of this section; and
    2. Specify that the hospice maintain professional, financial, and administrative responsibility for planning, coordinating, and prescribing hospice services and care on behalf of the hospice patient and his family. [In addition to the general requirements for contracted services detailed in subsection (5) of this section, contracted services for a health care facility shall be governed by the following:
      - (a) Any contract entered into between a hospice and a health care facility as defined in KRS 216B.015 or service provider shall specify that the hospice maintain professional, financial and administrative responsibility for planning, coordinating and prescribing hospice services and care on behalf of the hospice patient and his [or her] family;]
      - (b) For a contract with an inpatient service provider, the hospice shall:

1. Provide the service provider a copy of the patient's plan of care;

2. Specify the inpatient services to be furnished; and

3. Require that the inpatient provider agree to the designation of services. [The hospice shall furnish to the inpatient provider a copy of the patient's plan of care and specify the inpatient services to be furnished and that the inpatient provider agrees to the terms contained therein;]

(c) A hospice shall not charge a fee [fees] for a service [services] provided directly by the hospice care team which is [are] duplicative of a [the] contractual service [services] provided by a health care facility to the individual or his family[and

(d) Staffing for hospice services provided on a contractual basis shall not be included in the overall staffing level of a health care facility.

(7) Medical records.

(a) A medical record shall be maintained for each [every] individual who is accepted as a hospice patient. The medical record [records] shall include:

1. Written referral from the attending physician of the patient to the hospice program;

2. Medical history;

3. Social and psychological information on [the] patient and family;

4. Doctors' [All doctors] orders;

5. [and] The approved care plan; and

6. [5:] Documentation of [all] medical services provided.

(b) A medical record [All medical records] shall be kept confidential and shall be retained for a minimum of five (5) years, or in the case of a minor, three (3) years after the patient reaches the age of majority under state law, whichever is the longer.

(8) Personnel. The hospice shall have:

(a) A medical director who is a licensed physician, available on at least a consultative basis, and who shall:

1. Direct [Is responsible for directing] medical aspects of the hospice care program; and

2. Participate [Participates] in the development of medical policy and procedure [policies and procedures].

(b) An administrator who shall:

1. Direct [is responsible for] the daily operation of the hospice; and

2. Implement [the implementation of] policies and procedures for [all] activities and services, whether provided [directly] by hospice personnel or by contract.

(c) A patient-care coordinator who is a registered nurse who shall be:

1. Available on a full or part-time basis; and

2. Knowledgeable of home-based skilled nursing services for the terminally ill.

Section 4. Services. (1) The hospice program shall provide palliative and supportive services including skilled nursing services to meet the physical, psychological, social, and spiritual needs of a terminally ill person [persons] and his family [their families]. Hospice services shall:

(a) Be available on a twenty-four (24) hour, seven (7) day a week, on-call basis;

(b) Be provided by an interdisciplinary team which shall include:

1. The patient;

2. [and] The patient's family, if willing to participate;

3. [2:] The medical director; [(the patient's attending physician, and other staff physicians may also be members of the team).]

4. [3:] A nurse;

5. [4:] A social worker; and

6. The following team members, on an optional basis:

a. The patient's attending physician;

b. Other staff physicians;

c. [5:] A representative of the clergy if the patient so chooses; and

d. A volunteer. [6-Volunteers, if available.]

(2) A patient [Patients] may be admitted to a hospice program only upon referral from a physician and upon the request of the patient and family. The patient's attending physician shall be responsible for the direct medical care of the patient's illness.

(3) The hospice shall provide the following services directly:

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- (a) Coordination of the medical aspects of the hospice program;
  - (b) ~~[Patient and /- family]~~ Assessment of physical, psychological, spiritual, social, and economic needs of the patient and his family;
  - (c) Development and coordination of a care plan which includes the delineation of responsibilities of each team member and provides for regularly scheduled team meetings for planning, ~~[and]~~ evaluation, and [as well as for] individual case management;
  - (d) Patient counseling and bereavement counseling of the family; and
  - (e) Education and training services for staff, volunteers, and family members.
- (4) Skilled nursing services shall be provided directly or through contract as indicated by the patient's needs.
- (5) The following services shall be provided directly, through contract, or through referral, as indicated by the patient and family needs:
- (a) Nutrition ~~[services]~~;
  - (b) Homemaker and ~~;~~ home health aide ~~[services]~~;
  - (c) Physical therapy ~~[services]~~;
  - (d) Occupational therapy; and
  - (e) Speech therapy.
  - (6) The hospice shall:
  - (a) Follow up on a patient ~~[patients given]~~ referral ~~[referrals]~~ to determine if the service was ~~[whether services were]~~ provided; and
  - (b) ~~[shall]~~ Make an appropriate entry ~~[entries]~~ into the patient's medical record ~~[records]~~ for each service ~~[services]~~ provided on a referral basis.

(7) The patient's plan of care shall be reviewed by the attending physician in consultation with agency professional personnel at such intervals as the severity of the patient's illness requires, but in all cases, at least once every two (2) months. Verbal authorization to change the plan of care shall be reviewed and signed by the attending physician within twenty-one (21) ~~[seven-(7)]~~ days after the order is issued.

(8) An original order for a drug ~~[orders for drugs]~~ and a change in an order for a drug ~~[changes in orders for drugs]~~ shall be signed by the physician and made a part of the patient's medical record. Verbal authorization by the physician to change a drug order ~~[orders]~~ shall be reviewed and signed by the physician within twenty-one (21) ~~[seven-(7)]~~ days after the order is issued.

TIMOTHY L. VENO, Inspector General

JOHN MORSE, Secretary

JOHN WALKER, Attorney

APPROVED BY AGENCY: April 8, 1999

FILED WITH LRC: April 8, 1999 at 11 a.m.

**CABINET FOR HEALTH SERVICES**  
**Department for Medicaid Services**  
**Division of Financial Management and Analysis**  
**(As Amended at ARRS, June 8, 1999)**

**907 KAR 1:780. Converted dual-licensed hospital-based nursing facility beds.**

RELATES TO: KRS 216B.020(4), (5)

STATUTORY AUTHORITY: KRS 194A.030, 194A.050, 205.520(3), 216B.075

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health Services, Department for Medicaid Services has the responsibility for administering the Kentucky Medicaid Program in an efficient, cost-effective manner, consonant with the funds that are available, and consistent with the objectives of the Program. One (1) of these objectives is for recipients to have reasonable access to health care and services under the Medicaid Program, taking into account such factors as geographic location, travel time, choice of providers, and utilization rates. This administrative regulation establishes the process and criteria relating to Medicaid participation for dual-licensed acute care hospital beds that were converted to nursing facility beds pursuant to KRS 216B.020(4), and supplements applicable provisions for provider enrollment in Section 2 of 907 KAR 1:672 and the administrative hearing process in 907 KAR 1:671.

Section 1. Definitions. (1) "Administrative process" means meeting, review, investigation, hearing, appeal, deliberation or exchange of documents or information between the provider and the department. ~~[is defined in 907 KAR 1:671, Section 1(2).]~~

(2) "Applicant" means a person or entity who submits an application to become a Medicaid provider. ~~[is defined in 907 KAR 1:672, Section 1(1).]~~

(3) "Applicant's geographic area" means the county in which the applicant's converted dual-licensed hospital-based nursing facility beds are located and contiguous Kentucky counties.

(4) "Application" means a request for Medicaid certification for beds that were converted to hospital-based nursing facility beds pursuant to KRS 216B.020(4).

(5) ~~["Cabinet" means the Cabinet for Health Services.~~

(6) ~~["Certificate of need" is defined in KRS 216B.015(8) [216B.015(7)].~~

(6) ~~[(7)]~~ "Converted" means a bed that was previously a dual-licensed acute care hospital bed that, pursuant to KRS 216B.020(4) and (5), changed a dual-licensed acute care bed [beds] to a hospital-based nursing facility bed and is not presently participating in the Medicaid Program. ~~[the process by which a dual-licensed acute care hospital bed was changed to a hospital-based nursing facility bed pursuant to KRS 216B.020(4).]~~

(7) ~~[(8)]~~ "Days" means calendar days, unless otherwise designated.

(9) ~~["Department" means the Department for Medicaid Services.~~

(10) ~~["Provider" is defined in KRS 205.8451(7).]~~

(8) ~~[(11)]~~ "State Health Plan" is defined in KRS 216B.015(19) ~~[(18)].~~

Section 2. Enrollment Process for Converted Dual-Licensed Hospital-Based Nursing Facility Beds Participation in Medicaid. (1) An application for converted dual-licensed hospital-based nursing facility beds which are not presently participating in the Medicaid Program, but requesting participation. ~~[bed Medicaid participation]~~ shall be submitted to the Commissioner of the Department for Medicaid Services.

(a) The application shall be in writing in the form, content and manner required by the department in accordance with this administrative regulation and 907 KAR 1:672. The application shall contain the following, with pertinent information and supporting documentation:

1. ~~[(a)]~~ The total number, each room number and bed designation of:

a. [1:] Dual-licensed acute care beds that were converted to hospital-based nursing facility beds and licensed pursuant to KRS 216B.020(4);

b. [2:] Converted beds already participating in Medicaid;

c. [3:] Converted hospital-based nursing facility beds applying for Medicaid certification; and

d. [4:] Licensed hospital-based nursing facility beds.

2. ~~[(b)]~~ Data that demonstrates a need for additional not presently participating Medicaid certified beds in the applicant's geographic area in accordance with the factors listed in Section 3 of this administrative regulation;

3. ~~[(c)]~~ The requested date for Medicaid certification of the converted beds; and

(b) [(d)] Information in the application shall be current, presented clearly and precisely.

(2) The department shall:

(a) Review the application for completeness; and

(b) Review the notification from the Division of Licensing and Regulation of the Office of Inspector General recommending Medicaid certification for the converted beds.

(3) Upon receipt of notification from the Division of Licensing and Regulation, along with a complete and accurate application, with all ~~[and]~~ requested documentation, the department shall determine:

(a) The number of licensed hospital-based nursing facility beds the applicant has available for certification; and

(b) Whether the application establishes a need for additional Medicaid certified beds in the applicant's geographic area in accordance with Section 3 of this administrative regulation.

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(4) Except as provided in subsection (9) of this section, the department shall make a decision regarding the application within thirty (30) days of the receipt of information specified in subsection (3) of this section. The department shall:

(a) Grant, in whole or in part, the requested Medicaid certification; or

(b) Deny the request.

(5) The department shall notify the applicant, in writing, of the decision, and the basis for denial if applicable.

(6) If an applicant wishes to appeal an adverse determination, the appeal shall be in accordance with Sections 4 and 5 of this administrative regulation.

(7) Except as provided in subsection (8) of this section, if an application for Medicaid certification of converted beds is fully or partially granted and the applicant is not currently a Medicaid certified nursing facility provider, the applicant shall ~~[-except as established in subsection (8) of this section]~~:

(a) Follow the enrollment procedures delineated in 907 KAR 1:672; and

(b) Include a copy of the department's decision granting certification in its enrollment packet.

(8) If the applicant is currently a Medicaid certified nursing facility provider:

(a) All converted beds that may be certified by the department shall be included under the existing provider number; and

(b) The provider shall comply with licensing requirements established in 902 KAR 20:300 and 902 KAR 20:310.

(9) Subsection (4) of this section shall:

(a) Apply to a request [requests] for new participation in the Medicaid Program; and

(b) Not apply to a bed [-not to beds] previously approved by the department.

Section 3. Enrollment Criteria for Converted Dual-Licensed Hospital-Based Nursing Facility Beds Requesting Participation in Medicaid. (1) Based on data submitted in the application, relevant factors in the applicant's geographic area shall be considered to assess the need for Medicaid certification of converted beds and shall include:

(a) The total number of free-standing and hospital-based nursing facility beds.

(b) The total number of the following:

1. Medicaid certified nursing facility beds; and

2. Medicaid certified hospital-based nursing facility beds;

(c) Survey data reported to the cabinet by providers for the two (2) calendar years preceding the date of receipt of the application, and data collected by the cabinet in accordance with 902 KAR 20:008 for licensed nursing facility beds in the applicant's geographic area relating to:

1. The occupancy percentage for each of the two (2) preceding calendar years; and

2. The number of admissions, discharges or deaths;

(d) The impact of the cost of the converted beds on the Medicaid budget [A comparison of the Medicaid reimbursement rates of free-standing and hospital-based nursing facilities as of a July 1 date preceding the date of the application];

(e) The current State Health Plan "nursing facility bed need calculations by county and state" maintained by the Cabinet for Health Services, Office of the Certificate of Need; and

(f) [Any] Other documentation included in the application that demonstrates the need for Medicaid certification of a converted bed [any converted beds].

(2) The department may consider the following when making a determination of need:

(a) The most current Medicaid nursing facility financial data; and

(b) Other information, including relevant information that the department may have requested from:

1. The applicant; or

2. Another provider [Other providers] in the applicant's geographic area; or

3. A medical services trend report.

Section 4. Resolution of Applicant Disputes Prior to an Adminis-

trative Hearing. (1) If an applicant disagrees with the department's determination regarding Medicaid certification, the applicant may:

(a) Request a resolution meeting pursuant to subsections (2), (3), and (4) of this section; or

(b) Submit additional information for consideration in lieu of a [such] request pursuant to subsection (5) of this section.

(2) A written request for a resolution meeting shall be received by the Director of the Department's Division of Long-term Care within thirty (30) calendar days of the date of the department's notice of decision. The [Such] request shall:

(a) Identify the disputed issue or issues;

(b) State the basis of the challenge to the department's decision;

(c) Provide documentation supporting the applicant's position; and

(d) State the name, address, and telephone number of an [any] individual expected to attend the resolution meeting on the applicant's behalf.

(3) The department shall, within thirty (30) calendar days of receipt of a request for resolution meeting, send written notice to the applicant of the date, time and place of the meeting.

(4) The resolution meeting shall be conducted by the department in an informal manner. The applicant or [and] the department may present [any] relevant evidence or testimony at the meeting in support of their respective positions.

(5) In lieu of requesting a resolution meeting, an applicant may submit additional information it wishes the department to consider.

(a) The additional information shall be received by the department within thirty (30) days of notice of the department's decision; and

(b) The submission of additional documentation shall not:

1. Constitute a request for a resolution meeting; and

2. ~~[(e)-it shall not]~~ Extend the thirty (30) day time period for requesting a resolution meeting.

(6) The department may rescind, modify or take no action with regard to its initial adverse decision.

(a) The department shall provide written notice to the provider of the department's decision within thirty (30) calendar days from:

1. The date of the resolution meeting; or

2. The date additional information was received for consideration.

(b) The notice shall state the decision and the facts on which it is based, including references to applicable statutes and administrative regulations.

(7) The department may extend a time frame [any of the time frames] specified in this section, [and] upon written notice to the applicant, if an extension:

(a) [Such extension] Is determined to be necessary for the efficient administration of the resolution meeting process; or

(b) Is needed to prevent a miscarriage of justice with regard to the provider.

Section 5. Administrative Hearing Process. An applicant may appeal an adverse decision rendered by the department. An appeal [Such appeals] shall be in accordance with the provisions established in 907 KAR 1:671, Section 9(1) and ~~[-and (4)]~~ through (14).

DENNIS BOYD, Commissioner

JOHN H. MORSE, Secretary

JOHN H. WALKER, Attorney

APPROVED BY AGENCY: April 8, 1999

FILED WITH LRC: April 8, 1999 at 11 a.m.

CABINET FOR FAMILIES AND CHILDREN  
Office of Program Support  
(As Amended at ARRS, June 8, 1999)

920 KAR 1:060. Protection of human subjects.

RELATES TO: 45 CFR 46.101 to 46.409

STATUTORY AUTHORITY: KRS 194B.050, 45 CFR 46.101 to 46.409, EO 98-731

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**NECESSITY, FUNCTION, AND CONFORMITY:** The cabinet is required, by 45 CFR 46.101 through 46.409, to have an Institutional Review Board for the Protection of Human Subjects to protect the rights and welfare of human subjects of research conducted or sponsored by the cabinet. This administrative regulation: (a) incorporates by reference, applicable federal regulations and publications which set forth the type of projects covered, definitions, assurances, membership, functions and operations, review procedures, criteria for approval of research, record requirements, informed consent requirements, consent documentation, ethical principles and guidelines, a listing of research activities which may be reviewed through expedited review procedures and other relevant matters; and (b) covers specific requirements for protecting human subjects in studies sponsored or funded by the Cabinet for Families and Children within the larger requirements defined by federal regulation.

**Section 1. Definitions.** ~~[As used in this administrative regulation the following terms shall have the meanings set forth below:]~~

(1) "Auxiliary review board" means an independently functioning local board within the Cabinet for Families and Children established to serve a particular facility or institution.

(2) "Board" means the cabinet's Institutional Review Board established by this administrative regulation and attached to the Office of Program Support.

(3) "Cabinet" means the Cabinet for Families and Children.

(4) "Health risk project" means a project in which the intervention variable is judged by the board to have a potential for adversely affecting the health of the human research subjects.

(5) "Principal investigator" means the investigator involved in the research project that has responsibility for making decisions regarding the research study.

(6) "Research" shall have the meaning set forth in 45 CFR 46.102(e) and in addition shall include descriptive and exploratory research activities that lay the groundwork for contributions to knowledge. Research shall be considered sponsored by the Cabinet for Families and Children if:

- (a) It is supported financially by the cabinet;
- (b) It uses staff or facilities provided by the cabinet; or
- (c) It is sponsored or endorsed by cabinet policy makers.

**Section 2. Institutional Review Board.** (1) An Institutional Review Board for the Protection of Human Subjects within the cabinet is hereby created. The board shall be attached to the Office of Program Support.

(2) The board shall consist of not less than five (5) nor more than eleven (11) members appointed by the secretary. Members representing various professional and academic fields shall be nominated by department commissioners or by office heads and appointed by the secretary. The board shall meet as needed to review a project. The board shall include a chair appointed by the secretary of the cabinet.

(3) The Executive Director of the Office of Program Support shall assign the necessary staff, provide needed administrative support, and serve as liaison between the board and the U.S. Department of Health and Human Services. Staff assigned to the board by the Executive Director of the Office of Program Support shall ensure the following:

- (a) Maintenance of appropriate records;
- (b) Conduct a preliminary review of a submitted project on a timely basis;
- (c) Refer a project, to which this administrative regulation is applicable, to the board; and
- (d) Make recommendations to the board on the disposition of an applicable project.

**Section 3. Project Submission.** (1) It shall be the responsibility of the appropriate division director, commissioner, or office head to direct the program or project administrators under their jurisdiction to submit a research project, involving a human subject, to the board chair or board staff for possible consideration by the board. Project submission shall include three (3) copies where applicable of the following:

- (a) Institutional Review Board request for approval of research

activity form;

(b) A narrative description of the project's purpose and proposed research procedures;

(c) The research instrument to be used;

(d) A narrative description of how subject confidentiality shall be addressed; and

(e) The research subject consent form that shall be appropriate for the research project.

(2) A [No] modification in the research protocol or design of an approved research project, that may increase the level of risk to a subject [the subjects], shall not be implemented unless first approved by the board. If an alteration becomes necessary, it shall be the responsibility of the research administrator to obtain the prior approval of the board. Failure to obtain prior approval of the board shall [may] result in the suspension or termination of the initial board approval and the requirement that all research activity be stopped.

**Section 4. Scope of Board Approval.** (1) Board approval of a project shall:

(a) Represent [represents only] a judgment that a human subject has been adequately protected; and

(b) [shall] Not in any way represent a judgment concerning its ultimate research value or a policy decision regarding the value of the research to the cabinet.

(2) The board shall have the ultimate responsibility of reviewing all research projects involving a human subject, if [when] the research is sponsored by the cabinet and if [when] it is not specifically exempted from board review. If the primary review is performed by an approved auxiliary review board, the board shall either:

(a) [may] Limit its review to the findings and recommendations of the auxiliary review board; or

(b) [the board may choose to] Conduct its own review of the project.

(3) A research administrator may request a reconsideration of an adverse decision by the board by submitting a written request for reconsideration to the chair of the Institutional Review Board.

(4) The request shall be made within thirty (30) days of the principal investigator's notification of adverse decision.

(5) Upon receipt, the request for reconsideration and any related documents shall be conveyed to the board chair for reconsideration. A reconsideration shall be made in the same manner as the initial review.

**Section 5. Board Responsibilities.** (1) The board chair shall, in coordination with the Office of Program Support, call a meeting as needed to conduct board business on a timely basis.

(2) A review and recommendation concerning a project shall be consistent with the criteria specified [in the federal regulations] 45 CFR 46.101 to 46.409 [adopted without change in this administrative regulation].

(3) The board shall [also] use the Institutional Review Board for the Protection of Human Subjects, Request for Approval for Research Activity form [adopted by the board and incorporated by reference in this administrative regulation].

**Section 6. Responsibilities of Principal Investigators.** (1) If a change is made in research design or protocol that affects the level of risk to a subject, confidentiality procedures, or consent procedures, the change shall be submitted, before implementation, to the board for approval.

(2) An unanticipated problem involving a risk to a subject or another individual as a result of research activity shall be reported to the board within ten (10) working days.

(3) If a project is defined as a health risk project by the board, the principal investigator shall report to the board a research subject death, which becomes known to him, whether the death appears likely to be related to participation in the research project. A report of a death shall be made to the board in writing within seven (7) days of the principal investigator's knowledge of the death.

(4) The principal investigator shall:

(a) Prepare an annual report and submit an annual request for reapproval of an ongoing research study; and

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(b) Submit a copy of the final research finding and conclusions.

Section 7. Auxiliary Review Boards. (1) The chief executive of the cabinet institution or facility conducting research, subject to **45 CFR 46.101 through 46.409** [~~the federal regulations pertaining to human subjects~~], may form an auxiliary review board to conduct the required review of a project. The establishment of an auxiliary review board shall be approved by the secretary of the cabinet.

(2) An auxiliary review board, as an institutional review board, shall conduct a review consistent with this administrative regulation.

(a) The findings and recommendations of the auxiliary review board on a research study involving risk to a human subject shall be forwarded at least five (5) working days before initiation of the research, to the board chair.

(b) The board shall respond to the auxiliary review board, within twenty-one (21) days of the board's receipt of the auxiliary review board's finding and recommendations.

Section 8. Confidentiality. Research information that identifies an individual subject shall be regarded as confidential and shall not be disclosed to a person outside the research project staff or published without the subject's prior written authorization. [~~Nothing contained herein shall be deemed to prevent the release of~~] Raw or summary data may be released if the data [that] does not identify a subject.

Section 9. The decision of the board concerning the protection of a human subject shall be guided by:

(1) The "Belmont Report Ethical Principles and Guidelines for the Protection of Human Subjects of Research", report, National Commission for the Protection of Human Subjects of Biomedical and Behavioral Research (April 18, 1979); and

(2) 45 CFR 46.101 through 45 CFR 46.409.

Section 10. Adoption Without Change. 45 CFR 46.101 through 46.409, as effective July 1, 1998 are adopted without change.

(2) This material may be inspected, copied, or obtained at the Cabinet for Families and Children, Office of Program Support, Fourth Floor Center, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. through 4:30 p.m.

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

(a) The "Belmont Report: Ethical Principles and Guidelines for the Protection of Human Subjects of Research", report, National Commission for the Protection of Human Subjects of Biomedical and Behavioral Research", edition April 18, 1979; and

(b) Institutional Review Board for the Protection of Human Subjects, Request for Approval for Research Activity form, edition October, 1981.

(2) This material may be inspected, copied, or obtained at the Cabinet for Families and Children, Office of Program Support, Fourth Floor Center, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. through 4:30 p.m.

TERESA SUTER, Executive Director

VIOLA P. MILLER, Secretary

CHARLES P. LAWRENCE, Attorney

APPROVED BY AGENCY: April 6, 1999

FILED WITH LRC: April 14, 1999 at 11 a.m.

**CABINET FOR FAMILIES AND CHILDREN**  
**Department for Community-Based Services**  
**Division of Policy Development**  
**(As Amended at ARRS, June 8, 1999)**

**921 KAR 2:015. Supplemental programs for persons who are aged, blind, or have a disability.**

RELATES TO: KRS 205.245, 216.557(1), 20 CFR 416.2095, 416.2096, 8 USC 1621, 1641

STATUTORY AUTHORITY: KRS 194B.050 [194-050], 205.245,

42 USC 1382e-g, EO 98-731 [HB-321-(1999)]

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Families and Children is authorized to administer a state funded program of supplementation to all December, 1973, former recipients of aid to the aged, blind and disabled, disadvantaged by the implementation of the Supplemental Security Income Program. KRS 205.245 provides for the mandatory supplementation program and also for supplementation to other needy persons who are aged, blind, or have a disability. The cabinet shall operate a supplement program for certified personal care homes which accept state supplementation recipients and have [a] thirty-five (35) percent of the residents in the personal care home's occupied licensed personal care beds who have a diagnosis of mental illness or mental retardation. This administrative regulation sets forth the provisions of the supplementation program.

Section 1. Definitions. (1) "Aid to the Aged, Blind and Disabled Program" means the former state funded program for an individual [individuals] who was [were] aged, blind or had a disability.

(2) "Qualified alien" means an alien who, at the time the person applies for, receives, or attempts to receive state supplementation, is an alien as defined in Section 1(10) of 904 KAR 2:006.

(3) "Specialized personal care home" means a licensed personal care home which receives funding from the Department for Mental Health and Mental Retardation Services to employ a mental health professional [professionals] who has [have] specialized training in the care of a resident [residents] with mental illness or mental retardation.

Section 2. Mandatory State Supplementation. (1) A mandatory state supplementation payment [payments] shall be equal to the difference between:

(a) The Aid to the Aged, Blind and Disabled Program payment for the month of December, 1973, plus any other income available to the recipient as of that month; and

(b) The total of the Supplemental Security Income Program payment and other income for the current month.

(2) A recipient shall include [includes] a [Recipients include] former Aid to the Aged, Blind and Disabled Program recipient [recipients] who became ineligible for the Supplemental Security Income Program due to income but whose special needs entitled him [them] to an Aid to the Aged, Blind and Disabled Program payment as of December, 1973.

(3) A mandatory payment [payments] shall continue until:

(a) The needs of the recipient as recognized in December, 1973, have decreased; or

(b) Income has increased to the December, 1973 level.

(4) The mandatory payment shall not be increased unless::

(a) Income as recognized in December, 1973, decreases;

(b) The Supplemental Security Income Program payment is reduced but the recipient's circumstances are unchanged; or

(c) The standard of need utilized by the department in determining optional supplementation payments for a class of recipients is increased.

(5) In a case [cases] of a husband and wife living together, an income change [changes] after September, 1974, shall not result in an increased mandatory payment unless total income of the couple is less than December, 1973, total income.

Section 3. Optional State Supplementation. (1) Optional state supplementation shall be available to a person who:

(a) Except as specified in Sections 5, 6, and 7 of this administrative regulation, meets technical requirements and resource limitations of the medically needy program for a person [persons] who is [are] aged, blind, or have a disability as contained in 907 KAR 1:011, Sections 1(4), 5(5), (6), (7), (12), (13), 9, 10, and 11, 907 KAR 1:640, Sections 1(1), (5), (6), (9), 3(3), 5(3), 907 KAR 1:645, 907 KAR 1:650, Sections 1(6), 3, and 907 KAR 1:660, Sections 1(1), (3), (5), (6), 2(1), (2)(b), (c), (e), (3), (4), (5), (7); and

(b) Requires a special living arrangement [arrangements]; and

(c) Has insufficient income to meet the [their] need for care.

(2) A special living arrangement [arrangements] shall include:

(a) Residence in a personal care home which:

1. Meets the requirements and provides services as specified in 902 KAR 20:036; and

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2. Is licensed under KRS 216B.010 to 216B.131; or
- (b) Residence in a family care home which:
  1. Meets the requirements and provides services as specified in 902 KAR 20:041; and
  2. Is licensed under KRS 216B.010 to 216B.131; or
- (c) A situation in which a caretaker must be hired to provide care other than room and board.
- (3) A [Each] person applying for or receiving state supplementation shall be required to:
  - (a) Furnish a Social Security number; or
  - (b) If a Social Security number has not been issued, apply for a Social Security number.
- (4) If potential eligibility exists for Supplemental Security Income Program, application for Supplemental Security Income Program shall be mandatory.

Section 4. Eligibility for Caretaker Services. (1) A service [Services] by a caretaker shall be made to enable the individual with an illness or infirmity to:

- (a) Remain safely and adequately:
  1. At home;
  2. In another family setting; or
  3. In a room and board situation; and
- (b) Prevent institutionalization.
- (2) A service [Services] by a caretaker shall be made at regular intervals by:
  - (a) A live-in attendant; or
  - (b) One (1) or more persons hired to come to the home.
- (3) A supplemental payment shall not be made to or on behalf of an otherwise eligible individual if:
  - (a) The client is taken daily or periodically to the home of the caretaker; or
  - (b) The caretaker service is provided by the following persons living with the applicant:
    1. The spouse;
    2. Parent of an adult child who has a disability or a minor child; or
    3. Adult child of a parent who is aged, blind or has a disability.
- (4) Eligibility for caretaker supplementation shall be verified by agency contact with the caretaker to establish:
  - (a) How often the service is provided;
  - (b) The service prevents institutionalization; and
  - (c) Payment is made for the service.

Section 5. Resource Consideration. (1) Except as stated in subsection (2) of this section, countable resources shall be determined according to policies for the medically needy as contained in 907 KAR 1:640, Sections 1(1), (5), (6), (9), 3(3), 5(3), 907 KAR 1:645, 907 KAR 1:650, Sections 1(6), 3, and 907 KAR 1:660, Sections 1(1), (3), (5), (6), 2(1), (2)(b), (c), (e), (3), (4), (5), (7).

- (2) The individual or couple shall not be eligible if countable resources exceed the limit of:
  - (a) \$2000 for individual; or
  - (b) \$3000 for couple.

Section 6. Income Considerations. (1) Except as noted in subsections (2) through (9) of this section, income and earned income deductions shall be considered according to the policy [policies] for the medically needy in 907 KAR 1:640, Sections 1(1), (5), (6), (9), 3(3), 5(3), 907 KAR 1:645, 907 KAR 1:650, Sections 1(6), 3, and 907 KAR 1:660, Sections 1(1), (3), (5), (6), 2(1), (2)(b), (c), (e), (3), (4), (5), (7).

(2) The optional supplementation payment shall be determined by adding:

- (a) Total net income of the applicant or recipient, or applicant or recipient and spouse; and
- (b) Except for a payment [payments] for medical insurance or medical care and services, a payment [payments] made to a third party in behalf of an applicant or recipient; and
- (c) Subtracting the total of paragraphs (a) and (b) of this subsection from the standard of need in Section 7 of this administrative regulation.
- (3) Income of the ineligible spouse shall be:
  - (a) Adjusted by deducting sixty-five (65) dollars and one-half (1/2) of the remainder from the monthly earnings; and

(b) Conserved in the amount of one-half (1/2) of the Supplemental Security Income Program standard for an individual for:

1. Himself; and
2. Each minor dependent child.
- (4) Income of the eligible individual shall not be conserved for the needs of the ineligible spouse or minor dependent children.
- (5) Income of the child shall be considered when conserving for the needs of the minor dependent child so the amount conserved does not exceed the allowable amount.
- (6) The earnings of the eligible individual and spouse shall be combined prior to the application of the earnings disregard of sixty-five (65) dollars and one-half (1/2) of the remainder.
- (7) If one (1) member of a couple is institutionalized and the spouse maintains a home, income in the amount of the Supplemental Security Income Program standard for one (1) shall be conserved for the spouse, if this spouse is a recipient of the Supplemental Security Income Program.

(8) A husband and wife residing in the same personal care or family care home may be considered to be living with each other if treating the husband and wife as living apart would prevent either of them from receiving state supplementation.

(9) The Supplemental Security Income Program twenty (20) dollars general exclusion shall not be an allowable deduction from income.

Section 7. Standard of Need. (1) The standard shall be based on living arrangement as follows:

- (a) 1. For an eligibility determination for a resident of a personal care home made on or after January 1, 1999, \$894 [1998, \$828].
2. [For an eligibility determination for a resident of a personal care home made between May 1, 1998, and June 30, 1999, \$888.
3. a. After June 30, 1999, if funds remain available, the standard shall remain at \$894 [888].
- b. After June 30, 1999, if funds are not available, the standard shall be \$834 [828, plus an applicable cost of living adjustment].
- (b) For an eligibility determination for a resident of a family care home made on or after January 1, 1999, \$639 [1998, \$633];
- (c) Caretaker.
  1. For an eligibility determination for a single individual, or an eligible individual with an ineligible spouse who is not aged, blind, or has a disability made on or after January 1, 1999, \$533 [1998, \$527];
  2. For an eligibility determination for an eligible couple, both aged, blind, or have a disability and one (1) requiring care made on or after January 1, 1999, \$779 [1998, \$769];
  3. For an eligibility determination for an eligible couple, both aged, blind or have a disability and both requiring care made on or after January 1, 1999, \$823 [1998, \$813].
- (2) In a couple case [cases], if both are eligible, the couple's income shall be [is] combined prior to comparison with the standard of need. One-half (1/2) of the deficit shall be [is] payable to each.
- (3) The personal care or family care home shall accept as full payment for cost of care the amount of the standard, based on the living arrangement, minus a forty (40) dollars personal needs allowance which shall be retained by the client.

Section 8. Temporary Stay in a Medical Institution. (1) A recipient of optional or mandatory state supplementation shall have continuation of state supplementation benefits without interruption for any of the first three (3) full months of medical confinement if:

- (a) Admitted to:
  1. A hospital;
  2. A psychiatric hospital; or
  3. A nursing facility;
- (b) The recipient's physician shall certify that he expects the recipient to be medically confined for ninety (90) full consecutive days or less; and
- (c) The state supplementation recipient receives benefits from the Supplemental Security Income Program.
- (2) If discharged in the month following the last month of continued benefits, the temporary absence shall continue through the date of discharge.

Section 9. Citizenship requirements. An applicant or recipient shall

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be:

- (1) A citizen of the United States; or
- (2) A qualified alien pursuant to Section 1(2) of this administrative regulation.

Section 10. Residence Requirements. (1) The applicant or recipient shall be a resident of Kentucky.

(2) ~~A supplemental payment~~ [payments] may be made to a Kentucky resident [residents] residing outside the state if:

- (a) The individual has been placed in the other state by this state.
- (b) Except with regard to the requirement shown in Section 8 of this administrative regulation, the other requirements for eligibility contained in this administrative regulation shall be applicable.
- (c) For an out-of-state placement [placements], the licensure shall be in accordance with a similar licensure act of the other state.
- (d) If there is no similar licensure act in the other state, the payment shall not be made unless this state determines that, except for being in another state, the facility meets standards for licensure under the provisions of KRS 216B.010 to 216B.131.
- (e) To be eligible for a supplemental payment while placed out-of-state:

1. The individual shall require the level of care provided in the out-of-state placement;

2. There shall not be a suitable placement available in Kentucky; and

3. The placement shall be preauthorized by staff of the Department for Community-Based Services.

(3) Except as specified in subsection (9) of this section, an applicant placed in Kentucky by another state shall not be considered a resident of Kentucky.

(4) The state of residence shall be Kentucky for an applicant or recipient of state supplementation if the individual:

- (a) Is age twenty-one (21) and over;
- (b) Is residing in the state; and

1. Intends to remain permanently or for an indefinite period; or

2. Entered the state with a job commitment or to seek employment.

(5) The applicant or recipient residing in a personal care home shall be considered incapable of indicating intent to become a Kentucky resident if the individual:

(a) Has an I.Q. of forty-nine (49) or less or has a mental age of seven (7) or less, based on the following tests:

1. Bayley Scales of Infant Development;
2. McCarthy Scales of Children's Abilities;
3. Stanford-Binet;
4. Wechsler Adult Intelligence Scale - Revised (WAIS-R);
5. Wechsler Intelligence Scale for Children-III (WISC-III);
6. Wechsler Intelligence Scale for Children - Revised (WISC-R); or
7. Wechsler Preschool and Primary Scale of Intelligence (WPPSI);

or

- (b) Is judged legally incompetent; or

- (c) Is found incapable of indicating intent based on medical or other documentation acceptable to the state.

(6) For an applicant or recipient residing in a family care home or requiring caretaker services, the state of residence shall be Kentucky if the individual is:

- (a) ~~1.~~ Under age twenty-one (21);

2. ~~[(b)]~~ Eligible for a supplemental payment based on blindness or disability; and

3. ~~[(c)]~~ Residing in the state; or

- ~~b.1.~~ ~~[(d)]~~ An individual Age twenty-one (21) or over;

2. ~~[and]~~ Incapable of indicating intent; and

3. ~~[-is simply]~~ Residing in the state.

(7) For an applicant or recipient residing in a personal care home who is under age twenty-one (21) or who is age twenty-one (21) or older and became incapable of indicating intent before age twenty-one (21), the state of residence shall be Kentucky if Kentucky is the state of residence of the individual's:

- (a) Parents; or

- (b) If one has been appointed, his legal guardian; or

- (c) Parent applying for the supplemental payment on behalf of the individual if:

1. The other parent lives in another state; and

2. There is no appointed legal guardian.

(8) For an applicant or recipient residing in a personal care home who became incapable of indicating intent at or after age twenty-one (21), the state of residence shall be Kentucky if:

- (a) He was living in Kentucky when he became incapable of indicating intent; or

- (b) If this cannot be determined, ~~[the state of residence shall be Kentucky unless]~~ he was ~~not~~ living in another state when he was first determined to be incapable of indicating intent.

(9) For an individual subject to a determination of residency according to subsections (7) ~~or~~ [and] (8) of this section, the state of residence shall be Kentucky if Kentucky and the state that would otherwise be the individual's state of residency have entered into an interstate residency agreement providing for reciprocal residency status.

(10) An individual receiving a mandatory state supplemental payment from Kentucky shall be considered a resident of Kentucky if he continues to reside in Kentucky.

(11) An individual receiving a mandatory or optional supplemental payment from another state shall not be considered a resident of Kentucky.

(12) A former Kentucky resident who becomes incapable of indicating intent while residing out of this state, may reestablish Kentucky residency if:

- (a) He returns to Kentucky; and

- (b) He has a guardian, parent or spouse residing in Kentucky.

Section 11. Persons with Mental Illness or Mental Retardation Supplement. A certified personal care home may qualify for quarterly supplement payments of fifty (50) cents per diem for each state supplementation recipient in their care as of the first calendar day of each qualifying month. The personal care home shall meet the following criteria to qualify for a supplementation payment:

- (1) The personal care home shall be licensed in accordance with KRS 216B.010 to 216B.131; and

- (2) The personal care home shall care for a resident [residents] who has [have]:

- (a) A primary or secondary diagnosis of mental retardation including mild or moderate, or other ranges of retardation whose needs can be met in a personal care home; or

- (b) A primary or secondary diagnosis of mental illness excluding organic brain syndrome, senility, chronic brain syndrome, Alzheimer's, and similar diagnoses; or

- (c) A medical history that includes a previous hospitalization in a psychiatric facility, regardless of present diagnosis.

(3) The personal care home shall care for a thirty-five (35) percent mental illness or mental retardation population in all of its occupied licensed personal care home beds.

(4) The personal care home shall not be eligible for a payment [payments] during the days it received a Type A citation pursuant to KRS 216.557(1) [time it has a conditional rating] by the Office of Inspector General. ~~[Rating requirements are specified in KRS 216.550 and 900-KAR 2:030.]~~

(5) The personal care home shall have a licensed nurse or an individual who has received and successfully completed certified medication technician training on duty for at least four (4) hours during the first or second shift each day. The personal care home shall not decrease staffing hours of the licensed nurse or individual who has successfully completed certified medication technician training in effect prior to July 1990, as a result of this minimum requirement.

(6) The personal care home shall file an Application for MI or MR Supplement Program Benefits ~~[, incorporated by reference in this administrative regulation,]~~ with the Department for Community-Based Services by the tenth working day of the first month of the calendar quarter to be eligible for payment in that quarter.

- (a) Quarters shall begin in January, April, July and October.

- (b) Once certified, unless eligibility is discontinued, a new application shall not be required.

- (c) The personal care home shall provide the Department for Community-Based Services with its tax identification number and address as part of the application process.

- (d) "Notice of Decision to Personal Care Home" shall be provided to the personal care home following approval or denial of the application.

(7) The personal care home shall provide the Department for Community-Based Services with a monthly report.

(a) The report shall list:

1. Every resident [All residents] of the personal care home who was a resident [were residents] on the first day of the month; and
2. The resident's [residents'] Social Security number [numbers].

(b) In order to maintain confidentiality, the personal care home shall annotate the monthly report as follows:

1. A star shall indicate a resident has a mental illness or mental retardation diagnosis.
2. A check mark shall indicate a resident receives state supplementation.

3. A star and a check mark shall indicate the resident has a mental illness or mental retardation diagnosis and is a recipient of state supplementation.

(c) The monthly report shall be used for:

1. Certification;
2. Payment; and
3. Audit purposes.

(d) The monthly report shall be postmarked to the Department for Community-Based Services by the fifth working day of the month.

(8) The personal care home shall notify the Department for Community-Based Services if its mental illness or mental retardation percentage goes below thirty-five (35) percent for all personal care residents. A facility [Facilities] may be randomly audited to verify percentages and payment accuracy.

Section 12. Training. (1) The personal care home licensed nurse or individual who has successfully completed certified medication technician training shall attend the mental illness or mental retardation basic training workshop provided through the Department for Mental Health and Mental Retardation Services. Other staff may attend the basic training workshop in order to assure the facility always has at least one (1) certified staff employed for certification purposes.

(2) The mental illness or mental retardation basic training shall be provided through a one (1) day workshop. The following topics shall be covered:

- (a) Importance of proper medication administration.
- (b) Side effects and adverse medication reactions with special attention to psychotropics.
- (c) Signs and symptoms of an acute onset of a psychiatric episode.
- (d) Characteristics of each major diagnosis, for example, paranoia, schizophrenia, bi-polar disorder, or mental retardation.
- (e) Guidance in the area of supervision versus patient rights for the population with a diagnosis of mental illness or mental retardation.
- (f) Instruction in providing a necessary activity [activities] to meet the needs of a resident [residents] who has [have] a diagnosis of mental illness or mental retardation.

(3) Initial basic training shall include the licensed nurse or the individual who has successfully completed certified medication technician training and may include the owner or operator. The individual [These individuals] shall be trained in the quarter during which the application is filed.

(4) To assure that a staff member who has received basic training is always employed at the facility, a maximum of five (5) may be trained during a year.

(a) If staff turnover results in the loss of the licensed nurse or individual who has successfully completed certified medication technician training and five (5) staff have been trained, the personal care home shall request in writing to the Department for Community-Based Services an exemption of the five (5) staff rule.

(b) The personal care home shall have on staff a licensed nurse or individual who has successfully completed certified medication technician training who:

1. Has received the mental illness or mental retardation basic training; or
2. Is enrolled in the next scheduled mental illness or mental retardation basic training workshop at the closest location.

(5) The Department for Mental Health and Mental Retardation Services may provide advanced level training for personal care homes.

(a) Advanced level training shall be provided through one (1) day

workshops.

(b) Each advanced level workshop shall consist of two (2) three (3) hour sessions per day.

(c) Each three (3) hour session shall cover a topic appropriate for staff who work with a resident [residents] who has [have] a diagnosis of mental illness or mental retardation.

(d) Attendance of advanced level training workshops shall be optional for a Persons with Mental Illness or Mental Retardation Supplement Program participant [participants].

(6) The Department for Mental Health and Mental Retardation Services shall provide within five (5) working days:

(a) A certificate to direct care staff who complete the workshop; and

(b) A listing to the Department for Community-Based Services of staff who completed the training workshop.

(7) The Department for Community-Based Services shall pay twenty-five (25) dollars for each staff member receiving basic or advanced level training up to the maximum of five (5) staff per year to a personal care home who has applied for the Persons with Mental Illness or Mental Retardation Supplement Program.

(8) Attendance of the basic training workshop shall be optional for a specialized personal care home.

Section 13. Persons with Mental Illness or Mental Retardation Supplement Program Certification. (1) The Office of the Inspector General, Division of Licensing and Regulation, shall visit the personal care home to certify eligibility to participate in the Persons with Mental Illness or Mental Retardation Supplement Program:

(a) The personal care home's initial Persons with Mental Illness or Mental Retardation Supplement Program Certification Survey [~~incorporated by reference in this administrative regulation.~~] may be separate from the annual survey;

(b) The initial Persons with Mental Illness or Mental Retardation Supplement Program Certification Survey shall be in effect until the next licensure survey that may be greater than or less than twelve (12) months;

(c) A personal care home's annual Persons with Mental Illness or Mental Retardation Supplement Program Certification Survey [recertification] may be completed during the annual licensure survey;

(d) The Department for Community-Based Services shall notify the Division of Licensing and Regulation that the facility is ready to be certified.

(2) The Division of Licensing and Regulation shall review records, observe and interview residents and staff during the certification process. The Division of Licensing and Regulation shall review records to assure the following criteria is met:

(a) Certification is on file at the personal care home to verify staff attended basic training provided by the Department for Mental Health and Mental Retardation Services. This provision shall be waived for a specialized personal care home.

(b) The personal care home's certified staff have trained all other direct care staff through in-service training or orientation regarding the information obtained at the mental illness or mental retardation basic training workshop. The personal care home shall maintain documentation of attendance at the in-service training for all direct care staff.

(c) An activity is [Activities are] being regularly provided and meets [meet] the needs of the resident [residents]. When a resident does [residents do] not attend a group activity, an activity [activities, activities] shall also be designed to meet the needs of an individual resident [residents], for example, reading or other activity that may be provided on an individual basis. An individualized care plan is [plans are] not required to meet this criteria.

(d) Medication administration meets licensure requirements and licensed nurse or individual who has successfully completed certified medication technician training demonstrates a knowledge of psychotropic drug side affects.

(3) The Division of Licensing and Regulation shall review the personal care home copy of the training certification prior to performing their record review during the Persons with Mental Illness or Mental Retardation Supplement Program Certification Survey process.

(4) If thirty-five (35) percent mental illness or mental retardation population is met on the day of the visit, the personal care home shall be deemed to have an ongoing qualifying percentage effective with

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month of request for certification. The personal care home shall notify ~~[be responsible for notifying]~~ the Department for Community-Based Services, within ten (10) working days, if the mental illness or mental retardation population goes below thirty-five (35) percent of all occupied personal care beds in the facility.

(5) The Office of the Inspector General, Division of Licensing and Regulation, shall provide a monthly statement to the Department for Community-Based Services identifying certified personal care homes eligible for the Persons with Mental Illness or Mental Retardation Supplement Program. This information shall be provided by the fifth working day of each month for the prior month.

(6) The Office of Inspector General, Division of Licensing and Regulation, shall inform the Department for Community-Based Services monthly of a personal care home which receives ~~[receive]~~ a Type A citation ~~[conditional rating]~~. This information shall be provided by the fifth working day of each month for the prior month.

(7) The personal care home shall receive a reduced payment for the number of days the Type A citation occurred on the first administratively feasible quarter following notification by the Office of Inspector General, Division of Licensing and Regulation, pursuant to 921 KAR 2:050.

**(8) "Notice of Decision to Personal Care Home" shall be provided to a personal care home following the certification survey by the Division of Licensing and Regulation if a criteria for certification is not met.**

Section 14. Hearings and Appeals. An applicant or recipient ~~[Applicants or recipients]~~ of benefits under a program ~~[programs]~~ described in this administrative regulation ~~[herein]~~ who is ~~[are]~~ dissatisfied with any action or inaction on the part of the cabinet shall have the right to a hearing under 921 KAR 2:055.

Section 15. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Notice of Decision to Personal Care Home", edition 3/99 ~~[Application for Mental Illness or Mental Retardation Supplement, (6/98), Cabinet for Families and Children];~~

(b) "Monthly Report Form", edition 3/99 ~~[(6/98), Cabinet for Families and Children];~~

(c) "Application for MI or MR Supplement Program Benefits ~~[Certification], edition 3/99 ~~[(6/98), Cabinet for Families and Children]; and~~~~

(d) "Persons with Mental Illness or Mental Retardation Supplement Program Certification Survey", edition 3/99 ~~[Monthly Statement Certifying Personal Care Homes for the Supplement Program, (6/98), Cabinet for Families and Children].~~

(2) This material may be inspected, copied, or obtained at the Cabinet for Families and Children, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m.

DIETRA PARIS, Commissioner

VIOLA P. MILLER, Secretary

CHARLES P. LAWRENCE, Attorney at Law

APPROVED BY AGENCY: April 6, 1999

FILED WITH LRC: April 9, 1999 at 11 a.m.

ADMINISTRATIVE REGULATIONS REVIEWED AFTER PUBLIC HEARING  
OR RECEIPT OF WRITTEN COMMENTS

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

401 KAR 47:110. Registered permit-by-rule.

RELATES TO: KRS 224.01, 224.10, 224.40, 224.43, 224.70, 224.99

STATUTORY AUTHORITY: KRS 224.10-100, 224.40-100, 224.40-120, 224.40-305, **224.43-330**

NECESSITY, FUNCTION, AND CONFORMITY: KRS Chapter 224 requires the cabinet to adopt [rules-and] administrative regulations for the management, processing, and disposal of wastes. KRS 224.40-305 requires that persons engaging in the management, processing, and disposal of waste obtain a permit. This chapter establishes the permitting standards for solid waste sites or facilities, the standards applicable to all solid waste sites or facilities, and the standards for certification of operators. An overview of the permit program is found in [Section 1 of] 401 KAR 47:080. This administrative regulation establishes requirements for registered permits-by-rule.

Section 1. Issuance of Registered Permit-by-rule. (1) Before accepting waste [beginning operation], the [Any] owner or operator of a solid waste site or facility specified in 401 KAR 47:080, Section 2(6) [of 401 KAR 47:080 in existence as of the effective date of this administrative regulation] shall notify the cabinet by submitting a registration [before October 1, 1990 on a form prescribed by the cabinet]. The registration shall become effective five (5) business days after the cabinet receives it unless the cabinet denies the registration within that time. The owner or operator of [Then the facility shall be deemed to have] a registered permit-by-rule facility shall comply [if the owner or operator complies] with the environmental performance standards in 401 KAR 30:031 in order for the registered permit-by-rule to remain effective [47:030].

(2) The registration for a registered permit-by-rule facility shall be submitted to the cabinet on one (1) of the following registration forms which are incorporated by reference in Section 5 of this administrative regulation:

- (a) DEP 7059; Solid Waste Transfer Station, Convenience Center, and Recycling Center;
- (b) DEP 7059-A; Solid Waste Composting Facility;
- (c) DEP 7059-E; Class I Solid Waste Landfarm;
- (d) DEP 7059-H; Less-than-one-acre Construction/Demolition Debris (CDD) Landfill; or
- (e) DEP 7059-J; Solid Waste Incinerator.

(3) If [When] the cabinet determines that a [upon examination or reexamination of the] registration [that it] fails to include all of the [required] information required [by Section 4 of this administrative regulation], the cabinet shall notify the operator that the registration is deficient. [and that] The owner or operator shall submit the requested information within thirty (30) calendar [ten (10) business] days of the date [receipt] of the notice of deficiency. The cabinet's review shall be conducted in accordance with the requirements of 401 KAR 47:025. [The owner or operator shall be subject to enforcement procedures for not submitting the requested information in a timely fashion. Failure to complete the form in a timely fashion is not grounds to revoke a registered permit-by-rule.]

[(3) A registered permit-by-rule is not available [Subsection (1) of this section shall not apply] to a [any] facility which has been previously denied a permit or to a [any] facility whose authority to operate under 401 KAR Chapters 47 through 48 and KRS Chapter 224 has been previously terminated.]

(4) Prior to submission of the registration, the owner or operator shall prepare a groundwater protection plan in accordance with 401 KAR 5:037.

(5) The owner or operator shall publish a notice two (2) weeks prior to submission of the registration in a daily or

weekly newspaper of general circulation where the proposed facility is located. Public notices shall be of a size to include not less than two (2) column widths for advertising and shall be in a display format. The public notice shall contain the following:

- (a) Name and address of the owner or operator;
- (b) The type of facility;
- (c) A brief description of the business to be conducted; and
- (d) Name and address of the facility.

Section 2. Operating Requirements for [Operation Under [During]-a] Registered Permit-by-rule Facilities. (1) The owner or operator of a facility operating under a registered permit-by-rule, except as provided in Section 3 of this administrative regulation, shall not:

- (a) Store, treat or dispose of solid waste not specified in the registration [form]; or
- (b) Exceed the design capacities specified in the registration [form].

(2) The owner or operator of a facility operating under a registered permit-by-rule shall comply with the environmental performance standards in 401 KAR 30:031 [47:030].

(3) The owner or operator of a registered permit-by-rule facility shall keep records as provided in this section [of the amount, sources and types of [municipal] solid waste received and other information as required by the cabinet].

(a) The owner or operator of a less-than-one (1) acre construction/demolition debris landfill or solid waste incinerator [and] shall report quarterly. In addition, the owner or operator shall submit DEP 7046, Annual Waste Quantity Report, [a [quarterly] summary of this information] to the cabinet annually and upon closure. DEP 7046, Annual Waste Quantity Report, is incorporated by reference in Section 5 of this administrative regulation. [The summary must be submitted no later than January 31 for the preceding calendar year.] [The quarterly report shall be on a form approved by the cabinet.]

(b) The owner or operator of a composting facility shall report quarterly. In addition, the owner or operator shall submit DEP 7108, Annual Report for a Solid Waste Composting Facility, to the cabinet annually and upon closure. DEP 7108, Annual Report for a Solid Waste Composting Facility, is incorporated by reference in Section 5 of this administrative regulation.

(c) The owner or operator of a landfarming facility shall report quarterly. In addition, the owner or operator shall submit DEP 7064, Annual Report for a Class I Solid Waste Landfarm, to the cabinet annually and upon closure. DEP 7064, Annual Report for a Class I Solid Waste Landfarm, is incorporated by reference in Section 5 of this administrative regulation.

(d) The owner or operator of a registered permit-by-rule convenience center, transfer station or commercial recycling center shall document records on DEP 7046, Annual Waste Quantity Report, incorporated by reference in Section 5 of this administrative regulation. Records shall be kept on site and available for inspection for three (3) years.

(4) The owner or operator of a [Convenience centers, transfer stations, solid waste incinerators, and commercial recyclers shall additionally submit a report to the cabinet annually, no later than January 31st for the previous year. The report shall identify the sources and quantities of waste handled. Additionally,] solid waste incinerator [incinerators] shall conduct the Toxicity Characteristic Leaching Procedure test described in 401 KAR 31:030, Section 5, before the initial disposal of any ash and whenever the characteristics of the waste accepted by the incinerator significantly change. The owner or operator of a solid waste incinerator shall report the volume of ash generated to the cabinet annually and upon closure. The report shall be submitted no later than January 31 for the preceding calendar year. [report volume of ash and the results of weekly extraction procedure tests on the ash.]

Section 3. Changes to a Registered Permit-by-rule. (1) Solid wastes not previously identified in the registration may be stored,

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treated, or disposed at a facility operating under a registered permit-by-rule if the owner or operator submits a revised registration to the cabinet prior to that [such-a] change.

(2) The owner or operator of a facility operating under a registered permit-by-rule shall submit a revised registration to the cabinet prior to increasing [increases-in] the design capacity of processes used at a facility.

(3) The owner or operator of a facility operating under a registered permit-by-rule shall submit a revised registration to the cabinet [at least five (5) business days] prior to changing [changes-in] the processes for the storage, treatment or disposal of solid waste, using [or use-of] additional processes, or changing the owner or operator. The revised registration shall become effective five (5) business days after the cabinet receives it, unless the cabinet denies the registration within that time.

[(4) The owner or operator shall submit a revised registration prior to changes in owners or operators:

(5) Changes listed in subsections (1) through (4) of this section may be implemented prior to cabinet acknowledgment of receipt of the revised registration.]

Section 4. The cabinet may revoke a registered permit-by-rule for the following causes:

(1) Noncompliance by the owner or operator with a condition of the registration;

(2) The owners, operator's, or key personnel's failure during the registration process to disclose all information required by the cabinet;

(3) The owner's, operator's, or key personnel's misrepresentation of any information required by the cabinet at any time;

(4) The cabinet's determination that the operation endangers human health, safety, or the environment;

(5) The owner's, operator's or key personnel's [facility's] violation of any requirement of KRS Chapter 224 or the administrative regulations promulgated pursuant thereto; or

(6) A change to the registered-permit-by-rule that was made without complying with Section 3 of this administrative regulation.

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

(a) DEP 7059; "Solid Waste Transfer Station, Convenience Center, and Recycling Center" (June 1999);

(b) DEP 7059-A; "Solid Waste Composting Facility" (June 1999);

(c) DEP 7059-E; "Class I Solid Waste Landfarm" (June 1999);

(d) DEP 7059-H; "Less-than-one-acre Construction/Demolition Debris" (June 1999);

(e) DEP 7059-J; "Solid Waste Incinerator" (June 1999);

(f) DEP 7064; "Annual Report for a Class I Solid Waste Landfarm" (June 1999);

(g) DEP 7108; "Annual Report for a Solid Waste Composting Facility" (June 1999); and

(h) DEP 7046; "Annual Waste Quantity Report" (May 1999).

(2) This material may be inspected, copied, or obtained at the Division of Waste Management, 14 Reilly Road, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m., or at any of the division's field offices Monday through Friday, 8 a.m. to 4:30 p.m.: 1508 Weston, Bowling Green, Kentucky 42104; 102 Burkesville Street, Columbia, Kentucky, 42728; 8020 Ewing Boulevard, Suite 110, Florence, Kentucky, 41042; 233 Birch Street, Hazard, Kentucky 41701; Regional State Office Building, 85 State Police Road, Room 345, London, Kentucky 40741; 312 Whittington Parkway, Suite 201, Louisville, Kentucky 40222-4925; Madisonville State Office Building, 625 Hospital Drive, Madisonville, Kentucky 42431; 200 Christy Creek Road, Suite 2, Morehead, Kentucky 40351; 4500 Clarks River Road, Paducah, Kentucky, 42003. [Contents of the Registration Form] for a Registered Permit-by-rule. The registration [contents of a form prescribed by the cabinet] for a registered permit-by-rule shall contain:

(1) A description of the management, processing, or disposal activities;

(2) The name and mailing address of the facility;

(3) The location of the waste site or facility; [and]

(4) The type of waste managed at the facility, with an estimate of the quantity, measured in tons, and sources of the [such] wastes to be managed annually;

(5) [, and] A general description of the methods of management for each waste;

(6) The disclosure statement required by KRS 224.40-330(2); and

(7) for a less-than-one (1) acre construction/demolition debris landfill, the bond required by KRS 224.40-120.]

JAMES E. BICKFORD, Secretary

BARBARA A. FOSTER, General Counsel

APPROVED BY AGENCY: June 10, 1999

FILED WITH LRC: June 10, 1999 at 4 p.m.

### REGULATORY IMPACT ANALYSIS

Contact person: Mark Ritter

(1) Type and number of entities affected: The administrative regulation affects persons with a registered permit-by-rule for the following types of facilities: commercial recycling centers, transfer stations, solid waste incinerators, construction demolition debris landfills of less-than-one-acre, solid waste landfarming facilities, recycling convenience centers, sludge give-away programs, and septic tank pumpings, and convenience centers. The total number of such entities existing in Kentucky, as of March 11, 1999, is 495.

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

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: Based on the comments received the cost of living and employment will not be affected by the proposed regulation.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: Based on the comments received the cost of doing business will not change appreciably in the geographical area.

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

1. First year following implementation: There will now be a five-day waiting period prior to beginning operation for all registered permit-by-rule facilities. The owner of a solid waste incinerator shall conduct a Toxicity Characteristic Leaching Procedure test before initial disposal of any ash and whenever the characteristics of the waste significantly change instead of conducting a weekly extraction procedure test on the ash. Competition is not expected to be adversely affected.

2. Second and subsequent years: The requirements will remain the same for the second year and subsequent years.

(3) Effects on the promulgating administrative body: Less time will be spent by staff recording the reports submitted by the registered permit-by-rule facilities since the reports will be submitted once per year instead of four (4) times per year.

(a) Direct and indirect costs or savings:

1. First year: None

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements:

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

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Existing agency funds will be used. No increase will be necessary.

(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: Based on the comments received, none.

(b) Kentucky: Based on the comments received, none.

(7) Assessment of alternative methods; reasons why alternatives were rejected: Alternative methods are not available.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: The five (5) business day period after the submittal of a registered permit-by-rule application before operations may begin at the facility allows the cabinet to review the registration before operation begins, and to deny a registration if justified. A registered permit-by-rule is not available to a facility that has been previously denied a permit or a facility whose authority to operate has been previously revoked.

(b) State whether a detrimental effect on environment and public health would result if not implemented: A detrimental effect on the environment and public health may result if the cabinet approves a defective registered permit-by-rule.

(c) If detrimental effect would result, explain detrimental effect: The detrimental effects are varied. Serious effects could be contamination of groundwater, air pollution, and litter.

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

(a) Necessity of proposed regulation if in conflict: No conflict exists.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: No conflict exist

(10) Any additional information or comments: None

(11) TIERING: Is tiering applied? Tiering is applied. Only less-than-one acre construction/demolition debris landfills and solid waste incinerators must submit annual reports to the cabinet. The cabinet believes the records of those two types of facilities should be reviewed annually, while the records of other registered permit-by-rule facilities may be kept on site for the cabinet's inspectors to review when conducting an inspection.

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

**401 KAR 48:320. Operating requirements for less-than-one-acre construction/demolition debris landfills.**

RELATES TO: KRS 224.01, 224.10, 224.40, 224.43, 224.70, 224.99

STATUTORY AUTHORITY: KRS 224.10-100, 224.40-100, 224.40-120, 224.40-305, 224.40-330, 224.40-605, 224.50-760

NECESSITY, FUNCTION, AND CONFORMITY: KRS Chapter 224 requires the cabinet to adopt administrative regulations for the management, processing and disposal of wastes. KRS 224.40-305 requires that persons engaging in the management, processing and disposal of waste obtain a permit. This chapter establishes the minimum technical standards for solid waste sites or facilities. An overview of the permit program is found in 401 KAR 47:080, Section 1. This administrative regulation establishes the technical requirements for less-than-one-acre construction/demolition debris landfills.

Section 1. Applicability. This administration regulation applies to owners and operators of less-than-one-acre construction/demolition debris landfills. The owner or operator of a less-than-one-acre construction/demolition debris landfill shall operate the facility in accordance with the requirements of this administrative regulation.

Section 2. Requirement to Obtain a Registered Permit-by-rule. The owner or operator of a less-than-one-acre construction/demolition debris landfill shall not begin construction or accept [disposal-of] waste until the registered permit-by-rule for the facility has become effective as specified in 401 KAR 47:110.

Section 3. Construction Requirements. The owner or operator of a less-than-one-acre construction/demolition debris landfill located inside a wellhead protection area, as described in defined in 401 KAR 5:002, Section 1, [5:037] shall construct and maintain the following liner and leachate collection system [systems]. The liner shall:

(1) Be constructed of soil with a minimum thickness of twelve (12) inches. In addition, the soil shall include a low permeability soil component with a minimum of twelve (12) contiguous inches of 1 x 10<sup>-7</sup> centimeters per second maximum permeable material, or its equivalent. The liner shall cover the bottom and sidewalls of the facility. The bottom liner shall be sloped toward a leachate collection system. A [Contain a minimum of twelve (12) inches of soil compacted to ninety (90) percent of standard proctor, or a layer of equivalent performance. The soils shall be placed in six (6) inch thick lifts. An] professional engineer, registered in Kentucky pursuant to KRS Chapter 322, shall oversee the design and installation of the liner, including moisture and density tests, and shall certify that the liner meets the compaction requirements. The certification shall be submitted to the cabinet within ten (10) days of completion of the liner; and

(2) Contain a leachate collection system with a minimum of a twelve (12) inch layer of gravel, or a layer of equivalent performance, and a toe-drain. The leachate shall be discharged into a collection tank with a minimum capacity of 1000 [2000] gallons [capacity]. A professional engineer registered in Kentucky, pursuant to KRS Chapter 322, shall oversee the design and installation of the leachate collection system, and shall certify that the collection tank meets the capacity requirement. The certification shall be submitted to the cabinet within ten (10) days of completion of the liner.

Section 4. Operating Requirements. (1) The owner or operator of a less-than-one-acre construction/demolition debris landfill shall comply with the following operating requirements:

(a) [(1) Comply with] The environmental performance standards of 401 KAR 30:031;

(b) [(2) Comply with] The siting requirements of 401 KAR 48:050, Sections 1, 2, and 3;

(c) The [(3) There is a] liner and a leachate collection system as specified in Section 3 of this administrative regulation, if the landfill is to be located in a wellhead protection area;

(d) [(4) Comply with] The groundwater protection plan requirements of 401 KAR 5:037;

(e) [(5) Comply with] The [disposal] requirements of KRS 224.40-120;

(f) [(6) Comply with] The operator certification requirements of KRS 224.40-605; and

(g) [(7) Comply with] The annual report requirement of 401 KAR 47:110, Section 2(3).

(2) The owner or operator of a less-than-one-acre construction/demolition debris landfill shall:

(a) Dispose only of construction material as defined in 401 KAR 48:005, Section 1(37);

(b) Not dispose of electrical fixtures containing hazardous liquids, such as fluorescent light ballasts or transformers;

[(b) Not dispose of:

(a) Asbestos-containing materials;

(b) Petroleum-contaminated soil;

(c) Tires;

(d) Appliances;

(e) Furniture;

(f) Light fixtures;

(g) Electrical devices;

(h) Buckets or other containers (unless processed to prevent the entrapment of water);

(i) Cardboard;

(j) Paper;

(k) Wood generated during demolition that has been chipped or otherwise processed; or

(l) Any other nonconstruction/demolition debris material unless approved by the cabinet;

(c) [(9)] Properly dispose of any non-construction/demolition debris landfill waste at a properly permitted disposal facility;

(d) During operation [(10)] clearly delineate the horizontal boundary [of the less-than-one (1) acre site] with slats, stakes or other types of easily identifiable permanent markers such that the constructed boundary is within the permitted boundary;

(e) [(11)] Install silt fencing, hay bales, or other appropriate best management practices to prevent sediment from leaving any area

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disturbed by construction, including stockpiled soil and borrow pit areas. The sediment controls shall be kept in good operating order;

(f) [(+2)] Only accept waste from sources listed in the registration and approved by the cabinet. Wastes may be added by submitting a revised registration pursuant to 401 KAR 47:110, Section 3(3);

(g) [(+3)] Place the waste in layers, two (2) feet [foot] thick[;] or smaller, [lifts] and compact each layer thereafter [weekly];

(h) [(+4)] Cover each ten (10) foot lift [the waste] with a minimum of six (6) inches compacted soil [once a week];

(i) [(+5)] Maintain a buffer zone of 750 yards from any other less-than-one-acre [the] construction/demolition debris landfill permitted [waste] boundary [and any other waste site or facility, including but not limited to another construction/demolition debris landfill]; and

(j) Remove [(+6) Be responsible for removing] landfill debris, mud and waste from off-site roadways.

Section 5. Closure Requirements. The owner or operator of a less-than-one-acre construction/demolition debris landfill shall close the facility as follows:

(1) The landfill shall be covered with a soil cap, two (2) feet thick, and the entire disturbed area shall be vegetated within thirty (30) days of ceasing to accept waste. The vegetation shall consist of a minimum of two (2) legumes, one (1) annual grass, and one (1) perennial grass, in sufficient poundage to provide at least ninety (90) percent ground coverage for the disturbed area. The grass seed shall be covered with at least one and one-half (1.5) tons of straw mulch or an alternative that delivers equivalent performance per acre. The straw mulch or its alternative shall be stabilized with netting on slopes that exceed fifteen (15) percent. The final cap shall have a slope of between five (5) percent and twenty-five (25) percent upon completion of the final grading.

(2) The [facility] owner or operator of a less-than-one-acre construction/demolition debris landfill shall record a notice, with the property deed, on which the less-than-one-acre construction/demolition debris landfill is located. The notice shall notify, in perpetuity, any potential purchaser of the property of the landfill's [facility's] location and dates of operation, the nature of the waste disposed [at the facility], and impose a restriction against any [future] disturbance of the cap. The notice shall be recorded in accordance with KRS Chapter 382 and proof of recording shall be submitted to the cabinet prior to the cabinet's approval of closure.

(3) The [facility] owner or operator of a less-than-one-acre construction/demolition debris landfill shall, upon completion of closure of the facility, contact the cabinet for a closure inspection and release of the bond, described in 401 KAR 48:310.

(4) Closure shall be completed no later than thirty (30) days after last receipt of waste.

Section 6. Corrective Action Requirements. If the cabinet determines that a threat to human health, safety[;] or the environment exists, the owner or operator of a less-than-one-acre construction/demolition debris landfill [the facility] shall conduct corrective action in accordance with 401 KAR 48:300, Section 8. The owner or operator shall certify to the cabinet that corrective action has been completed in accordance with this section. The cabinet shall determine that corrective action has been completed before releasing the bond.

JAMES E. BICKFORD, Secretary

BARBARA A. FOSTER, General Counsel

APPROVED BY AGENCY: June 10, 1999

FILED WITH LRC: June 10, 1999 at 4 p.m.

### REGULATORY IMPACT ANALYSIS

Contact person: Mark Ritter

(1) Type and number of entities affected: The administrative regulation affects persons who own or operate a less-than-one-acre construction demolition debris landfills. There are 123 permits of this type 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: Based on the comments received related, the cost of living and employment will not be affected by the proposed regulation.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: Based on the comments received, there are no additional cost identified for doing business in the geographical area in which the regulation will be implemented.

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

1. First year following implementation: The cost for a facility located in a wellhead protection area will be affected by the liner and leachate collection system requirements.

2. Second and subsequent years: No additional costs from the liner and leachate collection system requirements are anticipated.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: No direct and indirect costs or savings are anticipated. Most of these new requirements were previously required as conditions to permits; now these will be required by administrative regulation.

2. Continuing costs or savings: No continuing costs or savings are anticipated.

3. Additional factors increasing or decreasing costs: No additional factors are anticipated.

(b) Reporting and paperwork requirements: No additional factors are anticipated.

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

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Existing agency funding will be used. No increase in funding is necessary.

(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: Based on the comments received, none.

(b) Kentucky: Based on the comments received, none.

(7) Assessment of alternative methods; reasons why alternatives were rejected: No alternative methods were identified.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environment welfare of the geographical area in which implemented and on Kentucky: This administrative regulation establishes construction and operating standards, most, of which were set only as permit conditions in the past.

(b) State whether a detrimental effect on environment and public health would result if not implemented: This administrative regulation will provide environmental safeguards against poorly constructed and operated less-than-one-acre construction and demolition debris landfills.

(c) If detrimental effect would result, explain detrimental effect: Detrimental effects could include contamination of groundwater, air pollution, and litter.

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

(a) Necessity of proposed regulation if in conflict: No conflict exists.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provision: No conflict exists.

(10) Any additional information or comments: None

(11) TIERING: Is tiering applied? Yes. Less-than-one-acre construction/demolition debris landfills have construction and operating requirements established by this administrative regulation that are tiered to their size and the types of waste they accept for disposal.

EDUCATION, ARTS, AND HUMANITIES CABINET  
Kentucky Board of Education  
Department of Education  
Bureau of Learning Support Services  
(Amended After Hearing)

**703 KAR 5:020. The formula for determining school performance classifications and school rewards.**

RELATES TO: KRS 158.645, 158.6451, 158.6453, 158.6455, 158.6457

STATUTORY AUTHORITY: KRS 156.070, 158.6455

NECESSITY, FUNCTION, AND CONFORMITY: KRS 158.6455 requires the Kentucky Board of Education to promulgate administrative regulations to establish a system for identifying and rewarding successful schools and to establish appropriate consequences for schools failing to meet or exceed their assistance line. This administrative regulation establishes procedures for determining successful schools, school rewards, and classifications of schools within the school accountability program.

Section 1. Definitions. (1) "Academic index" means the summary statistic or index which describes school success on the academic goals one (1), two (2), five (5), and six (6) set forth in KRS 158.6451(1)(b).

(2) "Accountability index" means the statistic defined in KRS 158.6457(1).

(3) "Accountability level" means elementary (grades end of primary, four (4), and five (5)), middle (grades six (6), seven (7), and eight (8)), or high school (grades nine (9), ten (10), eleven (11), and twelve (12)).

(4) "Assistance line" means that unique line for a school that starts in the biennium ending with the school year 2001-2002 at one (1) standard error of measurement below the school's baseline accountability index to a point that is one (1) standard error of measurement below eighty (80) on the accountability index scale in the biennium ending with the school year 2013-2014. The [Points] calculated points defining this line shall be rounded to the nearest tenth. If a school's baseline is above eighty (80), the assistance line is [means] a horizontal line at eighty (80) minus one (1) standard error of measurement.

(5) "Alternate portfolio" means that component of the assessment system designed for students with legally identified disabilities who cannot with the assistance of adaptive devices available participate in the regular curriculum.

(6) "Alternate portfolio scores" means the scores assigned by teachers, or scores reassigned through state scoring review procedures, to a collection of best pieces of student work assembled through the instructional process.

(7) "Baseline accountability index" means the accountability index score that describes the school's average performance during the 1998-99 and 1999-2000 school years, and is that number against which progress shall be measured.

(8) "Gained population" means students in grades at which accountability assessments are administered who now attend a different school because of service area boundary changes or other local board of education policy changes affecting the school population served.

(9) "Goal line" means a fixed line that extends from a point that is one (1) standard error of measurement below school's baseline index to a point that is one (1) standard error of measurement below the state goal established for the target biennium. Points calculated defining this line shall be rounded to the nearest tenth. In any biennium, a school's growth accountability index shall be at or above this line in order to achieve a classification of meets goal in recognition of growth.

(10) "Growth accountability index" means the average accountability index that describes the school's performance every two (2) years beginning with the 2000-2001 and 2001-2002 school years.

(11) "Lost population" means students in grades at which accountability assessments are administered who no longer can attend a particular school because of service area boundary changes or other local board of education policy changes affecting school

population served.

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

(13) "Reward share" means the unit of money to be distributed to schools, and is determined by the total amount of the money available for rewards in a biennium and the total number of shares to be awarded.

(14) "School classification" means the status of a school or school district, including meets goal, progressing, or in need of assistance based on measures of growth.

(15) "School" means an A1 school as defined in 703 KAR 5:040, Section 1(1).

(16) "School recognition points" means those points as defined in this administrative regulation for the purpose of recognizing school standing.

(17) "Stable population" means students in grades at which accountability assessments are administered who would have attended the school prior to and after any service area boundary changes or other local board of education policy changes affecting school population served.

(18) "Standard error of measurement" means, for purposes of the assistance line or the goal line, the statistic derived from the baseline calculations taking into account appropriate sources of measurement error and number of students assessed.

(19) "Standing of a school" means the actual performance of a school as measured by the accountability index.

(20) "State goal" means 100 on the accountability index scale which all schools are expected to meet by the target biennium.

(21) "Student achievement levels" means categories of student learning in each of the content areas, including nonperformance, medium novice, high novice, low apprentice, medium apprentice, high apprentice, proficient, or distinguished.

(22) "Target biennium" means the biennium by the end of which schools are expected to reach the state goal, which is the biennium ending with the 2013-2014 school year.

(23) "Threshold" means the point on the goal line corresponding to the end year of the biennium.

(24) "Writing portfolio scores" means the scores assigned by teachers, or scores reassigned through portfolio scoring audit procedures, to a collection of a student's best work.

Section 2. Academic and Nonacademic Index Calculations. (1) The points assigned to students scoring at each student achievement level and sublevel for purposes of computing the academic indices for a particular content area shall include:

(a) Nonperformance - if a total open-response raw score of less than one (1), and multiple-choice total raw score that is less than chance performance and the score converts to less than medium novice, it shall be assigned a score of zero. For the writing or alternate portfolio, a blank or incomplete shall be assigned a score of zero;

(b) Medium novice (reading, mathematics, science, social studies, alternate portfolio, writing on-demand prompt, writing portfolio, arts and humanities, practical living and vocational studies) shall be assigned a score of thirteen (13);

(c) High novice (reading, mathematics, science, and social studies) shall be assigned a score of twenty-six (26);

(d) Low apprentice (reading, mathematics, science, and social studies) shall be assigned a score of forty (40);

(e) Medium apprentice (reading, mathematics, science, social studies, alternate portfolio, writing on-demand prompt, writing portfolio, arts and humanities, practical living and vocational studies) shall be assigned a score of sixty (60);

(f) High apprentice (reading, mathematics, science, and social studies) shall be assigned a score of eighty (80);

(g) Proficient in all content areas shall be assigned a score of 100, or distinguished in all content areas shall be assigned a score of 140.

(2) For all content areas except writing, the scores derived from the Kentucky Core Content Test shall be based on a scoring method that assigns sixty-seven (67) percent of the weight of the scores from open-response items and thirty-three (33) percent of the weight

from multiple-choice items. The writing score shall be based on the writing prompt and the writing portfolio.

(3) The values for attendance rate and successful transition to adult life rate shall be the actual percentage reported. The values entered into formula calculations for retention rate and dropout rate shall be 100 minus the actual percentage calculated. Nonacademic data for a particular assessment year shall be calculated using the data from the previous school year. Nonacademic data shall be based on all grades within a school building generating appropriate data as follows:

- (a) Attendance, primary through grade twelve (12);
- (b) Retention rates, grades four (4) through twelve (12);
- (c) Dropout rates, grades seven (7) through twelve (12); and
- (d) Successful transition to adult life for the graduating students.

(4) Scores from alternate portfolios shall be included in the academic indices so that the data from an alternate portfolio completed by a student eligible to participate with an alternate portfolio contributes the same weight to the academic component of the accountability index as would the data for a student participating in the regular components of the assessment program at the elementary, middle, or high school levels.

### Section 3. Components of the Accountability Index and Weights.

(1) The accountability index shall consist of two (2) components. Component One consists of academic indices and the nonacademic index. Component Two shall be an index created from a national norm-reference assessment (NRT). Component One shall comprise ninety-five (95) percent of the total index. Component Two shall comprise five (5) percent of the index.

(2) The accountability index shall be rounded to the nearest tenth on the accountability scale.

(3) Computing the academic index for each of the content areas of writing, reading, mathematics, science, social studies, arts and humanities, and practical living and vocational studies shall be based on the average of student scores as described in Section 2(1) of this administrative regulation. Component One of the accountability index shall be calculated according to the following weights:

(a) Elementary school (grades end of primary - five (5))

Content Area	Component One (Without NRT)	Component One and Two (With NRT)
Reading	20%	19.00%
Mathematics	20%	19.00%
Science	15%	14.25%
Social studies	15%	14.25%
Writing (15%)		
Writing On-Demand Prompt	3%	2.85%
Writing Portfolio	12%	11.40%
Arts and Humanities	5%	4.75%
Practical Living and Vocational Studies	5%	4.75%
Nonacademic Index (5%)		
Attendance Rate	4%	3.80%
Retention Rate	1%	0.95%
National-Norm Referenced Test	(Not Applicable)	5.00%
	100%	100.00%

(b) Middle school (grades six (6) - eight (8))

Content Area	Component One (Without NRT)	Component One and Two (With NRT)
Reading	15%	14.25%
Mathematics	15%	14.25%
Science	15%	14.25%
Social studies	15%	14.25%
Writing (15%)		
Writing On-Demand Prompt	3%	2.85%
Writing Portfolio	12%	11.40%

Arts and Humanities	7.5%	7.125%
Practical Living and Vocational Studies	7.5%	7.125%
Nonacademic Index (10%)		
Attendance Rate	4%	3.80%
Retention Rate	4%	3.80%
Dropout Rate	2%	1.90%
National-Norm Referenced Test	(Not Applicable)	5.00%
	100%	100%

(c) High school (grades nine (9) - twelve (12))

Content Area	Component One (Without NRT)	Component One and Two (With NRT)
Reading	15%	14.25%
Mathematics	15%	14.25%
Science	15%	14.25%
Social studies	15%	14.25%
Writing (15%)		
Writing On-Demand Prompt	3%	2.85%
Writing Portfolio	12%	11.40%
Arts and Humanities	7.5%	7.125%
Practical Living and Vocational Studies	7.5%	7.125%
Nonacademic Index (10%)		
Attendance Rate	2%	1.90%
Retention Rate	0.5%	0.48%
Dropout Rate	3.75%	3.56%
Successful Transition to Adult Life	3.75%	3.56%
National-Norm Referenced Test	(Not Applicable)	5.00%
	100%	100%

(4) The academic index for each content area and the nonacademic index shall be determined by summing the indices as described in this section.

(5) Component One of the accountability index shall be calculated by aggregating the data from all of the students in the school.

(6) Component Two of the accountability index shall be derived from the national norm referenced assessment as follows:

(a) Student performance standards comparable to those used in Component One and described in Section 2 of this administrative regulation shall be established by the end of the year 2000.

(b) Scores shall be associated with each performance level as described in Section 2 of this administrative regulation; and

(c) The Component Two index shall be based on the average of the scores.

Section 4. Schools Not Conforming to the Standard Grade Configuration. (1) For the Kentucky Core Content Test, if a school does not have grades four (4) and five (5) at the elementary level, grades seven (7) and eight (8) at the middle school, or grades ten (10), eleven (11), and twelve (12) at the high school, the school shall be combined with the school or schools having the missing grade(s) its students previously attended or would subsequently attend, forming a single school accountability unit.

(2) A school that does not contain a grade at which the national norm-referenced assessment is administered shall have its accountability index calculated using only the weights specified as Component One of the index in Section 3 of this administrative regulation. Schools that have more than one (1) grade at which the national norm-referenced assessment is administered shall have those grades combined to form the basis for Component Two of the calculations described in Section 3 of this administrative regulation.

(3) A school or school district may request a waiver of the requirements of subsections (1) and (2) of this section or from the normal configuration of schools (elementary, middle, or high school) from the Kentucky Board of Education specifying other combinations of schools and assessment data if all students in an accountability grade are included, and all schools are accountable for all content areas assessed.

A condition for the granting of a waiver shall be that each affected school and school district shall waive in writing its right to make the school configuration for which it sought a waiver the basis of a subsequent appeal of a school's classification. A waiver request shall be received by the Kentucky Department of Education by June 30 of the year prior to the biennium for which the waiver is requested. For the biennium ending in school year 2000, a waiver request shall be received by the Kentucky Department of Education by September 1, 1999.

Section 5. Schools Having More than One (1) Accountability Level. If a school has more than one (1) accountability level, the school's accountability index shall be the average of the academic and nonacademic data for the school.

Section 6. School Service Area Reconfigurations. (1) If as a result of a change in service area boundaries or local board of education policies affecting student population served by a school, less than eighty (80) percent of a school's student population at its accountability grades is stable, the school shall be considered a reconfigured school. To determine if eighty (80) percent of the population is stable, the number of students in the stable population shall be divided by the sum of that number, plus the lost population, plus the gained population. If the result is less than eight-tenths (.8), the school shall be considered a reconfigured school.

(2) A school that would be considered a reconfigured school in the 1998-1999 school year shall be treated as if it were not reconfigured, with the exception that the nonacademic index for the district from the previous year at the corresponding level (elementary, middle, or high school) shall be substituted for that school's nonacademic data. Schools reconfigured after the 1998-1999 school year shall be assigned a baseline calculated from the 1998-1999 and 1999-2000 aggregate district level data for the appropriate level (elementary, middle, or high school).

(3) A school district shall notify the Department of Education of any school considered a reconfigured school as provided in this administrative regulation by September 30 of the school year in which the reconfiguration occurs. A school that is considered a reconfigured school in either year of a biennium after 2000 on which accountability decisions are based shall have the performance judgment that would have applied to the district at that level (elementary, middle, or high school), if separate decisions (elementary, middle, or high school) were to be applied at the district level. In the alternative, a school district may submit to the Department of Education a plan for reconstituting baseline data taking into consideration the changes in service areas. The plan shall assure that local district calculations are accurate and appropriately include all student data in both baseline and growth index calculations. The plan shall be submitted to the Department of Education at the same time the district notifies the Department of Education of the school reconfiguration. If the Department of Education approves the plan, it shall become effective and shall remain in effect unless a specific waiver from this reconfiguration arrangement is requested from and granted by the Kentucky Board of Education as provided in this administrative regulation. This alternative shall not be implemented until the affected schools have a complete biennium of data to be considered in the growth calculations. A condition for acceptance of the plan shall be that each affected school and school district shall waive in writing its right to make the plan the basis of a subsequent appeal of a school's classification.

(4) A school that has contained more than one (1) level (elementary, middle, or high school) and is reconfigured by removing an entire level of the accountability grades may request that the portion of the school remaining stable be considered within the accountability system using its established historical data.

(5) A school in transition because of a new building or a new policy affecting population served and being phased in may request that the Department of Education establish data to maintain the continuity of accountability data if the request does not require the tracking of individual student data. This request shall require the approval of each affected school council, [f]or the principal, if a school does not have a council, [j] and the local board of education upon the recommendation of the superintendent.

Section 7. Accountability Procedures. (1) To establish expected levels of growth for each school, a straight line shall be drawn from a school's baseline minus one (1) standard error of measurement established in the 1998-1999 and 1999-2000 biennium to the state goal of a growth accountability index of 100 minus one (1) standard error of measurement by 2014.

(2) There shall be five (5) points of school recognition. These shall be determined from the baseline data (school years 1998-1999 and 1999-2000) so that at least ten (10) percent of the schools fall below the first point of recognition and the fifth recognition point shall be set at 100 on the accountability index scale, with the remaining points being established at equal whole number intervals between the high and the low.

Section 8. School Classifications Recognizing Growth. (1) To determine if a school is classified as meets goal, progressing, or in need of assistance, the school's growth accountability index for a biennium shall be compared to the corresponding goal point and assistance point.

(2) A school shall be classified as meets goal if the school's growth accountability index meets or exceeds its goal point and meets the dropout and novice reduction requirements of this section.

(3) To receive rewards under the provisions of this administrative regulation, a school shall have a biennial dropout rate less than or equal to five and three-tenths (5.3) percent, or a dropout rate that is at least one-half (1/2) of one (1) percent lower than its dropout rate of the previous biennium. A school shall not receive rewards if its dropout rate exceeds six (6) percent. If a school is reconfigured for a biennium, the school shall receive the aggregate district dropout rate for the biennium.

(4) To receive rewards under this administrative regulation, a school shall reduce the percent of novices on a schedule so that by the target biennium, the school shall have five (5) percent or less of its students scoring in the novice range of performance. The percent of novices shall be calculated to be reflective of the weights in Section 3 of this administrative regulation. The schedule shall be calculated by subtracting five (5) from the baseline percent novice and dividing this value by seven (7). The maximum allowable percent novice for each biennium shall be calculated as follows:

(a) Year 2002 = baseline percent novice minus the required novice reduction factor;

(b) Year 2004 = baseline percent novice minus the required novice reduction factor multiplied by two (2);

(c) Year 2006 = baseline percent novice minus the required novice reduction factor multiplied by three (3);

(d) Year 2008 = baseline percent novice minus the required novice reduction factor multiplied by four (4);

(e) Year 2010 = baseline percent novice minus the required novice reduction factor multiplied by five (5);

(f) Year 2012 = baseline percent novice minus the required novice reduction factor multiplied by six (6); and

(g) Year 2014 = baseline percent novice minus the required novice reduction factor multiplied by seven (7).

(5) A school shall be classified as a progressing school if the school's growth accountability index falls below its goal point and meets or exceeds its assistance point. A progressing school shall obtain an accountability index greater than that which it obtained in the previous biennium to earn a reward and other recognition as a progressing school.

(6) A school shall be classified as in need of assistance school if the school's growth accountability index falls below its assistance point. A school classified as being in need of assistance shall be eligible to apply for Commonwealth school improvement funds and may be subject to a scholastic audit.

(7) In 2002, the highest scoring five (5) percent of all schools shall be designated as Commonwealth pace-setter schools if they have met or exceeded the fourth point of recognition and if they meet the dropout rate and novice reduction requirements of this section [subsection (3) of this administrative regulation]. This calculation shall be based on the total accountability index of the school regardless of whether one (1), multiple, or no grades at which the norm referenced assessment is administered are included. If not

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otherwise receiving rewards in recognition for growth, a Commonwealth pace-setter school shall receive one (1) share of rewards. In addition, to be classified as a pace-setter school beginning with the biennium ending in 2004, a school shall not have declined in both of the two (2) previous biennia. The rewards that may be due a school for having passed a higher point of recognition shall be given in addition to this amount.

Section 9. Reward Amounts. (1) There shall be two (2) levels of rewards for growth. A school classified as meets goal in accordance with Section 8(2) of this administrative regulation shall earn three (3) shares of rewards. A school classified as progressing in accordance with Section 8(4) of this administrative regulation shall earn one-half (1/2) share of rewards.

(2) A special one (1) time reward amount shall be distributed to schools as they meet or exceed school recognition points. These schools shall receive one (1) share of rewards and other forms of recognition as determined by the Kentucky Board of Education for meeting or exceeding each school recognition point.

(3) If a school passes two (2) or more of the school recognition points, in one (1) biennium, the reward shall be cumulative. A school shall be awarded these amounts only one (1) time for meeting or passing each point. A school earning this reward and subsequently falling below a recognition point shall not earn the reward for passing the point again.

(4) A school shall earn a recognition point reward based on where its baseline falls and shall not receive rewards for meeting or exceeding school recognition points below its baseline index.

(5) The total amount of rewards to be distributed to schools and school districts earning rewards shall not exceed 1.75 percent of the amount of funds paid to certified personnel within Kentucky's public schools during the last year of the accountability cycle. The total number of shares earned shall be divided into the amount determined pursuant to the subsection to determine the per share reward amount; however, a reward share shall not exceed \$2000. A reward share shall be distributed to a school that meets the requirements for rewards as specified in Section 8 of this administrative regulation. The number of shares earned shall be multiplied by the total number of certified staff, as provided in KRS 158.6455 and subsection (6) of this section, to determine the final reward amount, as follows:

(a) Meets goal: number of certified full-time equivalent (FTE) staff times three (3) shares;

(b) Progressing: number of certified full-time equivalent (FTE) staff times one-half (1/2) share;

(c) Pass one (1) school recognition point: number of certified full-time equivalent (FTE) staff times one (1) share; and

(d) Pace setter: number of certified full-time equivalent (FTE) staff times one (1) share.

(6) Beginning with rewards issued at the close of the 1999-2000 school year, a school shall earn rewards for use in the school based on the number of certified staff assigned to the school at the close of the biennium. A reward amount shall be determined based on the number of verified certified staff assigned to the school or combinations of schools earning the reward. A reward amount for part-time and itinerant staff shall be calculated based on the proportion of time spent in the school.

WILMER S. CODY, Commissioner  
HELEN MOUNTJOY, Chairperson  
KEVIN M. NOLAND, Attorney

APPROVED BY AGENCY: June 4, 1999

FILED WITH LRC: June 4, 1999 at 10 a.m.

### REGULATORY IMPACT ANALYSIS

Agency Contact: Kevin Noland

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

(2) Direct and indirect costs or saving to those affected: None

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: None

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available

from the public comments received: None

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

1. First year following implementation: None

2. Second and subsequent years: None

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: None

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: None

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

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: School Rewards Trust Fund; State Appropriation for Assessment Implementation

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

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

(b) Kentucky: None

(7) Assessment of alternative methods; reasons why alternatives were rejected: Pursuant to KRS Chapter 13A and 158.6455, this can only be done by regulation.

(8) Assessment of expected benefits:

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

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

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

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

(a) Necessity of proposed regulation, if in conflict: 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: Was tiering applied? No. Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all school districts.

### CABINET FOR FAMILIES AND CHILDREN Department for Community-Based Services Division of Policy Development (Amended After Hearing)

#### 905 KAR 1:180. Protection and permanency [DSS] policy and procedures manual.

RELATES TO: KRS 194B.060 [194.060], 199.420 to 199.990, 200.080 to 200.120, 205.201 to 205.204, 205.455 to 205.465, Chapters 208, 209, 600 to 645, 42 USC 671, 675, 9901-9912

STATUTORY AUTHORITY: KRS 194B.050 [194.050(+)], 199.420, 200.080, 209.030, 605.150, 615.050, 620.180, 625.120, 630.140, 635.100, 640.120, 645.250, 1998 Ky. Acts ch. 150, EO 98-731 [EO 96-862, 96-1576]

NECESSITY, FUNCTION, AND CONFORMITY: 42 USC 9901-9912[-, "Block Grants for Social Services - Title XX,"] authorizes grants to states for social services. KRS 194B.050 [194.050(+)] authorizes the Cabinet for Families and Children to adopt administrative regulations as are necessary to implement programs mandated by federal law, or to qualify for receipt of federal funds and as are necessary to cooperate with federal agencies for the proper administration of the cabinet and its programs. [Executive Order 96-862, effective July 2, 1996, reorganized the Cabinet for Human Resources and placed the Department for Social Services under the Cabinet for Families and Children. Executive Order 96-1576, effective December 16, 1996, transferred the residential treatment facilities, services and programs for public and youthful offenders from the Cabinet for Families and Children, Department for Social Services, Division of Children's Resi-

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dential Services to the Justice Cabinet, Department of Juvenile Justice:] This administrative regulation is amended to incorporate into regulatory form, by reference, materials used by the cabinet in the implementation of a statewide social service program.

Section 1. Incorporation by Reference. (1) The Protection and Permanency [Department for Social Services] Policy and Procedures Manual as revised June [April] 1999 [August 1997:] is incorporated by reference.

(2) This material [Copies of the Department for Social Services Policy and Procedures Manual] may be inspected, copied or obtained at the [in any department field office in each of the 120 counties or at the Office of the Commissioner:] Department for Community-Based [Social] Services, Division of Protection and Permanency, 275 East Main, 6 Floor West, Frankfort, Kentucky 40621. Office hours are [; between the hours of] 8 a.m. to [and] 4:30 p.m., Monday through Friday.

DIETRA PARIS, Commissioner

VIOLA MILLER, Secretary

WILLIAM K. MOORE, JR., Attorney

APPROVED BY AGENCY: June 3, 1999

FILED WITH LRC: June 4, 1999 at 11 a.m.

### REGULATORY IMPACT ANALYSIS

Agency Contact: Cathy G. Mobley

(1) Type and number of entities affected: The type and number of entities affected are all families, children and adults who may be benefited by the implementation of a statewide protection and permanency program through the current policies and procedures of the department.

(2) Direct and indirect costs or savings to those affected:

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comment received. A public hearing was requested as a result of the Notice of Intent being published but no written or verbal comments were received.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comment received. Implementation of this regulation will not affect the cost of doing business in the areas served. A public hearing was requested as a result of the Notice of Intent being published but no written or verbal comments were received.

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

1. First year following implementation: There are no first year additional compliance, reporting or paperwork requirements as this administrative regulation only removes from the Protection and Permanency policy and procedures manual the Children's Residential Services Program which has been transferred to the Department of Juvenile Justice and the Aging Services Program which was transferred to the Department for Health Services, pursuant to EO 96-1576.

2. Second and subsequent years: There are no second or subsequent year additional compliance, reporting or paperwork requirements as this administrative regulation only removes from the Protection and Permanency policy and procedures manual the Children's Residential Services Program which has been transferred to the Department of Juvenile Justice pursuant to EO 96-1576.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: 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: There is no anticipated effect on state and local revenues.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Sources of revenue used to implement this administrative regulation include the Social Services Block Grant, 42 USC 9901-9912, Medicaid and General Funds.

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

(a) Geographical area in which administrative regulation will be implemented: A public hearing was requested as a result of the Notice of Intent being published but no written or verbal comments were received.

(b) Kentucky: A public hearing was requested as a result of the Notice of Intent being published but no written or verbal comments were received.

(7) Assessment of alternative methods; reasons why alternatives were rejected: No viable alternatives were identified.

(8) Assessment of expected benefits:

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

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

(10) Any additional information or comments: None

(11) TIERING: Is tiering applied? No. This administrative regulation amends the policies and procedures of all offices of the Department for Community Based Services providing protection and permanency services, and is effective statewide. Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all of those individuals or entities regulated by it.

### CABINET FOR FAMILIES AND CHILDREN Department for Community-Based Services Division of Policy Development (Amended After Hearing)

#### 922 KAR 5:070. Adult protective services.

RELATES TO: KRS Chapters 202A, 202B, 209.010 to 209.160, 209.990, 387.540(1), 403.715 to 403.785

STATUTORY AUTHORITY: KRS 194B.050 [194.050], 209.030(1), EO 98-731

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194B.050 [194.050] provides that the Secretary for the Cabinet for Families and Children shall promulgate [adopt] administrative regulations necessary to operate the programs and fulfill the responsibilities vested in the Cabinet for Families and Children. Pursuant to [in compliance with] KRS 209.030(1) the Department for Community-Based Services is amending this administrative regulation to [has drafted procedures that shall] enable the implementation of provisions of KRS 209.010 to 209.160 and 209.990, concerning the protection of adults who may be suffering from or at risk of abuse, neglect or exploitation[; to be implemented].

Section 1. Historical File. [Central Office Register:] (1) A statewide historical file [central register] of adult abuse, neglect, exploitation and spouse abuse reports shall be maintained by the cabinet for administrative purposes.

(2) This information shall be obtained from the DSS-292, Adult Protective Services Investigation, herein incorporated by reference. [The purpose of this register shall be to:

(a) Gather and correlate data on incidence and characteristics of adult abuse, neglect, exploitation and spouse abuse;

(b) Correlate and cross reference adult and child protection reports;

(c) Identify previous reports on an alleged victim;

(d) Serve as a resource for defining problem areas in adult protective services and identify training needs; and

(e) Serve as a source of information in the development of policy, planning and budgeting; and

(f) Identify a previous report on an alleged perpetrator requesting a certificate, license, registration or permit to operate a human services center as defined in 922 KAR 2:001.]

Section 2. Receiving the Report. (1) When receiving a report of suspected adult abuse, neglect, exploitation or spouse abuse the worker shall make every effort to obtain the information to comply with KRS 209.030(3) and other information that may assist in determining if the adult may be in a state of emergency and in immediate need of protective services. ~~The worker may: [It may be necessary for the worker to:]~~

(a) Advise the reporting source that ~~it may not be possible~~ [additional information is necessary] to conduct an investigation if ~~insufficient information is received; and [he refuses or is unable to give sufficient information to locate or identify the adult:]~~

(b) ~~Advise the reporting source that insufficient information may lead to the inability to locate or identify the adult needing protective services. [Contact other agencies or individuals for the purpose of securing additional information which may be relevant in conducting the investigation.]~~

(2) When the report is received and required information secured, the worker shall:

(a) Prepare a written intake report on the DSS-115, Suspected Abuse/Neglect, Dependency or Exploitation Reporting Form, herein incorporated by reference, [(DSS-115, see child protective services, 922-KAR 1:330)] concerning the adult alleged to be abused, neglected or exploited;

(b) ~~[and]~~ Submit the DSS-115 [it] to the family services office supervisor or designee, for determination of assignment for investigation; and

(c) ~~Send~~ a copy of the DSS-115 ~~[shall be sent]~~ to the appropriate law enforcement agency pursuant to [in compliance with] KRS 209.030(4) unless they are the originating reporting source.

Section 3. Adult Protective Service Investigations. (1) The Department for Community-Based Services or its designee shall conduct an investigation of a report of alleged abuse, neglect or exploitation of an adult and provide protective services, upon request. The investigation shall include contact with the alleged victim and may include contact with the alleged perpetrator and collaterals.

(2) ~~Information obtained as a result of a protective service investigation shall be kept confidential, pursuant to the provisions of KRS 209.140. [Provisions of KRS 209.140 shall take precedence over general confidentiality statutes and are limited to protective services investigations.]~~

(a) Requests for written information, except for court ordered releases, shall be handled through the open records process. Court orders for records may be responded to at the local office unless the worker has reason to question or contest the order. Requests for open records made by someone other than those listed in KRS 209.140 shall be accompanied with a release of information from the alleged victim or the alleged perpetrator.

(b) Prior to releasing verbal information, the worker shall determine the legitimacy of the individual or agency's interest in the case. If staff are in contact with persons who shall not have legal access to the records, the only information which may be shared is that which is deemed necessary to carry out their statutory responsibility to protect the client and complete the investigation. ~~[If the reporting source or other interested parties permitted by statute request follow up information, the worker may:]~~

1. Provide information of a general nature as to whether the investigation is complete;

2. Offer an explanation as to the type of services the department may offer in these situations; and

3. Explain the department's policy as relates to the client's right to accept or refuse services.]

(3) Guidelines for conducting investigations.

(a) The investigations of a report of adult abuse, neglect, exploitation or spouse abuse shall be initiated by the assigned family services worker within:

1. One (1) hour of receipt if the reporting source claims that the adult is in a state of emergency which presents a substantial risk of death or immediate and serious physical harm to himself or others;

2. Twenty-four (24) hours of receipt if the information indicates the adult is not in a state of emergency.

(b) An adult protective services investigation shall include a personal interview with the alleged victim and may include face-to-face

contact. In situations where violence is alleged, the worker shall take into consideration the safety of the victim and worker when deciding upon the type of contact with the victim. [In alternate care situations, the worker shall inform the administrator, operator or designee that an investigation is being conducted. The alleged victim and others shall be interviewed in private if possible. If the alleged victim has a guardian, an interview with the guardian to explain the worker's role as investigator is appropriate.]

(c) Mental and physical health records necessary to complete the investigation shall be reviewed by the worker and copies obtained, if possible, to be included in the investigative report.

(d) Police records, mental inquest, disability, probate records and legal documents may be reviewed when appropriate to the conduct of the investigation.

(e) Financial records including savings and checking account statements, financial eligibility and assistance records, disability or retirement income records and property valuation records, may be reviewed by the worker in cases of financial exploitation of adults. ~~[A release of information may be used in accessing records. If the worker experiences difficulty, the office of the counsel may be consulted with supervisory approval.]~~

(f) It may be appropriate to take photographs of the alleged victims injuries, but pictures shall not be taken by Department for Community-Based Services staff if the alleged victim refuses permission.

(g) A written voluntary statement regarding the incident may be obtained if it is apparent that abuse or neglect has occurred and the alleged victim, witness, or alleged perpetrator is willing. The persons providing the statement shall be advised that it may be shared with law enforcement officials and they may be required to testify in court.

(h) When conducting a spouse abuse investigation, the worker shall:

1. Attempt to arrange a face-to-face interview with the alleged victim to conduct the investigation and offer protective services. ~~[Efforts to contact the alleged victim shall be documented in the investigative report. If a spouse abuse report indicates that the alleged victim does not want to be contacted supervisory discretion shall be exercised in determining the appropriate plan of action based on the nature of the report.]~~

2. Not disclose the location of a spouse abuse shelter.]

2. Discuss all services available including spouse abuse center services. ~~[3. Discuss the services of the area spouse abuse shelter with the alleged victim during the investigative interview. If the alleged victim requests assistance in securing shelter in the area spouse abuse shelter, the DCBS worker shall assist in making the necessary arrangements.]~~

(i) Upon receipt of a report of alleged abuse, neglect or exploitation of an adult in a licensed health care facility or a facility operated by the cabinet, and the Division of Licensing and Regulation is not the originating reporting source, the worker shall complete the DSS-284, Complaint Report, herein incorporated by reference. The original of the DSS-284 shall be mailed to the Division of Licensing and Regulation. [When conducting investigations involving a licensed health care facility, the worker shall contact, via telephone, the Division of Licensing and Regulation regional office to coordinate the investigation and shall send a DSS-284, Complaint Report, herein incorporated by reference.]

(j) When DCBS receives a report involving alleged abuse, neglect or exploitation in a GFC facility, the worker shall immediately contact, via phone, the Division of Licensing and Regulation regional office and report the incident. The phone call is followed by completing the DSS-284 and mailing the original to the Division of Licensing and Regulation. If the worker receives the initial complaint, the worker shall notify the appropriate local law enforcement agency in compliance with KRS 209.030(4)(a) using the DSS-115.]

(j) [(k)] When investigating reports of alleged abuse or neglect of an adult resulting in death, the worker shall examine the coroner's or doctor's report and if possible obtain a copy of the death certificate for the case record. The worker shall notify appropriate supervisory staff and:

1. If the findings of an investigation suggest an adult in the community died allegedly as a result of abuse or neglect, consult law enforcement for assistance in completing the investigation.

2. If the findings of an investigation suggest an adult in an alter-

nate care facility died allegedly as a result of abuse or neglect, determine[~~in consultation with Licensing and Regulation;~~] if other residents in the facility are at risk of abuse, neglect or exploitation.

(k) [(h)] Ascertain if there are other alleged victims of abuse, neglect or exploitation in the household or facility pursuant to KRS 209.020 and report the allegation pursuant to [in compliance with] KRS 209.030 and 620.030.

Section 4. Failure to Gain Entry. If an adult, a caretaker or a facility does not consent to an investigation and refuses to allow entry, the worker shall inform them of the cabinet's statutory authority to investigate. If entry is still denied, the worker may return with law enforcement officials to gain entry. If entry is still denied, the worker shall notify departmental [DCBS] supervisory staff and determine if probable cause exists to pursue a search warrant or other legal remedy. An employee of the cabinet shall not attempt to serve a search warrant.

Section 5. Results of the Investigation. **(1) The worker, as appropriate, shall address the following when determining the results of the investigation:**

- (a) The alleged victim's account of the situation;**
- (b) The alleged perpetrator's account of the situation;**
- (c) The information supplied by collateral contact;**
- (d) Records and documents;**
- (e) The assessment information;**
- (f) Previous reports involving the alleged victim or alleged perpetrator; and**

**(g) Other factors depending upon the type of report.** [(1) The worker, as appropriate, shall address the following when determining the results of the investigation:

- (a) The alleged victim's account of the situation;
- (b) The alleged perpetrator's account of the situation;
- (c) The information supplied by collateral contact;
- (d) Records and documents;
- (e) The assessment information;
- (f) Previous reports involving the alleged victim or alleged perpetrator; and

(g) Other factors depending upon the type of report.

[(2)] **(2)** The findings of the adult protective services investigation shall be documented on the DSS-292 and a written record pursuant to KRS 209.030(4)(c) shall be maintained by the worker to include:

- (a) [(1)] The [(a)] DSS-115, Confidential Suspected Abuse/Neglect, Dependency or Exploitation Reporting Form;**
- (b) [(2)] The [(b)] DSS-292, Adult Protective Services Investigation;**
- (c) [(3)] [(c)] A narrative documenting the investigation; and**
- (d) [(4)] [(d)] Voluntary written statements and photographs, if available, documenting the findings of the adult services investigation.**

Section 6. Opening a Case. (1) A case may be opened as a result of a protective services investigation or when an adult is identified through a general adult services assessment as being at risk of abuse, neglect or exploitation. The decision to open a case shall be based on:

(a) The voluntary request for, acceptance of, or nonrefusal of services by an adult who needs adult protection or general adult services; or

(b) The need for involuntary emergency protective services.

(2) There shall be a case plan developed with the client and appropriate others in each adult service case. Within fifteen (15) [thirty (30)] working days of the decision to open a case, the case plan is initiated with the client and submitted to the family services office supervisor for approval. A copy of the case plan shall be given to the client and appropriate others with a copy of the DSS-154, pursuant to [see Fair hearing section:] 922 KAR 1:320.

Section 7. Referrals for Criminal Prosecution. Substantiated reports of abuse, neglect or exploitation may be referred for consideration for criminal prosecution.

Section 8. Involuntary Emergency Protective Services. The need for involuntary protective services shall be assessed by the worker

when an adult is living in conditions which present a substantial risk of death or immediate and serious physical harm to himself or others. If an adult lacks the capacity to consent and refuses [or refuse] to consent to receive emergency protective services, the cabinet may seek a court order authorizing the provision of these services on an emergency basis in compliance with KRS 209.100-209.130. Depending upon the adult's situation, the cabinet may:

(1) [either] Seek an ex parte order; or

(2) File a petition for an emergency protective service order[~~depending upon the adult's situation~~].

Section 9. Restraining Order or Injunctive Relief. Pursuant to [In compliance with] KRS 209.040 a court may issue a restraining order or injunctive relief upon proper application of the cabinet. Staff shall contact the office of the general counsel for advice and assistance in obtaining restraining orders or other forms of injunctive relief, if possible.

Section 10. Guardianship or Conservatorship of Disabled Persons. (1) In an attempt to provide appropriate protective services, the family services [The DCBS] worker shall assess the need for guardianship when an individual is identified who appears unable to manage personal affairs or carry out the activities of daily living.

(2) The worker may assist in protective service situations in seeking out family, friends, or other interested and qualified individuals who are willing to become guardians.

(3) The family services worker, if he meets the qualification of KRS 335.080(1)(a), (b), and (c) or 335.090(1)(a), (b), and (c), may be appointed by the court, as a member of the interdisciplinary team and may be required to testify during disability court proceedings, pursuant to KRS 387.540(1).

[(2) A worker's decision to file a disability petition shall be based on the following conditions:

- (a) There is no one else willing to bring the petition;
- (b) There is an urgent and bona fide need to initiate the action;
- (c) There is assurance that filing the petition is in the best interest of the client; and

(d) The employee has discussed with and received approval of the district manager or designee.

(3) The family service worker may be appointed by the court, as a member of the interdisciplinary team and may be required to testify during disability court proceedings.]

Section 11. Involuntary Hospitalization. (1) If the worker believes a client may be in need of hospitalization for mental health reasons, the worker shall encourage the client to secure mental health treatment.

(2) If a client refuses and all other resources are unavailable, a worker may file a petition for involuntary hospitalization pursuant to [in compliance with] KRS Chapter 202A. Prior approval, if possible, shall be obtained from the service region administrator [district manager] or designee.

Section 12. Domestic Violence and Abuse. Staff may assist individuals in petitioning the court for an order of protection pursuant to [in compliance with] KRS 403.715 to 403.785. Reports received from law enforcement pursuant to [per] KRS 403.785(1) that do not meet the criteria of KRS Chapter 209 may be assigned for assessment and services based on supervisory discretion. Reports received from the family support worker that do not meet the criteria of KRS Chapter 209 shall be assigned for assessment.

Section 13. Penalties. Any person violating KRS Chapter 209 shall be subject to penalties pursuant to KRS 209.990.

Section 14. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) DSS - 115, "Confidential Suspected Abuse/Neglect, Dependency or Exploitation Reporting Form", "July, 1994".

(b) DSS - 284, "Complaint Report" Form, "October, 1996".

(c) DSS - 292, "Adult Protective Services Investigation" Form, "September, 1996".

[Section 13. Material Incorporated by Reference. (1) Forms necessary for the implementation of adult protective services shall be

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incorporated effective January, 1991.]

(2) ~~This material~~ [Material incorporated by reference] may be inspected, [and] copied, or obtained at the Department for Community-Based Services, Division of Protection and Permanency, [GFC-Building, 6th Floor,] 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, [-Office hours are] 8 a.m. to 4:30 p.m.

DIETRA PARIS, Commissioner

VIOLA P. MILLER, Secretary

CHARLES P. LAWRENCE, Attorney

APPROVED BY AGENCY: May 27, 1999

FILED WITH LRC: June 4, 1999 at 11 a.m.

(10) Any additional information or comments: None

(11) TIERING: Is tiering applied? No. Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all of those individuals or entities regulated by it.

### REGULATORY IMPACT ANALYSIS

Agency Contact Person: Cathy G. Mobley, Director

(1) Type and number of entities affected: The total number of adults who received protective services in fiscal year 1998 was 35,479. Of that total, 12,272 received adult protective services, 17,064 received spouse abuse services, 2,635 received services relating to neglect by caretaker, 2,643 received services relating to self-neglect, and 865 received services relating to exploitation.

(2) Direct and indirect cost or savings to those affected: None

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comment received: No public hearing was requested as a result of the Notice of Intent being published and no written comments were received. To be determined after the hearing on this ordinary 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 comment received: No public hearing was requested as a result of the Notice of Intent being published and no written comments were received. To be determined after the hearing on this ordinary regulation.

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

1. First year following implementation: None

2. Second and subsequent years: None

(3) Effects on the promulgating administrative body:

(a) Direct and indirect cost or savings: None

1. First year: None

2. Continuing cost 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: There is no fiscal impact associated with the filing of this administrative regulation.

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

(a) Geographical area in which administrative regulation will be implemented: No public hearing was requested as a result of the Notice of Intent being published and no written comments were received. To be determined after the public hearing on this ordinary regulation.

(b) Kentucky: No public hearing was requested as a result of the Notice of Intent being published and no written comments were received. To be determined after the public hearing on this ordinary 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: 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

PROPOSED AMENDMENTS RECEIVED AS OF NOON, JUNE 15, 1999

KENTUCKY HIGHER EDUCATION ASSISTANCE AUTHORITY  
(Proposed Amendment)

11 KAR 12:010. Definitions for 11 KAR Chapter 12.

RELATES TO: KRS 164A.300 to 164A.380

STATUTORY AUTHORITY: KRS 164A.325(9)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 164A.325(9) authorizes the board to promulgate administrative regulations to implement the Kentucky Educational Savings Plan Trust. This administrative regulation establishes the definitions for 11 KAR Chapter 12.

Section 1. Definitions. (1) "Academic period" means one (1) semester or one (1) quarter or an equivalent period for a vocational technical institution.

(2) "Account" means the account in the program fund established and maintained under the trust for a beneficiary.

(3) "Account balance" means the fair market value of an account as of the accounting date.

(4) "Accounting date" means the date, not later than the last business day of each quarter as determined by the program administrator.

(5) "Administrative fund" is defined in KRS 164A.305(2).

(6) "Beneficiary" is defined in KRS 164A.305(3).

(7) "Benefits" is defined in KRS 164A.305(4).

(8) "Board" is defined by KRS 164A.305(5).

(9) "Dependent person" means a person who is unable to meet the criteria for an independent person as defined in subsection (12) of this section.

(10) "Designated date" means the date on which each beneficiary is eligible to be designated in a participation agreement.

(11) "Domicile" or "legal residence" 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.

(12) "Effective date" means the date which a participant may enter into a participation agreement with the trust, which is on or after July 1, 1989.

(13) "Higher education costs" is defined by KRS 164A.305(7).

(14) "Independent" means a person:

(a) Who has not been claimed by his parent as a dependent on a federal or state income tax return for the tax year preceding the date of application for reclassification of residency status;

(b) Who demonstrates no financial dependence upon a parent; and

(c) Whose parent's income is not taken into account by a private or governmental agency furnishing educational financial assistance to the person, including a scholarship, loan, or other assistance.

(15) "Institution of higher education" is defined in KRS 164A.305(8).

(16) "Kentucky ties" means a participant or beneficiary who has contact or ties with the Commonwealth, including current or former residence or employment in the Commonwealth, or a family member with current or former residence in the Commonwealth.

~~[(15) "Minimum rate of return" means the minimum earnings of four (4) percent guaranteed by the trust on a payment made by the participant.]~~

(17) "Notice to delay benefits under participation agreement" means the participant's written instruction [the form which a participant submits] to the program administrator of the trust to delay benefits under a participation agreement, after the beneficiary has attained the age of eighteen (18).

(18) "Notice to extend payments under participation agreement" means the participant's written instruction [the form which a participant submits] to the program administrator of the trust to extend payments under a participation agreement beyond the beneficiary's age of eighteen (18).

(19) "Notice to increase or decrease payments under participation agreement" means the participant's written instruction [the form which a participant submits] to the program administrator of the trust to in-

crease or decrease payments under a participation agreement.

(20) "Notice to preauthorize debit" means the participant's written instruction to [the form which a participant completes to notify] the participant's financial institution to debit or charge the participant's checking or savings account for payments due under the participation agreement.

(21) "Notice to substitute beneficiary" means the participant's written instruction [the form which a participant submits] to the program administrator of the trust to substitute a beneficiary.

(22) "Notice to terminate the participation agreement" means the participant's written instruction [the form which a participant submits] to the program administrator of the trust to terminate a participation agreement under the trust.

(23) "Notice to use trust benefits" means the participant's written instruction [the form which a participant submits] to the program administrator of the trust to notify the trust of the date benefits are to begin and level of benefits paid.

(24) "Notice to authorize payroll deduction" means the participant's written instruction [the form which a participant submits] to the [program administrator of the trust to direct the] participant's employer to deduct payments from the participant's earnings [payroll deduction check] and forward that amount to the trust.

(25) "Parent" means one (1) of the following:

(a) A person's father or mother; or

(b) A court-appointed legal guardian if the guardianship was not established primarily to confer Kentucky residency on the person.

(26) "Participant" is defined in KRS 164A.305(10).

(27) "Participation agreement" is defined in KRS 164.305(11).

(28) "Payments" means the money paid by the participant to the trust under the participation agreement.

(29) "Payment book" means the book which contains individual coupons, designating the amount and due date of each payment.

(30) "Program administrator" is defined in KRS 164A.305(12).

(31) "Program fund" is defined in KRS 164A.305(13).

(32) "Property settlement agreement" or "decree of dissolution by the court" means the agreement or judgment approved or entered by a court of competent jurisdiction which sets forth the participant's right, if any, to the participant's interest in the participation agreement.

(33) "Trust year" means the fiscal year beginning July 1 and ending the following June 30 of each year for purposes of the calculation of benefits.

(34) "Vested participation agreement" is defined in KRS 164A.305(15).

WAYNE STRATTON, Chairman

RICHARD F. CASEY, General Counsel

APPROVED BY AGENCY: April 26, 1999

FILED WITH LRC: June 14, 1999 at 1 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on Wednesday, July 21, 1999 at 10 a.m. at 1050 U.S. 127 South, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by Wednesday, July 14, 1999, five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: Mr. Richard F. Casey, General Counsel, Kentucky Higher Education Assistance Authority, 1050 U.S. 127 South, Frankfort, Kentucky 40601, (502) 696-7292, Fax Number (502) 696-7293, Email address: [Rcasey@KHEAA.com](mailto:Rcasey@KHEAA.com).

REGULATORY IMPACT ANALYSIS

Agency Contact: Richard F. Casey

(1) Type and number of entities affected: This proposed amendment defines or references certain statutory definitions of terms commonly used in the administration by KHEAA of the Kentucky Educational Savings Plan Trust. As of April 30, 1999, the Kentucky Educational Savings Plan Trust had 2,989 open accounts.

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

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: The administrative regulation itself merely defines terms used in the administration of the Kentucky Educational Savings Plan Trust. Therefore, it has no direct or indirect cost or savings to 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 from the public comments received: The amendment is anticipated to have no effect on the cost of doing business of any entity.

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

1. First year following implementation: The amendment affects no change in the compliance, reporting or paperwork requirements of any participant and is anticipated to have no effect upon competition.

2. Second and subsequent years: Same as #1 above.

(3) Effect on the promulgating body:

(a) Direct and indirect costs or savings:

1. First year: The amendment has no direct or indirect cost or savings respecting the promulgating body.

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: There is no change in the paperwork or reporting requirements for the promulgating body.

(4) Assessment of anticipated effect on state and local revenues: The amendment is anticipated to have no effect on state and local revenues.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: The administrative regulation itself merely defines terms commonly used in the administration of the Kentucky Educational Savings Plan Trust. Therefore, no revenue is necessary to implement this administrative regulation.

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

(a) Geographical area in which administrative regulation will be implemented: No public comments have been received. This administrative regulation merely defines terms commonly used in the administration of the Kentucky Educational Savings Plan Trust and is anticipated to have no economic impact. The proposed amendment deletes the definition of "minimum rate of interest" because KRS 164A.330(3) requires the minimum rate of interest to be specified in the participation agreement, and the rate is established in 11 KAR 12:020, thus a definition is not necessary.

(b) Kentucky: Same as (a) above.

(7) Assessment of alternative methods; reasons why alternatives were rejected: No alternatives were considered. The proposed amendment modifies defined terms to be consistent with efficient administration of the Kentucky Educational Savings Plan Trust.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: There is no effect upon public health or the environment resulting from the amendment of this administrative regulation.

(b) State whether a detrimental effect on the environmental or public health would result if not implemented: None

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

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

(a) Necessity of proposed regulation if in conflict: There is no known conflict.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: There is no

known conflict.

(10) Any additional information of comments: None

(11) Tiering: Was tiering applied? No. The concept of tiering is not applicable to this amendment of this administrative regulation. The administrative regulation is intended to provide equal opportunity to participate within parameters prescribed by statute, and consequently does not inherently result in disproportionate impacts on certain classes or regulated entities or address a particular problem to which certain regulated entities do not contribute. Disparate treatment of any person or entity affected by this administrative regulation could raise questions of arbitrary action on the part of the agency. The "equal protection" and "due process" clauses of the Fourteenth Amendment of the U.S. Constitution may be implicated as well as Sections 2 and 3 of the Kentucky Constitution. The regulation provides equal treatment and opportunity for all applicants and recipients.

## KENTUCKY HIGHER EDUCATION ASSISTANCE AUTHORITY (Amendment)

### 11 KAR 12:020. General rules for investments and fund transfers.

RELATES TO: KRS 164A.310(4), 164A.325(7), 164A.335(1), 164A.375

STATUTORY AUTHORITY: KRS 164A.325(9)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 164A.300 through 164A.380 confer certain powers and duties upon the Kentucky educational savings plan trust to invest funds and to utilize the administrative fund to support its activities. This administrative regulation establishes [sets forth] the policy for investments and fund transfers. ~~[This amendment is necessary to eliminate certain defined terms that are being placed in a separate administrative regulation and to reflect amendments to KRS 164A.300 through 164A.380 that provide for a separate organization to administer the endowment fund.]~~

Section 1. ~~[Definitions. "Administrative fund" (as defined in KRS 164A.305(2)).]~~

Section 2. ~~[Investments. (1) The program administrator, any investment manager, and any trustee or depository institution holding funds received pursuant to KRS 164A.335 shall adhere to the following standards:~~

(a) Safety of principal at the time of a projected cash need shall be paramount for all investment situations.

(b) Liquidity of investments shall be assured for funds which may be needed to satisfy short term cash flow needs; and

(c) Except as provided in paragraphs (a) and (b), maximizing investment yield shall be the prime objective of any investment.

~~(2) In accordance with the standards established in subsection (1) of this section, the board through the program administrator or any investment manager may invest funds received pursuant to KRS 164A.335 [may be invested] in any of the following solely in the interest of the participants and beneficiaries and for the exclusive purposes of providing benefits to beneficiaries and defraying reasonable expenses of administering the plan:~~

(a) Deposits or banker's acceptances with commercial banks whose outstanding indebtedness is rated A or better by a nationally recognized rating service, and deposits with any financial institution to the extent fully insured by the Federal Deposit Insurance Corporation or other U.S. government insurance entity;

(b) U.S. Treasury securities, obligations backed by the full faith and credit of the United States government, and U. S. government agency securities;

(c) Repurchase agreements, both overnight and term, must be governed by a Public Securities Association or equivalent master repurchase agreement including the appropriate annexes. These agreements shall be collateralized at 100 percent with U.S. Treasury securities, U.S. government agency securities, and other obligations backed by the full faith and credit of the United States government. Collateral shall be held by a third party custodian.

(d) Bank certificates of deposit rate A/A-1 or better by a nationally

recognized rating service.

(e) State or municipal obligations rated in one (1) of the two (2) top classifications by a nationally recognized rating service (at least AA or Aa, SP-2 or MIG-2/VMIG-2).

(f) Obligations of any U.S. corporation, if the obligations are rated at least AA or As by a nationally recognized rating service.

(g) Collateralized mortgage or credit card obligations, mortgage backed securities, or similar securities that are collateralized at 100 percent, provided that the obligations are either fully insured by a U.S. government insurance entity or are issued by a corporation whose obligations would be an authorized investment.

(h) Commercial paper rated in the highest classification as established by a nationally recognized rating service (A-1 or Prime-1).

(i) Mutual funds, including money market funds, equity funds, international funds, growth funds, income funds, and funds combining one (1) or more of the foregoing investment options which, at the time of making the investment, are, by law, permitted for the investment of funds by fiduciaries in this state [consisting of securities which would be authorized investments]; and

(j) Other investments [as] approved by the board of directors with the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent investor acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims.

Section 2. The following minimum rates of interest borne by the investment made by the participant shall apply to participation agreements executed by the program administrator:

(1) Four (4) percent guaranteed by the trust on a payment credited to the account of a participant before October 1, 1999; and

(2) Zero percent guaranteed by the trust on a payment credited to the account of a participant on and after October 1, 1999.

Section 3. Administrative Fund. The costs of administering the Kentucky educational savings plan trust shall be paid out of the administrative fund. Funds shall be transferred periodically to the administrative fund from the program fund. Fund transfers may be made quarterly, or more or less frequently, as the program administrator determines is necessary to cover the administrative costs of the trust. The total amount transferred to the administrative fund during any trust year shall not exceed four (4) percent of the total investment earnings accruing and credited to the program fund during that trust year. Monies transferred to the administrative fund pursuant to KRS 164A.335(1) and this administrative regulation shall be deposited in accordance with KRS 41.070(2).

WAYNE STRATTON, Chairman

RICHARD F. CASEY, General Counsel

APPROVED BY AGENCY: April 26, 1999

FILED WITH LRC: June 14, 1999 at 1 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on Wednesday, July 21, 1999 at 10 a.m. at 1050 U.S. 127 South, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by Wednesday, July 14, 1999, five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: Mr. Richard F. Casey, General Counsel, Kentucky Higher Education Assistance Authority, 1050 U.S. 127 South, Frankfort, Kentucky 40601, (502) 696-7292, Fax Number (502) 696-7293, Email address: Rcasey@KHEAA.com.

#### REGULATORY IMPACT ANALYSIS

Agency Contact: Richard F. Casey

(1) Type and number of entities affected: This administrative

regulation establishes the policy for investments and fund transfers for accounts administered by KHEAA in the Kentucky Educational Savings Plan Trust. As of April 30, 1999, the Kentucky Educational Savings Plan Trust had 2,989 open accounts.

(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 proposed amendment is anticipated to have no effect on cost of living and employment.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent from the public comments received: The amendment is anticipated to have no effect on the cost of doing business by any entity.

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

1. First year following implementation: The amendment affects no change in the compliance, reporting or paperwork requirements of any participant and is anticipated to have no effect upon competition.

2. Second and subsequent years: Same as #1 above.

(3) Effect on the promulgating body:

(a) Direct and indirect costs or savings:

1. First year: The amendment modifies the standards for investment of Kentucky Educational Savings Plan Trust funds in mutual funds and other investments approved by the board for the benefit of participants and specifies a minimum rate of interest on investments guaranteed by the board. It has no direct or indirect costs or savings on the promulgating body.

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: There is no change in the paperwork or reporting requirements for the promulgating body.

(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: This amendment merely modifies the standards for investments in mutual funds and other investments approved by the board and adds a specified minimum rate of interest on investments guaranteed by the Kentucky Educational Savings Plan Trust. Therefore, no revenue is necessary for implementation or enforcement of the amendment.

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

(a) Geographical area in which administrative regulation will be implemented: No public comments were received. The amendment establishes a minimum rate of interest on investments guaranteed by the Kentucky Educational Savings Plan Trust. However, the amendment is anticipated to have no economic impact on the area.

(b) Kentucky: Same as (a) above.

(7) Assessment of alternative methods; reasons why alternatives were rejected: No alternatives were considered. The proposed amendment modifies the standards for investments in mutual funds and other investments approved by the board and lowers to zero the minimum rate of interest on investments guaranteed by the Kentucky Educational Savings Plan Trust to make administration of the trust consistent with similar state educational savings plans. This proposed change avails participants the opportunity to invest in a more balanced and competitive savings plan. A more balanced and competitive savings plan has the potential to increase yields.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: There is no effect upon public health or the environment resulting from the adoption of this amendment.

(b) State whether a detrimental effect on the environmental or public health would result if not implemented: None

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

(9) Identify any statute, administrative regulation or government

policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict: There is no known conflict.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: There is no known conflict.

(10) Any additional information of comments: None

(11) Tiering: Was tiering applied? No. The concept of tiering is not applicable to this amendment of this administrative regulation. The administrative regulation is intended to provide equal opportunity to participate within parameters prescribed by statute, and consequently does not inherently result in disproportionate impacts on certain classes or regulated entities or address a particular problem to which certain regulated entities do not contribute. Disparate treatment of any person or entity affected by this administrative regulation could raise questions of arbitrary action on the part of the agency. The "equal protection" and "due process" clauses of the Fourteenth Amendment of the U.S. Constitution may be implicated as well as Sections 2 and 3 of the Kentucky Constitution. The regulation provides equal treatment and opportunity for all applicants and recipients.

# KENTUCKY HIGHER EDUCATION ASSISTANCE AUTHORITY (Amendment)

## 11 KAR 12:060. Cancellation and payment of refund.

RELATES TO: KRS 164A.325(5), 164A.350

STATUTORY AUTHORITY: KRS 164A.325(5), (9), 164A.350(7)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 164A.325(9) authorizes the board to promulgate administrative regulations to implement the Kentucky Educational Savings Plan Trust. KRS 164A.350(2) provides that a participant may cancel a participation agreement and requires a penalty to be charged by the trust. This administrative regulation establishes the procedures for cancellation of the participation agreement and refund of the account balance and specifies the penalty.

Section 1. Cancellation. [(+) ] To cancel a participation agreement pursuant to KRS 164A.350(2), a participant shall submit to the program administrator a notice to terminate the participation agreement.

Section 2. Partial Withdrawal. A participant may request a partial withdrawal of an account balance without cancellation of the participating agreement. To request a partial withdrawal from a Kentucky Educational Savings Plan Trust account, a participant shall submit a written request to the program administrator. The minimum partial withdrawal amount shall be \$500.

Section 3. Refund Penalty. [(2) ] Except as provided in KRS 164A.350(7), a penalty shall be deducted from the amount refunded to the participant. The penalty shall be ten (10) percent of the investment earnings refunded to the participant [~~accrued to the account~~]. The amount to be refunded pursuant to KRS 164A.350, less the penalty, shall be mailed or otherwise sent to the participant within sixty (60) days after receipt by the program administrator of notice to terminate the participation agreement or written request for partial withdrawal.

WAYNE STRATTON, Chairman

RICHARD F. CASEY, General Counsel

APPROVED BY AGENCY: April 26, 1999

FILED WITH LRC: June 14, 1999 at 1 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on Wednesday, July 21, 1999 at 10 a.m. at 1050 U.S. 127 South, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by Wednesday, July 14, 1999, five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a

transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: Mr. Richard F. Casey, General Counsel, Kentucky Higher Education Assistance Authority, 1050 U.S. 127 South, Frankfort, Kentucky 40601, (502) 696-7292, Fax Number (502) 696-7293, Email address: [Rcasey@KHEAA.com](mailto:Rcasey@KHEAA.com).

## REGULATORY IMPACT ANALYSIS

Agency Contact: Richard F. Casey

(1) Type and number of entities affected: This proposed amendment would allow a participant in the Kentucky Educational Savings Plan Trust to make partial withdrawals of his or her account balance. As of April 30, 1999, the Kentucky Educational Savings Plan Trust had 2,989 open accounts.

(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 amendment merely allows for partial withdrawal of a Kentucky Educational Savings Plan Trust account balance; therefore, it has no direct or indirect costs or savings.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent from the public comments received: Same as (a) above.

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

1. First year following implementation: The amendment affects no change in the compliance, reporting or paperwork requirements of any participant and is anticipated to have no effect upon competition.

2. Second and subsequent years: Same as #1 above.

(3) Effect on the promulgating body:

(a) Direct and indirect costs or savings:

1. First year: The proposed amendment for partial withdrawal of account balances provides a penalty for partial withdrawal that will cover any costs incurred by the promulgating body.

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: None

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: The proposed amendment for partial withdrawal of account balances provides a penalty for partial withdrawal that will cover any costs incurred.

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

(a) Geographical area in which administrative regulation will be implemented: No public comments were received. The proposed amendment is not anticipated to have any economic impact.

(b) Kentucky: Same as (a) above.

(7) Assessment of alternative methods; reasons why alternatives were rejected: No alternatives were considered. The proposed amendment is a benefit provided to participants in that it allows for partial withdrawal of account balances.

(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 proposed amendment has no effect upon public health or the environment.

(b) State whether a detrimental effect on the environmental or public health would result if not implemented: None

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

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

(a) Necessity of proposed regulation if in conflict: There is no known conflict.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: There is no known conflict.

(10) Any additional information of comments: None

(11) Tiering: Was tiering applied? No. The concept of tiering is not applicable to this amendment of this administrative regulation. The administrative regulation is intended to provide equal opportunity to participate within parameters prescribed by statute, and consequently does not inherently result in disproportionate impacts on certain classes or regulated entities or address a particular problem to which certain regulated entities do not contribute. Disparate treatment of any person or entity affected by this administrative regulation could raise questions of arbitrary action on the part of the agency. The "equal protection" and "due process" clauses of the Fourteenth Amendment of the U.S. Constitution may be implicated as well as Sections 2 and 3 of the Kentucky Constitution. The regulation provides equal treatment and opportunity for all applicants and recipients.

# KENTUCKY HIGHER EDUCATION ASSISTANCE AUTHORITY (Amendment)

## 11 KAR 12:070. Benefits payable from the Kentucky Educational Savings Plan Trust Program fund.

RELATES TO: KRS 164A.310(8), 164A.330(5), 164A.335, 26 USC 529[PL-105-34]

STATUTORY AUTHORITY: KRS 164A.325(9)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 164A.310(8), 164A.330(5) and 164A.335 establish the statutory framework for payment of benefits from the program fund. This administrative regulation establishes the maximum benefits payable in an 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.

Section 1. Distribution of Benefits. (1) Upon submission of a notice to use trust benefits, the participant shall specify the level of benefits to be paid. The participant shall elect distribution of an allotment of the account balance, calculated by dividing the account balance by the number of academic periods in the beneficiary's program of study, or a higher amount, which shall not exceed the beneficiary's higher education costs for each academic period. The participant may adjust the level of benefits paid in an academic period by notifying the program administrator in writing.

(2) Distribution of benefits shall begin after receipt by the program administrator of a notice to use trust benefits and shall continue throughout the beneficiary's period of enrollment at an institution of higher education, or until the account balance has been exhausted, whichever occurs first.

(3) If a participant transfers ownership rights pursuant to KRS Chapter 385, Uniform Transfers to Minors Act, notwithstanding KRS 385.202(1), which mandates the transfer of custodial property to the minor upon attainment of age eighteen (18), the property shall be distributed for postsecondary educational purposes in accordance with the terms of the participation agreement during each academic period of the beneficiary's educational program.

Section 2. Beneficiary Residing Off Campus. If a beneficiary resides off campus, upon written request of the participant, the program administrator shall pay to the beneficiary, ~~for [in addition to the amounts paid to the institution, an amount equal to the cost of] room and board for an academic period, that portion of higher education costs not paid to the institution that [as established by the institution for an on-campus student. The amounts paid to the institution and the beneficiary] shall not exceed the amount of [payable in an academic period from the program fund or exceed] the beneficiary's higher education costs permitted for room and board pursuant to 26 USC 529 [for that institution].~~

Section 3. Nonenrollment. [(1)] 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, beginning July 1 and ending June 30 of the following year, that begins after the beneficiary attains the age of eighteen (18), or if the beneficiary interrupts enrollment (other than normal intersemester vacation periods), and the trust does not receive a notice to delay benefits, the program administrator shall refund the balance of payments and the earnings from the investments in the program fund remaining in the account in accordance with KRS 164A.350.

~~[(2) A participant shall not delay distribution of benefits more than a total of eight (8) academic periods. After delay of distribution of benefits for eight (8) academic periods:~~

~~(a) Distributions shall be made each academic period until the beneficiary graduates from an institution of higher education or the account balance has been exhausted, whichever occurs first; or~~

~~(b) The balance shall be refunded to the participant pursuant to KRS 164A.350.]~~

Section 4. Unused Benefits. (1) During academic period. If a beneficiary's higher education costs are less than the benefits due for an academic period, that portion of the unused benefits shall accumulate to the beneficiary's account. The unused benefits plus the beneficiary's entitlement in the program fund in an academic period not exceeding the higher education costs may be paid for the beneficiary in the next succeeding academic period.

(2) After graduation. If the beneficiary graduates from an institution of higher education, and a balance remains in the beneficiary's account, the program administrator shall pay the balance of the payments and the earnings from the investments in the program fund remaining in the account to the participant pursuant to KRS 164A.350. The refund shall be made unless the beneficiary plans to continue at a higher education institution and the participant submits a completed notice to delay benefits or notice to use trust benefits.

WAYNE STRATTON, Chairman

RICHARD F. CASEY, General Counsel

APPROVED BY AGENCY: April 26, 1999

FILED WITH LRC: June 14, 1999 at 1 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on Wednesday, July 21, 1999 at 10 a.m. at 1050 U.S. 127 South, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by Wednesday, July 14, 1999, five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: Mr. Richard F. Casey, General Counsel, Kentucky Higher Education Assistance Authority, 1050 U.S. 127 South, Frankfort, Kentucky 40601, (502) 696-7292, Fax Number (502) 696-7293, Email address: [Rcasey@KHEAA.com](mailto:Rcasey@KHEAA.com).

## REGULATORY IMPACT ANALYSIS

Agency Contact: Richard F. Casey

(1) Type and number of entities affected: This proposed amendment modifies the amounts payable for room and board to beneficiaries of the Kentucky Educational Savings Plan Trust who reside off-campus. The proposed amendment also deletes limits on the time period in which benefits must be used. As of April 30, 1999, the Kentucky Educational Savings Plan Trust had 2,989 open accounts.

(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 proposed amendment merely deletes the limit on withdrawal by a participant from the Kentucky Educational Savings Plan Trust for off campus

room and board and deletes the limits on the time period when benefits must be used. Therefore, there are no costs or savings on the costs of living or doing business.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent from the public comments received: Same as (a) above.

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

1. First year following implementation: The proposed amendment is not anticipated to have any effect on compliance, reporting or paperwork requirements or competition.

2. Second and subsequent years: Same as #1 above.

(3) Effect on the promulgating body:

(a) Direct and indirect costs or savings:

1. First year: The proposed amendment is not anticipated to have any effect on the promulgating body.

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: The proposed amendment is not anticipated to have any effect on state or local revenues.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: The proposed amendment is not anticipated to have any costs of implementation or enforcement.

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

(a) Geographical area in which administrative regulation will be implemented: No public comments were received. The proposed amendment is not anticipated to have any economic impact. However, participants will be able to utilize funds from the Kentucky Educational Savings Plan Trust for an unlimited time and for off campus room and board expenses, thus encouraging saving for higher education.

(b) Kentucky: Same as (a) above.

(7) Assessment of alternative methods; reasons why alternatives were rejected: No alternatives were considered.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: The proposed amendment will have no impact on public health or the environment.

(b) State whether a detrimental effect on the environmental or 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: There is no known conflict, overlapping or duplication.

(a) Necessity of proposed regulation if in conflict: None

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: None

(10) Any additional information of comments: None

(11) Tiering: Was tiering applied? No. The concept of tiering is not applicable to this amendment of this administrative regulation. The administrative regulation is intended to provide equal opportunity to participate within parameters prescribed by statute, and consequently does not inherently result in disproportionate impacts on certain classes or regulated entities or address a particular problem to which certain regulated entities do not contribute. Disparate treatment of any person or entity affected by this administrative regulation could raise questions of arbitrary action on the part of the agency. The "equal protection" and "due process" clauses of the Fourteenth Amendment of the U.S. Constitution may be implicated as well as Sections 2 and 3 of the Kentucky Constitution. The regulation provides equal treatment and opportunity for all applicants and recipients.

## PERSONNEL CABINET (Amendment)

### 101 KAR 2:020. Classification plan.

RELATES TO: KRS 18A.005, 18A.030, 18A.032, 18A.110

STATUTORY AUTHORITY: KRS Chapter 13A, 18A.110

NECESSITY, FUNCTION, AND CONFORMITY: KRS 18A.110

requires the Secretary [Commissioner] of Personnel to promulgate comprehensive administrative regulations, consistent with the provisions of KRS Chapter 18A, which govern the classification plan for all positions in the classified service so that the same qualifications may reasonably be required for, and the same schedule of pay equitably applied to, all positions in the same job classification. This administrative regulation is to assure uniformity and equity in administering the plan, in accordance with requirements of the statutes.

Section 1. Interpretation of Class Specifications. (1) Class specifications describe and explain the job duties and responsibilities typically assigned to a position within a particular class.

(2) Class specifications ~~[are descriptive and explanatory. They are designed to]~~ indicate the kinds of positions which should be allocated to the various job classifications as determined by their characteristics and duties or responsibilities.

(3) Characteristic of a class are general statements indicating the level of responsibility and discretion of positions in that job classification.

(4) Examples of duties or responsibilities are not to be construed as describing what the duties or responsibilities of any individual position shall be or; ~~[and are not to be construed]~~ as limiting the appointing ~~[authorities']~~ ability to temporarily take away from, add to, or otherwise alter the duties and responsibilities of an individual [a] position.

(5) The use of an individual expression or illustration describing the [as-to] duties or responsibilities of a class shall not be regarded as excluding assignment of other duties or responsibilities [others] not mentioned which are of similar kind or quality.

(6) ~~[(4)]~~ Minimum requirements are comprehensive statements of the minimum background as to education, experience and other qualifications which will be required in all cases as evidence of an appointee's ability to perform the work properly.

(7) Position descriptions state, in detail, the duties and responsibilities assigned to an individual position. If the duties and responsibilities assigned to a position are to be changed in a material and permanent way, the supervisor making the recommendation shall timely submit to the appointing authority for the agency a position description, stating the duties and responsibilities to be assigned. If the appointing authority approves the material and permanent assignment of the duties and responsibilities, the new position description shall be forwarded to the secretary with the appointing authority's recommendation for reclassification.

Section 2. Official Copy of Class Specifications. (1) The ~~[Department of]~~ Personnel Cabinet shall maintain a master set of all approved class specifications. These ~~[Such]~~ specifications shall constitute the official class specifications in the classification plan. The copies of the specification for each job classification shall indicate the date of adoption or the last revision of the specification.

(2) The ~~[Department of]~~ Personnel Cabinet shall provide each appointing authority with a set of ~~[the]~~ class specifications ~~[of these job classifications to which positions in his department are allocated and such other job classifications as it sees fit].~~ Class specifications shall be available for inspection by any employee or the public under reasonable conditions during business hours.

Section 3. Title of Position and Classification. (1) The title of the job classification to which a position has been allocated shall be used to designate the ~~[such]~~ position in all payrolls and other official records, documents, vouchers, and communications in connection with all personnel processes. For purposes of internal administration or for any other purposes not involving the personnel processes, any office title, abbreviation, or code symbol may be used in lieu of the class title.

(2) The Personnel Cabinet may change the title of a job classification to more accurately describe job functions that have been or may

be assigned to a class.

PAUL E. PATTON, Governor  
CAROL M. PALMORE, Secretary  
DANIEL F. EGBERS, General Counsel

APPROVED: May 21, 1999

FILED WITH LRC: June 10, 1999 at 4 p.m.

**PUBLIC HEARING:** A public Hearing on this administrative regulation shall be held on July 23, 1999 at 9:30 a.m., prevailing local time in Room 508 of the Personnel Cabinet's Offices, 200 Fair Oaks Lane, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify the agency in writing by July 16, 1999, five workdays prior to the hearing of their intent to attend. If no notification of intent to attend is received by that date, the hearing may be cancelled. The hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on this proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to: Daniel F. Egbers, General Counsel, Kentucky Personnel Cabinet, 200 Fair Oaks Lane, Suite 516, Frankfort, Kentucky 40601, telephone: (502) 564-4460, fax number: (502) 564-7603.

#### REGULATORY IMPACT ANALYSIS

Agency Contact: Daniel F. Egbers

(1) Type and number of entities affected: The proposed amendment to this administrative regulation will affect approximately 32,000 employees in the classified service of the executive branch of state government.

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

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented: None anticipated.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented: None anticipated.

(c) Compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon completion), to the extent available from the public comments received, for the:

1. First year following implementation: No significant change is anticipated.

2. Second and subsequent years: No significant change is anticipated.

(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 change anticipated.

(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: Recurring agency base budgets.

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

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

(b) Kentucky: None

(7) Assessment of alternative methods; reasons why alternatives were rejected: No alternative method was considered.

(8) Assessment of expected benefits: The new regulation governing the use of position descriptions should clarify the responsibility of supervisors in making recommendations to appointing authorities for the reclassification of employees when there has been a permanent and material change in the employee's duties and responsibilities. This should help to insure that employees are appro-

priately classified and paid.

(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: This administrative regulation does not impact environmental and public health.

(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: This administrative regulation does not conflict with, overlap or duplicate and existing statute, administrative regulation or government policy, to our knowledge.

(a) Necessity of proposed regulation if in conflict: No conflict is seen.

(b) If in conflict, was the effort made to harmonize the proposed administrative regulation with the conflicting provisions. No conflict is seen.

(10) Any additional information or comments: This administrative regulation incorporates term changes adopted by the General Assembly in the 1998 Session.

(11) TIERING: Is tiering applied? Yes. Although this administrative regulation applies equally to all employees in the classified service of state government, it does not apply to the unclassified service.

#### PERSONNEL CABINET (Amendment)

#### 101 KAR 2:046. Applications, qualifications and examinations.

RELATES TO: KRS 18A.030, 18A.110, 18A.120

STATUTORY AUTHORITY: KRS Chapter 13A, 18A.030, 18A.110, 18A.150

NECESSITY, FUNCTION, AND CONFORMITY: KRS 18A.110 requires the Secretary [Commissioner] of Personnel to promulgate comprehensive administrative regulations, consistent with the provisions of KRS Chapter 18A, which govern open competitive exams to test the relative fitness of applicants and for the rejection of candidates or eligibles who fail to meet reasonable requirements of the secretary [commissioner]. This administrative regulation is necessary to implement these statutory requirements and to assure uniformity in administering exams.

Section 1. Notices of Examinations. (1) Examinations for entrance to the classified service shall be conducted on an open-competitive basis.

(2) For those job classifications in which there is expected to be a considerable and recurring need of eligibles, the secretary [commissioner] shall establish a recruitment program which shall be both positive and continuous.

(3) Under this [such] plan, applications may be:

(a) Accepted at any time; and

(b) Examinations held whenever and wherever the secretary [commissioner] deems it to be in the best interests of [desirable for] the Merit System [service].

(4) If [For those job classifications for which] continuous recruitment is not needed, special announcements will be used.

(5) Eligibles will be listed in rank order of score without respect to the [irrespective of] date on which the examination was taken.

(6) Notice of examinations shall be announced publicly at least ten [10] [fifteen (15)] days prior to the certification of the register and applications shall be accepted up to the date prior to certification of the register.

(7) Examinations may be advertised through the press, radio and other media.

(8) [opening and may be distributed to public officials, employment service offices, newspapers, radio stations, educational institutions, professional and vocational societies, other media and such other individuals and organizations as the commissioner may deem expedient.] The public notice of examination shall specify:

- (a) The title and minimum salary of the job classifications;
- (b) The minimum qualifications required;
- (c) The opening [final] date on which application will be received for placement of the applicant on the register;
- (d) The relative weights to be assigned to different parts of the examination; and
- (e) All other pertinent information and requirements.

Section 2. Minimum Qualifications for Filing. Open-competitive examinations shall be open to all applicants who meet the standards or requirements fixed by the secretary [commissioner] with regard to:

- (a) Education;
- (b) Experience;
- (c) Training;
- (d) licensure;
- (e) Certification; or
- (f) [age, physical condition, and] Such other factors as may be held to relate to the ability of the candidate to perform [with reasonable efficiency] the essential functions of the position with reasonable efficiency.

Section 3. Filing Applications. (1) All applications shall be made on forms prescribed by the secretary [commissioner].

(2) An [Such] application may require information concerning:

- (a) Personal characteristics;
- (b) Education;
- (c) Experience;
- (d) References; and

(e) Other pertinent information. [When the nature of the work is such that age limits are necessary, the commissioner after consultation with the appointing authority may approve the age limits, which shall be stated in the examination announcement.]

(3) All applications shall be signed by the applicant personally or by electronic means and the truth of the statements contained therein certified by such signatures.

(4) Applicants shall:

(a) [must] Meet the minimum qualifications established [specified] in the class specification [announcements] as to education and experience, but:

(b) In no case shall admittance to the examinations constitute assurance of a passing grade.

(5) [(2)] For those job classifications for which there is to be continuous recruitment, a statement shall be included in the announcement to the effect that applications will be received until further notice.

(6) When [(3)] For those job classifications for which continuous recruitment is not needed; special announcement bulletins are [will be] used, [-] applicants shall have at least ten (10) [fifteen (15)] calendar days from the date of the announcement to apply and test for these [special] openings. [The applications will be processed and those applicants who meet the minimum requirements will be notified of the testing dates.]

Section 4. Advance Examinations. (1) If an [Any] applicant [who] does not meet the minimum requirements as to education at the time of application, but [who] will meet these requirements as a result of the completion of currently scheduled [further] educational work in three (3) [which he has scheduled for the six (6)] months following the date of receipt of application, he may be allowed to take the examination with the approval [at the discretion] of the secretary [commissioner].

(2) An applicant taking the examination under this provision shall have his or her name entered on the register up to thirty (30) days prior to completing the educational requirements.

Section 5. Character of Examinations. (1) Examinations shall:

- (a) Be practical in nature;
- (b) Be constructed to reveal the capacity of the candidate for the particular job classification for which he is competing; and
- (c) Consider the applicant's [his] general background and related knowledge; and
- (d) [shall] Be rated impartially.
- (2) The secretary [commissioner] may use a rating of:
  - (a) Education and experience; and
  - (b) Any test of capacity, knowledge, manual skill, character, per-

sonal traits, [or] physical fitness, or any combination of qualifications which, in the secretary's [his] judgment, serves the need to discover the relative fitness of applicants.

Section 6. Conduct of Examinations. (1) Examinations shall be conducted in as many places in the Commonwealth as are found convenient for applicants and practicable for administration.

(2) Reasonable accommodation in testing will be provided upon timely request and receipt of verification of need [if required].

(3) [(2)] The secretary [commissioner] may designate monitors in various parts of the Commonwealth to:

(a) Conduct [take charge locally of] examinations under instructions prescribed by the secretary;

(b) [him] Provide for the compensation of such monitors; and

(c) Make arrangements for the use of public buildings in which to conduct the examinations.

(4) [(3)] Retest procedures.

(a) For open continuous testing an applicant may be admitted to the same exam or its alternate no more than two (2) times within a regular workweek.

(b) For open continuous testing an applicant shall not be permitted to take the same exam or its alternate more than twelve (12) times in a twelve (12) month period beginning with the original date such test is taken.

(c) [~~Retest procedures for examinations listed on special announcements shall be stated on the bulletin.~~]

(d) An eligible who is removed from a register for failure to report [- who fails to make himself available] to an appointing authority or appointing authority's designee for consideration or [who] declines appointment by an appointing authority shall not be allowed to retest for the job class from which removed for three (3) [six (6)] months from the date of removal unless [he has been] restored for reasons satisfactory to the secretary [commissioner] or in accordance with the decision of the Personnel Board on appeal.

Section 7. Rating Examinations. (1) The secretary [commissioner] shall determine the rating or standing of applicants on the register for all examinations.

(2) A [Such] final rating shall be based upon a weighted average of the various parts of the total examination.

(3) All applicants for the same job classification shall be accorded uniform and equal treatment in all phases of the examination procedure.

Section 8. Rating Education and Experience. (1) When the rating of education and experience forms a part of the total examination, the secretary [commissioner] shall determine a procedure for the evaluation of the education and experience qualifications of the applicants.

(2) The formula used in appraisal shall give due regard to recency [recency] and quality as well as quantity of experience and the pertinence [pertinency] of the education.

(3) [(2)] The secretary [commissioner] shall investigate the candidate's educational documentation [record form].

(4) The secretary [commissioner] may investigate the candidate's work history.

(5) If the results of this investigation disclose [bring out] information affecting the rating of education and experience, the secretary [commissioner] may:

(a) Rate the candidate accordingly; or

(b) Make the necessary revision of the rating; and

(c) [so] Notify the candidate.

(6) If [(3)] When the knowledge [knowledges], skills and abilities necessary for a job classification [are those which] cannot [best] be accurately measured by written, performance, or training and experience examination, the secretary [commissioner] may determine the selection method for the classification to be "qualifying".

(a) When a classification is determined to be qualifying the secretary [commissioner] shall notify the Personnel Board of the classification and the minimum requirements.

(b) The secretary [commissioner] shall maintain a list of those classifications which are qualifying along with the minimum requirements for each for public review.

Section 9. Oral Examinations. (1) If [When] an oral examination forms a part of the total examination for a position, the secretary [commissioner] shall appoint one (1) or more oral examination panels as needed.

(2) An oral examination panel shall consist of three (3) or more members who shall be known to be interested in the improvement of public administration and in the selection of efficient government personnel of whom one (1) shall be technically familiar with the character of work in the position for which the applicants will be examined.

(3) Whenever practicable, all candidates for the same job classification who qualify for the oral examination shall be rated by the same oral examination panel.

(4) A member of an oral examination panel shall disclose each instance in which the member [he] knows the applicant personally and shall [may] refrain from rating such applicant.

Section 10. Notice of Examination Results. (1) Each applicant [competitor] shall be notified of the [his] final rating as soon as the rating of the examination has been completed.

(2) Eligibles shall be entitled to information concerning their relative position on the register upon request and presentation of proper identification.

Section 11. Adjustment of Errors. (1) The secretary shall correct a clerical [An] error in the rating of an examination, if the error is called to the attention of the secretary [commissioner] within thirty (30) days after receipt [by the applicant] of the notice of examination results.

(2) Corrections [shall be corrected by the commissioner provided, however, that such corrections] shall not invalidate any certification and appointment previously made.

Section 12. Examination Records. The secretary shall maintain [commissioner shall be responsible for the maintenance of] all records pertinent to applications and examinations for a period of three (3) years [examination programs. Applications and other necessary examination records shall be kept during the life of the register].

PAUL E PATTON, Governor  
CAROL M. PALMORE, Secretary  
DANIEL F. EGBERS, General Counsel

APPROVED BY AGENCY: May 21, 1999

FILED WITH LRC: June 10, 1999 at 4 p.m.

PUBLIC HEARING: A public Hearing on this administrative regulation shall be held on July 23, 1999 at 9:30 a.m., prevailing local time in Room 508 of the Personnel Cabinet's Offices, 200 Fair Oaks Lane, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify the agency in writing by July 16, 1999, five workdays prior to the hearing of their intent to attend. If no notification of intent to attend is received by that date, the hearing may be cancelled. The hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on this proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to: Daniel F. Egbers, General Counsel, Kentucky Personnel Cabinet, 200 Fair Oaks Lane, Suite 516, Frankfort, Kentucky 40601, telephone: (502) 564-4460, fax number: (502) 564-7603.

#### REGULATORY IMPACT ANALYSIS

Agency Contact: Daniel F. Egbers

(1) Type and number of entities affected: The proposed amendment to 101 KAR 2:046 governing applications, qualifications and examinations will affect approximately 32,000 employees in the classified service of the executive branch of state government and an unknown number of potential applicants.

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

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented: None anticipated.

anticipated.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented: None anticipated.

(c) Compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon completion), to the extent available from the public comments received, for the:

1. First year following implementation: No significant change is anticipated.

2. Second and subsequent years: No significant change is anticipated.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

(b) First year: None

(c) Continuing costs or savings: None

1. Additional factors increasing or decreasing costs: None

2. Reporting and paperwork requirements: No change anticipated.

(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: Recurring agency base budgets.

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

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

(b) Kentucky: None

(7) Assessment of alternative methods; reasons why alternatives were rejected: Most of the amendments to this administrative regulation are technical in nature and are offered to comply with changes in statutory language.

(8) Assessment of expected benefits: The change from 15 to 10 days for special announcement bulletins should facilitate recruiting. Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: None

(a) State whether a detrimental effect on environmental and public health would result if not implemented: This administrative regulation does not directly impact environmental and public health.

(b) 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: This administrative regulation does not conflict with, overlap or duplicate an existing statute, administrative regulation or government policy, to our knowledge.

(a) Necessity of proposed regulation if in conflict: No conflict is seen.

(b) If in conflict, was the effort made to harmonize the proposed administrative regulation with the conflicting provisions. No conflict is seen.

(10) Any additional information or comments: The administrative regulation will also incorporate term changes adopted by the General Assembly in the 1998 Session.

(11) TIERING: Is tiering applied? Yes. Although this administrative regulation applies equally to all employees in the classified service of state government, it does not apply to the unclassified service.

#### PERSONNEL CABINET (Amendment)

##### 101 KAR 2:056. Registers.

RELATES TO: KRS 18A.005, 18A.110, 18A.120

STATUTORY AUTHORITY: KRS Chapter 13A, 18A.030, 18A.040, 18A.110

NECESSITY, FUNCTION, AND CONFORMITY: KRS 18A.110 requires the Secretary [Commissioner] of Personnel to promulgate comprehensive administrative regulations, consistent with the provisions of KRS Chapter 18A, which govern the establishment of eligible

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lists for appointment and for the rejection of candidates or eligibles who do not meet reasonable selection requirements of the secretary [commissioner]. This administrative regulation is necessary to comply with these statutory requirements.

Section 1. Notification of Register Vacancies. ~~[It shall be the duty of]~~ The appointing authorities shall ~~[to]~~ notify the secretary, on the prescribed "Certificate of Eligibles" form [commissioner] as far in advance as possible of vacancies in full-time or part-time classified positions to be filled from registers [which may occur in the agencies].

Section 2. Use of Related Registers. (1) The secretary may [commissioner shall] select registers from job classifications for which the minimum qualifications are comparable to or higher than those required for the job classification in which a [the] vacancy exists if there is an inadequate or insufficient register available.

(2) The secretary [commissioner] may, if appropriate, rerate an applicant's training and experience on the basis of the minimum qualification required for the job classification in which the vacancy exists.

Section 3. Duration of Registers. (1) When a register becomes so depleted that the preparation of usable certificates for a major portion of the current [imminent] vacancies in a particular [of the] job classification is impracticable, the register shall be considered exhausted.

(2) A [The] register which has become exhausted shall expire [be considered expired] upon the administration of a superseding examination and the establishment of a register on the basis of that examination.

(3) When a new examination is established for a class, ~~[a register becomes exhausted;]~~ the secretary [commissioner] shall send to each eligible remaining on the current [such] register a notification prior to the administration of a superseding examination.

Section 4. Replenishment of Registers. If the secretary [commissioner] determines that a register, although not exhausted, is inadequate for the filling of anticipated vacancies, the secretary [he] may announce an open competitive examination for the purpose of replenishing such register.

Section 5. Internal Mobility Program. There is established an internal mobility program to facilitate the movement of classified employees to positions in different classes in the state personnel system.

(1) The secretary [commissioner] shall maintain full-time and part-time registers which shall include:

(a) ~~[; in addition to]~~ The names of eligibles for reemployment and appointment, (as provided by 101 KAR 2:066); and

(b) ~~[shall consist of]~~ The names of interested employees with status who:

1. Meet the minimum requirements; and

2. Seek promotion, demotion, or transfer to a position of a different class ~~[and who meet the minimum requirements and pass the appropriate selection method].~~

(2) An employee with status interested in internal mobility shall:

(a) Submit a completed application to the Personnel Cabinet; ~~[Department of Personnel]~~ and

(b) Request placement on the register. [Such employee shall also be required to pass the appropriate examination or selection method before being placed on the register for any job classification outside of their present classification series.]

Section 6. Reemployment Registers. The secretary [commissioner] shall prepare reemployment registers. Reemployment registers shall contain:

(1) The names of former employees, in rank order of seniority, who are exercising their reemployment rights; and

(2) May be combined with lists of current employees in the Internal Mobility Program for the classification.

Section 7. Full-time or Part-time Registers. (1) The secretary [commissioner] shall maintain separate registers for full-time and part-time positions.

(2) An eligible shall notify the cabinet [department] if he wants to be on the register for full time, part time or both.

Section 8. Maximum Number of Classifications. Except for those individuals exercising reemployment rights, no person shall be eligible to have his name placed on the register for more than fifteen (15) individual job classifications at the same [any specific] time.

PAUL E. PATTON, Governor

CAROL M. PALMORE, Secretary

DANIEL F. EGBERS, General Counsel

APPROVED BY AGENCY: May 21, 1999

FILED WITH LRC: June 10, 1999 at 4 p.m.

PUBLIC HEARING: A public Hearing on this administrative regulation shall be held on July 23, 1999 at 9:30 a.m., prevailing local time in Room 508 of the Personnel Cabinet's Offices, 200 Fair Oaks Lane, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify the agency in writing by July 16, 1999, five workdays prior to the hearing of their intent to attend. If no notification of intent to attend is received by that date, the hearing may be cancelled. The hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on this proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to: Daniel F. Egbers, General Counsel, Kentucky Personnel Cabinet, 200 Fair Oaks Lane, Suite 516, Frankfort, Kentucky 40601, telephone: (502) 564-4460, Fax: (502) 564-7603.

### REGULATORY IMPACT ANALYSIS

Agency Contact: Daniel F. Egbers

(1) Type and number of entities affected: The proposed amendment to 101 KAR 2:056 governing registers will affect approximately 32,000 employees in the classified service of the executive branch of state government and an unknown number of potential applicants.

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

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented: None anticipated.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented: None anticipated.

(c) Compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon completion), to the extent available from the public comments received, for the:

1. First year following implementation: No significant change is anticipated.

2. Second and subsequent years: No significant change is anticipated.

(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 change anticipated.

(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: Recurring agency base budgets.

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

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

(b) Kentucky: None

(7) Assessment of alternative methods; reasons why alternatives were rejected: Most of the amendments to this administrative regulation are technical in nature and are offered to comply with changes in statutory language.

(8) Assessment of expected benefits: Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: None

(a) State whether a detrimental effect on environmental and public health would result if not implemented: This administrative regulation does not directly impact environmental and public health.

(b) 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: This administrative regulation does not conflict with, overlap or duplicate an existing statute, administrative regulation or government policy, to our knowledge.

(a) Necessity of proposed regulation if in conflict: No conflict is seen.

(b) If in conflict, was the effort made to harmonize the proposed administrative regulation with the conflicting provisions. No conflict is seen.

(10) Any additional information or comments: The administrative regulation will also incorporate term changes adopted by the General Assembly in the 1998 Session.

(11) TIERING: Is tiering applied? Yes. Although this administrative regulation applies equally to all employees in the classified service of state government, it does not apply to the unclassified service.

#### PERSONNEL CABINET (Amendment)

#### 101 KAR 2:066. Certification and selection of eligibles for appointment.

RELATES TO: KRS 18A.030, 18A.110, 18A.165

STATUTORY AUTHORITY: KRS Chapter 13A, 18A.030, 18A.110

NECESSITY, FUNCTION, AND CONFORMITY: KRS 18A.110 requires the Secretary [Commissioner] of Personnel to promulgate comprehensive administrative regulations, consistent with KRS Chapter 18A, which govern the establishment of eligibility [eligible] lists for appointment, and for consideration for appointment of persons whose scores are included in the five (5) highest scores on the exam. This administrative regulation is necessary to comply with these statutory requirements.

Section 1. Request for Certification of Eligibles. To fill a vacant position in the classified service that is [is] not [otherwise] filled by lateral transfer, reinstatement, reversion or demotion the appointing authority shall submit a request for a register [certification] to the secretary [commissioner] upon a prescribed form. This requisition may be for one (1) or more positions in the same class, in the same county, and shall indicate the number and identity of positions to be filled and the title of the job classification in which they have been allocated and specify all other pertinent information which the appointing authority and the secretary [commissioner] deem necessary. The appointing authority shall make such request as far in advance as possible of the date the position is to be filled [employee is to begin work].

Section 2. Certification of Eligibles. Upon receipt of a requisition, the secretary [commissioner] shall certify and submit in writing to the appointing authority the names of available persons eligible for the position. If one (1) position is involved, the secretary [he] shall certify and submit from the register for that job classification the names of the applicants whose scores are included in the highest five (5) scores earned through the selection method [on the examination], and the names of all internal mobility candidates for that classification. If more than one (1) vacancy is involved, the secretary [commissioner] may certify sufficient additional names [scores] for the agencies' consideration in filling the total number of vacancies [by procedures to retain orderly consideration of eligibles]; however, each appointment shall [must] be made from the internal mobility candidate listing or the eligibles with the five (5) highest scores. Scores shall be considered in whole numbers. The life of a certificate during which action may be taken shall be sixty (60) [forty-five (45)] days from the date of issue

unless otherwise specified on the certification. Any appointment made from such certificate during that time shall not be subject to any change in the condition of the register taking place during that period.

Section 3. Availability. An eligible may at any time during the life of a register have himself listed as available or not available for appointment to a position of that job classification in any county or counties in the state by filing notice to such effect with the secretary [commissioner].

Section 4. Selective Certification. (1) The appointing authority may [shall] specify, in writing, requirements of particular experience, education, or skill if [when he deems] such requirements are necessary for a position. [If,] After investigation of the duties and responsibilities of the position, if the secretary [commissioner] finds that the particular experience, education, or skill is essential for successful performance, the secretary [he] may certify, in order of rank on the register, the names of those persons with the five (5) highest scores who possess those qualifications [specified]. If, in certifying the names of such eligibles, the secretary [commissioner] finds there are fewer than five (5) such eligibles, the secretary [he] shall complete the certificate by adding, after the names of such eligibles, the names of other eligibles available for the appointment in the order of their respective rank on the register.

(2) ~~The appointing authority shall specify in writing exceptional requirements of particular characteristics when he deems such requirements necessary for a position. If, after investigation of the duties and responsibilities of the position, the commissioner finds the exceptional requirement of the characteristic essential for successful performance, he may certify in order of rank on the register the names of those persons who possess the qualifications specified. If, in certifying the names of such eligibles, the commissioner finds there are fewer than five (5) such eligibles, he shall complete the certificate by adding, after the names of such eligibles, the names of other eligibles available for the appointment in the order of their respective rank on the register.~~

(3) ~~The secretary~~ [commissioner] shall transmit a copy of all requests for selective certification to the Personnel Board upon approval of the request.

Section 5. Selection. The final selection by the appointing authority shall be reported in writing to the secretary [commissioner]. At the same time, the appointing authority shall indicate the disposition of the other names listed on the certificate and shall certify to the secretary [commissioner] the nonavailability of any eligibles passed over for that reason.

~~[Section 6. Certification of Names from the Reemployment Register. Whenever a vacancy is to be filled from a reemployment register, the commissioner shall certify the names of eligibles.]~~

PAUL E. PATTON, Governor  
CAROL M. PALMORE, Secretary  
DANIEL F. EGBERS, General Counsel

APPROVED BY AGENCY: May 21, 1999

FILED WITH LRC: June 10, 1999 at 4 p.m.

PUBLIC HEARING: A public Hearing on this administrative regulation shall be held on July 23, 1999 at 9:30 a.m., prevailing local time in Room 508 of the Personnel Cabinet's Offices, 200 Fair Oaks Lane, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify the agency in writing by July 16, 1999, five workdays prior to the hearing of their intent to attend. If no notification of intent to attend is received by that date, the hearing may be cancelled. The hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on this proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to: Daniel F. Egbers, General Counsel, Kentucky Personnel Cabinet, 200 Fair Oaks Lane, Suite 516, Frankfort, Kentucky

VOLUME 26, NUMBER 1 – JULY 1, 1999

40601, telephone: (502) 564-4460, Fax: (502) 564-7603.

PERSONNEL CABINET  
(Amendment)

REGULATORY IMPACT ANALYSIS

Agency Contact: Daniel F. Egbers

(1) Type and number of entities affected: The proposed amendment to 101 KAR 2:066 governing certification and selection of eligibles for appointment will affect approximately 32,000 employees in the classified service of the executive branch of state government and an unknown number of potential applicants.

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

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented: None anticipated.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented: None anticipated.

(c) Compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon completion), to the extent available from the public comments received, for the:

1. First year following implementation: No significant change is anticipated.

2. Second and subsequent years: No significant change is anticipated.

(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 change anticipated.

(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: Recurring agency base budgets.

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

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

(b) Kentucky: None

(7) Assessment of alternative methods; reasons why alternatives were rejected: Most of the amendments to this administrative regulation are technical in nature and are offered to comply with changes in statutory language.

(8) Assessment of expected benefits: Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: None

(a) State whether a detrimental effect on environmental and public health would result if not implemented: This administrative regulation does not directly impact environmental and public health.

(b) 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: This administrative regulation does not conflict with, overlap or duplicate an existing statute, administrative regulation or government policy, to our knowledge.

(a) Necessity of proposed regulation if in conflict: No conflict is seen.

(b) If in conflict, was the effort made to harmonize the proposed administrative regulation with the conflicting provisions. No conflict is seen.

(10) Any additional information or comments: The administrative regulation will also incorporate term changes adopted by the General Assembly in the 1998 Session.

(11) TIERING: Is tiering applied? Yes. Although this administrative regulation applies equally to all employees in the classified service of state government, it does not apply to the unclassified service.

101 KAR 2:076. Vacancies, detail to special duty and temporary overlap.

RELATES TO: KRS 18A.005, 18A.110, 18A.115, 18A.120

STATUTORY AUTHORITY: KRS Chapter 13A, 18A.030, 18A.110

NECESSITY, FUNCTION, AND CONFORMITY: KRS 18A.110 requires the Secretary [Commissioner] of Personnel to promulgate comprehensive administrative regulations, consistent with KRS Chapter 18A, which govern the various types of appointments, [such as probationary, emergency, provisional, reinstatement,] and for such other administrative regulations, not inconsistent with KRS Chapter 18A, as may be proper and necessary. This administrative regulation is necessary to comply with these statutory requirements [and replaces 101-KAR-2:070].

Section 1. Filling of Vacancies. All vacancies in the classified service which are not filled by promotion, transfer, or demotion, shall be filled by probationary appointment, reemployment of career employees or of laid-off employees, reversion, or reinstatement [emergency appointment or provisional appointment].

Section 2. Detail to Special Duty. (1) When the services of an [a permanent] employee with status are needed in a position within an agency other than the position to which regularly assigned, the employee may be detailed to that position for a period not to exceed one (1) year with prior approval of the secretary [commissioner].

(2) For detail to special duty the secretary [commissioner] may waive the minimum requirements when requested and justified by the appointing authority in writing.

(3) Upon approval by the secretary, the appointing authority shall notify the employee, in writing, of:

(a) The detail to special duty;

(b) The reasons for the action; and

(c) The employee's retention of status in the position from which he was detailed to special duty.

Section 3. Temporary Overlap. With the [prior] approval of the secretary [commissioner], an agency may place an employee for training purposes or in the best interest of the state service; in a position currently occupied by another employee for a period not to exceed sixty (60) calendar days, for training purposes or when it is in the best interests of the service.

PAUL E. PATTON, Governor  
CAROL M. PALMORE, Secretary  
DANIEL F. EGBERS, General Counsel

APPROVED BY AGENCY: May 21, 1999

FILED WITH LRC: June 10, 1999 at 4 p.m.

PUBLIC HEARING: A public Hearing on this administrative regulation shall be held on July 23, 1999 at 9:30 a.m., prevailing local time in Room 508 of the Personnel Cabinet's Offices, 200 Fair Oaks Lane, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify the agency in writing by July 16, 1999, five workdays prior to the hearing of their intent to attend. If no notification of intent to attend is received by that date, the hearing may be cancelled. The hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on this proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to: Daniel F. Egbers, General Counsel, Kentucky Personnel Cabinet, 200 Fair Oaks Lane, Suite 516, Frankfort, Kentucky 40601, telephone: (502) 564-4460, Fax: (502) 564-7603.

REGULATORY IMPACT ANALYSIS

Agency Contact: Daniel F. Egbers

PERSONNEL CABINET  
(Amendment)

## 101 KAR 2:095. Classified service administrative regulations.

RELATES TO: KRS 18A.030, 18A.110

STATUTORY AUTHORITY: KRS Chapter 13A, 18A.030, 18A.110

NECESSITY, FUNCTION, AND CONFORMITY: KRS 18A.110

requires the Secretary [Commissioner] of Personnel to promulgate comprehensive administrative regulations consistent with KRS Chapter 18A, which govern [for] the maintenance of employee records, the maintenance of other records and reports in the cabinet [department], and for other conditions of employment. This administrative regulation is necessary to comply with these statutory requirements [and replaces 101 KAR 2:090].

Section 1. Attendance; Hours of Work. (1) The number of hours full-time employees [in state offices in Frankfort] are required to work shall be thirty-seven and one-half (37 1/2) hours per week [uniform for all positions] unless specified otherwise by the appointing authority or the statutes.

(2) The normal work day shall be from 8 a.m. to 4:30 p.m., local time, Monday through Friday.

(3) An appointing authority may require employees to work hours and [work] days other than regular days and hours, [normal] including overtime and inclement weather schedules if it is in the best interest of the agency.

(4) Employees who work for agencies which require more than one (1) shift or seven (7) days a week operation may be reassigned from one shift to another and from one post to another or alternate days off by the agency to meet staffing requirements or to maintain security or provide essential services of the agency.

(5) An [The] employee shall [is required to] give reasonable notice in advance of absence from a work station.

Section 2. Work Station and Temporary Assignment. (1) Each employee shall be assigned a work station by the appointing authority.

(2) A work station may be changed to better meet the needs of the agency.

(3) An employee may be temporarily assigned to a different work station in a different county for a period of up to sixty (60) calendar days. Temporary assignment may be renewed with the approval of the Secretary of Personnel. A temporarily reassigned [- provided that such] employee shall be [is] reimbursed for [his] travel expenses in accordance with regulatory provisions and the appointing authority shall notify [notifies] the employee in writing prior to the effective date of the action.

(4) Nothing within this administrative regulation shall be construed as prohibiting an appointing authority from assigning an employee to work in a different site within the county of employment.

Section 3. Dual Employment. (1) No employee holding a full-time position with the Commonwealth may hold another state position except upon recommendation of the appointing authority and the written approval of the secretary [commissioner].

(2) ~~[A copy of such written approval and a statement of the reasons therefor shall be transmitted to the Governor and the Director of the Legislative Research Commission.]~~ A complete list of all employees holding more than one (1) state position shall be furnished to the Legislative Research Commission quarterly by the secretary [commissioner].

Section 4. Notice of Resignation and Retirement. (1) [Resignations:] An employee who desires to terminate his service with the state shall submit a written resignation or notice of retirement to the appointing authority.

(2) Resignations and notices of retirement shall be submitted at least fourteen (14) calendar days before the final working day. A copy of an employee's resignation shall be attached to the personnel action [advice] effecting the separation and be filed in the employee's service record in the agency and the Personnel Cabinet [department].

(3) Failure of an employee to give fourteen (14) calendar days notice with his resignation or notice of retirement may result in forfei-

(1) Type and number of entities affected: The proposed amendment to 101 KAR 2:046 governing applications, qualifications and examinations will affect approximately 32,000 employees in the classified service of the executive branch of state government and an unknown number of potential applicants.

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

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented: None anticipated.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented: None anticipated.

(c) Compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon completion), to the extent available from the public comments received, for the:

1. First year following implementation: No significant change is anticipated.

2. Second and subsequent years: No significant change is anticipated.

(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 change anticipated.

(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: Recurring agency base budgets.

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

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

(b) Kentucky: None

(7) Assessment of alternative methods; reasons why alternatives were rejected: Most of the amendments to this administrative regulation are technical in nature and are offered to comply with changes in statutory language. The changes to the detail to special duty provision requires the appointing authority to justify the reason for the action and to notify the employee that he or she retains status in the position from which the detailed.

(8) Assessment of expected benefits: The change from fifteen to ten days for special announcement bulletins should facilitate recruiting. Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: None

(a) State whether a detrimental effect on environmental and public health would result if not implemented: This administrative regulation does not directly impact environmental and public health.

(b) 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: This administrative regulation does not conflict with, overlap or duplicate an existing statute, administrative regulation or government policy, to our knowledge.

(a) Necessity of proposed regulation if in conflict: No conflict is seen.

(b) If in conflict, was the effort made to harmonize the proposed administrative regulation with the conflicting provisions. No conflict is seen.

(10) Any additional information or comments: The administrative regulation will also incorporate term changes adopted by the General Assembly in the 1998 Session.

(11) TIERING: Is tiering applied? Yes. Although this administrative regulation applies equally to all employees in the Classified service of state government, it does not apply to the unclassified service.

ture of accrued annual leave.

(4) The effective date of a separation shall be the last work day unless the employee has been approved for the use of annual and compensatory leave prior to termination.

Section 5. Records and Reports. (1) The secretary [commissioner] shall prescribe personnel action forms which appointing authorities shall use to report such personnel actions and status changes [as he may require]. The secretary [commissioner] shall inform the appointing authorities which personnel actions and status changes must be reported [to him]. The appointing authority shall provide a copy of a personnel action form to the employee affected by such action.

(2) The secretary [commissioner] shall maintain a leave record showing for each employee:

- (a) Annual leave earned, used and unused;
- (b) Sick leave earned, used and unused;
- (c) Compensatory leave earned, used and unused; and
- (d) Special leave or any other leave with or without pay. [Such

record shall be documentary evidence to support and justify authorized leave of absence with pay.]

Section 6. Telecommuting. (1) Telecommuting is a work arrangement where selected state employees are allowed to perform the normal duties and responsibilities of their positions through the use of computer or telecommunications at home or another place apart from the employees' usual work station.

(2) An appointing authority may establish a telecommuting program for all or any part of the agency.

(3) Eligibility and selection for participation in such a program is solely the decision of the agency, with no implied or specific right to participation being granted to any employee.

(4) The telecommuter's conditions of employment shall remain the same as for nontelecommuting employees.

(a) Employee salary, benefits and employer-sponsored insurance coverage shall not change as a result of telecommuting.

(b) The telecommuter shall be responsible for the security and confidentiality of data, as well as the protection of state-provided equipment, used and accessed during telecommuting.

(c) The telecommuter must agree to maintain a clean, safe workplace.

(d) On-site visits by the employer for monitoring of safety issues shall be arranged in advance.

Section 7. Guidelines for the Kentucky Employees Charitable Campaign. (1) General Purpose. The Kentucky Employees Charitable Campaign was established to:

(a) Provide an opportunity for employees to contribute to eligible Kentucky organizations through the state's payroll deduction process;

(b) Ensure accountability for participants in regard to the funds raised;

(c) Encourage the involvement of state employees as responsible citizens;

(d) Give recognition to state employee volunteers; and to minimize workplace disruption and administrative costs to Kentucky taxpayers by allowing only one (1) statewide payroll deduction charitable solicitation per year.

(2) Definitions. For the purpose of the Kentucky Employees Charitable Campaign:

(a) A "charitable federation" is a legally constituted grouping, made up of or supporting at least ten (10) health and human welfare organizations, all of which qualify as exempt voluntary charitable organizations under the IRS Code Section 501(c)(3), and which have a substantial Kentucky presence.

(b) "Substantial Kentucky presence" means a facility, staffed by professionals or volunteers, available to provide its services and open at least fifteen (15) hours a week and with a regional or statewide presence.

1. Services shall be available to state employees in the local community.

2. Services shall directly benefit human beings whether children, youth, adults, the aged, the ill and infirm, or the mentally or physically disabled.

3. Services must consist of care, research, education or prevention in the fields of human health or social adjustment and rehabilitation; relief for victims of natural disasters and other emergencies; or assistance to those who are impoverished and in need of food, shelter, clothing and basic human welfare services.

(c) "Approved charitable federation" means any charitable organization which:

1. Qualifies as a charitable federation with a substantial Kentucky presence; and

2. Has been approved by the Secretary of Personnel for participation in the campaign and demonstrates:

a. Proof of tax exempt status under Internal Revenue Code 501(c)(3).

b. Proof of current registration and compliance with the reporting requirements of the Secretary of State and the Office of the Attorney General.

c. Proof of financial responsibility, including but not limited to:

(i) Adoption of a detailed annual budget;

(ii) Use of generally accepted accounting principles and procedures;

(iii) The board of directors' approval for deviations from the approved budget;

(iv) An annual financial audit.

d. Proof of direction by an active volunteer board of directors which meets regularly and whose members serve without compensation.

e. A written nondiscrimination policy.

f. Public disclosure of fund raising administrative costs with a statement demonstrating that, if fund and administrative expenses are in excess of twenty-five (25) percent of total support and revenue, actual expense for those purposes are reasonable under all the circumstances in its case.

g. Publication of an annual report available to the general public, which includes a full description of the organization's Kentucky activities including fundraising activities.

h. Federations may apply on behalf of all their member organizations. Both federations and all federation members shall meet these criteria.

(d) "Designated nonprofit agency" means any organization with proof of tax-exempt status under Internal Revenue Code 501(c)(3) which is written in on a pledge card by a state employee as a choice to receive contributions.

(e) "State employee" means a person, including an elected public official, who is employed by any department, board, agency or branch of state government, except one (1) relating to any of the state colleges or universities.

(3) Authority of the Secretary of Personnel.

(a) The Secretary of Personnel shall have the full authority over the procedures and policies relating to the operation of the Kentucky Employees Charitable Campaign.

(b) The secretary shall designate a group of state employees to compose the Kentucky Employees Charitable Campaign Committee to make recommendations on such matters.

(c) The committee will be composed of a cross-section of state employees, involving the large cabinets and small agencies.

(d) The chair of the committee shall be appointed by the secretary.

(4) Functions of the committee. The committee may make recommendations on the following:

(a) Designation of a campaign administrator.

1. The campaign administrator shall serve for a minimum period of two (2) years.

2. The campaign administrator will be charged to manage and administer the charitable fund campaign for the Commonwealth, subject to the direction and control of the Secretary of Personnel. The campaign administrator shall have statewide workplace campaign experience and have the necessary staff and volunteer support to administer the Kentucky Employee Charitable Campaign.

(b) Establishment of minimum amount, based on cost effectiveness, that an employee may authorize to be deducted for each approved federation.

(c) The format of the brochure, pledge card and other promotional materials for the annual campaign.

(d) The dates and duration of the campaign.

(e) The annual campaign budget submitted by the campaign administrator.

(f) The costs of the campaign, which will be detailed in the budget, shall be borne by each recipient organization proportionally.

(5) Charitable federations to apply for statewide campaign.

(a) Federations desiring inclusion shall make application by February 15 of each year.

(b) Federations that have previously participated in the campaign may update their application with a letter and a copy of the most recent year's audit.

(c) Any charitable organization that has previously participated in the campaign is eligible as long as it fulfills all conditions of eligibility.

(6) The campaign administrator. The campaign administrator responsibilities include:

(a) Provide staffing to manage and administer the annual campaign. This includes preparing drafts of campaign materials for consideration by the Secretary of Personnel.

(b) Serves as the central accounting point for both campaign cash and for payroll deductions received from the Personnel Cabinet including:

1. The preparation and submission of an annual campaign budget. Costs of the campaign will be divided among recipient organizations.

2. A separate account maintained for managing the income and expenses of the campaign.

(c) Distribute campaign funds received from the Personnel Cabinet to participating organizations in accordance with agreed upon time periods. This includes distribution of funds to designated nonprofit agencies.

(d) Provide an end-of-campaign report to the Secretary of Personnel and to participating organizations.

(e) Annually furnish a financial statement prepared by a certified public accountant.

Section 8. Workplace Violence Policy. (1) Workplace violence is:

(a) The attempted, threatened, or actual conduct of a person who endangers or is likely to endanger the health and safety of state employees or the general public; or

(b) Any threatening statement, harassment or behavior that gives a state employee or member of the general public reasonable cause to believe that his health or safety is at risk.

(2) Examples of prohibited workplace violence include, but are not limited to:

(a) Threats of harm;

(b) Brandishing or displaying a weapon or an object that looks like a weapon in a manner which would present a safety risk to state employees or a member of the general public or threatens or intimidates them;

(c) Intimidating, threatening, or directing abusive language toward another person, either verbally, in writing or by gesture;

(d) Stalking;

(e) Striking, slapping or otherwise physically attacking another person;

(f) Disobeying or failing to follow the reasonable directive of a supervisor to take action or cease actions which create a risk to the health or safety of state employees or the public or threatens or intimidates them.

(3) Violation of this section shall constitute grounds for disciplinary action and referral for criminal prosecution.

Section 9. Issuance of Paychecks to State Employees. (1) Paychecks shall be issued to state employees on the 15th and 30th day of each month.

(2) If the regularly scheduled pay date falls on a weekend, paychecks shall be issued on the preceding Friday.

(3) If the regularly scheduled pay date falls on a state holiday as defined in KRS 18A.190, paychecks shall be issued on the workday preceding the holiday.

PAUL E. PATTON, Governor  
CAROL M. PALMORE, Secretary

DANIEL F. EGBERS, General Counsel

APPROVED BY AGENCY: May 21, 1999

FILED WITH LRC: June 10, 1999 at 4 p.m.

PUBLIC HEARING: A public Hearing on this administrative regulation shall be held on July 23, 1999 at 9:30 a.m., prevailing local time in Room 508 of the Personnel Cabinet's Offices, 200 Fair Oaks Lane, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify the agency in writing by July 16, 1999, five workdays prior to the hearing of their intent to attend. If no notification of intent to attend is received by that date, the hearing may be cancelled. The hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on this proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to: Daniel F. Egbers, General Counsel, Kentucky Personnel Cabinet, 200 Fair Oaks Lane, Suite 516, Frankfort, Kentucky 40601, telephone: (502) 564-4460, Fax: (502) 564-7603.

#### REGULATORY IMPACT ANALYSIS

Agency Contact: Daniel F. Egbers

(1) Type and number of entities affected: The proposed amendment to 101 KAR 2:095, Classified service administrative regulations will affect approximately 32,000 employees in the classified service of the executive branch of state government.

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

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented: None anticipated.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented: None anticipated.

(c) Compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon completion), to the extent available from the public comments received, for the:

1. First year following implementation: No significant change is anticipated.

2. Second and subsequent years: No significant change is anticipated.

(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 change anticipated.

(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: Recurring agency base budgets.

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

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

(b) Kentucky: None

(7) Assessment of alternative methods; reasons why alternatives were rejected: Most of the amendments to this administrative regulation are technical in nature and are offered to comply with changes in statutory language. The substantive amendments establish a telecommuting policy, guidelines for the Kentucky Employees Charitable Campaign, and workplace violence.

(8) Assessment of expected benefits: Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: Telecommuting can be a valuable form of reasonable accommodation for employees with disabilities. The workplace violence policy prohibits and defines threatening conduct and enables a supervisor to take direct and immediate ac-

tion to deal with a threat in the workplace.

(a) State whether a detrimental effect on environmental and public health would result if not implemented: This administrative regulation does not directly impact environmental and public health other than as noted above.

(b) 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: This administrative regulation does not conflict with, overlap or duplicate an existing statute, administrative regulation or government policy, to our knowledge.

(a) Necessity of proposed regulation if in conflict: No conflict is seen.

(b) If in conflict, was the effort made to harmonize the proposed administrative regulation with the conflicting provisions. No conflict is seen.

(10) Any additional information or comments: The administrative regulation will also incorporate term changes adopted by the General Assembly in the 1998 Session.

(11) TIERING: Is tiering applied? Yes. Although this administrative regulation applies equally to all employees in the classified service of state government, it does not apply to the unclassified service.

# PERSONNEL CABINET (Amendment)

## 101 KAR 2:105. Sick leave sharing procedures.

RELATES TO: KRS 18A.030, 18A.110, 18A.196, 18A.197

STATUTORY AUTHORITY: KRS 18A.030, 18A.110, 18A.197

NECESSITY, FUNCTION, AND CONFORMITY: KRS 18A.197(9)

[(9)] requires the Secretary [Department] of Personnel to promulgate procedural administrative regulations to implement the sick leave sharing program.

Section 1. [~~Sick Leave Sharing Procedures.~~ (4)] Definitions. (1) [(a)] "Employee" means any [an] employee in active payroll status. An employee who has resigned or retired or who has been placed in unpaid leave status by a personnel action shall not qualify to donate or receive sick leave under the Sick leave sharing program.

(2) [(b)] "Immediate family" means:

(a) The employee's spouse, mother, father, grandparent, son or daughter; or

(b) Person of similarly close [blood or legal] relationship:

1. Who has resided with the employee for at least [not less than] thirty (30) days prior to application; or

2. For whom the employee is legally responsible.

(3) [(c)] "Medically certified illness, injury, impairment or physical or mental condition" means a disabling medical condition which has rendered or will render [renders] the employee completely incapable of performing the essential duties of his job due to:

(a) The employee's personal illness; or

(b) The medically certified necessity that the employee care for an eligible family member.

Section 2. Procedures and Restrictions. (1) The ten (10) consecutive days of leave required for eligibility may be leave with or without pay.

(2) Sick leave sharing shall not be authorized for mere convenience or employee preference.

(3) [(2)] Sick leave shall not be donated in an amount less than seven and one-half (7.5) hours.

(4) [(3)] Where multiple donors donate sick leave to an eligible recipient, agencies shall transfer leave in chronological order of receipt of the donation forms, up to the maximum amount that has been certified to be needed by the recipient.

(5) [(4)] The applicant for sick leave sharing shall be responsible for filing the appropriate medical certificates and applications.

(6) Donated sick leave shall not be utilized retroactively except to cover the period between the date the request was submitted to the

employee's supervisor or agency representative and the date of approval by the appointing authority.

(7) [(5)] The sick leave sharing recipient shall be responsible for monitoring the amount of sick leave donated and used.

(8) [(6)] Donated sick leave shall be used in the order in which it is donated and shall be used on consecutive days except as provided by subsection (9) [(7)] of this section.

(9) Any leave that an employee accrues while receiving donated sick leave shall be used before donated sick leave.

(10) [(7)] When the recipient of donated leave returns to work, unused donated leave shall be restored to the donors in reverse order of donation, unless the recipient provides medical evidence that [he will require] continued, periodic medical treatment relating to the original condition for which leave was donated is required.

(11) [(8)] If a sick leave donor resigns, retires or is otherwise terminated from state employment before the process of transferring leave to the recipient has begun, such leave shall not be available for use by the recipient.

(12) [(9)] An appointing authority may require a sick leave recipient to provide an updated medical certificate attesting to the continued need for leave after thirty (30) working days of sick leave.

(13) [(10)] An employee receiving workers' compensation benefits is eligible to receive shared sick leave to maintain a regular level of pay.

PAUL E. PATTON, Governor

CAROL M. PALMORE, Secretary

DANIEL F. EGBERS, General Counsel

APPROVED BY AGENCY: May 21, 1999

FILED WITH LRC: June 10, 1999 at 4 p.m.

PUBLIC HEARING: A public Hearing on this administrative regulation shall be held on July 23, 1999 at 9:30 a.m., prevailing local time in Room 508 of the Personnel Cabinet's Offices, 200 Fair Oaks Lane, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify the agency in writing by July 16, 1999, five workdays prior to the hearing of their intent to attend. If no notification of intent to attend is received by that date, the hearing may be cancelled. The hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on this proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to: Daniel F. Egbers, General Counsel, Kentucky Personnel Cabinet, 200 Fair Oaks Lane, Suite 516, Frankfort, Kentucky 40601, telephone: (502) 564-4460, Fax: (502) 564-7603.

## REGULATORY IMPACT ANALYSIS

Agency Contact: Daniel F. Egbers

(1) Type and number of entities affected: The proposed amendment to 101 KAR 2:105, Sick leave sharing procedures will affect approximately 32,000 employees in the classified service of the executive branch of state government.

(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 impact anticipated.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented: None anticipated.

(c) Compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon completion), to the extent available from the public comments received, for the:

1. First year following implementation: No significant change is anticipated.

2. Second and subsequent years: No significant change is anticipated.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1 First year: None anticipated.

2. Continuing costs or savings: None anticipated.
3. Additional factors increasing or decreasing costs: None
- (b) Reporting and paperwork requirements: No change anticipated.
- (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: Recurring agency base budgets.
- (6) To the extent available from public comments received, the economic impact, including effects of economic activities arising from administrative regulation on:
  - (a) Geographical area in which administrative regulation will be implemented: None
  - (b) Kentucky: None
  - (7) Assessment of alternative methods; reasons why alternatives were rejected: Most of the amendments to this administrative regulation are technical in nature and are offered to comply with changes in statutory language. The substantive amendments clarify the qualification of family members whose illness could result in sick leave sharing.
  - (8) Assessment of expected benefits: Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: Please see item (7) above. No direct impact on public health or environmental welfare is anticipated.
    - (a) State whether a detrimental effect on environmental and public health would result if not implemented: This administrative regulation does not directly impact environmental and public health other than as noted above.
    - (b) 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: This administrative regulation does not conflict with, overlap or duplicate an existing statute, administrative regulation or government policy, to our knowledge.
    - (a) Necessity of proposed regulation if in conflict: No conflict is seen.
    - (b) If in conflict, was the effort made to harmonize the proposed administrative regulation with the conflicting provisions. No conflict is seen.
  - (10) Any additional information or comments: The administrative regulation will also incorporate term changes adopted by the General Assembly in the 1998 Session.
  - (11) TIERING: Is tiering applied? Yes. Although this administrative regulation applies equally to all employees in the classified service of state government, it does not apply to the unclassified service.

# PERSONNEL CABINET (Amendment)

## 101 KAR 2:120. Incentive programs.

RELATES TO: KRS 18A.110, 18A.202

STATUTORY AUTHORITY: KRS Chapter 13A, 18A.202

NECESSITY, FUNCTION, AND CONFORMITY: KRS 18A.110 requires the Secretary [Commissioner] of Personnel to promulgate comprehensive administrative regulations consistent with KRS Chapter 18A, to implement work related incentive programs for state employees. This administrative regulation is necessary to comply with these statutory provisions.

Section 1. [Definitions: (1) Suggestion system coordinator means a designee of the appointing authority who reviews and processes evaluations from the cabinet or agency and brings suggestions approved by the agency to the attention of the suggestion council.

(2) Employee suggestion council means a group comprised of cabinet or agency suggestion system coordinators.

(3) Chairman of the employee suggestion council means a designee of the Commissioner of Personnel who shall provide administrative support to the council.

Section 2.] Employee Suggestion System. (1) Administration. Employees with status in the classified service may be recognized and rewarded for submitting suggestions that result in the improvement of state service or in the realization of financial savings by the state.

(a) The [(2) An employee suggestion system] council, headed by the chairperson designated by the Secretary of Personnel, shall develop procedures to ensure proper evaluation of each suggestion, review and act upon, by approval or denial [rejection], any suggestion presented to the council by a cabinet or agency, and review denials as set forth in subsection (4) of this section [5 of this administrative regulation]. Only designated coordinators shall have the right to present recommended suggestions to the council and to vote on them. The [employee suggestion system] council may defer action for [on a suggestion in order to obtain additional information or may defer action] up to one (1) year and one (1) month pending documentation of cash savings. The council shall receive administrative support from the Personnel Cabinet. The [employee suggestion system] council shall prepare an annual report to be submitted to the Secretary of Personnel [commissioner] that shall include the number of suggestions received and the status of each suggestion. The council shall meet at a minimum on a quarterly basis or upon the request of the council chairperson or a majority of the coordinators [chairman].

(b) [(3)] Each cabinet secretary or agency head shall designate, in writing, the appointment of a [an employee suggestion system] coordinator who shall also serve on the [employee suggestion system] council. The coordinator shall receive suggestions and establish and maintain internal procedures to ensure appropriate evaluation of suggestions. Suggestions may be made by employees to their [of his] cabinet or agency or [and such suggestions that] may be forwarded from other [cabinet] coordinators if they [that] affect the coordinator's [his] agency. The coordinator shall present suggestions recommended for approval by his cabinet or agency to the council for consideration.

(2) [Section 3:] Eligibility.

(a) [(4)] A suggestion is a positive idea which explains how to improve methods, equipment or procedures; reduces time and/or cost of a work operation; creates a safer work environment; increases revenue; or improves relationships with or services for [to] the public.

(b) [(2)] The suggestion must present an improvement in state service or function; [and must] explain how the change would be accomplished; and define what benefits would be realized by [result to] the state, particularly in terms of efficiency, effectiveness, safety, economy, conservation of energy resources, or public relations. The suggestion shall be submitted on the form designated by the council and be accompanied by exhibits or illustrations as needed.

1. [(a)] Suggestions must be practicable, useful, and constructive.

2. [(b)] A suggestion that requires legislative or regulatory changes for implementation may be submitted. However, it is the responsibility of the agency that desires to implement the suggestion to request the necessary legislative or regulatory changes. Upon appropriate legislative action or administrative regulation changes, the suggestion shall [may] be considered for an award.

3. A suggestion which has been implemented and which will result in cost savings or improvement in government operations shall be eligible for an award if it is submitted on a form designated by the council within thirty (30) working days of implementation of the suggestion by an agency.

(c) [(3)] The following suggestions are not eligible for a cash award:

1. [(a)] A suggestion that falls within the scope of the duties of the suggester and which the suggester has the authority to initiate or implement without other administrative approval. "Scope of duties" shall include [be defined as] a specific set of tasks as set forth in the position description of the suggester at the time the suggestion is submitted. [Authority is defined as the power to implement the suggestion.]

2. [(b)] Suggestions related to a particular problem given to an employee to solve within the scope of his duties and responsibilities.

3. [(c)] Suggestions made by members of the council or a cabinet/agency suggestion review committee.

4. [(d)] Suggestions which include proposals to perform routine maintenance operations or follow manufacturer's recommendations.

5. [(e)] Suggestions to make a change which has been documented in writing as already under consideration by those administratively responsible.

6. [(f)] Suggestions which correct an error or [a] condition that exists only because established procedures are not followed.

(d) [(4)] If more than one (1) suggester makes significant contributions to the idea, the suggestion may be submitted jointly, with any award being divided equally between or among the suggesters.

(e) [(5)] The first suggestion received takes precedence over all future suggestions having the same purpose. If two (2) or more suggestions deemed similar are received on the same day, any award granted will be divided equally between or among the suggesters.

(f) [(6)] Suggestions shall be considered confidential communications among the suggesters and the employees [employee] and officers whose responsibility it is to process, investigate, review, or evaluate suggestions.

(3) [Section 4:] General provisions.

(a) [(+)] The cabinet or agency head shall establish an internal system for receipt, evaluation, and reconsideration of employee suggestions. This system shall, at a minimum, include the following:

1. [(a)] A method to notify the suggester, in writing, that the suggestion has been received, and to [periodically] notify the suggester, in writing, of any change in the status of the suggestion.

2. [(b)] A method to document the original suggestion, evaluation, and action taken.

3. [(c)] A method to prepare and present documentation of suggestions for recommendation to the [employee suggestion system] council.

(b) [(2)] Eligibility of a suggestion shall be evaluated according to the circumstances existing at the time the suggestion was made. An evaluation shall be completed by a person with expertise in the area under consideration. The results of the evaluation shall be recorded on the form designated by the council, and the form shall be dated and signed by the individual making the evaluation.

(c) The suggester [(3) Suggesters] shall be notified in writing of the disposition of the [their] suggestion within ninety-five (95) calendar days of receipt by the coordinator. If all parties involved agree, an extension of time may be granted when extenuating circumstances exist.

1. [(a)] A suggestion shall be considered to be active and eligible for an award until the suggester is notified, in writing, that the suggestion has been approved or denied.

2. [(b)] When it is determined that a suggestion will not be implemented, the coordinator shall notify the suggester, in writing, stating the reason it was not implemented.

3. [(c)] When an eligible suggestion is not adopted and conditions under which it was originally considered have changed, the suggester may request reevaluation by the cabinet or agency. Such request shall be in writing, shall be evaluated by the next level of supervision, and shall be received by the agency within one (1) year from the date of rejection. The request shall include [be accompanied by] information regarding [of] the change in conditions [of circumstances].

(d) [(4)] When a suggestion is approved and implemented by the cabinet(s) or agency(ies), the suggester's [determined to be of benefit as set forth in Section 2(1) of this administrative regulation, the cabinet] coordinator shall recommend approval of the suggestion to the council.

1. [(a)] The recommendation shall contain:

a. [1:] The suggestion as completed by the suggester on the form designated by the council;

b. [2:] The evaluation forms completed according to the criteria [as] set forth in this administrative regulation; and

c. [3:] A statement of actual or projected cost savings using generally accepted accounting principles.

2. Upon receipt of the council's decision, the chairperson [(b) The chairman] of the council shall send written notification of the council's action to the suggester's [cabinet] coordinator and the coordinator shall then provide written notification to the suggester regarding the decision [of the council's action].

(c) Upon receipt of the council's decision, the coordinator shall notify the employee, in writing, of the decision.

3. [(d)] When an eligible suggestion is denied by the council, the suggestion shall remain on active file with the council for a period of one (1) year from the date of denial.

(e) [(5)] Award of cash payment shall be in accordance with KRS 18A.202.

1. [(a)] The calculation of cash payment shall be calculated based upon [represents] the amount saved over the period of one (1) year minus [-less] implementation costs and shall [-to] be determined according to generally accepted accounting principles.

2. [(b)] The award check shall be issued by the agency where the suggester is employed. Funds for payment shall come from the agency or agencies implementing the suggestion. The agency issuing the check may interaccount other agencies implementing the suggestion for a proportionate share of the total [amount of the] award amount.

3. [(c)] When a suggestion which may result in [is made promoting] financial savings to the state and [for which] proper documentation of cost savings has not yet been obtained, the council may request that each agency implementing the suggestion maintain records which document [documenting] the cost savings for a period not to exceed one (1) year from the date of implementation. Documentation shall be carried out according to generally accepted accounting principles. This cost savings analysis [and] shall be forwarded by the coordinator to the council chairperson within thirty (30) work days of its completion [by the coordinator to the chairman of the council].

(f) [(6)] When a [an employee] suggestion has been approved by the council and has resulted in a financial savings to the state, the suggester [employee who submitted the suggestion] shall be compensated in an amount of ten (10) percent of the amount saved over one (1) calendar year, with a minimum of \$100[-] and [with] a maximum of \$2,500. When a [an employee] suggestion [has been] approved by the council results [and has resulted] in an intangible improvement in state service, the suggester [employee] shall be compensated in the amount of \$100. Upon the suggester's [employee's] receipt of compensation, the suggestion becomes the property of the state.

(4) [Section 5:] Reconsideration.

(a) [(+)] A suggester may request reconsideration of a suggestion that has not received approval from the cabinet or agency within ten (10) work days of the date that written notice of denial [disapproval] is received by the suggester [employee].

(b) [(2)] The suggester shall request reconsideration, in writing, and shall set forth the basis for the request. The request shall be filed with the coordinator within [the aforementioned] ten (10) days of the date of the denial [day period]. When the tenth day falls on a day that the cabinet or agency office is closed during regular [normal] work hours, the request may be filed on the next work day.

(c) Within thirty (30) work days [(3)] the cabinet or agency shall act on the request for reconsideration [within thirty (30) work days] and notify the suggester [respond to the employee], in writing, of [setting forth] the reason for the decision.

(5) [Section 6:] Council review.

(a) [(+)] A suggestion may be reviewed by the council on its own motion, or upon request of the suggester. When a suggestion has been reconsidered and denied by the cabinet or agency, the suggester may request a review by the council. The suggester may request review within thirty (30) days of receipt of the written notification of the outcome of the reconsideration and shall set forth, in writing, the basis for his request. The request shall be filed in the office of the employee suggestion system chairperson [chairman] within the aforementioned thirty (30) day period. When the 30th day falls on a day that the chairperson's [chairman's] office is closed during regular [normal] work hours, the request may be filed on the next work day.

(b) [(2)] The council shall complete the review within ninety (90) calendar days of the date that the chairperson receives the request for review [is received by the chairman].

(c) [(3)] The council chairperson [chairman of the council] shall notify the agency head of the council's findings [of the council's review] and its recommendation concerning the suggestion's implementation or denial [suggestion to be implemented or denied].

**Section 2. Adoption Benefit Program.** (1) The Personnel Cabinet shall administer a program to provide financial assistance as an incentive to state employees in the executive branch who adopt a child on or after November 1, 1998.

(2) A state employee who finalizes a legal adoption procedure for the adoption of a child, other than the child of a spouse, on or after November 1, 1998, shall be eligible to receive reimbursement for actual costs associated with the adoption of a special needs child

as defined by KRS 199.555(1), or other child. Funding for this program is limited to \$150,000 in any fiscal year.

(3) The employee may receive:

(a) Up to \$5,000 in unreimbursed direct costs related to the adoption of a special needs child; or

(b) Up to \$3,000 in unreimbursed direct costs related to the adoption of any other child.

(4) Unreimbursed direct costs related to the adoption of a special needs child or other child may include:

(a) Licensed adoption agency fees;

(b) Legal fees;

(c) Medical costs;

(d) Court costs; and

(e) Other reasonable fees or costs associated with child adoption as allowed by state and federal law and reviewed and approved by the court at the time of finalization of the adoption.

(5) Application for financial assistance shall be made to the Secretary of Personnel and supported by documentary evidence of:

(a) Finalization of the adoption;

(b) Certification by the Secretary of the Cabinet for Families and Children that the adopted child is a special needs child, if reimbursement for special needs adoption is sought; and

(c) A copy of an affidavit of expenses related to the adoption filed with and approved by the court at the time of finalization of the adoption.

(6) If both adoptive parents are executive branch state employees, the application for financial assistance shall be made jointly and the amount of reimbursement shall be limited to that specified in subsection (3) of this section.

(7) Upon approval of the application for financial assistance, the employee's agency shall dispense funds in the amount authorized by the Secretary of Personnel, provided that the amount available for the program has not been exhausted.

PAUL E. PATTON, Governor

CAROL M. PALMORE, Secretary

DANIEL F. EGBERS, General Counsel

APPROVED BY AGENCY: May 21, 1999

FILED WITH LRC: June 10, 1999 at 4 p.m.

PUBLIC HEARING: A public Hearing on this administrative regulation shall be held on July 23, 1999 at 9:30 a.m., prevailing local time in Room 508 of the Personnel Cabinet's Offices, 200 Fair Oaks Lane, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify the agency in writing by July 16, 1999, five workdays prior to the hearing of their intent to attend. If no notification of intent to attend is received by that date, the hearing may be cancelled. The hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on this proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to: Daniel F. Egbers, General Counsel, Kentucky Personnel Cabinet, 200 Fair Oaks Lane, Suite 516, Frankfort, Kentucky 40601, telephone: (502) 564-4460, Fax: (502) 564-7603.

#### REGULATORY IMPACT ANALYSIS

Agency Contact: Daniel F. Egbers

Type and number of entities affected: The proposed amendment to 101 KAR 2:120, Incentive programs will affect approximately 32,000 employees in the classified service of the executive branch of state government.

(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 impact anticipated.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented: None anticipated.

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

completion), to the extent available from the public comments received, for the:

1. First year following implementation: No significant change is anticipated. Employees will apply to the Personnel Cabinet as the single point of contact for adoption expense reimbursement under a procedure already in place.

2. Second and subsequent years: No significant change is anticipated.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: None anticipated.

2. Continuing costs or savings: None anticipated.

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: No change anticipated.

(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: Recurring agency base budgets.

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

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

(b) Kentucky: None

(7) Assessment of alternative methods; reasons why alternatives were rejected: Most of the amendments to this administrative regulation are technical in nature and are offered to comply with changes in statutory language. The substantive amendments outline qualification for adoption expense reimbursement.

(8) Assessment of expected benefits: Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: Please see item (7) above. No direct impact on public health or environmental welfare is anticipated. There is an indirect benefit to public health from encouraging citizens to adopt children by providing reimbursement for expenses to employees.

(a) State whether a detrimental effect on environmental and public health would result if not implemented: This administrative regulation does not directly impact environmental and public health other than as noted above.

(b) 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: This administrative regulation does not conflict with, overlap or duplicate an existing statute, administrative regulation or government policy, to our knowledge.

(a) Necessity of proposed regulation if in conflict: No conflict is seen.

(b) If in conflict, was the effort made to harmonize the proposed administrative regulation with the conflicting provisions. No conflict is seen.

(10) Any additional information or comments: The administrative regulation will also incorporate term changes adopted by the General Assembly in the 1998 Session.

(11) TIERING: Is tiering applied? Yes. This administrative regulation applies equally to all employees in the classified and unclassified services of state government in the executive branch, but not to other state employees.

#### PERSONNEL CABINET (Amendment)

##### 101 KAR 2:140. Workers' Compensation Fund and Program.

RELATES TO: KRS 18A.110, 342.640

STATUTORY AUTHORITY: KRS Chapter 13A, 18A.030, 18A.110  
NECESSITY, FUNCTION, AND CONFORMITY: KRS 18A.110

requires the Secretary [Commissioner] of Personnel to promulgate comprehensive administrative regulations consistent with KRS Chap-

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ter 18A, to implement programs to provide for the safety, health and welfare of state employees. This administrative regulation is necessary to comply with these statutory provisions.

Section 1. Workers Compensation Fund. A self-insured workers compensation fund and program shall be established and administered by the Personnel Cabinet, Division of Employee Benefits, [~~Department of Personnel~~] to cover all eligible employees.

Section 2. Eligibles. (1) The following state agencies and their employees are eligible to participate: all agencies within the judicial, legislative and executive branches of state government except for the Transportation Cabinet, which is self-insured with its own fund and administers its own program; volunteer fireman, volunteer ambulance, Daviess County Court Clerk, Daviess County Sheriff, Campbell County Court Clerk, Campbell County Sheriff, Fayette County Court Clerk, Fayette County Sheriff, Jefferson County Court Clerk, Jefferson County Sheriff, Kenton County Court Clerk, Kenton County Sheriff, Pike County Court Clerk, Pike County Sheriff, Hardin County Sheriff, Hardin County Clerk, Warren County Sheriff, Warren County Clerk, Kentucky Community and Technical College System, Kentucky Lottery Corporation, Kentucky Employer Mutual Insurance, Lexington Fayette County Health Department, Eastern Kentucky University, Kentucky State University, Morehead State University, Murray State University, Northern Kentucky University, University of Louisville, and Western Kentucky University.

(2) Other state related groups may also be included upon written agreement with the Personnel Cabinet [~~Department of Personnel~~].

Section 3. Assessments. Assessments for individual agencies shall be based on the claims history for the past three (3) years and on the number of employees in the agency. Premiums shall be assessed at the beginning of each fiscal year.

(1) Biennial actuarial studies shall be carried out to insure the fund's fiscal soundness.

(2) Fund deficits will be recouped through interim billings or additional assessments if deemed necessary by actuarial studies.

Section 4. Benefits. (1) Required medical expenses for services rendered by hospitals, doctors, and for prescribed medications are paid subject to approval of the claim. A percentage of the employee's average weekly wage shall be paid when he is unable to work for an extended period due to a job-related injury or illness. No compensation shall be payable for the first seven (7) days of disability unless disability continues over two (2) weeks in which case compensation shall be allowed from the first day of disability.

(2) In cases of absences due to illness or injury for which workers compensation benefits are received, if the employee elects to accept the workers' compensation benefits, accumulated sick leave may be used in order to maintain regular full salary. If paid sick leave is used, workers compensation pay benefits shall be assigned back to the state for whatever period of time an employee received paid sick leave. An employee shall not receive paid sick leave and workers compensation pay for the same period of time.

Section 5. Notification Procedures. (1) Employee requirements. An employee shall inform the [his] supervisor of any injury as soon as physically able to do so.

(2) Supervisor requirements. The supervisor shall complete the employer's first report of injury, IA-1 [SF-4], and shall submit the form to the designated office in the [his] agency. This shall occur as soon as possible, but no later than three (3) working days after the supervisor is notified of an injury to insure timely payments to injured employees. IA-1 [SF-4] forms shall be completed, giving specific information about the injury, and shall be submitted in triplicate.

(a) A lost-time/return-to-work form, WCF-1, shall be submitted when an employee is losing time from [has returned to] work due to a work-related injury. The supervisor shall notify his personnel unit when an employee returns so that a WCF-1 form may be submitted to the Personnel Cabinet [~~Department of Personnel~~].

(b) Any medical bills, or medical information regarding treatment of job-related injuries or illness of the employee, shall be submitted in the same manner as injury reports. Injury reports ~~[shall not be held,~~

~~until medical bills are received, but]~~ shall be forwarded as soon as possible.

(c) Safety representatives in each agency shall be notified of all accidents so that they may review accident causes and provide safety training. Supervisors shall promote safety with employees.

Section 6. Recordkeeping. All records maintained by the Personnel Cabinet and by agencies with respect to employee claims under this administrative regulation shall be confidentially maintained.

PAUL E. PATTON, Governor  
CAROL M. PALMORE, Secretary  
DANIEL F. EGBERS, General Counsel

APPROVED BY AGENCY: May 21, 1999

FILED WITH LRC: June 10, 1999 at 4 p.m.

PUBLIC HEARING: A public Hearing on this administrative regulation shall be held on July 23, 1999 at 9:30 a.m., prevailing local time in Room 508 of the Personnel Cabinet's Offices, 200 Fair Oaks Lane, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify the agency in writing by July 16, 1999, five workdays prior to the hearing of their intent to attend. If no notification of intent to attend is received by that date, the hearing may be cancelled. The hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on this proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to: Daniel F. Egbers, General Counsel, Kentucky Personnel Cabinet, 200 Fair Oaks Lane, Suite 516, Frankfort, Kentucky 40601, telephone: (502) 564-4460, Fax: (502) 564-7603.

### REGULATORY IMPACT ANALYSIS

Agency Contact: Daniel F. Egbers

(1) Type and number of entities affected: The proposed amendment to 101 KAR 2:140, Workers' Compensation Fund and Program, will affect approximately 32,000 employees in the classified service of the executive branch of state government.

(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 impact anticipated.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented: None anticipated.

(c) Compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon completion), to the extent available from the public comments received, for the:

1. First year following implementation: No significant change is anticipated.

2. Second and subsequent years: No significant change is anticipated.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: None anticipated.

2. Continuing costs or savings: None anticipated.

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: No change anticipated.

(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: Recurring agency base budgets.

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

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

(b) Kentucky: None

(7) Assessment of alternative methods; reasons why alternatives were rejected: Most of the amendments to this administrative regulation are technical in nature and are offered to comply with changes in statutory language.

(8) Assessment of expected benefits: Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: No impact anticipated.

(a) State whether a detrimental effect on environmental and public health would result if not implemented: This administrative regulation does not directly impact environmental and public health.

(b) 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: This administrative regulation does not conflict with, overlap or duplicate an existing statute, administrative regulation or government policy, to our knowledge.

(a) Necessity of proposed regulation if in conflict: No conflict is seen.

(b) If in conflict, was the effort made to harmonize the proposed administrative regulation with the conflicting provisions. No conflict is seen.

(10) Any additional information or comments: The administrative regulation will also incorporate term changes adopted by the General Assembly in the 1998 Session.

(11) TIERING: Is tiering applied? Yes. This administrative regulation applies equally to all employees in the classified and unclassified services of state government in the executive branch, but not to other state employees.

#### PERSONNEL CABINET (Amendment)

##### 101 KAR 2:150. State Safety Program.

RELATES TO: KRS 18A.030, 18A.110, 18A.155

STATUTORY AUTHORITY: KRS Chapter 13A, 18A.030, 18A.110, 18A.155

NECESSITY, FUNCTION, AND CONFORMITY: KRS 18A.110(k) and (l) requires the Secretary [Commissioner] of Personnel to promulgate comprehensive administrative regulations, consistent with KRS Chapters 13A and 18A [and proper] and necessary for development, [and] operation and enforcement of programs to improve work safety [effectiveness of employees in the state service in the area of safety]. This administrative regulation is necessary to comply with these statutory requirements.

Section 1. [Definitions. (1) State safety program means a program established and administered through the Division of Employee Benefits, Department of Personnel, for the purpose of enhancing and monitoring work conditions for state employees in the executive department who are covered by the state self-insured workers compensation plan:

(2) State safety director means the administrator of the state safety program, designated by the Commissioner of Personnel.

(3) Agency safety representative means the coordinator designated by an appointing authority for each site location to work with the Department of Personnel in implementing the state safety program.

Section 2. [Establishment of State Safety Program. (1) A state safety program shall be established and administered through the Personnel Cabinet [Division of Employee Benefits, Department of Personnel], and headed by a state safety coordinator [director].

(2) Appointing authorities shall designate an agency safety representative for each site location.

(3) The state safety program shall comply with the Occupational Health and Safety Act of 1970 as administered by the Kentucky Occupational Safety and Health Program.

Section 2. [3] Duties of Agency Safety Representative [Responsibilities]. (1) Each agency safety representative shall:

(a) Implement and supervise a safety program;

(b) [shall] Attend safety meetings sponsored by the Personnel Cabinet;

(c) [Department of Personnel, shall] Conduct safety meetings and training sessions for agency employees;

(d) [shall] Document preventive safety measures; and

(e) [shall otherwise] Promote safety of employees.

(2) The agency safety representative may establish agency safety committees, to meet on a regular basis for:

(a) Review of causes of accidents;

(b) [for] Inspection of facilities;

(c) [for] Development of hazard abatement methods; and

(d) Assessment of [to assess] safety training needs.

Section 3. [4:] Duties of Supervisors. (1) Supervisors shall:

(a) Review the safety program with new employees;

(b) Enforce [shall adhere to] general safety regulations and procedures;

(c) [shall] Maintain safe working conditions; [and]

(d) [shall] Require employees to follow safety regulations and procedures.

(2) Supervisors or designees shall investigate all accidents and shall forward a report on the findings to the state safety coordinator [director] in the Personnel Cabinet [Department of Personnel].

(3) Supervisors shall require employees to attend regular safety meetings and training sessions at times to be determined in coordination with the agency safety representative.

PAUL E. PATTON, Governor

CAROL M. PALMORE, Secretary

DANIEL F. EGBERS, General Counsel

APPROVED BY AGENCY: June 9, 1999

FILED WITH LRC: June 10, 1999 at 4 p.m.

PUBLIC HEARING: A public Hearing on this administrative regulation shall be held on July 23, 1999 at 9:30 a.m., prevailing local time in Room 508 of the Personnel Cabinet's Offices, 200 Fair Oaks Lane, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify the agency in writing by July 16, 1999, five workdays prior to the hearing of their intent to attend. If no notification of intent to attend is received by that date, the hearing may be cancelled. The hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on this proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to: Daniel F. Egbers, General Counsel, Kentucky Personnel Cabinet, 200 Fair Oaks Lane, Suite 516, Frankfort, Kentucky 40601, telephone: (502) 564-4460, Fax: (502) 564-7603.

#### REGULATORY IMPACT ANALYSIS

Agency Contact: Daniel F. Egbers

(1) Type and number of entities affected: The proposed amendment to 101 KAR 2:150, State Safety Program will affect approximately 32,000 employees in the classified service of the executive branch of state government.

(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 impact anticipated.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented: None anticipated.

(c) Compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon completion), to the extent available from the public comments received, for the:

1. First year following implementation: No significant change is anticipated.

2. Second and subsequent years: No significant change is anticipated.

(3) Effects on the promulgating administrative body:

- (a) Direct and indirect costs or savings:
  - 1. First year: None anticipated.
  - 2. Continuing costs or savings: None anticipated.
  - 3. Additional factors increasing or decreasing costs: None
- (b) Reporting and paperwork requirements: No change anticipated.
- (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: Recurring agency base budgets.
- (6) To the extent available from public comments received, the economic impact, including effects of economic activities arising from administrative regulation on:
  - (a) Geographical area in which administrative regulation will be implemented: None
  - (b) Kentucky: None
- (7) Assessment of alternative methods; reasons why alternatives were rejected: Most of the amendments to this administrative regulation are technical in nature and are offered to comply with changes in statutory language
- (8) Assessment of expected benefits: Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: No substantial impact is anticipated.
  - (a) State whether a detrimental effect on environmental and public health would result if not implemented: The changes in this administrative regulation do not directly impact environmental and public health.
  - (b) 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: This administrative regulation does not conflict with, overlap or duplicate an existing statute, administrative regulation or government policy, to our knowledge.
  - (a) Necessity of proposed regulation if in conflict: No conflict is seen.
  - (b) If in conflict, was the effort made to harmonize the proposed administrative regulation with the conflicting provisions. No conflict is seen.
- (10) Any additional information or comments: The administrative regulation will also incorporate term changes adopted by the General Assembly in the 1998 Session.
- (11) TIERING: Is tiering applied? Yes. This administrative regulation apply equally to all employees in the classified and unclassified services of state government in the executive branch, but not to other state employees.

**PERSONNEL CABINET  
(Amendment)**

**101 KAR 3:045. Compensation plan and pay incentives [compensation-incentive-systems].**

RELATES TO: KRS 18A.155

STATUTORY AUTHORITY: KRS 18A.155(1)(b)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 18A.155 requires the Secretary [Commissioner] of Personnel to submit to the Governor proposed administrative regulations for persons in positions enumerated in KRS 18A.115(1)(g), (h), (i), (j), (k), (p), (l) and (u) [and (v)].

Section 1. New Appointments. An appointing authority may appoint an applicant at a salary not to exceed the midpoint of the pay grade.

Section 2. Reentrance to State Service. (1) Returning retirees. An employee who was formerly employed under KRS Chapter 18A and who is appointed to a position covered by the provisions of KRS Chapter 18A, while receiving retirement payments through the Kentucky Retirement Systems or Kentucky Teachers Retirement System, shall be appointed in accordance with the provisions for new

appointments.

(2) Other reentering employees: An appointing authority may set the salary of a former classified or unclassified employee, other than a returning retiree:

(a) In accordance with the standards used for making new appointments; or

(b) Up to a salary formerly paid in the classified or unclassified service, if that salary is within the current pay grade.

Section 3. Salary Adjustments. (1) Promotion. An employee who is promoted shall receive a five (5) percent increase or an increase to the minimum of the new grade, whichever is greater. An appointing authority may grant a salary increase of five (5) percent per grade upon promotion.

(2) Demotion. When an employee who is demoted the appointing authority may determine the salary in one (1) of the following ways:

(a) The employee's salary may be reduced to a rate that is not below the minimum for the class to which the demotion is made; or

(b) The employee may be allowed to retain the salary received prior to the demotion. If the employee's salary is not reduced upon demotion, the appointing authority shall explain the reason in writing and place the explanation in the employee's personnel files.

(3) Reclassification. An employee who is advanced to a higher pay grade through reclassification shall receive a five (5) percent increase or an increase to the minimum of the new grade, whichever is greater. An appointing authority may grant a salary increase of five (5) percent per grade upon reclassification to a higher grade. An employee who is placed in a lower pay grade through reclassification shall receive the same salary received prior to reclassification.

(4) Reallocation. An employee who is advanced to a higher pay grade through reallocation shall receive a five (5) percent increase or an increase to the new grade minimum, whichever is greater. An appointing authority may grant a five (5) percent increase per grade upon reallocation to a higher grade. An employee who is placed in a lower pay grade through reallocation shall receive the same salary received prior to reallocation.

(5) Detail to special duty. An employee who is detailed to special duty in a higher grade shall receive a five (5) percent increase or an increase to the minimum of the grade, whichever is greater, for the duration of the period of the detail. An appointing authority may grant a salary increase of five (5) percent per grade for the duration of the detail. An employee who is detailed to special duty to the same or lower grade shall continue to receive the same salary.

(6) Reversion.

(a) The salary of an employee who is reverted following detail to special duty in a higher class shall be adjusted to:

1. The salary received prior to the detail; and

2. All salary advancements and adjustments which would have been awarded if the detail had not occurred.

(b) The salary of an employee who is reverted from a position in the unclassified service to a position in the classified service shall be adjusted to:

1. The salary received prior to leaving the classified service; and

2. All salary advancements and adjustments which would have been awarded if the individual had remained in the classified service.

(7) Pay grade changes. When a job classification is assigned to a higher pay grade through a pay grade change, the salary of all employees below the new minimum shall be raised to the new minimum.

(a) If sufficient funds are available, an appointing authority may provide an increase to an employee whose salary is at or above the new minimum of the job classification in one (1) of the following amounts:

1. Five (5) percent;

2. Ten (10) percent; or

3. A dollar amount approved by the Secretary of Personnel.

(b) Employees in a class assigned to a lower pay grade through a grade change shall retain their current salary.

(8) Special entrance rates. When a special entrance rate is established for a job classification, an appointing authority shall adjust the salary of any employee in that classification, who is below the

special entrance rate, to the new rate. An appointing authority may also grant a salary adjustment equal to the difference between the former entrance rate and the new special entrance rate to other employees in that classification.

(9) Other salary adjustments.

(a) On the 16th of any month, an appointing authority may grant a five (5) percent salary adjustment to an employee who was eligible for but did not receive an increase upon the completion of six (6) months service following promotion.

(b) On the 16th of any month, an appointing authority may grant a salary adjustment to an employee within an agency who was eligible for, but did not receive at least a five (5) percent advancement as a result of a grade change on or after January 1, 1999. The total adjustment under this provision when combined with any increase at the time of the grade change shall equal five (5) percent of the employee's salary immediately prior to the grade change.

(c) An appointing authority may grant an employee who was eligible for, but did not receive an adjustment beyond the new minimum at the time the special entrance rate was established an increase equal to the difference between the old entrance rate and the new entrance rate.

Section 4. Salary Advancements. (1) Initial appointment increase.

(a) An appointing authority may grant a five (5) percent increase to an employee, except an interim employee, on the first day of the month following completion of six (6) months of service.

(b) If the appointing authority elects not to grant the initial appointment increase upon completion of six (6) months service, the increase may be granted on the first day of any month following the date the employee was eligible, but shall be granted no later than the first day following twelve (12) months of service.

(2) Six (6) month promotional increase. An employee may receive a five (5) percent increase following the completion of six (6) months service after promotion.

(3) Annual increment dates shall be established as follows:

(a) On the date of receiving an initial appointment increase;

(b) On the first of the month following completion of twelve (12) months service by a former employee who is appointed or reappointed, except in the case of an interim employee;

(c) On the first day of the month following completion of twelve (12) months service by an employee, other than an interim employee, who returns from leave without pay.

(4) Annual increment dates shall not change when an employee:

(a) Is in a position which is assigned a new or different pay grade;

(b) Receives a salary adjustment as a result of his position being reallocated;

(c) Is promoted;

(d) Is transferred;

(e) Is demoted;

(f) Is detailed to special duty;

(g) Receives an educational achievement award;

(h) Returns from military leave;

(i) Is reclassified;

(j) Receives an increase six (6) months following promotion.

(5) Service computation. Full-time and part-time service shall be counted when computing service for purposes of determining increment eligibility. Service as an interim employee, or in the former seasonal, temporary, emergency, provisional or federally funded, time-limited categories shall not be considered.

(6) Return from leave without pay. An employee returning to duty from leave without pay shall receive an annual increment on the first of the month after completing twelve (12) months of service since the last increment was received.

Section 5. Educational Achievement Award. (1) On the 16th of any month, an appointing authority may grant a five (5) percent increase to an employee's base salary based on educational achievement as specified in this section.

(2) An agency may elect not to participate in the educational achievement program if sufficient funds are not available.

(3) An employee may not receive more than one (1) educational

achievement award in any fiscal year.

(4) An employee shall not receive an educational achievement award and an adjustment for continuing excellence (ACE) based on the same training.

(5) By submitting a personnel action to grant an educational achievement award, the appointing authority certifies that all of the qualifying conditions established by this section for the appropriate type of educational achievement award have been met:

(a) High school diploma, high school equivalency certificate, or a passing score on the GED test.

1. The employee has obtained the high school diploma, equivalency certificate, or passing score on the GED test:

a. Outside of work hours;

b. While in state service;

c. After establishing an increment date; and

d. On or after January 1, 1984.

2. The employee has not previously attained a high school diploma, equivalency certificate, or passing score on the GED test; and

3. The employee has not completed college coursework on the undergraduate or graduate level prior to obtaining the high school diploma, equivalency certificate or a passing score on the GED test.

(b) Postsecondary education or training.

1. The employee has completed 260 hours of job related instruction (or the equivalent as determined by the Secretary of Personnel);

2. The employee began the course work after becoming a state employee and completed the course work after establishing an increment date;

3. The employee has completed the course work within five (5) years of the date on which it was begun;

4. The course work has not previously been applied toward an educational achievement award;

5. The agency has not paid for the course work or costs associated with it, in whole or in part;

6. The employee was not on educational or extended sick leave when the courses were taken.

(c) Kentucky Certified Public Manager Program.

1. The employee has successfully completed the Kentucky Certified Public Manager Program offered by the Governmental Services Center at Kentucky State University; and

2. The employee has not previously received an educational achievement award for completing the Kentucky Certified Managers Program.

Section 6. Employee Recognition Award. (1) On the 16th day of any month, an appointing authority may grant an employee an employee recognition award (ERA) in the form of a lump sum payment of up to five (5) percent of midpoint under the following conditions:

(a) The employee has established an annual increment date and has worked at least twenty-four (24) months in state service, twelve (12) consecutive months of which is in the department granting the award; and

(b) The employee has not received an ERA in the preceding twelve (12) months or an ACE or a distinguished service award in the preceding twenty-four (24) months; and

(c) The appointing authority determines that the employee's acts or ideas have resulted in significant financial savings or improvements in services to the Commonwealth and its citizens. An employee is not eligible for an ERA under this provision for an act or idea that has been approved or submitted for consideration as an employee suggestion system award. An employee who has received an ERA shall not be eligible to be considered for an employee suggestion system award for those acts or ideas upon which the ERA is based.

(d) The employee has exhibited distinguished performance during participation in special projects that have had a significant beneficial impact on the department or governmental operations.

(2) The granting of an ERA shall be within the sole discretion of the appointing authority.

(3) An appointing authority may grant an ERA to no more than twenty-five (25) percent of the total number of full-time employees in the department in any calendar year.

(4) When an appointing authority grants an ERA, the reason(s) for the award shall be stated in writing, and placed in the employee's personnel files.

(5) By submitting the appropriate personnel documents to award an ERA, the appointing authority certifies that sufficient funds are available within the department, and that the criteria in this section have been met.

#### Section 7. Adjustment for Continuing Excellence (ACE) Award.

(1) On the 16th day of any month, an appointing authority may grant a salary adjustment of up to ten (10) percent of the grade midpoint to a full-time employee's base pay as an adjustment for continuing excellence award (ACE) under the following conditions:

(a) The employee has an established annual increment date.

(b) The employee has worked at least twenty-four (24) consecutive months, twelve (12) consecutive months of which shall have been served in the department granting the award.

(c) The employee has not received an ACE award or a distinguished service award in the preceding twenty-four (24) months or an employee recognition award (ERA) in the preceding twelve (12) months; and

(d) The employee has demonstrated a sustained level of exceptional job performance; or

(e) The employee has assumed a significant level of additional job responsibilities or duties consistent with the assigned classification, and has performed them in an exceptional manner; or

(f) The employee has acquired professional or technical skills or knowledge through agency directed or authorized attainment of a job related licensure, certification, or formal training that will substantially improve job performance.

(g) An employee is not eligible for an ACE award under this provision if an educational achievement award has been granted for the same training.

(2) The granting of an ACE award shall be within the sole discretion of the appointing authority.

(3) An appointing authority may grant an ACE to no more than twenty-five (25) percent of the total number of full-time employees in the department in any calendar year.

(4) When an appointing authority grants an ACE award, the appointing authority shall submit the appropriate personnel action supported by a memorandum of justification certifying:

(a) The reason or reasons for the granting of the award; and

(b) That all criteria and limitations provided in this section for the award have been met; and

(c) That funds are available within the department's current recurring base budget to support the award.

Section 8. Adoption Benefit Program. (1) The Personnel Cabinet shall administer a program to provide financial assistance as an incentive to state employees in the executive branch who adopt a child on or after November 1, 1998.

(2) A state employee who finalizes a legal adoption procedure for the adoption of a child, other than the child of a spouse, on or after November 1, 1998, shall be eligible to receive reimbursement for actual costs associated with the adoption of a special needs child as defined by KRS 199.555(1), or other child. Available funds for this program shall not exceed \$150,000 in any fiscal year.

(3) The employee may receive:

(a) Up to \$5,000 in unreimbursed direct costs related to the adoption of a special needs child; or

(b) Up to \$3,000 in unreimbursed direct costs related to the adoption of any other child.

(4) Unreimbursed direct costs related to the adoption of a special needs child or other child may include:

(a) Licensed adoption agency fees;

(b) Legal fees;

(c) Medical costs;

(d) Court costs; and

(e) Other reasonable fees or costs associated with child adoption as allowed by state and federal law and reviewed and approved by the court at the time of finalization of the adoption.

(5) Application for financial assistance shall be made to the Secretary of Personnel and supported by documentary evidence of:

(a) Finalization of the adoption;

(b) Certification by the Secretary of the Cabinet for Families and Children that the adopted child is a special needs child, if reimbursement for special needs adoption is sought; and

(c) A copy of an affidavit of expenses related to the adoption filed with and approved by the court at the time of finalization of the adoption.

(6) If both adoptive parents are executive branch state employees, the application for financial assistance shall be made jointly and the amount of reimbursement shall be limited to that specified in subsection (3) of this section.

(7) Upon approval of the application for financial assistance, the employee's agency shall disburse funds in the amount authorized by the Secretary of Personnel, provided that the funds authorized for the program has not been exhausted. [Classification Plan. The principles and provisions of 101 KAR 2:020 shall apply to positions in the unclassified service.]

Section 2. Compensation Plan. (1) With the exception of the provisions of Section 3 of this administrative regulation relating to probationary increments, the principles and provisions of 101 KAR 2:036 shall apply to employees and positions in the unclassified service. An employee in the unclassified service who completes the initial six (6) month period following appointment with satisfactory performance may be granted a statutory increment at the beginning of the month following completion of such period.

(a) An employee who was eligible for but did not receive a five (5) percent salary advancement as the result of any of the following actions: promotional increase, reallocation, or class grade changes, on or after January 3, 1986, may have his salary adjusted upon request by the appointing authority and approval by the commissioner. In no case may the salary adjustment be made retroactive to the original effective date but shall be granted on the first of the month following approval of the increase.

(b) Inasmuch as the appointing authority has the option of not providing salary increases under this section, an eligible employee whose salary is not adjusted is not considered to have been penalized and therefore shall have no basis for appeal.

(c) An appointing authority, with the approval of the commissioner, may grant a salary adjustment, equivalent to the budgeted annual increment for classified employees, to seasonal, temporary, FFL and other unclassified employees who have completed twelve (12) months total full-time employment in the classified or unclassified service without a salary increase. The salary adjustment, if granted, shall be effective on the first day of the month following approval of the increase.

(2) Physicians, employed as such and pursuant to KRS 64.655, shall be exempt from the provisions of 101 KAR 2:036, Section 1, and may be appointed to any rate within the pay range when justified in writing by the appointing authority and approved by the commissioner.

Section 3. Educational Achievement Award. Upon request of the appointing authority and subject to the approval of the commissioner:

(1) An employee may receive one (1) lump sum educational achievement award per fiscal year for satisfactorily completing outside of work hours, 260 classroom hours (or the equivalent as determined by the commissioner) of job-related instruction in approved courses. Approved courses must have been completed after an employee initially served six (6) months in state government. Employees shall not receive credit for hours taken while on educational leave, for hours paid for by the agency through tuition assistance, or for hours which previously counted toward an educational achievement award. The lump sum educational achievement award shall be ten (10) percent of the employee's annual base salary but not more than \$2,500. The lump sum payment shall be granted only if the 260 classroom hours (or equivalent) have been completed within the past five (5) years prior to the effective date of the increase; or

(2) An employee may receive one (1) lump sum educational achievement award for earning an approved diploma, high school equivalency certificate, or a passing score on the GED test. The approved high school diploma, certificate, or passing score shall have been obtained by the state employee on or after January 1, 1984 while in state service. Employees receiving an approved high school diploma, high school equivalency certificate, or a passing score on the

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GED test shall receive a lump sum educational achievement award of ten (10) percent of their annual base salary but not more than \$2,500. A high school level educational achievement award shall not be granted to employees who present new credentials but have previously:

(a) Received a high school diploma, high school equivalency certificate, or a passing score on the GED test; or

(b) Completed college course work on the undergraduate or graduate level.

(3) An employee who has successfully completed the Kentucky Certified Public Manager Program offered by Governmental Services Center at Kentucky State University shall receive one (1) lump sum educational achievement award. The lump sum educational achievement award shall be ten (10) percent of the employee's annual base salary but not more than \$2,500.

(4) To apply for an educational achievement award an employee shall submit supporting documentation to the appointing authority or his designee on a DPT Form 10 or its equivalent, demonstrating completion of 260 classroom hours (or the equivalent) together with official transcripts or grade reports for the courses completed. As provided by this section, the appointing authority may recommend the application for approval and may forward the documentation to the Commissioner of the Department of Personnel for final approval.]

PAUL E. PATTON, Governor

CAROL M. PALMORE, Secretary

DANIEL F. EGBERS, General Counsel

APPROVED BY AGENCY: May 21, 1999

FILED WITH LRC: June 10, 1999 at 4 p.m.

PUBLIC HEARING: A public Hearing on this administrative regulation shall be held on July 23, 1999 at 9:30 a.m., prevailing local time in Room 508 of the Personnel Cabinet's Offices, 200 Fair Oaks Lane, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify the agency in writing by July 16, 1999, five workdays prior to the hearing of their intent to attend. If no notification of intent to attend is received by that date, the hearing may be cancelled. The hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on this proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to: Daniel F. Egbers, General Counsel, Kentucky Personnel Cabinet, 200 Fair Oaks Lane, Suite 516, Frankfort, Kentucky 40601, telephone: (502) 564-4460, Fax: (502) 564-7603.

### REGULATORY IMPACT ANALYSIS

Agency Contact: Daniel F. Egbers

(1) Type and number of entities affected: The proposed amendment to this administrative regulation will affect approximately 3,260 employees in the unclassified service of the executive branch of state government.

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

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented: None anticipated.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented: None anticipated.

(c) Compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon completion), to the extent available from the public comments received, for the:

1. First year following implementation: No significant change is anticipated.

2. Second and subsequent years: No significant change is anticipated.

(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 change anticipated.

(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: Recurring agency base budgets.

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

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

(b) Kentucky: None

(7) Assessment of alternative methods; reasons why alternatives were rejected: No suggestions were received or considered from outside sources.

(8) Assessment of expected benefits: The amended regulation governing the compensation system for the Unclassified Service should promote ease of administration and equity in the manner in which employees are paid. Due to the statutory changes impacting retirees and seasonal employment, special new rules are necessary to address these issues. Salary increases on promotion are tied to the number of grades advanced, which promotes the generally accepted compensation philosophy relating to the worth of a job. The Personnel Cabinet also believes that the uniform salary rules relating to grade changes will provide fairness and prevent favoritism. The new award programs replace the former Distinguished Service Award and provide a more meaningful incentive for continuing excellence or service on special projects.

(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: This administrative regulation does not directly impact environmental and public health.

(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: This administrative regulation does not conflict with, overlap or duplicate and existing statute, administrative regulation or government policy, to our knowledge.

(a) Necessity of proposed regulation if in conflict: No conflict is seen.

(b) If in conflict, was the effort made to harmonize the proposed administrative regulation with the conflicting provisions. No conflict is seen.

(10) Any additional information or comments: The administrative regulation governing compensation for the classified service amends 101 KAR 3:045 and incorporates term changes adopted by the General Assembly in the 1998 Session.

(11) TIERING: Is tiering applied? Yes. Although this administrative regulation applies equally to all employees in the unclassified service of state government, it does not apply to the classified service.

### GENERAL GOVERNMENT CABINET

#### Board of Certification of Marriage and Family Therapists (Amendment)

#### 201 KAR 32:010. Definitions.

RELATES TO: KRS 335.330

STATUTORY AUTHORITY: KRS 335.320

NECESSITY, FUNCTION, AND CONFORMITY: KRS 335.330 sets forth the requirements for licensure [certification] as a marriage and family therapist. The board is required to review the applications of applicants for licensure [certification]. In addition to other requirements, KRS 335.330 requires applicants to have experience under supervision. This administrative regulation establishes definitions necessary for the evaluation of experience under supervision.

Section 1. Definitions. The following terms relate to the evaluation of applications for licensure [certification]:

(1) "Approved supervisor" means an individual who:

(a) Holds a designation as an approved supervisor granted by the American Association for Marriage and Family Therapy;

(b) Is licensed [certified] as a marriage and family therapist in the Commonwealth of Kentucky with a minimum of four (4) years of experience in the practice of marriage and family therapy; or

(c) Holds licensure or certification in another mental health profession whose education and experience demonstrate to the board a level of competence equivalent to that contained in paragraph (b) of this subsection. After July 15, 1999, a supervisor qualifying under this paragraph shall no longer be considered as an approved supervisor.

(2) "Clinical supervision" means the process of utilizing a partnership aimed at enhancing the professional development of supervisees in providing marriage and family therapy services. Clinical supervision shall be equally distributed throughout the qualifying period. It shall be clearly distinguishable from psychotherapy, didactic enrichment or training activities. Supervision must focus on raw data from the supervisee's current clinical work made available to the supervisor.

(a) The supervision process shall focus on:

1. Accurate diagnosis of client problems leading to proficiency in applying professionally recognized nomenclature and developing a plan for treatment as set forth in the Diagnostic and Statistical Manual of Mental Disorders;

2. Development of treatment skills appropriate to the therapeutic process;

3. Development of sensitivity to context and issues of cultural diversity, gender, age and sexual orientation;

4. Acknowledgment of an awareness of the use of the professional self of the therapist in the process of therapy;

5. Increased theoretical and applied knowledge for the therapist;

6. Acquisition of a greater depth of knowledge and range of techniques in the provision of marriage and family therapy; and

7. Awareness of ethical issues in practice, in order to safeguard and enhance the quality of care available to marriage and family therapy clients.

(b) Examples of clinical supervision may include:

1. Supervision behind a one (1) way mirror;

2. Video either in individual or group supervision; and

3. Therapy and supervision involving supervisors and supervisees.

(3) "Equivalent course of study" means a master's or doctoral degree from a regionally accredited institution in a mental health field closely related to marriage and family therapy which either contains, or has been supplemented by the coursework in each of the basic core areas listed in Section 2 [†] of 201 KAR 32:020.

(4) "Raw data" includes audio tapes, direct observations, interactive videos, oral or written reports, or video tapes. Oral or written reports should never constitute more than fifty (5) percent of the supervision provided each student. Not more than fifty (50) hours of clinical supervision may be via interactive video.

(5) "Supervision behind a one (1) way mirror" means supervisees in groups of up to six (6) persons, behind a one (1) way mirror, may receive credit for group supervision provided an approved supervisor is present and students are actively participating in the session. Up to two (2) students seeing a client on the other side of the one (1) way mirror may concurrently receive client contact and individual supervision hours provided the approved supervisor is actively supervising the session. ["The practice of marriage and family therapy" means the identification and treatment of cognitive, affective, and behavioral symptoms of marital and family dysfunctions that involves the professional application of psychotherapeutic and systems theories and techniques in the delivery of services to individuals, couples, and families.]

(6) [(5)] "Two (2) years" experience in the practice of marriage and family therapy means a minimum of two (2) years of the practice of marriage and family therapy which includes 1,000 hours of direct, face-to-face contact with individuals, couples, and families in the practice of marriage and family therapy under the supervision of an approved supervisor.

(7) "Therapy and supervision involving supervisors and supervisees" means an approved supervisor and no more than two (2)

supervisees are physically present in the treatment room. The role of the approved supervisor as either supervisor or cotherapist must be clearly defined prior to the beginning of the session. The supervisees may receive client contact hours and supervision hours.

(8) "Video either in individual or group supervision" means an individual supervisee presents a video tape in group supervision with an approved supervisor. The individual supervisee may receive group supervision hours provided no more than five (5) additional students are present. The additional five (5) or fewer students receive group supervision credit provided they are actively involved in the process.

JOHN P. SOHAN, Chair

DIANE SCHULER FLEMING, Assistant Attorney General

APPROVED BY AGENCY: June 14, 1999

FILED WITH LRC: June 15, 1999 at noon

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on July 29, 1999, at 10 a.m. at the offices of the Division of Occupations and Professions, 700 Louisville Road, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by July 22, 1999, five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by this date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given the opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Nancy Black, Executive Director, Division of Occupations and Professions, 700 Louisville Road, Frankfort, Kentucky 40601, telephone (502) 564-3296, Fax (502) 564-4818.

#### REGULATORY IMPACT ANALYSIS

Agency contact: Nancy Black

(1) Type and number of entities affected: Approximately 399 licensed marriage and family therapists and approximately 10 supervisees who will become marriage and family therapist associates in the Commonwealth of Kentucky.

(2) Direct and indirect costs or savings to those affected: There are no direct or indirect costs or savings associated with this regulation as it contains only definitions to be used in this chapter.

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: No comments received.

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

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

1. First year following implementation: None

2. Second and subsequent years: None

(3) Effects on the promulgating administrative body: None

(a) Direct or indirect costs or savings: None

1. First year: None

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs: None anticipated.

(b) Reporting and paperwork requirements: No change in reporting and paperwork requirements.

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

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Not applicable.

(6) To the extent available from public comments received, the economic impact, including effects of economic activities arising from administrative regulation on: No comments received.

(a) Geographical area in which administrative regulation will be implemented : This administrative regulation does not affect economic activity.

(b) Kentucky: None

(7) Assessment of alternative methods; reasons why alternatives were rejected: Not applicable.

(8) Assessment of expected benefits: Update and modify definitions used in the administrative regulations of the board.

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

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

(c) If detrimental effect would result, explain detrimental effect: Not applicable.

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: Board is not aware of any statute, regulation or government policy which may be in conflict or is duplicated by this proposed regulation.

(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 comments: None

(11) TIERING: Is tiering applied? No. The regulation applies equally to all marriage and family therapists and marriage and family therapist associates.

**GENERAL GOVERNMENT CABINET**  
**Board of Certification of Marriage and Family Therapists**  
**(Amendment)**

**201 KAR 32:050. Code of ethics.**

RELATES TO: KRS 335.320(5)

STATUTORY AUTHORITY: KRS 335.320(5), (7)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 335.320(5) requires the board to promulgate a code of ethics for licensed [certified] marriage and family therapists and marriage and family therapist associates. This administrative regulation establishes the required code of ethics.

Section 1. Responsibility to Clients. (1) A marriage and family therapist or a marriage and family therapist associate shall:

(a) Advance and protect the welfare of his client;

(b) respect the rights of persons seeking his assistance; and

(c) Make reasonable efforts to ensure that his services are used appropriately.

(2) A marriage and family therapist or marriage and family therapist associate shall not:

(a) Discriminate against or refuse professional service to anyone on the basis of race, gender, religion, national origin, or sexual orientation;

(b) Exploit the trust and dependency of a client;

(c) Engage in a dual relationship with a client, including a social, business, or personal relationship, that may:

1. Impair professional judgment;

2. Incur a risk of exploitation of the client; or

3. Otherwise violate a provision of this administrative regulation.

If a dual relationship cannot be avoided, and does not impair professional judgment, incur a risk of exploitation of the client, or otherwise violate a provision of this administrative regulation, a therapist or therapist associate shall take appropriate professional precautions to ensure that judgment is not impaired and exploitation of the client does not occur.

(d) Engage in a sexual relationship with a current client or with a former client for two (2) years following the termination of therapy;

(e) Use his professional relationship with a client to further his own interests;

(f) Continue therapeutic relationships unless it is reasonably clear that the client is benefiting from the relationship;

(g) Fail to assist a person in obtaining other therapeutic services if the therapist or therapist associate is unable or unwilling, for appropriate reasons, to provide professional help;

(h) Abandon or neglect a client in treatment without making reasonable arrangements for the continuation of treatment;

(i) Videotape, record, or permit third party observation of therapy sessions without having first obtained written informed consent from the client;

(j) Engage in sexual or other harassment or exploitation of a client, student, trainee, supervisee, employee, colleague, research subject, or actual or potential witness or complainant in investigations and ethical proceedings; or

(k) Diagnose, treat, or advise on problems outside the recognized boundaries of his competence.

Section 2. Confidentiality. (1) A therapist or therapist associate shall respect and guard the confidences of each individual client.

(2) Marriage and family therapists and marriage and family therapist associates shall not disclose a client confidence except:

(a) As mandated, or permitted by law;

(b) To prevent a clear and immediate danger to a person or persons;

(c) If the therapist or therapist associate is a defendant in a civil, criminal, or disciplinary action arising from the therapy, confidences may be disclosed only in the course of that action; or

(d) If a waiver has been obtained in writing, confidential information shall be revealed only in accordance with the terms of the waiver. If more than one (1) person in a family receives therapy, unless a waiver is executed by each family member receiving therapy, who is legally competent to execute a waiver, a therapist or therapist associate shall not disclose information received from any family member.

(2) A marriage and family therapist or marriage and family therapist associate may use client or clinical materials in teaching, writing, and public presentations if:

(a) A written waiver has been obtained in accordance with subsection (1)(d) of this section; or

(b) Appropriate steps have been taken to protect client identity and confidentiality.

(3) A marriage and family therapist or marriage and family therapist associate shall store or dispose of client records so as to maintain confidentiality.

Section 3. Professional Competence and Integrity. A marriage and family therapist or marriage and family therapist associate shall maintain standards of professional competence and integrity and shall be subject to disciplinary action:

(1)(a) Upon conviction of a felony, or a misdemeanor related to his practice as a marriage and family therapist or marriage and family therapist associate.

(b) Conviction shall include conviction based on:

1. A plea of no contest or an "Alford Plea"; or

2. The suspension or deferral of a sentence.

(2) If his license or certificate is subject to disciplinary action by another state's regulatory agency that the board determines violates applicable Kentucky state law or administrative regulation;

(3) Upon a showing of impairment due to mental incapacity or the abuse of alcohol or other substances which negatively impact the practice of marriage and family therapy;

(4) If he misrepresented or concealed a material fact in obtaining or seeking reinstatement of a license or certificate;

(5) If he has refused to comply with an order issued by the board; or

(6) He has failed to cooperate with the board by not:

(a) Furnishing in writing a complete explanation to a complaint filed with the board;

(b) Appearing before the board at the time and place designated; or

(c) Properly responding to subpoenas issued by the board.

Section 4. Responsibility to a Student or Supervisee. (1) A marriage and family therapist or marriage and family therapist associate shall not exploit the trust and dependency of a student or supervisee.

(2) A marriage and family therapist or marriage and family therapist associate shall:

(a) Be aware of his influential position with respect to a student or supervisee; and

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(b) Avoid exploiting the trust and dependency of these persons.

1. A therapist or therapist associate shall make every effort to avoid a dual relationship, including a social, business, or personal relationship, with a student or supervisee that may impair professional judgment or increase the risk of exploitation.

2. If a dual relationship cannot be avoided, a therapist or therapist associate shall take appropriate professional precautions to ensure judgment is not impaired and no exploitation occurs.

3. A therapist or therapist associate shall not provide therapy to a student, employee or supervisee.

4. A therapist or therapist associate shall not engage in sexual intimacy or contact with a student or supervisee.

(3) A marriage and family therapist or marriage and family therapist associate shall not permit a student or supervisee to perform or to hold himself out as competent to perform professional services beyond his level of training, experience, and competence.

(4) A marriage and family therapist or marriage and family therapist associate shall not disclose a student's or supervisee's confidence except:

(a) As mandated, or permitted by law;

(b) To prevent a clear and immediate danger to a person or persons;

(c) If the therapist or therapist associate is a defendant in a civil, criminal, or disciplinary action arising from the supervision, the student's or supervisee's confidence may be disclosed only in the course of that action;

(d) In educational or training settings if there are multiple supervisors, to other professional colleagues who share responsibility for the training of the supervisee; or

(e) If there is a waiver previously obtained in writing, information shall be revealed only in accordance with the terms of the waiver.

Section 5. Financial Arrangements. (1) A marriage and family therapist or marriage and family therapist associate shall make financial arrangements with a client, third party payor, or supervisee that are reasonably understandable and conform to accepted professional practices.

(2) A marriage and family therapist or marriage and family therapist associate shall:

(a) Not offer or accept payment for referrals;

(b) Not charge excessive fees for services;

(c) Disclose his fees to clients and supervisees at the beginning of services; or

(d) Represent facts truthfully to clients, third party payors, and supervisees regarding services rendered.

Section 6. Advertising. A marriage and family therapist shall:

(1) Accurately represent his education, training, and experience relevant to his practice of marriage and family therapy;

(2) Not use professional identification, including a business card, office sign, letterhead, or telephone or association directory listing if it includes a statement or claim that is false, fraudulent, misleading, or deceptive.

(3) A statement shall be false, fraudulent, misleading, or deceptive if it:

(a) Contains a material misrepresentation of fact;

(b) Fails to state any material fact necessary to make the statement, in light of all circumstances, not misleading; or

(c) Is intended to or is likely to create an unjustified expectation.

Section 7. Marriage and family therapist associates may have business cards and letterhead if it is clearly stated that they are associates. They cannot present themselves as or imply that they are licensed to practice as a marriage and family therapist.

JOHN P. SOHAN, Chair

DIANE SCHULER FLEMING, Assistant Attorney General

APPROVED BY AGENCY: June 15, 1999

FILED WITH LRC: June 15, 1999 at noon

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on July 29, 1999, at 10 a.m. at the offices of the Division of Occupations and Professions, 700 Louisville Road, Frankfort, Kentucky. Individuals interested in being heard at this

hearing shall notify this agency in writing by July 22, 1999, five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by this date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given the opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Nancy Black, Executive Director, Division of Occupations and Professions, 700 Louisville Road, Frankfort, Kentucky 40601, telephone (502) 564-3296, Fax (502) 564-4818.

### REGULATORY IMPACT ANALYSIS

Agency contact: Nancy Black

(1) Type and number of entities affected: All marriage and family therapists and marriage and family therapist associates.

(2) Direct and indirect costs or savings to those affected: None

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public 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: No change.

2. Second and subsequent years: See above.

(3) Effects on the promulgating administrative body: None

(a) Direct or indirect costs or savings: None

1. First year: See above.

2. Continuing costs or savings: See above.

3. Additional factors increasing or decreasing costs: None anticipated.

(b) Reporting and paperwork requirements: None

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

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Board funds generated from licensure fees.

(6) To the extent available from public comments received, the economic impact, including effects of economic activities arising from administrative regulation on: No comments received.

(a) Geographical area in which administrative regulation will be implemented: This administrative regulation does not affect economic activity.

(b) Kentucky: None

(7) Assessment of alternative methods; reasons why alternatives were rejected: Not applicable.

(8) Assessment of expected benefits: Complies with statutory requirement which creates the new group of marriage and family therapist associates.

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

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

(c) If detrimental effect would result, explain detrimental effect: Not applicable.

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: Board is not aware of any statute, regulation or government policy which may be in conflict or is duplicated by this proposed regulation.

(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 comments: None

(11) TIERING: Is tiering applied? No. The regulation applies

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equally to all marriage and family therapists and marriage and family therapist associates.

### TOURISM DEVELOPMENT CABINET Department of Fish and Wildlife Resources (Amendment)

#### 301 KAR 1:201. Fishing limits.

RELATES TO: KRS 150.470, 150.990(2)

STATUTORY AUTHORITY: KRS 150.025(1), 150.470

NECESSITY, FUNCTION, AND CONFORMITY: KRS 150.025(1) authorizes the department to promulgate administrative regulations to protect fish species from overharvest, allocate their harvest, maintain ecological balance and improve fishing. This administrative regulation establishes size, daily, and possession limits for fishing.

Section 1. Definitions. (1) "Artificial bait" means a lure or fly:

(a) Made of:

1. Wood;
  2. Metal;
  3. Plastic;
  4. Feathers;
  5. Preserved pork rind; or
  6. A similar inert material; and
- (b) Not having attached:
1. An insect;
  2. Minnow;
  3. Fish egg;
  4. A worm;
  5. Corn;
  6. Cheese;
  7. Cut bait; or
  8. Similar organic bait substance.

(2) "Daily limit" means the creel limit, the maximum number of a particular species or group of species a person may legally take in a day or have in possession while fishing.

(3) "Daylight hours" are defined by KRS 150.010(6).

(4) "Kentucky bass" means the following with a patch of teeth on its tongue:

- (a) Largemouth bass;
- (b) Kentucky bass; or
- (c) Coosa bass.

(5) "Lake" means impounded waters from the dam upstream to the first riffle on:

- (a) The main stem river; and
- (b) Tributary streams.

(6) "Length" means the distance from the tip of a fish's lower jaw to the tip of its tail, measured with the fish laid flat on a rule and its tail lobes squeezed together.

(7) "Possession limit" means the maximum number of fish a person may hold in the field after two (2) or more days of fishing.

(8) "Release" means to return a fish:

- (a) In the best possible physical condition;
- (b) Immediately after removing the hook;
- (c) To the water from which it was taken; and
- (d) In a place where the fish's immediate escape shall not be prevented.

(9) "Single hook" means a hook with no more than one (1) point.

(10) "Size limit" means the minimum legal length of a fish.

(11) "Slot limit" means that a person:

- (a) Shall release fish within a specified minimum and maximum size; and
- (b) May keep fish above and below the protected size range.

Section 2. Statewide Size and Creel Limits. (1) Except as specified in Section 4 of this administrative regulation or by 301 KAR 1:180, a person fishing in public or private waters shall observe the following daily possession and size limits.

(a) Black bass: daily limit, six (6); possession limit, twelve (12).

1. Largemouth bass, smallmouth bass or Coosa bass: size limit, twelve (12) inches.

2. Kentucky bass: no size limit.

(b) Rock bass: daily limit, fifteen (15); possession limit, thirty (30); no size limit.

(c) Walleye and their hybrids: daily limit, ten (10); possession limit, twenty (20); size limit, fifteen (15) inches.

(d) Sauger: daily limit, ten (10); possession limit, twenty (20); no size limit.

(e) Muskellunge: daily and possession limit, two (2); size limit, thirty (30) inches.

(f) Chain pickerel: daily limit, five (5); possession limit, ten (10); no size limit.

(g) White bass and yellow bass, singly or in combination: daily limit, thirty (30); possession limit, sixty (60); no size limit.

(h) Striped bass and their hybrids: daily and possession limit, five (5); size limit, fifteen (15) inches.

(i) Crappie: daily limit, thirty (30); possession limit, sixty (60); no size limit.

(j) Rainbow trout and brown trout, singly or in combination: daily and possession limit, eight (8), no more than three (3) of which shall be brown trout; no size limit on rainbow trout; beginning March 1, 2000, twelve (12) inch size limit on brown trout.

(k) Brook trout: daily and possession limit, two (2); size limit, ten (10) inches.

(2) A person shall release grass carp caught from a lake owned or managed by the department.

(3) A person shall release fish:

(a) Below the minimum size limits established by this administrative regulation;

(b) Within a protected slot limit established by this administrative regulation; or

(c) Of a particular species, if a person has in his possession the daily limit for that species established by this administrative regulation.

(4) A person shall not remove any part of the head or tail of a fish for which there is a size or creel limit until he has completed fishing for the day and has left the water.

(5) A person who wishes to possess sport fish below the size limit or beyond the possession limit shall:

(a) Obtain the fish from a licensed fish propagator or other legal source; and

(b) Retain a receipt or other written proof that the fish were legally acquired.

(6) A person shall release trout unless he:

(a) Has a valid trout permit;

(b) Is exempted from trout permit [stamp] requirements by KRS 150.170(3); or

(c) Is fishing in a licensed pay lake stocked with trout by the lake operator.

Section 3. Fishing Season. The fishing season shall be open year round.

Section 4. Exceptions to Statewide Administrative Regulations. A person fishing in the waters listed in this section shall observe the following special requirements. Except as specified in this section, all other provisions of this administrative regulation shall apply to these bodies of water.

(1) Bad Branch, Letcher County. A person shall not fish except with an artificial bait with a single hook.

(2) Bark Camp Creek in Whitley County. [Beginning in 1999;] From October 1 through March 31, a person shall:

(a) Not fish except with an artificial bait; and

(b) Release trout.

(3) Barkley Lake.

(a) Largemouth bass and smallmouth bass: size limit, fifteen (15) inches.

(b) Crappie: size limit, ten (10) inches.

(c) Sauger: size limit, fourteen (14) inches.

(4) Barren River Lake, including:

(a) Barren River to the Highway 100 bridge;

(b) Long Creek to the Highway 100 bridge;

(c) Beaver Creek to the Highway 1297 bridge;

(d) Skaggs Creek to the Mathews Mill Road bridge; and

(e) Peter Creek to the Peter Creek Road bridge;

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1. White bass, yellow bass, striped bass and their hybrids, singly or in combination: daily limit, twenty (20); possession limit, forty (40); size limit, no more than five (5) fish in a daily limit or ten (10) fish in a possession limit shall be fifteen (15) inches or longer.
2. Crappie: size limit, nine (9) inches.
3. Largemouth bass and smallmouth bass: size limit, fifteen (15) inches. Daily limit may include no more than one (1) and the possession limit no more than two (2) fish less than fifteen (15) inches.
  - (5) Beaver Lake.
  - (a) Beginning March 1, 2000, largemouth bass: size limit, fifteen (15) inches.
  - (b) [Beginning March 1, 1999,] A person shall not possess shad or use shad for bait.
  - (6) Bert Combs Lake: a person shall not possess shad or use shad for bait.
  - (7) Boltz Lake: a person shall not possess shad or use shad for bait.
  - (8) Briggs Lake: a person shall not possess shad or use shad for bait.
  - (9) Buckhorn Lake: largemouth bass and smallmouth bass: size limit, fifteen (15) inches.
  - (10) Cane Creek in Laurel County. [Beginning in 1999,] From October 1 through March 31, a person shall:
    - (a) Not fish except with an artificial bait; and
    - (b) Release trout.
  - (11) Carpenter Lake: a person shall not possess shad or use shad for bait.
  - (12) Carr Creek Lake.
    - (a) Largemouth bass and smallmouth bass: size limit, fifteen (15) inches.
    - (b) Crappie: size limit, nine (9) inches.
  - (13) Carter Caves Lake.
    - (a) Fishing shall be during daylight hours only.
    - (b) Largemouth bass: daily and possession limit, one (1) fish; size limit, fifteen (15) inches.
    - (c) A person shall not possess shad or use shad for bait.
  - (14) Cave Run Lake: largemouth bass and smallmouth bass: slot limit - a person may keep fish less than thirteen (13) or greater than sixteen (16) inches and shall release fish between thirteen (13) and sixteen (16) inches.
  - (15) Corinth Lake: a person shall not possess shad or use shad for bait.
  - (16) Cumberland Lake.
    - (a) Largemouth and smallmouth bass: size limit, fifteen (15) inches.
    - (b) Striped bass: size limit, twenty-four (24) inches; daily and possession limit, two (2) fish.
    - (c) Crappie: size limit, ten (10) inches.
  - (17) Cumberland River downstream from Barkley Lake Dam.
    - (a) Striped bass: daily and possession limit, three (3).
    - (b) Sauger: size limit, fourteen (14) inches.
  - (18) Cumberland River from Wolfe Creek Dam downstream to the Kentucky-Tennessee state line. Brown trout: size limit, twenty (20) inches; creel limit, one (1).
  - (19) Cyprus AMAX and Robinson Forest Wildlife Management Areas. On impounded waters of the area:
    - (a) Largemouth bass: size limit, fifteen (15) inches;  
~~[1. Through February 28, 1999, daily and possession limit, one (1);~~  
~~2. Beginning March 1, 1999,] daily limit three (3); possession limit, six (6).~~
    - (b) Sunfish:  
~~[1. Through February 28, 1999, daily and possession limit, ten (10);~~  
~~2. Beginning March 1, 1999,] daily limit, fifteen (15); possession limit, thirty (30).~~
    - (c) Channel catfish:  
~~[1. Through February 28, 1999, size limit, fifteen (15) inches;~~  
~~2.] daily and possession limit, four (4).~~
    - (d) A person shall not fish:
      1. Except during daylight hours; or
      2. On Starfire Lake between January 1 and May 31.
  - (20) Dale Hollow Lake.
    - (a) Smallmouth bass: daily limit, two (2); size limit, eighteen (18) inches.
    - (b) Walleye and their hybrids:  
~~[1. Through February 28, 1999, daily limit, ten (10);~~  
~~2. Beginning March 1, 1999,] daily limit, five (5);~~
    3. Size limit, sixteen (16) inches.
    - (c) Sauger: daily limit, ten (10); size limit, fourteen (14) inches.
    - (d) Muskellunge: daily limit, one (1).
    - (e) Rainbow trout and lake trout.
      1. Daily limit, April 1 - October 31: seven (7), no more than two (2) of which may be lake trout. No size limit.
      2. Daily limit, November 1 - March 31: two (2); size limit, twenty-two (22) inches.
    - (f) [Beginning March 1, 1999:
      - 1.] Largemouth bass: size limit, fifteen (15) inches;
      - (g) [2.] Black bass: aggregate daily limit, five (5), no more than two (2) of which shall be smallmouth bass.
      - (h) [3.] Crappie: Size limit, ten (10) inches.
    - (21) Dewey Lake.
      - (a) Largemouth bass and smallmouth bass: size limit, fifteen (15) inches.
      - (b) White bass, yellow bass, striped bass and their hybrids, singly or in combination: daily and possession limit, five (5); size limit, fifteen (15) inches.
    - (22) Dix River for two (2) miles downstream from Herrington Lake Dam.
      - (a) A person shall not fish except with an artificial bait.
      - (b) Brown trout: size limit, fifteen (15) inches.
    - (23) Dix River upstream from Herrington Lake. White bass, yellow bass, striped bass and their hybrids, singly or in combination: daily limit, twenty (20); possession limit, forty (40); size limit: no more than five (5) in a daily limit or ten (10) fish in a possession limit shall be fifteen (15) inches or longer.
    - (24) Dog Fork, Wolfe County. Beginning March 1, 2000, a person shall:
      - (a) Not fish except with an artificial bait with a single hook;
      - (b) Release brook trout.
    - (25) East Fork Indian Creek in Menifee County. [Beginning in 1999,] From October 1 through March 31, a person shall:
      - (a) Not fish except with an artificial bait; and
      - (b) Release trout.
    - (26) [(25)] Elkhorn Creek downstream from the confluence of the North and South forks. Largemouth bass and smallmouth bass: slot limit - a person shall release fish between twelve (12) and sixteen (16) inches. The daily limit shall not include more than two (2) fish greater than sixteen (16) inches long.
    - (27) [(26)] Elmer Davis Lake.
      - (a) Largemouth bass: slot limit - a person shall release fish between twelve (12); and  
~~[1. Through February 28, 1999, sixteen (16) inches;~~  
~~2. Beginning March 1, 1999,] fifteen (15) inches.~~
      - (b) A person shall not possess shad or use shad for bait.
    - (28) [(27)] Fishtrap Lake.
      - (a) Largemouth bass or smallmouth bass: size limit, fifteen (15) inches.
      - (b) White bass, yellow bass, striped bass and their hybrids, singly or in combination: daily and possession limit, five (5); size limit, fifteen (15) inches.
    - (29) Game Farm Lakes. [(28)](a) A person shall not possess shad or use shad for bait.
      - (b) Upper Game Farm Lake:
        1. Largemouth bass and smallmouth bass: size limit, fifteen (15) inches; [  
~~a. Through February 28, 1999, daily limit, two (2);~~  
~~b. Beginning March 1, 1999,] daily limit, three (3); possession limit, six (6).~~
        2. Channel catfish:  
~~[a. Through February 28, 1999, daily limit, three (3);~~  
~~b. Beginning March 1, 1999,] daily limit, four (4); possession limit, eight (8).~~
      - (c) Lower Game Farm Lake:
        1. A person thirteen (13) years or older shall not fish.
        2. Daily limit, three (3) fish regardless of species.

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- (30) [(29)] Grayson Lake.
- (a) Largemouth bass and smallmouth bass: size limit, fifteen (15) inches.
- (b) [Beginning March 1, 1999,] White bass, yellow bass, striped bass and their hybrids, singly or in combination: size limit, fifteen (15) inches, daily and possession limit, five (5) fish.
- (31) [(30)] Greenbo Lake. A person shall not possess shad or use shad for bait.
- (32) [(31)] Green River Lake. Crappie: size limit, nine (9) inches.
- (33) [(32)] Guist Creek Lake. White bass, yellow bass, striped bass and their hybrids, singly or in combination: daily and possession limit, five (5); size limit, fifteen (15) inches.
- (34) [(33)] Hawk Creek in Laurel County. [Beginning in 1999,] From October 1 through March 31, a person shall:
- (a) Not fish except with an artificial bait; and
- (b) Release trout.
- (35) [(34)] Herrington Lake. White bass, yellow bass, striped bass and their hybrids, singly or in combination: daily limit, twenty (20); possession limit, forty (40); size limit: no more than five (5) in a daily limit or ten (10) fish in a possession limit shall be fifteen (15) inches long or longer.
- (36) [(35)] Kentucky Lake and the canal connecting Kentucky and Barkley lakes.
- (a) Largemouth bass and smallmouth bass: size limit, fifteen (15) inches.
- (b) Crappie: size limit, ten (10) inches.
- (c) Sauger: size limit, fourteen (14) inches.
- (37) [(36)] Laurel Lake. Largemouth bass and smallmouth bass, size limit, fifteen (15) inches.
- (38) [(37)] Lebanon City Lake.
- (a) Largemouth bass and smallmouth bass: size limit, fifteen (15) inches.
- (b) Crappie: size limit, nine (9) inches; daily limit, fifteen (15).
- (c) Bluegill and shellcrackers (singly or in aggregate): creel limit, thirty (30).
- (d) Channel catfish: creel limit, five (5).
- (39) [(38)] Leary Lake.
- (a) A person shall not fish except during daylight hours.
- (b) Largemouth bass:
- [1. Through February 28, 1999, daily limit, one (1); size limit, fifteen (15) inches.
2. Beginning March 1, 1999,] daily limit, three (3); possession limit, six (6).
- (c) Bluegill:
- [1. Through February 28, 1999, daily limit, twelve (12).
2. Beginning March 1, 1999,] daily limit, fifteen (15), possession limit, thirty (30).
- (d) Channel catfish:
- [1. Through February 28, 1999, daily limit, two (2).
2. Beginning March 1, 1999,] daily limit, four (4); possession limit, eight (8).
- (40) [(39)] Lincoln Homestead Lake.
- (a) A person shall not fish except during daylight hours.
- (b) Largemouth bass: daily limit, three (3); size limit, fifteen (15) inches.
- (c) [Bluegill and red-ear sunfish: through February 28, 1999, daily limit, ten (10) fish over seven (7) inches, singly or in combination; no limit on fish less than seven (7) inches.
- (d) Channel catfish:
- [1. Through February 28, 1999, daily limit, three (3).
2. Beginning March 1, 1999,] daily limit, four (4); possession limit, eight (8).
- (e) A person shall not possess shad or use shad for bait.
- (41) [(40)] Lake Malone. Largemouth bass: slot limit - a person shall release fish between twelve (12) and fifteen (15) inches.
- (42) [(41)] Marion County Lake.
- (a) Largemouth bass: size limit, fifteen (15) inches.
- (b) A person shall not possess shad or use shad for bait.
- [(42) Martins Fork and its tributaries in Harlan County from the Left Fork upstream two and three-tenths (2.3) miles to the Cumberland Gap National Park boundary. A person shall not fish except with an artificial bait with a single hook.]
- (43) Mauzy Lake. Largemouth bass; no size limit.
- (44) McNeely Lake. A person shall not possess shad or use shad for bait.
- (45) Mill Creek Lake (Powell County). A person shall not possess shad or use shad for bait.
- (46) Nolin River Lake.
- (a) Largemouth bass and smallmouth bass: size limit, fifteen (15) inches except that the daily limit may contain one (1) and the possession limit two (2) bass under fifteen (15) inches.
- (b) Crappie: size limit, nine (9) inches.
- (47) Ohio River.
- (a) Walleye, sauger and their hybrids: no size limit; daily limit, ten (10) fish, singly or in combination.
- (b) White bass, yellow bass, striped bass and their hybrids: daily limit, thirty (30); no more than four (4) in a daily limit shall be fifteen (15) inches long or longer.
- (48) Paintsville Lake. Largemouth bass and smallmouth bass: size limit, fifteen (15) inches.
- (49) Parched Corn Creek, Wolfe County. A person shall:
- (a) Not fish except with an artificial bait with a single hook;
- (b) Beginning March 1, 2000, release brook trout.
- (50) Peabody Wildlife Management Area (Goose Lake, Island Lake or South Lake):
- (a) Largemouth bass:
- [1. Through February 28, 1999, size limit, twenty (20) inches; daily and possession limit, one (1).
2. Beginning March 1, 1999,] Size limit, fifteen (15) inches; daily limit, three (3); possession limit, six (6).
- (b) Bluegill: daily and possession limit, fifteen (15).
- (c) Redbreast sunfish: daily and possession limit, fifteen (15).
- (d) Channel catfish:
- [1. Through February 28, 1999, size limit, fifteen (15) inches; daily and possession limit, two (2).
2. Beginning March 1, 1999,] daily limit, four (4); possession limit, eight (8).
- (e) Walleye: size limit, fifteen (15) inches; daily and possession limit, one (1).
- (f) [Crappie: through February 28, 1999, daily and possession limit, ten (10).
- (g) A person shall not:
1. Fish:
    - a. Except during daylight hours;
    - b. From October 15 through March 15.
  2. Take frogs.
- (51) Poor Fork and its tributaries in Letcher County downstream to the first crossing of Highway 932 [392]. A person shall:
- (a) Not fish except with an artificial bait with a single hook.
- (b) After March 1, 2000, release brook trout.
- (52) Lake Reba.
- (a) Largemouth bass and smallmouth bass: size limit, fifteen (15) inches.
- (b) A person shall not possess shad or use shad for bait.
- (53) Rock Creek from the Bell Farm Bridge to the Tennessee state line. [Beginning in 1999,] From October 1 through March 31, a person shall:
- (a) Not fish except with an artificial bait; and
- (b) Release trout.
- (54) Rough River Lake.
- (a) Crappie: size limit, nine (9) inches.
- (b) Largemouth bass and smallmouth bass: size limit, fifteen (15) inches, except that the daily limit may contain one (1) and the possession limit two (2) bass under fifteen (15) inches.
- (c) White bass: for size and creel limit purposes anglers shall consider fish of the Morone family with an unseparated, U-shaped rear tooth patch on the tongue to be white bass.
- (d) Hybrid striped bass: for size and creel limit purposes anglers shall consider fish of the Morone family with a separated rear tooth patch on the tongue to be hybrid striped bass.
- (55) Shanty Hollow Lake.
- (a) Largemouth bass: size limit, fifteen (15) inches.
- (b) A person shall not possess shad or use shad for bait.
- (56) Shillalah Creek, Bell County, outside the Cumberland Gap National Park. A person shall:
- (a) Not fish except with an artificial bait with a single hook.

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(b) Beginning March 1, 2000, release brook trout.

(57) Spurlington Lake. A person shall not possess shad or use shad for bait.

(58) Sympson Lake: Largemouth bass: size limit, fifteen (15) inches.

(59) Taylorsville Lake.

(a) Largemouth bass and smallmouth bass: size limit, fifteen (15) inches.

(b) Crappie: daily limit, fifteen (15); possession limit, thirty (30); size limits, nine (9) inches.

(c) White bass, yellow bass, striped bass and their hybrids, singly or in combination: daily and possession limit, five (5); size limit, fifteen (15) inches.

(60) Tennessee River downstream from Kentucky Lake Dam.

(a) Striped bass: daily and possession limit, three (3).

(b) Sauger: size limit, fourteen (14) inches.

(61) Wolf Creek Federal Fish Hatchery. Rainbow trout: beginning March 1, 2000, creel limit five (5) in the developed portion of Hatchery Creek from the galvanized culvert/tile upstream to the hatchery discharge.

(62) Yatesville Lake. Largemouth bass and smallmouth bass; size limit, fifteen (15) inches.

C. THOMAS BENNETT, Commissioner

MIKE BOATWRIGHT, Chairman

ANN R. LATTA, Secretary

DOUGLAS SCOTT PORTER, Assistant Attorney General

APPROVED BY AGENCY: June 4, 1999

FILED WITH LRC: June 14, 1999 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on July 29, 1999 at 9 a.m. at the Department of Fish and Wildlife Resources in the Commission Room of the Arnold L. Mitchell Building, #1 Game Farm Road, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by July 22, 1999, 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: Jennifer Fetter, Department of Fish and Wildlife Resources, Arnold L. Mitchell Building, #1 Game Farm Road, Frankfort, Kentucky 40601, (502) 564-3400, FAX (502) 564-6508.

### REGULATORY IMPACT ANALYSIS

Contact Person: John Wilson

(1) Type and number of entities affected: Approximately one million anglers fish Kentucky Waters each year. Only a fraction of those will be affected by the provisions of the amendments to 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 comments received. This amendment to an existing administrative regulation should have no impact on costs of living or employment.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: No comments received. This amendment to an existing administrative regulation should have no impact on costs of doing business.

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

1. First year following implementation: This amendment to an existing administrative regulation will not affect compliance, reporting or paperwork requirements.

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: This amendment to an existing administrative regulation will create no additional direct or indirect costs or savings.

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

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: None

(4) Assessment of anticipated effect on state and local revenues: To the extent that this administrative regulation improves fishing, the sale of fishing licenses and local tourist revenue could be positively impacted.

(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 comments received. This amendment to an existing administrative regulation should have no negative impact, and may have some positive impact in the geographical areas where implemented.

(b) Kentucky: This amendment to an existing administrative regulation should have no negative impact, and may have some positive impact on Kentucky.

(7) Assessment of alternative methods; reasons why alternatives were rejected: At every body of water affected by the amendment to this administrative regulation, the alternative chosen was considered the most viable means of protecting fishery resources while allowing optimum angling opportunity for the species involved.

(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 allow outdoor recreation while protecting the ecological balance of Kentucky's waters.

(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: Fishing size and creel limits prevent overfishing and population imbalances between predator and prey species. Without the size and creel limits imposed by this administrative regulation, both the recreational fishery and ecological balance in Kentucky's waters would suffer.

(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 used to the extent that specific regulations are applied to different bodies of water in an effort to create maximum recreational fishing opportunities while maintaining adequate fish populations and favorable environmental conditions. In other instances, 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 2:140. Requirements for wild turkey hunting.

RELATES TO: KRS 150.010, 150.025, 150.092, 150.170(3), 150.175(4), 150.305, 150.360, 150.365, 150.390(1), 150.990(11)

STATUTORY AUTHORITY: KRS 150.025(1), 150.390(1), 150.620

NECESSITY, FUNCTION, AND CONFORMITY: KRS 150.025(1)

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and 150.390(1) authorize the department to promulgate administrative regulations governing wild turkey hunting. The function of this administrative regulation is to assure the continued protection and conservation of wild turkey populations, and a permanent and continued supply for present and future residents of the state.

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

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

Section 2. A person shall not take a wild turkey:

(1) Except on the dates and during the times specified in:

(a) 301 KAR 2:142;

(b) 301 KAR 2:144; or

(c) 301 KAR 2:111.

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

Section 3. Unless exempted by KRS 150.170(3), a person hunting a wild turkey shall possess a:

(1) Spring turkey hunting permit during the spring season.

(2) Fall turkey archery hunting permit during the fall archery season.

(3) Fall turkey gun hunting permit during the fall gun season.

Section 4. (1) An adult shall accompany and maintain control of a person under sixteen (16) years of age turkey hunting with a firearm.

(2) Immediately after taking a wild turkey, ~~[and before moving the carcass;]~~ a person shall:

(a) Cut and remove the numbers on [; punch, or mark with ink or indelible pencil] the appropriate [number and month on the carcass] tag portion of the turkey permit corresponding to the day and month the turkey was taken [current date].

(b) Attach the tag to the carcass:

1. While transporting the turkey by vehicle; or

2. Whenever the hunter is not in physical possession of the carcass.

(3) A person shall check a harvested turkey by:

(a) Calling 1-877-245-4263;

1. During the fall archery season, by 9 a.m. on the day following the day he took the turkey; or

2. During the spring or fall gun season, on the same day he took the turkey.

(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 turkey permit.

(4) A person shall:

(a) Not knowingly provide false information when checking a turkey;

(b) Check a turkey before transporting it out of Kentucky.

(c) Have the turkey checked at a check station or by an authorized employee of the department:

1. On the same day it was taken during the spring or fall gun season;

2. By 9 a.m. on the day after it was taken during the fall archery season;

(d) Fill out a game check card and return it to the person checking the turkey;

(e) Keep the hunter's portion of the game check card in possession until the turkey is processed;

(f) Attach to a turkey taken to a taxidermist:

1. The taxidermy portion of the game check card;

2. A Ft. Campbell game check card; or

3. A Land Between the Lakes game check card.

(g) Check the turkey before transporting them out of Kentucky.]

(5) [(3)] A person taking a turkey on a wildlife management area shall follow the tagging and checking requirements in 301 KAR 2:142 or 301 KAR 2:111.

(6) [(4)](a) A person exempt from turkey permit requirements by KRS 150.170(3) shall:

1. Write his name, address, the date when, and the county where, the turkey was taken on a card; and

2. Attach the card to the carcass when he removes the turkey from the property where it was taken.

(b) A person turkey hunting with a senior/disabled license as authorized by KRS 150.175(1)(a) and 301 KAR 3:022 shall:

1. Before hunting, write his name and address on cards corresponding to the number of turkeys he is allowed to take during the appropriate season;

2. Immediately after taking a turkey ~~[and before moving the carcass]~~, write the date the turkey was taken on the card; and

3. Attach the tag to a turkey while it is being transported by vehicle or is out of the hunter's possession.

Section 5. Firearms and Archery Equipment. A person hunting wild turkey shall not use or carry:

(1) A rifle or handgun.

(2) A shotgun larger than ten (10) gauge or smaller than twenty (20) gauge.

(3) Shot larger than number four (4).

(4) Shotgun slugs.

(5) A firearm during archery-only seasons.

(6) A crossbow, except on the Pioneer Weapons Area.

(7) Barbed broadheads.

(8) Broadheads smaller than seven-eighths (7/8) inch wide.

(9) Arrows with chemical treatments or attachments containing chemicals.

Section 6. Baiting. (1) A person shall not hunt wild turkeys on a baited area or by the aid of baiting:

(a) While bait is present; or

(b) For thirty (30) days after the bait has been removed.

(2) A person may hunt wild turkey on an area where grain, feed or other substance exists as the result of:

(a) Bona fide agricultural practice; or

(b) Manipulating a crop for a wildlife management purpose.

(3) A field shall be considered baited if grain, feed or other substance grown on the field is removed and later returned to the field.

Section 7. Turkey Hunting Restrictions. (1) A person hunting wild turkeys:

(a) May use a hand or mouth-operated call;

(b) Shall not:

1. Use a dog;

2. Hunt from a boat;

3. Use an electronic call;

4. Use a live decoy; or

5. Take a roosting turkey.

(2) A person shall not mimic the sound of a turkey:

(a) From March 1 until the opening of the spring season;

(b) In an area open to hunting if turkeys are reasonably expected to occur.

C. THOMAS BENNETT, Commissioner

MIKE BOATWRIGHT, Chairman

ANN R. LATTA, Secretary

DOUGLAS SCOTT PORTER, Assistant Attorney General

APPROVED BY AGENCY: February 26, 1999

FILED WITH LRC: June 14, 1999 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on July 29, 1999 at 9 a.m. at the Department of Fish and Wildlife Resources in the Commission Room of the Arnold L. Mitchell Building, #1 Game Farm Road, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by July 22, 1999, 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

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the public hearing or written comments on the proposed administrative regulation to: Jennifer Fetter, Department of Fish and Wildlife Resources, Arnold L. Mitchell Building, #1 Game Farm Road, Frankfort, Kentucky 40601, (502) 564-3400, FAX (502) 564-6508.

### REGULATORY IMPACT ANALYSIS

Contact Person: Jennifer Fetter

(1) Type and number of entities affected: Approximately 15,000 persons hunt wild turkey in Kentucky.

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

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

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: No public comments received. The amendment to this administrative regulation will have no impact on cost of doing business.

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

1. First year following implementation: No additional paperwork requirements.

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

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: No additional costs or savings.

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

3. Additional factors increasing or decreasing costs: None

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

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

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

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

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

(b) Kentucky: No economic impact.

(7) Assessment of alternative methods; reasons why alternatives were rejected: KRS 150.360 specifies that a person shall not take wildlife unless the department opens a season for a particular species; there is no alternate way of opening a season on wild turkey except by administrative regulation. Alternatives to the specifics contained within this administrative regulation were considered and rejected because they would not provide the desired combination of protection for Kentucky's wild turkey flock and optimal recreational opportunities for hunters.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: This administrative regulation is a conservation measure that will help keep the harvest of wild turkey within acceptable limits.

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

(c) If detrimental effect would result, explain detrimental effect: Possible overharvest of wild turkey, leading to reduced seasons and lessened hunter opportunity.

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

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

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

(10) Any additional information or comments: None

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

### NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET Department for Environmental Protection Division of Water (Amendment)

#### 401 KAR 5:002. Definitions [of terms] for 401 KAR Chapter 5.

RELATES TO: KRS 224.01-010, 224.01-400, 224.10-100, 224.10-110, 224.16-050, 224.16-060, 224.40, 224.43, 224.46, 224.50, 224.60, 224.70, 224.71, 224.73 [224.70-100, 224.70-110], 40 CFR Parts 35, 116, 130, 131, 136, 401 - 471, 33 USC 1281, 1288, 1313(e), 1314(b), 1341, 1342, 42 USC 300f-j, 9601-9675

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, 131, 136, 401 - 471, 33 USC 1281, 1288, 1313(e), 1314(b), 1341, 1342

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 administrative regulation and 401 KAR 5:026, 5:029, 5:030, and 5:031 will operate to protect the surface waters of the Commonwealth, and thus protect water resources. 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. (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) "Acute-chronic ratio" means the ratio of the acute toxicity, expressed as an  $LC_{50}$ , of an effluent or a toxic substance, to its chronic toxicity. It is used as a factor to estimate chronic toxicity from acute toxicity data.

(4) "Acute criteria" means the highest instream concentration of a toxic substance or an effluent to which an organism can be exposed for a brief period of time without causing an unacceptable harmful effect.

(5) "Acute toxicity" means lethality or other harmful effect sustained by either an indigenous aquatic organism or a representative indicator organism used in a toxicity test, due to a short-term exposure, of ninety-six (96) hours or less, to a specific toxic substance or mixture of toxic substances.

(6) "Acute toxicity unit" means the reciprocal of the effluent dilution that causes the acute effect, or  $LC_{50}$ , by the end of the acute exposure period.

(7) "Administrator" means the administrator of the United States Environmental Protection Agency, or the administrator's authorized representative.

(8) "Adversely affect" or "adversely change" means, for purposes of 401 KAR 5:026 through 5:031, to alter or change the community structure or function, to reduce the number or proportion of sensitive species, or to increase the number or proportion of pollution tolerant aquatic species so that aquatic life use support or aquatic habitat is impaired.

(9) "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.

(10) "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.

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(11) "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.

(12) "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:

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.

(13) "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.

(14) "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.

(15) "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.

(16) "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.

(17) "Area of review" means a fixed radius around a facility of not less than one-fourth (1/4) mile.

(18) "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.

(19) "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.

(20) "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.

(21) "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.

(22) "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.

(23) "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.

(24) "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.

(25) "Barrel" means forty-two (42) U.S. gallons.

(26) "BAT" means best available technology economically achievable.

(27) "BCT" means best conventional pollutant control technology.

(28) "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.

(29) "Biochemical oxygen demand", "BOD", or "BOD<sub>5</sub>" means the amount of oxygen required to stabilize biodegradable organic matter under aerobic conditions within a five (5) day period. Other time periods may be measured, and if so, are indicated where the term is used.

(30) "BMPs" means best management practices.

(31) "Board" means the Kentucky Board of Certification of Wastewater System Operators, as established by KRS 224.73-110.

(32) "BOD" or "BOD<sub>5</sub>" means biochemical oxygen demand.

(33) "BPT" means best practicable technology currently available.

(34) "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.

(35) "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.

(36) "Bypass" means the intentional diversion of sewage or wastestreams from a portion of a facility or industrial user's treatment facility.

(37) "°C" means degrees Celsius.

(38) "CAH" means cold water aquatic habitat.

(39) "Carbonaceous biochemical oxygen demand" or "CBOD" means BOD, not including the nitrogenous oxygen demand of the wastewater.

(40) "Cation exchange capacity" or "CEC" means the measure of the ability of a soil to retain cations in a form available for uptake by plants. CEC is expressed in milliequivalents per 100 grams of soil.

(41) "CBOD" means carbonaceous biochemical oxygen demand.

(42) "CEC" means cation exchange capacity.

(43) "CERCLA" means the Comprehensive Environmental Response, Compensation, and Liability Act, as amended (42 USC 9601 et seq.).

(44) "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.

(45) "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.

(46) "cfm" means cubic feet per minute.

(47) "CFR" means Code of Federal Regulations.

(48) "Chronic criteria" means the highest instream concentration

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of a toxic substance or an effluent to which organisms can be exposed indefinitely without causing an unacceptable harmful effect.

(49) "Chronic toxicity" means lethality, reduced growth or reproduction or other harmful effect sustained by either indigenous aquatic organisms or representative indicator organisms used in toxicity tests due to long-term exposures, relative to the life span of the organisms or a significant portion of their life span, to toxic substances or mixtures of toxic substances.

(50) "Chronic toxicity unit" means the reciprocal of the effluent dilution that causes twenty-five (25) percent inhibition of growth or reproduction to the test organisms by the end of the chronic exposure period.

(51) "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.

(52) "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.

(53) "COD" means chemical oxygen demand.

(54) "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.

(55) "Combined sewer" or "combined sewer line" means a sewer or sewer line designed to carry storm water runoff as well as sanitary wastewater.

(56) "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.

(57) "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.

(58) "Concentrated animal feeding operation" means, for purposes of 401 KAR 5:005, 5:009, 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.

(59) "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.

(60) "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.

(61) "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.

(62) "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.

(63) "Conventional domestic water supply treatment" means or includes coagulation, sedimentation, filtration, and chlorination.

(64) "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.

(65) "Copermitee" 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.

(66) "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.

(67) "CSO" means combined sewer overflow.

(68) "CWA" means the Clean Water Act, as amended.

(69) "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.

(70) "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).

(71) "Day" means a twenty-four (24) hour period.

(72) "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.

(73) "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.

(74) "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

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to, additions of pollutants into waters of the Commonwealth from surface run-off which is collected or channeled 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.

(75) "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.

(76) "Disappearing stream" means an intermittent or perennial surface stream that terminates and drains underground through caves, fractures, or swallets in the stream bed.

(77) "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.

(78) "Division" means the Kentucky Division of Water, within the Department for Environmental Protection, Natural Resources and Environmental Protection Cabinet.

(79) "DMR" means discharge monitoring report.

(80) "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.

(81) "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.

(82) "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.

(83) "Draft permit" means a document prepared under 401 KAR 5:009 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 5:009 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.

(84) "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.

(85) "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.

(86) "DWS" means domestic water supply.

(87) "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.

(88) "Effluent lagoon" means a treatment lagoon.

(89) "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.

(90) "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.

(91) "Engineer" means a professional engineer.

(92) "Enhanced recovery well" means a well used for the injection of fluids to improve or maintain reservoir productivity.

(93) "Environmental Protection Agency" or "EPA" means the United States Environmental Protection Agency.

(94) "Epilimnion" means the thermally homogeneous water layer overlying the metalimnion of a thermally stratified lake or reservoir.

(95) "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.

(96) "Eutrophication" means the enrichment of a surface water by the discharge or addition of a nutrient.

(97) "Exceptional water" means a surface water categorized as exceptional by the cabinet pursuant to 401 KAR 5:030.

(98) "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.

(99) "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.

(100) "Existing source" means, for purposes of 401 KAR 5:080, any source which is not a new source or a new discharger.

(101) "Existing use" means a legitimate use being attained in or on a surface water of the Commonwealth on or after November 28, 1975, irrespective of its use designation.

(102) "°F" means degrees Fahrenheit.

(103) "Facility" means:

(a) For purposes of 401 KAR 5:005, 5:006, or 5:009, 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.

(104) "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.

(105) "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.

(106) "Filter strip" means a strip or area of vegetation for removing sediment, organic material, and other pollutants from runoff and wastewater.

(107) "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.

(108) "Force main" means a conduit used to transport sewage from a pump discharge to a sewer line, pump station, or WWTP.

(109) "Gas" means, for purposes of 401 KAR 5:090, all natural gas, including casinghead gas, and all other hydrocarbons not defined as oil.

(110) "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.

(111) "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.

(112) "GPD" or "gpd" means gallons per day.

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(113) "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.

(114) "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.

(115) "Harmonic mean flow" means the reciprocal of the mean of the reciprocal daily flow values.

(116) "Hazardous substance" means, for purposes of 401 KAR 5:050 to 5:080, any pollutant designated under 40 CFR Part 116.

(117) "Holding pit" means an earthen excavated depression which receives and stores produced water at a facility.

(118) "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.

(119) "Hypolimnion" means the lower cold region of a thermally stratified lake or reservoir that extends below the metalimnion to the bottom.

(120) "IC<sub>25</sub>" means an inhibition concentration of twenty-five (25) percent.

(121) "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.

(122) "Impact" means, for the purpose of 401 KAR 5:026 through 5:031, a change in the chemical, physical, or biological quality or condition of a surface water.

(123) "Impairment" means, for the purpose of 401 KAR 5:026 through 5:031, a detrimental impact to a surface water that prevents attainment of a designated use.

(124) "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.

(125) "Incorporated place" means a city, town, township, or village that is created under the Kentucky Revised Statutes.

(126) "Indigenous aquatic life" means naturally occurring aquatic organisms including but not limited to bacteria, fungi, algae, aquatic insects, other aquatic invertebrates, reptiles, amphibians, and fishes. Under some natural conditions one (1) or more of the above groups may be absent from a surface water.

(127) "Indirect discharge" or "discharge" means, for purposes of 401 KAR 5:057, the introduction of pollutants into a POTW from a non-domestic industrial source regulated by the program.

(128) "Indirect discharger" means a nondomestic discharger introducing pollutants to a publicly-owned treatment works.

(129) "Industrial user" or "user" means a source of indirect discharge.

(130) "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.

(131) "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.

(132) "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.

(133) "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.

(134) "Inhibition concentration of twenty-five (25) percent" or "IC<sub>25</sub>" means the concentration that is determined by a linear interpolation

method for estimating the concentration at which a twenty-five (25) percent reduction is shown in reproduction or growth in test organisms, and which statistically approximates the concentration at which no unacceptable chronic effect is observed.

(135) "Injection" means, for purposes of 401 KAR 5:009, a type of land application in which the waste is placed directly beneath the land surface.

(136) "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.

(137) "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.

(138) "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.

(139) "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.

(140) "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.

(141) "Intermittent water" means a stream that flows only at certain times of the year.

(142) "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.

(143) "IWWTP" means an industrial WWTP.

(144) "KAR" means Kentucky Administrative Regulations.

(145) "Karst" means the type of geologic terrane underlain by carbonate rocks where significant solution of rock has occurred due to flowing groundwater.

(146) "Karst feature" means a naturally occurring feature formed by the dissolution of carbonate rock including but not limited to a sinkhole drain, karst window, swallow, spring, sinking stream, or cave.

(147) "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.

(148) "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.

(149) "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.

(150) "kg" means kilograms.

(151) "KPDES" means the Kentucky Pollutant Discharge Elimination System.

(152) "KPDES permit" means a Kentucky Pollutant Discharge

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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.

(153) "KRS" means Kentucky Revised Statutes.

(154) "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.

(155) "Land treatment" or "land disposal" means the application or incorporation of a pollutant onto or into the soil.

(156) "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.

(157) "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.

(158) "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.

(159) "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.

(160) "LC" means that concentration of a toxic substance or mixture of toxic substances that is lethal, or immobilizing if appropriate, to one (1) percent of the organisms tested in a toxicity test during a specified exposure period.

(161) "LC<sub>50</sub>" means that concentration of a toxic substance or mixture of toxic substances that is lethal, or immobilizing if appropriate, to fifty (50) percent of the species tested in a toxicity test during a specified exposure period.

(162) "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.

(163) "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).

(164) "Maintain" means, for purposes of 401 KAR 5:026 through 5:031, to preserve or keep in present condition by not allowing an adverse permanent or long-term change to water quality or to a population of an aquatic organism or its habitat.

(165) "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.

(166) "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.

(167) "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.

(168) "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.

(169) "Major outfall" means a major municipal separate storm sewer outfall.

(170) "Manmade" means constructed by humans.

(171) "Maximum daily discharge limitation" means the highest allowable daily discharge.

(172) "Measurement" means the ability of the analytical method or protocol to quantify as well as identify the presence of the substance in question.

(173) "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.

(174) "Metalimnion" means the region of the thermocline.

(175) "µg/l" means micrograms per liter, same as ppb, assuming unit density.

(176) "mgd" or "MGD" means million gallons per day.

(177) "mg/l" means milligrams per liter, same as ppm, assuming unit density.

(178) "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.

(179) "Minimum design volume" means the treatment volume in

the lagoon necessary to maintain an anaerobic condition in the lagoon.

(180) "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.

(181) "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.

(182) "Mixing zone" means a domain of a water body contiguous to a treated or untreated wastewater discharge with quality characteristics different from those of the receiving water. The discharge is in transit and progressively diluted from the source to the receiving system. The mixing zone is the domain where wastewater and receiving water mix.

(183) "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.

(184) "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).

(185) "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.

(186) "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.

(187) "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.

(188) "Natural temperature" means, for purposes of 401 KAR 5:026 through 5:031, the temperature that would exist in waters of the Commonwealth without the change of enthalpy of artificial origin, as contrasted with that caused by climatic change or naturally occurring variable temperature associated with riparian vegetation and seasonal changes.

(189) "Natural water quality" means, for purposes of 401 KAR 5:026 through 5:031, those naturally occurring physical, chemical, and biological properties of waters.

(190) "Net discharge" means, for purposes of 401 KAR 5:026 through 5:031, the amount of substance released to a surface water by excluding the influent value from the effluent value if both the intake and discharge are from and to the same or similar body of water.

(191) "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 com-

mences 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.

(192) "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.

(193) "Nonconventional pollutant" means a pollutant not considered to be a conventional pollutant, including priority pollutants identified in 401 KAR 5:060.

(194) "Nonpoint" means any source of pollutants not defined by a point source, as used in this chapter.

(195) "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 LC<sub>50</sub>) for a representative indigenous aquatic organism. If any of the above conditions is not met, then the discharge is considered to be from a minor industry.

(196) "NPDES" is defined [shall have the meaning given it] in KRS 224.01-010.

(197) "NRCS" means the Natural Resources Conservation Service.

(198) "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.

(199) "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.

(200) "O&M" means operation and maintenance.

(201) "Operate" means, for purposes of 401 KAR 5:090, any act relating to the construction, operation, or maintenance of any facility.

(202) "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.

(203) "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.

(204) "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.

(205) "Outstanding national resource water" means a surface water categorized by the cabinet as an outstanding national resource water pursuant to 401 KAR 5:030.

(206) "Outstanding state resource water" means a surface water designated by the cabinet as an outstanding state resource water pursuant to 401 KAR 5:031.

(207) "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.

(208) "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.

(209) "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.

(210) "Package WWTP" means a factory-built WWTP which is transported to and assembled or set in place at the site.

(211) "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.

(212) "pCi/l" means picocuries per liter.

(213) "PCR" means primary contact recreation.

(214) "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 5:009, a Swine Waste Management Permit; or

(c) For purposes of 401 KAR 5:050 to 5:080, a KPDES permit.

(215) "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.

(216) "Planning area" means the geographic area proposed to be served by a regional planning agency in a projected twenty (20) year period.

(217) "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.

(218) "POTW" means publicly-owned treatment works as defined in KRS 224.01-010.

(219) "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.

(220) "ppb" means parts per billion; assuming unit density, same as µg/l.

(221) "ppm" means parts per million; assuming unit density, same as mg/l.

(222) "Preexisting discharge" means any discharge that is occurring when applying for a KPDES permit under 401 KAR 5:029 or 5:040.

(223) "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.

(224) "Pretreatment requirement" means a substantive or procedural requirement related to pretreatment, other than a pretreatment standard, imposed on an industrial user.

(225) "Pretreatment standard" means a national pretreatment standard.

(226) "Primary contact recreation water" means those waters suitable for full body contact recreation during the recreation season of May 1 through October 31.

(227) "Primary industry category" means any industry category listed as being a primary industry in 401 KAR 5:060.

(228) "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.

(229) "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.

(230) "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.

(231) "Produced water" means all water, pollutants, and combinations thereof resulting, obtained, or produced from the exploration, drilling, or production of oil or gas.

(232) "Productive aquatic community" means an assemblage of indigenous aquatic life capable of reproduction and growth.

(233) "Professional engineer" or "engineer" means a person registered to practice engineering pursuant to KRS Chapter 322.

(234) "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).

(235) "Propagation" means the continuance of a species by successful spawning, hatching, and development or natural generation in the natural environment, as opposed to the maintenance of the species by artificial culture and stocking.

(236) "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.

(237) "Public water" shall have the meaning given it in 401 KAR 8:010.

(238) "RCRA" means the Resource Conservation Recovery Act as amended (42 USC 6901 et seq.).

(239) "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.

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(240) "Recommencing discharger" means a source which recommences discharge after terminating operations.

(241) "Regional administrator" means the regional administrator of the Region IV office of the U.S. EPA or the authorized representative of the regional administrator.

(242) "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.

(243) "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 Sections 201, 205, and 208 of the CWA to control point sources of pollution within a planning area.

(244) "Regional planning agency" means a governmental agency, such as a city, county, or other public body created by KRS Chapter 67, 67A, 74, 76, 96, 108, or 220, that has been designated pursuant to 33 USC 1288 of the CWA and 40 CFR Part 130 to provide planning for the treatment of wastewater and for controls and recommendations relating to wastewater for a particular area. Those existing agencies that have developed plans pursuant to Sections 201, 205, 208, and 303(e) of the CWA shall be considered the regional planning agency for the area.

(245) "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.

(246) "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.

(247) "Remined area" means only that area of any coal remining operation on which a coal mining operation was conducted before August 3, 1977.

(248) "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.

(249) "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.

(250) "Representative indicator organism" means an aquatic organism designated for use in toxicity testing because of its relative sensitivity to toxicants and its widespread distribution in the aquatic environment.

(251) "Requester" means any industrial user or a POTW or other interested person seeking a variance from the limits specified in a categorical pretreatment standard.

(252) "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.

(253) "Rock crushing and gravel washing facilities" means facilities which process crushed and broken stone, gravel, and riprap.

(254) "Run-off coefficient" means the fraction of total rainfall that will appear at a conveyance as run-off.

(255) "SARA" means the Superfund Amendments and Reauthorization Act, as amended.

(256) "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.

(257) "SCR" means secondary contact recreation.

(258) "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.

(259) "Secondary industry category" means any industry category which is not a primary industry category.

(260) "Secondary treatment" means that degree of treatment which results in an effluent quality which meets the minimum requirements of 401 KAR 5:045.

(261) "Service area" means that geographic area currently being served by a regional facility.

(262) "Seven-Q-ten" or "7Q<sub>10</sub>" means that minimum average flow which occurs for seven (7) consecutive days with a recurrence interval of ten (10) years.

(263) "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.

(264) "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.

(265) "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.

(266) "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.

(267) "Sewer line extension" means a proposed construction project which extends a sewer system; it includes gravity sewer lines, pump stations, and force mains.

(268) "Sewer system" means the network of sewer lines, pump stations, and force mains that discharge to a common WWTP.

(269) "SIC" means standard industrial classification.

(270) "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.

(271) "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.

(272) "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.

(273) "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.

(274) "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.

(275) "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.

(276) "SMCRA" means the Surface Mining Control and Reclamation Act, as amended (33 USC 1201 et seq.).

(277) "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.

(278) "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.

(279) "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.

(280) "Source" means any building, structure, facility, or installation from which there is or may be a discharge of pollutants.

(281) "SPCC" means spill prevention control and countermeasure.

(282) "Standard" means:

(a) For purposes of 401 KAR 5:026, 5:029, 5:030 or 5:031, a water quality standard; or

(b) For purposes of 401 KAR 5:057, a pretreatment standard.

(283) "Storm water" means storm water run-off, snow melt run-off, and surface run-off and drainage.

(284) "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.

(285) "Stripper well" means any oil well producing ten (10) barrels or less per day of oil.

(286) "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.

(287) "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.

(288) "Surface mining operation" means only those facilities required to have a permit by 405 KAR Chapters 7 through 26.

(289) "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.

(290) "SWDA" means the Solid Waste Disposal Act, as amended (42 USC 6901 et seq.).

(291) "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.

(292) "Swine units" means the units of measurement used to determine the applicability of 401 KAR 5:009. The number of units shall be determined using the formula in 401 KAR 5:009.

(293) "Swine waste" means the waste from a swine feeding operation, including manure, bedding, soil, wasted water and feed, and flushing water from swine confinement.

(294) "Swine waste lagoon" means a structure constructed pursuant to 401 KAR 5:009 for the purpose of collecting, storing, and treating the waste from a swine feeding operation.

(295) "Swine Waste Management Permit" or "SWMP" means the permit issued pursuant to 401 KAR 5:009 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.

(296) "SWMP" means a swine waste management permit.

(297) "Tank battery" means an installation where oil is collected from wellheads and is separated from produced water.

(298) "TDS" means total dissolved solids.

(299) "Thermocline" means the plane in a thermally stratified body of water in which the maximum rate of decrease in temperature occurs with respect to depth.

(300) "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.

(301) "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.

(302) "Toxic pollutant" means, for purposes of 401 KAR 5:050 to 5:080, any pollutant listed as being toxic in 401 KAR 5:080.

(303) "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.

(304) "Toxic substance" means a substance that is bioaccumulative, synergistic, antagonistic, teratogenic, mutagenic or carcinogenic and causes death, disease, a behavioral abnormality, a physiological malfunction, or a physical deformity in an organism or its offspring or interferes with normal propagation.

(305) "TSS" means total suspended solids.

(306) "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.

(307) "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.

(308) "Underground injection" means a well injection.

(309) "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.

(310) "USC" means United States Code.

(311) "U.S. EPA" means the United States Environmental Protection Agency.

(312) "USGS" means the United States Geological Survey.

(313) "Use-protected water" means a surface water categorized as use-protected by the cabinet pursuant to 401 KAR 5:030.

(314) "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 5:009, a mechanism or provision that allows a modification or waiver of specified requirements.

(315) "WAH" means warm water aquatic habitat.

(316) "Warm water aquatic habitat" or "WAH" means any surface water and associated substrate capable of supporting indigenous warm water aquatic life.

(317) "Wastewater system" means a sewage system as defined in KRS 224.01-010.

(318) "Wastewater treatment plant" or "WWTP" means a facility used for the treatment and disposal of sewage.

(319) "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.

(320) "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.

(321) "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.

(322) "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.

(323) "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.

(324) "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

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circumstances does support, a prevalence of hydrophytic vegetation typically adapted for life in saturated soil conditions.

(325) "Whole effluent toxicity" means the aggregate toxic effect of an effluent measured directly by a toxicity test.

(326) "WWTP" means wastewater treatment plant.

(327) "Zone" means a subsurface layer or stratum capable of producing or receiving fluids.

(328) "Zone of initial dilution" means the limited area permitted by the cabinet surrounding or downstream from a discharge location where rapid, first-stage mixing occurs. The zone of initial dilution is the domain where wastewater and receiving water initially mix.

(329) "Zone of saturation" means the zone in which all the subsurface voids in the rock or soil are filled with water.

(330) "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 law;]~~ 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 1, 1998 [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. Incorporation by Reference. (1) "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, is incorporated by reference.

(2) This material may be inspected, copied, or obtained at the Kentucky Division of Water, 14 Reilly Road, Frankfort, Kentucky, Monday through Friday, 8 a.m. to 4:30 p.m. ~~[This material may be subject to copyright law.]~~

JAMES E. BICKFORD, Secretary

BARBARA A. FOSTER, General Counsel

APPROVED BY AGENCY: June 15, 1999

FILED WITH LRC: June 15, 1999 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation is scheduled for July 27, 1999, at 7 p.m. (EDT) at the Western Hills High School Auditorium, 100 Doctors Drive, Frankfort, Kentucky. Individuals who intend to be heard at this hearing shall notify this agency in writing by July 20, 1999, five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend 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 administrative regulation. A transcript of the hearing will not be made unless a written request for a transcript is made. If you request a transcript, you may be required to pay for it. If you do not wish to be heard at the hearing, you may submit written comments on the administrative regulation. Send written notification of your intent to be heard at the hearing, or your written comments on the administrative regulation, to the contact person listed below. Written comments must be received before adjournment of the hearing, or by 4:30 p.m. on July 27, 1999,

if the hearing is not held. The hearing facility is accessible to persons with disabilities. Requests for reasonable accommodations, including auxiliary aids and services necessary to participate in the hearing, may be made to the contact person at least five (5) workdays prior to the hearing.

CONTACT PERSON: Jack A. Wilson, Director, Division of Water, Department for Environmental Protection, 14 Reilly Road, Frankfort, Kentucky 40601, Telephone: (502) 564-3410 Fax: (502) 564-0111.

### REGULATORY IMPACT ANALYSIS

Contact person: Jack A. Wilson

(1) Type and number of entities affected: This administrative regulation defines the terms used by administrative regulations in 401 KAR Chapter 5. It is being amended to accompany the amended water quality standards, 401 KAR 5:026, 5:029, 5:030 and 5:031, filed on the same date. 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 amended water quality standards. Any impact of these administrative regulations on the entities affected occurs in the specific administrative regulation where the term is actually used. This administrative regulation is being amended to provide one central location where terms used in Chapter 5 are defined.

(2) Direct and indirect costs or savings: There are no direct or indirect costs or savings on the affected entities due to the amendment of this administrative regulation; any direct or indirect costs or savings would occur in the administrative regulation where the term is used.

(a) Effect on the cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: No known or expected impacts. No specific comments were received during the public comment period.

(b) Effect on the cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: No known or expected impacts. No specific comments were received during the public comment period.

(c) Effect on the compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition), to the extent available from the public comments received, for the:

1. First year following implementation: No specific comments were received during the public comment period.

2. Second and subsequent years: No specific comments were received during the public comment period.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings: There are no effects on this agency from defining these terms. Any impact would occur when the terms are used in a particular 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: There are no reporting and paperwork requirements imposed by the terms defined in this amended administrative regulation.

(4) Assessment of anticipated effect on state and local revenues: No known or expected effects. Any effects would occur in the administrative regulation where the term is used.

(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, economic impact, including effects of economic activities arising from administrative regulation, on:

(a) Geographical area in which administration regulation will be implemented: No specific comments were received during the public comment period.

(b) Kentucky: No specific comments were received during the public comment period.

(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 administrative regulation, but that would have required that terms be duplicated in each administrative regulation in the chapter. That in turn would have generated longer administrative regulations, requiring more printing time, paper, and other resources. Also, if a definition changed, each administrative regulation would have to be amended. Therefore to save time and expenses of amending and printing each administrative regulation, and so the public will know that all the definitions are in one location, the Division of Water is amending the administrative regulation that will apply to all administrative regulations in the chapter. As the administrative regulations in the chapter are amended, the definitions in those administrative regulations will be moved to this administrative 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 an administrative 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 administrative regulation were not implemented would occur in the program where the administrative regulation would exist.

(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, administrative regulation, or government policy is in conflict, overlapping, or duplication.

(a) Necessity of proposed regulation if in conflict: The administrative regulation is not in conflict.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: The administrative regulation is 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 administrative regulation where the terms are used may be tiered.

#### FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. There is no federal statute or regulation mandating that Kentucky implement a water pollution control program or use these definitions. For Kentucky to maintain its delegation over the NPDES permit program, however, the Clean Water Act requires that Kentucky review its water quality standards every three years and comply with the programmatic requirements of 40 CFR Part 131, including the requirement for an antidegradation policy. This administrative regulation is being amended to add definitions relating to the triennial review and the antidegradation policy and its implementation. There is federal guidance issued for states on how to implement the water quality standards and the antidegradation policy, but there is no federal regulation that mandates these definitions.

2. State compliance standards. 401 KAR 5:002, 5:026, 5:029, 5:030, and 5:031, the water quality standards regulations.

3. Minimum or uniform standards contained in the federal mandate. The Clean Water Act requires designated uses, criteria, standards and antidegradation policies in water quality standards.

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. There is no stricter standard or additional or different responsibilities or requirements.

#### 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 amended administrative 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 amended administrative 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 administrative 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 (+/-): None

Expenditures (+/-): None

Other explanation: Since this amended administrative regulation merely defines terms, it does not impact the expenditures or revenues of a local government.

#### NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET Department for Environmental Protection Division of Water (Amendment)

#### 401 KAR 5:026. Designation of uses of surface [Classification of] waters.

RELATES TO: KRS 146.200 to 146.360, 146.410 to 146.990, 224.01-100, 224.01-400, 224.16-050, 224.16-070, 224.40, 224.43, 224.46, 224.50, 224.60, 224.70, 224.71, 224.73 [Chapter 224]

STATUTORY AUTHORITY: KRS 146.200 to 146.360, 146.410 to 146.990, 224.10-100, 224.16-050, 224.16-060, 224.70-100, 224.70-110, 40 CFR Part 131, 16 USC 1271 et seq., 1531 et seq., 33 USC 1311, 1313, 1314, 1316, 1341

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 pollution. This administrative regulation and 401 KAR 5:002, 5:029, 5:030, and 5:031 will operate to protect the surface waters of the Commonwealth, and thus protect water resources. This administrative regulation applies the designated uses described [use classifications found] in 401 KAR 5:031 to the surface waters of the Commonwealth. This administrative regulation also makes all surface waters subject to the general criteria specified in [Section 2 of] 401 KAR 5:031, Section 2. Definitions for terms used in this administrative regulation are found in 401 KAR 5:002 [5:029].

Section 1. Scope of Designation [Classification to Designated Uses]. (1) Surface waters listed [classified] under this administrative regulation shall be designated for all legitimate uses contained [listed] in KRS 224.70-100(1) except as specified in 401 KAR 5:031, Sections [Section] 5 and 7 or until redesignated [reclassified] in accordance with the procedures of this administrative regulation.

(2) Those designated uses are:

(a) Warm water aquatic habitat;

(b) Cold water aquatic habitat;

(c) Primary contact recreation;

(d) Secondary contact recreation;

(e) Domestic water supply; and

(f) Outstanding state resource water.

(3) Listed [Classified] waters shall meet all criteria applicable to their designated uses and those criteria listed in [Section 2 of] 401 KAR 5:031, Section 2, unless the cabinet grants an exception pursuant to 401 KAR 5:031, Section 9 or 10 [8].

(4) Outstanding state resource waters may have unique water quality characteristics that [which] shall be protected [maintained] by additional criteria adopted as administrative regulations by the cabinet pursuant to 401 KAR 5:031, Section 7.

Section 2. Redesignation of Surface Water Uses. [Reclassification:] (1) Surface waters may be redesignated [reclassified] only upon

affirmative findings by the cabinet pursuant to Sections 3 and 4 [5 and 6] of this administrative regulation. Before redesignating a [reclassifying any] surface water, the cabinet shall provide notice and an opportunity for a public hearing.

(2) In redesignating a [reclassifying any] surface water, the cabinet shall ensure that its water quality standards provide for the attainment and maintenance of the water quality standards of downstream surface waters.

(3) A designated use shall not be removed for a surface water if that use is an existing use, or if the use may be attained by implementing effluent limitations required under Sections 301(b) and 306 of the Clean Water Act, 33 USC 1311(b) and 1316, and by implementing cost-effective and reasonable best management practices for nonpoint source control.

(4) If a surface water is designated for a use that is not an existing use, the cabinet shall redesignate [reclassify] the surface water upon demonstration that the designated use is unattainable because:

(a) Naturally occurring pollutant concentrations prevent the attainment of the use; or

(b) Natural, ephemeral, intermittent or low flow conditions or water levels prevent the attainment of the use, unless these conditions may be compensated for by the discharge of sufficient volume of effluent discharges; or

(c) Human caused conditions or sources of pollution prevent the attainment of the use and cannot be remedied or would cause more environmental damage to correct than to leave in place; or

(d) Dams, diversions or other types of hydrologic modifications preclude the attainment of the use, and it is not feasible to restore the surface water to its original condition or to operate such modification in a way that would result in the attainment of the use; or

(e) Physical conditions related to the natural features of the surface water, such as the lack of a proper substrate, cover, flow, depth, pools, riffles, and the like, unrelated to water quality, preclude attainment of the aquatic life use; or

(f) Controls more stringent than those required by Sections 301(b) and 306 of the Clean Water Act, 33 USC 1311(b) and 1316, would result in substantial and widespread economic and social impact as determined by following the guidelines in "Interim Economic Guidance for Water Quality Standards Workbook (EPA, March 1995)" incorporated by reference in Section 6 of this administrative regulation.

(5) Redesignations shall [Reclassifications will] be consistent with the antidegradation provisions [nondegradation requirements] of 401 KAR 5:029 and 401 KAR 5:030 [; Section 2].

Section 3. [Priority for Implementation. Priorities for reclassification of the surface waters of the Commonwealth are:

(1) Surface waters receiving or proposed to receive discharges from a POTW or serving as public water system sources have first priority in the following order:

(a) Any local unit of government with a pending construction permit application for installation or upgrading of a POTW or public water system treatment plant.

(b) Any local unit of government in the cabinet's construction grants program administered pursuant to 33 USC 1281 for installation or upgrading of a POTW in an order of priority consistent with its priority project list rank.

(c) Any local unit of government which requests consideration prior to entering its own construction project, applying for an NPDES or KPDES permit, or applying for participation in the cabinet's construction grants program administered pursuant to 33 USC 1281 for installation or upgrading of a POTW.

(d) Other local units of government, on a first-come, first-served basis:

(2) Surface waters receiving or proposed to receive discharges from any other treatment works shall have second priority in the following order:

(a) Applicants for new or modified NPDES or KPDES permits for discharges to surface waters which may potentially be classified for cold-water-aquatic habitat.

(b) All other surface waters with point source dischargers on a first come, first-served basis:

(3) Reclassifications for all other surface waters which do not have any existing or proposed point source dischargers have third priority.

(4) These priorities may be varied by order of the cabinet.

Section 4. Responsibility for Providing Documentation. The following entities are responsible for providing the documentation for the reclassification of the surface waters under this administrative regulation. The required documentation is listed in Section 5 of this administrative regulation:

(1) The cabinet will provide supporting documentation for the reclassification of surface waters on which are located or proposed to be located facilities which are either:

(a) POTWs; or

(b) Outstanding resource waters on publicly owned land; or

(c) Applicants for new or modified NPDES or KPDES permits for discharges to surface waters which may potentially be classified as outstanding resource waters.

(2) Any applicant filing for reclassification of surface waters in circumvention of the priority system contained in Section 3 of this administrative regulation shall provide the cabinet with classification documentation. The applicant has the burden of proof that the reclassification is appropriate and necessary.

(3) The cabinet will provide documentation for all other surface waters which do not have any existing or proposed point source dischargers.

Section 5. Required Documentation for Redesignations. (1) A person may request redesignation of surface water uses by petition to the cabinet. The petitioner shall provide the cabinet with the documentation required in subsection (3) of this section and shall have the burden of proof that the redesignation is appropriate.

(2) The cabinet may propose redesignations of surface water uses. The cabinet shall provide documentation for those surface waters that it proposes for use redesignation.

(3) Documentation [which shall be required] to support the redesignation [reclassification] of a surface water of the Commonwealth shall be [is as follows]:

(a) [(1)] A United States Geological Survey 7.5 minute topographic map or its equivalent approved by the cabinet showing those surface waters to be redesignated [reclassified], with a description consisting of a river mile index with [any] existing and proposed discharge points;

(b) [(2)] Existing uses and water quality data for the surface waters for which the redesignation [reclassification] is proposed. If [Where] adequate data are unavailable, additional studies may be required by the cabinet;

(c) [(3)] Descriptions of general land uses [e.g., mining, agricultural, recreation, low, medium, and high density residential, commercial-industrial, etc.] and specific land uses adjacent to the surface waters for which the redesignation [reclassification] is proposed;

(d) [(4)] The existing and designated uses of the downstream waters into which the surface water under consideration discharges;

(e) [(5)] General physical characteristics of the surface water including, but not limited to width, depth, bottom composition, and slope;

(f) [(6)] The frequency of occasions when there is no natural flow in the surface water and the 7Q<sub>10</sub> and harmonic mean flow values for the surface water and adjacent surface waters;

(g) [(7)] An assessment of the existing and potential aquatic life habitat in the surface waters under consideration and the adjacent upstream surface waters. The existing aquatic life shall be documented and livestock and natural wildlife dependence on the surface water shall be assessed. The occurrence of individuals or populations, indices of diversity and well-being, and abundance of species of any unique native biota shall be documented;

(h) [(8)] The proposed designated uses for the surface water in question; and

(i) [(9)] An explanation of the irretrievable person-induced, or natural conditions which preclude attainment of a higher use designation or an assessment of the substantial and widespread social and economic impacts resulting from the imposition of additional controls necessary for existing point sources, beyond the most stringent effluent limitation levels normally required for the [such] sources.

Section 4. [6:] Procedures for Redesignation [Reclassification. This section outlines the procedures for evaluating proposed use reclassifications]. (1) For each of the surface waters for which a redesig-

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nation [reclassification] is proposed, the cabinet or petitioner [applicant] shall prepare a fact sheet containing, but not limited to, the following information:

- (a) The name and address of the petitioner [applicant];
  - (b) The name and sketch or description of the surface water proposed for specified use redesignations [reclassifications], including the location of existing and proposed dischargers;
  - (c) The proposed use redesignations [classifications];
  - (d) A brief abstract of the supportive documentation which demonstrates that the redesignation [reclassification] is appropriate;
  - (e) The appropriate water quality criteria for the surface water based on the proposed designated use(s);
  - (f) The treatment requirements proposed for discharges to the surface water in question if designated for the proposed use(s); and
  - (g) A "plain English" summary of the implications of the [such] designation for the community and other users or potential users of the surface water in question;
  - (h) The procedure by which the designation will be made.
- (2) The cabinet shall document the determination to propose or deny redesignation as a result of a petition, and shall provide a copy of the decision to the petitioner and other interested parties. [Based upon all available information, the staff shall make its recommendation of use classifications of the surface waters in question to the secretary of the cabinet.]
- (3) The cabinet shall have a list of surface waters and their redesignated uses promulgated as an amendment to this administrative regulation. (The secretary shall have a list of surface waters and their classification prepared to be published as an administrative regulation.)
- (4) Upon completing the procedure for promulgation of adminis-

trative regulations set forth in KRS Chapter 13A, all designated surface waters and their use classifications shall be listed in this administrative regulation.]

Section 5. [7:] Surface Water Use Designations [Classifications].  
 (1) Listed in the tables below are the use designations [classifications] for specific surface waters of the Commonwealth. The county column indicates the county in which the mouth or outlet of the surface water is located. The identifying symbols for use designations [classifications] are [as follows]:

WAH	Warm Water Aquatic Habitat
CAH	Cold Water Aquatic Habitat
PCR	Primary Contact Recreation
SCR	Secondary Contact Recreation
DWS	Domestic Water Supply, [{}applicable at existing points of public water supply withdrawal{}]
OSRW	Outstanding State Resource Water

(2) Surface waters not specifically listed in this section are designated for the use of warm water aquatic habitat, primary [primarily] contact recreation, secondary contact recreation and domestic water supply in accordance with Section 1 of this administrative regulation.

(3) Exceptions to specific criteria in 401 KAR 5:031 that [which] apply to particular surface waters are shown in the tables of surface water use designations [classifications] in this section. All other criteria in 401 KAR 5:031 applicable to the listed use designations shall [classifications] apply to these surface waters.

[LIST OF DESIGNATED] SURFACE WATER USE DESIGNATIONS [CLASSIFICATIONS]				
Stream	Zone	County	Use Designation [Classification]	Exceptions To Specific Criteria
<b>BIG SANDY RIVER BASIN</b>				
Big Sandy River	River Mile 26.8 to Ohio River	Boyd	WAH, PCR, SCR	
Hood Creek	Source to Wheeler Branch	Lawrence	WAH, PCR, SCR	
Levisa Fork of Big Sandy River	Kentucky-Virginia State Line to River Mile 147.5 (Headwaters of Fishtrap Lake)	Pike	WAH, PCR, SCR, DWS	
Levisa Fork of Big Sandy River	River Mile 126.6 (Fishtrap Lake Dam) to Big Sandy River	Lawrence	WAH, PCR, SCR, DWS	
Paint Creek of Levisa Fork	River Mile 8.3 (Paintsville Lake Dam) to Levisa Fork	Johnson	CAH, PCR, SCR	
Russell Fork of Big Sandy River	Kentucky-Virginia State Line (River Mile 15.9) to Levisa Fork	Pike	WAH, PCR, SCR, DWS	
Tug Fork of Big Sandy River	Kentucky-Virginia State Line (River Mile 94.0) to Big Sandy River	Lawrence	WAH, PCR, SCR, DWS	
<b>LAKES AND RESERVOIRS</b>				
Dewey	Entire reservoir	Floyd	WAH, PCR, SCR, DWS	
Fishtrap	Entire reservoir	Pike	WAH, PCR, SCR, DWS	
Paintsville	Entire reservoir	Johnson	WAH, CAH, PCR, SCR	
<b>LITTLE SANDY RIVER BASIN</b>				
Big Caney Creek	Source to Grayson Lake	Elliott	CAH, PCR, SCR	
Big Sinking Creek	River Mile 6.0 to Little Sandy River	Carter	WAH [CAH], PCR, SCR	
Laurel Creek	Source to Little Sandy River	Elliott	CAH, PCR, SCR	
Little Sandy River	Source to River Mile 71.1 (Headwaters of Grayson Lake)	Elliott	WAH, PCR, SCR, DWS	
Little Sandy River	River Mile 50.0 (Grayson Lake Dam) to Ohio River	Greenup	WAH, PCR, SCR, DWS	
<b>LAKES AND RESERVOIRS</b>				
Grayson	Entire Reservoir	Carter	WAH, PCR, SCR	
Greenbo	Entire Reservoir	Greenup	WAH, CAH, PCR, SCR, DWS	
<b>TYGARTS CREEK BASIN</b>				
Buffalo Creek	Source to Tygarts Creek	Carter	WAH, PCR, SCR	
Little White Oak Creek	Source to Tygarts Creek	Greenup	WAH, PCR, SCR	
Tygarts Creek	Source to Ohio River	Greenup	WAH, PCR, SCR, DWS	
White Oak Creek	Source to Tygarts Creek	Greenup	WAH, PCR, SCR	
<b>LICKING RIVER BASIN</b>				
Burning Fork	Basin	Magoffin	WAH, PCR, SCR	
Craney Creek	Source to North Fork of Licking River	Rowan/	CAH, PCR, SCR	

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		Morgan		
Fleming Creek	Source to Licking River	Nicholas	WAH, PCR, SCR	
Licking River	Source to River Mile 218.2 (Headwaters of Cave Run Lake)	Morgan	WAH, PCR, SCR, DWS	
Licking River	River Mile 169.6 to Ohio River	Kenton/ Campbell	WAH, PCR, SCR, DWS]	
Licking River	River Mile 176.8 (Cave Run Lake Dam) to River Mile 169.6 (U.S. Highway 60 Bridge)	Bath/Rowan	CAH, PCR, SCR, DWS	
Licking River	River Mile 169.6 to River Mile 165.0	Bath/Rowan	WAH, PCR, SCR, DWS	
Licking River	River Mile 165.0 to River Mile 154.5	Bath/Rowan	WAH, PCR, SCR, OSRW	
Licking River	River Mile 154.5 to River Mile 115.0	Nicholas/ Bourbon	WAH, PCR, SCR, DWS	
Licking River	River Mile 115.0 to River Mile 18.9	Kenton/ Campbell	WAH, PCR, SCR, DWS, OSRW	
Licking River	River Mile 18.9 to Ohio River	Kenton/ Campbell	WAH, PCR, SCR, DWS	
Licking River	Source to River Mile 218.2	Morgan	WAH, PCR, SCR, DWS]	
North Fork of Licking River	Source to Licking River	Pendleton/ Bracken	WAH, PCR, SCR, DWS	
Slabcamp Creek	Basin including Stonecoal Branch	Rowan	CAH, PCR, SCR	
Slate Creek	Source to Licking River	Bath	WAH, PCR, SCR, DWS	
South Fork Licking River	River Mile 65.1 to Licking River	Pendleton	WAH, PCR, SCR, DWS	
<b>LAKES AND RESERVOIRS</b>				
Cave Run	Entire Reservoir	Rowan/Bath	WAH, PCR, SCR	
<b>KENTUCKY RIVER BASIN</b>				
Bailey Run	Basin	Anderson	WAH, PCR, SCR	
Buck Lick Branch	Basin	Lee	WAH, PCR, SCR	
Cedar Brook	Basin	Anderson	WAH, PCR, SCR	
Chimney Top Creek	Basin	Wolfe	CAH, PCR, SCR	
Clarks Run	Source to Herrington Lake	Boyle	WAH, PCR, SCR	
Dix River	Source to River Mile 33.1 (Headwaters of Herrington Lake)	Boyle/ Garrard	WAH, PCR, SCR	
Dix River	[Herrington Lake Dam] to Kentucky River	Garrard/ Mercer	CAH, PCR, SCR	
Dix River	Source to River Mile 33.1 (Headwaters of Herrington Lake)	Boyle/ Garrard	WAH, PCR, SCR]	
East Fork of Indian Creek	Source to Indian Creek	Menifee	CAH, PCR, SCR	
Glade Creek	Basin	Menifee	WAH [GAH], PCR, SCR	
Hanging Fork Creek	Source to Dix River	Boyle/Lincoln	WAH, PCR, SCR	
Indian Creek	River Mile 5.2 to River Mile 1.2	Menifee	CAH, PCR, SCR	
Kentucky River	River Mile 254.8 to Ohio River	Carroll	WAH, PCR, SCR, DWS	
Middle Fork of Kentucky River	Source to River Mile 76.6 (Headwaters of Buckhorn Lake)	Leslie	WAH, PCR, SCR	
Middle Fork of Kentucky River	River Mile 43.2 (Buckhorn Lake Dam) to North Fork of Kentucky River	Lee	WAH, PCR, SCR	
Middle Fork of Red River	Source to River Mile 10.6	Powell	WAH [GAH], PCR, SCR	
North Fork of Kentucky River	Source to Kentucky River	Lee	WAH, PCR, SCR, DWS	
Parched Corn Creek	Source to Red River	Wolfe	CAH, PCR, SCR	
Red River	Source to River Mile 68.6	Menifee/ Wolfe	WAH, PCR, SCR	
Red River	River Mile 68.6 to River Mile 49.2 [59.5]	Menifee/ Wolfe	WAH, PCR, SCR, OSRW	
Red River	River Mile 49.2 [59.5] to Kentucky River	Clark/Estill	WAH, PCR, SCR, DWS	
Ross Creek	Source to Kentucky River	Lee	WAH, PCR, SCR	
Silver Creek	Source to Kentucky River	Madison	WAH, PCR, SCR	
South Fork of Elkhorn Creek	Source to North Fork of Elkhorn Creek	Franklin	WAH, PCR, SCR	
South Fork of Kentucky River	Source to Kentucky River	Lee	WAH, PCR, SCR, DWS	
Swift Camp Creek	Source to Red River	Wolfe	WAH [GAH], PCR, SCR	
Town Branch	Source to South Fork of Elkhorn Creek	Fayette	WAH, PCR, SCR	
War Fork of Station Camp Creek	Source to River Mile 8.5	Jackson	WAH, PCR, SCR	
War Fork of Station Camp Creek	River Mile 8.5 to River Mile 2.0	Jackson	CAH, PCR, SCR	
War Fork of Station Camp Creek	River Mile 2.0 to Station Camp Creek	Jackson	WAH, PCR, SCR	
<b>LAKES AND RESERVOIRS</b>				
Bert Combs	Entire Reservoir	Clay	WAH, CAH, PCR, SCR, DWS	
Buckhorn	Entire Reservoir	Perry	WAH, PCR, SCR, DWS	
Carr Fork	Entire Reservoir	Knott/Perry	WAH, PCR, SCR	
Fishpond	Entire Reservoir	Letcher	WAH, CAH, PCR, SCR	

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Herrington	Entire Reservoir	Gar-rard/Mercer	WAH, PCR, SCR, DWS	
Mill Creek	Entire Reservoir	Wolfe	WAH, CAH, PCR, SCR, DWS	
<b>SALT RIVER BASIN</b>				
Beech Fork of Salt River	Source to Salt River	Hardin/Bullitt	WAH, PCR, SCR, DWS	
Chenoweth Run	Source to Floyds Fork [(River Mile 24.3)]	Jefferson	WAH, PCR, SCR	
Currys Fork	Confluence of South and North Forks to Floyds Fork	Oldham	WAH, PCR, SCR	
Floyds Fork	Source to Salt River	Bullitt	WAH, PCR, SCR	
Mill Creek	Source to Salt River	Bullitt	WAH, PCR, SCR	
North Fork of Currys Fork	Source to South Fork of Currys Fork	Oldham	WAH, PCR, SCR	
Rolling Fork of Salt River	Source to Salt River	Bullitt	WAH, PCR, SCR, DWS	
Salt River	Source to River Mile 74.8 (Headwaters of Taylorsville Lake)	Anderson	WAH, PCR, SCR, DWS	
Salt River	River Mile 60.1 (Taylorsville Lake Dam) to Ohio River	Hardin/Jefferson	WAH, PCR, SCR, DWS	
<del>Beech Fork Salt River</del>	<del>Source to Salt River</del>	<del>Hardin/Bullitt</del>	<del>WAH, PCR, SCR</del>	
<del>Rolling Fork Salt River</del>	<del>Source to Salt River</del>	<del>Bullitt</del>	<del>WAH, PCR, SCR, DWS</del>	
Unnamed tributary to Mill Creek	Source to Mill Creek at River Mile 11.8	Bullitt	WAH, PCR, SCR	
<b>LAKES AND RESERVOIRS</b>				
Taylorsville	Entire Reservoir	Spencer	WAH, PCR, SCR	
<b>GREEN RIVER BASIN</b>				
Barren River	Source to River Mile 118.5 (Headwaters of Barren River Lake)	Allen	WAH, PCR, SCR	
Barren River	River Mile 79.1 (Barren River Lake Dam) to River Mile 15.0	Warren	WAH, PCR, SCR, DWS	
Barren River	River Mile 15.0 to Green River	But-ler/Warren	WAH, PCR, SCR, ORW	
Beaverdam Creek	Source to Green River [Green River]	Edmonson	WAH [CAH], PCR, SCR	
Big Pitman Creek	Source to Green River	Green	WAH, PCR, SCR	
Black Lick Creek	Source to Clear Fork	Logan	WAH, PCR, SCR, DWS	
Buck Horn Creek	Source to Little Pitman Creek	Taylor	WAH, PCR, SCR	
Buffalo Creek	Source to Green River (in Mammoth Cave National Park)	Edmonson	WAH [CAH], PCR, SCR	
Cypress Creek	Source to Pond River	McLean	WAH, PCR, SCR	
Drakes Creek	Confluence of West Fork and Middle Fork to Barren River	Warren	WAH, PCR, SCR	
Gasper River	Source to Barren River	Warren	WAH, PCR, SCR	
Green River	Source to River Mile 340.1 (Headwaters of Green River Lake)	Adair	WAH, PCR, SCR, DWS	
Green River	River Mile 305.6 (Green River Lake Dam) to River Mile 291.0 [225-9]	Hart	WAH, PCR, SCR, OSRW [DWS]	
Green River	River Mile 291.0 to River Mile 260.0	Hart	WAH, PCR, SCR, DWS	
Green River	River Mile 260.0 [225-9] to River Mile 207.8 [181-7]	Hart [Edmonson]	WAH, PCR, SCR, DWS, OSRW	
Green River	River Mile 207.8 to River Mile 181.7	Edmonson	WAH, PCR, SCR, OSRW	
Green River	River Mile 181.7 to River Mile 168.0	Butler/Warren	WAH, PCR, SCR, DWS	
Green River	River Mile 168.0 to River Mile 148.0	Butler	WAH, PCR, SCR, OSRW	
Green River	River Mile 148.0 to Ohio River	Henderson	WAH, PCR, SCR, DWS	
Lick Creek	Source to West Fork of Drakes Creek	Simpson	CAH, PCR, SCR	
Little Pitman Creek	Source to Big Pitman Creek	Green	WAH, PCR, SCR	
Lynn Camp Creek	Source to Green River	Hart	WAH [CAH], PCR, SCR	
Middle Pitman Creek	Source to Big Pitman Creek	Green	WAH, PCR, SCR	
Underground River System	Mammoth Cave National Park	Edmonson/Hart/Barren	CAH, PCR, SCR, OSRW	
Turnhole Spring	Basin Outside Mammoth Cave National Park Boundary	Edmonson/Barren	CAH, PCR, SCR, OSRW	
Echo River	Basin Outside Mammoth Cave National Park Boundary	Edmonson	CAH, PCR, SCR, OSRW	
Pike Spring	Basin Outside Mammoth Cave National Park Boundary	Edmonson	CAH, PCR, SCR, OSRW	
Mile 205.7 Spring	Basin Outside Mammoth Cave National Park Boundary	Hart	CAH, PCR, SCR, OSRW	
McCoy Spring	Basin Outside Mammoth Cave National Park Boundary	Hart	CAH, PCR, SCR, OSRW	
Suds Spring	Basin Outside Mammoth Cave National	Hart/Barren	CAH, PCR, SCR, OSRW	

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	Park Boundary			
Double Sink Spring	Basin Outside Mammoth Cave National Park Boundary	Edmonson/Barren	CAH, PCR, SCR, OSRW	
Ganter Spring	Basin Outside Mammoth Cave National Park Boundary	Edmonson	CAH, PCR, SCR, OSRW	
Running Spring	Basin Outside Mammoth Cave National Park Boundary	Edmonson	CAH, PCR, SCR, OSRW	
Mud River	Source to Green River	Butler/Muhlenburg	WAH, PCR, SCR	
Nolin River	Source to River Mile 64.3 (Headwaters of Nolin Lake)	Hart/Grayson	WAH, PCR, SCR	
Nolin River	River Mile 7.6 (Nolin Lake Dam) to Green River	Edmonson	WAH [GAH], PCR, SCR	
Rough River	Source to River Mile 133.8 (Headwaters of Rough River Lake)	Hardin	WAH, PCR, SCR, DWS	
Rough River	River Mile 89.3 (Rough River Lake Dam) to River Mile 72.4	Ohio/Grayson	WAH [GAH], PCR, SCR, DWS	
Rough River	River Mile 72.4 to Green River	McLean/Ohio	WAH, PCR, SCR, DWS	
Roundstone Creek	Source to Hwy 1140 (River Mile 3.5)	Hart	WAH [GAH], PCR, SCR	
Sharp's Branch	Source to West Fork of Drakes Creek	Simpson	WAH, PCR, SCR	
Trammel Fork	River Mile 30.15 (Kentucky/Tennessee State Line) [Source] to Hwy 31E (River Mile 23.6)	Allen [Warren]	CAH, PCR, SCR	[HQ*]
Trammel Fork	River Mile 23.6 to Drakes Creek	Warren	WAH, PCR, SCR	
West Fork of Drakes Creek	Source to Confluence with Middle Fork of Drakes Creek	Warren	WAH, PCR, SCR, DWS	
Wiggington Creek	Source to Gasper River	Logan	WAH, PCR, SCR	
<b>LAKES AND RESERVOIRS</b>				
Barren River	Entire Reservoir	Barren/Allen	WAH, PCR, SCR, DWS	
Green River	Entire Reservoir	Taylor	WAH, PCR, SCR, DWS	
Nolin	Entire Reservoir	Edmonson	WAH, PCR, SCR, DWS	
Rough River	Entire Reservoir	Breckinridge/Grayson	WAH, PCR, SCR, DWS	
<b>LOWER CUMBERLAND RIVER BASIN</b>				
Casey Creek	Source to Little River	Trigg	WAH [GAH], PCR, SCR	
Cumberland River	River Mile 30.8 (Lake Barkley Dam) to Ohio River	Livingston	WAH, PCR, SCR, DWS	
Skinframe Creek	Source to Livingston Creek	Lyon	WAH [GAH], PCR, SCR	
Sulphur Spring Creek	Source to Red River	Simpson	WAH [GAH], PCR, SCR	
West Fork of Red River	River Mile 32.2 to Kentucky/Tennessee State Line (River Mile 14.5)	Christian	CAH, PCR, SCR	
Whipporwill Creek	Source to Red River	Logan	WAH, PCR, SCR, OSRW	
[Cumberland River	River Mile 30.8 (Lake Barkley Dam) to Ohio River	Livingston	WAH, PCR, SCR, DWS]	
<b>LAKES AND RESERVOIRS</b>				
Barkley	Entire Reservoir from [to] Kentucky/Tennessee State Line (River Mile 74.7)	Lyon/Livingston	WAH, PCR, SCR, DWS	
<b>TENNESSEE RIVER BASIN</b>				
Tennessee River	River Mile 22.4 (Kentucky Lake Dam) to River Mile 12.0	Livingston/McCracken	WAH, PCR, SCR, OSRW	
Tennessee River	River Mile 12.0 to Ohio River [Mile 0-0]	Livingston/McCracken	WAH, PCR, SCR, DWS	
[Tennessee River	River Mile 22.4 (Kentucky Lake Dam) to River Mile 12.0	Livingston/McCracken	WAH, PCR, SCR, OSRW]	
<b>LAKES AND RESERVOIRS</b>				
Kentucky	Entire Reservoir from [to] Kentucky/Tennessee State Line (River Mile 62.4)	Livingston/Marshall	WAH, PCR, SCR, DWS	
<b>TRADEWATER RIVER BASIN</b>				
Crab Orchard Creek/Vaughn Ditch	Source to Tradewater River	Webster	WAH, PCR, SCR	
Montgomery Creek	Source to Tradewater River	Caldwell	WAH, PCR, SCR	
Tradewater River	Source to Ohio River	Crittenden/Union	WAH, PCR, SCR	
<b>OHIO RIVER BASIN (Main Stem and Minor Tributaries)</b>				
Doe Run Creek	Source to [KY] Hwy 1628 (River Mile 5.15)	Meade	WAH [GAH], PCR, SCR	
Ohio River	Big Sandy River (River Mile 317.1) to River Mile 940.7[}]	McCracken	WAH, PCR, SCR, DWS	

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Ohio River	River Mile 940.7 to River Mile 943.3	McCracken	WAH, PCR, SCR, DWS, OSRW	
Ohio River	River Mile 943.3 to River Mile <u>948.2</u> [966.3]	McCracken/ Ballard]	WAH, PCR, SCR, DWS	
<u>Ohio River</u>	<u>River Mile 948.2 to River Mile 949.5</u>	<u>Ballard</u>	<u>WAH, PCR, SCR, DWS, OSRW</u>	
Ohio River	<u>River Mile 949.5 to River Mile 966.3</u>	<u>Ballard</u>	<u>WAH, PCR, SCR, DWS</u>	
Ohio River	River Mile 966.3 to River Mile 969.5	Ballard	WAH, PCR, SCR, DWS, OSRW	
Ohio River	River Mile 969.5 to Mississippi River	Ballard	WAH, PCR, SCR, DWS	
Ohio River	River Mile 922.0 to River Mile 923.5 (Channel East of Towhead Island)	Livingston	WAH, PCR, SCR, OSRW	
Paddy's Run	Source to Ohio River	Jefferson	PCR, SCR	401 KAR 5:031, Section 2(1)(d) and (2) do not apply
[Section 2(1)(d) and 2(2) of 401 KAR 5:031 do not apply.]				
Sinking Creek	Source to Hwy 259 (River Mile 4.0)	Breckinridge	CAH, PCR, SCR	
<u>White Oak Creek</u>	<u>River Mile 1.08 to Ohio River</u>	<u>Greenup</u>	<u>SCR</u>	401 KAR 5:031, Section 2(1)(d) and (2) do not apply
<b>LAKES AND RESERVOIRS</b>				
Metropolis	Entire Lake	McCracken	WAH, PCR, SCR, OSRW	
Swan	Entire Lake	Ballard	WAH, PCR, SCR, OSRW	
<b>MISSISSIPPI RIVER BASIN (Main Stem and Minor Tributaries)</b>				
<u>Bayou de Chien</u>	<u>Source to River Mile 13.0</u>	<u>Hickman</u>	<u>WAH, PCR, SCR, OSRW</u>	
<u>Cane Creek of Bayou de Chien</u>	<u>Basin</u>	<u>Graves</u>	<u>WAH, PCR, SCR, OSRW</u>	
<u>Jackson Creek</u>	<u>Basin</u>	<u>Graves</u>	<u>WAH, PCR, SCR, OSRW</u>	
<u>Sand Creek</u>	<u>Basin</u>	<u>Graves</u>	<u>WAH, PCR, SCR, OSRW</u>	
<u>South Fork of Bayou de Chien</u>	<u>Basin</u>	<u>Graves</u>	<u>WAH, PCR, SCR, OSRW</u>	
Mississippi River	Confluence with Ohio River to Kentucky/Tennessee State Line	Fulton	WAH, PCR, SCR	
Murphy's Pond	Entire Pond and Preserve Area	Hickman	WAH, PCR, SCR, OSRW	
<b>UPPER CUMBERLAND RIVER BASIN</b>				
<u>Adams Branch</u>	<u>Basin</u>	<u>Whitley</u>	<u>WAH, PCR, SCR, OSRW</u>	
Archers Creek	Basin	Whitley	WAH, PCR, SCR, OSRW	
Bad Branch	Basin	Letcher	CAH, PCR, SCR, OSRW	
Bark Camp Creek	Basin	Whitley	CAH, PCR, SCR	
Beaver Creek	Basin	McCreary	CAH, PCR, SCR, OSRW	
Beaver Creek	Source to Lake Cumberland	Wayne	WAH, PCR, SCR	
Beck's Creek	Basin	Whitley	WAH, PCR, SCR, OSRW	
<u>Bens Fork of Little Clear Creek</u>	<u>Basin</u>	<u>Bell</u>	<u>WAH, PCR, SCR, OSRW</u>	
<u>Big Branch</u>	<u>Basin Above River Mile 0.8</u>	<u>McCreary</u>	<u>WAH, PCR, SCR, OSRW</u>	
Big Lick Branch	Basin	Pulaski	WAH, PCR, SCR, OSRW	
Big South Fork of Cumberland River	River Mile 55.2 to River Mile 45.0	McCreary	WAH, PCR, SCR, OSRW	
<u>Blacksnake Branch</u>	<u>Basin</u>	<u>Bell</u>	<u>WAH, PCR, SCR, OSRW</u>	
Breeden's Creek	Basin	Harlan	WAH [CAH], PCR, SCR, OSRW	
<u>Brices Creek</u>	<u>Basin</u>	<u>Knox</u>	<u>WAH, PCR, SCR, OSRW</u>	
Brownies Creek	Basin to River Mile <u>10.0</u> [8-7]	Harlan	WAH, PCR, SCR, OSRW	
Buck Creek	River Mile 53.3 to River Mile 10.5	Pulaski	WAH, PCR, SCR, OSRW	
Buck Creek	Basin	Whitley	WAH, PCR, SCR, OSRW	

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Bucks Branch	Basin	Whitley	WAH, PCR, SCR, OSRW
Buffalo Creek	Basin to Kentucky/Tennessee State Line (River Mile 3.2)	Whitley	WAH, PCR, SCR, OSRW
Bunches Creek	Basin	Whitley	WAH [GAH], PCR, SCR, OSRW
Campbell Branch	Basin	Whitley	WAH, PCR, SCR, OSRW
Cane Creek	Basin	Laurel	WAH, PCR, SCR
Caney Creek	Basin	Bell	WAH, PCR, SCR, OSRW
Cannon Creek	Basin above Cannon Creek Lake	Bell	WAH, PCR, SCR, OSRW
Clover Bottom Creek	River Mile 1.4 to Horselick Creek	Jackson	CAH, PCR, SCR
Cogur Fork	Basin	McCreary	WAH [GAH], PCR, SCR
Coles Branch	Basin	Knox	WAH, PCR, SCR, OSRW
Colliers Creek	Basin	Bell	WAH, PCR, SCR, OSRW
Criscillis Branch	Basin	Whitley	WAH, PCR, SCR, OSRW
Cumberland River	River Mile 694.2 to River Mile 574.6	Whitley	WAH, PCR, SCR, DWS
Cumberland River	River Mile 574.6 to River Mile 558.5 (Headwaters of Lake Cumberland)	McCreary/Whitley	WAH, PCR, SCR, OSRW
Cumberland River	River Mile 460.9 (Lake Cumberland Dam) to Kentucky/Tennessee State Line (River Mile 401.05) [(River mile 460.9) to Highway 90 bridge (River Mile 426.5)]	Monroe [Gumberland]	CAH, PCR, SCR, DWS
[Cumberland River	River Mile 426.5 to Kentucky/ Tennessee State Line (River mile 401.05)	Monroe	WAH, PCR, SCR, DWS]
Davis Branch	Basin	Bell	WAH, PCR, SCR, OSRW
Difficulty Creek	Basin	McCreary	WAH [GAH], PCR, SCR
Dog Slaughter Creek	Basin	Whitley	CAH, PCR, SCR, OSRW
Eagle Creek	Basin	McCreary	WAH, PCR, SCR, OSRW
Four Mile Creek	Basin above River Mile 2.5	Bell	WAH, PCR, SCR, OSRW
Four Mile Run	Basin above River Mile 1.0	Bell	WAH, PCR, SCR, OSRW
Fugitt Creek	Basin	Harlan	CAH, PCR, SCR
Hale Fork	Basin	Knox	WAH, PCR, SCR, OSRW
Hawk Creek	Basin	Laurel	CAH, PCR, SCR
Hinkle Branch	Basin	Knox	WAH, PCR, SCR, OSRW
Honeycutt Branch	Basin	Knox	WAH, PCR, SCR, OSRW
Horse Lick Creek	River Mile 12.3 to Middle Fork of Rockcastle River [Mile 0.0]	Jackson/ Rockcastle	WAH, PCR, SCR, OSRW
Hunting Shirt Branch	Basin	Knox	WAH, PCR, SCR, OSRW
Indian Creek	Source to Barren Fork	McCreary	WAH [GAH], PCR, SCR
Jennys Branch	Basin	McCreary	WAH, PCR, SCR, OSRW
Kelly Branch	Basin	Harlan	WAH [GAH], PCR, SCR
Kennedy Creek	River Mile 1.0 to Little South Fork of Cumberland River [Mile 0.0]	Wayne	WAH, PCR, SCR, OSRW
Kilburn Fork of Indian Creek	Basin	McCreary	WAH, PCR, SCR, OSRW
Laurel Creek of Marsh Creek	River Mile 9.0 to River Mile 3.4	McCreary	WAH [GAH], PCR, SCR, OSRW
Laurel Fork	Source to Middle Fork of Rockcastle River	Jackson	WAH, PCR, SCR, OSRW
Laurel Fork of Clear Fork	Basin above River Mile 16.0	Bell	WAH, PCR, SCR, OSRW
Laurel Fork of Clear Fork	River Mile 16.0 to River Mile 4.25 (Kentucky/Tennessee State Line)	Whitley	WAH, PCR, SCR, OSRW
Laurel Fork of Indian Creek	Basin	McCreary	WAH, PCR, SCR, OSRW
Laurel River	Laurel River Lake Dam (River Mile 2.1) to River Mile 0.9	Laurel	CAH, PCR, SCR
Lick Fork	Basin	Bell	WAH, PCR, SCR, OSRW

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Little Clear Creek	Basin from Confluence with Fuson Branch	Bell	WAH, PCR, SCR, OSRW
Little Popular Creek	Basin above and including East Ridge Branch	Knox	WAH, PCR, SCR, OSRW
Little South Fork of Cumberland River	River Mile 35.6 to River Mile 4.1	Wayne	WAH, PCR, SCR, OSRW
Little Yellow Creek	River Mile 3.2 (Fern Lake Dam) to Yellow Creek (River Mile 0.0)	Bell	WAH, PCR, SCR, OSRW
Long Branch	Basin	Bell	WAH, PCR, SCR, OSRW
Looney Creek	Basin above River Mile 5.3	Harlan	CAH, PCR, SCR
Marsh Creek	Basin above River Mile 24.0	McCreary	WAH, PCR, SCR, OSRW
Marsh Creek	River Mile 24.0 to Confluence with Cumberland River	McCreary	WAH, PCR, SCR, OSRW
Martins Fork	Basin above River Mile 31.3	Harlan	CAH, PCR, SCR
Martin's Fork	River Mile 31.3 to [Basin above] River Mile 27.4	Harlan	CAH, PCR, SCR, OSRW
Meadow Fork	Basin	Letcher	WAH, PCR, SCR, OSRW
Middle Fork of Rockcastle River	River Mile 61.1 to River Mile 53.3	Jackson	WAH, PCR, SCR, OSRW
Mill Branch	Basin	Knox	WAH, PCR, SCR, OSRW
Mill Creek of Straight Creek	Basin	Bell	WAH, PCR, SCR, OSRW
Mill Creek	Basin	McCreary	WAH, PCR, SCR, OSRW
Moore's Creek	Basin	Knox	WAH, PCR, SCR, OSRW
Mud Creek	Basin above River Mile 6.5	Whitley	WAH, PCR, SCR, OSRW
Mud Lick	Basin	Knox	WAH, PCR, SCR, OSRW
Ned Branch	Basin	Laurel	WAH, PCR, SCR, OSRW
Patterson Creek	Basin above River Mile 7.4	Whitley	WAH, PCR, SCR, OSRW
Poor Fork of Cumberland River	Basin above River Mile 742.5 [7]	Letcher	CAH, PCR, SCR, OSRW
Poor Fork of Cumberland River	[Basin from] River Mile 742.5 [7] to Jefferson National Forest Boundary (River Mile 720.55)	Harlan [Letcher]	WAH [CAH], PCR, SCR
Poor Fork of Cumberland River	River Mile 720.55 to Clover Fork of Cumberland River	Harlan	WAH, PCR, SCR, DWS
Razor Fork	Basin	Harlan	WAH [CAH], PCR, SCR
Richland Creek	Basin above River Mile 15.7	Knox	WAH, PCR, SCR, OSRW
Roaring Fork	Basin	Knox	WAH, PCR, SCR, OSRW
Rock Creek	[Tennessee/Kentucky/Tennessee State Line (River Mile 21.9) to White Oak Creek	McCreary	CAH, PCR, SCR, OSRW
Rock Creek	Basin from confluence with Jellico Creek	McCreary	WAH, PCR, SCR, OSRW
Rockcastle River	River Mile 53.3 to River Mile 8.5	Laurel/Pulaski	WAH, PCR, SCR, OSRW
Ross Branch	Basin	Whitley	WAH, PCR, SCR, OSRW
Roundstone Creek	Source to River Mile 13.5	Rockcastle	WAH, PCR, SCR
Roundstone Creek	River Mile 13.5 to River Mile 4.7	Rockcastle	WAH, PCR, SCR, OSRW
Roundstone Creek	River Mile 4.7 to Rockcastle River	Rockcastle	WAH, PCR, SCR, DWS
Ryans Creek	Basin	Whitley	WAH, PCR, SCR, OSRW
Sanders Creek	Basin	Whitley	WAH, PCR, SCR, OSRW
Shillalah Creek	Source to Cumberland Gap National Historical Park Boundary	Bell	CAH, PCR, SCR
Shut-in Branch	Basin	McCreary	WAH, PCR, SCR, OSRW
Sinking Creek	Source to Rockcastle River	Laurel	WAH, PCR, SCR, OSRW

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Sims Fork	Basin	Bell	WAH, PCR, SCR, OSRW
Smith Creek	Basin	Letcher	WAH, PCR, SCR, OSRW
South Fork of Rockcastle River	River Mile 2.1 to Rockcastle River	Rockcastle	WAH, PCR, SCR, OSRW
Stevenson Branch	Basin	Bell	WAH, PCR, SCR, OSRW
Straight Creek	Basin [above River Mile 11.3]	Harlan	WAH, PCR, SCR, OSRW
Sugar Run	Source to Cumberland Gap National Historical Park Boundary	Bell	WAH [CAH], PCR, SCR
Trace Branch	Basin	Knox	WAH, PCR, SCR, OSRW
Trammel Fork	Basin	McCreary	WAH, PCR, SCR, OSRW
Troublesome Creek	Basin	McCreary	WAH [CAH], PCR, SCR
Turkey Creek	Basin	Knox	WAH, PCR, SCR, OSRW
Watts Creek	Basin above Camp Blanton Lake	Harlan	WAH, PCR, SCR, OSRW
White Oak Creek	Basin above River Mile 1.2 (includes Little White Oak Creek)	Laurel	CAH, PCR, SCR
Wood Creek	River Mile 4.0 (Wood Creek Lake Dam) to Hazel Patch Creek	Laurel	WAH [CAH], PCR, SCR
Yellow Creek	Source to Cumberland River	Bell	WAH, PCR, SCR
Youngs Creek	Basin	Whitley	WAH, PCR, SCR, OSRW
LAKES AND RESERVOIRS			
Beulah (=Tyner)	Entire Reservoir	Jackson	WAH, CAH, PCR, SCR, DWS
Cannon Creek	Entire Reservoir	Bell	WAH, CAH, PCR, SCR, DWS
Cumberland	Entire Reservoir	Pulaski	WAH, PCR, SCR, DWS
Dale Hollow	Entire portion of Reservoir within Kentucky	Clinton/Cumberland	WAH, PCR, SCR
Laurel River	Entire Reservoir	Laurel/Whitley	WAH, CAH, PCR, SCR, DWS
Martins Fork	Entire Reservoir	Harlan	WAH, PCR, SCR
Wood Creek	Entire Reservoir	Laurel	WAH, CAH, PCR, SCR, DWS

Section 6. Incorporation by Reference. (1) "Interim Economic Guidance for Water Quality Standards Workbook (EPA, March 1995)" Publication EPA-823-B-95-002. U.S. Environmental Protection Agency, Office of Water, Washington, D.C., is incorporated by reference.

(2) This material may be inspected, copied, or obtained at the Kentucky Division of Water, 14 Reilly Road, Frankfort, Kentucky, Monday through Friday, 8 a.m. to 4:30 p.m.

JAMES E. BICKFORD, Secretary  
BARBARA A. FOSTER, General Counsel

APPROVED BY AGENCY: June 15, 1999

FILED WITH LRC: June 15, 1999 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation is scheduled for July 27, 1999, at 7 p.m. (EDT) at the Western Hills High School Auditorium, 100 Doctors Drive, Frankfort, Kentucky. Individuals who intend to be heard at this hearing shall notify this agency in writing by July 20, 1999, five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend 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 administrative regulation. A transcript of the hearing will not be made unless a written request for a transcript is made. If you request a transcript, you may be required to pay for it. If you do not wish to be heard at the hearing, you may submit written comments on the administrative regulation. Send written notification of your intent to be heard at the hearing, or your written comments on the administrative regulation, to the contact person listed below. Written comments must be received before adjournment of the hearing, or by 4:30 p.m. on July 27, 1999, if the hearing is not held. The hearing facility is accessible to per-

sons with disabilities. Requests for reasonable accommodations, including auxiliary aids and services necessary to participate in the hearing, may be made to the contact person at least five (5) workdays prior to the hearing.

CONTACT PERSON: Jack A. Wilson, Director, Division of Water, Department for Environmental Protection, 14 Reilly Road, Frankfort, Kentucky 40601, Telephone: (502) 564-3410 Fax: (502) 564-0111.

## REGULATORY IMPACT ANALYSIS

Contact person: Jack A. Wilson

(1) Type and number of entities affected: This amended administrative regulation applies designated uses to the surface waters of the Commonwealth. It is being amended to change use designations for selected streams. The amendments to this regulation will affect point source discharges to outstanding state resource waters, warm water aquatic habitats, and cold water aquatic habitats. Approximately 100 residences, businesses, municipalities, schools, and federal and state government agencies are currently discharging into waters proposed for redesignation. Approximately 75 dischargers are currently discharging into waters whose designation has changed to a more restrictive designation. Approximately 25 dischargers are currently discharging into waters whose designation has changed from a more restricted to a less restrictive designation. An unknown number of existing mines in watersheds of outstanding state resource waters will be affected. This amended administrative regulation also applies to persons served by domestic supplies, agricultural water users, recreational enthusiasts, and the tourism industry.

(2) Direct and indirect costs or savings: The stricter permit limits imposed on dischargers whose use designation has changed to a

more restrictive designation, could result in additional treatment outlays, training costs, and operational changes. Savings may be realized by dischargers who discharge into waters whose designation has changed from a more restrictive to a less restrictive designation. Direct and indirect savings would be realized through reduced drinking water treatment costs, maintenance of good agricultural water, maintenance of fisheries, and healthy recreational waters.

(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: Comments received from the public referred to a study by Stephen M. Meyer, Professor in Political Science, Massachusetts Institute of Technology, entitled *Environmentalism and Economic Prosperity: Testing the Environmental Impact Hypothesis*, October 5, 1992. This study compared the relative strengths of environmental programs in the fifty states with economic performance measured in terms of gross state product and economic growth, total employment, construction employment, manufacturing labor, and overall labor productivity. The study found that "...average employment growth among the environmentally strong states was about 45% better than that of the environmentally weak states." It concluded that "...states with stronger environmental policies consistently out-performed the weaker environmental states on all the economic measures." Further, "...states with stronger environmental policies did not experience weaker gains in economic growth between the 1970s and 1980s. Here again, it was the states with strong environmental policies that showed the greater inter-decade improvement in economic performance."

(b) Effect on the cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: No comments received.

(c) Effect on the compliance, reporting, and paperwork requirements, to the extent available from the public comments received, including factors increasing or decreasing costs (note any effects upon competition) for the:

1. First year following implementation: No comments received.
2. Second and subsequent years: No comments received.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings: Waters are being redesignated to both the more restrictive outstanding state resource waters and to the less restrictive warm water aquatic habitat use. The Division of Water assists with field assessments of waters for outstanding state resource water use.

1. First year: The division incurs part of the costs of determining designations. These costs depend on the number of waters to be considered and the number that require field assessments. These are not new costs since existing staff will be reassigned to conduct the assessments.

2. Continuing costs or savings: Same as (3)(a)1.

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: This amended administrative regulation will not significantly affect the cabinet's routine reporting and paperwork requirements.

(4) Assessment of anticipated effect on state and local revenues: Some localities will be affected because of the presence of outstanding state resource waters, causing tax-generating businesses to locate elsewhere. On the other hand, protection of outstanding state resource waters may have a positive influence on revenues derived from water-based tourism.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: The source of revenue will be the General Fund and federal funds, as appropriated by the Kentucky General Assembly.

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

(a) Geographical area in which administration regulation will be implemented: No comments received.

(b) Kentucky: No comments received

(7) Assessment of alternative methods; reasons why alternatives were rejected: The amended administrative regulation designates uses

of Kentucky's surface waters. Designation of uses is required by the Clean Water Act and 40 CFR 131.10. Therefore, no other alternatives were considered.

(8) Assessment of expected benefits of the administrative regulation: These designations will help sustain and enhance existing levels of aquatic recreation, fishing, and water-based tourism.

(9)(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: This amended administrative regulation serves to protect outstanding state resource waters. Nondegraded waters protect rare aquatic species and support a rich biodiversity of plants, fish, and macroinvertebrates. Waters redesignated to the less restrictive warm water aquatic habitat use will receive less stringent protection for dissolved oxygen and temperature but will be protected for their true existing use, that of warm water aquatic habitat.

(b) State whether a detrimental effect on environment and public health would result if not implemented: There would be a detrimental effect on the environment if this amended administrative regulation is not implemented.

(c) If detrimental effect would result, explain detrimental effect: Failure to implement this amended administrative regulation would allow less regulatory authority and less ability to protect those waters identified as outstanding state resource waters. Aquatic organisms sensitive to pollution may be impacted.

(10) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: No statutes, administrative regulations, or government policies are in conflict, overlap, or duplicate this amended administrative regulation.

(a) Necessity of proposed administrative regulation if in conflict: The administrative regulation is not in conflict.

(b) If in conflict, was effort made to harmonize the proposed administration regulation with conflicting provisions: The administrative regulation is not in conflict.

(11) Any additional information or comments: State water quality standards are required by federal law to be reviewed for possible changes at least every three years.

(12) TIERING: Is tiering applied? No. The regulation affects all discharges into surface waters of the Commonwealth, irrespective of ownership, capacity, process, or treatment employed. However, stream segments are identified depending on their quality and different standards apply to them.

#### FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. There is no federal statute or regulation mandating that Kentucky implement a water pollution control program. For Kentucky to maintain its delegation over the NPDES permit program, however, the Clean Water Act requires that Kentucky review its water quality standards every three years and comply with the programmatic requirements of 40 CFR Part 131, including the requirement for redesignating uses.

2. State compliance standards. 401 KAR 5:002, 5:026, 5:029, 5:030, and 5:031, the water quality standards regulations.

3. Minimum or uniform standards contained in the federal mandate. The Clean Water Act requires designated uses, criteria, standards and antidegradation policies in water quality standards.

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. There is no stricter standard or additional or different responsibilities or requirements.

#### FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? No

2. State what unit, part or division of local government this administrative regulation will affect. This amended administrative regulation may affect the waste water treatment operations of local government if they will have new or expanded discharges into high quality waters, outstanding state resource waters, or outstanding national resource

waters.

3. State the aspect or service of local government to which this administrative regulation relates. This amended administrative regulation relates to local governments' waste water treatment service.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a local government for the first full year the administrative 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 (+/-): Cannot be determined.

Expenditures (+/-): Cannot be determined.

Other explanation: Waste water treatment costs may increase for those local governments that will have new or expanded discharges into high quality waters or outstanding state resource waters. Local governments withdrawing drinking water from these waters may have lower treatment costs, because these waters should have lower pollutant loads. Waste water treatment costs may decrease for those local governments discharging into waters that have changed to a less restrictive category.

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

**401 KAR 5:029. General provisions.**

RELATES TO: KRS 146.200 to 146.360, 146.410 to 146.940, 224.01-100, 224.01-400, 224.16-050, 224.16-070, 224.40 to 224.43, 224.46, 224.50, 224.60, 224.70, 224.71, 224.73, [Chapter 224,] 40 CFR Part 136

STATUTORY AUTHORITY: KRS 146.200 to 146.360, 146.410 to 146.990, 224.10-100, 224.16-050, 224.16-060, 224.70-100, 224.70-110, 40 CFR Part 131, 136, 33 USC 1311, 1312, 1313, 1314, 1316, 1341

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 and 401 KAR 5:002, 5:026, 5:030, and 5:031, will operate to protect the surface waters of the Commonwealth, and thus protect water resources. These general provisions contain the Commonwealth's surface water antidegradation policy, provide for withdrawals of waters not meeting water quality standards, and address sample collection and analytical methodology, mixing zones, and variances for coal remining operations. [This administrative regulation contains a definition and abbreviation section applicable to 401 KAR 5:026, this administrative regulation, and 401 KAR 5:031. A nondegradation section and a section pertaining to withdrawal of waters not meeting water quality standards are included. A sample collection and analytical methodology section is included to ensure reproducible analytical results. A provision relating to allowable conditions in mixing zones is also included. A procedure for issuing a variance from criteria for pH, iron and manganese is included for coal remining operations.]

Section 1. Antidegradation Policy. [Definitions and Abbreviations: (1) The following definitions describe terms used in 401 KAR 5:026, this administrative regulation, and 401 KAR 5:031. Terms not defined below shall have the meanings given to them in KRS 224.01-010 or, if not so defined, the meanings attributed by common use:

(a) "Acute-chronic ratio" means the ratio of the acute toxicity (expressed as an  $LG_{50}$  of an effluent or a toxic substance to its chronic toxicity (expressed as a NOEL). It is used as a factor to estimate chronic toxicity from acute toxicity data:

(b) "Acute criteria" means the highest instream concentration of a toxic substance or an effluent to which organisms can be exposed for a brief period of time without causing unacceptable harmful effects:

(c) "Acute toxicity" means lethality or other harmful effect sustained by either indigenous aquatic organisms or representative indicator organisms used in toxicity tests, due to a short-term exposure

(ninety-six (96) hours or less) to a specific toxic substance or mixture of toxic substances:

(d) "Acute toxicity unit" means the reciprocal of the effluent dilution that causes the acute effect ( $LG_{50}$ ) by the end of the acute exposure period:

(e) "Chronic criteria" means the highest instream concentration of a toxic substance or an effluent to which organisms can be exposed indefinitely without causing an unacceptable harmful effect:

(f) "Chronic toxicity" means lethality, reduced growth or reproduction or other harmful effect sustained by either indigenous aquatic organisms or representative indicator organisms used in toxicity tests due to long-term exposures (relative to the life span of the organisms or a significant portion of their life span) to toxic substances or mixtures of toxic substances:

(g) "Chronic toxicity unit" means the reciprocal of the effluent dilution that causes no observed unacceptable harmful effect (NOEL) on the test organisms by the end of the chronic exposure period:

(h) "Cold water aquatic habitat" means surface waters and associated substrate that will support indigenous aquatic life or self-sustaining or reproducing trout populations on a year-round basis:

(i) "Conventional domestic water supply treatment" means or includes coagulation, sedimentation, filtration, and chlorination:

(j) "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:

(k) "Division" means the Division of Water:

(l) "Domestic water supply (DWS)" means surface waters that with conventional treatment will be suitable for: human consumption through a public water system as defined in 401 KAR 6:015, Section 1; culinary purposes; or for use in any food or beverage processing industry; and, meets state and federal regulations under the Safe Drinking Water Act, 42 USC 300f-300j, as amended:

(m) "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 waters of the Commonwealth:

(n) "Epilimnion" means the thermally homogeneous water layer overlying the metalimnion (the region of the thermocline) of a thermally stratified lake or reservoir:

(o) "Eutrophication" means the enrichment of surface waters of the state by the discharge or addition of nutrients:

(p) "Existing uses" means those legitimate uses being attained in or on a surface water of the Commonwealth on or after November 28, 1975, irrespective of its use classification:

(q) "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:

(r) "Harmonic mean flow" means the reciprocal of the mean of the reciprocal daily flow values:

(s) "Hypolimnion" means the lower cold region of a thermally stratified lake or reservoir that extends from the metalimnion to the bottom:

(t) "Indigenous aquatic life" means naturally occurring aquatic organisms including but not limited to bacteria, fungi, algae, aquatic insects, other aquatic invertebrates, reptiles and amphibians, and fishes. Under some natural conditions one (1) or more of the above groups may be absent from any given surface water:

(u) "Intermittent water" means a stream that flows only at certain times of the year as when it receives water from springs or precipitation in its immediate watershed:

(v) " $LG_{50}$ " means that concentration of a toxic substance or mixture of toxic substances which is lethal (or immobilizing, if appropriate) to fifty (50) percent of the species tested in a toxicity test during a specified exposure period:

(w) " $LG_{1}$ " means that concentration of a toxic substance or mixture of toxic substances which is lethal (or immobilizing, if appropriate) to one (1) percent of the organisms tested in a toxicity test during a

specified exposure period.

(x) "Maintain" means to preserve or keep in present condition by not allowing adverse permanent or long-term changes to water quality or to populations of aquatic organisms or their habitat.

(y) "Milligrams per liter (mg/l)" means the milligrams of substance per liter of solution, and is equivalent to parts per million in water assuming unit density.

(z) "Mixing zone" means a domain of a water body contiguous to a treated or untreated wastewater discharge of quality characteristics different from those of the receiving water. The discharge is in transit and progressively diluted from the source to the receiving system. The mixing zone is the domain where wastewater and receiving water mix.

(aa) "Natural temperature" means the temperature that would exist in waters of the Commonwealth without the change of enthalpy of artificial origin, as contrasted with that caused by climatic change or naturally occurring variable temperature associated with riparian vegetation and seasonal changes.

(bb) "Natural water quality" means those naturally occurring physical, chemical, and biological properties of waters.

(cc) "Net discharge" means the amount of substance released to a surface water by excluding the influent value from the effluent value if both the intake and discharge are from and to the same or similar body of water.

(dd) "No observed effect level (NOEL)" means the highest concentration of an effluent or a toxic substance that causes no observed harmful effects on either indigenous aquatic organisms or representative indicator organisms used in toxicity tests.

(ee) "Nonpoint" means any source of pollutants not defined by point source as used in this administrative regulation.

(ff) "Outstanding resource waters" means surface waters designated by the cabinet pursuant to 401 KAR 5:031, Section 7.

(gg) "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, concentrated animal feeding operation, from which pollutants are or may be discharged. This term does not include return flows from irrigated agriculture.

(hh) "Productive aquatic communities" means an assemblage of indigenous aquatic life capable of reproduction and growth.

(ii) "Propagation" means the continuance of species by successful spawning, hatching, and development or natural generation in the natural environment, as opposed to the maintenance of species by artificial culture and stocking.

(jj) "Standard or water quality standard" means an administrative regulation promulgated by the cabinet establishing the use to be made of a surface water and the water quality criteria necessary to maintain and protect that use.

(kk) "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.

(ll) "Thermocline" means the plane in a body of water in which the maximum rate of decrease in temperature occurs with respect to depth.

(mm) "Toxic substances" means substances which are bioaccumulative, synergistic, antagonistic, teratogenic, mutagenic or carcinogenic and cause death, disease, behavioral abnormalities, physiological malfunctions or physical deformities in any organism or its offspring or interfere with normal propagation.

(nn) "Warm water aquatic habitat (WHA)" means any surface water and associated substrate capable of supporting indigenous warm water aquatic life.

(oo) "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.

(2) Abbreviations:

(a) °C means degree(s) Celsius;

(b) EPA—See U. S. EPA;

(c) °F means degree(s) Fahrenheit;

(d) KPDES means Kentucky Pollutant Discharge Elimination System;

(e) mg/l means milligrams per liter (same as ppm);

(f) NPDES means National Pollutant Discharge Elimination System;

(g) pCi/l means picocuries per liter;

(h) ppb means part(s) per billion;

(i) ppm means part(s) per million (assuming unit density, same as mg/l);

(j) ug/l means micrograms per liter (same as ppb assuming unit density);

(k) U.S. EPA means the United States Environmental Protection Agency;

(l) 7Q<sub>10</sub> means that minimum average flow which occurs for seven (7) consecutive days with a recurrence interval of ten (10) years;

(m) POTW means public owned treatment works.

(3) Definitions for coal remining operations:

(a) "Coal remining operation" means a surface coal mining operation which begins after the effective date of this administrative regulation at a site on which a coal mining operation was conducted before August 3, 1977. "Coal remining operation" also means an existing surface coal mining operation 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.

(b) "Preexisting discharge" means any discharge at the time of applying for a KPDES permit under this administrative regulation.

(c) "Remined area" means only that area of any coal remining operation on which a coal mining operation was conducted before August 3, 1977.

Section 2. Nondegradation.] (1) [It is] The purpose of 401 KAR 5:026 to 401 KAR 5:031 is [these administrative regulations] to safeguard the surface waters of the Commonwealth for their designated uses, to prevent the creation of any new pollution of these waters, [;] and to abate any existing pollution.

(2) Where the quality of surface waters exceeds that necessary to support propagation of fish, shellfish, wildlife and recreation in and on the water, that quality shall be maintained and protected unless the cabinet finds, after full satisfaction of the intergovernmental coordination and public participation provisions of the cabinet's continuing planning process, that allowing lower water quality is necessary to accommodate important economic or social development in the area in which the waters are located. In allowing [such] degradation or lower water quality, the cabinet shall assure water quality adequate to protect existing uses fully. Further, the cabinet shall [will] assure that there shall be achieved the highest statutory and regulatory requirements for waste treatment by all new and existing point sources and that nonpoint sources of pollutants be controlled by application of all cost effective and reasonable best management practices.

(3) Water quality shall be maintained and protected in a water categorized as an outstanding national resource water according to the procedures specified in 401 KAR 5:030, Section 1. [The implementation of this section shall conform to 40 CFR 131.12 to the extent allowed by KRS 224.70-100.]

(4) Water quality shall be maintained and protected in those waters designated as outstanding state resource waters according to the procedures specified in [Section 7(2) of] 401 KAR 5:031, Section 7.

(5) If [in those cases where] potential water quality impairment associated with a thermal discharge is involved, a successful demonstration conducted under Section 316 of the Clean Water Act, 33 USC 1326, shall be in compliance with [all portions of] this section.

Section 2. [3.] Withdrawal of Contaminated Water. [It is recognized that] Surface waters may [will], on occasion, not meet the [standards and] criteria established in 401 KAR 5:031. Withdrawal and subsequent discharge of these waters without alteration of the physical, or chemical characteristics into the same or similar surface water shall [will] not be considered a violation of water quality standards. The cabinet shall [will] determine [effluent criteria and] KPDES permit limitations in these situations based on the quality of the raw and receiv-

ing waters. The cabinet retains the right to require modification under the provisions of 401 KAR 5:035, 401 KAR 5:065, 401 KAR 5:070, 401 KAR 5:075, and 401 KAR 5:080.

Section 3. [4:] Sample Collection and Analytical Methodology. All methods of preservation and analysis used to determine conformity or nonconformity with water quality standards shall be governed by 40 CFR Part 136, as amended, if [when] applicable. Sample collection and other methods not found in the above reference may be used where appropriate if they meet commonly accepted quality assurance and quality control principles, are within the accuracy required for determining conformity or nonconformity with water quality standards, and receive prior written approval by the cabinet. [~~approved by the cabinet.~~]

Section 4. [5:] Mixing Zones. The following requirements shall apply to a mixing zone [~~guidelines and conditions are applicable to all mixing zones~~]:

(1) The cabinet may [will] assign [~~on a case-by-case basis~~], definable geometric limits for mixing zones for a discharge or a pollutant or pollutants within a discharge. Applicable limits shall include, but may not be limited to, the linear distances from the point of discharge, surface area involvement, volume of receiving water, and shall take into account other nearby mixing zones. Dilution provided by assigned mixing zones shall [will] not be allowed until applicable limits are assigned by the cabinet in accordance with this section.

(2) Concentrations of toxic substances that [which] exceed the acute criteria for protection of aquatic life [set forth] in 401 KAR 5:031 shall not exist [at any point] within an assigned mixing zone or in the discharge itself unless a zone of initial dilution is assigned. A zone of initial dilution may be assigned pursuant to subsection (3) of this section [~~on a case-by-case basis at the discretion of the cabinet. Concentrations of toxic substances shall not exceed the acute criteria at the edge of the assigned zone of initial dilution~~]. Chronic criteria for the protection of aquatic life and criteria for the protection of human health from the consumption of fish tissue shall be met at the edge of the assigned mixing zone.

(3) The following requirements shall apply to a zone of initial dilution:

(a) The cabinet shall require an applicant to provide a technical evaluation for a zone of initial dilution;

(b) Concentrations of toxic substances shall not exceed the acute criteria for the protection of aquatic life at the edge of the assigned zone of initial dilution, however, numeric acute criteria may be exceeded within the zone if the frequency and duration of exposure of aquatic organisms are not sufficient to cause acute toxicity; and

(c) A new zone of initial dilution shall not be allowed in an exceptional water, a publicly-owned lake, or a publicly-owned reservoir.

(4) A new zone of initial dilution shall be available only to a submerged multiport outfall structure and shall be limited in size to the most restrictive of the following:

(a) The acute criteria shall be met within ten (10) percent of the distance from the edge of the outfall structure to the edge of the regulatory mixing zone in a spatial direction;

(b) The acute criteria shall be met within a distance of fifty (50) times the square root of the cross-sectional area of a discharge port, in a spatial direction;

(c) The acute criteria shall be met in a horizontal direction within a distance of five (5) times the natural water depth that prevails under mixing zone design conditions, and exists before the installation of a discharge outlet; or

(d) The acute criteria shall be met within a distance of ten (10) feet from the discharge port in a spatial direction.

(5) The location of a mixing zone shall not interfere with fish spawning or nursery areas, fish migration routes, public water supply intakes, or bathing areas, nor preclude the free passage of fish or other aquatic life.

(6) [(4) Whenever possible] The assigned mixing zone, from the point of discharge in a spatial direction, shall not exceed one-third (1/3) of the width of the receiving stream or [; and in no case shall exceed] one-half (1/2) of the cross-sectional area.

(7) In a publicly-owned lake or a publicly-owned reservoir the assigned mixing zone, from the point of discharge in any spatial direction, shall not exceed one-tenth (1/10) of the width of the lake, or reservoir at the discharge point and shall be kept to a minimum within this restricted area. [(5) ~~In lakes and other surface impoundments, the volume of a mixing zone shall not affect in excess of ten (10) percent of the volume of that portion of the receiving waters available for mixing.~~]

(8) An assigned [(6) A] mixing zone shall be limited to an area or volume which will not adversely affect [alter] the designated [legitimate] uses of the receiving water, nor be so large as to adversely affect an established community of aquatic organisms.

(9) For [(7) In the case of] thermal discharges, a successful demonstration conducted under Section 316(a) of the Clean Water Act shall constitute compliance with [all provisions of] this section.

Section 5. [6:] Water Quality-based Variance for Coal Remining Operations. (1) Applicability. An applicant for a Kentucky pollutant discharge elimination system (KPDES) permit to discharge pollutants from or affected by a coal remining operation may request a variance from the water quality criteria for pH, iron and manganese set forth in 401 KAR 5:031.

(2) Application requirements.

(a) The applicant shall comply with all KPDES permit application requirements, as set forth in 401 KAR 5:060.

(b) The applicant shall submit documentation from the Department for Surface Mining Reclamation and Enforcement (DSMRE) that the proposed coal remining operation will be located on a remined area, and shall certify that the proposed coal remining operation will be located on a remined area.

(c) The applicant shall also:

1. Describe the hydrologic balance for the proposed coal remining operation, including:

a. Results of a detailed water quality and quantity monitoring program, including seasonal variations, variations in response to precipitation events, and modeled baseline pollution loads using the monitoring program; and

b. Monitoring for pH, alkalinity, acidity, total iron, total manganese, sulfates, total suspended solids, and any other water quality parameters requested by the cabinet [director];

2. Submit the application for a permit from DSMRE;

3. Submit, if not submitted in the application for a permit from DSMRE:

a. Plans, cross-sections, and schematic drawings describing the techniques for reducing the discharge of acid-forming materials, iron and manganese;

b. A description and an explanation of the range of abatement levels that probably can be achieved, costs, and each step proposed to reduce the discharge of acid-forming materials, iron and manganese;

c. A description of the spoil handling practices necessary to reduce the discharge of acid-forming materials, iron and manganese;

d. A detailed topographic map of the proposed coal remining operation, including the locations of the preexisting and proposed discharges; and

4. Continue the water quality and quantity monitoring program described in subparagraph 1 of this paragraph, and submit the results to the cabinet [director] on a periodic basis until the cabinet [director] makes a final permit decision. The cabinet will evaluate the KPDES monitoring program and the DSMRE monitoring program for each applicant to avoid duplication and inconsistencies.

(d) The applicant may submit the information described in the document entitled "Coal Remining-Best Professional Judgment Analysis: Preexisting Pollutional Discharge Data Input Module, Baseline Statistical Calculation Module, Water Treatment Cost Calculation Module, Surface Mine Materials Handling and Cost Simulator, User Manual" and accompanying software published by the Pennsylvania Department of Environmental Resources, Mining Engineering Section; Pennsylvania State University and Kohlmann Ruggiero Engineers, P.C. (1988).

(e) An applicant with an existing surface coal mining operation seeking a permit revision from DSMRE pursuant to 405 KAR 8:010, Section 20 shall also demonstrate to the satisfaction of the cabinet

[director] that:

1. The applicant discovered discharges within the proposed coal remining area after the applicant's DSMRE permit was issued; and

2. The applicant has not caused or contributed to the discharges.

(3) Treatment requirements. If the ~~cabinet~~ [director] issues a KPDES permit to discharge pollutants from or affected by a coal remining operation containing the variance described in subsection (1) of this section, the water quality-based effluent limitations for pH, iron and manganese will be established on a case-by-case basis. Compliance with those effluent limitations constitutes compliance with those water quality criteria for pH, iron and manganese set forth in 401 KAR 5:031. The ~~cabinet~~ [director] may employ the document entitled "Coal Remining-Best Professional Judgment Analysis: Preexisting Pollutional Discharge Data Input Module, Baseline Statistical Calculation Module, Water Treatment Cost Calculation Module, Surface Mine Materials Handling and Cost Simulator, User Manual" and accompanying software published by the Pennsylvania Department of Environmental Resources, Mining Engineering Section; Pennsylvania State University and Kohlmann Ruggiero Engineers, P.C. (1988).

(4) Prohibitions. In addition to the prohibitions contained in 401 KAR 5:055, [Section-2;] the following prohibitions apply to this section:

(a) No KPDES permit containing the water quality-based variance of subsection (1) of this section shall be issued unless the coal remining operation has applied for a permit from the Department for Surface Mining Reclamation and Enforcement, as set forth in 405 KAR Chapters 7 through 24, inclusive. The effective date of the KPDES permit shall be no sooner than the effective date of the permit issued by the Department for Surface Mining Reclamation and Enforcement.

(b) No KPDES permit containing the water quality-based variance of subsection (1) of this section shall be issued for a surface coal mining operation which is not a coal remining operation located on a remined area.

(c) No KPDES permit containing the water quality-based variance of subsection (1) of this section shall be issued which would allow the discharges of acid-forming materials, iron or manganese to exceed the levels being discharged from the remined area before the coal remining operation begins.

(d) No KPDES permit containing the water quality-based variance of subsection (1) of this section shall be issued if the applicant fails to demonstrate to the satisfaction of the ~~cabinet~~ [director] that the coal remining operation will result in the potential for improved water quality from the remining operation over that existing prior to the remining operation, and that the information provided in the application is adequate for the ~~cabinet~~ [director] to make an informed final permit decision.

(e) No KPDES permit containing the water quality-based variance of subsection (1) of this section shall be issued with effluent limitations less stringent than applicable technology-based effluent limitations, as set forth in 401 KAR 5:065 or 401 KAR 5:080 [; Section-4(2); 401 KAR 5:080; Section-1(2)(a)2 or (c)].

(f) In addition to the prohibitions of paragraphs (a) through (e) of this subsection, no KPDES permit containing the water quality based variance of subsection (1) of this section shall be issued for an existing surface coal mining operation unless:

1. The applicant receives a permit revision from DSMRE in accordance with 405 KAR 8:010, Section 20;

2. The applicant discovered discharges within the proposed coal remining area after the applicant's DSMRE permit was issued; and

3. The applicant has not caused or contributed to the discharges since August 3, 1977.

Section 6. Federal Regulation Adopted Without Change. (1) The following federal regulation governs the subject matter of this administrative regulation and is adopted without change: "40 CFR Part 136 Guidelines Establishing Test Procedures for the Analysis of Pollutants, July 1, 1998", U.S. Environmental Protection Agency, U.S. Government Printing Office, Superintendent of Documents, Mail Stop: SSOP, Washington, D. C. 20402-9328.

(2) This federal regulation may be inspected, copied, or obtained at the Division of Water, 14 Reilly Road, Frankfort, Kentucky, Monday through Friday, 8 a.m. to 4:30 p.m.

JAMES E. BICKFORD, Secretary

BARBARA A. FOSTER, General Counsel

APPROVED BY AGENCY: June 15, 1999

FILED WITH LRC: June 15, 1999 at 11 a.m.

**PUBLIC HEARING:** A public hearing on this administrative regulation is scheduled for July 27, 1999, at 7 p.m. (EDT) at the Western Hills High School Auditorium, 100 Doctors Drive, Frankfort, Kentucky. Individuals who intend to be heard at this hearing shall notify this agency in writing by July 20, 1999, five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend 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 administrative regulation. A transcript of the hearing will not be made unless a written request for a transcript is made. If you request a transcript, you may be required to pay for it. If you do not wish to be heard at the hearing, you may submit written comments on the administrative regulation. Send written notification of your intent to be heard at the hearing, or your written comments on the administrative regulation, to the contact person listed below. Written comments must be received before adjournment of the hearing, or by 4:30 p.m. on July 27, 1999, if the hearing is not held. The hearing facility is accessible to persons with disabilities. Requests for reasonable accommodations, including auxiliary aids and services necessary to participate in the hearing, may be made to the contact person at least five (5) workdays prior to the hearing.

**CONTACT PERSON:** Jack A. Wilson, Director, Division of Water, Department for Environmental Protection, 14 Reilly Road, Frankfort, Kentucky 40601, Telephone: (502) 564-3410 Fax: (502) 564-0111.

## REGULATORY IMPACT ANALYSIS

Contact person: Jack A. Wilson

(1) Type and number of entities affected: This amended administrative regulation provides general provisions under which water quality regulations operate to protect the surface waters of the Commonwealth. It is being amended to change mixing zone requirements and address zones of initial dilution. Approximately 100 municipalities, campgrounds, subdivisions, businesses, marinas, residences, and government agencies have permitted discharges into publicly-owned lakes. New zones of initial dilution are not allowed in publicly-owned lakes and reservoirs.

(2) Direct and indirect costs or savings: Stricter mixing zone and zone of initial dilution requirements may create additional costs to affected entities.

(a) Effect on the cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: No comments received.

(b) Effect on the cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: No comments received.

(c) Effect on the compliance, reporting, and paperwork requirements, to the extent available from the public comments received, including factors increasing or decreasing costs (note any effects upon competition) for the:

1. First year following implementation: No comments received.

2. Second and subsequent years: No comments received.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings: No significant additional costs are anticipated.

1. First year: No significant costs are anticipated.

2. Continuing costs or savings: No significant costs are anticipated.

3. Additional factors increasing or decreasing costs: None anticipated.

(b) Reporting and paperwork requirements: None

(4) Assessment of anticipated effect on state and local revenues: Stricter mixing zone and zone of initial dilution requirements could cause businesses to site in another locality, resulting in local loss of jobs and revenue. On the other hand, maintaining existing

water quality may have a positive influence on revenues derived from water-based tourism.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: The source of revenue will be the General Fund and federal funds, as appropriated by the Kentucky General Assembly.

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

(a) Geographical area in which administration regulation will be implemented: No comments received.

(b) Kentucky: No comments received.

(7) Assessment of alternative methods; reasons why alternatives were rejected: Alternatives for mixing zones and zones of initial dilution ranged from prohibiting all mixing zones and zones of initial dilution to making no changes to the existing regulation. Since mixing zones and zones of initial dilution are allowed by federal regulations, this alternative was rejected. The cabinet believes that clarification of the mixing zone and zones of initial dilution provisions is necessary to provide better guidance to dischargers. The alternative to not allowing zones of initial dilution in exceptional waters publicly-owned lakes and publicly-owned reservoirs was to allow zones of initial dilution in these waters. That alternative was rejected because the cabinet determined that these waters deserved a higher level of protection. Another consideration was the difficulty in determining waste accumulation and prediction of long term assimilation capacity in discharges with zones of initial dilution in lakes and reservoirs. Mixing zones, however, are allowed in these waters according to provisions in this amended administrative regulation.

(8) Assessment of expected benefits of the administrative regulation: The quality of publicly-owned lakes, publicly-owned reservoirs and exceptional waters will be protected, consequently aquatic biodiversity and water-based recreational values will be maintained.

(9)(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: This amended administrative regulation ensures protection of streams, rivers, and publicly-owned lakes and reservoirs for recreation, fishing, drinking water, and biological communities inhabiting the lakes. Through limiting the size of mixing zones and zones of initial dilution, and by not allowing zones of initial dilution in exceptional waters and in publicly-owned lakes and reservoirs this amended administrative regulation limits the discharge of waste waters.

(b) State whether a detrimental effect on environment and public health would result if not implemented: There would be a detrimental effect on the environment if this amended administrative regulation is not implemented.

(c) If detrimental effect would result, explain detrimental effect: Without this amended administrative regulation, drinking water treatment may have to be upgraded for some systems. Water-based recreation may be affected, and aquatic organisms sensitive to pollution may be impacted.

(10) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: No statutes, administrative regulations or government policies are in conflict, overlap, or duplicate this amended administrative regulation.

(a) Necessity of proposed administrative regulation if in conflict: The administrative regulation is not in conflict.

(b) If in conflict, was effort made to harmonize the proposed administration regulation with conflicting provisions: The administrative regulation is not in conflict.

(11) Any additional information or comments: State water quality standards are required by federal law to be reviewed for possible changes at least every 3 years.

(12) TIERING: Is tiering applied? No. The amended administrative regulation affects all discharges into surface waters of the Commonwealth, irrespective of ownership, capacity, processes, or treatment used. There are discharge restrictions, however, on certain waters.

#### FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate.

There is no federal statute or regulation mandating that Kentucky implement a water pollution control program. For Kentucky to maintain its delegation over the NPDES permit program, however, the Clean Water Act requires that Kentucky review its water quality standards every three years and comply with the programmatic requirements of 40 CFR Part 131, including the requirement for an antidegradation policy. The federal regulations require the adoption of an antidegradation policy for delegated states and permit the adoption of certain general policies such as mixing zones. The U.S. Environmental Protection Agency does provide guidance to the states, but individual decisions concerning the states water quality programs are left to the states.

2. State compliance standards. 401 KAR 5:002, 5:026, 5:029, 5:030, and 5:031, the water quality standards regulations.

3. Minimum or uniform standards contained in the federal mandate. The Clean Water Act requires designated uses, criteria, standards and antidegradation policies in water quality standards.

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. There is no stricter standard or additional or different responsibilities or requirements.

#### 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 amended administrative regulation may affect the wastewater treatment divisions of local government if they will have new or expanded discharges.

3. State the aspect or service of local government to which this administrative regulation relates. This amended administrative regulation relates to local governments' waste water treatment service.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a local government for the first full year the administrative 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 (+/-): Cannot be determined.

Expenditures (+/-): Cannot be determined.

Other explanation: Waste water treatment costs may increase for those local governments that will have new or expanded discharges into streams, rivers, and publicly-owned lakes and reservoirs. On the other hand, local governments withdrawing drinking water from these waters may have lower treatment costs, because these waters should have lower pollutant loads.

#### NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET Department for Environmental Protection Division of Water (Amendment)

401 KAR 5:030. Antidegradation [Nondegradation] policy implementation methodology.

RELATES TO: KRS 146.200 to 146.360, 146.410 to 146.990, 224.01-100, 224.01-400, 224.16-050, 224.16-070, 224.40, 224.43, 224.46, 224.50, 224.60, 224.70, 224.71, 224.73 [Chapter 224]

STATUTORY AUTHORITY: KRS 146.200 to 146.360, 146.410 to 146.990, 224.10-100, 224.16-050, 224.16-060, 224.70-110, 40 CFR Part 131, 16 USC 1271 et seq., 1531 et seq., 33 USC 1311, 1313, 1314, 1316, 1341, 1342

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 all water pollution. KRS 224.70-100 declares that the policy of the Commonwealth is to conserve its waters for legitimate uses and lists among the purposes of KRS Chapter 224: safeguarding from pollution the uncontaminated waters of the Commonwealth, preventing the creation of any new pollution in the waters of the Commonwealth, and abating any existing pollution. This administrative regulation and 401 KAR 5:002, 5:026, 5:029, and 5:031 will operate to protect the surface waters of the Commonwealth, and thus protect water resources. This administrative regulation sets forth a methodology to implement the antidegradation [nondegradation] policy contained in 401 KAR 5:029 by establishing procedures to control water pollution in waters affected by that policy.

Section 1. Implementation of Antidegradation [Nondegradation] Policy. The following procedures shall govern implementation of the antidegradation [nondegradation] policy of 401 KAR 5:029, Section 1, for a point source discharge [2].

(1) Surface waters shall be placed into one (1) of three (3) categories: outstanding national resource waters, exceptional waters [waterbodies whose quality exceeds that necessary to support propagation of fish, shellfish, and wildlife and recreation in and on the water], or use protected waters.

(2) Categorization of surface waters to outstanding national resource waters. The following procedures shall govern the categorization of surface waters to outstanding national resource waters.

(a) A surface water shall meet, at a minimum, the requirements for outstanding state resource water classification found in 401 KAR 5:031, Section 7; and [-]

(b) The water shall be demonstrated to be of national ecological or recreational significance.

(3) Categorization of surface water to exceptional waters [waterbodies whose quality exceeds that necessary to support propagation of fish, shellfish, and wildlife and recreation in and on the water]. Waterbodies in this category shall include [any of] the following:

(a) Surface waters designated as Kentucky Wild Rivers, unless they are categorized as outstanding national resource waters;

(b) Outstanding state resource waters other than those that support federally threatened or endangered aquatic species;

(c) Automatic inclusion shall be provided to surface waters that fully support all applicable designated uses and that contain fish communities that are rated "excellent" by the use of the Index of Biotic Integrity, which is in "Methods for [of] Assessing Biological Integrity of Surface Waters", incorporated by reference in Section 4 of this administrative regulation; or macroinvertebrate communities that are rated "excellent" by the use of the Macroinvertebrate Bioassessment Index, which is in "A Macroinvertebrate Bioassessment Index for Streams of the Interior Plateau Ecoregion in Kentucky", incorporated by reference in Section 4 of this administrative regulation; and

(d) Waters in the cabinet's reference reach network.

(4) Procedure for implementing the antidegradation [nondegradation] policy in outstanding national resource waters [for point source discharges].

(a) Water quality shall be maintained and protected in outstanding national resource waters.

(b) The cabinet may approve temporary or short-term changes in water quality if the changes to the waters in question have no demonstrable impact on the ability of the waters to support their designated uses.

(5) Procedure for implementing the antidegradation [nondegradation] policy in exceptional waters [waterbodies whose quality exceeds that necessary to support propagation of fish, shellfish, and wildlife and recreation in and on the water for point source discharges].

(a) Applicants for a new unpermitted and expanded discharge shall conduct an alternatives analysis as contained in subsection (8) of this section.

(b) A KPDES permit for a new unpermitted or expanded discharge shall contain effluent limitations for the entire effluent that are as follows:

1. Domestic discharges shall have an effluent quality of no greater than ten (10) mg/l five (5) day carbonaceous biochemical oxygen demand, two (2) mg/l ammonia-nitrogen, 0.010 mg/l total residual chlorine, ten (10) mg/l total suspended solids, one (1) mg/l total phosphorus, a minimum seven (7) mg/l dissolved oxygen, a chronic whole

effluent toxicity limit unless an acute whole effluent toxicity limit is more stringent, and a geometric mean value for fecal coliform bacteria not to exceed 200 colonies per 100 milliliters during a period of thirty (30) consecutive days nor 400 colonies per 100 milliliters during a period of seven (7) consecutive days, and the discharge shall not cause the average instream dissolved oxygen concentration to be less than six and zero-tenths (6.0) mg/l.

2. Chloride limits shall be based on the domestic water supply criterion of 250 mg/l.

3. Stormwater discharges shall be [are] exempt from antidegradation [nondegradation] implementation procedures for exceptional waters [waterbodies whose quality exceeds that necessary to support propagation of fish, shellfish, and wildlife and recreation in and on the water], but shall be [are] subject to control by existing cabinet programs.

4. Chronic whole effluent toxicity limits shall apply unless an acute whole effluent toxicity limit is more stringent.

5. [Carcinogenic pollutants shall be limited as in use protected waters.]

6. [All other waste discharges shall be restricted to one-half (1/2) of the limitation that would have been permitted for use protected waters at standard design conditions.]

6. [7.] KPDES permit renewals that result in no increase in pollutant loading are exempt from implementation procedures for exceptional waters [waterbodies whose quality exceeds that necessary to support propagation of fish, shellfish, and wildlife and recreation in and on the water].

(c) [(b)] If the permit applicant determines that it can meet limits required by paragraph (b) of this subsection [these limitations], the KPDES permit shall be issued with these limitations without further antidegradation [nondegradation] review as described in subsection (6) of this section for use protected waters. If a KPDES permit applicant cannot meet those effluent limitations the applicant may request a less stringent limitation. In making this request, the applicant shall demonstrate to the satisfaction of the cabinet that allowing lower water quality is necessary to accommodate important economic or social development in the area in which the waters are located following the guidelines in "Interim Economic Guidance for Water Quality Standards Workbook, (EPA, March 1995)" incorporated by reference in Section 4 of this administrative regulation. [-]

1. The applicant has conducted a thorough alternative or enhanced treatment analysis that investigated other alternative or enhanced treatment options that were available, technically feasible, and cost-effective, including alternate discharge locations that would eliminate the need for less stringent limitations; and

2. The applicant has conducted a thorough pollution prevention alternatives analysis that investigated any cost-effective pollution prevention alternatives and techniques that were available that would eliminate the need for less stringent limitations or significantly reduce the extent of the less stringent limitations;

3. If the applicant satisfies the requirements of subparagraphs 1 and 2 of this paragraph, the applicant may then be permitted a less stringent level of treatment; [-] In allowing the resultant lowering of water quality, the cabinet shall assure water quality necessary to fully protect existing uses.

(d) [(c)] New zones of initial dilution are prohibited in these waters.

(6) Procedure for implementing the antidegradation [nondegradation] policy in use protected waters for point source discharges. All surface waters not categorized [listed in Section 3 of this administrative regulation] as outstanding national resource waters or exceptional waters [waterbodies whose quality exceeds that necessary to support fish, shellfish, and wildlife and recreation in and on the water] shall be categorized as use protected waters.

(a) All existing uses shall be protected and the level of water quality necessary to protect these uses shall be assured in these surface waters.

(b) The process to allow discharges to these surface waters and to assure their protection is regulated by the requirements in the Kentucky Pollution Discharge Elimination System Program.

(c) An applicant for a new unpermitted or expanded discharge shall conduct an alternatives analysis as contained in subsection (8) of this section.

(7) These procedures shall not preempt the power or authority of

a local government to provide by ordinance for a higher level of protection through antidegradation [nondegradation] implementation, for dischargers located within that local government's jurisdiction to surface waters of the Commonwealth.

(8) An applicant for a new unpermitted or expanded point source discharge shall conduct an alternatives analysis that shall consider:

- (a) Discharge to other treatment facilities;
- (b) Use of other discharge locations;
- (c) Water reuse or recycle;
- (d) Process and treatment alternatives; and
- (e) On-site or subsurface disposal.

Section 2. Procedures for Recategorizing Waters. This section shall apply to the recategorization of surface waters to outstanding national resource waters and exceptional waters [waterbodies whose quality exceeds that necessary to support propagation of fish, shellfish, and wildlife and recreation in and on the water]. The redesignation [reclassification] of waters to outstanding state resource waters shall be governed by the procedures in 401 KAR 5:026.

(1) The cabinet may propose to recategorize certain waters to outstanding national resource waters and exceptional waters. [waterbodies whose quality exceeds that necessary to support propagation of fish, shellfish, and wildlife and recreation in and on the water.]

(a) If the cabinet proposes to recategorize these waters, it shall provide notice and an opportunity for public hearing.

(b) The cabinet shall provide the documentation for those surface waters it proposes to recategorize.

(2) A [Any] person may request recategorization of a surface water to an outstanding national resource water or exceptional water [a waterbody whose quality exceeds that necessary to support propagation of fish, shellfish, and wildlife and recreation in and on the water] by filing a petition with the cabinet.

(a) The petition shall include the name and address of the petitioner and the information and documentation necessary to recategorize the particular water as required by subsection (4) of this section;

(b) The petitioner shall have the burden of proof that the recategorization is appropriate.

(c) The cabinet shall provide notice of the petition and an opportunity for a public hearing.

(d) The cabinet shall review the petition, supporting documentation, and any comments received from the public to determine if the proposed waters qualify for recategorization.

(e) The cabinet shall document the determination to grant or deny recategorization as a result of a petition, and shall provide a copy of the decision to the petitioner and other interested parties.

(3) If a water is to be recategorized the cabinet shall publish notice of the recategorization. Any permit issued after the date of publication shall be issued with limitations based on the new category. When the cabinet reviews its water quality standards pursuant to the provisions of Section 303 of the Clean Water Act, the cabinet shall propose to have all recategorized waters promulgated as an amendment to this administrative regulation.

(4) The following information, documentation, and data shall [are required to] support a petition for recategorization:

(a) To support a petition for outstanding national resource waters:

1. A United States Geological Survey 7.5 minute topographic map or its equivalent as approved by the cabinet showing those surface waters to be recategorized, with a description consisting of a river mile index with any existing and proposed discharge points;

2. Existing uses and water quality data for the surface waters for which the recategorization is proposed. If adequate data are unavailable, additional studies may be required by the cabinet;

3. Descriptions of general land uses, [(e.g., mining, agricultural, recreation, low, medium, and high density residential, commercial, industrial, etc.)] and specific land uses adjacent to the surface waters for which the recategorization is proposed;

4. The existing and designated uses of the waters upstream and downstream of the proposed recategorized waters;

5. General physical characteristics of the surface water including, but not limited to width, depth, bottom composition, and slope;

6. The frequency of occasions when there is no natural flow in the surface water, and the 7Q<sub>10</sub> and harmonic mean flow values for the surface water and adjacent surface waters;

7. An assessment of the existing and potential aquatic life habitat in the surface waters under consideration and the adjacent upstream surface waters. The existing aquatic life shall be documented including the occurrence of individuals or populations, indices of diversity and well-being, and abundance of species of any unique native biota;

8. A documented rationale as to why the waters qualify for the recategorization; and

9. The rationale used to support the national significance of the water.

(b) To support a petition for exceptional waters [waterbodies whose quality exceeds that necessary to support propagation of fish, shellfish, and wildlife and recreation in and on the water]:

1. A United States Geological Survey 7.5 minute topographic map or its equivalent as approved by the cabinet showing the surface waters to be recategorized, with a description consisting of a river mile index with [any] existing and proposed discharge points;

2. Descriptions of general land uses, including mining, agricultural, recreational, low, medium, and high density residential, commercial, and industrial, and specific land uses adjacent to the surface waters for which the recategorization is proposed; and

3. The frequency of occasions when there is no natural flow in the surface water, and the 7Q<sub>10</sub> and annual mean flow values for the surface water;

4. Fish or benthic macroinvertebrate collection data and an Index of Biotic Integrity or Macroinvertebrate Bioassessment Index calculation from a waterbody if criteria [that criterion] specified in Section 1(3)(c) of this administrative regulation are [is] utilized.

Section 3. [List of] Surface Water Categories. [(+) Surface waters categorized for antidegradation [nondegradation] purposes are listed in the following tables. The county column indicates the county in which the mouth or outlet of the surface water is located.

[(2) Surface waters not specifically listed in this section are categorized as use protected.]

[LIST OF] SURFACE WATERS CATEGORIZED AS OUTSTANDING NATIONAL RESOURCE WATERS		
Stream	Zone	County
Red River	River Mile 68.6 to River Mile 49.2	Menifee/Wolfe
Underground River System	Within Mammoth Cave National Park Boundary	Edmonson/Hart/Barren
Big South Fork of Cumberland River	River Mile 55.2 to River Mile 45.0	McCreary

[LIST OF] SURFACE WATERS CATEGORIZED AS EXCEPTIONAL WATERS [WATERBODIES WHOSE QUALITY EXCEEDS THAT NECESSARY TO SUPPORT PROPAGATION OF FISH, SHELLFISH, AND WILDLIFE AND RECREATION IN AND ON THE WATER]		
Stream	Zone	County
LITTLE SANDY RIVER BASIN		
Arabs Fork*	Source to [confluence with] Clay Fork	Carter
Big Caney Creek*	Source to Grayson Lake	Elliott
Big Sinking Creek*	Source to River Mile 10.7	Carter
Laurel Creek*	Source to River Mile 7.6	Elliott
LICKING RIVER BASIN		
Blackwater Creek	River Mile 11.4 to River Mile 3.8	Morgan
Bucket Branch*	Source to [confluence with] North Fork of Licking River	Morgan
Devils Fork*	Source to [confluence with] North Fork of Licking River	Morgan
Licking River	River Mile 165.0 to River Mile 154.5	Bath/Rowan
North Fork of Licking River*	Source to River Mile 13.0	Morgan
KENTUCKY RIVER BASIN		

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Buffalo Creek*	River Mile 12.8 to River Mile 0.8	Owsley
Cavanaugh Creek	River mile 5.3 to South Fork of Station Camp Creek	Jackson
Clear Creek*	Source to River Mile 4.1	Woodford
Clemons Fork*	Source to Buckhorn Creek	Breathitt
Coles Fork*	Source to Buckhorn Creek	Breathitt
Drennon Creek*	River Mile 11.9 to River Mile 10.5	Henry
East Fork of Indian Creek*	Source to West Fork of Indian Creek	Menifee
Elisha Creek*	Source to River Mile 0.95	Leslie
Gladie Creek*	Source to Red River	Menifee
Goose Creek	Laurel Creek to Red Bird River	Clay
Hardwick Creek	Little Hardwick Creek to Red River	Powell
Indian Creek*	River Mile 4.7 to River Mile 0.55	Carroll
Line Fork	River Mile 27.5 to River Mile 17.3	Letcher
Lulbegrud Creek	Falls Branch to Red River	Clark/Powell
Middle Fork of Kentucky River	Upper Twin Creek to North Fork of Kentucky River	Lee
Middle Fork of Kentucky River	Greasy Creek to Buckhorn Reservoir backwaters	Leslie
Musselman Creek*	River Mile 8.4 to River Mile 2.6	Grant
Red Bird River	Big Creek to Goose Creek	Clay
Right Fork of Buffalo Creek*	Source to Buffalo Creek	Owsley
South Fork of Kentucky River	Sexton Creek to River Mile 11.3	Owsley
South Fork of Red River	Sand Lick Fork to Middle Fork of Red River	Powell
South Fork of Station Camp Creek*	Source to River Mile 5.3	Jackson
Station Camp Creek*	River Mile 22.3 to River Mile 19.0	Estill
Sturgeon Creek*	Source to River Mile 4.0	Lee
Sugar Creek*	Source to River Mile 0.8	Leslie
Wolfpen Creek*	Source to Red River	Menifee
SALT RIVER BASIN		
Salt Lick Creek*	Source to River Mile 5.3	Marion
Wilson Creek*	Source to River Mile 12.2	Bullitt
GREEN RIVER BASIN		
Beaverdam Creek*	Source to River Mile 7.6	Edmonson
Caney Fork*	Source to River Mile 0.85	Barren
Falling Timber Creek*	River Mile 16.0 to River Mile 11.5	Metcalf
Gaspar River*	Source to River Mile 32.3	Logan
Goose Creek*	Source to River Mile 5.6	Casey
Green River	River Mile 207.8 to River Mile 181.7	Edmonson
Lick Creek*	Source to River Mile 5.3	Simpson
Otter Creek*	Source, including East and Middle Fork, to River Mile 1.75	Larue
Peter Creek*	River Mile 18.05 to River Mile 13.05	Barren
Russell Creek*	Source to River Mile 23.8 [60.5]	Adair
Trammel Fork*	River Mile 30.15 (Kentucky-Tennessee State Line) to River Mile 19.4	Allen
LOWER CUMBERLAND RIVER BASIN		
West Fork of Red River*	River Mile 26.5 to River Mile 16.3	Christian
Whipporwill Creek*	Source to Red River	Logan

TENNESSEE RIVER BASIN		
Blood River*	River Mile 15.65 (Kentucky-Tennessee State Line) to River Mile 15.1	Calloway
Panther Creek*	Source to River Mile 1.2	Calloway
Soldier Creek*	River Mile 5.3 to River Mile 2.6	Marshall
TRADEWATER RIVER BASIN		
Sandlick Creek*	Source to River Mile 3.5	Christian
Tradewater River*	Source to River Mile 126.0	Christian
OHIO RIVER BASIN (Main Stem and Minor Tributaries)		
Yellowbank Creek*	Source to River Mile 4.4	Breckinridge
LAKES AND RESERVOIRS		
Metropolis	Entire Lake	McCracken
Swan	Entire Lake	Ballard
MISSISSIPPI RIVER BASIN (Main Stem and Minor Tributaries)		
Murphy's Pond	Entire Pond and Preserve Area	Hickman
UPPER CUMBERLAND RIVER BASIN		
Bad Branch*	Source to [confluence with] Poor Fork of Cumberland River	Letcher
Bark Camp Creek*	Source to River Mile 2.6	Whitley
Buck Creek*	River Mile 62.6 to River Mile 28.9	Pulaski
Cane Creek*	Source to River Mile 7.0	Laurel
Cumberland River	River Mile 574.6 to River Mile 558.5 (Headwaters of Lake Cumberland)	McCreary/Whitley
Eagle Creek*	Source to River Mile 3.0	McCreary
Horse Lick Creek*	Source to River Mile 12.3	Jackson
Little South Fork of Cumberland River	River Mile 35.6 to River Mile 4.1	Wayne
Marsh Creek*	Source to River Mile 12.6	McCreary
Martins Fork of Cumberland River	River Mile 31.3 to River Mile 27.4	Harlan
Rock Creek	Tennessee-Kentucky State Line (River Mile 21.9) to White Oak Creek	McCreary
Rockcastle River	River Mile 24.4 to River Mile 8.5	Laurel/Pulaski
South Fork of Dog Slaughter Creek*	Source to Dog Slaughter Creek	Whitley

\*Waterbodies in the cabinet's reference reach network

Section 4. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Methods for Assessing Biological Integrity of Surface Water, October 1993," Kentucky Division of Water, Natural Resources and Environmental Protection Cabinet;

(b) "A Macroinvertebrate Bioassessment Index for Streams of the Interior Plateau Ecoregion in Kentucky, June 1999," Kentucky Division of Water, Natural Resources and Environmental Protection Cabinet;

(c) "Interim Economic Guidance for Water Quality Standards Workbook (EPA, March 1995)" Publication EPA-823-B-95-002, U.S. Environmental Protection Agency, Office of Water, Washington, D.C. [Document Incorporated by Reference. The subject matter of this administrative regulation relating to biological assessments shall be governed by the document, "Methods for Assessing Biological Integrity of Surface Water", Kentucky Division of Water, Natural Resources and Environmental Protection Cabinet, October 1993, which is hereby incorporated by reference.]

(2) This material may be inspected, copied, or obtained [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., excluding state holidays,] at the Division of Water, 14 Reilly Road, Frankfort, Kentucky, Monday through Friday, 8 a.m. to 4:30 p.m.

JAMES E. BICKFORD, Secretary

BARBARA A. FOSTER, General Counsel

APPROVED BY AGENCY: June 15, 1999

FILED WITH LRC: June 15, 1999 at 11 a.m.

**PUBLIC HEARING:** A public hearing on this administrative regulation is scheduled for July 27, 1999, at 7 p.m. (EDT) at the Western Hills High School Auditorium, 100 Doctors Drive, Frankfort, Kentucky. Individuals who intend to be heard at this hearing shall notify this agency in writing by July 20, 1999, five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend 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 administrative regulation. A transcript of the hearing will not be made unless a written request for a transcript is made. If you request a transcript, you may be required to pay for it. If you do not wish to be heard at the hearing, you may submit written comments on the administrative regulation. Send written notification of your intent to be heard at the hearing, or your written comments on the administrative regulation, to the contact person listed below. Written comments must be received before adjournment of the hearing, or by 4:30 p.m. on July 27, 1999, if the hearing is not held. The hearing facility is accessible to persons with disabilities. Requests for reasonable accommodations, including auxiliary aids and services necessary to participate in the hearing, may be made to the contact person at least five (5) workdays prior to the hearing.

**CONTACT PERSON:** Jack A. Wilson, Director, Division of Water, Department for Environmental Protection, 14 Reilly Road, Frankfort, Kentucky 40601, Telephone: (502) 564-3410 Fax: (502) 564-0111.

#### REGULATORY IMPACT ANALYSIS

Contact person: Jack A. Wilson

(1) Type and number of entities affected: This amended administrative regulation implements the antidegradation policy of amended 401 KAR 5:029 by establishing procedures to control water pollution in waters affected by that policy. No additional surface waters are categorized as outstanding national resource waters and 27 surface waters are categorized as exceptional waters. Individuals, businesses, organizations, and governments that will have new or expanded wastewater discharges into streams categorized as exceptional waters are affected by stricter discharge limits. Fewer than 10 sites have permits to discharge to these categorized waterbodies. Effluent limitations are set for carbonaceous biochemical oxygen demand, ammonia-nitrogen, residual chlorine, suspended solids, phosphorus, dissolved oxygen, fecal coliform bacteria, and a chronic whole effluent toxicity limit unless an acute whole effluent toxicity limit is more stringent. All other waste discharges will have limits twice as stringent as discharges into waters classified as use protected with some exceptions. This amended administrative regulation will affect new or expanded mining operations in watersheds of these newly categorized waters. This amended administrative regulation also applies indirectly to persons served by domestic water supplies, agricultural water users, recreational enthusiasts, and the tourism industry.

(2) Direct and indirect costs or savings: The stricter permit limits imposed on new or expanded point source dischargers into waterbodies categorized as exceptional waters could result in additional treatment outlays, training costs, and operational changes. New or expanded dischargers may incur costs of alternatives and pollution prevention analyses. Direct and indirect savings will be realized through reduced drinking water treatment costs, maintenance of good agricultural water, maintenance of fisheries, and healthy recreational waters. Of important note is that this requirement already exists in state and federal law. Therefore, the amended administrative regulation does not create additional obligations for dischargers. Any cost a discharger would incur would already be required under existing federal and state law. This amended administrative regulation sets forth specific implementation procedures to comply with already existing antidegradation requirements.

(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: Several

comments received from the public referred to a study by Stephen M. Meyer, Professor in Political Science, Massachusetts Institute of Technology, entitled *Environmentalism and Economic Prosperity: Testing the Environmental Impact Hypothesis*, October 5, 1992. This study compared the relative strengths of environmental programs in the fifty states with economic performance measured in terms of gross state product and economic growth, total employment, construction employment, manufacturing labor, and overall labor productivity. The study found that "...average employment growth among the environmentally strong states was about 45% better than that of the environmentally weak states." It concluded that "...states with stronger environmental policies consistently out-performed the weaker environmental states on all the economic measures." Further, "...states with stronger environmental policies did not experience weaker gains in economic growth between the 1970s and 1980s. Here again, it was the states with strong environmental policies that showed the greater inter-decade improvement in economic performance."

(b) Effect on the cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: No known or expected impacts. No specific comments received.

(c) Effect on the compliance, reporting, and paperwork requirements, to the extent available from the public comments received, including factors increasing or decreasing costs (note any effects upon competition) for the:

1. First year following implementation: No known or expected impacts. No specific comments received.

2. Second and subsequent years: No known or expected impacts. No specific comments received.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings: 3 categorizations of waters for antidegradation purposes are included: outstanding national resource waters, exceptional waters, and use protected waters. The Division of Water may perform field assessments of surface waters having potential for categorization and will make determinations based on its assessments and petitions submitted by the public. The cabinet's antidegradation implementation policy will involve additional reviews of alternatives and pollution prevention analyses. The permitting process itself will not change significantly.

1. First year: None

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs: Alternatives and pollution prevention analyses must be reviewed and determinations made as to their adequacy. Costs may increase if the division's findings are contested.

(b) Reporting and paperwork requirements: Implementing the antidegradation policy will involve minimal internal paperwork.

(4) Assessment of anticipated effect on state and local revenues: Some localities may be affected because of the presence of exceptional waters, causing tax-generating businesses to locate elsewhere. However, protection of these waterbodies may have a positive influence on revenues derived from water-based tourism. Again, it must be noted, this is already required under federal and state law so the promulgation of this amended administrative regulation which sets forth a procedure to implement the law itself will not impact revenue more than it is already impacted by the existing federal and state regulation.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: The source of revenue will be the General Fund and federal funds, as appropriated by the Kentucky General Assembly.

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

(a) Geographical area in which administration regulation will be implemented: No known or expected impacts. No specific comments received.

(b) Kentucky: Comments received: "The cabinet's nondegradation rule must balance the need to protect the waters of Kentucky against the separate but critical need to promote economic growth and development in Northern Kentucky and the rest of the state. The proposed revisions should not result in substantial delays or cause

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significant, unnecessary costs for local governments in Northern Kentucky as they strive to improve existing and extend new sewer service."

(7) Assessment of alternative methods; reasons why alternatives were rejected: This new amended administrative regulation implements Kentucky's antidegradation policy, which is contained in 401 KAR 5:029. Implementation of an antidegradation policy is required by the Clean Water Act and 40 CFR 131.12. Therefore, no alternatives were considered. The domestic discharge limits for new or expanded discharges to exceptional waters are stringent but technologically achievable.

(8) Assessment of expected benefits of the administrative regulation: This amended administrative regulation establishes 3 surface water categories: outstanding national resource waters, exceptional waters, and use protected waters. By categorizing certain streams as exceptional waters, this amended administrative regulation will lessen the degree of degradation of those waters. The quality of aquatic-based recreation (e.g., fishing, swimming, skiing, and boating) will be preserved. Drinking water treatment costs will be contained because of controlled pollutant amounts. Aquatic biodiversity will be maintained.

(9)(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: This amended administrative regulation reduces the amount of permissible point source pollutant loading into exceptional waters. Aquatic recreation, such as swimming, wading, skiing, and boating, depends on the maintenance of clean, safe water. Categorizing these waters protects rare aquatic species and the rich biodiversity of plants, fish, and macroinvertebrates.

(b) State whether a detrimental effect on environment and public health would result if not implemented: There would be a detrimental effect on the environment if this amended administrative regulation is not implemented.

(c) If detrimental effect would result, explain detrimental effect: Failure to implement this amended administrative regulation would allow the degradation of those streams and lakes identified as outstanding national resource waters and exceptional waters. Although these waters would meet designated uses, any increment of water quality greater than that necessary to support propagation of fish, shellfish, wildlife, and recreation in and on the water could be lost. Analysis of alternatives will assure that no feasible environmentally beneficial alternatives exist.

(10) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: No statutes, administrative regulations or government policies are in conflict, overlap, or duplicate this amended administrative regulation.

(a) Necessity of proposed administrative regulation if in conflict: The administrative regulation is not in conflict.

(b) If in conflict, was effort made to harmonize the proposed administration regulation with conflicting provisions: The administrative regulation is not in conflict.

(11) Any additional information or comments: State water quality standards are required by federal law to be reviewed for possible changes at least every three years. The U.S. Environmental Protection Agency disapproved: 1) excluding carcinogenic pollutants from twice as stringent limits in discharges to exceptional waters; and 2) the number of waters that would undergo an antidegradation review. The cabinet is addressing these issues in these proposed revisions by applying twice as stringent limits to carcinogenic substances for discharges to exceptional waters, and by requiring an alternatives analysis for new and expanded discharges to exceptional and use protected waters.

(12) TIERING: Is tiering applied? No. The amended administrative regulation affects all discharges into surface waters of the Commonwealth, irrespective of ownership, capacity, processes, or treatment used.

### FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. There is no federal statute or regulation mandating that Kentucky implement a water pollution control program. For Kentucky to maintain its delegation over the NPDES permit program, however, the

Clean Water Act requires that Kentucky review its water quality standards every three years and comply with the programmatic requirements of 40 CFR Part 131, including the requirement for implementing and antidegradation policy. The federal regulations require the adoption of an antidegradation policy for delegated states. The U.S. Environmental Protection Agency does provide guidance to the states, but individual decisions concerning the states water quality programs are left to the states.

2. State compliance standards. 401 KAR 5:002, 5:026, 5:029, 5:030, and 5:031, the water quality standards regulations.

3. Minimum or uniform standards contained in the federal mandate. The Clean Water Act requires designated uses, criteria, standards and antidegradation policies in water quality standards.

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. There is no stricter standard or additional or different responsibilities or requirements.

### 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 amended administrative regulation may affect the wastewater treatment divisions of local government if they will have new or expanded discharges into outstanding national resource waters or exceptional waters.

3. State the aspect or service of local government to which this administrative regulation relates. This amended administrative regulation relates to local governments' waste water treatment service.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a local government for the first full year the administrative 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 (+/-): Cannot be determined.

Expenditures (+/-): Cannot be determined.

Other explanation: Waste water treatment costs may increase for those local governments that will have new or expanded discharges into exceptional waters. However, local governments withdrawing drinking water from these waters may have lower treatment costs, because these waters should have lower pollutant loads. The basic requirement already exists in federal and state law. The cost associated with this amended administrative regulation will be procedural in nature.

### NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET Department for Environmental Protection Division of Water (Amendment)

#### 401 KAR 5:031. Surface water standards.

RELATES TO: KRS 146.200 to 146.360, 146.410 to 146.990, 224.01-100, 224.01-400, 224.16-050, 224.16-070, 224.40, 224.43, 224.46, 224.50, 224.60, 224.70, 224.71, 224.73 [Chapter 224]

STATUTORY AUTHORITY: KRS 146.200 to 146.360, 146.410 to 146.990, 224.10-100, 224.16-050, 224.16-060, 224.70-100, 224.70-110, 40 CFR Part 131, 16 USC 1271 et seq., 1531 et seq., 33 USC 1311, 1313, 1314, 1341

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 and 401 KAR 5:002, 5:026, 5:029, and 5:030 will operate to

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protect the surface waters of the Commonwealth, and thus protect water resources. This administrative regulation sets forth water quality standards which consist of designated legitimate uses of the surface waters of the Commonwealth and the associated water quality criteria necessary to protect those uses. These water quality standards are minimum requirements that [criteria which] apply to all surface waters in the Commonwealth of Kentucky in order to maintain and protect them for designated uses. [Criteria for nutrients are recognized and included. These water quality standards are established to protect public health and welfare, protect and enhance the quality of water, and fulfill federal and state requirements for the establishment of water quality standards.] These water quality standards are subject to periodic review and revision in accordance with federal and state laws. Definitions for terms used in this administrative regulation are found in 401 KAR 5:002 [029. On May 31, 1990 the Interim Joint Committee on Agriculture and Natural Resources determined that this administrative regulation did not comply with KRS Chapter 13A. This administrative regulation is being amended to remove the portions that the Interim Joint Committee found deficient, so that the letter of attachment may be removed].

Section 1. Nutrient Limits. [(4)] In publicly-owned lakes and publicly-owned reservoirs, [surface impoundments] and their tributaries, and other surface waters where eutrophication problems may exist, nitrogen, phosphorus, carbon, and contributing trace element discharges shall [will] be limited by the cabinet in accordance with the scope of the problem, the geography of the affected area, and relative contributions from existing and proposed sources. [as appropriate by the cabinet.

(2) The affected surface waters will be designated as nutrient limited.]

Section 2. Minimum Criteria Applicable to All Surface Waters. (1) The following minimum water quality criteria are applicable to all surface waters including mixing zones, with the exception that toxicity to aquatic life in mixing zones shall be subject to the provisions of 401 KAR 5:029, Section 4 [5]. Surface waters shall not be aesthetically or otherwise degraded by substances that:

- Settle to form objectionable deposits;
- Float as debris, scum, oil, or other matter to form a nuisance;
- Produce objectionable color, odor, taste, or turbidity;
- Injure, are chronically or acutely toxic to or produce adverse physiological or behavioral responses in humans, animals, fish and other aquatic life;
- Produce undesirable aquatic life or result in the dominance of nuisance species;
- Cause fish flesh tainting. [(The concentration of all phenolic compounds which cause fish flesh tainting shall not exceed five (5) µg/l as an instream value)];
- Cause the following changes in radionuclides:
  - The gross total alpha particle activity, [(including radium-226 but excluding radon and uranium, )] to exceed fifteen (15) pCi/l;
  - Combined radium-226 and radium-228 to exceed five (5) pCi/l, [(Specific determinations of radium-226 and radium-228 are not necessary if dissolved gross alpha particle activity does not exceed five (5) pCi/l)];
  - The concentration of total gross beta particle activity to exceed fifty (50) pCi/l;
  - The concentration of tritium to exceed 20,000 pCi/l;
  - The concentration of total Strontium-90 to exceed eight (8) pCi/l.

(2) The following criteria are applicable to all surface water outside assigned [designated] mixing zones except for those points where water is withdrawn for domestic water supply use. They are established for the protection of human health from the consumption of fish tissue, and shall not be exceeded. For those substances associated with a cancer risk, an acceptable risk level of no more than one (1) additional cancer case in a population of 1,000,000 people, or 1 x [(10<sup>-6</sup>)] shall [will] be utilized to establish the allowable concentration.

Table 1. Water Quality Criteria for Protection of Human Health from the Consumption of Fish Tissue	
Substances Not Linked to Cancer	Concentration (µg/l)
<b>Metals<sup>1</sup></b>	
Antimony	4,300 [45,000]
[Chromium(III)]	670,000]
Mercury	0.051 [0.146]
Nickel	4,600
Thallium	6.3 [48]
Zinc	69,000
<b>Organics</b>	
Acenaphthene	2,700
Acrolein	780
Anthracene	110,000
Chlorobenzene	21,000
1,2,4,5-tetrachlorobenzene	2.9 [48]
Pentachlorobenzene	4.1 [85]
[1,1,1-trichloroethane	1,030,000]
bis(2-chloroisopropyl) ether	170,000 [4,360]
Cyanide	220,000
1,2-dichlorobenzene	17,000
1,3-dichlorobenzene	2,600
1,4-dichlorobenzene	2,600
1,3-dichloropropylene	1,700
[Dichlorobenzenes	2,600
Dichloropropenes	14,100]
alfa-Endosulfan	240 [159]
beta-Endosulfan	240
Endosulfan sulfate	240
Endrin	0.81
Endrin aldehyde	0.81
Ethylbenzene	29,000
Fluoranthene	370 [54]
Fluorene	14,000
Hexachloropsychlopentadine	17,000
2-chloronaphthalene	4,300
2-chlorophenol	400
2,4 dichlorophenol	790
2,4,5-trichlorophenol	9,800
2,4-dimethylphenol	2,300
[Isophorone	520,000]
2,4-dinitro-o-cresol, or 2-methyl-4,6-dinitrophenol	765
2,4 dinitrophenol	14,000 [14,300]
Phenol	4,600,000
Di-n-butyl [Dibutyl] phthalate	12,000 [154,000]
Diethyl phthalate	120,000 [800,000]
[2-ethylhexyl phthalate	50,000]
Dimethyl phthalate	2,900,000
1,3-dichloropropene	1,700
Pyrene	11,000
Methyl bromide	4,000
Nitrobenzene	1,900
Toluene	200,000 [424,000]
<b>Substances Linked to Cancer</b>	
<b>[Metals<sup>1</sup></b>	
Beryllium	0.117]
<b>Organics</b>	
Acrylonitrile	0.65
Aldrin	0.00014 [-000079]
Benzene	71
Benzidine	0.00054 [-00053]
Benzo(a)anthracene	0.049
Benzo(a)pyrene	0.049
Benzo(b)fluoroanthene	0.049
Benzo(k)fluoroanthene	0.049
Bromoform	360

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Carbon tetrachloride	4.4 [6.94]
Chlordane	0.0022 [0.0048]
Chlorodibromomethane	34
Dichlorobromomethane	46
Hexachlorobenzene	0.00077 [0.0074]
1,2-dichloroethane	99 [243]
1,1,2-trichloroethane	41.8
1,1,2,2-tetrachloroethane	10.7
Hexachloroethane	8.9 [8.74]
2,4,6-trichlorophenol	6.5 [3.6]
Pentachlorophenol	8.2
bis(2-chloroethyl) ether	1.40 [1.36]
bis(2-ethylhexyl) phthalate	5.9
Chloroform	470
Chrysene	0.049
4,4'-DDE	0.00059
4,4'-DDD	0.00084
4,4'-DDT	0.00059 [0.00024]
Dibenzo(a,h)anthracene	0.049
3,3'-dichlorobenzidine	0.077 [0.02]
1,1-dichloroethylene	3.2 [1.85]
1,2-trans-dichloroethylene	140,000
Dieldrin	0.00014 [0.00076]
2,4-dinitrotoluene	9.1
Dioxine, 2,3,7,8-TCDD	0.00000012
1,2-diphenylhydrazine	0.54 [0.56]
Halomethanes	15.7
Heptachlor	0.00021 [0.00029]
Heptachlor epoxide	0.00011
Hexachlorobutadiene	50.0
alpha Hexachlorocyclohexane or BHC (HCH)	0.013 [0.031]
Beta BHC (HCH)	0.046 [0.0547]
gamma BHC or (HCH) (lindane)	0.063 [0.0625]
Technical HCH	0.0414
Indeno(1,2,3-cd)pyrene	0.049
Isophorone	2,600
Methylene chloride	1,600
N-nitrosodiethylamine	1.24
N-nitrosodimethylamine	8.1 [16.0]
N-nitrosodibutylamine	0.587
N-nitrosodi-n-propylamine	1.4
N-nitrosodiphenylamine	16.0 [16.1]
N-nitrosopyrrolidine	91.9
Polychlorinated Biphenyls or (PCBs)	0.000079
Polynuclear Aromatic Hydrocarbons (PAHs)	0.0311
Tetrachloroethylene	8.85
Toxaphene	0.00075 [0.00073]
Trichloroethylene	81 [80.7]
Vinyl Chloride	525

Total recoverable form measured in an unfiltered sample

Section 3. Use Designations [Classifications] and Associated Criteria. (1) Surface waters may be designated as having one (1) or more [of the following] legitimate uses and associated [use] criteria protective of those uses. Those uses are listed in 401 KAR 5:026. [The classifications in Sections 4, 5, 6, and 7 of this administrative regulation include the most common usage of surface waters within the Commonwealth.] Nothing in this administrative regulation shall be construed to prohibit or impair the legitimate beneficial uses of these waters. The criteria in Sections 2, 4, 5, and 6 [Section 2] of this administrative regulation [and the following use criteria] represent minimum conditions necessary to protect surface waters for the indicated use and to provide for the protection of human health from fish consumption [or a combination of fish and water consumption].

(2) On occasion surface water quality may be outside of the limits established to protect designated uses because of natural conditions. If [When] this condition occurs during periods when stream flows are below the flow that [which] is used by the cabinet to establish effluent

limitations [limits] for wastewater treatment facilities, a discharger shall not be considered a contributor to instream violations of water quality standards, if [provided that] treatment results in compliance with permit requirements [is maintained].

(3) Governing flows for water quality-based permits. The following stream flows are to be utilized when deriving KPDES permit limitations for the protection of surface waters for the listed uses and purposes.

(a) Aquatic life protection -  $7Q_{10}$ .

(b) Water-based recreation protection -  $7Q_{10}$ .

(c) Domestic water supply protection - harmonic mean for cancer-linked substances,  $7Q_{10}$  for noncancer-linked substances, determined at points of withdrawal.

(d) Human health protection from fish consumption only - harmonic mean for cancer-linked substances,  $7Q_{10}$  for noncancer-linked substances.

(e) Protection of aesthetics and for changes in radionuclides -  $7Q_{10}$ .

Section 4. Aquatic Life. (1) Warm water aquatic habitat. The following parameters and associated criteria shall apply for the protection of productive warm water aquatic communities, fowl, animal wildlife, arboreal growth, agricultural, and industrial uses:

(a) Natural alkalinity as  $\text{CaCO}_3$  shall not be reduced by more than twenty-five (25) percent. If [Where] natural alkalinity is below twenty (20) mg/l  $\text{CaCO}_3$ , no reduction below the natural level is allowed. Alkalinity shall not be reduced or increased to a degree which may adversely affect the aquatic community.

(b) pH shall not be less than six and zero-tenths (6.0) nor more than nine (9.0) and shall not fluctuate more than one and zero-tenths (1.0) pH [(+)] unit over a period of twenty-four (24) hours.

(c) Flow shall not be altered to a degree which will adversely affect the aquatic community.

(d) Temperature shall not exceed thirty-one and seven-tenths (31.7) degrees Celsius (eighty-nine (89) degrees Fahrenheit).

1. The normal daily and seasonal temperature fluctuations that existed before the addition of heat due to other than natural causes shall be maintained.

2. The cabinet may [will] determine allowable surface water temperatures on a site-specific basis utilizing available data which shall be based on the effects of temperature on the aquatic biota which utilize specific surface waters of the Commonwealth and which may be affected by person-induced temperature changes. Effects on downstream uses will also be considered in determining site-specific temperatures. As a guideline, the water temperature for all surface waters shall comply with the limitations [limits] shown in the following table:

Month/Date	Period Average (°F)	Instantaneous Maximum (°F)
January 1-31	45	50
February 1-29	45	50
March 1-15	51	56
March 16-31	54	59
April 1-15	58	64
April 16-30	64	69
May 1-15	68	73
May 16-31	75	80
June 1-15	80	85
June 16-30	83	87
July 1-31	84	89
August 1-31	84	89
September 1-15	84	87
September 16-30	82	86
October 1-15	77	82
October 16-31	72	77
November 1-30	67	72
December 1-31	52	57

3. A successful demonstration concerning thermal discharge limits carried out under Section 316(a) of the Clean Water Act shall constitute compliance with the temperature requirements of this subsection. A successful demonstration assures the protection and propagation of a balanced indigenous population of shellfish, fish and wildlife in or on the water into which the discharge is made.

(e) Dissolved oxygen.

1. Dissolved oxygen shall be maintained at a minimum concentration of five and zero tenths (5.0) mg/l daily average; [at no time shall] the instantaneous minimum shall not be less than four and zero-tenths (4.0) mg/l.

2. The dissolved oxygen concentration shall be measured at mid-depth in waters having a total depth of ten (10) feet or less and at representative depths in other waters.

(f) Solids.

1. Total dissolved solids. Total dissolved solids shall not be changed to the extent that the indigenous aquatic community is adversely affected.

2. Total suspended solids. Total suspended solids shall not be changed to the extent that the indigenous aquatic community is adversely affected.

3. Settleable solids. The addition of settleable solids that may [adversely] alter the stream bottom so as to adversely affect productive aquatic communities is prohibited.

(g) Ammonia. The concentration of the un-ionized form shall not be greater than 0.05 mg/l at any time instream after mixing. Un-ionized ammonia shall be determined from values for total ammonia-N, in mg/l, pH and temperature, by means of the following equation:

$$Y = 1.2 \text{ (Total ammonia-N)} / (1 + 10^{pk_a - pH})$$

$$pk_a = 0.0902 + (2730 / (273.2 + T_c))$$

Where:

$T_c$  = temperature, degrees Celsius.

Y = un-ionized ammonia (mg/l).

(h) Toxics.

1. The allowable instream concentration of toxic substances, or whole effluents, containing toxic substances which are noncumulative or nonpersistent with a [half-life of less than ninety-six (96) hours] shall not exceed [the no-observed effect level (NOEL) or] one-tenth (0.1) of the ninety-six (96) hour median lethal concentration ( $LC_{50}$ ) of [a] representative indigenous or indicator aquatic organisms [organism(s)] or exceed a chronic toxicity unit of 1.00 utilizing the twenty-five (25) percent inhibition concentration, or  $LC_{25}$  [one (1), whichever is more appropriate].

2. The allowable instream concentration of toxic substances, or whole effluents, containing toxic substances which are bioaccumulative or persistent, including pesticides, when not specified elsewhere in this section, shall not exceed [the NOEL or] 0.01 of the ninety-six (96) hour median lethal concentration ( $LC_{50}$ ) of [a] representative indigenous or indicator aquatic organisms [organism(s)] or exceed a chronic toxicity unit of 1.00 utilizing the  $LC_{25}$  [one (1), whichever is more appropriate].

3. In the absence of acute criteria for substances listed in Table 2 or for other substances known to be toxic but not listed in this administrative regulation, or for whole effluents which are acutely toxic, the allowable concentration shall not exceed the  $LC_1$  or one-third (1/3)  $LC_{50}$  concentration derived from toxicity [bioassay] tests on [a] representative indigenous or indicator aquatic organisms [organism(s)] or exceed three-tenths (0.3) acute toxicity units [unit, whichever is more appropriate].

4. If [Where] specific application factors have been determined for a toxic substance or whole effluent such as an acute to [f] chronic ratio or water effect ratio, they may be used instead of the one-tenth (0.1) and 0.01 factors listed in this subsection upon approval by the cabinet.

5. Allowable instream concentrations for specific substances, [acute and chronic criteria] are listed in Table 2. These concentrations are based on protecting aquatic life from acute and chronic toxicity, and shall not be exceeded.

Table 2 Warm Water Aquatic Habitat Criteria <sup>1</sup>		
Metals		
Substance	Acute Criteria	Chronic Criteria
Arsenic		50 µg/l
Arsenic (III)	340 [360] µg/l	150 [190] µg/l
Beryllium		11 µg/l soft water <sup>2</sup> 1100 µg/l hard water <sup>2</sup>
Cadmium (µg/l)	$e^{(1.126(\ln \text{Hard}) - 3.687)}$ [680]	$e^{(0.7852(\ln \text{Hard}) - 2.715)}$ [3,490]

Chromium (III) (µg/l)	$e^{(0.8150(\ln \text{Hard}) - 3.726)}$ [680]	$e^{(0.8150(\ln \text{Hard}) - 0.685)}$ [1-561]
Chromium (VI)	16 µg/l	11 µg/l
Copper (µg/l)	$e^{(0.9422(\ln \text{Hard}) - 1.709)}$ [464]	$e^{(0.8545(\ln \text{Hard}) - 1.702)}$ [466]
Iron	4.0 mg/l	1.0 mg/l <sup>[2]</sup>
Lead (µg/l)	$e^{(1.273(\ln \text{Hard}) - 1.460)}$	$e^{(1.273(\ln \text{Hard}) - 4.705)}$
Mercury	1.7 [2-4] µg/l	0.91 [0-012] µg/l
Nickel (µg/l)	$e^{(0.8420(\ln \text{Hard}) - 2.255)}$ [3,9612]	$e^{(0.8450(\ln \text{Hard}) - 0.0584)}$ [1-1645]
Selenium	20 µg/l	5 µg/l
Silver (µg/l)	$e^{(1.72(\ln \text{Hard}) - 6.52)}$	
Zinc (µg/l)	$e^{(0.8473(\ln \text{Hard}) - 0.884)}$ [694]	$e^{(0.8473(\ln \text{Hard}) - 0.884)}$ [7614]
Organics		
Aldrin	3.0 µg/l	
Chlordane	2.4 µg/l	0.0043 µg/l
Chlorpyrifos	0.083 µg/l	0.041 µg/l
4,4'-DDT	1.1 µg/l	0.001 µg/l
Dieldrin	0.24 [2-5] µg/l	0.056 [0-0019] µg/l
alpha-Endosulfan	0.22 µg/l	0.056 µg/l
beta-Endosulfan	0.22 µg/l	0.056 µg/l
Endrin	0.086 [0-18 µg/l]	0.036 [0-0023 µg/l]
Guthion		0.01 µg/l
Heptachlor	0.52 µg/l	0.0038 µg/l
Heptachlor epoxide	0.52 µg/l	0.0038 µg/l
Lindane or gamma BHC	0.95 [2-8] µg/l	[0-080 µg/l]
Melathion		0.1 µg/l
Mirex		0.001 µg/l
Methoxychlor		0.030 µg/l
Parathion	0.065 µg/l	0.013 µg/l
Pentachlorophenol (µg/l)	$e^{(1.005(\ln \text{Hard}) - 4.889)}$ [890]	$e^{(1.005(\ln \text{Hard}) - 5.134)}$ [290]
Phthalate esters		3 µg/l
Polychlorinated Biphenyls or [PCBs]		0.0014 µg/l
Toxaphene	0.73 µg/l	0.0002 µg/l
Others		
Chloride	1200 mg/l	600 mg/l
Chlorine, total residual	19 µg/l	11 [10] µg/l
Cyanide, free	22 µg/l	5.2 µg/l
Hydrogen sulfide (undissociated)		2 µg/l

<sup>1</sup>Metal criteria, for purposes of this administrative regulation, are total recoverable metals to be measured in an unfiltered sample, unless it can be demonstrated to the satisfaction of the cabinet that a more appropriate analytical technique is available which provides a measurement of that portion of the metal present which causes toxicity to aquatic life.

<sup>2</sup>[Soft water has an equivalent concentration of calcium carbonate ( $CaCO_3$ ) of zero to seventy-five (75) mg/l, and hard water has an equivalent concentration of calcium carbonate ( $CaCO_3$ ) of over seventy-five (75) mg/l.]

<sup>3</sup>The chronic criterion for iron shall not exceed three and five-tenths (3.5) mg/l if aquatic life has not been shown to be adversely affected [when it is established that there will be no damage to aquatic life].

\*Hard = Hardness as mg/l  $CaCO_3$ .

(2) Cold water aquatic habitat. The following parameters and their associated criteria are for the protection of productive cold water aquatic communities and streams that [which] support trout populations, [whether self-sustaining or reproducing, ] on a year-round basis. [All of] The criteria adopted for the protection of warm water aquatic life also apply to the protection of cold water habitats with the following additions:

(a) Dissolved oxygen.

1. A minimum concentration of six and zero-tenths (6.0) mg/l as a daily average and five and zero-tenths (5.0) mg/l as an instantaneous minimum shall be maintained [at all times].

2. In publicly-owned lakes and publicly-owned reservoirs that

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[impoundments which] support trout, the concentration of dissolved oxygen in waters below the epilimnion shall be kept consistent with natural water quality.

(b) Temperature. Water temperature shall not be increased through human [man's] activities above the natural seasonal temperatures.

Section 5. Domestic Water Supply Use. Maximum allowable in-stream concentrations for specific substances, to be applicable at the point of withdrawal for use for domestic water supply from surface water sources are specified in Table 3 and shall not be exceeded.

Table 3 Domestic Water Supply Source Criteria	
Substances Not Linked to Cancer	Concentration
<b>Metals<sup>1</sup></b>	
Antimony	0.006 [0.146] mg/l
Barium	2.0 [†] mg/l
Beryllium	0.004 µg/l
Cadmium	0.005 [0.010] mg/l
Chromium	0.10 [0.05] mg/l
[Chromium (III)]	33 mg/l
Copper	1.0 mg/l
Lead	0.015 [0.05] mg/l
Manganese	0.05 mg/l
Mercury	0.000050 mg/l [0.144 µg/l]
Nickel	0.100 mg/l [610 µg/l]
Selenium	0.05 [0.0†] mg/l
Silver	0.05 mg/l
Thallium	0.0017 [0.013] mg/l
Zinc	5.0 mg/l
<b>Organics</b>	
Acenaphthene	1.200 mg/l
Acrolein	0.320 mg/l
Anthracene	9.6 mg/l
Monochlorobenzene or Chlorobenzene	0.680 [0.488] mg/l
1,2,4,5-tetrachlorobenzene	0.0023 [0.038] mg/l
Pentachlorobenzene	0.0035 [0.074] mg/l
[1,1,1-trichloroethane	18.4 mg/l
2,4,5-trichlorophenol	2.6 mg/l]
Bis(2-chloroisopropyl) ether	1.4 [0.0347] mg/l
1,2-dichlorobenzene	0.600 mg/l
1,3-dichlorobenzene	0.400 mg/l
1,4-dichlorobenzene	0.075 mg/l
1,2,4-trichlorobenzene	0.070 mg/l
[Dichlorobenzenes	0.400 mg/l
2,4-dichlorophenol	3.090 mg/l
Dichloropropenes	0.087 mg/l]
alpha-Endosulfan	0.110 [0.074] mg/l
beta-Endosulfan	0.110 mg/l
Endosulfan sulfate	0.110 mg/l
Endrin	0.00076 [0.00†] mg/l
Endrin aldehyde	0.00076 mg/l
Ethylbenzene	0.70 [0.†] mg/l
Fluoranthene	0.300 [0.042] mg/l
Fluorene	1.3 mg/l
Hexachlorocyclopentadiene	0.05 [0.206] mg/l
Methylbromide	0.048 mg/l
2-Chloronaphthalene	1.700 mg/l
[Isophorone	5.2 mg/l]
Nitrobenzene	0.017 [†9.8] mg/l
2-chlorophenol	0.120 mg/l
2,4-dichlorophenol	0.093 mg/l
2,4,5-trichlorophenol	2.6 mg/l
2,4-dimethylphenol	0.540 mg/l
2,4-dinitro-o-cresol or 2-methyl-4,6-dinitrophenol	0.0134 mg/l
2,4-dinitrophenol	0.070 mg/l
[Pentachlorophenol	†0 mg/l]
Phenol	21 [3.5] mg/l

Di-n-butyl [Dibutyl] phthalate	2.7 [34] mg/l
Diethyl phthalate	23 [350] mg/l
[Di-2-ethylhexyl phthalate	15 mg/l]
Dimethyl phthalate	313 mg/l
1,3-dichloropropene	0.010 mg/l
Pyrene	0.960 mg/l
Toluene	1.0 [14.3] mg/l
<b>Others</b>	
Chloride	250 mg/l
Color	75 Platinum Cobalt Color Units
Cyanide (free)	0.200 mg/l
Fecal Coliform	2000/100 ml (Geometric mean)
Fluoride	2.0 [†.0] mg/l
Methylene Blue Active Substances	0.5 mg/l
Nitrate (NO <sub>3</sub> -N)	10 mg/l
Sulfate	250 mg/l
Total Dissolved Solids	750 mg/l
<b>Substances Linked to Cancer</b>	
<b>[Metals (µg/l)]</b>	
Beryllium	0.0068]
<b>Organics (µg/l)</b>	
Acrylonitrile	0.058
Aldrin	0.00013 [0.000074]
Asbestos (fibers/liter)	7,000,000 [30,000]
Benzene	1.2
Benzidine	0.00012
Benzo(a)anthracene	0.0044
Benzo(a)pyrene	0.0044
Benzo(b)fluoranthene	0.0044
Benzo(k)fluoranthene	0.0044
Bromoform	4.3
Carbon tetrachloride	0.25 [0.40]
Chlordane	0.0021 [0.00046]
Chlorodibromomethane	0.41
Dichlorobromomethane	0.56
Hexachlorobenzene	0.00075 [0.00072]
1,2-dichloroethane	0.38 [0.94]
1,1,1-trichloroethane	200
1,1,2-trichloroethane	0.60
1,1,2,2-tetrachloroethane	0.17
Hexachloroethane	1.9
1,2-dichloropropane	0.52
2,4,6-trichlorophenol	2.1 [†.2]
Pentachlorophenol	0.28
bis(2-chloroethyl) ether	0.031 [0.03]
bis(2-ethylhexyl) phthalate	1.8
Chloroform	5.7
Chrysene	0.0044
4,4'-DDT	0.00059 [0.000024]
4,4'-DDE	0.00059
4,4'-DDD	0.00083
Dibenzo(a,h)anthracene	0.0044
3-3'-dichlorobenzidine	0.04 [0.0†]
1,1-dichloroethylene	0.057 [0.033]
Dieldrin	0.00014 [0.00007†]
2,4-dinitrotoluene	0.11
1,2-diphenylhydrazine	0.040 [0.042]
[Halomethanes	0.19]
Heptachlor	0.00021 [0.000028]
Heptachlor epoxide	0.00010
Hexachlorobutadiene	0.44 [0.45]
alpha Hexachlorocyclohexane, or BHC [HCH]	0.0039 [0.009]
beta BHC [HCH]	0.014 [0.016]
gamma BHC or [HCH-[Lindane]]	0.019
Indeno (1,2,3-cd) pyrene	0.0044
Isophorone	36

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Methylene chloride	4.7
[Technical HGH	0.012
N-nitrosodiethylamine	0.0008]
N-nitrosodimethylamine	0.00069 [0.0014]
[N-nitrosodibutylamine	0.0064]
N-nitrosodiphenylamine	5.0 [4.9]
N-nitrosodi-n-propylamine	0.005
[N-nitrosopyrrolidine	0.016]
Polychlorinated Biphenyls or [(PCBs)]	0.000079
[Polynuclear Aromatic Hydrocarbons (PAHs)	0.0028]
Tetrachloroethylene	0.8
Toxaphene	0.00073 [0.00071]
Trichloroethylene	2.7
Vinyl Chloride	2.0

<sup>1</sup>Total recoverable form measured in an unfiltered sample.

Section 6. Recreational Waters. (1) Primary contact recreation water. ~~[Primary contact recreation waters are waters suitable for full body contact recreation during the recreation season of May 1 through October 31.]~~ Criteria for primary contact recreation waters are [listed below]:

(a) Fecal coliform content shall not exceed 200 colonies per 100 ml as a monthly geometric mean based on not less than five (5) samples per month; nor exceed 400 colonies per 100 ml in twenty (20) percent or more of all samples taken during the month. ~~[:] These limits shall be [are] applicable during the recreation season of May 1 through October 31.~~ Fecal coliform criteria listed in subsection (2)(a) of this section shall apply during the remainder of the year.

(b) pH shall be between six and zero-tenths (6.0) to nine and zero-tenths (9.0) and shall not change more than one and zero-tenths (1.0) pH unit within this range over a period of twenty-four (24) hours.

(2) Secondary contact recreation water. ~~[Secondary contact recreation waters are waters suitable for partial body contact recreation, with minimal threat to public health due to water quality.]~~ The following criteria shall apply to waters designated [classified] for secondary contact recreation use during the entire year:

(a) Fecal coliform content shall not exceed 1000 colonies per 100 ml as a monthly geometric mean based on not less than five (5) samples per month; nor exceed 2000 colonies per 100 ml in twenty (20) percent or more of all samples taken during the month.

(b) pH shall be between six and zero-tenths (6.0) to nine and zero-tenths (9.0) and shall not change more than one and zero-tenths (1.0) pH unit within this range over a period of twenty-four (24) hours.

Section 7. Outstanding State Resource Waters. This designation [classification] category includes certain unique waters of the Commonwealth.

(1) Water for inclusion.

(a) Automatic inclusion. The following surface waters shall automatically be included in this category:

1. Waters designated under the Kentucky Wild Rivers Act, KRS 146.200-146.360.

2. Waters designated under the Federal Wild and Scenic Rivers Act, 16 USC 1271 et seq. ~~[and high quality waters constituting an outstanding national resource water.]~~

3. Waters identified under the Kentucky Nature Preserves Act, KRS 146.410-146.530, which are contained within a formally dedicated nature preserve or are published in the registry of natural areas in accordance with 400 KAR 2:080 and concurred upon by the cabinet.

4. Waters that support federally recognized endangered or threatened species under the Endangered Species Act of 1973, as amended, 16 USC 1531 et seq.

(b) Permissible consideration. Other surface waters may be included in this category as determined by the cabinet if:

1. The surface waters flow through or are bounded by state or federal forest land, or are of exceptional aesthetic or ecological value or are within the boundaries of national, state, or local government parks, or are a part of a unique geological or historical area recognized by state or federal designation; or

2. They are a component part of an undisturbed or relatively un-

disturbed watershed that can provide basic scientific data and possess outstanding water quality characteristics; or two (2) of the following criteria:

a. Support a diverse or unique native aquatic flora or fauna.  
b. Possess physical or chemical characteristics that provide an unusual and uncommon aquatic habitat.

c. Provide [Provides] a unique aquatic environment within a physiographic region.

(2) Outstanding state resource waters protection. ~~[:] The designation [classification] of certain waters as outstanding state resource waters shall fairly and fully reflect those aspects of the waters for which the designation [classification] is proposed. The cabinet shall [will] determine water quality criteria for these waters as follows:~~

(a) At a minimum, the criteria of Section 2 of this administrative regulation and the appropriate criteria associated with the stream use designation [classification] assignments in 401 KAR 5:026, shall be [are] applicable to these waters.

(b) ~~If [Where] the values identified for an outstanding state resource water are dependent upon or related to instream water quality, the cabinet shall [will] review existing water quality criteria and determine if [whether] additional criteria or more stringent criteria are necessary for protection, and evaluate the need for the development of additional data upon which to base the determination. Existing water quality and habitat shall be maintained and protected in those waters designated as outstanding state resource waters that [which] support federally threatened and endangered species of aquatic organisms, unless it can be demonstrated to the satisfaction of the cabinet, that lowering of water quality or a habitat modification will not have a harmful effect on the threatened or endangered species which the water supports.~~

(c) ~~["Water quality shall be maintained and protected in waters which constitute an outstanding national resource. The cabinet may approve temporary or short-term changes in water quality if the changes to the waters in question have no demonstrable impact on the ability of the waters to support this use."~~

(d) Adoption of more protective criteria in accordance with this section shall [will] be listed with the respective stream segment in 401 KAR 5:026, ~~and will be promulgated as an administrative regulation pursuant to KRS Chapter 13A.~~

(3) Determination of designation [classification].

(a) Any person may present a proposal to designate [classify] certain waters under this section. Documentation requirements in support of an outstanding state resource water proposal shall contain those elements outlined in 401 KAR 5:026, Section 3(3)(a) through (h) [5(1) through (8)].

(b) The cabinet shall [will] review the proposal and supporting documentation to determine whether the proposed waters qualify as outstanding state resource waters within the criteria established by this administrative regulation. The cabinet shall [will] document the determination to deny or to propose redesignation [reclassification], and a copy of the decision shall [will] be served upon the petitioner and other interested parties.

(c) After considering all of the pertinent data, a redesignation [reclassification], if appropriate, shall [will] be made pursuant to 401 KAR 5:026.

Section 8. Water Quality Criteria for the Main Stem of the Ohio River. The following criteria apply to the main stem of the Ohio River from its juncture with the Big Sandy River at River Mile 317.1 to its confluence with the Mississippi River, and shall not be exceeded. ~~[:] These waters are subject to all applicable provisions of 401 KAR 5:002, 5:026, 5:029, 5:030, and this administrative regulation.~~

(1) Dissolved oxygen. Concentrations shall average at least five and zero-tenths (5.0) mg/l per calendar day and shall not be less than four and zero-tenths (4.0) mg/l except during the April 15-June 15 spawning season when a minimum of five and one-tenth (5.1) mg/l shall be [at any time provided that a minimum of five and one-tenth (5.1) mg/l at any time is] maintained [during the April 15-June 15 spawning season].

(2) Temperature.

(a) Allowable stream temperatures are:

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Month/Date	Period Average (°F)	Instantaneous Maximum (°F)
January 1-31	45	50
February 1-29	45	50
March 1-15	51	56
March 16-31	54	59
April 1-15	58	64
April 16-30	64	69
May 1-15	68	73
May 16-31	75	80
June 1-15	80	85
June 16-30	83	87
July 1-31	84	89
August 1-31	84	89
September 1-15	84	87
September 16-30	82	86
October 1-15	77	82
October 16-31	72	77
November 1-30	67	72
December 1-31	52	57

(b) A successful demonstration conducted for thermal discharge limitations [limits] under Section 316(a) of the Clean Water Act shall [will] constitute compliance with these temperature criteria.

(3) ~~Total dissolved solids: not to exceed 500 mg/l as a monthly average, nor exceed 750 mg/l at any time. Equivalent twenty-five (25) degrees Centigrade specific conductance values are 800 and 1200 micromhos/cm respectively.~~

(4) Maximum allowable instream concentrations for specific parameters for the protection of human health are given below. They shall be met outside the mixing zone. Metal concentrations are total recoverable values except hexavalent chromium, which is dissolved.

Parameter	Concentration (mg/l)
Arsenic	.05
Barium	2.0 [1.0]
Chloride	250
Fluoride	2.0 [1.0]
Nitrite + Nitrate Nitrogen	10.0
Nitrite-Nitrogen	1.0
Phenolics	.005
Sulfate	250

(4) To provide protection of warm water aquatic life habitats, the following criteria shall be met outside the mixing zone.

Parameter	Chronic Criteria Concentration (µg/l)	Acute Criteria Concentration (µg/l)
Cadmium	$e^{(.7852(\ln \text{Hard} - 2.715) + 490)}$	$e^{(1.128(\ln \text{Hard} - 3.687) + 826)}$
Chromium (hexavalent)	11	16
Copper	$e^{(.8545(\ln \text{Hard} - 1.702) + 465)}$	$e^{(.9422(\ln \text{Hard} - 1.700) + 464)}$
Cyanide (free)	5.2	22
Lead	$e^{(1.273(\ln \text{Hard} - 4.705)}$	$e^{(1.273(\ln \text{Hard} - 1.465)}$
Mercury	0.91 [-0.12]	1.7 [2.4]
Zinc	$e^{(.8473(\ln \text{Hard} - 864) + 7614)}$	$e^{(.8473(\ln \text{Hard} - 864) + 8604)}$

(5) The net discharge of aldrin, dieldrin, DDT, including DDD and DDE, endrin, toxaphene, benzidine, and PCBs is prohibited.

Section 9. Exceptions to Criteria for Specific Surface Waters. (1) The cabinet may grant exceptions to the criteria contained in Sections 2, 4, 5, 6, [and] 7, and 8 of this administrative regulation upon demonstration by an applicant that maintenance of applicable water quality criteria is [are] not attainable or scientifically valid but the use designation [classification] is still appropriate. This determination shall [will] be made on a case-by-case basis with respect to a specific surface water following an analysis for each area.

(2) The analysis shall show that the water quality criteria cannot be reasonably achieved either on a seasonal or year-round basis due to natural conditions, or site-specific factors differing from the conditions used to derive criteria in Sections 2, 4, 5, 6, 7, and 8 of this administrative regulation; or a demonstration that meeting the criteria would cause substantial and widespread economic and social impact].

Site-specific criteria shall be developed by the applicant utilizing toxicity tests, indicator organisms, and application factors that are consistent with those outlined in Chapter 3 of "Water Quality Standards Handbook" (EPA, 1994 [1983]) incorporated by reference in Section 11 of this administrative regulation. In addition, an applicant shall supply the documentation listed in [Section 5 of] 401 KAR 5:026, Section 3.

(3) An exception to criteria listed in Section 2(2) of this administrative regulation for the protection of human health from the consumption of fish tissue may be granted if it can be demonstrated that natural, ephemeral, intermittent or low flow conditions or water levels preclude the year-round support of a fishery, unless these conditions may be compensated for by the discharge of sufficient volume of effluent discharges.

(4) Before granting an exception to water quality criteria, the cabinet shall ensure that the water quality standards of downstream waters are attained and maintained.

(5) All exceptions to water quality criteria shall [will] be subject to review at least every three (3) years.

(6) ~~Upon completing a review and the procedures for promulgation under administrative rule-making, all~~ Exceptions to water quality criteria shall be adopted as an administrative regulation by listing them [listed] with the respective surface water [stream segment] in [Section 7 of] 401 KAR 5:026.

Section 10. Exceptions to Criteria for Individual Dischargers. (1) An exception to criteria may be granted to an individual discharger based on a demonstration by the discharger, following the guidelines in "Interim Economic Guidance for Water Quality Standards Workbook (EPA, March 1995)" incorporated by reference in Section 11 of this administrative regulation, that KPDES permit compliance with existing instream criteria shall result in substantial and widespread adverse economic and social impacts.

(2) The demonstration shall include an assessment of alternative pollution control strategies and biological assessments that indicated designated uses are being met.

(3) Before granting an exception, the cabinet shall ensure that the water quality standards of downstream waters are attained and maintained.

(4) All exceptions shall be submitted to the cabinet for review at least every three (3) years. Upon review, the discharger shall demonstrate to the cabinet that a reasonable effort has been made to reduce the pollutants in the discharge to levels that would achieve existing applicable water quality criteria.

(5) The highest level of effluent quality that can be economically and technologically achieved shall be ensured while the exception is in effect.

(6) The Kentucky Pollution Discharge Elimination System permitting program shall be the mechanism for the review and public notification of intentions to grant exceptions to criteria.

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

(a) "Water Quality Standards Handbook-Chapter 3 (EPA August 1994)", Publication EPA-823-B-94-005a, U.S. Environmental Protection Agency, Office of Water, Washington, D.C.

(b) "Interim Economic Guidance for Water Quality Standards Workbook (EPA March 1995)" Publication EPA-823-B-95-002, U.S. Environmental Protection Agency, Office of Water, Washington, D.C.

(2) This material may be inspected, copied, or obtained at the Division of Water, 14 Reilly Road, Frankfort, Kentucky, Monday through Friday, 8 a.m. to 4:30 p.m.

JAMES E. BICKFORD, Secretary

BARBARA A. FOSTER, General Counsel

APPROVED BY AGENCY: June 15, 1999

FILED WITH LRC: June 15, 1999 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation is scheduled for July 27, 1999, at 7 p.m. (EDT) at the Western Hills High School Auditorium, 100 Doctors Drive, Frankfort, Kentucky. Individuals who intend to be heard at this hearing shall notify this agency in writing by July 20, 1999, five (5) workdays prior

to the hearing, of their intent to attend. If no notification of intent to attend 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 administrative regulation. A transcript of the hearing will not be made unless a written request for a transcript is made. If you request a transcript, you may be required to pay for it. If you do not wish to be heard at the hearing, you may submit written comments on the administrative regulation. Send written notification of your intent to be heard at the hearing, or your written comments on the administrative regulation, to the contact person listed below. Written comments must be received before adjournment of the hearing, or by 4:30 p.m. on July 27, 1999, if the hearing is not held. The hearing facility is accessible to persons with disabilities. Requests for reasonable accommodations, including auxiliary aids and services necessary to participate in the hearing, may be made to the contact person at least five (5) work-days prior to the hearing.

CONTACT PERSON: Jack A. Wilson, Director, Division of Water, Department for Environmental Protection, 14 Reilly Road, Frankfort, Kentucky 40601, Telephone: (502) 564-3410 Fax: (502) 564-0111.

### REGULATORY IMPACT ANALYSIS

Contact person: Jack A. Wilson

(1) Type and number of entities affected: This amended administrative regulation sets forth water quality standards which consist of designated uses of the surface waters of the Commonwealth and the associated water quality criteria necessary to protect those uses. It is being amended to revise limits for chemical substances discharged to surface waters of the Commonwealth. Permitted facilities will not be affected until they apply for reissuance of their KPDES permits. The amended administrative regulation will also affect any new, previously unpermitted waste water dischargers. Municipalities with approved pretreatment programs set local limits for their industrial dischargers. These dischargers may be affected by this amended administrative regulation.

(2) Direct and indirect costs or savings: The revised water quality criteria will be implemented at the time of permit reissuance at existing facilities and new discharges and expanded facilities must comply with the revisions. Additional costs may be incurred where criteria are more stringent or new criteria are established. Savings may accrue where criteria have been relaxed or existing criteria are deleted.

(a) Effect on the cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: No comments were received.

(b) Effect on the cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: No comments 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: No comments received.
2. Second and subsequent years: No comments received.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings: This amended administrative regulation does not change routine procedures involved in managing construction grants, permitting, compliance monitoring, or enforcement.

1. First year: No major costs are anticipated. The cabinet in implementing the requirements of this amended administrative regulation will internalize associated costs within normal budget appropriations.

2. Continuing costs or savings: Same as (3)(a)1 above.

3. Additional factors increasing or decreasing costs: None determined.

(b) Reporting and paperwork requirements: This amended administrative regulation will not affect routine reporting and paperwork requirements, however, the KPDES program will have an unknown

number of requests for exceptions to water quality criteria to review and make public.

(4) Assessment of anticipated effect on state and local revenues: State and local revenues will not be affected in the short term. For the long term this amended administrative regulation should sustain revenues derived from water-based activities, such as sport fishing, commercial fishing, boating, and skiing. In addition, revenues may be saved at the local level where revenues used to treat drinking water may be less because source water is protected using more stringent finished drinking water criteria.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: The source of revenue will be the General Fund and federal funds, as appropriated by the Kentucky General Assembly.

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

(a) Geographical area in which administration regulation will be implemented: No comments received.

(b) Kentucky: No comments received.

(7) Assessment of alternative methods; reasons why alternatives were rejected: The cabinet had the alternative to not update chemical criteria. However, that may have resulted in a federal action to cause the update. The cabinet rejected this alternative and proposed the changes in order to utilize the best current scientific information available.

(8) Assessment of expected benefits of the administrative regulation: This amended administrative regulation protects human health by revising numerical criteria for water consumption, fish consumption, and domestic water supply sources. This amended administrative regulation also protects aquatic life by revising numerical criteria for warm water aquatic habitat use. A healthy aquatic ecosystem will sustain quality recreation, fishing, and water-based tourism.

(9)(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: The purpose of this amended administrative regulation is to protect public health and environmental welfare. Surface drinking water supplies will be protected, and fish consumption will remain safe. Aquatic recreation, such as swimming, wading, skiing, and boating, will also remain safe. Warm water aquatic habitat criteria will safeguard aquatic life and support a biodiversity of plants, fish, and macroinvertebrates.

(b) State whether a detrimental effect on environment and public health would result if not implemented: There would be a detrimental effect on the environment and public health if this amended administrative regulation is not implemented.

(c) If detrimental effect would result, explain detrimental effect: The revised water quality criteria in this amended administrative regulation are based on the recommended federal criteria, which addresses toxicity levels for aquatic and human life. If this amended administrative regulation is not implemented less protective concentrations of chemicals might be discharged into surface waters.

(10) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: No statutes, administrative regulations or government policies are in conflict, overlap, or duplicate this amended administrative regulation.

(a) Necessity of proposed administrative regulation if in conflict: The administrative regulation is not in conflict.

(b) If in conflict, was effort made to harmonize the proposed administration regulation with conflicting provisions: The administrative regulation is not in conflict.

(11) Any additional information or comments: State water quality standards are required by federal law to be reviewed for possible changes at least every 3 years. The U.S. Environmental Protection Agency (EPA) disapproved this administrative regulation because there was no criterion for dioxins. The cabinet has proposed a criterion in this amended administrative regulation. If it is not adopted, EPA will promulgate a federal criterion for Kentucky.

(12) TIERING: Is tiering applied? No. This amended administrative regulation affects all discharges into surface waters of the Commonwealth, irrespective of ownership, capacity, process, or treatment used.

## VOLUME 26, NUMBER 1 – JULY 1, 1999

### FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. There is no federal statute or regulation mandating that Kentucky implement a water pollution control program. For Kentucky to maintain its delegation over the NPDES permit program, however, the Clean Water Act requires that Kentucky review its water quality standards every 3 years and comply with the programmatic requirements of 40 CFR Part 131, including the requirement for reviewing water quality criteria for appropriate revisions.
2. State compliance standards. 401 KAR 5:002, 5:026, 5:029, 5:030, and 5:031, the water quality standards regulations.
3. Minimum or uniform standards contained in the federal mandate. The Clean Water Act requires designated uses, criteria, standards and antidegradation policies in water quality standards.
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. There is no stricter standard or additional or different responsibilities or requirements.

### 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 amended administrative regulation will affect the waste water treatment operations of local government if they will have new or expanded discharges into surface waters of the Commonwealth.
3. State the aspect or service of local government to which this administrative regulation relates. This amended administrative regulation relates to local governments' waste water treatment service.
4. Estimate the effect of this administrative regulation on the expenditures and revenues of a local government for the first full year the administrative 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 (+/-): Cannot be determined.  
Expenditures (+/-): Cannot be determined.  
Other explanation: This amended administrative regulation sets forth protective criteria for instream uses designated by the cabinet (see 401 KAR 5:026). Local governments will be required to discharge effluents which assure attainment of the receiving surface water's designated uses. The costs or savings of this amended administrative regulation would ordinarily be passed through to users. However, a local government that owns a public waste water treatment system could elect to absorb some or all of the costs or savings.

#### JUSTICE CABINET Department of Corrections Division of Local Facilities (Amendment)

#### 501 KAR 3:010. Definitions.

RELATES TO: KRS 441.055

STATUTORY AUTHORITY: KRS 441.055

NECESSITY, FUNCTION, AND CONFORMITY: KRS 441.055 requires the Department of Corrections to promulgate administrative regulations establishing minimum standards for jails which elect to house state prisoners. This administrative regulation sets forth definitions.

Section 1. Definitions. (1) "Ceiling" means the overhead area in the multipurpose room which is below the secure deck.

(2) "Dayroom" means a secure area with controlled access from

the inmate living area, to which inmates may be admitted for daytime activities including [such as] dining, bathing, and selected recreation or exercise.

(3) "Deck" means the secure overhead area of the jail which is part of the security perimeter.

(4) "Department" is defined in KRS 441.005(5). [~~means the Department of Corrections.~~]

(5) "Detoxification area" means an area used to temporarily hold one (1) or more chemically impaired persons during the detoxification process until they can care for themselves.

(6) "Dormitory" means an area equipped for housing not less than three (3) persons or more than thirty-six (36) persons.

(7) "Holding area" means an area used to hold one (1) or more persons temporarily while awaiting processing, booking, court appearance, discharge or until they can be moved to general housing areas.

(8) "Prisoner" [~~"Inmate"~~] means any person confined in the jail pursuant to any code, ordinance, law or statute of any unit of government and who is:

(a) ~~Charged with or convicted of an offense;~~

(b) ~~Held for extradition or as a material witness;~~ or

(c) ~~Confined for any reason.~~

(9) [~~"Inmate"~~] living area" means a group of rooms or cells which provide housing for the inmate population.

(9) "Jail" means county jails or [and] correctional or detention facilities, [including correctional facilities defined in KRS 67B.020 and juvenile detention facilities,] operated by and under the supervision of any political subdivision [county, regional jail authority, city or urban county government].

(10) "Jailer" means:

(a) The official duly elected or appointed pursuant to Section 152 of the Kentucky Constitution [official] charged with the responsibility of administering the jail;

(b) A department as defined in KRS 67B.020(1); or

(c) A correctional services division as created by KRS 67A.028.

(11) "Jail personnel [staff]" is defined in KRS 441.005(6). [~~means deputy jailers, and other personnel involved in the supervision, custody, care or treatment of prisoners in the jail.~~]

(12) "Medical authority" means the person or persons licensed and certified to provide medical care to inmates in the jail.

(13) "Penal type" means furnishings approved by the department [~~of Corrections~~].

(14) "Prisoner" is defined in KRS 441.005(3).

(15) "Safety vestibule" means a defined space that promotes security by the use of two (2) or more doors and shall [can] be used to observe those who pass. When the vestibule is used at a cell area at least the inner door shall be remotely operated. When the vestibule is used for outside entrance at least the outer entry door shall be remotely operated.

(16) "Sallyport" means a vehicular drive-in made secure by electrically or manually operated doors for entrance and exit which shall be [it is generally] located in close proximity to the jail intake area.

(17) "Security area" means a defined space whose physical boundaries have controlled ingress and egress.

DOUG SAPP, Commissioner

TAMELA BIGGS, Staff Attorney

APPROVED BY AGENCY: June 8, 1999

FILED WITH LRC: June 14, 1999 at 3 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on July 22, 1999, at 9 a.m., in the Fifth Floor Conference Room of the State Office Building. Individuals interested in being heard at this hearing shall notify this agency in writing by July 15, 1999, 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.

## VOLUME 26, NUMBER 1 – JULY 1, 1999

CONTACT PERSON: Jack Damron or Tamela Biggs, Staff Attorneys, Kentucky Department of Corrections, Office of General Counsel, 2nd Floor, State Office Building, Frankfort, Kentucky 40601, Telephone Number (502) 564-2024, Facsimile Number (502) 564-6494.

### JUSTICE CABINET Department of Corrections Division of Local Facilities (Amendment)

#### REGULATORY IMPACT ANALYSIS

Contact Person: Tamela Biggs

(1) Type and number of entities affected: 68 jails which elect to house state prisoners and 7350 prisoners in those jails.

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

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: None

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: None

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

1. First year following implementation: None

2. Second and subsequent years: None

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: None

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: Policy revisions.

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

(5) Source of revenue to be used for implementation and enforcement of administrative regulation is the funds budgeted for this 1998 - 2000 biennium.

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

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

(b) Kentucky: None

(7) Assessment of alternative methods; reasons why alternatives were rejected: None

(8) Assessment of expected benefits:

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

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

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

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

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

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

(10) Any additional information or comments: None

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

#### 501 KAR 3:040. Personnel.

RELATES TO: KRS 441.055

STATUTORY AUTHORITY: KRS 13A.350, 441.055

NECESSITY, FUNCTION, AND CONFORMITY: KRS 441.055 requires the Department of Corrections to promulgate administrative regulations establishing minimum standards for jails which elect to house state prisoners. This administrative regulation sets forth personnel procedures to be followed in jails.

Section 1. Staffing. (1) Each jail shall provide twenty-four (24) hour awake supervision for all prisoners ~~[inmates]~~.

(2) When a female prisoner is ~~[inmates are]~~ lodged in the jail, the jail shall provide a female deputy to perform twenty-four (24) hour awake supervision.

Section 2. Background Checks; Qualifications. (1) Prior to employment, all employees of the jail shall be subject to thorough background investigation to include criminal, medical, and employment history.

(2) All security employees of the jail shall be at least twenty-one (21) years of age.

Section 3. Compensation. All employees of the jail shall receive salaries at least equal to the State Minimum Wage Law except where Federal Minimum Wage Law has to be applied.

Section 4. Training; Curriculum. (1) In order to qualify for the training expense allowance under KRS 441.017, the jailer shall receive a minimum of forty (40) hours annual in-service training certified by the department ~~[of Corrections]~~.

(a) Local corrections training efforts shall be certified by the department ~~[of Corrections]~~.

(b) The Curriculum Advisory Committee shall advise the department ~~[of Corrections]~~ on topics for training curriculum.

(c) Jailer training shall be delivered on a regional basis by the department ~~[of Corrections]~~.

(2) Jail personnel ~~[Deputy jailers, correctional officers and other employees whose jobs require supervision of inmates]~~ shall receive a minimum of sixteen (16) hours annual in-service training delivered by the department ~~[of Corrections]~~ on a regional or local basis or approved by the department if delivered by another agency.

Section 5. Policy and Procedures. Written policy shall specify that equal employment opportunities exist for all positions.

Section 6. Physical Fitness. The jailer shall ensure that all employees maintain a level of physical fitness that will allow each employee ~~[the employees]~~ to satisfactorily perform their duties.

Section 7. Code of Ethics. (1) The jailer shall make available to all employees a written code of ethics.

(2) The written code of ethics shall be incorporated in the jail's policy and procedures manual and shall include ~~[but not be limited to]~~ the following:

(a) An employee ~~[Employees]~~ shall not:

1. Exchange a personal gift or favor with a prisoner, his ~~[gifts or favors with inmates, their]~~ family, or friends;

2. Accept any form of bribe or unlawful inducement;

3. Perform duties under the influence of an intoxicant ~~[intoxicants]~~ or consume any intoxicant ~~[intoxicants]~~ while on duty;

4. Violate or disobey established rules, administrative regulations, or lawful orders from a superior;

5. Discriminate against a prisoner ~~[any inmate]~~ on the basis of race, religion, creed, gender, national origin, or other individual characteristics;

6. Employ corporal punishment or unnecessary physical force;

7. Subject a prisoner ~~[inmates]~~ to any ~~[form of]~~ unwarranted physi-

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cal or mental abuse;

8. Intentionally demean or humiliate a prisoner [inmates];

9. Bring any ~~[type of]~~ weapon or item declared as contraband into the jail without proper authorization;

10. Engage in critical discussion of staff ~~[members]~~ or a prisoner [inmates] in the presence of another prisoner [inmates];

11. Divulge confidential information without proper authorization;

12. Withhold information which ~~[in so doing]~~ threatens the security of the jail, its staff, visitors, or the community;

13. Through negligence, endanger the well-being of self or another [others];

14. Engage in any ~~[form of]~~ business or profitable enterprise with a prisoner [inmates]; and

15. Inquire about, disclose, or discuss details of a prisoner's [an inmate's] crime other than as may be absolutely necessary in performing official duties.

(b) An employee [Employees] shall:

1. Comply with all established rules, administrative regulations, and lawful orders from a superior [superiors];

2. Treat all prisoners [inmates] in a fair, impartial manner; and

3. Report all violations of the code of ethics to the jailer.

(3) Any employee violation of this code of ethics shall be made a part of that employee's personnel file.

DOUG SAPP, Commissioner

TAMELA BIGGS, Staff Attorney

APPROVED BY AGENCY: June 8, 1999

FILED WITH LRC: June 14, 1999 at 3 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on July 22, 1999, at 9 a.m., in the Fifth Floor Conference Room of the State Office Building. Individuals interested in being heard at this hearing shall notify this agency in writing by July 15, 1999, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to be heard at the public hearing, or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Jack Damron or Tamela Biggs, Staff Attorneys, Kentucky Department of Corrections, Office of General Counsel, 2nd Floor, State Office Building, Frankfort, Kentucky 40601, Telephone Number (502) 564-2024, Facsimile Number (502) 564-6494.

### REGULATORY IMPACT ANALYSIS

Contact Person: Tamela Biggs

(1) Type and number of entities affected: 68 jails which elect to house state prisoners and 7350 prisoners in those jails.

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

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: None

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: None

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

1. First year following implementation: None

2. Second and subsequent years: None

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: None

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: Policy revisions.

(4) Assessment of anticipated effect on state and local reve-

nues: None

(5) Source of revenue to be used for implementation and enforcement of administrative regulation is the funds budgeted for this 1998 - 2000 biennium.

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

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

(b) Kentucky: None

(7) Assessment of alternative methods; reasons why alternatives were rejected: None

(8) Assessment of expected benefits:

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

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

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

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

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

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

(10) Any additional information or comments: None

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

### JUSTICE CABINET Department of Corrections Division of Local Facilities (Amendment)

#### 501 KAR 3:060. Security; control.

RELATES TO: KRS 441.055

STATUTORY AUTHORITY: KRS 441.055

NECESSITY, FUNCTION, AND CONFORMITY: KRS 441.055 requires the Department of Corrections to promulgate administrative regulations establishing minimum standards for jails which elect to house state prisoners. This administrative regulation sets forth security procedures to be followed in local jails.

Section 1. Policy and Procedure. (1) Each jailer shall develop a written policy and procedure governing all security aspects of the jail's [jails] operations.

(2) The department ~~[of Corrections]~~ shall provide technical assistance to the jailer in his efforts to formulate ~~[such]~~ written policy and procedure.

(3) ~~The~~ ~~[These]~~ policies and procedures shall include ~~[but not be limited to]~~:

(a) Prisoner [inmate] rules and administrative regulations;

(b) Staffing;

(c) Searches of prisoner [inmate] and of secure areas;

(d) Visitation;

(e) Key and weapon control;

(f) Prisoner [inmate] head counts;

(g) Surveillance checks;

(h) Emergency situations; ~~[and]~~

(i) Jail schedule; ~~[and]~~

(j) Administering medication.

Section 2. Prisoner [Inmate] Supervision. (1) Jail personnel shall conduct and document direct in-person surveillance of each prisoner [inmate] on an irregular schedule, no less than every sixty (60) minutes.

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(2) Jail personnel shall conduct and document direct in-person surveillance every twenty (20) minutes on the following classes of prisoners [inmates]:

- (a) Suicidal;
- (b) Assaultive, unless housed in a single cell;
- (c) Escape risk, unless housed in a single cell;
- (d) Mentally or emotionally disturbed;
- (e) [inmates] In segregation, unless housed in a single cell;
- (f) [inmates] In detox cell;
- (g) Juveniles, if housed in the jail; and
- (h) Mental inquest detainees.

(3) When available, closed-circuit television shall be used primarily to monitor hallways, stairwells, sallyports, perimeter security, points of egress, and common and support areas.

(4) There shall be at least three (3) documented prisoner [inmate] counts every twenty-four (24) hours during which each prisoner's [inmate's] physical presence, by show of skin, or movement shall be observed. At least one (1) count shall be conducted per shift.

Section 3. Security Procedures. (1) Each jailer shall establish a procedure for inspecting all facility areas accessible to a prisoner [inmate] for contraband and physical security at least weekly.

(a) Isolated security spot checks for contraband shall be conducted daily.

(b) Any item [Items] considered [as] contraband or any item [items] permitted in the jail shall be clearly defined in the jail rules.

(c) There shall be a written procedure for reporting security irregularities.

(2) Any weapon, ammunition, chemical agent, related security equipment, or object which may be used as a weapon shall not be permitted in the security area unless authorized by the jailer. Firearms shall not be permitted in the security perimeter unless authorized by the jailer, under emergency circumstances. [No weapon, ammunition, chemical agent, related security equipment, or any object which represents the potential of being used as a weapon shall be permitted in the security area unless authorized by the jailer under emergency circumstances so determined by the jailer.]

(3) If a weapon, ammunition, chemical agent, or related security equipment is not being carried or used, as authorized by the jailer, it [All firearms, weapons, and chemical agents assigned to the jail] shall be stored in an arsenal, vault, or other secure room under lock.

(a) This area shall be inaccessible to all unauthorized persons.

(b) There shall be a written procedure for issuing and accounting for all weapons.

(4) All security devices and safety equipment shall be inspected monthly to ensure they are maintained in proper working order.

(5) All tools, toxic, corrosive, and flammable substances, and other potentially dangerous supplies and equipment shall be stored in a locked area which is secure and located outside the security perimeter of the confinement area.

(6) Tools, supplies, and equipment which are hazardous shall be used by a prisoner [inmate] only under the direct supervision of jail personnel.

(7) A prisoner [An inmate] may be assigned the responsibility of providing prisoner [inmate] services including [such as] providing meals under the direct supervision of staff; however, a prisoner shall not [at no time shall an inmate] be assigned to a position of authority over another prisoner [other inmates].

(8) A prisoner [inmate] shall not [never] be permitted to perform or assist in any security duties.

(9) A jail [jails] with a work release or community service program [programs] shall establish special control procedures to minimize contact between a prisoner [inmate] with work release privileges and another prisoner [other inmates].

(10) A prisoner [inmate] shall be thoroughly searched whenever entering or leaving the security perimeter.

(11) Written procedures shall be developed for transporting outside the jail.

(12) Each jailer shall develop written policies and procedures governing the use of physical restraints.

(13) A prisoner [No inmate] placed in physical restraints shall be constantly monitored [left unattended].

(14) All jails shall have key-control procedures which shall include

[but not be limited to]:

(a) A key control center which is secure and inaccessible to an unauthorized person [persons] at all times.

(b) An accounting procedure for issuing and returning keys.

(c) A procedure for immediate reporting and repairing any broken or malfunctioning key or lock.

(d) A set of duplicate keys to be maintained in a separate, secure place.

(e) An [No] inmate shall not be permitted to handle any key [keys] used to operate jail security locks.

(f) A key [Keys] operating a lock [locks] to an outside door or gate [doors or gates] shall not be permitted in the confinement area.

(g) An emergency key or any key [keys and keys] to a critical security area [areas] shall [only] be issued in accordance with written procedures established by the jailer.

(h) Precautions similar to those outlined above shall be taken to insure the security of all nonkey operated locking devices including [such as] electrical switches or levers.

(i) A lock [locks] to an outside exit [exits] shall be keyed differently from an interior lock. The lock [locks, locks] to the control room shall be keyed differently from all other locks.

(15) Trustees [Trusties].

(a) A trustee shall not [At no time shall a trusty] have access to, or control of, any weapon [weapons].

(b) An unsupervised trustee shall not [At no time shall an unsupervised trusty] be permitted in either a program, support, or housing area with a prisoner [inmate] of the opposite sex.

(c) A trustee shall not [At no time shall an inmate trusty] be permitted in either a program, support, or housing area with a juvenile inmate [inmates].

Section 4. Daily Jail Log; Special Reports. A daily jail log shall be kept current and reflect all significant occurrences within the jail. Special reports shall include:

(1) Use of force.

(2) Disciplinary actions.

(3) Medical or mental health treatment.

(4) Feeding schedule and menus.

(5) Extraordinary occurrences.

(a) Fires.

(b) Assaults.

(c) Suicide or attempted suicide.

(d) Escape or attempted escape.

(6) Inmate vandalism.

(a) Destruction of jail property.

(b) Flooding of plumbing fixtures.

(7) Staff roster for each shift.

(8) Telephone log of initial phone call [call(s)].

(9) Visitor's log.

DOUG SAPP, Commissioner

TAMELA BIGGS, Staff Attorney

APPROVED BY AGENCY: June 8, 1999

FILED WITH LRC: June 14, 1999 at 3 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on July 22, 1999, at 9 a.m., in the Fifth Floor Conference Room of the State Office Building. Individuals interested in being heard at this hearing shall notify this agency in writing by July 15, 1999, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to be heard at the public hearing, or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Jack Damron or Tamela Biggs, Staff Attorneys, Kentucky Department of Corrections, Office of General Counsel, 2nd Floor, State Office Building, Frankfort, Kentucky 40601, Telephone Number (502) 564-2024, Facsimile Number (502)

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564-6494.

REGULATORY IMPACT ANALYSIS

Contact Person: Tamela Biggs

(1) Type and number of entities affected: 68 jails which elect to house state prisoners and 7350 prisoners in those jails.

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

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: None

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: None

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

1. First year following implementation: None

2. Second and subsequent years: None

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: None

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: Policy revisions.

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

(5) Source of revenue to be used for implementation and enforcement of administrative regulation is the funds budgeted for this 1998 - 2000 biennium.

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

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

(b) Kentucky: None

(7) Assessment of alternative methods; reasons why alternatives were rejected: None

(8) Assessment of expected benefits:

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

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

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

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

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

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

(10) Any additional information or comments: None

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

JUSTICE CABINET  
Department of Corrections  
Division of Local Facilities  
(Amendment)

501 KAR 3:070. Safety; emergency procedures.

RELATES TO: KRS 441.055

STATUTORY AUTHORITY: KRS 13A.350, 441.055

NECESSITY, FUNCTION, AND CONFORMITY: KRS 441.055 requires the Department of Corrections to promulgate administrative regulations establishing minimum standards for jails which elect to

house state prisoners. This administrative regulation sets forth safety and emergency procedures to be followed in local jails.

Section 1. Policy and Procedure. (1) Each jail shall have a written policy and procedure which shall specify fire prevention administrative regulations and practices to ensure the safety of prisoners [inmates], visitors, and staff. These shall include ~~but not be limited to~~:

(a) Provision for a fire emergency planning session [sessions] for staff at least quarterly.

(b) Written documentation of the fire planning session [sessions].

(c) A fire safety inspection by the department ~~[of Corrections]~~ at least once a year.

(d) Inspection and testing of fire protection equipment by a qualified person [persons] at least annually with visual inspections by staff monthly.

(e) Smoking restrictions and administrative regulations.

(f) Written evacuation plan coordinated with local fire officials.

(2) Each jail shall have written policy and procedures for emergency situations including ~~but not limited to~~:

(a) Escapes.

(b) Taking of hostages.

(c) Riots.

(d) Food poisoning.

(e) Civil disturbances in the community.

(f) Natural disasters.

(g) Suicides.

(h) Other deaths and disorder.

Section 2. Physical Plant. (1) Each jail shall comply with the Kentucky Building Code (KBC) [~~NFPA Life Safety Code (1981 Edition)~~] which is hereby incorporated by reference. An existing jail for which approval has been granted, may continue without change, except when an alternation, addition or change of occupancy occurs.

(2) Each jail shall have an exit which is [~~exits which are~~] distinctly and permanently marked, visible at all times, kept clear, and maintained in usable condition.

(3) Each jail shall have equipment necessary to maintain essential lights, power, and communications in an emergency situation.

(4) In all areas where a prisoner [~~an inmate~~] may be confined, each jail shall be provided with an emergency smoke evacuation system actuated by smoke detectors and be operated by emergency power.

(5) Each jail shall have an approved fire alarm and smoke detection system.

(6) Each direct supervision area shall have an approved fire-suppression system.

DOUG SAPP, Commissioner

TAMELA BIGGS, Staff Attorney

APPROVED BY AGENCY: June 8, 1999

FILED WITH LRC: June 14, 1999 at 3 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on July 22, 1999, at 9 a.m., in the Fifth Floor Conference Room of the State Office Building. Individuals interested in being heard at this hearing shall notify this agency in writing by July 15, 1999, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to be heard at the public hearing, or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Jack Damron or Tamela Biggs, Staff Attorneys, Kentucky Department of Corrections, Office of General Counsel, 2nd Floor, State Office Building, Frankfort, Kentucky 40601, Telephone Number (502) 564-2024, Facsimile Number (502) 564-6494.

REGULATORY IMPACT ANALYSIS

Contact Person: Tamela Biggs

(1) Type and number of entities affected: 68 jails which elect to house state prisoners and 7350 prisoners in those jails.

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

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: None

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: None

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

1. First year following implementation: None

2. Second and subsequent years: None

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: None

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: Policy revisions.

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

(5) Source of revenue to be used for implementation and enforcement of administrative regulation is the funds budgeted for this 1998 - 2000 biennium.

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

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

(b) Kentucky: None

(7) Assessment of alternative methods; reasons why alternatives were rejected: None

(8) Assessment of expected benefits:

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

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

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

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

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

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

(10) Any additional information or comments: None

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

**JUSTICE CABINET  
Department of Corrections  
Division of Local Facilities  
(Amendment)**

**501 KAR 3:110. Classification.**

RELATES TO: KRS 441.055

STATUTORY AUTHORITY: KRS 13A.350, 441.055

NECESSITY, FUNCTION, AND CONFORMITY: KRS 441.055 requires the Department of Corrections to promulgate administrative regulations establishing minimum standards for jails which elect to house state prisoners. This administrative regulation sets forth procedures for the classification of prisoners [inmates].

Section 1. Procedure. (1) Each jail shall develop an appropriate prisoner [inmate] classification system, which shall be included in the facility's written policy and procedure manual. The provisions of this subsection shall be effective as of July 1, 1983.

(2) The prisoner [inmate] classification system shall provide for the separation of the following categories of prisoners [inmates]:

(a) Male and female prisoners, [inmates] except in diversion/holding;

(b) Juvenile and adult prisoners [inmates]. If a juvenile is housed in the jail, he shall be housed as a juvenile regardless of his criminal status. These [Such] offenders, as anyone [those] confined for a traffic offense and anyone [offenses and those] whose rights as a juvenile have been waived, shall [will] be housed as a juvenile [juveniles];

(c) Mental inquest detainee [detainees] and other prisoners [inmates];

(d) Mentally ill or mentally retarded prisoner [inmates] and other prisoners [inmates];

(e) Chemically incapacitated prisoner [inmates] and other prisoners [inmates];

(f) Any prisoner [inmates] with a tendency to harm others, be harmed by others, or requiring administrative segregation and other prisoners [inmates];

(g) A prisoner [inmates] with a communicable disease and other prisoners [inmates].

(3) The criteria to be used in the classification of other prisoner [inmate] categories shall be as follows:

(a) Sentenced or unsentenced status.

(b) Felons and misdemeanants.

(c) Noncriminal and criminal status including a [such as] traffic violator [violators], nonsupport case [cases] or civil contempt.

(d) Community custody prisoner including [inmates such as] work release, education release, weekenders [weekenders].

(e) Trusties. All prisoners [inmates] receiving trustee [trusty] status shall be selected by the jailer or his designee based upon criteria including [but not limited to]:

1. The nature of the prisoner's [inmate's] offense and sentence;

2. Previous escape attempts; and

3. The prisoner's [inmate's] "day-to-day" behavior.

(4) A prisoner's [An inmate's] classification shall be changed to reflect changes in his [the inmate's] status including [but not limited to] the following:

(a) Court appearance by the prisoner [inmate];

(b) Disciplinary hearing and action; and

(c) Reevaluation of the prisoner's [inmate's] physical, emotional, or mental condition.

(5) The prisoner [inmate] classification system shall prohibit discrimination or segregation based upon race, color, creed, or national origin.

Section 2. (1) Each detention facility may develop a system of prisoner classification to assess prisoners for the purpose of:

(a) Protecting public or institutional safety;

(b) Providing an acceptable level of health care services; and

(c) Considering the opportunity to provide programs intended to reduce the likelihood of reincarceration.

(2) The classification system shall provide for the assessment of prisoner risk and need, considering elements including:

(a) Medical care needs;

(b) Mental health care needs;

(c) The propensity for suicidal behavior;

(d) The potential conflicts arising from contacts with another individual or group within the institution;

(e) The potential threat of escape;

(f) The potential threat to the public safety if placed in a community release program;

(g) The potential risk to staff or another prisoner;

(h) The prisoner's previous institutional behavior record; and

(i) Assessment for participation in educational, vocational, rehabilitate and work-related programming.

(3) Each classification system shall consider the development of the following components:

(a) An assessment of a prisoner arrestee upon intake to the

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facility that determines:

1. Legal custody;
2. Medical fitness for acceptance; and

3. Information asked of the arresting or transporting agent concerning the prisoner's potential risk and needs.

(b) A screening component to assess, as soon as practical after acceptance into the facility, the prisoner's risk and need for the purpose of determining appropriate housing, supervision requirements and the need for providing immediate health care, or other services.

(c) A primary classification of a prisoner shall be accomplished as soon as practical after his initial court appearance, or prior to a permanent housing placement within the institutional population. The purpose of primary classification is to address the long term housing, supervision and health care needs of the prisoner. Primary classification may also address the appropriateness of program placement in consideration of the needs of the prisoner and the potential risks to the community and the institution associated with the placement.

(4) A reclassification component shall be developed that reassesses the prisoner's risk, need and housing assignment and supervision based upon either time, event, change of status or request.

(5) An instrument of assessment shall be developed for each of the classification components using sources including charged offense, criminal history of the prisoner, available institutional behavior history, interview and observation of the prisoner or other information sources available to the institution.

DOUG SAPP, Commissioner

TAMELY BIGGS, Staff Attorney

APPROVED BY AGENCY: June 8, 1999

FILED WITH LRC: June 14, 1999 at 3 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on July 22, 1999, at 9 a.m., in the Fifth Floor Conference Room of the State Office Building. Individuals interested in being heard at this hearing shall notify this agency in writing by July 15, 1999, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to be heard at the public hearing, or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Jack Damron or Tamela Biggs, Staff Attorneys, Kentucky Department of Corrections, Office of General Counsel, 2nd Floor, State Office Building, Frankfort, Kentucky 40601, Telephone Number (502) 564-2024, Facsimile Number (502) 564-6494.

### REGULATORY IMPACT ANALYSIS

Contact Person: Tamela Biggs

(1) Type and number of entities affected: 68 jails which elect to house state prisoners and 7350 prisoners in those jails.

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

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: None

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: None

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

1. First year following implementation: None

2. Second and subsequent years: None

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: None

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: Policy revisions.

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

(5) Source of revenue to be used for implementation and enforcement of administrative regulation is the funds budgeted for this 1998 - 2000 biennium.

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

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

(b) Kentucky: None

(7) Assessment of alternative methods; reasons why alternatives were rejected: None

(8) Assessment of expected benefits:

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

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

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

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

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

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

(10) Any additional information or comments: None

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

### JUSTICE CABINET Department of Corrections Division of Local Facilities (Amendment)

#### 501 KAR 3:120. Admission; release.

RELATES TO: KRS 441.055

STATUTORY AUTHORITY: KRS 13A.350, 441.055

NECESSITY, FUNCTION, AND CONFORMITY: KRS 441.055 requires the Department of Corrections to promulgate administrative regulations establishing minimum standards for jails which elect to house state prisoners. This administrative regulation sets forth admission and release procedures.

Section 1. Policy and Procedure. Each jail shall develop written admission, orientation, and release procedures to be included in the jail's policy and procedure manual.

Section 2. Admission. (1) Any person in need of emergency medical attention shall not be admitted to the jail until a medical examination ~~is [has been]~~ conducted. A denial of admission form shall be completed which lists the reasons for the denial and shall be signed by appropriate jail personnel ~~[the jail staff member]~~ on duty.

(2) Jail personnel ~~[The jail staff]~~ shall assure that each prisoner ~~[inmate]~~ is committed under proper legal authority by a duly authorized officer.

(3) An intake form shall be completed on every new [inmate] admission and shall include ~~[but not be limited to]~~ the following:

(a) Time and date of commitment;

(b) Name, alias, nickname;

(c) Official charge, cite five (5) digit UOR number;

(d) Authority ordering commitment;

(e) Unit of government to be billed;

(f) Signature and title of arresting or committing officer;

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(g) Date of birth;  
(h) Race;  
(i) Sex;  
(j) Height and weight;  
(k) Current or last known address;  
(l) Telephone number;  
(m) Marital status;  
(n) Spouse or next of kin;  
(o) Emergency contact including [{}name, relation, address, telephone number{}];

(p) Employer, place of employment, telephone number;  
(q) Social Security number;  
(r) Health status [{}including current medications, known allergies, diet or other special medical needs{}];

(s) Blood type, if known;  
(t) The name of any known person in the jail who might be a threat to the prisoner [arrestee]; and

(u) Mental health history [{}including past hospitalizations, comprehensive care treatment, current treatment, and medication{}].

(4) Jail personnel [~~The jail staff~~] shall conduct a search of each prisoner and his [inmates and their] possessions.

(a) Each prisoner [inmate] shall be searched for contraband in [such] a manner [as responsible] staff reasonably determine is necessary to protect the safety of fellow prisoners [inmates], staff, and institutional security. The [Such] search shall be conducted in a private area and in a manner which protects the prisoner's [inmate's] dignity to the [such] extent [as] possible in that particular jail.

(b) When a strip search is conducted, it shall be done only on reasonable suspicion that is based upon the existence of objective information that predicts the likelihood of the presence of a weapon, drugs, or other item of contraband concealed on a particular prisoner. The criteria used to determine reasonable suspicion shall include the following:

1. A current offense involving felony violence, drug charges, or fugitive status.

2. A criminal history of offenses involving the use of a weapon or the possession of contraband.

3. Institutional behavior or history that indicates possession or manufacturing of contraband, the refusal to submit to a clothed pat down search, or a clothed pat down search reveals the possession of contraband.

4. A person in custody has contact with the public by a contact visit, court appearance, or after transport from an area of public exposure.

5. The court has ordered commitment to custody after arraignment, conviction, or sentencing. [performed by a staff person of the same sex as the inmate].

(c) When a strip search of a prisoner [an inmate] is conducted, it shall be performed by a staff person of the same sex as the prisoner [done on reasonable belief to suspect contraband and include a thorough visual check for birthmarks, wounds, sores, cuts, bruises, scars, and injuries, "health tags," and body vermin. A less complete search shall include the same checks to the extent determined reasonably necessary].

(d) The probing of body cavities shall not be done except where there is reasonable suspicion to believe that the prisoner [inmate] is carrying contraband in a body cavity. The [there and such] search shall [only] be conducted by a licensed medical professional [medically trained persons (physician, registered nurse, licensed practical nurse)] in a private location and under sanitary conditions.

(5) Each jail shall develop written policies and procedures, specifying the personal property that a prisoner [inmates] may retain in his [their] possession.

(a) Any cash or personal property which is taken from the prisoner [inmate] upon admission shall be listed by complete description on a receipt form, and securely stored pending the prisoner's [inmate's] release. The receipt shall be signed by the receiving officer and the prisoner [inmate] and kept for the jail record.

(b) If the prisoner [inmate] is [in-an] inebriated [state], is a mental inquest detainee, or is mentally ill or mentally retarded, there shall be at least one (1) witness to verify this transaction. As soon as the prisoner [inmate] is able to understand and account for his actions, he shall sign the receipt.

(c) Personal property released to a third party shall have the prisoner's [inmate's] signature of approval and the signature receipt of the third party.

(6) The jailer may establish a written policy on hair length or beards if based on actual concerns for safety, security, identification, or hygiene. A prisoner [inmates] may be permitted freedom in personal grooming if not in conflict with the jail's policy. Caution shall be taken to protect the prisoner's [inmate's] rights in accordance with court decisions regarding religion.

Section 3. Orientation. (1) As soon after assignment as possible, an oral or written orientation shall be made available to each prisoner [inmate].

(2) The orientation shall provide the prisoner [inmate] with information regarding his confinement including [but not limited to] the following:

(a) Information pertaining to rising and retiring, meals, mail procedures, work assignments, telephone privileges, visitation, correspondence, commissary, medical care, and other matters related to the conditions of the prisoner's [inmate's] confinement;

(b) Rules of prisoner [inmate] conduct;

(c) Disciplinary procedures;

(d) Information regarding programs including [{}work, educational and vocational training, counseling, and other social services{}]; and

(e) Procedures for making a request [requests] or registering a complaint [complaints] with the jail staff, judiciary, or department [of Corrections] personnel.

Section 4. Release. (1) Written legal authorization shall be required prior to the release or removal of any prisoner [inmate] from confinement.

(2) When a prisoner [an inmate] is released or removed for any legal purpose to the custody of another, the identity of receiving authority shall be verified.

(3) A written record shall be kept of the time, purpose, date, and authority for release or removal from confinement, and into whose custody the prisoner [inmate] is released or removed.

(4) Prior to the release or removal of a prisoner [an inmate], the receiving authority shall sign an authorized release form.

(5) Before the jailer releases a prisoner [an inmate] to an out-of-state jurisdiction, he shall consult with the appropriate prosecutorial office in the county.

(6) Any property, not legally confiscated or retained, receipted from the prisoner [inmate] upon admission shall be returned to him [the inmate] at the time of release.

(7) Each prisoner [inmate] shall sign a receipt for property returned at the time of release.

(8) Any complaint regarding property returned shall be submitted in writing with specific details within twenty-four (24) hours.

DOUG SAPP, Commissioner

TAMELA BIGGS, Staff Attorney

APPROVED BY AGENCY: June 8, 1999

FILED WITH LRC: June 14, 1999 at 3 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on July 22, 1999, at 9 a.m., in the Fifth Floor Conference Room of the State Office Building. Individuals interested in being heard at this hearing shall notify this agency in writing by July 15, 1999, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to be heard at the public hearing, or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Jack Damron or Tamela Biggs, Staff Attorneys, Kentucky Department of Corrections, Office of General Counsel, 2nd Floor, State Office Building, Frankfort, Kentucky 40601, Telephone Number (502) 564-2024, Facsimile Number (502)

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564-6494.

### REGULATORY IMPACT ANALYSIS

Contact Person: Tamela Biggs

(1) Type and number of entities affected: 68 jails which elect to house state prisoners and 7350 prisoners in those jails.

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

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: None

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: None

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

1. First year following implementation: None

2. Second and subsequent years: None

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: None

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: Policy revisions.

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

(5) Source of revenue to be used for implementation and enforcement of administrative regulation is the funds budgeted for this 1998 - 2000 biennium.

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

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

(b) Kentucky: None

(7) Assessment of alternative methods; reasons why alternatives were rejected: None

(8) Assessment of expected benefits:

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

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

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

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

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

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

(10) Any additional information or comments: None

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

#### JUSTICE CABINET Department of Corrections Division of Local Facilities (Amendment)

#### 501 KAR 3:140. Inmate rights.

RELATES TO: KRS 441.055

STATUTORY AUTHORITY: KRS 441.055

NECESSITY, FUNCTION, AND CONFORMITY: KRS 441.055 requires the Department of Corrections to promulgate administrative regulations establishing minimum standards for jails which elect to

house state prisoners. This administrative regulation sets forth procedures to ensure the protection of inmate rights.

Section 1. Policy and Procedure. (1) Each jail shall have a written statement of prisoner's [inmate] rights which shall include [but not be limited to]:

(a) Access to court [courts].

(b) Access to attorney.

(c) Mail.

(d) Telephone.

(e) Grievances.

(f) Search and seizure.

(g) Disciplinary procedure.

(h) Racial segregation.

(i) Medical care.

(j) Mental health care, [(if possible)].

(k) Religion.

The statement of prisoner [inmate] rights shall be posted in a conspicuous place in the booking and [inmate] living areas of the jail.

(2) The jailer shall not prohibit a prisoner's [an inmate's] right of access to the judicial process.

(3) The jailer shall ensure the right of a prisoner [inmates] to have confidential access to his [their] attorney or [and their] authorized representative.

(4) The jailer shall have a written policy which defines the jail's visitation rules and administrative regulations, which shall include [but not be limited to]:

(a) A schedule identifying no fewer than two (2) visiting days each week, one (1) of which shall [must] be during the weekend.

(b) At least one (1) visit per week per prisoner [inmate] shall be allowed except when a prisoner is [an inmate has been] assessed a disciplinary penalty for an infraction of rules governing visitation.

(c) A visit [Visits] shall not be less than fifteen (15) minutes.

(d) Two (2) or more persons permitted to visit at the same time shall count as a single visit.

(e) Children, when accompanied by an adult, shall be permitted to visit a prisoner [inmates].

(5) Attorneys, clergy, and medical personnel shall be permitted to visit a prisoner [inmates] at reasonable hours, other than during regularly scheduled visiting hours and shall not count as an allotted visit.

(6) Each visitor [Visitors] shall register before admission and may be denied admission for refusal to register, for refusal to consent to search or for any violation.

(7) A prisoner [inmates] shall not be restricted in regard to whom he [they] may have as a visitor unless the jailer determines that a visitor shall [should] be excluded due to the existence of one (1) or more of the following conditions:

(a) The visitor:

1. Represents a clear and present danger to security;

2. Has a past history of disruptive conduct at the jail;

3. Is under the influence of alcohol or drugs; or

4. Refuses to submit to search or show proper identification.

(b) ~~The visitor has a past history of disruptive conduct at the jail.~~

(c) ~~The visitor is under the influence of alcohol or drugs.~~

(d) ~~The visitor refuses to submit to search or show proper identification.~~

(e) ~~The prisoner [inmate] refuses the visit.~~

(8) The jailer shall not listen to any visitor's conversation [visitors' conversations] but may observe the visitation for security reasons.

Section 2. Mail. (1) The jailer shall have written policy and procedure for receiving and sending mail that protects the prisoner's [inmate's] personal rights and provides for reasonable security practices consistent with the operation of the jail.

(2) A prisoner [inmates] shall be allowed to correspond with anyone so long as the [such] correspondence does not violate any state or federal law, ~~[except that]~~ Caution shall be taken to protect the prisoner's [inmate's] rights in accordance with court decisions regarding correspondence. A jail may, by policy, prohibit a prisoner from sending or receiving mail to or from another prisoner in a jail, prison or detention facility.

(3) Incoming mail may be inspected for contraband items prior to delivery, unless the [such] mail is received from the court [courts],

attorney of record or public official [officials]; then it may be opened and inspected in the presence of the prisoner [inmate].

Section 3. Telephone. (1) A newly admitted prisoner [inmates] shall be permitted a reasonable number of local or collect long distance telephone calls to an attorney of his [their] choice, or to a family member, as soon as practical, generally within one (1) hour after arrival, until one (1) call has been completed.

(2) The jailer or his designee shall maintain a log of all telephone calls made by an inmate during the admission procedure unless those calls are made on a telephone available in the housing area. The log shall document the date, time and party contacted.

(3) Written policy and procedure shall permit each prisoner [inmate] to complete at least one (1) telephone call each week. Any expense incurred for a call [calls] shall be borne by the prisoner [inmate] or the party called.

(4) A minimum of five (5) minutes shall be allotted for each phone call.

(5) Telephone calls shall not be routinely monitored. If calls are monitored, the prisoner [inmate] shall be notified.

(6) Telephone privileges may be suspended for a designated period of time if telephone rules are violated.

Section 4. Religion. (1) A prisoner [inmates] shall be granted the right to practice his [their] religion within limits necessary to maintain institution order and security.

(2) Each prisoner [inmates] shall be afforded an opportunity to participate in religious services and receive religious counseling within the jail.

(3) A prisoner [inmates] shall not be required to attend or participate in religious services or discussions.

Section 5. Access to Programs. The jailer shall ensure equal access to programs and services for all prisoners [inmates] provided the security and order of the jail shall not be [are not] jeopardized.

Section 6. Grievance Procedure. The jailer shall have a written prisoner [inmate] grievance procedure which shall be available to all prisoners [inmates]. The [These] procedures shall include provisions for:

(1) Responses, within a reasonable time limit, to all grievance complaints.

(2) Equal access to all prisoners [inmates].

(3) Guarantees against reprisal.

(4) Resolving legitimate complaints.

Section 7. Searches. (1) Each search of a prisoner [an inmate] for contraband shall be done in [such] a manner as the jailer determines is necessary to insure the safety of prisoners [inmates] and staff, and security of the jail.

(2) Each search shall be conducted in a private area and in a professional manner which protects the prisoner's [inmate's] dignity to the extent possible.

(3) All strip searches shall be performed by a staff person of the same sex as the prisoner [inmate].

Section 8. Disciplinary Rights. Each jail shall have a written policy and procedure for maintaining discipline which is consistent with constitutional requirements for due process.

Section 9. Medical. Each prisoner [inmate] shall be afforded access to necessary medical care.

DOUG SAPP, Commissioner

TAMELA BIGGS, Staff Attorney

APPROVED BY AGENCY: June 8, 1999

FILED WITH LRC: June 14, 1999 at 3 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on July 22, 1999, at 9 a.m., in the Fifth Floor Conference Room of the State Office Building. Individuals interested in being heard at this hearing shall notify this agency in writing by July 15, 1999, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that

date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to be heard at the public hearing, or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Jack Damron or Tamela Biggs, Staff Attorneys, Kentucky Department of Corrections, Office of General Counsel, 2nd Floor, State Office Building, Frankfort, Kentucky 40601, Telephone Number (502) 564-2024, Facsimile Number (502) 564-6494.

## REGULATORY IMPACT ANALYSIS

Contact Person: Tamela Biggs

(1) Type and number of entities affected: 68 jails which elect to house state prisoners and 7350 prisoners in those jails.

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

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: None

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: None

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

1. First year following implementation: None

2. Second and subsequent years: None

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: None

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: Policy revisions

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

(5) Source of revenue to be used for implementation and enforcement of administrative regulation is the funds budgeted for this 1998 - 2000 biennium.

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

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

(b) Kentucky: None

(7) Assessment of alternative methods; reasons why alternatives were rejected: None

(8) Assessment of expected benefits:

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

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

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

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

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

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

(10) Any additional information or comments: None

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

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## JUSTICE CABINET Kentucky Department of Corrections (Amendment)

### 501 KAR 6:020. Corrections policies and procedures.

RELATES TO: KRS Chapters 196, 197, 439

STATUTORY AUTHORITY: KRS 196.035, 197.020, 439.470, 439.590, 439.640

NECESSITY, FUNCTION, AND CONFORMITY: KRS 196.035, 197.020, 439.470, 439.590, and 439.640 authorize the Justice Cabinet and Department of Corrections to promulgate administrative regulations necessary and suitable for the proper administration of the department or any division therein. These policies and procedures are incorporated by reference in order to comply with the accreditation standards of the American Correctional Association. This administrative regulation establishes the policies and procedures for the Department of Corrections.

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

(a) "Department of Corrections Policies and Procedures, Volume I, June 14 [March 15], 1999":

- 1.1 Legal Assistance for Corrections Staff
- 1.2 News Media
- 1.4 The Monitoring and Operation of Private Prisons (Amended 6/14/99)
- ~~[01-04-01 The operation of Contracted Adult Correctional Facilities (Deleted 6/14/99)~~
- 1.6 ~~Extraordinary Occurrence Reports (Deleted 6/14/99)~~
- 1.9 Institutional Duty Officer
- 1.11 Population Counts and Reporting Procedures
- 1.12 Operation of Motor Vehicles by Department of Corrections Employees
- 2.1 Inmate Canteen
- 2.2 Warden's Fund
- 2.10 Surplus Property
- 3.1 Code of Ethics
- 3.3 Holding of Second Jobs by Corrections' Employees
- 3.5 Sexual Harassment
- 3.6 Criminal History Checks on All Personnel and the Employment of Exoffenders
- 3.7 Shifts, Posts and Days Off Assignment (Added 3/15/99)
- 3.12 Institutional Staff Housing
- 3.20 Communication and Recording Devices
- 4.2 Staff Training and Development
- 4.3 Firearms and Chemical Agents Training
- 4.7 Uniformed Employee Dress Code
- 6.1 Open Records Law
- 6.5 E-mail
- 7.2 Asbestos Abatement
- 8.1 Occupational Exposure to Bloodborne Pathogens
- 8.2 Fire Safety
- 8.6 Extraordinary Occurrence Report (Added 6/14/99)
- 8.7 Notification of Extraordinary Occurrence (Added 6/14/99)
- 9.4 Transportation of Inmates to Funerals or Bedside Visits
- 9.5 Execution
- 9.6 Contraband
- 9.8 Search Policy
- 9.18 Informants
- 9.19 Found Lost or Abandoned Property
- 10.2 Special Management Inmates
- 10.3 Safekeepers
- 10.4 Special Needs Inmates
- 11.2 Nutritional Adequacy of the Diet for Inmates
- 11.3 Special Diet Procedures
- 11.4 Alternative Diet
- 13.1 Pharmacy Policy and Formulary
- 13.2 Health Maintenance Services
- 13.3 Medical Alert System
- 13.4 Health Program Audits
- 13.6 Sex Offender Treatment Program

- 13.7 Involuntary Psychotropic Medication Policy
- 13.8 Substance Abuse Treatment Program
- 13.9 Dental Services
- 13.10 Serious Infectious Disease (Added 3/15/99)
- 13.11 Employee Tuberculosis Program (Added 3/15/99)
- 14.1 Investigation of Missing Inmate Property
- 14.2 Personal Hygiene Items
- 14.3 Marriage of Inmates
- 14.4 Legal Services Program
- 14.6 Inmate Grievance Procedures
- 15.1 Hair and Grooming Standards
- 15.2 Offenses and Penalties
- 15.3 Meritorious Good Time
- 15.5 ~~[15-05-01]~~ Restoration of Forfeited Good Time (Amended 6/14/99)
- 15.6 Adjustment Procedures and Programs (Amended 6/14/99)
- 15.7 Inmate Account Restriction
- 15.8 Unauthorized Substance Abuse Testing
- 16.1 Inmate Visits
- 16.2 Inmate Correspondence
- 16.3 Telephone Calls
- 16.4 Inmate Packages
- 17.1 Inmate Personal Property (Amended 6/14/99)
- 17.2 Assessment Center Operations
- 17.3 Controlled Intake of Inmates

(b) "Department of Corrections Policies and Procedures, Volume II, June 14, 1999 [July 13, 1998]":

- 18.1 Classification of the Inmate (Amended 6/14/99)
- 18.2 Central Office Classification Committee (Added 6/14/99)
- 18.5 Custody and Security Guidelines
- 18.7 Transfers (Amended 6/14/99)
- 18.9 Out-of-state Transfers
- 18-10-01 Parole Progress Reports
- 18.11 Kentucky Correctional Psychiatric Center Transfer Procedures
- 18.12 Referral Procedure for Inmates Adjudicated Guilty But Mentally Ill
- 18.13 Population Categories
- 18.15 Protective Custody
- 18.17 Interstate Agreement on Transfers
- 18.18 International Transfer of Inmates
- 19.1 Government Services Projects
- 19.2 Community Services Projects
- 19.3 Inmate Wage Program
- 20.1 Educational Programs and Educational Good Time
- ~~[21-1 Staffing Pattern for the First Incarceration Shock Treatment Program (FIST) (Deleted 6/14/99)]~~
- 21.2 Boot Camp Program (Amended 6/14/99) [Phase I: Program Selection Assessment Criteria]
- ~~[21-3 Program Schedule - Phase II and Phase III (Deleted 6/14/99)~~
- 21.4 Platoon Size and Composition (Deleted 6/14/99)
- 21.5 Physical Conditions Program Component (Deleted 6/14/99)
- 21.6 Group and Individual Counseling
- 21.7 Drug and Alcohol Abuse Counseling and Treatment (Deleted 6/14/99)
- 21.8 Work Programs Component (Deleted 6/14/99)
- 21.9 Education and Life Management (Deleted 6/14/99)
- 21.10 Auxiliary Services (Deleted 6/14/99)
- 21.11 Offenses and Penalties (Deleted 6/14/99)
- 22.1 Privilege Trips
- 23.1 Religious Programs
- 25.1 Gratuities
- 25.2 Public Official Notification of Release of an Inmate
- 25.3 Pre-release Program
- 25.4 Institutional Inmate Furloughs (Amended 6/14/99)
- 25.6 Community Center Program
- 25.7 Expedient Release
- 25.8 Extended Furloughs

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25.10 Administrative Release of Inmates  
25.11 Victim Notification

(c) "Department of Corrections Policies and Procedures, Volume III, June 14, 1999 [July 13, 1998]":

27-01-01 Probation and Parole Procedures  
27-02-01 Duties of Probation and Parole Officers  
27-03-01 Workload Formula Supervisor/Staff Ratio  
27-05-01 Testimony, Court Demeanor and Availability of Legal Services  
27-06-01 Availability of Supervision Services (Amended 6/14/99)  
27-06-02 Equal Access to Services  
27-07-01 Cooperation with Law Enforcement Agencies  
27-08-01 Use of Force  
27-09-01 Kentucky Community Resources Directory (Amended 6/14/99)  
27-10-01 Pretrial Diversion  
27-11-01 Intensive Supervision  
27-11-02 Prerelease Probation (Amended 3/15/99)  
27-12-01 Supervision: Case Classification  
27-12-02 Risk Assessment  
27-12-03 Initial Interview (Amended 6/14/99)  
27-12-04 Conditions of [Regular] Supervision and [f] Request for Modification (Amended 6/14/99)  
27-12-05 Releasee's Report (Amended 6/14/99)  
27-12-06 Grievance Procedures for Offenders  
27-12-07 Employment, Educational and [Education and -f] Vocational Referrals (Amended 6/14/99)  
27-12-08 Supervision Plan (Amended 6/14/99)  
27-12-09 Casebook  
27-12-10 Guidelines for Monitoring Supervision Fee  
27-12-11 Guidelines for Monitoring Financial Obligations Ordered by the Releasing Authority  
27-12-12 Other Financial Obligations (Not Ordered by Releasing Authority)  
27-12-13 Community Service Work (Amended 6/14/99)  
27-12-14 Offender [Client] Travel (Amended 6/14/99) [Restrictions]  
27-13-01 Drug and Alcohol Testing of Offenders  
27-13-02 Alcohol Detection (Amended 6/14/99)  
27-14-01 Interstate Compact Transfers  
27-14-02 Interstate Compact Out-of-state Probation and Parole Violation  
27-15-01 Supervision Report; Violations, Unusual Incidents  
27-15-02 Community Confinement Program Subject: Electronic Monitoring  
27-16-01 Search; Seizure; Chain of Custody; Disposal of Evidence  
27-17-01 Absconder Procedures (Amended 6/14/99)  
27-18-01 Probation and Parole Issuance of Detainer or [f] Warrant (Amended 6/14/99)  
27-19-01 Preliminary Revocation Hearing  
27-20-01 Division of Probation and Parole Controlled Intake Program  
27-20-02 Prisoner Intake Notification  
27-20-03 Prisoner Status Change  
27-21-01 Apprehension and Transportation of Probation and Parole Violators  
[27-22-01 Fugitive Unit - Apprehensions (Deleted 6/14/99)  
27-22-02 Fugitive Unit - Transportation of Fugitives (Deleted 6/14/99)  
27-23-01 In-state Transfer  
27-24-01 Closing Supervision Report  
27-24-02 Reinstatement of Clients to Active Supervision  
27-26-01 Assistance to Former Clients and Dischargees  
27-27-01 Restoration of Civil Rights  
27-28-01 Firearms/Explosives: Application for Relief from Disability  
27-29-01 Parole Review Dates Modification  
27-30-01 Sex Offender Registration  
27-30-02 Conditional Discharge of Sex Offenders (Added 6/14/99)  
27-31-01 Use of Chemical Agents in Probation and Parole (Added 6/14/99)  
28-01-01 Probation and Parole Investigation Reports (Introduction, Definitions, Confidentiality, Timing, and General Com-

ments)  
28-01-02 Probation and Parole Investigation Reports (Administrative Responsibilities)  
28-01-03 Presentence, Postsentence, Supplemental and Partial Investigations  
28-01-08 Probation Parole Investigation Reports (Partial Investigation Reports and Submission Schedule)  
28-01-09 Release of Information of Factual Content on Presentence/Postsentence Investigation Reports  
28-02-01 Expedient Release Program  
28-03-01 Parole Plans/Halfway Houses/Extended Furlough/Sponsorship/Gradual Release  
28-04-01 Furlough Verifications  
28-05-01 Out-of-state Investigations

(2) This material may be inspected, copied, or obtained at the Office of General Counsel, Department of Corrections, State Office Building, Frankfort, Kentucky 40601, (502) 564-2024, facsimile (502) 564-6494, Monday through Friday, 8 a.m. to 4:30 p.m.

DOUG SAPP, Commissioner

TAMELA BIGGS, Staff Attorney

APPROVED BY AGENCY: June 8, 1999

FILED WITH LRC: June 14, 1999 at 3 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on July 22, 1999, at 9 a.m., in the 5th Floor Conference Room of the State Office Building. Individuals interested in being heard at this hearing shall notify this agency in writing by July 15, 1999, five work days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on this proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Jack Damron or Tamela Biggs, Staff Attorneys, Department of Corrections, 2nd Floor, State Office Building, Frankfort, Kentucky 40601, Telephone (502) 564-2024, Facsimile (502) 564-6494.

## REGULATORY IMPACT ANALYSIS

Agency Contact Person: Tamela Biggs

(1) Type and number of entities affected: 2,948 employees of the correctional institutions, 11,134 inmates, 14,211 parolees and probationers, and all visitors to state correctional institutions.

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

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented: None

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented: None

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

1. First year following implementation: None

2. Second and subsequent years: None

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: None

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: Policy revisions.

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

(5) Source of revenue to be used for implementation and enforcement of administrative regulation is the funds budgeted for this 1998-2000 biennium.

(6) Economic impact, including effects of economic activities arising from administrative regulation, on:

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(a) Geographical area in which administrative regulation will be implemented: None  
 (b) Kentucky: None  
 (7) Assessment of alternative methods; reasons why alternatives were rejected: None  
 (8) Assessment of expected benefits:  
 (a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: None  
 (b) State whether a detrimental effect on environment and public health would result if not implemented: None  
 (c) If detrimental effect would result, explain detrimental effect: N/A  
 (9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None  
 (a) Necessity of proposed administrative regulation if in conflict: N/A  
 (b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: N/A  
 (10) Any additional information or comments: None  
 (11) TIERING: Is tiering applied? No. Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it. Disparate treatment of any person or entity subject to this administrative regulation could raise questions of arbitrary action on the part of the agency. The "equal protection" and "due process" clauses of the 14th Amendment of the U.S. Constitution may be implicated as well as Sections 2 and 3 of the Kentucky Constitution.

## JUSTICE CABINET Department of Corrections Division of Adult Institutions (Amendment)

### 501 KAR 6:030. Kentucky State Reformatory.

RELATES TO: KRS Chapters 196, 197, 439  
 STATUTORY AUTHORITY: KRS 196.035, 197.020, 439.470, 439.590, 439.640

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

Section 1. (1)(a) Kentucky State Reformatory policies and procedures June 14, 1999 [~~November 12, 1997~~], are incorporated by reference.

(b) There will be no public hearing on these policies and procedures as they are secured policies under the provisions of KRS 197.025 which states that such policies shall not be accessible to the public or inmates.

(2) Kentucky State Reformatory policies and procedures include:

KSR 01-00-09 Public Information and News Media Relations  
 KSR 01-00-10 Entry Authorization for All Cameras and Tape Recorders Brought into the Institution  
 KSR 01-00-15 Cooperation and Coordination with Oldham County Court  
 KSR 01-00-19 Personal Service Contract Personnel  
 KSR 02-00-01 Inmate Canteen  
 KSR 02-00-03 Screening Disbursements from Inmate Personal Accounts  
 KSR 02-00-11 Inmate Personal Accounts  
 KSR 02-00-12 Institutional Funds and Issuance of Checks  
 KSR 04-00-02 Staff Training and Development  
 KSR 05-00-01 Officers' Daily Housing Security and Safety Log  
 KSR 05-00-02 Research Activities  
 KSR 05-00-03 Management Information Systems  
 KSR 06-00-01 Inmate Master File  
 KSR 06-00-03 Kentucky Open Records Law and Release of Psychological/ Psychiatric Information

KSR 07-00-02 Institutional Tower Room Regulations  
 KSR 07-00-04 Handling of PCB Articles and Containers  
 KSR 07-00-05 Proper Removal of Transformers  
 KSR 07-00-06 Asbestos Abatement  
 KSR 07-00-07 Discharge Monitoring Report (DMR)  
 KSR 07-00-08 Control of Hazardous Energy (Lockout or Tagout)  
 KSR 07-00-09 Inventory Control of Underground Storage Tanks  
 KSR 08-00-07 Inmate Family Emergency - Life Threatening Illness or Death in Inmate's Immediate Family  
 KSR 08-00-08 Death of an Inmate/Notification of Inmate Family in Case of Serious Injury, Critical Medical Emergency, Major Surgery or Death  
 KSR 08-00-10 Hazardous Chemicals and Material Safety Data Sheet  
 KSR 09-00-21 Crime Scene Camera  
 KSR 09-00-22 Collection, Preservation, and Identification of Physical Evidence  
 KSR 09-00-23 Drug Abuse Testing  
 KSR 09-00-26 Contraband Outside Institutional Perimeter  
 KSR 09-00-28 Restricted Areas  
 KSR 09-00-29 Transportation of Inmates  
 KSR 09-00-30 Parole Board  
 KSR 09-00-31 Forced Cell Move in Medium or Maximum Area  
 KSR 10-00-10 Segregation - Special Management Inmate Legal Access  
 KSR 10-00-11 Unit D - Behavior Problem Control  
 KSR 10-01-13 Unit D - Property Room Access  
 KSR 10-01-01 Segregation Unit - Staffing Pattern, Staff Allocation, Position Description, Staff Selection, Training and Evaluation  
 KSR 10-01-02 Segregation - General Operational Procedures  
 KSR 10-01-03 Segregation - Inmate Tracking System and Records System  
 KSR 10-01-04 Segregation - Administrative Segregation  
 KSR 10-01-05 Segregation - Disciplinary Segregation  
 KSR 10-01-06 Segregation - Protective Custody  
 KSR 10-01-07 Segregation - Convalescent Care Unit  
 KSR 10-01-08 Unit D - Safekeepers and Pretrial Contract Hold Status Inmates  
 KSR 10-01-09 Unit D - Hold Ticket Residents  
 KSR 10-01-11 Segregation Unit - Behavior Problem Control  
 KSR 10-01-13 Segregation Unit - Property Room Access  
 KSR 10-02-01 Department of Corrections Division of Mental Health's Intensive Services Transitional Program: Staffing Pattern, Staff Allocation, Position Description, Staff Selection, Training, Time and Attendance  
 KSR 10-02-02 Unit E Designated Staff Visits  
 KSR 10-02-03 Unit E-1 Convalescent Care  
 KSR 10-02-04 Department of Corrections Division of Mental Health's Intensive Services Transitional Program: General Operating Procedures  
 KSR 11-00-01 Meal Planning for the General Population  
 KSR 11-00-02 Special Diets  
 KSR 11-00-03 Food Service Inspections  
 KSR 11-00-04 Dining Room Rules and Dress Code for Inmates  
 KSR 11-00-06 Health Standards/Regulations for Food Service Employees  
 KSR 11-00-07 Early Chow Line Passes for Medically Designated Inmates  
 KSR 12-00-01 Inmate Summer Dress Regulations  
 KSR 12-00-03 State Items Issued to Inmates  
 KSR 12-00-05 Sanitation Policy and Standards  
 KSR 12-00-07 Regulations for Inmate Barbershop  
 KSR 12-00-09 Treatment of Inmates with Body Lice  
 KSR 13-00-02 Hospital Operations, Rules and Regulations  
 KSR 13-00-03 Medication for Inmates Leaving Institution Grounds  
 KSR 13-00-04 Medical and Dental Care  
 KSR 13-00-05 Medical Records  
 KSR 13-00-08 Institutional Laboratory Procedures  
 KSR 13-00-09 Institutional Pharmacy Procedures  
 KSR 13-00-10 Requirements for Medical Personnel  
 KSR 13-00-11 Health Evaluation  
 KSR 13-00-12 Vision Care/Optomety Services

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KSR 13-00-14 Periodic Health Examinations for Inmates  
 KSR 13-00-15 Medical Alert System  
 KSR 13-00-16 Suicide Prevention and Intervention Program  
 KSR 13-00-17 Special Care  
 KSR 13-02-01 Mental Health Services  
 KSR 13-02-02 Mentally Retarded Inmates  
 KSR 13-02-03 Suicide Prevention and Intervention Program  
 KSR 13-02-04 Department of Corrections Division of Mental Health's Intensive Services Transitional Program: Program Description  
 KSR 13-02-05 Access to Intensive Services Programs Operated at Kentucky State Reformatory by the Division of Mental Health  
 KSR 14-00-01 Inmate Rights  
 KSR 14-00-02 Americans with Disabilities Act Inmate Program Access  
 KSR 14-00-04 Inmate Grievance Procedure  
 KSR 15-00-02 Regulations Prohibiting Inmate Control or Authority Over Other Inmate(s)  
 KSR 15-00-06 Inmate I.D. Cards  
 KSR 15-00-07 Inmate Rules and Discipline - Adjustment Committee Procedures  
 KSR 15-00-08 Firehouse Living Area  
 KSR 15-00-09 Smoking and No Smoking Areas for Inmates and Staff  
 KSR 15-00-10 Program Services for Special Housing Placement  
 KSR 15-01-01 Operational Procedures and Rules and Regulations for Unit A, B & C: Functions of Assigned Personnel  
 KSR 15-01-02 Operational Procedures and Rules and Regulations for Unit A, B, & C: Staff Operational Procedures  
 KSR 15-01-03 Operational Procedures and Rules and Regulations for Unit A, B & C: Inmate Rules and Regulations  
 KSR 15-01-04 Operational Procedures and Rules and Regulations for Unit A, B & C: Institutional Medical and Fire Safety Service: Unit Application  
 KSR 15-01-05 Operational Procedures Rules and Regulations for Unit A, B, & C: Institutional Inmate Services  
 KSR 15-01-06 Operational Procedures and Rules and Regulations for Unit A, B & C: Inmate Honor Housing Criteria and Regulations  
 KSR 16-00-02 Inmate Correspondence and Mailroom Operations  
 KSR 16-00-03 Inmate Access to Telephones  
 KSR 16-01-01 Visiting Regulations  
 KSR 16-01-02 Lawn Visit Procedure and Regulations  
 KSR 16-01-03 Night Visit Regulations  
 KSR 17-00-05 Assessment and Orientation, Consent Decree Notification to Inmates  
 KSR 17-00-07 Inmate Personal Property  
 KSR 17-00-08 Repair of Inmate Owned Appliances by Outside Dealers  
 KSR 18-00-04 Intratransfers, Identification Department, Departure - Admission and Discharge  
 KSR 18-00-05 Transfer of Residents to Kentucky Correctional Psychiatric Center, and Referral Procedure for Residents Adjudicated Guilty but Mentally Ill  
 KSR 18-00-06 Classification  
 KSR 18-00-07 Kentucky State Reformatory Placement Committee  
 KSR 19-00-01 Inmate Work Incentives  
 KSR 19-00-02 On-the-job Training Program  
 KSR 19-00-03 Safety Inspections of Inmate Work Assignment Locations  
 KSR 20-00-01 Technical and Adult Basic Level Learning Center Programs  
 KSR 20-00-04 Criteria for Participation in A College Program  
 KSR 20-00-06 English as a Second Language  
 KSR 21-00-01 Legal Aide Office and Inmate Law Library Services and Supervision  
 KSR 21-00-02 Inmate Library Services  
 KSR 21-00-03 Library Services for Unit D  
 KSR 21-00-05 Library Services for Correctional Psychiatric Treatment Unit (Added 6/14/99)  
 KSR 22-00-03 Inmate Organizations  
 KSR 22-00-07 Inmate Magazine

KSR 22-00-08 Privilege Trips  
 KSR 23-00-02 Chaplain's Responsibility and Inmate Access to Religious Representatives  
 KSR 23-00-03 Religious Programming  
 KSR 24-00-02 Substance Abuse and Chemical Dependency Program  
 KSR 25-00-01 Discharge of Inmates to Hospital or Nursing Home  
 KSR 26-00-01 Volunteer Services Program

DOUG SAPP, Commissioner

TAMELA BIGGS, Staff Attorney

APPROVED BY AGENCY: June 8, 1999

FILED WITH LRC: June 14, 1999 at 3 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on July 22, 1999, at 9 a.m., in the 5th Floor Conference Room of the State Office Building. Individuals interested in being heard at this hearing shall notify this agency in writing by July 15, 1999, five work days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on this proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Jack Damron or Tamela Biggs, Staff Attorneys, Department of Corrections, 2nd Floor, State Office Building, Frankfort, Kentucky 40601, Telephone (502) 564-2024, Facsimile (502) 564-6494.

## REGULATORY IMPACT ANALYSIS

Contact person: Tamela Biggs

(1) Type and number of entities affected: 532 employees of the correctional institutions, 1608 inmates, and all visitors to state correctional institutions.

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

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented: None

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented: None

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

1. First year following implementation: None

2. Second and subsequent years: None

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: None

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: Policy revisions.

(4) Assessment of anticipated effect on state and local revenues:

None

(5) Source of revenue to be used for implementation and enforcement of administrative regulation is the funds budgeted for this 1994-1996 biennium.

(6) Economic impact, including effects of economic activities arising from administrative regulation, on:

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

(b) Kentucky: None

(7) Assessment of alternative methods; reasons why alternatives were rejected: None

(8) Assessment of expected benefits:

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

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

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

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

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

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

(10) Any additional information or comments: None

(11) TIERING: Is tiering applied? No. Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it. Disparate treatment of any person or entity subject to this administrative regulation could raise questions of arbitrary action on the part of the agency. The "equal protection" and "due process" clauses of the 14th Amendment of the U.S. Constitution may be implicated as well as Sections 2 and 3 of the Kentucky Constitution.

## JUSTICE CABINET Department of Corrections Division of Adult Institutions (Amendment)

### 501 KAR 6:110. Roederer Correctional Complex.

RELATES TO: KRS Chapters 196, 197, 439

STATUTORY AUTHORITY: KRS 196.035, 197.020, 439.470, 439.590, 439.640

NECESSITY, FUNCTION, AND CONFORMITY: KRS 196.035, 197.020, 439.470, 439.590, and 439.640 authorizes the Justice Cabinet and Department of Corrections to promulgate administrative regulations necessary and suitable for the proper administration of the department or any division therein. These policies and procedures are incorporated by reference in order to comply with the accreditation standards of the American Correctional Association.

Section 1. Incorporation by Reference. (1)(a) Roederer Correctional Complex policies and procedures, June 14 [March 15], 1999, are incorporated by reference.

(b) They may be inspected, copied, or obtained at the Office of the General Counsel, Department of Corrections, State Office Building, 501 High Street, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

(2) Roederer Correctional Complex policies and procedures include:

RCC 01-06-01	Inmate Access to and Communication with Staff [(Amended 3/15/99)]
RCC 01-08-01	Public Information and News Media Access [(Amended 3/15/99)]
RCC 01-10-01	Cooperation with Outside Bodies; Including Courts, ACA, Governmental Legislative, Executive, and Community Agencies [(Amended 3/15/99)]
RCC 02-01-01	Fiscal Management: Organization
RCC 02-01-02	Fiscal Management: Accounting Procedures
RCC 02-01-03	Fiscal Management: Agency Funds
RCC 02-01-04	Fiscal Management: Insurance
RCC 02-02-01	Fiscal Management: Budget
RCC 02-02-02	Inmate Control of Personal Funds
RCC 02-02-03	Storage and Disposition of Monies received on Weekends, Holidays, and Between 4 p.m. and 8 a.m. Weekdays [(Amended 3/15/99)]
RCC 02-02-05	Inmate Canteen Services
RCC 02-03-01	Fiscal Management: Audits
RCC 02-04-01	Purchase Orders [(Amended 3/15/99)]
RCC 02-04-02	Processing of Invoices [(Amended 3/15/99)]
RCC 02-06-01	Property Inventory [(Amended 3/15/99)]
RCC 04-01-01	Employee Training and Development
RCC 04-01-02	First Aid and CPR Training
RCC 06-01-01	Offender Records
RCC 06-03-01	Records Release of Information
RCC 06-03-02	Storage of Expunged Records
RCC 06-04-01	Court Trips
RCC 06-04-02	Receipt of Order of Appearance

RCC 08-01-01	Fire Prevention (Amended 6/14/99)
RCC 09-04-03	Duties and Responsibilities of the Fire and Safety Officer (Amended 6/14/99)
RCC 11-01-01	Food Service [Services]: General Guidelines (Amended 6/14/99)
RCC 11-02-01	Food Service: Security (Amended 6/14/99)
RCC 11-03-01	Dining Room Guidelines (Amended 6/14/99)
RCC 11-04-01	Food Service: Meals (Amended 6/14/99)
RCC 11-04-02	Food Service: Menu, Nutrition and Alternative Items (Amended 6/14/99) [Special Diets]
RCC 11-05-02	Health Requirements of Food Handlers
RCC 11-06-01	Food Service: Inspections and Sanitation
RCC 11-07-01	Food Service: Purchasing and [;] Storage (Amended 6/14/99) [and Farm Products]
RCC 12-01-01	Sanitation, Living Conditions and [Standards;] Clothing Issuances (Amended 6/14/99) [Issues]
RCC 12-01-02	Bed Areas [(Amended 3/15/99)]
RCC 12-01-03	General Guidelines for Living Units (Amended 6/14/99)
RCC 12-02-01	Issuance of Clean Laundry and Receiving of Dirty Laundry (Amended 6/14/99)
RCC 12-03-01	Personal Hygiene Items: Issuance and Placement Schedule
RCC 12-03-02	Barber Shop Services and Equipment Control
RCC 12-04-01	Institutional Inspections (Amended 6/14/99)
RCC 12-05-02	Use of Noncombustible Receptacle
RCC 12-06-01	Insect and Vermin Control (Amended 6/14/99)
RCC 13-01-01	Organization of Health Services
RCC 13-02-01	Health Maintenance Services: Sick Call and Pill Call (Amended 6/14/99)
RCC 13-03-01	Dental Procedures and Sick Call
RCC 13-04-01	Preliminary Health Evaluation and Establishment of Inmate Medical Records
RCC 13-04-02	Medical Intake Processing for Inmates in Hold Status
RCC 13-05-02	Licensure and Training Standards for Medical Department (Amended 6/14/99)
RCC 13-06-01	Suicide Prevention and Intervention Program
RCC 13-06-03	Emergency Medical and Dental Care Services (Amended 6/14/99)
RCC 13-07-01	Health Records (Amended 6/14/99)
RCC 13-07-03	Use of Pharmaceutical Products (Amended 6/14/99)
RCC 13-07-04	Self-administered Medication Program (Amended 6/14/99)
RCC 13-09-01	Notification of Inmate Family in the Event of Serious Illness, Surgery, or Inmate Death
RCC 13-10-01	Health Education and Special Health Programs (Amended 6/14/99)
RCC 13-11-01	Informed Consent
RCC 13-12-01	Mental Health/Provision of Psychiatric Services by KCPC
RCC 13-12-02	Transfer of Inmates to Kentucky Correctional Psychiatric Center
RCC 13-13-01	Identification of Special Needs Inmates
RCC 13-15-01	Medical Restraints
RCC 13-16-01	Specialized Health Services
RCC 13-17-01	Vision Care and Optometry Services
RCC 13-18-01	Infection Control
RCC 14-01-01	Inmate Rights and Responsibilities [(Amended 3/15/99)]
RCC 16-01-01	Inmate Visiting [(Amended 3/15/99)]
RCC 16-01-03	Extended and Special Visits
RCC 16-02-01	Telephone Communications (Amended 6/14/99)
RCC 16-03-01	Mail Regulations
RCC 17-01-01	Assessment/Orientation Procedure for Intrasystem Transfers
RCC 17-03-01	Inmate Personal Property and Property Control (Amended 6/14/99)
RCC 17-05-02	Housing Unit Assignment Assessment/Classification Center
RCC 17-05-03	Notifying Inmate's Families of Admission and Procedures for Mail and Visiting

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RCC 17-05-04	Assessment Unit Operations Rules and Regulations [(Amended 3/15/99)]
RCC 17-05-05	Assessment Center Operations and Reception Programs
RCC 18-01-01	Institutional Classification Committee
RCC 19-01-01	Job and Program Assignments [(Amended 3/15/99)]
RCC 20-01-01	Education Program [(Amended 3/15/99)]
RCC 20-01-03	Vocational Horticulture Program [(Amended 3/15/99)]
RCC 21-01-01	Library Services [(Amended 3/15/99)]
RCC 22-01-01	Recreation and Inmate Activities [(Amended 3/15/99)]
RCC 22-03-01	Inmate Clubs and Organizations [(Amended 3/15/99)]
RCC 23-01-01	Religious Services [(Amended 3/15/99)]
RCC 24-01-01	Social Services and Counseling
RCC 25-05-01	Inmate Discharge Procedures

DOUG SAPP, Commissioner

TAMELA BIGGS, Staff Attorney

APPROVED BY AGENCY: June 8, 1999

FILED WITH LRC: June 14, 1999 at 3 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on July 22, 1999, at 9 a.m., in the Fifth Floor Conference Room of the State Office Building. Individuals interested in being heard at this hearing shall notify this agency in writing by July 15, 1999, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to be heard at the public hearing, or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Jack Damron or Tamela Biggs, Staff Attorneys, Department of Corrections, 2nd Floor, State Office Building, Frankfort, Kentucky 40601, Telephone Number (502) 564-2024, Facsimile Number (502) 564-6494.

## REGULATORY IMPACT ANALYSIS

Agency Contact Person: Tamela Biggs, Staff Attorney

(1) Type and number of entities affected: 180 employees of the correctional institutions, 682 inmates, and all visitors to state correctional institutions.

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

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented: None

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented: None

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

1. First year following implementation: None

2. Second and subsequent years: None

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: None

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: Policy revisions.

(4) Assessment of anticipated effect on state and local revenues:

None

(5) Source of revenue to be used for implementation and enforcement of administrative regulation is the funds budgeted for this 1998-2000 biennium.

(6) Economic impact, including effects of economic activities arising from administrative regulation, on:

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

(b) Kentucky: None

(7) Assessment of alternative methods; reasons why alternatives were rejected: None

(8) Assessment of expected benefits:

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

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

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

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

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

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

(10) Any additional information or comments: None

(11) TIERING: Is tiering applied? No. Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it. Disparate treatment of any person or entity subject to this administrative regulation could raise questions of arbitrary action on the part of the agency. The "equal protection" and "due process" clauses of the 14th Amendment of the U.S. Constitution may be implicated as well as Sections 2 and 3 of the Kentucky Constitution.

## JUSTICE CABINET

### Kentucky Department of Corrections (Amendment)

#### 501 KAR 6:999. Corrections secured policies and procedures.

RELATES TO: KRS Chapters 196, 197, 439

STATUTORY AUTHORITY: KRS 196.035, 197.020, 439.470, 439.590, 439.640

NECESSITY, FUNCTION, AND CONFORMITY: KRS 196.035, 197.020, 439.470, 439.590, and 439.640 authorize the Justice Cabinet and Department of Corrections to promulgate administrative regulations necessary and suitable for the proper administration of the department or any division therein. These policies and procedures are incorporated by reference in order to comply with the accreditation standards of the American Correctional Association. This administrative regulation establishes the policies and procedures for the Department of Corrections.

Section 1. Incorporation by Reference. (1) The following material is incorporated by reference: "Department of Corrections Secured Policies and Procedures, May 14, 1999 [February 12, 1998]."

BCC 09-01-01	Inclement Weather/Emergency Condition Operation
BCC 09-02-01	Restricted Areas [(Amended 11/12/98)]
BCC 09-02-02	Inmate Pass System to Restricted Areas
BCC 09-02-03	Regulation of Inmate Movement
BCC 09-04-01	Construction Crew Entry, Exit and Regulations [(Added 11/12/98)]
BCC 09-04-02	Complex Entry and Exit [(Amended 11/12/98)]
BCC 09-05-01	Key Control
BCC 09-06-02	Transportation to Courts (Amended 11/12/98)]
BCC 09-07-01	Drug Abuse and Intoxicants Testing [(Amended 11/12/98)]
BCC 09-09-01	Population Counts and Count Documentation [(Amended 11/12/98)]
BCC 09-15-01	Search Policy and Disposition of Contraband [(Amended 11/12/98)]
BCC 09-16-01	Security Activity Logs [(Amended 11/12/98)]
BCC 09-17-01	Institutional Supervisor Inspections [(Amended 11/12/98)]
BCC 09-20-01	Inmate Death
BCC 09-21-01	Tool Control
BCC 09-22-01	Emergency Communication System
CPP 8.3	Emergency Planning
CPP 8.4	Emergency Preparedness
CPP 8.5	Emergency Squads

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CPP 9.1	Use of Force
CPP 9.3	<u>Security Threat Groups (Added 6/14/99)</u>
CPP 9.7	Storage, Issue and Use of Weapons Including Chemical Agents
CPP 9.9	Transportation of Inmates
CPP 9.10	Security Inspections
CPP 9.11	Tool Control
FCDC 09-01-02	Institutional Entry and Exit Surveillance and Perimeter Security Procedures
FCDC 09-03-01	Control and Accountability of Flammable, Toxic, Caustic and Other Hazardous Materials
GRCC 08-03-01	Escape Plan
GRCC 08-05-01	Emergency Squad: Selection, Training and Evaluation
GRCC 08-06-01	Response Units
GRCC 09-03-01	Procedure for Operation in Event of Dense Fog, Inclement Weather or Loss of Power
GRCC 09-04-01	Inmate Death
GRCC 09-06-01	Entry and Exit Procedures
KSP 09-08-01	Searches and Preservation of Evidence
KSR 09-00-04	Horizontal Gates/Box 1 Entrance and Exit Procedure
KSR 09-00-09	Contraband, Dangerous Contraband and Search Policy
KSR 09-00-27	Construction Crew Entry/Exit
RCC 08-08-01	Control and Use of Flammable, Toxic, and Caustic Materials ( <u>Amended 6/14/99</u> )
RCC 09-06-01	Search Policy/Disposition of Contraband

(2) There will be no public hearing on these policies and procedures as they are secured policies under the provisions of KRS 197.025 which states that such policies shall not be accessible to the public or inmates.

DOUG SAPP, Commissioner  
TAMELA BIGGS, Staff Attorney

APPROVED BY AGENCY: June 8, 1999  
FILED WITH LRC: June 14, 1999 at 3 p.m.

## REGULATORY IMPACT ANALYSIS

Agency Contact Person: Tamela Biggs, Staff Attorney

(1) Type and number of entities affected: 2,948 employees of the correctional institutions, 8,729 inmates, and all visitors to state correctional institutions.

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

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented: None

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented: None

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

1. First year following implementation: None

2. Second and subsequent years: None

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: None

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: Policy revisions.

(4) Assessment of anticipated effect on state and local revenues:

None

(5) Source of revenue to be used for implementation and enforcement of administrative regulation is the funds budgeted for this 1998-2000 biennium.

(6) Economic impact, including effects of economic activities arising from administrative regulation, on:

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

(b) Kentucky: None

(7) Assessment of alternative methods; reasons why alternatives were rejected: None

(8) Assessment of expected benefits:

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

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

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

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

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

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

(10) Any additional information or comments: None

(11) TIERING: Is tiering applied? No. Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it. Disparate treatment of any person or entity subject to this administrative regulation could raise questions of arbitrary action on the part of the agency. The "equal protection" and "due process" clauses of the 14th Amendment of the U.S. Constitution may be implicated as well as Sections 2 and 3 of the Kentucky Constitution.

## JUSTICE CABINET Department of Corrections Division of Local Facilities (Amendment)

### 501 KAR 7:010. Definitions.

RELATES TO: KRS 441.055

STATUTORY AUTHORITY: KRS 441.055

NECESSITY, FUNCTION, AND CONFORMITY: KRS 441.055 requires the Department of Corrections to promulgate administrative regulations establishing minimum standards for detention facilities. This administrative regulation sets forth definitions.

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

(a) The official duly elected or appointed pursuant to Section 152 of the Kentucky Constitution [official] charged with the [overall] responsibility of administering the center;

(b) A department as defined in KRS 67B.020(1); or

(c) A correctional services division as created by KRS 67A.028.

(2) "Medical authority" means the person or persons licensed and certified to provide medical care to residents in the center.

(3) "Resident" means any person approved for placement in the center by the jailer in accordance with the definition of a restricted custody center.

(4) "Resident living area" means a group of rooms which provide housing for the resident population.

(5) "Restricted custody center" or "center" means a facility or area separate from the jail used for the housing of sentenced residents [inmates] who have been approved for educational, work or program participation release and pretrial residents [inmates] who have been approved by the court for educational, work or program participation release.

(6) "Security area" means a defined space whose physical boundaries have controlled ingress and egress.

(7) "Staff" means deputy jailers and other personnel involved in the supervision, custody, care, or treatment of residents [prisoners] in the center.

DOUG SAPP, Commissioner

TAMELA BIGGS, General Counsel

APPROVED BY AGENCY: June 8, 1999

FILED WITH LRC: June 14, 1999 at 3 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on July 22, 1999, at 9 a.m., in the Fifth Floor Conference Room of the State Office Building. Individuals interested in being heard at this hearing shall notify this agency in writing by July 15, 1999, 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 pub-

lic. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to be heard at the public hearing, or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Jack Damron or Tamela Biggs, Staff Attorneys, Kentucky Department of Corrections, Office of General Counsel, 2nd Floor, State Office Building, Frankfort, Kentucky 40601, Telephone Number (502) 564-2024, Facsimile Number (502) 564-6494.

#### REGULATORY IMPACT ANALYSIS

Contact Person: Tamela Biggs

(1) Type and number of entities affected: 18 centers which house 1650 restricted custody center residents in those facilities.

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

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: None

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: None

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

1. First year following implementation: None

2. Second and subsequent years: None

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: None

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: Policy revisions.

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

(5) Source of revenue to be used for implementation and enforcement of administrative regulation is the funds budgeted for this 1998 - 2000 biennium.

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

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

(b) Kentucky: None

(7) Assessment of alternative methods; reasons why alternatives were rejected: None

(8) Assessment of expected benefits:

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

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

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

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

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

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

(10) Any additional information or comments: None

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

#### JUSTICE CABINET Department of Corrections Division of Local Facilities (Amendment)

#### 501 KAR 7:020. Administration; management.

RELATES TO: KRS 441.055

STATUTORY AUTHORITY: KRS 13A.350, 441.055

NECESSITY, FUNCTION, AND CONFORMITY: KRS 441.055 requires the Department of Corrections to promulgate administrative regulations establishing minimum standards for detention facilities. This administrative regulation sets forth procedures to be followed for the administration and management of restricted custody centers.

Section 1. Policy and Procedures and [-] Organization. (1) The jailer shall develop and maintain an organizational chart and an operations manual of policy and procedure which has been adopted by the fiscal court and filed with the department [~~of Corrections~~].

(2) The written policy and procedures manual shall be made available to employees.

(3) The operations manual shall include [~~but not be limited to~~] the following aspects of the center's operation:

(a) Administration;

(b) Fiscal management;

(c) Personnel;

(d) Security and control;

(e) Sanitation and management;

(f) Medical services;

(g) Food services;

(h) Emergency and safety procedures;

(i) Classification;

(j) Resident programs;

(k) Resident services; and

(l) Admission and release.

(4) The operations manual shall be reviewed and updated at least annually. All revisions shall be marked with the effective date and filed with the department [~~of Corrections~~].

Section 2. Public Information. (1) The jailer shall develop and implement a procedure for the dissemination of information about the center to the public, to government agencies, and to the media. The public and residents shall have access to the procedure.

(2) With the resident's consent [~~of the resident~~], news media shall be permitted to interview any resident as set forth in the center's policy and procedure manual except when the safety and security of the center is affected.

(3) Written policy and procedure shall set forth the time and length allowable for resident interviews.

(4) All official statements to the news media, relating to center administration policy, shall be made by the jailer [~~only~~] or his designee.

(5) The procedure for the release of resident information shall include the following:

(a) All requests for information shall be addressed to the jailer;

(b) Governmental agencies shall be provided with information pertinent only to their specific function and with the consent of the resident; and

(c) A private citizen [~~citizens~~] shall only be provided with information supplied to the media.

(6) [~~No~~] Information shall not be released that is detrimental to another resident.

Section 3. Information Systems. (1) The jailer shall establish and maintain an information system which shall comply with the requirements of this section.

(a) Center information and resident records shall be:

1. Retained in written form or within computer records; and

2. [~~(b) Center information and resident records shall be~~] Stored in a secure manner so that they are protected from theft, loss, tampering, and destruction. Written guidelines shall specify the length of time a resident record shall be maintained after a resident's release from custody and the conditions under which archives shall be [~~are~~] maintained.

(b) [(e)] A written report shall be made of all extraordinary or unusual occurrences within forty-eight (48) hours of the occurrence. This report shall be placed in the resident's center record. An extraordinary or unusual occurrence [occurrences] shall include [but not be limited to]:

1. Death of a resident;
2. Attempted suicide or suicide;
3. Serious injury, whether accidental or self-inflicted;
4. Attempted escape or escape from center;
5. Fire;
6. Riot;
7. Battery, whether by a staff member or resident;
8. Sexual assault [assaults]; and
9. Occurrence of contagious or infectious disease, or illness within the facility.

(c) [(d)] The center shall keep a log of daily activity.

(d) [(e)] Each center shall maintain records on the types and hours of training completed by each employee. A current and accurate personnel record shall be maintained on each employee. Each employee shall have access to his individual record.

Section 4. Resident Records. (1) The information required by 501 KAR for admission and release shall be retained for each resident. Other information retained in each resident's center record shall include [but not be limited to]:

- (a) Court orders;
- (b) Personal property receipts;
- (c) Infraction reports;
- (d) Reports of disciplinary actions;
- (e) Work record and program involvement; and
- (f) Any unusual occurrence [occurrences] and in the case of death of a resident, disposition of the resident's property and remains.

(2) Medical records shall be maintained as required by 501 KAR.

(3) The jailer shall ensure that resident records are safeguarded in accordance with relevant federal and state laws and regulations.

(4) The jailer shall require that a resident [residents] sign a "Release of Information Consent Form" prior to the release of information, other than public information, to an individual [individuals] other than law enforcement or a court official [officials]. A copy of the signed consent form shall be maintained in the resident's record. This form shall include [but not be limited to]:

- (a) Name of person, agency or organization requesting information;
- (b) Name of facility releasing information;
- (c) Specific information to be disclosed;
- (d) Purpose of the information;
- (e) Date consent form [is] signed;
- (f) Signature of resident; and
- (g) Signature of employee witnessing the resident's signature.

DOUG SAPP, Commissioner

TAMELA BIGGS, General Counsel

APPROVED BY AGENCY: June 8, 1999

FILED WITH LRC: June 14, 1999 at 3 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on July 22, 1999, at 9 a.m., in the Fifth Floor Conference Room of the State Office Building. Individuals interested in being heard at this hearing shall notify this agency in writing by July 15, 1999, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to be heard at the public hearing, or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Jack Damron or Tamela Biggs, Staff Attorneys, Kentucky Department of Corrections, Office of General Counsel, 2nd Floor, State Office Building, Frankfort, Kentucky 40601, Telephone Number (502) 564-2024, Facsimile Number (502)

564-6494.

## REGULATORY IMPACT ANALYSIS

Contact Person: Tamela Biggs

(1) Type and number of entities affected: 18 centers which house 1650 restricted custody center residents in those facilities.

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

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: None

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: None

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

1. First year following implementation: None

2. Second and subsequent years: None

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: None

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: Policy revisions.

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

(5) Source of revenue to be used for implementation and enforcement of administrative regulation is the funds budgeted for this 1998 - 2000 biennium.

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

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

(b) Kentucky: None

(7) Assessment of alternative methods; reasons why alternatives were rejected: None

(8) Assessment of expected benefits:

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

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

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

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

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

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

(10) Any additional information or comments: None

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

## JUSTICE CABINET Department of Corrections Division of Local Facilities (Amendment)

501 KAR 7:040. Personnel.

RELATES TO: KRS 441.055

STATUTORY AUTHORITY: KRS 13A.350, 441.055

NECESSITY, FUNCTION, AND CONFORMITY: KRS 441.055 requires the Department of Corrections to promulgate administrative regulations establishing minimum standards for detention facilities.

## VOLUME 26, NUMBER 1 – JULY 1, 1999

This administrative regulation sets forth personnel procedures to be followed in restricted custody centers.

Section 1. Staffing. (1) Each center shall provide twenty-four (24) hour awake supervision.

(2) If a [When] female resident is [residents-are] housed in the center, the center shall provide a female deputy to perform twenty-four (24) hour awake supervision.

Section 2. Background Checks; Qualifications. (1) Prior to employment, all employees of the center shall be subject to a thorough background investigation to include criminal, medical, and employment histories.

(2) All security employees of the center shall be at least twenty-one (21) years of age.

Section 3. Compensation. All employees of the center shall receive salaries at least equal to the State Minimum Wage Law except where Federal Minimum Wage Law has to be applied.

Section 4. Training. Deputy jailers, correctional officers and other employees whose jobs require supervision of residents shall receive a minimum of sixteen (16) hours annual in-service training delivered by the department ~~[of Corrections]~~ on a regional or local basis or approved by the department if delivered by another agency.

Section 5. Policy and Procedures. Written policy shall specify that equal employment opportunities exist for all positions.

Section 6. Physical Fitness. The jailer shall ensure that all employees maintain a level of physical fitness that will allow each employee [the employees] to satisfactorily perform his [their] duties.

Section 7. Code of Ethics. (1) The jailer shall make available to all employees a written code of ethics.

(2) The written code of ethics shall be incorporated in the center's policy and procedures manual and shall include ~~[but not be limited to]~~ the following:

(a) An employee [Employees] shall not:

1. Exchange any personal gift or favor with a resident, his [gifts or favors with residents, their] family, or friend [friends];
2. Accept any form of bribe or unlawful inducement;
3. Perform duties under the influence of an intoxicant [intoxicants] or consume any intoxicant [intoxicants] while on duty;
4. Violate or disobey established rules, administrative regulations, or lawful orders from a superior;
5. Discriminate against any resident [residents] on the basis of race, religion, creed, gender, national origin, or other individual characteristics;
6. Employ corporal punishment or unnecessary physical force;
7. Subject a resident [residents] to any form of unwarranted physical or mental abuse;
8. Intentionally demean or humiliate a resident [residents];
9. Bring any type of weapon or item declared as contraband into the center without proper authorization;
10. Engage in critical discussion of staff [members] or any resident [residents] in the presence of a resident [residents];
11. Divulge confidential information without proper authorization;
12. Withhold information which, in so doing, threatens the security of the center, its staff, visitors, or the community;
13. Through negligence, endanger the well-being of self or others;
14. Engage in any form of business or profitable enterprise with a resident [residents]; or
15. Inquire about, disclose, or discuss details of a resident's crime other than as may be absolutely necessary in performing official duties.

(b) An employee [Employees] shall:

1. Comply with all established rules, administrative regulations, and lawful orders from superiors;
  2. Treat all residents in a fair, impartial manner; and
  3. Report all violations of the code of ethics to the jailer.
- (3) Any employee violation of this code of ethics shall be made a part of that employee's personnel file.

DOUG SAPP, Commissioner

TAMELA BIGGS, General Counsel

APPROVED BY AGENCY: June 8, 1999

FILED WITH LRC: June 14, 1999 at 3 p.m.

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### REGULATORY IMPACT ANALYSIS

Contact Person: Tamela Biggs

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**JUSTICE CABINET  
Department of Corrections  
Division of Local Facilities  
(Amendment)**

**501 KAR 7:050. Physical plant.**

RELATES TO: KRS 441.055

STATUTORY AUTHORITY: KRS 441.055

NECESSITY, FUNCTION, AND CONFORMITY: KRS 441.055 requires the Department of Corrections to promulgate administrative regulations establishing minimum standards for detention facilities. This administrative regulation sets forth standards and procedures to be followed in the design and construction of centers and provides minimum standards for the renovation and construction of detention facilities and for measuring compliance of existing centers in accordance with KRS 441.055, 441.064, and 441.075, and Kentucky construction and renovation standards.

Section 1. Consultation. The department [~~of Corrections~~] shall provide for any county government which wishes to remodel an existing detention facility or construct a new facility, a consultant knowledgeable in the design, utilization, and operation of detention facilities. The consultant shall meet with the appropriate officials of that county and advise them concerning:

- (1) Site selection;
- (2) Probable need as it relates to capacity and types of residents to be housed;
- (3) Sources of financing for constructing;
- (4) Laws and administrative regulations relating to treatment of residents;
- (5) Laws and administrative regulations relating to facilities for residents;
- (6) Sources of revenue for operations of the center;
- (7) Probable cost for operation of the center; and
- (8) Potential for shared facilities with adjoining counties.

Section 2. Site Acceptance. A [~~No~~] center shall not be built without site acceptance by the department [~~of Corrections~~]. The following criteria shall be considered in site selection:

- (1) Size;
- (2) Proximity to court [~~courts~~];
- (3) Proximity to community resources;
- (4) Availability of public transportation;
- (5) Environmental health;
- (6) Adequate parking; and
- (7) Provisions for future expansion.

Section 3. Construction Documents. Prior to the renovation or construction of any detention facility, plans and specifications shall be submitted to the department [~~of Corrections~~] for review and approval. Plans and specifications for jail renovation or construction shall contain the following criteria and documentation:

- (1) A programming phase containing a(n):
  - (a) Evaluation of existing facility;
  - (b) Population analysis;
  - (c) Space requirements based on population analysis and standards for the facility and site outlined in these Kentucky Minimum Standards for Restricted Custody Centers;
  - (d) Staffing analysis;
  - (e) Cost analysis to include construction and operation cost;
  - (f) Financing alternatives, if applicable;

(g) Design-construction time schedule; and

(h) Summary and recommendations; and

(i) Information concerning the programming phase shall only be submitted:

1. On major renovation or new construction; and
2. For information review purposes.

(2) A Schematic phase containing:

(a) Scale drawings of each floor plan with all proposed rooms and areas one-eighth (1/8) inch minimum;

(b) Scale drawings of the site, locating the building, parking and other facilities one (1) inch = fifty (50) feet;

(c) Documentation of site as to:

1. Size;
2. Proximity to court [~~courts~~];
3. Proximity to community resources;
4. Availability of public transportation;
5. Environmental health;
6. Adequate parking; and
7. Provisions of future expansion.

(d) Sections through the proposed structure indicating ceiling heights of rooms, mechanical spaces, roof slopes and other related information;

(e) Scale elevation drawings of all exterior walls;

(f) Schematic cost estimate to include revised construction and operation costs; and

(g) A revised design-construction time schedule.

(3) A design development phase containing:

(a) Scale drawings on each floor plan with all proposed rooms and areas with their dimensions one-eighth (1/8) inch minimum;

(b) All necessary construction drawings including construction details;

(c) Specifications for all materials and workmanship;

(d) A proposed contract with general and special conditions;

(e) Engineering calculations for the foundation, structure, heating, ventilating, air conditioning, lighting and plumbing; and

(f) Detailed estimates of cost of land, site development, construction, financing, professional services, equipment and furnishings.

(4) A construction document phase containing:

(a) Revised design development construction drawings following review by all applicable agencies signed by an architect registered in the Commonwealth of Kentucky and revised if necessary to include all changes required by the department [~~of Corrections~~]; and

(b) Revised design development specifications of material and workmanship following review by all applicable agencies.

(5) A contract administration phase containing:

(a) Signed copies of all contracts for construction, financing and bonding;

(b) Signed copies of all construction permits;

(c) Documentation of review by all other applicable state agencies; and

(d) All change orders shall be submitted to the department [~~of Corrections~~] for review and approval.

Section 4. Approval of Renovation, Construction Plans and Specifications. (1) The department [~~of Corrections~~] shall review all submissions within thirty (30) days of receipt and issue a letter of approval, acceptance with required changes, or rejection with reasons. [~~No~~] construction shall not be started until the construction document phase as required in Section 4[(4)] of this administrative regulation has been approved.

(2) Depending on the site of the proposed construction, renovation or addition the department [~~of Corrections~~] may combine two (2) or more phases as outlined in this section for review and approval.

(3) All changes to the plans shall require redraws unless specifically exempted by the department [~~of Corrections~~]. Specifications shall [~~must~~] be rewritten to reflect changes.

Section 5. Waiver of Compliance. (1) The department [~~of Corrections~~] may grant a waiver of the implementation of the physical plant standards for an existing center if the department determines:

(a) That strict compliance shall [~~will~~] cause unreasonable difficulties;

(b) That a waiver shall [~~will~~] not seriously affect the security, su-

pervision of ~~residents~~ [prisoners], programs, or the safe, healthful, or efficient operations of the center; and

(c) That compliance ~~shall~~ [is-to] be achieved in a manner other than that which is specified, but in a manner which is sufficient to meet the intent of these standards.

(2) When a waiver from a standard is desired, the responsible local authority shall submit a written request to the department [of Corrections]. The written request shall include the following information:

- (a) Citation of the specific standard involved;
- (b) Identification and description of the specific difficulties involved in meeting strict compliance;
- (c) Description of alternative proposed; and
- (d) Provision of sufficient documentation which ~~shall~~ [will] demonstrate that the waiver, if granted, ~~shall~~ [will] not jeopardize the security, supervision of residents, programs, or the safe, healthful, or efficient operation of the center.

(3) A waiver, if granted by the department [of Corrections], shall apply only to the petitioner for the specific situation cited and for the period of time specified and shall include any requirements imposed by the department as conditions upon the waiver. A [No] waiver shall ~~not~~ be granted for longer than twelve (12) months. Any waiver granted for a twelve (12) month period shall be reviewed at the end of the period for reapproval.

Section 6. Facility Design. (1) Each center shall have two (2) separate entrances, a resident entrance and a service entrance. The department [of Corrections] may permit these entrances to be combined.

(a) Residents' entry. The purpose of this entrance shall be to provide secure and controlled access to the center for residents.

(b) Service entrance. The purpose of this entrance shall be to provide access to service vehicles and delivery trucks with minimum security risks. It should be located in close proximity to storage rooms and the kitchen area.

(2) All exits in the security area shall be secured.

(3) Security area. The area shall enclose all facilities and services required for or used by residents. It shall contain the following function areas:

(a) Control area. This area shall be located in close proximity to the resident entrance and shall be used to monitor the movement of residents in and out of the facility.

(b) Visitation. Adequate space shall be made available for contact visits between residents and families. Tables and chairs shall be provided. Bathroom facilities shall be available to serve this area.

(c) Multipurpose room. The purpose of this area is to provide space for assembly of residents for specific program activities. Adequate furnishings shall be provided.

(d) Conference area. The purpose of this space is to provide space for confidential conferences between residents and lawyers, counselors, clergy, etc. A table and chairs shall be provided.

(e) Living areas.

1. All sleeping rooms shall provide a minimum of fifty (50) square feet per resident. No more than thirty-six (36) residents shall be placed in a single sleeping room.

2. Each resident ~~shall be~~ [has] provided in the sleeping room, at a minimum: bed, mattress and pillow, supply of bed linen, chair, and closet ~~or~~ [f] locker space for the storage of personal items.

3. Sleeping areas shall have lighting of at least twenty (20) foot-candles in reading and grooming area with a nightlight capable of providing five (5) foot-candles of light.

4. The facility shall have one (1) toilet for every eight (8) residents, one (1) wash basin for every eight (8) residents and a shower for every sixteen (16) [eight (8)] residents. One (1) urinal may be substituted for each commode in male areas but [in no instance shall] the commodes ~~shall not be~~ reduced to less than one-half (1/2) the number required.

5. Phone facilities ~~shall be~~ [are] available for resident use.

6. Provide temperature ranges within comfort zones, [(sixty-five (65) degree Fahrenheit to eighty-five (85) degree Fahrenheit)].

7. Provide ventilation to meet air exchange as required in the State Health Code.

(f) Kitchen. The purpose of this area is to provide sufficient space

and equipment for preparing meals for the maximum rated capacity of the center. Design features shall include compliance with standards for the State Food Service Code. If food is not prepared in the facility, a food distribution area shall be substituted.

(g) Laundry facilities. Laundry facilities ~~shall be available~~ [to include at least one (1) washer and dryer per sixteen (16) residents shall be located at the center or a contract for such services shall be in effect].

(h) Furnishings. All furnishings in the center shall be noncombustible ~~and~~ [f] nontoxic as approved by ~~the department~~ [corrections].

DOUG SAPP, Commissioner

TAMELA BIGGS, General Counsel

APPROVED BY AGENCY: June 8, 1999

FILED WITH LRC: June 14, 1999 at 3 p.m.

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**JUSTICE CABINET  
 Department of Corrections  
 Division of Local Facilities  
 (Amendment)**

**501 KAR 7:060. Security; control.**

RELATES TO: KRS 441.055

STATUTORY AUTHORITY: KRS 13A.350, 441.055

NECESSITY, FUNCTION, AND CONFORMITY: KRS 441.055 requires the Department of Corrections to promulgate administrative regulations establishing minimum standards for detention facilities. This administrative regulation sets forth security procedures to be followed in restricted custody centers.

Section 1. Policy and Procedure. (1) Each jailer shall develop a written policy and procedure governing all security aspects of the center's operations.

(2) The department [~~of Corrections~~] shall provide technical assistance to the jailer in his efforts to formulate [~~such~~] written policy and procedure.

(3) ~~The~~ [~~These~~] policies and procedures shall include [~~but not be limited to~~]:

- (a) Resident rules and administrative regulations;
- (b) Staffing;
- (c) Searches of resident and of secure areas;
- (d) Visitation;
- (e) Key and weapon control;
- (f) Resident head counts;
- (g) Movement of residents;
- (h) Emergency situations;
- (i) Center schedule; and
- (j) Administering medication.

Section 2. Resident Supervision. (1) Center personnel shall conduct rounds of the center no less than every sixty (60) minutes.

(2) There shall be at least three (3) documented resident counts every twenty-four (24) hours during which each resident's physical presence, by show of skin, or movement shall be observed or his location accounted for. At least one (1) count shall be conducted per shift.

Section 3. Security Procedures. (1) Each jailer shall establish a procedure for inspecting all facility areas accessible to any resident [~~residents~~] for contraband and physical security at least weekly.

(a) Isolated security spot checks for contraband shall be conducted daily.

(b) Any item [~~Items~~] considered [~~as~~] contraband or item [~~items~~] permitted in the center shall be clearly defined in the center rules.

(c) There shall be a written procedure for reporting security irregularities and for confiscating contraband.

(2) Any [~~No~~] weapon, ammunition, chemical agent, related security equipment, or any object which may be [~~represents the potential of being~~] used as a weapon shall not be permitted in the security area unless authorized by the jailer [~~under emergency circumstances~~]. A firearm shall not be permitted in the security perimeter unless authorized by the jailer, under emergency circumstances.

(3) All [~~firearms~~;] weapons, ammunition, [~~and~~] chemical agents, or related security equipment when not being carried or used, as authorized by the jailer, [assigned to the center] shall be stored in an arsenal, vault, or other secure room under lock.

(a) This area shall be inaccessible to all unauthorized persons.

(b) There shall be a written procedure for issuing and accounting for all weapons.

(4) All security devices and safety equipment shall be inspected monthly to ensure they are maintained in proper working order.

(5) All tools, toxic, corrosive, and flammable substances, and other potentially dangerous supplies and equipment shall be stored in a locked area which is secure.

(6) Tools, supplies, and equipment which are hazardous shall be used by a resident [~~residents~~] only under the direct supervision of center personnel.

(7) A resident [~~An inmate~~] may be assigned the responsibility of providing resident [~~inmate~~] services, including [~~such as~~] providing meals under the direct supervision of staff; however, a resident [~~an inmate~~] shall not be assigned to a position of authority over another resident [~~inmate~~].

(8) A resident shall not [~~Residents shall never~~] be permitted to perform or assist in any security duties.

(9) A resident and his [~~Residents and their~~] belongings shall be searched whenever entering the security perimeter.

(10) Written procedures shall be developed for transporting outside the center.

(11) All centers shall have key control procedures.

Section 4. Daily Center Log; Special Reports. (1) A daily center log shall be kept current and reflect all significant occurrences within the center. Special reports shall include:

- (a) Use of force;
- (b) Disciplinary actions;
- (c) Medical or mental health treatment;
- (d) Feeding schedule and menus;
- (e) Extraordinary occurrences:
  - 1. Fire [~~Fires~~];
  - 2. Assault [~~Assaults~~];
  - 3. Suicide or attempted suicide;
  - 4. Escape or attempted escape;
- (f) Resident vandalism;
  - 1. Destruction of center property.
  - 2. Flooding of plumbing fixtures.
- (g) Staff roster for each shift;
- (h) Visitors' log;
- (i) Fire planning sessions.

DOUG SAPP, Commissioner

TAMELA BIGGS, General Counsel

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FILED WITH LRC: June 14, 1999 at 3 p.m.

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CONTACT PERSON: Jack Damron or Tamela Biggs, Staff At-

## VOLUME 26, NUMBER 1 – JULY 1, 1999

torneys, Kentucky Department of Corrections, Office of General Counsel, 2nd Floor, State Office Building, Frankfort, Kentucky 40601, Telephone Number (502) 564-2024, Facsimile Number (502) 564-6494.

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Contact Person: Tamela Biggs

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2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: Policy revisions.

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

(5) Source of revenue to be used for implementation and enforcement of administrative regulation is the funds budgeted for this 1998 - 2000 biennium.

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

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

(b) Kentucky: None

(7) Assessment of alternative methods; reasons why alternatives were rejected: None

(8) Assessment of expected benefits:

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

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

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

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

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

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

(10) Any additional information or comments: None

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

#### JUSTICE CABINET Department of Corrections Division of Local Facilities (Amendment)

501 KAR 7:080. Sanitation; hygiene.

RELATES TO: KRS 441.055

STATUTORY AUTHORITY: KRS 13A.350, 441.055

NECESSITY, FUNCTION, AND CONFORMITY: KRS 441.055 requires the Department of Corrections to promulgate administrative regulations establishing minimum standards for detention facilities. This administrative regulation sets forth procedures to provide proper sanitation and hygiene in restricted community centers.

Section 1. Procedures. (1) The jailer shall provide for:

(a) The control of vermin and pests; and

(b) Both solid and liquid waste disposal.

(2) ~~The jailer shall provide for both solid and liquid waste disposal.~~

(3) The jailer shall have a written preventative maintenance plan which includes ~~but is not limited to~~:

(a) A cleaning schedule for various locations and items in the center;

(b) A schedule for inspections by the jailer;

(c) A schedule for trash and garbage removal; and

(d) A schedule for periodic inspection and maintenance of specific mechanical equipment.

(3) ~~(4)~~ The center shall have fresh and purified air circulating within resident living and activity areas.

(4) ~~(5)~~ The center shall furnish clean sanitized bedding to residents, including ~~but not limited to~~:

(a) One (1) penal mattress;

(b) One (1) mattress cover;

(c) One (1) blanket, when conditions require;

(d) One (1) sheet;

(e) One (1) pillow; and

(f) One (1) pillowcase.

(5) ~~(6)~~ Resident bedding shall be cleaned on a regular basis according to the following schedule:

(a) Sheets, pillowcases, and mattress cover shall be cleaned at least once per week;

(b) Blankets shall be cleaned upon reissue or quarterly, whichever is sooner;

(c) Mattresses and pillows shall be cleaned quarterly.

(6) ~~(7)~~ Each resident shall be issued a clean towel. Towels shall be laundered every fourth day.

(7) ~~(8)~~ Provisions shall be made for laundering resident clothing at least once a week.

(8) ~~(9)~~ All floors, toilets, and sinks in the center shall be washed daily or more often as necessary.

(9) ~~(10)~~ All showers shall be cleaned on at least a weekly basis.

(10) ~~(11)~~ All residents shall be issued or permitted to obtain the following hygienic items:

(a) Soap;

(b) Toothbrush;

(c) Toothpaste;

(d) Toilet paper; and

(e) Female sanitary supplies, ~~{where applicable}~~. An indigent resident [residents] shall be furnished these items by the center.

(11) ~~(12)~~ Hair cutting services or sanitized hair cutting equipment shall be available to all residents. [Residents shall not be forced to cut their hair except for medical purposes and under the specific orders of the medical authority.]

DOUG SAPP, Commissioner

TAMELA BIGGS, General Counsel

APPROVED BY AGENCY: June 8, 1999

FILED WITH LRC: June 14, 1999 at 3 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on July 22, 1999, at 9 a.m., in the Fifth Floor Conference Room of the State Office Building. Individuals interested in being heard at this hearing shall notify this agency in writing by July 15, 1999, 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

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regulation to the contact person.

CONTACT PERSON: Jack Damron or Tamela Biggs, Staff Attorneys, Kentucky Department of Corrections, Office of General Counsel, 2nd Floor, State Office Building, Frankfort, Kentucky 40601, Telephone Number (502) 564-2024, Facsimile Number (502) 564-6494.

REGULATORY IMPACT ANALYSIS

Contact Person: Tamela Biggs

- (1) Type and number of entities affected: 18 centers which house 1650 restricted custody center residents in those facilities.
- (2) Direct and indirect costs or savings on the:
  - (a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: None
  - (b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: None
  - (c) Compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition) for the:
    1. First year following implementation: None
    2. Second and subsequent years: None
  - (3) Effects on the promulgating administrative body:
    - (a) Direct and indirect costs or savings:
      1. First year: None
      2. Continuing costs or savings: None
    3. Additional factors increasing or decreasing costs: None
    - (b) Reporting and paperwork requirements: Policy revisions.
  - (4) Assessment of anticipated effect on state and local revenues: None
  - (5) Source of revenue to be used for implementation and enforcement of administrative regulation is the funds budgeted for this 1998 - 2000 biennium.
  - (6) To the extent available from the public comments received, the economic impact, including effects of economic activities arising from administrative regulation, on:
    - (a) Geographical area in which administrative regulation will be implemented: None
    - (b) Kentucky: None
  - (7) Assessment of alternative methods; reasons why alternatives were rejected: None
  - (8) Assessment of expected benefits:
    - (a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: None
    - (b) State whether a detrimental effect on environment and public health would result if not implemented: None
    - (c) If detrimental effect would result, explain detrimental effect: N/A
  - (9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None
    - (a) Necessity of proposed regulation if in conflict: N/A
    - (b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: N/A
  - (10) Any additional information or comments: None
  - (11) TIERING: Is tiering applied: No. Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it. Disparate treatment of any person or entity subject to this administrative regulation could raise questions of arbitrary action on the part of the agency. The "equal protection" and "due process" clauses of the Fourteenth Amendment of the U.S. Constitution may be implicated as well as Sections 2 and 3 of the Kentucky Constitution.

JUSTICE CABINET  
Department of Corrections  
Division of Local Facilities  
(Amendment)

501 KAR 7:120. Admission; release.

RELATES TO: KRS 441.055

STATUTORY AUTHORITY: KRS 13A.350, 441.055

NECESSITY, FUNCTION, AND CONFORMITY: KRS 441.055 requires the Department of Corrections to promulgate administrative regulations establishing minimum standards for detention facilities. This administrative regulation sets forth admission and release procedures.

Section 1. Policy and Procedure. Each center shall develop written admission, orientation, and release procedures to be included in the center's policy and procedure manual.

Section 2. Admission. (1) The center staff shall ensure that each resident is transferred under proper legal authority by a duly authorized officer.

(2) Resident records shall be delivered to the center at the time of admission. The admitting officer shall make certain that all required forms are complete and that information is current.

(3) The center staff shall conduct a search of a resident and his [residents and their] possessions upon admission.

(a) Each resident shall be searched for contraband in [such] a manner as responsible staff reasonably determine is necessary to protect the safety of fellow residents, staff and institutional security. The [Such] search shall be conducted in a private area and in a manner which protects the resident's dignity to the [such] extent [as] possible in that particular center.

(b) When a strip search is conducted, it shall be done only on reasonable suspicion that is based upon the existence of objective information that may predict the likelihood of the presence of a weapon, drugs, or other items of contraband concealed on a particular inmate. The criteria used to determine reasonable suspicion shall include the following:

1. A current offense involving felony violence, drug charges, or fugitive status.

2. A criminal history of offenses involving the use of a weapon or the possession of contraband.

3. Institutional behavior or history that indicates possession or manufacturing of contraband, the refusal to submit to a clothed pat down search, or a clothed pat down search reveals the possession of contraband.

4. A person in custody has contact with the public by a contact visit, court appearance, or after transported from an area of public exposure.

5. The court has ordered commitment to custody after arraignment, conviction, or sentencing. [performed by a staff person of the same sex as the resident.]

(c) When a strip search of a resident is conducted it shall be performed by a staff person of the same sex as the resident, [done on reasonable belief to suspect contraband and include a thorough visual check for birthmarks, wounds, sores, cuts, bruises, scars, and injuries, "health tags" and body vermin. A less complete search shall include the same checks to the extent determined reasonably necessary.]

(d) The probing of body cavities shall not be done except where there is reasonable suspicion to believe that the resident is carrying contraband in a body cavity. The [there and such] search shall [only] be conducted by a licensed medical professional [medically-trained persons (physician, emergency medical technician, registered nurse, licensed practical nurse)] in a private location and under sanitary conditions.

(4) Each center shall develop written policies and procedures, specifying the personal property that a resident [residents] may retain in his [their] possession.

(a) Any cash or personal property which is taken from the resident upon admission shall be listed by complete description on a receipt form, and securely stored pending the resident's release. The receipt shall be signed by the receiving officer and the resident.

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(b) Personal property released to a third party ~~shall~~ **[must]** have the resident's signature of approval and the signature receipt of the third party.

Section 3. Orientation. (1) As soon after assignment as possible an oral or written orientation shall be made available to each resident. Special assistance shall be given to any illiterate or ~~[and]~~ non-English speaking resident ~~[residents]~~.

(2) The orientation shall provide the resident with information regarding his confinement including ~~[-but not limited to]~~ the following:

(a) Information pertaining to rising and retiring, meals, mail procedures, work assignments, telephone privileges, visitation, correspondence, commissary, medical care, and other matters related to the conditions of the resident's confinement;

(b) Rules of resident conduct;

(c) Disciplinary procedures;

(d) Information regarding ~~programs~~ ~~(work, educational and vocational training, counseling, and other social services~~ programs ~~);~~];

(e) Procedures for making requests or registering complaints with the center's staff, judiciary, and department ~~[of Corrections]~~ personnel.

Section 4. Release. (1) Written legal authorization shall be required prior to the release or removal of any resident from confinement.

(2) When a resident is released or removed for any legal purpose ~~[purposes]~~ to the custody of another, the identity or receiving authority shall be verified.

(3) A written record shall be kept of the time, purpose, date, and authority for release or removal from confinement, and into whose custody the resident is released or removed.

(4) Prior to the release or removal of a resident, the receiving authority shall sign an authorized release form.

(5) Before the jailer releases a resident to an out-of-state jurisdiction, he shall consult with the appropriate prosecuting office in the county.

(6) Any property, not legally confiscated or retained, receipted from the resident upon admission shall be returned to the resident at the time of release.

(7) Each resident shall sign a receipt for property returned at the time of release.

(8) Any complaint regarding property returned ~~shall~~ **[must]** be submitted in writing with specific details within twenty-four (24) hours.

Section 5. Transfer. (1) Policy and procedure shall be developed to determine the conditions under which a resident ~~shall~~ **[would]** become ineligible to remain at the facility and ~~shall~~ **[must]** be transferred to the jail.

(2) When a resident is transferred to the jail, an incident report specifying the reasons for the transfer, the resident's record and personal property shall accompany the resident.

DOUG SAPP, Commissioner  
TAMELA BIGGS, General Counsel

APPROVED BY AGENCY: June 8, 1999

FILED WITH LRC: June 14, 1999 at 3 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on July 22, 1999, at 9 a.m., in the Fifth Floor Conference Room of the State Office Building. Individuals interested in being heard at this hearing shall notify this agency in writing by July 15, 1999, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to be heard at the public hearing, or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Jack Damron or Tamela Biggs, Staff Attorneys, Kentucky Department of Corrections, Office of General Counsel, 2nd Floor, State Office Building, Frankfort, Kentucky

40601, Telephone Number (502) 564-2024, Facsimile Number (502) 564-6494.

REGULATORY IMPACT ANALYSIS

Contact Person: Tamela Biggs

(1) Type and number of entities affected: 18 centers which house 1650 restricted custody center residents in those facilities.

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

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: None

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: None

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

1. First year following implementation: None

2. Second and subsequent years: None

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: None

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: Policy revisions.

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

(5) Source of revenue to be used for implementation and enforcement of administrative regulation is the funds budgeted for this 1998 - 2000 biennium.

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

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

(b) Kentucky: None

(7) Assessment of alternative methods; reasons why alternatives were rejected: None

(8) Assessment of expected benefits:

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

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

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

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

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

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

(10) Any additional information or comments: None

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

JUSTICE CABINET  
Department of Corrections  
Division of Local Facilities  
(Amendment)

501 KAR 7:140. Inmate rights.

RELATES TO: KRS 441.055

STATUTORY AUTHORITY: KRS 13A.350, 441.055

NECESSITY, FUNCTION, AND CONFORMITY: KRS 441.055 requires the Department of Corrections to promulgate administrative

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regulations establishing minimum standards for detention facilities. This administrative regulation sets forth procedures to ensure resident rights.

Section 1. Policy and Procedure. (1) Each center shall have a written statement of resident rights which shall include~~[-but not be limited to]:~~

- (a) Access to court [courts];
- (b) Access to attorney;
- (c) Mail;
- (d) Telephone;
- (e) Grievances;
- (f) Search and seizure;
- (g) Disciplinary procedure;
- (h) Racial segregation;
- (i) Medical care;
- (j) Counseling, if available; and
- (k) Religion.

The statement of resident rights shall be posted in a conspicuous place in the booking and living areas of the center and a copy shall be made available to the resident as soon after assignment as possible.

(2) The jailer shall not prohibit a resident's right of access to the judicial process.

(3) The jailer shall ensure the right of each resident [residents] to have confidential access to his [their] attorney and his [their] authorized representative.

(4) The jailer shall have a written policy which defines the center's visitation rules and administrative regulations, which shall include [but not be limited to]:

(a) A schedule identifying no fewer than two (2) visiting days each week, one (1) of which shall [must] be during the weekend;

(b) At least one (1) visit per week per resident shall be allowed except when a resident has been assessed a disciplinary penalty for an infraction of rules governing visitation;

(c) A visit [Visits] shall not be less than fifteen (15) minutes;

(d) Two (2) or more persons permitted to visit at the same time shall count as a single visit; or

(e) Children, when accompanied by an adult, shall be permitted to visit a resident [residents].

(5) Attorneys, clergy, and medical personnel shall be permitted to visit a resident [residents] at reasonable hours other than during regularly scheduled visiting hours and shall not count as an allotted visit.

(6) Each visitor [Visitors] shall register before admission and may be denied admission for refusal to register, for refusal to consent to search or for any violation.

(7) A resident [Residents] shall not be restricted in regard to whom he [they] may have as a visitor, unless the jailer determines that a visitor shall [should] be excluded due to the existence of one (1) or more of the following conditions:

(a) The visitor represents a clear and present danger to security;

(b) The visitor has a past history of disruptive conduct at the center;

(c) The visitor is under the influence of alcohol or drugs;

(d) The visitor refuses to submit to a search or show proper identification;

(e) The resident refuses the visit.

(8) The jailer shall not listen to visitor's conversations but may observe the visitation for security reasons.

Section 2. Mail. (1) The jailer shall have a written policy and procedure for receiving and sending mail that protects the resident's personal rights and provides for reasonable security practices consistent with the operation of the center.

(2) A resident [Residents] shall be allowed to correspond with anyone so long as the [such] correspondence does not violate any state or federal law, [except that] Caution shall be taken to protect the resident's rights in accordance with court decisions regarding correspondence. A center may, by policy, prohibit a resident from sending or receiving mail to or from an inmate in a jail, prison, or detention facility.

(3) Incoming mail may be inspected for any contraband item [items] prior to delivery unless the [such] mail is received from the

court [courts], attorney of record or public official [officials], then it may be opened and inspected in the presence of the resident.

Section 3. Telephone. (1) Written policy and procedure shall permit each resident to complete at least one (1) telephone [phone] call each week. Any expense incurred for a call [calls] shall be borne by the resident or the party called.

(2) Telephone calls shall not be routinely monitored. If calls are monitored, the resident shall be notified.

(3) Telephone privileges may be suspended for a designated period of time if telephone rules are violated.

Section 4. Religion. (1) Each resident [Residents] shall be:

(a) Granted the right to practice his [their] religion within limits necessary to maintain institutional order and security; and

(b) Afforded an opportunity to participate in religious services and receive religious counseling within the center.

(2) A resident [Residents] shall be afforded an opportunity to participate in religious services and receive religious counseling within the center.

(3) Residents shall not be required to attend or participate in any religious service or discussion [services or discussions].

Section 5. Access to Programs. The jailer shall ensure equal access to programs and services for all residents provided the security and order of the center are not jeopardized.

Section 6. Grievance Procedure. The jailer shall have a written resident grievance procedure which shall be available to all residents. These procedures shall include provisions for:

(1) Responses, within a reasonable time limit, to all grievance complaints;

(2) Equal access to all residents;

(3) Guarantees against reprisal;

(4) Resolving legitimate complaints.

Section 7. Searches. (1) Each search of a resident for contraband shall be done in such a manner as the jailer determines is necessary to insure the safety of residents, staff and security of the center.

(2) Each search shall be conducted in a private area and in a professional manner which protects the resident's dignity to the extent possible.

(3) All strip searches shall be performed by a staff person of the same sex as the resident.

Section 8. Disciplinary Rights. Each center shall have a written policy and procedure for maintaining discipline which is consistent with constitutional requirements for due process.

Section 9. Medical. Each resident shall be afforded access to necessary medical care.

DOUG SAPP, Commissioner

TAMELA BIGGS, General Counsel

APPROVED BY AGENCY: June 8, 1999

FILED WITH LRC: June 14, 1999 at 3 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on July 22, 1999, at 9 a.m., in the Fifth Floor Conference Room of the State Office Building. Individuals interested in being heard at this hearing shall notify this agency in writing by July 15, 1999, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to be heard at the public hearing, or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Jack Damron or Tamela Biggs, Staff Attorneys, Kentucky Department of Corrections, Office of General

Counsel, 2nd Floor, State Office Building, Frankfort, Kentucky 40601, Telephone Number (502) 564-2024, Facsimile Number (502) 564-6494.

# REGULATORY IMPACT ANALYSIS

Contact Person: Tamela Biggs

(1) Type and number of entities affected: 18 centers which house 1650 restricted custody center residents in those facilities.

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

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: None

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: None

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

1. First year following implementation: None

2. Second and subsequent years: None

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: None

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: Policy revisions.

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

(5) Source of revenue to be used for implementation and enforcement of administrative regulation is the funds budgeted for this 1998 - 2000 biennium.

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

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

(b) Kentucky: None

(7) Assessment of alternative methods; reasons why alternatives were rejected: None

(8) Assessment of expected benefits:

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

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

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

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

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

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

(10) Any additional information or comments: None

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

## JUSTICE CABINET Department of Corrections Division of Local Facilities (Amendment)

### 501 KAR 10:010. Definitions.

RELATES TO: KRS 441.055

STATUTORY AUTHORITY: KRS 13A.350, 441.055

NECESSITY, FUNCTION, AND CONFORMITY: KRS 441.055

requires the Department of Corrections to promulgate administrative regulations establishing minimum standards for jails which elect to house state prisoners. This administrative regulation sets forth definitions.

Section 1. Definitions. (1) "Ceiling" means the overhead area in the multipurpose room which is below the secure deck.

(2) "Commercial type" means furnishings of a commercial or industrial grade approved by the department.

(3) "Dayroom" means a secure area with controlled access from the prisoner living area, to which prisoners may be admitted for daytime activities including dining, bathing, and selected recreation or exercise.

(4) "Deck" means the secure overhead area of the jail which is part of the security perimeter.

(5) "Department" is defined in KRS 441.005(5).

(6) "Detoxification area" means an area used to temporarily hold one (1) or more chemically-impaired persons during the detoxification process until they can care for themselves.

(7) "Direct supervision area" means a group of cells adjacent to a dayroom area which provides housing for up to forty-eight (48) prisoners. A staff member shall be stationed within each direct supervision area in order to control prisoner behavior.

(8) "Dormitory" means an area equipped for housing not less than three (3) persons or more than sixteen (16) persons.

(9) "Holding area" means an area used to hold one (1) or more persons temporarily while awaiting processing, booking, court appearance, discharge or until they can be moved to general housing areas.

(10) "Jail" means county jail or correctional or detention facilities, operated by and under the supervision of any political subdivision.

(11) "Jailer" means:

(a) The official duly elected or appointed pursuant to Section 152 of the Kentucky Constitution charged with the responsibility of administering the jail;

(b) A department as defined in KRS 67B.0200(1); or

(c) A correctional services division as created by KRS 67A.028.

(12) "Jail personnel" as defined in KRS 441.005(6).

(13) "Medical authority" means the person or persons licensed and certified to provide medical care to prisoners in the jail.

(14) "Penal type" means furnishings approved by the department.

(15) "Prisoner" is defined in KRS 441.005(3).

(16) "Prisoner living area" means a group of rooms or cells which provide housing for the prisoner population.

(17) "Safety vestibule" means a defined space that promotes security by the use of two (2) or more doors that shall be used to observe those who pass. When the vestibule is used at a cell area at least the inner door shall be remotely operated. When the vestibule is used for outside entrance at least the outer entry door shall be remotely operated.

(18) "Sallyport" is a vehicular drive-in made secure by electrically or manually operated doors for entrance and exit which shall be located in close proximity to the jail intake area.

(19) "Security area" means a defined space whose physical boundaries have controlled ingress and egress. ["Jail" means county jail and correctional or detention facilities, including correctional facilities defined in KRS 67B.020 and juvenile detention facilities, operated by and under the supervision of any county, regional jail authority, city or urban-county government.

(2) "Jailer" means the duly elected or appointed official charged with the responsibility of administering the jail.

(3) "Jail staff" means deputy jailers, and other personnel involved in the supervision, custody, care or treatment of prisoners in the jail.

(4) "Inmate" means any person confined in the jail pursuant to any code, ordinance, law or statute of any unit of government and who is:

(a) Charged with or convicted of an offense;

(b) Held for extradition or as a material witness; or

(c) Confined for any reason.

(5) "Department" means the Department of Corrections.

(6) "Medical authority" means the person or persons licensed and certified to provide medical care to inmates in the jail.

(7) "Security area" means a defined space whose physical

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boundaries have controlled ingress and egress.

(8) "Direct supervision area" means a group of cells adjacent to a dayroom area which provides housing for up to forty-eight (48) inmates. A staff member shall be stationed within each direct supervision area in order to control inmate behavior.

(9) "Inmate living area" means a group of rooms or cells which provide housing for the inmate population.

(10) "Holding area" means an area used to hold one (1) or more persons temporarily while awaiting processing, booking, court appearance, discharge or until they can be moved to general housing areas.

(11) "Detoxification area" means an area used to temporarily hold one (1) or more chemically impaired persons during the detoxification process until they can care for themselves.

(12) "Dormitory" is an area equipped for housing not less than three (3) persons or more than sixteen (16) persons.

(13) "Dayroom" means a secure area with controlled access from the inmate living area, to which inmates may be admitted for daytime activities such as dining, bathing, and selected recreation or exercise.

(14) "Safety vestibule" is a defined space that promotes security by the use of two (2) or more doors and can be used to observe those who pass. When the vestibule is used at a cell area at least the inner door shall be remotely operated. When the vestibule is used for outside entrance at least the outer entry door shall be remotely operated.

(15) "Sallyport" is a vehicular drive-in made secure by electrically or manually operated doors for entrance and exit. It is generally located in close proximity to the jail intake area.

(16) "Penal type" means furnishings approved by the Department of Corrections.

(17) "Commercial type" means furnishings of a commercial or industrial grade approved by the Department of Corrections.

(18) "Deck" means the secure overhead area of the jail which is part of the security perimeter.

(19) "Ceiling" means the overhead area in the multipurpose room which is below the secure deck.]

DOUG SAPP, Commissioner

TAMELA BIGGS, General Counsel

APPROVED BY AGENCY: June 8, 1999

FILED WITH LRC: June 14, 1999 at 3 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on July 22, 1999, at 9 a.m., in the Fifth Floor Conference Room of the State Office Building. Individuals interested in being heard at this hearing shall notify this agency in writing by July 15, 1999, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to be heard at the public hearing, or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Jack Damron or Tamela Biggs, Staff Attorneys, Kentucky Department of Corrections, Office of General Counsel, 2nd Floor, State Office Building, Frankfort, Kentucky 40601, Telephone Number (502) 564-2024, Facsimile Number (502) 564-6494.

### REGULATORY IMPACT ANALYSIS

Contact Person: Tamela Biggs

(1) Type and number of entities affected: 68 jails which elect to house state prisoners and 7350 prisoners in those jails.

(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, includ-

ing factors increasing or decreasing costs (note any effects upon competition) for the:

1. First year following implementation: None

2. Second and subsequent years: None

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: None

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: Policy revisions.

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

(5) Source of revenue to be used for implementation and enforcement of administrative regulation is the funds budgeted for this 1998 - 2000 biennium.

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

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

(b) Kentucky: None

(7) Assessment of alternative methods; reasons why alternatives were rejected: None

(8) Assessment of expected benefits:

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

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

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

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

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

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

(10) Any additional information or comments: None

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

### JUSTICE CABINET Department of Corrections Division of Local Facilities (Amendment)

501 KAR 10:040. Personnel.

RELATES TO: KRS 441.055

STATUTORY AUTHORITY: KRS 13A.350, 441.055

NECESSITY, FUNCTION, AND CONFORMITY: KRS 441.055 requires the Department of Corrections to promulgate administrative regulations establishing minimum standards for jails which elect to house state prisoners. This administrative regulation sets forth personnel procedures to be followed in jails.

Section 1. Staffing. (1) Each jail shall provide twenty-four (24) hour awake supervision for all prisoners [inmates].

(2) If a [When] female prisoner is [inmates are] lodged in the jail, the jail shall provide a female deputy to perform twenty-four (24) hour awake supervision.

Section 2. Background Checks; Qualifications. (1) Prior to employment, all employees of the jail shall be subject to thorough background investigation to include criminal, medical, and employment history.

(2) All security employees of the jail shall be at least twenty-one (21) years of age.

Section 3. Compensation. All employees of the jail shall receive salaries at least equal to the State Minimum Wage Law except where Federal Minimum Wage Law has to be applied.

Section 4. Training; Curriculum. (1) In order to qualify for the training expense allowance under KRS 441.017, the jailer shall receive a minimum of forty (40) hours annual in-service training certified by the department ~~[of Corrections]~~.

(a) Local corrections training efforts shall be certified by the department ~~[of Corrections]~~.

(b) The Curriculum Advisory Committee shall advise the department ~~[of Corrections]~~ on topics for training curriculum.

(c) Jailer training shall be delivered on a regional basis by the Department of Corrections.

(2) Deputy jailers, correctional officers and other employees whose jobs require supervision of prisoners ~~[inmates]~~ shall receive a minimum of sixteen (16) hours annual in-service training delivered by the department ~~[of Corrections]~~ on a regional or local basis or approved by the department if delivered by another agency.

(3) Jail personnel ~~[staff]~~ whose job requires the supervision of prisoners ~~[inmates]~~ in a "direct supervision area" shall receive a minimum of forty (40) hours of preservice training, and shall receive a minimum of forty (40) hours annual in-service training provided by the department on ~~[of Corrections and]~~ a regional or local basis.

Section 5. Policy and Procedures. Written policy shall specify that equal employment opportunities exist for all positions.

Section 6. Physical Fitness. The jailer shall have written policy and procedures that promote the physical fitness of staff.

Section 7. Code of Ethics. (1) The jailer shall make available to all employees a written code of ethics.

(2) The written code of ethics shall be incorporated in the jail's policy and procedures manual and shall include ~~[but not be limited to]~~ the following:

(a) An employee ~~[Employees]~~ shall not:

1. Exchange any personal gift or favors with a prisoner, his ~~[gifts or favors with inmates, their]~~ family, or friends;
2. Accept any form of bribe or unlawful inducement;
3. Perform duties under the influence of an intoxicant ~~[intoxicants]~~ or consume any intoxicant ~~[intoxicants]~~ while on duty;
4. Violate or disobey established rules, administrative regulations, or lawful orders from a superior;
5. Discriminate against any prisoner ~~[inmate]~~ on the basis of race, religion, creed, gender, national origin, or other individual characteristics;
6. Employ corporal punishment or unnecessary physical force;
7. Subject a prisoner ~~[inmate]~~ to any form of unwarranted physical or mental abuse;
8. Intentionally demean or humiliate a prisoner ~~[inmate]~~;
9. Bring any type of weapon or item declared as contraband into the jail without proper authorization;
10. Engage in critical discussion of jail personnel or prisoners ~~[staff members or inmates]~~ in the presence of a prisoner ~~[inmate]~~;
11. Divulge confidential information without proper authorization;
12. Withhold information which, in so doing, threatens the security of the jail, its staff, visitors, or the community;
13. Through negligence, endanger the well-being of self or others;
14. Engage in any form of business or profitable enterprise with a prisoner ~~[inmate]~~; and
15. Inquire about, disclose, or discuss details of a prisoner's ~~[an inmate's]~~ crime other than as may be absolutely necessary in performing official duties.

(b) An employee ~~[Employees]~~ shall:

1. Comply with all established rules, administrative regulations, and lawful orders from superiors;
  2. Treat all prisoners ~~[inmates]~~ in a fair, impartial manner; and
  3. Report all violations of the code of ethics to the jailer.
- (3) Any employee violation of this code of ethics shall be made a part of that employee's personnel file.

DOUG SAPP, Commissioner

TAMELA BIGGS, General Counsel

APPROVED BY AGENCY: June 8, 1999

FILED WITH LRC: June 14, 1999 at 3 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on July 22, 1999, at 9 a.m., in the Fifth Floor Conference Room of the State Office Building. Individuals interested in being heard at this hearing shall notify this agency in writing by July 15, 1999, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to be heard at the public hearing, or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Jack Damron or Tamela Biggs, Staff Attorneys, Kentucky Department of Corrections, Office of General Counsel, 2nd Floor, State Office Building, Frankfort, Kentucky 40601, Telephone Number (502) 564-2024, Facsimile Number (502) 564-6494.

#### REGULATORY IMPACT ANALYSIS

Contact Person: Tamela Biggs

(1) Type and number of entities affected: 68 jails which elect to house state prisoners and 7350 prisoners in those jails.

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

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: None

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: None

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

1. First year following implementation: None

2. Second and subsequent years: None

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: None

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs: None

(4) Reporting and paperwork requirements: Policy revisions.

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

(5) Source of revenue to be used for implementation and enforcement of administrative regulation is the funds budgeted for this 1998 - 2000 biennium.

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

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

(b) Kentucky: None

(7) Assessment of alternative methods; reasons why alternatives were rejected: None

(8) Assessment of expected benefits:

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

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

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

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

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

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

(10) Any additional information or comments: None

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

**JUSTICE CABINET**  
**Department of Corrections**  
**Division of Local Facilities**  
**(Amendment)**

**501 KAR 10:060. Security; control.**

RELATES TO: KRS 441.055

STATUTORY AUTHORITY: KRS 13A.350, 441.055

NECESSITY, FUNCTION, AND CONFORMITY: KRS 441.055 requires the Department of Corrections to promulgate administrative regulations establishing minimum standards for jails which elect to house state prisoners. This administrative regulation sets forth security procedures to be followed in local jails.

Section 1. Policy and Procedure. (1) Each jailer shall develop a written policy and procedure governing all security aspects of the jail's operations.

(2) The department [of Corrections] shall provide technical assistance to the jailer in his efforts to formulate such written policy and procedure.

(3) These policies and procedures shall include [but not be limited to]:

- (a) Prisoner [Inmate] rules and administrative regulations;
- (b) Staffing;
- (c) Searches of prisoners [inmate] and of secure areas;
- (d) Visitation;
- (e) Key and weapon control;
- (f) Prisoner [Inmate] head counts;
- (g) Surveillance checks;
- (h) Emergency situations; and
- (i) Jail schedule;
- (j) Administering medication.

Section 2. Inmate Supervision. (1) Jail personnel shall conduct and document direct in-person surveillance of each prisoner [inmate] on an irregular schedule, no less than every sixty (60) minutes.

(2) Jail personnel shall conduct and document direct in-person surveillance every twenty (20) minutes on the following classes of prisoners [inmates]:

- (a) Suicidal;
- (b) Assaultive;
- (c) Escape risk;
- (d) Mentally or emotionally disturbed;
- (e) Prisoners [Inmates] in segregation;
- (f) Prisoners [Inmates] in detox cell;
- (g) Juveniles, if housed in the jail; and
- (h) Mental inquest detainees.

(3) When available, closed-circuit television shall be used primarily to monitor hallways, stairwells, sallyports, perimeter security, points of egress, and common and support areas.

(4) There shall be at least three (3) documented prisoner [inmate] counts every twenty-four (24) hours during which each prisoner's [inmate's] physical presence, by show of skin, or movement shall be observed. At least one (1) count shall be conducted per shift.

Section 3. Security Procedures. (1) Each jailer shall establish a procedure for inspecting all jail areas accessible to prisoners [inmates] for contraband and physical security at least weekly.

(a) Isolated security spot checks for contraband shall be conducted daily.

(b) Any item [Items] considered as contraband or any item [items] permitted in the jail shall be clearly defined in the jail rules.

(c) There shall be a written procedure for reporting security irregularities.

(2) Any weapon, ammunition, chemical agent, related security equipment, or object which may be used as a weapon shall not be permitted in the security area unless authorized by the jailer. Firearms shall not be permitted in the security perimeter unless authorized by the jailer, under emergency circumstances.

(3) Any weapon, ammunition, chemical agent, or related security equipment when not being carried or used, as authorized by the jailer, shall be stored in an arsenal, vault, or other secure room under lock. [No weapon, ammunition, chemical agent, related security equipment, or any object which represents the potential of being used as a weapon shall be permitted in the security area unless authorized by the jailer under emergency circumstances as determined by the jailer.]

(3) All firearms, weapons, and chemical agents assigned to the jail shall be stored in an arsenal, vault, or other secure room under lock.

(a) This area shall be inaccessible to all unauthorized persons.

(b) There shall be a written procedure for issuing and accounting for all weapons.

(4) All security devices and safety equipment shall be inspected monthly to ensure they are maintained in proper working order.

(5) All tools, toxic, corrosive, and flammable substances, and other potentially dangerous supplies and equipment shall be stored in a locked area which is secure and located outside the security perimeter of the confinement area.

(6) Tools, supplies, and equipment which are hazardous shall be used by prisoners [inmates] only under the direct supervision of jail personnel.

(7) A prisoner [An inmate] may be assigned the responsibility of providing a prisoner [inmate] services including [such as] providing meals under the direct supervision of staff; however, a prisoner shall not [at no time shall an inmate] be assigned to a position of authority over other prisoners [inmates].

(8) A prisoner [Inmates] shall not [never] be permitted to perform or assist in any security duties.

(9) Jails with a work release or community service program [programs] shall establish special control procedures to minimize contact between prisoners [inmates] with work release privileges and other prisoners [inmates].

(10) Each prisoner [Inmates] shall be thoroughly searched whenever entering or leaving the security perimeter.

(11) Written procedures shall be developed for transporting outside the jail.

(12) Each jailer shall develop written policies and procedures governing the use of physical restraints.

(13) A prisoner placed in physical restraints shall be constantly monitored. [No inmate placed in physical restraints shall be left unattended.]

(14) All jails shall have key-control procedures which shall include [but not be limited to]:

(a) A key control center which is secure and inaccessible to unauthorized persons at all times.

(b) An accounting procedure for issuing and returning keys.

(c) A procedure for immediate reporting and repairing any broken or malfunctioning key or lock.

(d) A set of duplicate keys to be maintained in a separate, secure place.

(e) A prisoner [No inmate] shall not be permitted to handle keys used to operate jail security locks.

(f) Any key [Keys] operating a lock to an [locks-to] outside door or gate [doors or gates] shall not be permitted in the confinement area.

(g) An emergency key and any key to a [keys and keys-to] critical security area [areas] shall only be issued in accordance with written procedures established by the jailer.

(h) Precautions similar to those outlined above shall be taken to insure the security of all nonkey operated locking devices like [such as] electrical switches or levers.

(i) A lock to an [locks-to] outside exit [exits] shall be keyed differently from an interior lock. The lock [locks-locks] to the control room shall be keyed differently from all other locks.

(15) Trustees. [Trusties:]

(a) A trustee shall not [At no time shall a trusty] have access to or

control of a weapon [weapons].

(b) [At no time shall] An unsupervised trustee shall not [trusty] be permitted in either a program, support, or housing area with a prisoner [inmates] of the opposite sex.

(c) A prisoner trustee shall not [At no time shall an inmate trusty] be permitted in either a program, support, or housing area with juvenile prisoner [inmates].

Section 4. Daily Jail Log; Special Reports. A daily jail log shall be kept current and reflect all significant occurrences within the jail. Special reports shall include:

- (1) Use of force.
- (2) Disciplinary actions.
- (3) Medical or mental health treatment.
- (4) Feeding schedule and menus.
- (5) Extraordinary occurrences.
  - (a) Fires.
  - (b) Assaults.
  - (c) Suicide or attempted suicide.
  - (d) Escape or attempted escape.
  - (6) Inmate vandalism.
    - (a) Destruction of jail property.
    - (b) Flooding of plumbing fixtures.
  - (7) Staff roster for each shift.
  - (8) Telephone log of initial phone call(s).
  - (9) Visitors log.
  - (10) Fire planning sessions.

DOUG SAPP, Commissioner

TAMELA BIGGS, General Counsel

APPROVED BY AGENCY: June 8, 1999

FILED WITH LRC: June 14, 1999 at 3 p.m.

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#### REGULATORY IMPACT ANALYSIS

Contact Person: Tamela Biggs

(1) Type and number of entities affected: 68 jails which elect to house state prisoners and 7350 prisoners in those jails.

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

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: None

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: None

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

1. First year following implementation: None
2. Second and subsequent years: None
- (3) Effects on the promulgating administrative body:
  - (a) Direct and indirect costs or savings:
    1. First year: None

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: Policy revisions.

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

(5) Source of revenue to be used for implementation and enforcement of administrative regulation is the funds budgeted for this 1998 - 2000 biennium.

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(b) Kentucky: None

(7) Assessment of alternative methods; reasons why alternatives were rejected: None

(8) Assessment of expected benefits:

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

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

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

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

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

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(10) Any additional information or comments: None

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

#### JUSTICE CABINET Department of Corrections Division of Local Facilities (Amendment)

#### 501 KAR 10:070. Safety; emergency procedures.

RELATES TO: KRS 441.055

STATUTORY AUTHORITY: KRS 13A.350, 441.055

NECESSITY, FUNCTION, AND CONFORMITY: KRS 441.055 requires the Department of Corrections to promulgate administrative regulations establishing minimum standards for jails which elect to house state prisoners. This administrative regulation sets forth safety and emergency procedures to be followed in local jails.

Section 1. Policy and Procedure. (1) Each jail shall have a written policy and procedure which specify fire prevention administrative regulations and practices to ensure the safety of prisoners [inmates], visitors, and staff. These shall include [~~but not be limited to~~]:

(a) Provision for fire emergency planning sessions for staff at least quarterly.

(b) Written documentation of fire planning sessions.

(c) A fire safety inspection by the department [~~of Corrections~~] at least once a year.

(d) Inspection and testing of fire protection equipment by qualified persons at least annually with visual inspections by staff monthly.

(e) Smoking restrictions and administrative regulations.

(f) Written evacuation plan coordinated with local fire officials.

(2) Each jail shall have written policy and procedures for emergency situations including [~~but not limited to~~]:

(a) Escapes.

(b) Taking of hostages.

(c) Riots.

(d) Food poisoning.

- (e) Civil disturbances in the community.
- (f) Natural disasters.
- (g) Suicides.
- (h) Other deaths and disorder.

Section 2. Physical Plant. (1) Each jail shall comply with the Kentucky Building Code (KBC) [NFPA Life Safety Code (1981 Edition)] which is hereby incorporated by reference. An existing jail for which approval has been granted, may continue without change, except when an alteration, addition or change of occupancy occurs.

(2) Each jail shall have exits which are distinctly and permanently marked, visible at all times, kept clear, and maintained in usable condition.

(3) Each jail shall have equipment necessary to maintain essential lights, power, and communications in an emergency situation.

(4) In all areas where a prisoner [an inmate] may be confined, each jail shall be provided with an emergency smoke evacuation system activated by smoke detectors and be operated by emergency power.

(5) Each jail shall have an approved fire alarm and smoke detection system.

(6) Each "direct supervision area" shall have an approved fire-suppression system.

DOUG SAPP, Commissioner

TAMELA BIGGS, General Counsel

APPROVED BY AGENCY: June 8, 1999

FILED WITH LRC: June 14, 1999 at 3 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on July 22, 1999, at 9 a.m., in the Fifth Floor Conference Room of the State Office Building. Individuals interested in being heard at this hearing shall notify this agency in writing by July 15, 1999, 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.

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#### REGULATORY IMPACT ANALYSIS

Contact Person: Tamela Biggs

(1) Type and number of entities affected: 68 jails which elect to house state prisoners and 7350 prisoners in those jails.

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

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: None

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: None

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

1. First year following implementation: None

2. Second and subsequent years: None

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: None

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: Policy revisions.

(4) Assessment of anticipated effect on state and local revenues:

nues: None

(5) Source of revenue to be used for implementation and enforcement of administrative regulation is the funds budgeted for this 1998 - 2000 biennium.

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

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(7) Assessment of alternative methods; reasons why alternatives were rejected: None

(8) Assessment of expected benefits:

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

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(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

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#### JUSTICE CABINET Department of Corrections Division of Local Facilities (Amendment)

#### 501 KAR 10:110. Classification.

RELATES TO: KRS 441.057

STATUTORY AUTHORITY: KRS 441.057

NECESSITY, FUNCTION, AND CONFORMITY: KRS 441.057 requires the Department of Corrections to promulgate administrative regulations establishing minimum standards for facilities. This administrative regulation sets forth procedures for the classification of prisoners [inmates].

Section 1. Procedure. (1) Each jail shall develop an appropriate prisoner [inmate] classification system, which shall be included in the jail's written policy and procedure manual. The provisions of this subsection shall be effective as of July 1, 1983.

(2) The prisoner [inmate] classification system shall provide for the separation of the following categories of prisoners [inmates]:

(a) Male and female prisoners, except in diversion or holding [inmates];

(b) Juvenile and adult prisoners [inmates]. If a juvenile is housed in the jail, he/she shall be housed as a juvenile regardless of his criminal status. This prisoner as anyone [Such offenders, as these] confined for a traffic offense [offenses] and one [those] whose rights as a juvenile have been waived, shall [will] be housed as a juvenile [juveniles];

(c) Mental inquest detainees and other prisoners [inmates];

(d) Mentally ill or mentally retarded prisoner [inmates] and other prisoners [inmates];

(e) Chemically incapacitated prisoner [inmates] and other prisoners [inmates];

(f) A prisoner [inmate] with a tendency to harm others, be harmed by others, or requiring administrative segregation and other prisoners [inmates];

(g) Any prisoner [inmate] with a communicable disease and other

prisoners [inmates].

(3) The criteria to be used in the classification of other prisoner [inmate] categories shall be as follows:

- (a) Sentenced or unsentenced status.
- (b) Felons and misdemeanants.
- (c) Noncriminal and criminal status including [such as] traffic violators, nonsupport cases or civil contempt.
- (d) Community custody prisoners including [inmates such as] work-release, education-release, or weekender [weekenders].
- (e) Trustees. All prisoners receiving trustee [Trusties. All inmates receiving trusty] status shall be selected by the jailer or his designee based upon criteria including [but not limited to]:
  1. The nature of the prisoner's [inmate's] offense and sentence;
  2. Previous escape attempts; and
  3. The prisoner's [inmate's] "day-to-day" behavior.
- (4) A prisoner's [An inmate's] classification shall be changed to reflect changes in his [the inmate's] status including [but not limited to] the following:
  - (a) [1-] Court appearance by the prisoner [inmate];
  - (b) [2-] Disciplinary hearing and action; and
  - (c) [3-] Reevaluation of the prisoner's [inmate's] physical, emotional, or mental condition.
- (5) The prisoner [inmate] classification system shall prohibit discrimination or segregation based upon race, color, creed, or national origin.

Section 2. Behavior Based Classification. (1) Each detention facility may develop a system of prisoner classification the intent of which is to assess prisoners for the purpose of protecting the public safety, the institutional safety, the provision of an acceptable level of health care services and consider the opportunity to provide programs intended to reduce the likelihood of reincarceration.

(2) When this classification system is used it shall provide for the assessment of prisoner risk and need considering elements like:

- (a) Medical care needs;
- (b) Mental health care needs;
- (c) The propensity for suicidal behavior;
- (d) The potential conflicts arising from contacts with other individuals or groups within the institution;
- (e) The potential threat of escape;
- (f) The potential threat to the public safety if placed in a community release program;
- (g) The potential risk to staff posed by the prisoner;
- (h) The potential risk to other prisoners posed by the prisoner;
- (i) The prisoner's previous institutional behavior record; and
- (j) Assessment for participation in educational, vocational, rehabilitative and work-related programming.

(3) Each classification system should consider the development of the following components:

- (a) An assessment of the prisoner upon intake to the facility that determines:
  1. Legal custody;
  2. Medical fitness for acceptance; and
  3. Information asked of the arresting or transporting agent concerning the prisoners' potential risk and needs.

(b) A screening component to assess, as soon as practical after acceptance into the facility, the prisoner's risk and need for the purpose of determining appropriate housing, supervision requirements and the need for providing immediate health care, or other services.

(c) A primary classification of a prisoner shall be accomplished as soon as practical after his initial court appearance, or prior to a permanent housing placement within the institutional population. The purpose of primary classification is to address the longer term housing, supervision and health care needs of the prisoner. Primary classification may also address the appropriateness of program placement in consideration of the needs of the prisoner and the potential risks to the community and the institution associated with the placement.

(4) A reclassification component should be developed that reassesses the prisoner's risk, need and housing assignment and supervision based upon either time, event, change of status or request.

(5) An instrument of assessment shall be developed for each of the classification components using sources including charged of-

fense, criminal history of the prisoner, available institutional behavior history, interview and observation of the prisoner or other information sources available to the institution.

DOUG SAPP, Commissioner

TAMELA BIGGS, General Counsel

APPROVED BY AGENCY: June 8, 1999

FILED WITH LRC: June 14, 1999 at 3 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on July 22, 1999, at 9 a.m., in the Fifth Floor Conference Room of the State Office Building. Individuals interested in being heard at this hearing shall notify this agency in writing by July 15, 1999, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to be heard at the public hearing, or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Jack Damron or Tamela Biggs, Staff Attorneys, Kentucky Department of Corrections, Office of General Counsel, 2nd Floor, State Office Building, Frankfort, Kentucky 40601, Telephone Number (502) 564-2024, Facsimile Number (502) 564-6494.

## REGULATORY IMPACT ANALYSIS

Contact Person: Tamela Biggs

(1) Type and number of entities affected: 68 jails which elect to house state prisoners and 7350 prisoners in those jails.

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

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: None

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: None

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

1. First year following implementation: None

2. Second and subsequent years: None

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: None

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: Policy revisions.

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

(5) Source of revenue to be used for implementation and enforcement of administrative regulation is the funds budgeted for this 1998 - 2000 biennium.

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

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

(b) Kentucky: None

(7) Assessment of alternative methods; reasons why alternatives were rejected: None

(8) Assessment of expected benefits:

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

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

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

N/A

(9) Identify any statute, administrative regulation or government

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policy which may be in conflict, overlapping, or duplication: None

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

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

(10) Any additional information or comments: None

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

### JUSTICE CABINET Department of Corrections Division of Local Facilities (Amendment)

#### 501 KAR 10:120. Admission; release.

RELATES TO: KRS 441.057

STATUTORY AUTHORITY: KRS 441.057

NECESSITY, FUNCTION, AND CONFORMITY: KRS 441.057 requires the Department of Corrections to promulgate administrative regulations establishing minimum standards for facilities. This administrative regulation sets forth admission and release procedures.

Section 1. Policy and Procedure. Each jail shall develop written admission, orientation, and release procedures to be included in the jail's policy and procedure manual.

Section 2. Admission. (1) Any prisoner [inmate] in need of emergency medical attention shall not be admitted to the jail until a medical examination is ~~is [has been]~~ conducted. A denial of admission form shall be completed which lists the reasons for the denial and shall be signed by the jail staff member on duty.

(2) Jail personnel [The jail staff] shall assure that each prisoner [inmate] is committed under proper legal authority by a duly authorized officer.

(3) An intake form shall be completed on every new prisoner [inmate] admission and shall include ~~[but not be limited to]~~ the following:

- (a) Time and date of commitment;
  - (b) Name, alias, nickname;
  - (c) Official charge, cite five (5) digit UOR number;
  - (d) Authority ordering commitment;
  - (e) Unit of government to be billed;
  - (f) Signature and title of arresting or committing officer;
  - (g) Date of birth;
  - (h) Race;
  - (i) Sex;
  - (j) Height and weight;
  - (k) Current or last known address;
  - (l) Telephone number;
  - (m) Marital status;
  - (n) Spouse or next of kin;
  - (o) Emergency contact: ~~[{]}name, relation, address, telephone number[}]~~;
  - (p) Employer, place of employment, telephone number;
  - (q) Social Security number;
  - (r) Health status: ~~[{]}including: current medications, known allergies, diet or other special medical needs[}]~~;
  - (s) Blood type, if known;
  - (t) The name of any known person in the jail who might be a threat to the arrestee; and
  - (u) Mental health history: ~~[{]}including: past hospitalizations, comprehensive care treatment, current treatment, and medication[}]~~.
- (4) Jail personnel [The jail staff] shall conduct a search of the prisoner and his [inmates and their] possessions.
- (a) Each prisoner [inmate] shall be searched for contraband in ~~[such]~~ a manner as responsible staff reasonably determine is necessary to protect the safety of fellow prisoners [inmates], staff, and insti-

tutional security. The [Such] search shall be conducted in a private area and in a manner which protects the prisoner's [inmate's] dignity to the [such] extent [as] possible in that particular jail.

(b) When a strip search is conducted, it shall be done only on reasonable suspicion that is based upon the existence of objective information that could predict the likelihood of the presence of a weapon, drugs, or other items of contraband concealed on a particular prisoner. The criteria used to determine reasonable suspicion shall include the following:

1. A current offense involving felony violence, drug charges, or fugitive status.

2. A criminal history of offenses involving the use of a weapon or the possession of contraband.

3. Institutional behavior or history that indicates possession or manufacturing of contraband, the refusal to submit to a clothed pat down search, or a clothed pat down search reveals the possession of contraband.

4. A person in custody has contact with the public by a contact visit, court appearance, or after transported from an area of public exposure.

5. The court has ordered commitment to custody after arraignment, conviction, or sentencing. [performed by a staff person of the same sex as the inmate, witnessed by a staff person of the same sex as the inmate.]

(c) When a strip search of a prisoner [an inmate] is conducted, it shall be performed by a staff person of the same sex as the prisoner. [done on reasonable belief to suspect contraband and include a thorough visual check for birthmarks, wounds, sores, cuts, bruises, scars, and injuries, "health tags," and body vermin. A less complete search shall include the same checks to the extent determined reasonably necessary.]

(d) The probing of body cavities shall not be done except where there is reasonable suspicion to believe that the prisoner [inmate] is carrying contraband in a body cavity. The [there and such] search shall [only] be conducted by a licensed medical professional [medically trained persons (physician, emergency medical technician, registered nurse, licensed practical nurse)] in a private location and under sanitary conditions.

(5) Each jail shall develop written policies and procedures, specifying the personal property that a prisoner [inmates] may retain in his [their] possession.

(a) Any cash or personal property which is taken from the prisoner [inmate] upon admission shall be listed by complete description on a receipt form, and securely stored pending the prisoner's [inmate's] release. The receipt shall be signed by the receiving officer and the prisoner [inmate] and kept for the jail record.

(b) If the prisoner [inmate] is a mental inquest detainee, or is mentally ill or mentally retarded, there shall be at least one (1) witness to verify this transaction. As soon as the prisoner [inmate] is able to understand and account for his actions, he shall sign the receipt.

(c) Personal property released to a third party shall [must] have the prisoner's [inmate's] signature of approval and the signature receipt of the third party.

Section 3. Orientation. (1) As soon after assignment as possible, an oral or written orientation shall be made available to each prisoner [inmate].

(2) The orientation shall provide the prisoner [inmate] with information regarding his confinement including ~~[but not limited to the following]:~~

(a) Information pertaining to rising and retiring, meals, mail procedures, work assignments, telephone privileges, visitation, correspondence, commissary, medical care, and other matters related to the conditions of his [the inmate's] confinement;

(b) Rules of prisoner [inmate] conduct;

(c) Disciplinary procedures;

(d) Information regarding programs, ~~[{]}work, educational and vocational training, counseling, and other social services[}]~~; and

(e) Procedures for making requests or registering complaints with ~~[the] jail personnel [staff], judiciary, or the department's [Department of Corrections] personnel.~~

Section 4. Release. (1) Written legal authorization shall be re-

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quired prior to the release or removal of any prisoner [inmate] from confinement.

(2) When a prisoner [an-inmate] is released or removed for any legal purpose to the custody of another, the identity of the receiving authority shall be verified.

(3) A written record shall be kept of the time, purpose, date, and authority for release or removal from confinement, and into whose custody the prisoner [inmate] is released or removed.

(4) Prior to the release or removal of a prisoner [an-inmate], the receiving authority shall sign an authorized release form.

(5) Before the jailer releases a prisoner [an-inmate] to an out-of-state jurisdiction, he shall consult with the appropriate prosecutorial office in the county.

(6) Any property, not legally confiscated or retained from the prisoner [inmate] upon admission shall be returned to him [the inmate] at the time of release.

(7) Each prisoner [inmate] shall sign a receipt for property returned at the time of release.

(8) Any complaint regarding property returned shall [must] be submitted in writing with specific details within twenty-four (24) hours.

DOUG SAPP, Commissioner  
TAMELA BIGGS, General Counsel

APPROVED BY AGENCY: June 8, 1999

FILED WITH LRC: June 14, 1999 at 3 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on July 22, 1999, at 9 a.m., in the Fifth Floor Conference Room of the State Office Building. Individuals interested in being heard at this hearing shall notify this agency in writing by July 15, 1999, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to be heard at the public hearing, or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Jack Damron or Tamela Biggs, Staff Attorneys, Kentucky Department of Corrections, Office of General Counsel, 2nd Floor, State Office Building, Frankfort, Kentucky 40601, Telephone Number (502) 564-2024, Facsimile Number (502) 564-6494.

### REGULATORY IMPACT ANALYSIS

Contact Person: Tamela Biggs

(1) Type and number of entities affected: 68 jails which elect to house state prisoners and 7350 prisoners in those jails.

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

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: None

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: None

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

1. First year following implementation: None

2. Second and subsequent years: None

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: None

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: Policy revisions.

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

(5) Source of revenue to be used for implementation and enforcement of administrative regulation is the funds budgeted for this

1998 - 2000 biennium.

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

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

(b) Kentucky: None

(7) Assessment of alternative methods; reasons why alternatives were rejected: None

(8) Assessment of expected benefits:

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

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

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

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

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

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

(10) Any additional information or comments: None

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

### JUSTICE CABINET Department of Corrections Division of Local Facilities (Amendment)

#### 501 KAR 10:140. Inmate rights.

RELATES TO: KRS 441.055

STATUTORY AUTHORITY: KRS 13A.350, 441.055

NECESSITY, FUNCTION, AND CONFORMITY: KRS 441.055 [441.057] requires the Department of Corrections to promulgate administrative regulations establishing minimum standards for jails which elect to house state prisoners. This administrative regulation sets forth procedures to ensure the protection of prisoner [inmate] rights.

Section 1. Policy and Procedure. (1) Each jail shall have a written statement of prisoner [inmate] rights which shall include [but not be limited to]:

(a) Access to court [courts].

(b) Access to attorney.

(c) Mail.

(d) Telephone.

(e) Grievances.

(f) Search and seizure.

(g) Disciplinary procedure.

(h) Racial segregation.

(i) Medical care.

(j) Mental health care (if possible).

(k) Religion.

The statement of prisoner [inmate] rights shall be posted in a conspicuous place in the booking and [inmate] living areas of the jail.

(2) The jailer shall not prohibit a prisoner's [an-inmate's] right of access to the judicial process.

(3) The jailer shall ensure the right of a prisoner [inmates] to have confidential access to his [their] attorney and his [their] authorized representative.

(4) The jailer shall have a written policy which defines the jail's visitation rules and administrative regulations, which shall include [but not be limited to]:

(a) A schedule identifying no fewer than two (2) visiting days each week, one (1) of which shall [must] be during the weekend.

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(b) At least one (1) visit per week per prisoner [inmate] shall be allowed except when a prisoner [an inmate] has been assessed a disciplinary penalty for an infraction of rules governing visitation.

(c) A visit [Visits] shall not be less than fifteen (15) minutes.

(d) Two (2) or more persons permitted to visit at the same time shall count as a single visit.

(e) Children, when accompanied by an adult, shall be permitted to visit a prisoner [inmates].

(5) Attorneys, clergy, and medical personnel shall be permitted to visit a prisoner [inmates] at reasonable hours other than during regularly scheduled visiting hours and shall not count as an allotted visit.

(6) Each visitor [Visitors] shall register before admission and may be denied admission for refusal to register, for refusal to consent to register, for refusal to consent to search or for any violation.

(7) A prisoner [Inmates] shall not be restricted in regard to whom he [they] may have as a visitor, unless the jailer determines that a visitor shall [should] be excluded due to the existence of one (1) or more of the following conditions:

(a) The visitor represents a clear and present danger to security.

(b) The visitor has a past history of disruptive conduct at the jail.

(c) The visitor is under the influence of alcohol or drugs.

(d) The visitor refuses to submit to search or show proper identification.

(e) The prisoner [inmate] refuses the visit.

(8) The jailer shall not listen to visitor's conversations, but may observe the visitation for security reasons.

Section 2. Mail. (1) The jailer shall have written policy and procedure for receiving and sending mail that protects the prisoner's [inmate's] personal rights and provides for reasonable security practices consistent with the operation of the jail.

(2) A prisoner [Inmates] shall be allowed to correspond with anyone so long as the [such] correspondence does not violate any state or federal law. [except that] Caution shall be taken to protect the prisoner's [inmate's] rights in accordance with court decisions regarding correspondence. A jail may, by policy, prohibit a prisoner from sending or receiving mail to or from another prisoner in a prison or detention facility.

(3) Incoming mail may be inspected for any contraband item [items] prior to delivery, unless the [such] mail is received from the court [courts], attorney of record or public official [officials]; then it may be opened and inspected in the presence of the prisoner [inmate].

Section 3. Telephone. (1) A newly admitted prisoner [inmates] shall be permitted a reasonable number of local or collect long distance telephone calls to an attorney of his [their] choice, or to a family member, as soon as practical, generally within one (1) hour after arrival, until one (1) call has been completed.

(2) The jailer or his designee shall maintain a log of all telephone calls made by a prisoner [an inmate] during the admission procedure. The log shall document the date, time and party contacted.

(3) Written policy and procedure shall permit each prisoner [inmate] to complete at least one (1) telephone call each week. Any expense incurred for a call [calls] shall be borne by the prisoner [inmate] or the party called.

(4) A minimum of five (5) minutes shall be allotted for each phone call.

(5) Telephone calls shall not be routinely monitored. If a call is [calls are] monitored, the prisoner [inmate] shall be notified.

(6) Telephone privileges may be suspended for a designated period of time if telephone rules are violated.

Section 4. Religion. (1) A prisoner [Inmates] shall be:

(a) Granted the right to practice his [their] religion within limits necessary to maintain jail order and security; and

(b) Afforded an opportunity to participate in religious services and receive religious counseling within the jail.

(2) A prisoner [Inmates shall be afforded an opportunity to participate in religious services and receive religious counseling within the jail:

(3) Inmates] shall not be required to attend or participate in any religious service or discussion [services or discussions].

Section 5. Access to Programs. The jailer shall ensure equal access to programs and services for all prisoners [inmates] provided the security and order of the jail shall not be [are not] jeopardized.

Section 6. Grievance Procedure. The jailer shall have a written prisoner [inmate] grievance procedure which shall be available to all prisoners [inmates]. These procedures shall include provisions for:

(1) Responses, within a reasonable time limit, to all grievance complaints.

(2) Equal access to all prisoners [inmates].

(3) Guarantees against reprisal.

(4) Resolving legitimate complaints.

Section 7. Searches. (1) Each search of a prisoner [an inmate] for contraband shall be done in [such] a manner as the jailer determines is necessary to insure the safety of prisoners [inmates] and staff, and security of the jail.

(2) Each search shall be conducted in a private area and in a professional manner which protects the prisoner's [inmate's] dignity to the [such] extent [as] possible.

(3) All strip searches shall be performed by a staff person of the same sex as the prisoner [inmate].

Section 8. Disciplinary Rights. Each jail shall have a written policy and procedure for maintaining discipline which is consistent with constitutional requirements for due process.

Section 9. Medical. Each prisoner [inmate] shall be afforded access to necessary medical care.

DOUG SAPP, Commissioner

TAMELA BIGGS, General Counsel

APPROVED BY AGENCY: June 8, 1999

FILED WITH LRC: June 14, 1999 at 3 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on July 22, 1999, at 9 a.m., in the Fifth Floor Conference Room of the State Office Building. Individuals interested in being heard at this hearing shall notify this agency in writing by July 15, 1999, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to be heard at the public hearing, or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Jack Damron or Tamela Biggs, Staff Attorneys, Kentucky Department of Corrections, Office of General Counsel, 2nd Floor, State Office Building, Frankfort, Kentucky 40601, Telephone Number (502) 564-2024, Facsimile Number (502) 564-6494.

### REGULATORY IMPACT ANALYSIS

Contact Person: Tamela Biggs

(1) Type and number of entities affected: 68 jails which elect to house state prisoners and 7350 prisoners in those jails.

(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:

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- (a) Direct and indirect costs or savings:
1. First year: None
  2. Continuing costs or savings: None
  3. Additional factors increasing or decreasing costs: None
- (b) Reporting and paperwork requirements: Policy revisions.
- (4) Assessment of anticipated effect on state and local revenues: None
- (5) Source of revenue to be used for implementation and enforcement of administrative regulation is the funds budgeted for this 1998 - 2000 biennium.
- (6) To the extent available from the public comments received, the economic impact, including effects of economic activities arising from administrative regulation, on:
- (a) Geographical area in which administrative regulation will be implemented: None
- (b) Kentucky: None
- (7) Assessment of alternative methods; reasons why alternatives were rejected: None
- (8) Assessment of expected benefits:
- (a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: None
- (b) State whether a detrimental effect on environment and public health would result if not implemented: None
- (c) If detrimental effect would result, explain detrimental effect: N/A
- (9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None
- (a) Necessity of proposed regulation if in conflict: N/A
- (b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: N/A
- (10) Any additional information or comments: None
- (11) TIERING: Is tiering applied: No. Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it. Disparate treatment of any person or entity subject to this administrative regulation could raise questions of arbitrary action on the part of the agency. The "equal protection" and "due process" clauses of the Fourteenth Amendment of the U.S. Constitution may be implicated as well as Sections 2 and 3 of the Kentucky Constitution.

### JUSTICE CABINET

#### Kentucky Department of Criminal Justice Training (Amendment)

**503 KAR 3:020. [In-service] Law enforcement training course trainee [conduct] requirements; misconduct; penalties; discipline procedures [and penalties].**

RELATES TO: KRS 15A.070

STATUTORY AUTHORITY: KRS Chapter 13A, 15A.160

NECESSITY, FUNCTION, AND CONFORMITY: KRS 15A.070

authorizes Department of Criminal Justice Training to establish, supervise and coordinate training programs and schools for law enforcement personnel. This administrative regulation prescribes conduct requirements of trainees attending in-service law enforcement training courses conducted by the Department of Criminal Justice Training, prescribes procedures for disciplinary action, and sets penalties.

Section 1. Removing a Trainee from the Course. (1) Unqualified trainee. If a trainee is not qualified to participate in training, he shall:

(a) Be removed from training by the:

1. Director;
2. Branch manager; or
3. Section supervisor;

(b) Not receive credit for completed portions of training.

(2) If a trainee is removed from training, pursuant to subsection (1) of this section, within thirty (30) days of the removal, he may request in writing an administrative hearing, which shall comply with KRS Chapter 13B.

(3) Agency request. The department shall remove a trainee from training upon written request of the trainee's law enforcement

agency. The trainee shall not receive credit for completed portions of the course.

Section 2. Gifts. A gift from trainees to department staff shall conform with the requirements of KRS Chapter 11A, the Executive Branch Code of Ethics.

Section 3. Penalties for Misconduct. (1) The following penalties shall apply to a trainee's failure to meet conduct requirements of the department. The penalties are listed in order of decreasing severity.

(a) Expulsion. The trainee is dismissed from the course and all privileges are terminated.

(b) Loss of privileges. The trainee's privileges as specified in the imposed penalty are rescinded for a stated period of time. The trainee's participation in training activities is not affected.

(c) Written reprimand. The trainee is reprimanded in writing for violating a conduct requirement.

(d) Verbal warning. The trainee is warned verbally that he has violated a conduct requirement.

(2) Second and subsequent violations.

(a) If a trainee has received a penalty for violating a conduct requirement, upon a second violation of any conduct requirement the next higher penalty shall be added to the list of penalties which may be imposed for the second violation.

(b) If a trainee has previously received two (2) penalties for violating two (2) conduct requirements, upon a third or subsequent violation of any conduct requirement the next two (2) higher penalties shall be added to the list of penalties which may be imposed for the third or subsequent violation.

(3) Giving notice of disciplinary action to trainee and trainee's agency. The department shall give written notice to a trainee of any penalty imposed upon him. The trainee's agency shall be given written notice of any penalty imposed upon the trainee except a verbal warning, and shall be given verbal notice when a trainee has been charged with a violation of a conduct requirement and has requested a hearing.

(4) Penalty records.

(a) The department shall keep a written record of any penalty imposed on a trainee.

(b) A copy of any penalty imposed on a trainee shall be placed in his training file.

(c) Only the department, the trainee, and the trainee's agency head shall have access to the penalty records in a trainee's training file unless broader access is required by law.

Section 4. Termination of Dangerous or Disruptive Situation. If the conduct or condition of a trainee constitutes an immediate danger or an immediate threat of danger to self or others, or is disruptive of, or is an immediate threat to be disruptive of a department activity, a department staff member may take all reasonable steps necessary to terminate the situation.

Section 5. Conduct Requirements. (1) A trainee attending a training course shall meet the following conduct requirements:

(a) General conduct - chain of command.

(b) All communications shall follow chain of command of the department. Exceptions are the unavailability of a supervisor, or the trainee's complaint regarding a supervisor. Penalty: verbal warning or written reprimand.

(2) General conduct - insubordination. A trainee shall:

(a) Obey a lawful order from a department staff member. Penalty: verbal warning, written reprimand, loss of privileges.

(b) Refrain from vulgarity, rudeness, confrontation, or other disrespectful conduct directed toward a department staff member, trainee or other department trainee or guest. Penalty: verbal warning, written reprimand.

(3) General conduct - grooming. The trainee shall maintain a professional personal appearance which reflects favorably upon the trainee, the department, and the trainee's agency. Penalty: verbal warning or written reprimand.

(4) General conduct - alcoholic beverages and other intoxicants.

(a) A trainee shall not possess, consume nor be under the influence of alcoholic beverages, controlled substances, or other intoxicants.

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cating substances not therapeutically prescribed by a physician while attending a training course. Penalty: written reprimand, loss of privileges, or expulsion.

(b) If a trainee has taken a controlled substance as prescribed by a physician or has taken any other medication, whether prescribed or not, he shall not participate in any training activity if he is under the influence thereof to the extent that the trainee may be impaired or may endanger himself or other persons or property. A trainee shall advise the section supervisor in writing of the use of controlled substance or medication whether or not it has been prescribed by a physician. Penalty: verbal warning, written reprimand.

(c) Confiscation.

1. If a dormitory staff member, department instructor, section supervisor, or branch manager observes an unlawfully-possessed intoxicating substance, he shall immediately confiscate it.

2. Confiscated items shall be stored in a safe and secure facility of the department pending appropriate disposition.

(5) General conduct - weapons and other dangerous devices.

(a) A trainee may possess his regular service weapon or authorized off-duty weapon, including ammunition, on property used by the department. A trainee shall not possess any other deadly weapons (as defined in KRS 500.080), ammunition, destructive devices or booby trap devices (as defined in KRS 237.030), hazardous substances (as defined in KRS 224.01-400), fireworks, or instruments used by law enforcement for control purposes (such as batons, stun guns, Mace, and pepper spray) on property used by the department except under circumstances specifically authorized by the department. Penalty: verbal warning, written reprimand, loss of privileges, or expulsion.

(b) Confiscation.

1. If a dormitory staff member, department instructor, section supervisor, branch manager, director or commissioner observes an unlawfully-possessed weapon or other dangerous device he shall immediately confiscate it.

2. Confiscated items shall be stored in a safe and secure facility of the department pending appropriate disposition.

(6) General conduct - department property.

(a) A trainee shall not damage, destroy, fail to return, or be wasteful of property of the department or any other facility used by the department. Penalty: verbal warning, written reprimand, loss of privileges, or expulsion.

(b) A trainee shall not have successfully completed training until he has returned all issued items or made satisfactory arrangements to pay for unreturned or damaged items.

(7) General conduct - conduct unbecoming a trainee. A trainee shall not:

(a) Engage in criminal activity, including acts which would constitute a felony, misdemeanor or violation, while enrolled in a training class. Depending on the nature of the conduct, the trainee shall be penalized by a verbal warning, written reprimand, loss of privileges, suspension or expulsion.

(b) Engage in conduct which creates a danger or risk of danger to the trainee or another, possess obscene material as defined in KRS 531.010, engage in conduct which is unreasonably annoying, engage in fighting or in violent, tumultuous or threatening conduct, engage in sexual harassment or conduct which is patently offensive. Penalty: verbal warning, written reprimand, loss of privileges, or expulsion.

(8) Training activities - absences.

(a) A trainee is absent if he is not physically present in a class or other required department activity for more than ten (10) minutes. A trainee shall give advance notice of an absence when possible. Penalty for an unexcused absence: verbal warning or written reprimand; penalty for an unexcused tardiness: verbal warning or written reprimand.

(b) All absences from training must be approved by the section supervisor or branch manager. Absences shall only be excused for legitimate reasons including sickness, court appearances, and emergencies. Written notice shall be given prior to the absence, or in the case of unexpected absences on the first day upon returning.

(c) If a trainee is absent less than ten (10) percent of a subject area, excused or unexcused, he shall make up for the absence by completing a special assignment. The assignment shall be provided

by the instructor who taught the missed subject area and shall be approved by the section supervisor. Failure to complete the assignment shall be deemed a failure for that subject area.

(d) A trainee shall repeat a subject area in which he has had an absence of ten (10) percent or more, excused or unexcused.

(e) A trainee shall not be allowed to repeat a test that occurs during the trainee's unexcused absence.

(9) Training activities - breaks. Trainees shall be allowed a ten (10) minute break per hour of instruction if possible. Breaks shall be taken only in areas designated by the department. Penalty: verbal warning or written reprimand.

(10) Training activities- general conduct.

(a) A trainee shall be attentive during training activities. Penalty: verbal warning or written reprimand.

(b) A trainee shall not use tobacco products during, or bring food or drink into, any department training activity, regardless of location, unless permitted by the branch manager. Penalty: verbal warning or written reprimand.

(c) A trainee shall not engage in conduct which creates or may create a risk of injury to others during a training session;

(11) Training activities - dishonesty. A trainee shall not cheat or attempt to cheat on a test or on any other assignment or activity; or alter or attempt to alter a test grade or other evaluation result; or engage in any other conduct intended to gain an undeserved evaluation for himself or another. Penalty: verbal warning, written reprimand, loss of privileges, or expulsion.

(12) Residence hall.

(a) Each trainee shall be responsible for cleaning his area. Each morning, prior to leaving for class training, a trainee shall ensure his room is clean and free of trash, with beds made and the room ready for inspection. Penalty: verbal warning, written reprimand, loss of privileges.

(b) Doors shall be locked whenever a room is unoccupied. Penalty: verbal warning or written reprimand.

(c) The use of cooking appliances or space heaters is prohibited. Penalty: verbal warning, written reprimand, loss of privileges.

(d) All residence hall rooms, closets, and containers therein may be inspected by department staff for purposes of safety, sanitation and rule violations.

(e) A trainee residing at the residence hall shall not:

1. Have any person of the opposite sex in his room without the permission of the department. Penalty: verbal warning, written reprimand, loss of privileges.

2. Keep pets, animals, or birds of any kind in his room. Penalty: verbal warning, written reprimand, loss of privileges.

3. Engage in dangerous, disruptive, immoral or obscene behavior. Penalty: verbal warning, written reprimand, loss of privileges.

Section 6. Summary Discipline. Except for summary discipline, no penalty shall be imposed upon a trainee unless charges have first been brought by the legal officer.

(1) The following department staff members have the authority to impose the specified penalties summarily without meeting the requirements of the formal disciplinary procedures provided by Sections 8 through 13 of this administrative regulation. To have the authority to impose summary discipline, the staff member shall believe by a preponderance of the evidence that the trainee has engaged in the misconduct.

(a) A department instructor may summarily impose a verbal warning.

(b) The section supervisor, branch manager, director, or commissioner may summarily impose a verbal warning, written reprimand, or loss of privileges.

(2) Before imposing a penalty summarily, the staff member shall give the trainee the opportunity to give an explanation.

(3) A summarily imposed penalty shall be reviewed by, and may be rescinded or modified by, the immediate supervisor of the staff member imposing the penalty. The reviewer shall provide the trainee with the opportunity to give an explanation.

Section 7. Removal from Training Pending an Initial Appearance Before the Commissioner. (1) When a request for charges is filed against a trainee, the commissioner or director may remove the

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trainee from some or all training until the trainee's initial appearance before the commissioner if he has reasonable grounds to believe the alleged misconduct took place and:

(a) He has reasonable suspicion to believe the trainee would be dangerous or disruptive if not removed; or

(b) The trainee may be charged with misconduct serious enough to authorize expulsion.

(2) A trainee who has been removed from training pending an initial appearance before the commissioner shall be provided the initial appearance within three (3) training days of the removal.

**Section 8. Complaint.** Anyone having reasonable grounds for believing that a trainee has violated any of the conduct requirements identified in this administrative regulation may file a complaint with the section supervisor. This complaint shall be in writing setting forth the facts upon which the complaint is based.

**Section 9. Investigation by Section Supervisor.** (1) If the section supervisor receives a complaint of or witnesses apparent misconduct, he shall take statements and otherwise investigate the matter.

(2) After investigating the matter, the section supervisor shall:

(a) Take no action if none is justified by the evidence; or

(b) Impose appropriate summary discipline; or

(c) File, with the legal officer, a written request that charges be brought against the trainee. The request for charges shall describe the alleged misconduct and designate the specific conduct requirements violated. All pertinent evidence and documents including the complaint, and statements of the trainee and witnesses shall be forwarded to the legal officer.

**Section 10. Review by Legal Officer; Placing Charges.** (1) The legal officer shall review the request for charges and the supporting evidence and documents.

(2) The legal officer may make or cause further inquiry into the matter for additional information.

(3) The legal officer shall either:

(a) File such charges against the trainee as he believes are justified by the evidence; or

(b) Deny the request for charges if the evidence does not support any charges. If the legal officer declines to file charges, he shall provide the commissioner with a statement of his reasons for not filing charges.

(4) The charging document shall:

(a) Be in writing;

(b) Particularly describe the alleged misconduct so as to reasonably inform the trainee of the nature of the allegation;

(c) State the time, date and place the trainee shall make an initial appearance before the commissioner to answer the charges.

(d) Be signed by the legal officer; and

(e) Be served upon the trainee at least one (1) hour before his initial appearance before the commissioner. Have a copy served upon the trainee either in person or by mail

**Section 11. Initial Appearance Before the Commissioner.** (1) The initial appearance before the commissioner shall be held no more than three (3) training days after the charges have been served on the trainee. If the trainee after receiving proper notice, fails to appear, the commissioner may proceed in his absence and the trainee shall be notified in writing of any action taken.

(2) At the initial appearance before the commissioner:

(a) The legal officer shall:

1. Read the charges to the trainee;

2. Explain to the trainee:

a. The charges;

b. His right to a hearing in accordance with KRS Chapter 13B; and

c. His right to be represented by legal counsel.

(b) The legal officer shall explain to the trainee the possible answers to the charges: admit the charges are true, deny the charges are true but waive a hearing, or deny the charges are true and ask for a hearing.

(c) The commissioner shall advise the trainee of the penalty which shall be imposed if the trainee admits the charges or waives a

hearing.

(d) The trainee shall be requested to answer the charges.

(e) If the trainee chooses to waive his rights and admits the charges or denies the charges but waives a hearing:

1. He shall be permitted to make a statement of explanation; and

2. The commissioner shall impose a penalty.

(f) If the trainee denies the charges and requests a hearing, or refuses to answer the charges, the commissioner shall set a date for the hearing. A notice of administrative hearing as required by KRS 13B.050 shall be served on the trainee within forty-eight (48) hours of the initial appearance before the commissioner.

(3) The commissioner may remove the trainee from some or all training until the hearing if:

(a) He has reasonable grounds to believe the trainee would be dangerous or disruptive if not removed; or

(b) The trainee is charged with misconduct serious enough to authorize expulsion as a possible penalty.

**Section 12. Hearing.** The hearing shall be conducted in accordance with KRS Chapter 13B.

**Section 13. Appeal.** (1) A trainee may appeal an order entered by the commissioner which imposes a penalty adverse to the trainee by filing a written notice of appeal to the Secretary of the Justice Cabinet.

(a) The notice of appeal shall state the points on which the appeal is based and shall be on a form provided by the department. The form is made a part of 503 KAR 3:010 by reference.

(b) A copy of the order being appealed shall be attached to the notice of appeal.

(c) A copy of the notice of appeal shall be delivered to the commissioner of the department by certified mail.

(2) The appeal shall not be heard de novo but shall be determined upon the audio record and any written or physical evidence introduced at the hearing.

(3) The Secretary of the Justice Cabinet shall render an opinion within sixty (60) days of receipt of the notice of appeal. [Conduct. A trainee attending a training course conducted by the Department of Criminal Justice Training shall be subject to the following rules of conduct:

(1) Absences.

(a) For the purpose of this section, absence is defined as not being physically present in a class.

(b) Any absences of less than twenty (20) percent of the subject area, excused or unexcused, shall be made up by completion of a special assignment determined by the instructor of the missed subject area and approved by the supervisor of the section conducting the course. Any absence, excused or unexcused, of twenty (20) percent or more, requires the trainee to repeat the area of instruction. Any test that occurs during an unexcused absence cannot be made up.

(c) To be excused, absences shall be for legitimate reasons such as sickness, court appearances, and emergencies. Written notice shall be given when possible before the absence or on the first day upon returning in unexpected absences.

(2) Alcoholic beverages or other intoxicating substances.

(a) A trainee shall not possess, consume nor be under the influence of alcoholic beverages or controlled substances not therapeutically prescribed by a physician while on property utilized by the Department of Criminal Justice Training.

(b) If a trainee has taken a controlled substance as prescribed by a physician or has taken any other medication whether prescribed or not he or she shall not participate in any training activity if the trainee is under the influence thereof to the extent that the trainee may be impaired or may endanger himself or other persons or property. A trainee shall advise the in-service course supervisor of the use of controlled substances or medication whether or not it has been prescribed by a physician.

(3) Appearance.

(a) Personal appearance shall be such as to project an image which will reflect favorably upon the student officer as well as the Department of Criminal Justice Training and the student officer's employing agency.

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(b) Clothing, jewelry or other accessories which depict obscenities (either pictorially or written) or any symbol representing objects not considered in good taste (based on professional police standards, or which depict words considered abusive) cannot be worn while attending Department of Criminal Justice Training classes or while on Department of Criminal Justice Training or campus property.

(4) Breaks:

(a) Each class may be allowed a ten (10) minute break per hour of instruction when possible. The course instructor shall designate the specific time and/or place for breaks.

(b) Trainees, attending class in the Stratton Building, are prohibited from taking breaks except in the following designated areas:

1. Lower level of breezeway (outside, between main building and gym);

2. Stratton Cafeteria; and

3. Second floor vending area.

(5) Conduct unbecoming an officer trainee.

(a) A trainee shall not conduct himself in a manner unbecoming an officer trainee.

(b) For the purposes of this section conduct unbecoming an officer trainee shall consist of, but not be limited to:

1. Inefficient or wasteful use of materials, supplies and equipment issued by the Department of Criminal Justice Training for the use by trainees;

2. Disorderly or boisterous behavior which is or may become disruptive to a training session;

3. Careless, negligent, or inattentive conduct which creates or may create a risk of injury to others during a training session;

4. Malingering or sleeping during a training class;

5. Wearing clothing that is so dirty or tattered as to present a sloven appearance;

6. Wearing clothing in a manner that is sexually revealing or suggestive; or

7. Aiding or abetting another in any of the foregoing.

(c) Disruptive trainees may be removed from the class room at the option of the instructor.

(d) The use of tobacco, drink and food products is prohibited in all classrooms in which Department of Criminal Justice Training classes are being conducted. This policy will apply to meeting rooms in state parks, hotels and rooms of other agencies, if used in a classroom setting and for teaching a Department of Criminal Justice Training course of class, or when being used for Department of Criminal Justice Training sponsored seminar.

(e) As used in this section, classroom includes all indoor facilities and outdoor areas utilized by the Department of Criminal Justice Training for training purposes whether the facilities are regularly utilized by the department or periodically utilized such as state parks, hotels/motels, law enforcement agencies or colleges and universities.

(6) Dishonesty.

(a) A trainee shall not cheat or attempt to cheat on an examination, other evaluation or assigned project; alter or attempt to alter an examination score; deceive for profit or gain; or steal.

(b) A trainee shall not encourage, aid or abet any trainee in any of the foregoing proscribed conduct.

(7) Dormitory conduct.

(a) Backing into parking spaces is prohibited.

(b) Trainees shall observe "lights out" by 11 p.m. Sunday through Thursday except on nights prior to an academic test when the time will be extended to 12 midnight.

(c) Trainees living in the dormitory shall conduct themselves in an orderly manner. Any dangerous or disruptive behavior such as but not limited to rowdiness, loud noise, theft, immoral or obscene conduct shall not be committed.

(d) Each trainee will be responsible for cleaning his area. Each morning, prior to leaving for class, the trainee shall ensure his room is clean, free of trash, beds made and the room ready for inspection.

(e) Doors shall be locked whenever a room is unattended. While the room is unoccupied during training hours (8 a.m. – 5 p.m.), the window coverings shall be left open to their widest extension.

(f) The use of cooking appliances such as hot plates, electric skillets and ovens is prohibited.

(g) All dorm rooms and lockers are subject to inspection search for purposes of safety, sanitation and rule violations by the staff of the Department of Criminal Justice Training.

(h) The lobby of the dormitory is available to entertain visitors and guests and is not to be used as a group study area.

(i) A trainee residing at the dormitory shall:

1. Turn off all lights upon departure from the room;

2. Turn off air conditioner when leaving the room for a long period of time, including school hours and weekends while away; and

3. Turn off heating unit when leaving the room for a long period of time unless the temperature is near freezing then leave the heater on low.

(j) A trainee shall not have any person of the opposite sex in his or her dormitory room without written permission of the class coordinator or higher staff member. No visitation shall be permitted after 10:30 p.m.

(k) Pets, animals or birds of any kind shall not be kept in rooms of the dormitory facilities.

(8) Gifts. A trainee, individually or as a participant in group action, shall not give or contribute toward the giving of a gift of value to a staff member of Department of Criminal Justice Training while participating as a trainee in any course conducted by the Department of Criminal Justice Training.

(9) Insubordination.

(a) A trainee shall not be insubordinate.

(b) For the purpose of this section insubordination means:

1. A refusal to obey a lawful order from an instructor or other staff member of the Department of Criminal Justice Training authorized to convey the order;

2. Disrespectful conduct consisting of, but not limited to, use of vulgarity, rude remarks, obscene comments or gestures.

(10) Property loss or damage.

(a) A trainee shall not willfully or negligently damage, destroy, or fail to return property of the Department of Criminal Justice Training or university.

(b) Failure to comply with this administrative regulation shall result in a trainee having to replace or pay for the damage, destroyed or lost property upon notification.

(11) Tardiness.

(a) Class shall begin and end promptly as scheduled unless otherwise specified. All trainees are expected to be punctual for class and school functions.

(b) Those who are late during the first ten (10) minutes of a class without justification shall be considered tardy.

(c) Arrival after ten (10) minutes will be considered an absence.

(12) Weapons, explosives, etc.

(a) Weapons.

1. Deadly weapons as defined in KRS 500.080 other than an officer's regular service weapon or authorized off-duty weapon including ammunition therefore shall not be possessed on university, college or governmental property used by the Department of Criminal Justice Training except those specifically authorized by the Department of Criminal Justice Training. Weapons specifically designated by the Department of Criminal Justice Training for training purposes and which are not provided by the Department of Criminal Justice Training shall only be brought directly to the facilities of the department at specific times and removed all as may be deemed appropriate by the department. Such weapons may not be stored in trainee vehicles parked on property utilized by the Department of Criminal Justice Training.

2. Weapons specifically designated by the Department of Criminal Justice Training to be used for training purposes shall be stored in a vault to be provided by the department at all times when they are not being used directly in a training session and may be removed only for scheduled training, servicing, cleaning, or repair purposes. Servicing, cleaning, and repairs of weapons shall be effected (other than repairs which may require expertise of a qualified gunsmith) only at times, places and subject to such conditions and supervision as may be approved by the supervisor of the in-service training section. Such activity shall only be conducted in the presence of a certified firearms instructor.

(b) Devices other than firearms. Destructive devices (as defined in KRS 237.030), booby trap devices (as defined in KRS 237.030), "stun" guns, or fireworks (in all forms) shall not be possessed on university, college or governmental property used by the Department of Criminal Justice Training. Exceptions may occur for training purposes and then only as they may be provided by the department.

(c) Hazardous substances. Hazardous substances (as defined in KRS 224.877) shall not be possessed on university, college or governmental property used by the Department of Criminal Justice Training. Exceptions may occur for training purposes and then only as they may be provided by the department.

(d) Confiscation:

1. Any instructor, supervisor, assistant director or director who observes any violation of this section, shall immediately confiscate the offending item or substance.

2. These items shall then be stored in a safe and secure facility of the Department of Criminal Justice Training pending appropriate disposition.

Section 2. Summary Action. (1) Recognizing that conduct of a trainee may constitute an immediate danger or a immediate threat of danger to self or others, an instructor, section supervisor, training assistant director, director or the commissioner, having knowledge of such conduct, may summarily discipline the trainee by reprimand, suspension from the particular training activity or by other appropriate action.

(2) Following such disciplinary action, the rules of procedure set forth in Section 4 of this administrative regulation shall be applicable.

Section 3. Penalties. (1) For the following violation:

(a) Alcoholic beverages or other intoxicating substances, i.e., being on property utilized by the Department of Criminal Justice Training while under the influence of alcoholic beverages or controlled substances not prescribed by a doctor, or if prescribed by a doctor participating in a training exercise while under the influence thereof to the extent that it endangers the trainee or other persons or property;

(b) Conduct unbecoming an officer trainee, i.e., willful, careless, negligent or inattentive conduct which causes injury or creates a grave risk of injury to another person or property;

(c) Dishonesty;

(d) Property loss or damage, i.e., willfully or negligently damaging, destroying or failing to return property of the Department of Criminal Justice Training or university;

(e) A second violation of the rules described in Section 1(1)(a) of this administrative regulation. The following penalty may be imposed:

1. Expulsion from training with or without prejudice. (Such expulsion shall be deemed a course failure);

2. Loss of privileges (meals, housing or both);

3. Suspension from training. (Such suspension shall be deemed a failure for that portion of training);

4. Written reprimand (with a copy filed with trainee's employing agency);

5. Probation.

(2) For the following violations:

(a) Alcoholic beverages or other intoxicating substances, i.e., the use or possession thereof not prescribed by a doctor on or about property utilized by the Department of Criminal Justice Training; possession of alcoholic beverages and/or intoxicating substances in a dormitory room shall result in loss of housing privilege;

(b) Conduct unbecoming an officer trainee except that which causes injury or damage to others or property;

(c) Insubordination;

(d) Weapons and explosives;

(e) Two (2) violations of other rules.

The following penalty may be imposed:

1. Loss of privileges (meals, housing or both);

2. Suspension from training not to exceed five (5) days (such suspension shall be deemed a failure for that portion of training);

3. Written reprimand (with a copy filed with trainee's employing agency);

4. Probation.

(3) For all other violations not specifically noted in subsections (1) and (2) of this section the following penalty may be imposed:

(a) Written reprimand;

(b) Written warning;

(c) Probation.

Section 4. Who May Impose Penalties. (1) Instructor. An instructor may only impose a penalty consisting of a written warning.

(2) Supervisor. A supervisor may only impose a penalty consisting

of a written warning, a written reprimand or a probation.

(3) Training director. The director of the training division may only impose a penalty consisting of written warning, written reprimand, suspension from training, a loss of privileges or probation.

(4) Commissioner. The commissioner may impose a penalty consisting of any of the previously identified penalties, expulsion from training or probation.

Section 5. Complaint Process. (1) Complaint. Any employee of the Department of Criminal Justice Training, guest instructor, guest or any course trainee having reasonable grounds for believing that a trainee has violated any of the rules of conduct identified herein or any violation of the law may file a complaint with the supervisor who is conducting the particular course at the time or the supervisor of the training section handling that training program. This complaint should be, but is not required to be, in writing setting forth the facts upon which the complaint is based. If an instructor or the supervisor observes a violation of a rule for which only a penalty of a written warning or reprimand is provided a complaint need not be filed.

(2) Review of complaint.

(a) Upon receiving a complaint of a violation of these rules of conduct or of a violation of law the supervisor of the training section of the particular training program shall inquire into the matter and take such statements as may be advisable.

(b) After an inquiry into and review of the complaint the supervisor may dispose of the complaint by the issuance of a written warning or reprimand or file charges.

(c) If the supervisor of the particular training program deems it advisable to file charges, the file together with the written request specifying the proscribed conduct shall be forwarded to the legal officer.

(3) Charges.

(a) Upon receipt of a request for charges, the legal officer shall review the request and the file to determine the sufficiency of the requested charge.

(b) The legal officer may make or cause further inquiry into the matter for additional information.

(c) The legal officer shall file such charges against a trainee as the legal officer believes is justified from the file and further inquiry or may deny the request for charges if the facts do not support any charges. If the legal officer declines to proceed with charges he shall notify the commissioner with a statement of reasons and the commissioner shall review the decision.

(4) Form.

(a) Charges shall be in writing.

(b) The proscribed conduct shall be particularly described so as to reasonably inform the trainee of the nature of the allegation.

(c) The charges form shall state the time, date and place the hearing on the charges shall be heard.

(d) The legal officer shall sign the charges form and have a copy served upon the trainee either in person or by mail.

Section 6. Summary Disposition. (1) At the appearance of the trainee the charges shall be read to the trainee and explained if need be.

(2) The trainee shall be advised of a proposed penalty to be assessed in the event the charges are admitted or in the event the trainee denies the charge but waives a hearing.

(3) The trainee shall be requested to enter a plea.

(4) If the trainee admits the charge he shall be permitted to make a statement of explanation.

(5) If the trainee admits the charge or denies the charge but waives a hearing, penalty shall be assessed and an order entered.

(6) If the trainee denies the charge and requests a hearing a date and place shall be forthwith determined and the trainee notified either in person or by mail.

Section 7. Hearing. (1) The hearing shall be open.

(2) A trainee charged with a violation shall have the right to be present at a hearing, to testify, to present evidence in his own behalf, present witnesses, and to question those testifying against him.

(3) Formal rules of evidence and procedures shall not be applicable.

(4) The hearing shall be recorded by audio means but need not be

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transcribed.

(5) Affidavits may be received provided a copy is served on the other side not less than five (5) days prior to the hearing.

(6) The legal officer shall prepare a finding of fact, conclusion of law and order at the conclusion of the hearing pursuant to direction of the staff member conducting the hearing.

**Section 8. Review.** (1) A penalty imposed by an instructor, supervisor or director shall be automatically reviewed by the next highest level in the chain of command.

(2) The review shall be made on the record only, i.e., on the audio recording of evidence, documents and statements introduced at the initial hearing.

(3) The review shall be limited to a determination of whether there are reasonable grounds for believing that the charge or charges have been sustained by the evidence and whether the penalty imposed is commensurate with the seriousness of the evidence.

**Section 9. Appeal.** (1) A trainee may appeal an order entered by the commissioner which imposes a penalty adverse to the trainee by filing a written notice of appeal to the Secretary of the Justice Cabinet.

(a) The notice of appeal shall state the point (reasons) on which the appeal is based and shall be on a form provided by the Department of Criminal Justice Training. The form is made a part hereof by reference.

(b) A copy of the order being appealed shall be attached to the notice of appeal.

(c) A copy of the notice of appeal shall be delivered to the Commissioner of the Department of Criminal Justice Training by certified mail.

(2) The appeal shall not be heard de novo but shall be determined upon the audio record and any written or physical evidence introduced at the initial hearing.

(3) The Secretary of the Justice Cabinet shall render an opinion within sixty (60) days of receipt of the notice of appeal.

### COMMONWEALTH OF KENTUCKY JUSTICE CABINET

In the matter of: (Name)

#### NOTICE OF APPEAL

Comes \_\_\_\_\_ (name) who appeals from an Order of the Commissioner of the Department of Criminal Justice Training dated \_\_\_\_\_, 19\_\_\_\_, a copy of which is annexed hereto and made a part hereof, and requests that said Order be reversed and held for naught.

The basis and reasons for this appeal are as follows:

This the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_.

NAME AND ADDRESS:

Served on the Department of Criminal Justice Training by mailing a true copy hereof to the commissioner thereof by certified mail this the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_.

NAME: ]

JOHN W. BIZZACK, Ph.D., Commissioner  
STEPHANIE C. BINGHAM, General Counsel

APPROVED BY AGENCY: May 21, 1999

FILED WITH LRC: May 21, 1999 at 4 p.m.

**PUBLIC HEARING:** A public hearing on this administrative regulation shall be held on July 21, 1999, at 9 a.m., in Room 313, Funderburk Building, Richmond, Kentucky 40475-3137. Individuals interested in being heard at this hearing shall notify this agency in writing by July 14, 1999, 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:** Stephanie C. Bingham, General Counsel, Department of Criminal Justice Training, Funderburk Building, Richmond, Kentucky 40475-3137; Telephone Number (606) 622-5897, Facsimile Number (606) 622-2740.

#### REGULATORY IMPACT ANALYSIS

Contact Person: Stephanie C. Bingham

(1) Type and number of entities affected: All law enforcement or other officers participating in department training (other than basic or communications training) and their agencies.

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

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: None

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: None

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

1. First year following implementation: None

2. Second and subsequent years: None

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: None

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: 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 is the funds budgeted for this 1998 - 1999 biennium.

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

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

(b) Kentucky: None

(7) Assessment of alternative methods; reasons why alternatives were rejected: None

(8) Assessment of expected benefits:

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

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

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

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

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

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

(10) Any additional information or comments: None

(11) **TIERING:** Was tiering applied: No. Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it. 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.

TRANSPORTATION CABINET  
Department of Vehicle Regulation  
Division of Motor Carriers  
Office of General Counsel  
(Amendment)

601 KAR 1:040. Application for operating authority and registration of motor carriers ~~[authorized to operate by the Interstate Commerce Commission].~~

RELATES TO: KRS Chapter 281, 281.615, 281.617, 281.618, 281.619, 281.620, 281.625, 281.627, 281.637, 281.650, 281.660, 49 CFR Part 367 [1023]

STATUTORY AUTHORITY: KRS 281.600, 281.620, 281.752, 49 CFR Part 367 [1023], 49 USC 11501

NECESSITY, FUNCTION, AND CONFORMITY: This administrative regulation describes the procedure to follow in applying for intrastate operating authority in the Commonwealth and the registration of interstate motor carriers operating in Kentucky pursuant to authority granted by the United States Department of Transportation [Interstate Commerce Commission].

Section 1. Kentucky Intrastate Passenger or Household Goods Authority. (1)(a) An application ~~[All applications]~~ for operating authority to engage in Kentucky intrastate commerce relating to the transportation of persons except for charter bus transportation or household goods shall be made on the following appropriate forms:

1. Transportation Cabinet form TC 93-10, Application for Operating Authority, Household Goods, effective April 1997;

2. Transportation Cabinet form TC 93-11, Application for Operating Authority, Disabled Persons Carrier, effective October 1996;

3. Transportation Cabinet form TC 93-12, Application for Operating Authority, Bus and Airport Shuttle, effective November 1998;

4. Transportation Cabinet form TC 93-13, Application for Operating Authority, City Limousine and Taxi, effective October 1996; or

5. Transportation Cabinet form TC 93-15, Application for Operating Authority, County Limousine and Taxi, effective April 1997. ~~[form, "Application for Operating Authority" form TC 93-13 effective October, 1994. This form is incorporated by reference in Section 8 of this administrative regulation.]~~

(b) The application shall be accompanied by a filing fee of twenty-five (25) dollars.

(c) ~~[All applications for operating authority to engage in Kentucky intrastate commerce shall be made on the forms prescribed and furnished by the department and shall be accompanied by a filing fee of twenty-five (25) dollars.]~~ All applications and exhibits shall be filed [in duplicate] with answers typewritten or printed legibly in ink. Each question shall be fully answered and all instructions with the application shall be read and fully complied with.

(2)(a) ~~If~~ When the applicant is a corporation, a copy of the corporation's certificate of good standing from the Secretary of State in the jurisdiction in which it was incorporated shall be submitted with the application.

(b) This certification shall not be more than thirty (30) days old at the time the application is submitted to the Transportation Cabinet [department].

(c) If the applicant is a foreign corporation, a Kentucky process agent shall be listed.

(3) The application shall be accompanied by the applicant's financial statement prepared in accordance with 601 KAR 2:010.

(4)(a) An application ~~[All applications]~~ shall be sworn to by the applicant or a responsible official acting for the applicant.

(b) A hearing shall not be called or authority issued upon an incomplete application.

Section 2. Temporary Authority Applications. (1)(a) An application ~~[Applications]~~ for temporary authority shall be made to the Transportation Cabinet [department] by petition ~~[filed in duplicate]~~.

(b) The petition shall set forth the facts relied on by the applicant as showing an immediate and urgent need for the authority sought.

(c) All existing carriers having authority to perform the proposed service between any of the points sought in the petition shall be fully identified and the authority of each as affected by the application shall

be stated.

(d)1. The applicant shall have the burden of proof in showing that any existing carriers with authority are not capable of meeting the need for service.

2. In lieu of meeting this burden, the applicant may submit a waiver from each carrier authorized to serve the area sought or any part thereof by filing a letter from each ~~[of the]~~ carrier waiving any objection to the temporary grant of authority.

(2) ~~[If the application is for authority as a contract bus carrier.]~~ There shall also be filed with the petition verified statements ~~[from a supporting passenger]~~. The supporting statement shall contain at least the following information:

(a) Name and address of the motor carrier who has filed the application for temporary authority;

(b) Statement of character and reputation of the applicant and a brief history of the applicant's work history, including any experience in providing transportation services;

(c) Name, address and interest of each person filing a supporting affidavit;

(d) A statement of how the transportation service, if any, is now obtained and how it was obtained in the past;

(e) How soon the transportation service is needed and the reasons for the time limit;

(f) How long the need for the transportation service likely will continue and if the person making the supporting statement would support a permanent service application;

(g) Statement of the consequences if this transportation service is not made available and the circumstances which create an immediate and urgent need for the requested service; and

(h) Whether efforts have been made to obtain the service from existing motor carriers and the dates and results of these efforts; name and address of all existing carriers who have either failed or refused to provide the service; and the reasons given for the failure or refusal.

(3) The department may issue temporary authority without following any of the requirements listed above if one (1) of the following conditions exists:

(a) There are no existing carriers with authority within the scope and area of the application;

(b) All existing carriers with authority within the scope and area of the application issue waivers for the issuance of temporary authority;

(c) There are unusual and emergency conditions; or

(d) The application is for temporary approval under KRS 281.632(2).

(4) If no application for corresponding permanent authority is made, applications for temporary authority shall be accompanied by a filing fee of twenty-five (25) dollars and the financial statement of the applicant prepared in accordance with 601 KAR 2:010.

Section 3. Application for Approval of Transfer of Certificate or Permit. (1)(a) An application ~~[All applications]~~ for approval to transfer a certificate or permit issued by the Transportation Cabinet ~~[Department of Vehicle Regulation]~~ authorizing Kentucky intrastate commerce shall be accompanied by a filing fee of twenty-five (25) dollars.

(b) The application shall be made on "Application for Approval of Transfer of Certificate of Permit" form TC 93-17, effective April 1997 ~~[October, 1994]~~. ~~[This form is incorporated by reference in Section 8 of this administrative regulation.]~~

(c) All applications and exhibits shall be filed ~~[in duplicate]~~ with answers typewritten or printed legibly in ink. Each question shall be fully answered and all instructions with the application shall be read and fully complied with.

(2)(a) When the applicant is a corporation, a copy of the corporation's certificate of good standing from the Secretary of State in the jurisdiction in which it was incorporated shall be submitted with the application. This certification shall not be more than thirty (30) days old at the time the application is submitted to the department.

(b) If the applicant is a foreign corporation, a Kentucky process agent shall be listed.

(3)(a) The application shall be accompanied by the transferee's financial statement prepared in accordance with 601 KAR 2:010.

(b) An application ~~[All applications]~~ shall be sworn to by the applicant or a responsible official acting for the applicant.

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(c) A hearing shall not be called or authority issued upon an incomplete application.

(4) A copy of the executed transfer agreement and a copy of the certificate or permit sought to be transferred shall accompany the application.

(5) If the application is for the transfer of contract carrier authority, a copy of the contract to be transferred and a duly executed assignment by the original shipper shall be attached to the application.

Section 4. ~~[Interstate Operating Authority—Exempt, For-hire. (1)(a) All for-hire motor carriers transporting commodities that have been exempted from the authority requirements of the Interstate Commerce Commission or are performing transportation functions that are exempt from the authority of the Interstate Commerce Commission shall before engaging in the interstate transportation of persons or property in Kentucky secure from the department a certificate authorizing this interstate exempt transportation.~~

~~(b) All applications for this certificate shall be made on the form, TC 95-12, as revised January, 1995, "Uniform Application for Registration by ICG Motor Carriers Exempt from ICG Regulations". This form is incorporated by reference in Section 8 of this administrative regulation.~~

~~(c) The application shall be accompanied by:~~

~~1. A twenty-five (25) dollar filing fee; and~~

~~2. A statement of reasons the transportation activities are exempted from federal regulation.~~

~~(2)(a) All applications and exhibits shall be typewritten or printed legibly in ink.~~

~~(b) Each question shall be fully answered and all instructions with the application shall be read and fully complied with.~~

~~(c) All applications shall be sworn to by the applicant or a responsible official acting for the applicant.~~

~~(3) If the motor carrier is engaged solely in transportation activities exempted by federal law from regulation, the department shall issue any qualified applicant a Kentucky interstate irregular route common carrier certificate restricted to the federally exempted activities as may be appropriate.~~

~~(4)(a) When the motor carrier has complied with the provisions of this administrative regulation, the Department of Vehicle Regulation shall issue the carrier an insurance receipt.~~

~~(b) The motor carrier shall keep a copy of the insurance receipt in each vehicle operating pursuant to this authority.~~

Section 5. ~~[Interstate Operating Authority - For-hire Motor Carriers [Authorized by the Interstate Commerce Commission]. (1) 49 CFR Part 367 revised October 1, 1998, [1023 as effective May 18, 1993] shall govern the registration of the for-hire motor carriers which meet the following criteria:~~

~~(a) Those whose principal place of business is Kentucky; and~~

~~(b) Those which are operating in interstate commerce [pursuant to authority granted by the Interstate Commerce Commission].~~

~~(2) The "Procedure Manual for the Single State Registration System" prepared by the National Conference of State Transportation Specialists and effective July 12, 1993 shall govern the procedures of the Department of Vehicle Regulation in the registration of for-hire motor carriers operating in interstate commerce [pursuant to authority granted by the Interstate Commerce Commission].~~

~~(3) A motor carrier which maintains its principal place of business in Kentucky shall apply to the Department of Vehicle Regulation for registration pursuant to 49 CFR Part 367 [1023].~~

~~(4) The Kentucky fee for the issuance of the registration receipt required by the "Procedure Manual for the Single State Registration System" shall be ten (10) dollars per motor vehicle.~~

~~[(5) The "Procedure Manual for the Single State Registration System" is incorporated by reference in Section 8 of this administrative regulation.]~~

Section 5. ~~[6:] Contract Bus Carrier Permit; Intrastate. (1) [All applications for operating authority to engage in intrastate commerce as a contract carrier shall be made on the form incorporated by reference in Section 1 of this administrative regulation and be in conformity with this administrative regulation and 601 KAR 1:045.~~

~~(2) Each application for authority as an intrastate contract bus~~

~~carrier shall include:]~~

~~(a) A filing fee of twenty-five (25) dollars; and~~

~~(b) two (2) copies of the contract under which the applicant desires to operate.~~

~~(2) [(3)] The contracts shall be executed by the applicant/buyer and seller or applicant and passenger, and shall set out:~~

~~(a) The rates applicable;~~

~~(b) The extent and scope of the activity covered by the contract; and~~

~~(c) The minimum number of persons to be transported.~~

~~(3) [(4)] Reference to a published common carrier tariff shall not be acceptable in defining rates or compensation.~~

~~(4) [(5)] At least one (1) of the contract copies shall have original signatures.~~

~~(5) [(6)] The extent of the authority of the contract carrier permit shall be:~~

~~(a) Limited to the scope of the contract on file with the department; and~~

~~(b) Made a part of the permit.~~

~~(6) [(7)(a) If [When] the motor carrier has complied with the provisions of this administrative regulation, the Department of Vehicle Regulation shall issue the carrier an insurance receipt.~~

~~(b) The motor carrier shall keep a copy of the insurance receipt in each vehicle operating pursuant to this authority.~~

~~[Section 7. Kentucky Intrastate Authority by a Single State Operator who Intends to Register with the ICG. All applications for a certificate of public convenience and necessity authorizing motor common carrier operations in the transportation of property in intrastate commerce, by an applicant who is a single state operator but also desires to engage in transportation in interstate and foreign commerce shall file a copy of its final Interstate Commerce Commission authority with the application for intrastate authority.]~~

Section 6. Charter Bus Applications. (1) An application for operating authority as a charter bus operator as defined in KRS 281.637 shall be made on form TC 93-20 "Application for Charter Bus Operating Authority".

(2) Each application shall include a filing fee of twenty-five (25) dollars.

(3) The applicant shall certify knowledge of and compliance with 601 KAR 1:005, Sections 2, 3(b) and 4 and with the provisions of KRS Chapter 281A relating to commercial drivers licenses.

(4) The applicant shall be required to file evidence of insurance as required in KRS 281.655(4).

(5)(a) If an applicant for a charter bus certificate has complied with the provisions of this administrative regulation, the Department of Vehicle Regulation shall issue the carrier a registration receipt authorizing charter bus operations between all points and places in Kentucky.

(b) The carrier shall keep a copy of this receipt in each vehicle operating pursuant to this authority.

Section 7. ~~[8:] Incorporation by reference. (1) The following material is incorporated by reference:~~

~~(a) Transportation Cabinet form TC 93-10, Application for Operating Authority, Household Goods, effective April 1997;~~

~~(b) Transportation Cabinet form TC 93-11, Application for Operating Authority, Disabled Persons Carrier, effective October 1996;~~

~~(c) Transportation Cabinet form TC 93-12, Application for Operating Authority, Bus and Airport Shuttle, effective November 1998;~~

~~(d) Transportation Cabinet form TC 93-13, Application for Operating Authority, City Limousine and Taxi, effective October 1996;~~

~~(e) Transportation Cabinet form TC 93-15, Application for Operating Authority, County Limousine and Taxi, effective April 1997;~~

~~(f) "Application for Charter Bus Operating Authority", form TC 93-20 November 1998 edition;~~

~~(g) "Application for Operating Authority", form TC 93-13, October 1994 edition;~~

~~(b) "Application for Approval of Transfer of Certificate or Permit", form TC 93-17, October 1994 edition;~~

~~(c) "Uniform Application for Registration by ICG Motor Carriers Exempt from ICG Regulations", TC 95-12, January 1995 edition; and~~

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(d)) "Procedure Manual for Single State Registration System", July 12, 1993 edition; and

(h) 49 CFR Part 367 revised October 1, 1998, prescribes standards for registration with states.

(2) Copies of the material incorporated in subsection (1)(a) through (g) [and (b)] of this section may be inspected, copied or obtained at the Office of General Counsel, [Division of] Hearings Section, State Office Building, 501 High Street, Frankfort, Kentucky 40622. The hours of operation are 8 a.m. to 4:30 p.m. on weekdays. The telephone number is (502) 564-2548.

(3) Copies of the material incorporated in subsection (1)(g) [(e)] of this section may be inspected, copied or obtained at the Division of Motor Carriers, Third Floor of the State Office Building, 501 East High Street, Frankfort, Kentucky 40622. The mailing address is Division of Motor Carriers, Qualification/Permit Branch, P.O. Box 2007, Frankfort, Kentucky 40602. The hours of operation are 8 a.m. to 4:30 p.m. on weekdays. The telephone number is (502) 564-4540.

ED LOGSDON, Commissioner

JAMES C. CODELL, III, Secretary

E. JEFFREY MOSLEY, Executive Director

APPROVED BY AGENCY: May 21, 1999

FILED WITH LRC: May 25, 1999 at 1 p.m.

**PUBLIC HEARING:** A public comment hearing on this administrative regulation will be held on July 21, 1999 at 9:30 a.m. local prevailing time at 501 High Street, 4th Floor Hearing Room of the State Office Building, Frankfort, Kentucky 40622. Persons wishing to attend this meeting must notify this agency in writing by July 14, 1999. If no notification of intent to attend the hearing is received by this date, the hearing may be cancelled. This hearing is open to the public. Any person who attends will be given the opportunity to comment on the administrative regulation. A transcript of the public comment hearing will not be made unless a written request for a transcript is made and then only at the requestor's expense. If you have a disability for which the Transportation Cabinet needs to provide accommodations, please notify us of your requirements by July 14, 1999. This request does not have to be in writing. If you do not wish to attend the public hearing, you may submit written comments on the administrative regulation. If the hearing is held, written comments will be accepted until the close of the hearing. If the hearing is cancelled, written comments will be accepted until close of business on July 21, 1999. Send written notification of intent to attend the public comment hearing or written comments on the administrative regulation to: Charles Harman, Staff Assistant, Transportation Cabinet, 501 High Street, Frankfort, Kentucky 40622, (502) 564-7650, Fax: (502) 564-5238.

### REGULATORY IMPACT ANALYSIS

Contact person: Charles Harman

(1) Type and number of entities affected: We have 65 current charter bus operators in Kentucky. There are 22 pending applications for this authority.

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

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: This administrative regulation will be implemented in all 120 counties across Kentucky. It is not anticipated to affect 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: This administrative regulation is not anticipated to have any affect on the cost of doing business in Kentucky.

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

1. First year following implementation: This regulation will result in fewer reporting and paperwork requirements for charter bus carriers operating in Kentucky. Competition will increase as a result of more charter bus operators in Kentucky.

2. Second and subsequent years: There is no change from the first year.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: This regulation will eliminate the hearing process from the charter bus application procedures in the Transportation Cabinet.

2. Continuing costs or savings: Same as above.

3. Additional factors increasing or decreasing costs: Not applicable.

(b) Reporting and paperwork requirements: Not applicable.

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

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: None

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

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

(b) Kentucky: None

(7) Assessment of alternative methods; reasons why alternatives were rejected: The Transportation Cabinet is implementing Section 4610 of the Transportation Equity Act of 2000.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: Not applicable.

(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: Not applicable.

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication:

(a) Necessity of proposed regulation if in conflict: None

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: None

(10) Any additional information or comments:

(11) TIERING: Is tiering applied? No. All affected entities will receive equal treatment as result of this administrative regulation.

### FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. Transportation Equity Act of 2000 (TEA 21) Section 4016 - Authority Over Charter Bus Transportation.

2. State compliance standards. Kentucky will no longer require complex applications, public hearings for authority and economic regulations governing charter buses.

3. Minimum or uniform standards contained in the federal mandate. No state may enforce economic regulations on the charter bus industry.

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.

### EDUCATION, ARTS, AND HUMANITIES CABINET

Kentucky Board of Education

Department of Education

(Amendment)

#### 704 KAR 3:285. Programs for the gifted and talented.

RELATES TO: KRS 157.196, 157.200, 157.224, 157.230

STATUTORY AUTHORITY: KRS 156.070, 157.220, 157.224

NECESSITY, FUNCTION, AND CONFORMITY: KRS 157.200

includes within the definition of "exceptional children" a category of "exceptional students" who are identified as possessing demonstrated or potential ability to perform at an exceptionally high level in general intellectual aptitude, specific academic aptitude, creative or divergent thinking, psychosocial [psychological] or leadership skills, or in the visual or performing arts; KRS 157.224 commits the state to a com-

prehensive educational program for its exceptional school aged children, and KRS 157.230 requires all school districts to operate programs for resident exceptional children, primary - grade twelve (12). This administrative regulation relates to funding, the provision of appropriate services for identified gifted students, [and] the operation of gifted education programs and a gifted and talented student services plan in compliance with KRS 157.196.

Section 1. Definitions. ~~[The following definitions shall apply to this administrative regulation:]~~

(1) "Acceleration options" means various forms of advancing through material or grade levels prior to the prescribed time based on early mastery, such as pretesting in content and being excused to go onto higher level activities, curriculum compacting or linear acceleration, simultaneous or dual enrollment in courses at different grade levels including postsecondary, early exit from school, and grade-skipping.

(2) "Advanced placement and honors courses" means courses emphasizing college-level content based on college board curricula and tests (advanced placement), or the provision of more challenging material through higher levels of content, process and product (honors courses).

(3) "Cluster group" means a group usually consisting of four (4) or more [grouping of approximately four (4) to six (6)] identified students placed in a heterogeneous classroom or other instructional setting with a teacher trained in the appropriate instruction of special needs students, specifically gifted and talented, for the purpose of receiving a differentiated educational experience matched to the student's needs, interests, and ability.

(4) "Collaborative teaching" means a gifted education teacher provides differentiated direct instruction in a regular classroom to a cluster group of identified gifted students in conjunction with the regular classroom teacher.

(5) "Consultation services" means the provision of instructional information and materials by the gifted teacher to the regular classroom teacher so that he may provide appropriate and adequate services to the gifted student while in the regular classroom setting.

(6) "Consortium" means a collaboration of schools or districts that pool resources to provide appropriate services for gifted and talented students.

(7) "Counseling services" means effectively-based counseling assistance planned in coordination with the gifted teacher and provided by a counselor familiar with the characteristics and socioemotional needs of gifted and talented students.

(8) "Creative or divergent thinking ability" means possessing either potential or demonstrated ability to perform at an exceptionally high level in creative thinking and divergent approaches to conventional tasks as evidenced by innovative or creative reasoning, advanced insight and imagination, and solving problems in unique ways.

(9) "Diagnosis" means the evaluation and determination of the appropriate type and level of service options which ~~[service options]~~ would meet a given [be the most appropriate intervention given an] individual child's interests, needs, and abilities.

(10) "Differentiation" means a method through which educators shall [may] establish a specific, well-thought-out match between learner characteristics in terms of abilities, interests, and needs, and curriculum opportunities in terms of enrichment and acceleration options which maximize learning experiences.

(11) "Differentiated service experiences" means educational experiences which extend, replace, or supplement learning beyond the standard curriculum.

(12) "Disadvantaged" means operating under conditions detrimental to normal cognitive or affective growth due to socioeconomic limitations, cultural factors, geographic isolation, or various combinations of these factors to a degree that requires special considerations.

(13) "Distance learning" means learning opportunities offered through the use of computer technology and satellite transmission or optical fiber transmission.

(14) "Extracurricular enrichment opportunities" means differentiated, academically-based activities that supplement classroom instruction and are often after school and competitive in nature, such as academic teams.

(15) "Formal identification" means a process by which a student in

grades four (4) through twelve (12) is identified and diagnosed as having gifted characteristics and behaviors using a balanced combination of criteria specific to a category of giftedness - intellectual aptitude, specific academic aptitude, creativity, leadership, or visual and performing arts, [informal measures and formal standardized or normed instruments;] and by which a student may be determined eligible for various levels of services in each category in which the student meets the criteria.

(16) "General intellectual ability" means possessing either the potential or demonstrated ability to perform at an exceptionally high level in general intellectual ability and possessing a consistently outstanding mental capacity as compared to children of one's age, experience, or environment. General intellectual ability is usually reflected in extraordinary performance in a variety of cognitive areas, such as abstract reasoning, logical reasoning, social awareness, memory, nonverbal ability, [spatial relations;] and the analysis, synthesis, and evaluation of information.

(17) "Gifted and talented identification and placement committee" means a school or district committee made up of the gifted education coordinator or a gifted education teacher and representatives from classroom teachers, administrators, counselors, special education teachers and any other appropriate personnel who follow district policies and procedures to formally identify and determine level and type of service options.

(18) "Gifted and talented student services plan" means an educational plan that matches a formally identified gifted student's interests, needs, and abilities to differentiated service options and serves as the communication vehicle between the parents and school personnel.

(19) "High potential learners" means those students who typically represent the top quartile (twenty-five (25) percent) [one-third (1/3)] of the entire student population in terms of the degree of demonstrated gifted characteristics and behaviors [achievement] and [frequently] require differentiated service experiences to further develop their interests and abilities. [special enrichment opportunities to remain educationally challenged. In terms of aptitude, students identified as gifted and talented are found in the top five (5) percent of this group.]

(20) "Independent study" means a self-directed course or study of a selected topic under the supervision of a teacher or the auspices of a university.

(21) "Informal selection [identification]" means a process by which a student in the primary program is documented [identified] as having the [gifted] characteristics and behaviors of a high potential learner in one (1) or more categories using a series of informal measures for the purpose of determining eligibility for the talent pool.

(22) "Instructional grouping" means the temporary grouping of students for the purposes of addressing specific continuous progress skill development, socioemotional needs, and interests.

(23) "Magnet school" means a school which is organized around an area of interests, draws students from an entire community, and has no specific entrance standards except interest in the focus of the school (e.g., a magnet school for the arts or a magnet school for science and mathematics).

(24) "Mentorship" means specialized studies, such as internships, with an adult mentor in the community and under the direction of an educator knowledgeable in gifted education.

(25) "Primary review committee" means primary teachers, counselors, administrators, gifted education personnel, and any other appropriate personnel familiar with the child's potential or demonstrated abilities.

(26) "Psychosocial or leadership ability" means possessing either potential or demonstrated ability to perform at an exceptionally high level in social skills and interpersonal qualities such as poise, effective oral and written expression, managerial ability, and the ability, or vision, to set goals and organize others to successfully reach those goals.

(27) "Resource services" means part-time grouping of students with gifted characteristics based on the interests, needs and abilities of the students. This type of service delivery option is designed for accelerated content, special interest groups, process skills development or various combinations of all, and may be provided in ~~[the general classroom or in]~~ a pull-out classroom or other appropriate instructional setting.

(28) "Seminars" means discussion-based sessions on specific topics focusing on advanced content and higher level process skills.

(29) "Special schools" means specialized schools designed to serve gifted students in grades four (4) through twelve (12) in specific academic areas (such as magnet schools in science and mathematics) or to develop specific areas of giftedness such as visual and performing arts.

(30) "Specific academic aptitude" means possessing either potential or demonstrated ability to perform at an exceptionally high level in specific academic areas significantly beyond the age, experience or environment of one's chronological peers. While students with specific academic aptitude are typically of at least above average intellectual ability, they are often extremely capable of high performance in one (1), or a very few related, academic areas.

(31) "Talent pool" means a group of primary students informally selected [identified] as having [gifted] characteristics and behaviors of a high potential learner and further diagnosed using a series of informal and formal measures to determine differentiated service delivery needs during their stay in the primary program.

(32) "Travel study options" means academically-based United States and overseas travel which may result in high school or university course credit.

(33) "Underachieving" means the development of a significant gap between a student's potential ability and demonstrated achievement to such a degree that there is an overall diminished ability to achieve at the expected level of ability.

(34) "Visual or performing arts ability" means possessing either potential or demonstrated ability to perform at an exceptionally high level in the visual or performing arts and demonstrating the potential for outstanding aesthetic production, accomplishment, or creativity in visual [areas such as] art, dance, music, or drama; speech, and in activities requiring exceptional gross or fine motor skills.

Section 2. Policies and Procedures. A [Each] local school district shall have in operation and available for public inspection local board approved policies and procedures which address each requirement in this administrative regulation and are consistent with KRS 157.200, 157.224, 157.230 and 703 KAR 4:040.

Section 3. Identification and Diagnosis of Gifted Characteristics, Behaviors, and Talent and Determination of Eligibility for Services. (1) A [Each] district shall adopt policies and procedures which shall provide for identification and diagnosis of strengths, gifted behaviors and talents through:

(a) Informal selection [identification] and diagnosis in the primary program;

(b) Formal identification and continuous diagnosis of students [on a three (3) year cycle] in grades four (4) through twelve (12); and

(c) Provision of multiple service delivery options in primary through grade twelve (12).

(2) A [Each] local school district shall establish a procedure that identifies students displaying gifted and talented behaviors and characteristics as defined in KRS 157.200 and Section 1 of this administrative regulation and allows for determination of eligibility for services based on the student's individual needs, interests and abilities. This procedure shall include a combination of informal measures, formal measures and objective-based eligibility criteria. Determination of appropriateness of level and type of services provided to a student shall be subject to continuous assessment. [and shall be performed on a three (3) year basis.]

(3) A [Each] local school district shall provide a system for diagnostic screening and identification of strengths, gifted behaviors and talents which provides equal access for [which gives special consideration to] racial and ethnic minority children, disadvantaged children, and children with disabilities.

(4) District identification and diagnosis procedures for appropriate services shall be based upon a balanced multiple criteria approach, continuous and multiple long-term assessment, and early identification and diagnosis of strengths, gifted behaviors and talents.

(5) A [Each] local school district shall implement a procedure to obtain parental or guardian permission prior to the administration of any individual tests, given as a follow-up to a test routinely administered to all students, used in formal identification and prior to official

identification and placement. [formal identification and diagnosis of strengths, gifted behaviors and talents, and to notify parents of eligible students of provision of appropriate services.]

(6) Beginning with the 2001-2002 school year, a local school district shall implement a procedure to obtain information related to the interests, needs, and abilities of an identified student from his parent or guardian for use in determining appropriate services. A parent or guardian of an identified student shall be notified annually of services included in his child's gifted and talented student services plan and specific procedures to follow in requesting changes in services. [Informal assessment options may be used for placement in the district's talent pool. Formal measures, consistent with this administrative regulation, shall be used for formal identification and diagnosis.]

(7) In the primary program, formal, normed measures may be used for diagnosing the level of instructional service needed by a student and for evaluation of student progress. [, however,] Data from formal, normed measures shall not be used for the purpose of eliminating eligibility for services to a child in the primary program but may be used to discover and include eligible students overlooked by informal assessment.

(8) A [No] single assessment instrument or measure shall not be the basis for [formally identifying or] denying services once a child has been informally selected [identified] and placed in the talent pool.

(9) For children in the primary program, the procedure for selecting high potential learners for participation in the primary talent pool [identifying and diagnosing a child's strengths, gifted behaviors, and talent] shall include use of a minimum of three (3) of the following recognized or acceptable assessment options to assess the degree of demonstrated gifted characteristics and behaviors and to determine level of need and most appropriate service interventions [to screen and refer students for services through a talent pool]:

(a) A collection of evidence (e.g., primary portfolios) demonstrating student performance;

(b) Inventory checklists of behaviors specific to gifted categories [Behavior checklists];

(c) Diagnostic data;

(d) Continuous progress data;

(e) Anecdotal records;

(f) Available formal test data;

(g) Parent interview or questionnaire;

(h) Primary review committee recommendation;

(i) Petition system; and

(j) Other valid and reliable documentation.

(10) Exit from the primary program shall be based on criteria established by 703 KAR 4:040.

(11) For students in grades four (4) through twelve (12), a local school district's procedure for identifying and diagnosing gifted and talented behaviors, and the level of services needed, shall include:

(a) A valid and reliable combination of [formal and informal] measures to identify strengths, gifted behaviors and talents which indicate a need and eligibility for service options;

(b) At least three (3) of the following recognized or acceptable assessment options for identification and diagnosis:

1. A collection of evidence from portfolios demonstrating student performance;

2. Inventory checklists of behaviors specific to gifted categories [Teacher behavior checklist];

3. Continuous progress data;

4. Anecdotal records;

5. Peer nominations;

6. Formal testing data specific to gifted categories;

7. Parent interview or questionnaire;

8. Primary review committee recommendation for those entering the fourth grade;

9. Self-nomination or petition system;

10. Student awards, critiques, of performance or products specific to gifted categories; and

11. Other valid and reliable documentation; [and]

[(c) At least one (1) source of data shall be derived from an appropriate formal, normed individual or group measure such as intelligence tests, achievement tests, and aptitude tests.]

(12) To qualify as a gifted and talented student [students] in grades four (4) through twelve (12) the following criteria shall be met in

[at least] one (1) of these [the following] gifted and talented categories:

(a) General intellectual ability shall be determined by a student score within the ninth stanine on a full scale comprehensive test of intellectual ability [or a composite score in the ninth stanine on a standardized or normed achievement test]. When a student scores low on [a] formal group measures of intellectual ability [measure of academic strength], yet other documentation shows [factors show] potential, the district shall administer an individual mental ability test. Evidence of general intellectual ability also may include:

1. High performance on additional [an] individual or group intellectual assessment;
2. Observation of applied advanced reasoning ability; or [and]
3. Checklist inventories of behaviors specific to underachieving or disadvantaged gifted learners [Perseverance to complete tasks].

(b) Specific academic aptitude shall be determined by composite scores in the ninth stanine on one (1) or more subject test scores of an achievement test. When a student scores low on a formal group measure of academic strength, yet other documentation shows [factors show] potential, the district shall administer another standardized normed achievement test [an individual mental ability test]. Evidence of specific academic aptitude also may include:

1. High performance on an additional individual or group test of academic aptitude;
2. Student awards or critiques of performances;
3. Off-level testing;
4. Portfolio of high academic performances; or [and]
5. Student progress data.

(c) Creativity shall be determined through the use of informal or formal assessment measures of [which focus on determining] a child's capacity for originality of thought, fluency, elaboration, and flexibility of thought. Documented evidence of creative thinking ability also may include:

1. Creative writing samples;
2. High scores on tests of creative ability (e.g., Williams or [;] Torrance, etc.);
3. Behavioral checklists or observations specific to [targeting] creative behavior; and
4. Observation of original ideas, [or] products or [;] problem-solving.

(d) Leadership or psychosocial abilities shall be determined by a variety of informal measures [administered by a teacher knowledgeable in the nature and needs of the gifted such as behavioral checklists;] and the documentation of the willingness of a student to assume leadership roles in class, in student organizations, and in community activities. Evidence of psychosocial or leadership ability also may include:

1. Sociograms (i.e., questionnaires designed to assess leadership characteristics);
2. Peer recommendations;
3. Behavioral checklists or observations specific to [targeting] leadership behavior;
4. Portfolio entries which display leadership qualities; or [and]
5. Offices held by student in extracurricular activities and class government [etc].

(e) Visual and performing arts talent shall be determined through evidence of performance which may include [;] auditions, letters of recommendations, or [and] product or portfolio assessment by specialists or professional artists. Evidence of visual or performing arts also may include:

1. Awards or critiques of performance; or [and]
2. Portfolio of visual or performing arts ability.

Section 4. Procedure for Determining Eligibility for Services. (1) Identification of [The procedure for identifying] gifted characteristics, behaviors and talent shall be based on the following process:

(a) Data gathering. A district [Districts] shall develop a system for [initially] searching the entire school [target] population on a continuous basis for likely candidates for services using both informal and available formal, normed, standardized measures, including measures of nonverbal ability [spatial ability for disadvantaged children and youth];

(b) Data analysis. A district [Districts] shall develop a system for analyzing student data for the purposes of a comparison of the stu-

dents under consideration for identification [in the talent pool] to local or national norms, including those required in this administrative regulation, and to district-established criteria of eligibility for each category of giftedness [a comparison of the data among the students within the pool; and developing an index of a student's scores relative to others in the pool];

(c) [Selection] Committee for determination of eligibility and services. A [determination. The] school district or school shall assemble a selection and placement committee which shall have four (4) purposes:

1. To provide feedback on the adequacy of the district's identification and diagnostic procedure;
2. To ensure that a variety of views are heard during the selection and placement process;
3. To determine which students meet identification criteria and which services, at what level, should be included in each identified student's gifted and talented student services plan [should receive services, and at what level]; and
4. To help provide communication and support in the schools and community; [;]

(d) Provision of services. A district [Districts] shall implement articulated services from primary through grade twelve (12) which provide multiple delivery options matched to diagnosed behaviors, strengths and characteristics of individual students; and

(e) Petition and appeal for services. A district [Districts] shall provide a petition system as a safeguard for a student [otherwise eligible students to apply for services] who may have been missed in the identification and diagnosis procedure.

(2) Exceptions and special considerations for eligibility. School personnel shall take into consideration environmental, cultural, and disabling conditions which may mask a child's true abilities that lead to exclusion of otherwise eligible students, such as a student who qualifies as:

- (a) [Any student who qualifies as] An exceptional child as defined in KRS 157.200;
- (b) [Any student who qualifies as] Disadvantaged; or [and]
- (c) [Any student who qualifies as] Underachieving.

Section 5. Program Evaluation. (1) District policies and procedures shall ensure that a program evaluation process [processes] shall be conducted on an annual basis and shall address:

- (a) Overall student progress;
- (b) Student, parent, and faculty attitudes toward the program;
- (c) Community involvement;
- (d) Cost effectiveness;
- (e) The incorporation of gifted education into the regular school program;
- (f) Overall quality of instruction and program personnel credentials; and
- (g) Future program directions and modifications.

(2) Data collected in the annual program evaluation shall be utilized in the school and district instructional planning process.

(3) Beginning with the 2001-2002 school year local district policies and procedures shall ensure that the school personnel report to a parent the progress of his child related to the gifted and talented student services plan at least once each semester. [Continued funding of the local district's gifted education annual plan for services shall be contingent upon the results of the preceding year's evaluation of the overall program.]

Section 6. Service Delivery Options. (1) A student [Students] diagnosed as possessing gifted characteristics, behaviors or [and] talent shall be provided articulated, primary through grade twelve (12) services which are qualitatively differentiated to meet his [their] individual needs, result in educational experiences commensurate with his [identified population's] interests, needs and abilities, and facilitate the high level attainment of goals established in KRS 158.6451.

(2) For a student [students] in a primary program [programs], services shall be provided within the framework of primary program requirements and shall allow for continuous progress through a differentiated curriculum and flexible grouping and regrouping based on the individual needs, interests, and abilities of the student. Consistent with 704 KAR 3:440(2), with the two (2) exceptions of the special school

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and the self-contained classroom, all service delivery options may [shall] be available in the primary program.

(3) Emphasis on educating gifted students in the general primary classroom, shall not preclude the continued, appropriate use of resource services, acceleration options, or any of the specialized service options contained in subsection (5) of this section. Recommendations for services shall be made on an individual basis.

(4) Grouping for instructional purposes and multiple services delivery options shall be utilized in local district gifted education plans. Student grouping formats shall include grouping for instructional purposes based on student interests, abilities, and needs, including social and emotional. [~~Example of alternative grouping arrangements are listed in subsection (5) of this section.~~]

(5) ~~There shall be [Local school districts shall implement] multiple service delivery options with no single service option existing alone, districtwide, at any grade level. These service delivery options shall be differentiated to such a degree as to be consistent with [the language and intent of] KRS 157.200(1). Both grouping for instructional purposes[,] and multiple service delivery options [.] may include [such alternatives as]:~~

(a) Various acceleration options (e.g., early exit from primary, grade skipping, content and curriculum in one (1) or more subjects from a higher grade level);

(b) Advanced placement and honors courses;

(c) Collaborative teaching and consultation services;

(d) Special counseling services;

(e) Differentiated study experiences for individuals and cluster groups in the regular classroom;

(f) Distance learning;

(g) Enrichment services during the school day (not extracurricular);

(h) Independent study;

(i) Mentorships;

(j) Resource services delivered in a [the general classroom or] pull-out classroom or other appropriate instructional setting;

(k) Seminars;

(l) [~~Cluster grouping~~];

(m) [~~Travel study options~~]; or

(n) [~~Special schools or self-contained classrooms, grades four (4) through twelve (12) only~~];

(o) [~~Itinerant services~~]; and

(p) [~~Special summer sessions~~].

(6) With the exception of academic competitions and optional extracurricular offerings, services shall be provided during the regular school hours.

Section 7. Curriculum. (1) A comprehensive framework or course of study for children and youth who are diagnosed as possessing gifted characteristics, behaviors and talent shall be based on a [each] district or school's curricula required to meet the goals established in KRS 158.6451.

(2) A [Each] school shall differentiate, replace, supplement, or modify curricula to facilitate high level attainment of the learning goals established in KRS 158.6451 and to assist students identified and diagnosed as gifted and talented to further develop their individual interest, needs and abilities.

Section 8. Personnel. A [Each] local school district shall ensure that direct services to students identified as demonstrating gifted and talented behaviors and characteristics shall be provided by professionally qualified and certified personnel as required by the Education Professional Standards Board.

(1) Teachers of gifted, who include those who work directly with identified gifted pupils in addition to the regularly assigned teacher(s) or for at least one-half (1/2) of the regular school day in a classroom made up only of properly identified gifted students, shall be appropriately endorsed in gifted education (704 KAR 20:280).

(2) All other personnel working with gifted students shall be prepared through appropriate professional development to address the individual needs, interests, and abilities of the students. [personnel providing services to gifted and talented students are prepared through appropriate credentials or professional development to address the individual needs, interests and abilities of the students.]

Section 9. Budget; Funding. (1) State funds for gifted education shall be used specifically for direct services to students who are gifted and talented. Direct services to students identified as demonstrating gifted and talented behaviors and characteristics shall be provided by professionally qualified and certified personnel as required by the Education Professional Standards Board in 704 KAR 20:280. Seventy-five (75) percent of a district's gifted education allocation shall be used to employ properly certified personnel to provide direct instructional services.

(2) A local district [Any] budget decision impacting state funds for gifted education [decisions made] after the annual submission of the local district [gifted] education plan [application] shall be coordinated through the district gifted education coordinator. If the change will cause a major or significant adjustment to the district gifted education budget, the change shall be submitted to the Kentucky Department of Education for approval as an amendment.

(3) A district [Districts] receiving state gifted education funding shall designate a gifted education coordinator to:

(a) Oversee the district gifted education operation;

(b) Serve as liaison between the district and the state;

(c) Ensure internal compliance with state statutes and administrative regulations; and

(d) Administer and revise the gifted education program budget.

(4) State funding to districts shall be contingent upon:

(a) Employing properly certified personnel to administer and teach in the program;

(b) The annual submission of a local district gifted education year-end report [plan application];

(c) A summative evaluation of the program and student progress; and

(d) Complying with [~~all mandated elements within~~] this administrative regulation.

Section 10. Procedural Safeguards. A school district shall establish a grievance procedure through which parents and students may resolve concerns regarding the appropriate and adequate provision of talent pool services or services addressed in a formally identified student's gifted and talented student services plan. This districtwide grievance procedure shall address:

(1) How, and by whom, the grievance procedure is initiated;

(2) The process for determining the need to evaluate or reevaluate the child for appropriate services;

(3) The criteria for determining if placement of the child needs revision;

(4) Procedures for ensuring that appropriate services are provided to all identified students consistent with KRS 157.200 and 157.230; and

(5) Procedures for ensuring the participation of parents, a regular education teacher of the student, a gifted education teacher or coordinator, administrator, and a counselor in addressing a grievance.

WILMER S. CODY, Commissioner

HELEN MOUNTJOY, Chairperson

KEVIN M. NOLAND, Attorney

APPROVED BY AGENCY: June 9, 1999

FILED WITH LRC: June 10, 1999 at 11 am.

PUBLIC HEARING: A public hearing on this proposed amended administrative regulation shall be held on July 23, 1999, at 10 a.m. in the State Board Room, First Floor, Capital Plaza Tower, 500 Mero Street, Frankfort, Kentucky. Individuals interested in being heard at this meeting shall notify this agency in writing by July 16, 1999, five working days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to be heard at the public hearing or written comments on the proposed amended administrative regulation to Mr. Kevin M. Noland, Associate Commissioner,

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Office of Legal Services, Department of Education, 500 Mero Street, First Floor, Capital Plaza Tower, Frankfort, Kentucky, 40601, phone (502) 564-4474, fax (502) 564-9321.

### REGULATORY IMPACT ANALYSIS

Agency Contact: Kevin M. Noland

- (1) Type and number of entities affected: 176 school districts
- (2) Direct and indirect costs or saving 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: 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: District level preparation and maintenance of gifted student services plans and progress reports to parents as required by KRS 157.196.
- (3) Effects on the promulgating administrative body:
  - (a) Direct and indirect costs or savings:
    1. First year: Need to provide technical assistance and support materials to districts in design of gifted student services plans and appropriate services.
    2. Continuing costs or savings: None
    3. Additional factors increasing or decreasing costs: None
  - (b) Reporting and paperwork requirements: None
  - (c) Assessment of anticipated effect on state and local revenues: None
- (5) Source of revenue to be used for implementation and enforcement of administrative regulation: Local school district funds and state appropriations for gifted education.
- (6) To the extent available from public comments received, the economic impact, including effects of economic activities arising from administrative regulation on:
  - (a) Geographical area in which administrative regulation will be implemented: None
  - (b) Kentucky: None
  - (7) Assessment of alternative methods; reasons why alternatives were rejected: None
  - (8) Assessment of expected benefits:
    - (a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: None
    - (b) State whether a detrimental effect on environment and public health would result if not implemented: None
  - (c) If detrimental effect would occur, explain detrimental effect: None
  - (9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping or duplicative: None
  - (a) Necessity of proposed regulation, if in conflict: 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: Was tiering applied? No. Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all school districts.

### PUBLIC PROTECTION AND REGULATION CABINET Department of Mines and Minerals Division of Miner Training, Education and Certification (Amendment)

805 KAR 7:010. Miner training, education and certification.  
[Definitions:]

RELATES TO: KRS 351.102, 351.103, 351.105  
STATUTORY AUTHORITY: KRS 13A.100, 351.106  
NECESSITY, FUNCTION, AND CONFORMITY: KRS 351.102, 351.103, and 351.106 require training of a person before his certifi-

cation for employment in coal mines and also require the Department of Mines and Minerals, with the Mining Board's approval, to establish training criteria and guidelines. This administrative regulation promulgates definitions of important terms necessary to implement the provisions of those statutes. [KRS 351.106 empowers the Commissioner of the Department of Mines and Minerals to promulgate such reasonable administrative regulations as are necessary to establish programs for miner training and examination according to the criteria and standards established by the Board of Miner Training, Education, and Certification. This administrative regulation effects the provisions of that statute.]

Section 1. Definitions. For purposes of this chapter, the following terms shall have the following meanings unless the context demands otherwise:

- (1) "Board" means the Mining Board [of Miner Training, Education, and Certification].
- (2) "Certified person" means a [any] person certified by the commissioner to perform particular work duties in and around a [an underground] coal mine.
- (3) "Commissioner" means the Commissioner of the Department of Mines and Minerals.
- (4) "Department" means the Department of Mines and Minerals.
- (5) "Experienced surface miner" means a [any] person who has [having] worked a minimum of forty-five (45) [ninety (90)] working days at a surface mine or on the surface area of an underground mine and has complied with all statutory and regulatory training requirements.
- (6) "Experienced underground miner" means a person who has worked a minimum of forty-five (45) working days in an underground coal mine and has complied with all statutory and regulatory training requirements.
- (7) "Hazard training" is instruction in awareness and avoidance of accident or injury from conditions inherent to mining provided by the licensee to visitors exposed to mine hazards.
- (8) "Inexperienced underground miner" means any trainee miner who has not worked a minimum of forty-five (45) working days in an underground coal mine.
- (9) "Inexperienced surface miner" means any trainee miner who has not worked a minimum of forty-five (45) working days at a surface mine or on the surface area of an underground coal mine.
- (10) "Newly employed miner" means any miner, experienced or inexperienced, employed by a licensee to work at a coal mine, who has not completed mine specific training requirements.
- (11) "Mine-specific training" is the instruction of mining relative to the distinct factors of a particular mine.
- (12) "New work assignment" means any work duties in which a miner has not completed task training or demonstrated proficiency.
- (13) "Normal work shift" means the period of time during which the miner is scheduled to work on a regular basis.
- (14) "Surface coal miner" means a person at a surface mine or on the surface area of an underground mine who is engaged in the activities of mining or processing coal.
- (15) "Task training" means training of miners for new work assignments.
- (16) "Trainee miner" means any miner who has not worked a minimum of forty-five (45) working days at a coal mine.
- (17) "Underground coal miner" means any person working in an underground mine and who is engaged in the extraction and production process, including maintenance, service, or other workers employed or contracted by the licensee who are regularly exposed to mining hazards. [in an underground coal mine:
- (6) "Inexperienced miner" means any person not having worked a minimum of ninety (90) days in an underground mine.
- (7) "Newly hired miner" means any miner, experienced or inexperienced, who is hired by an operator to work in an underground coal mine:
- (8) "New work assignment" means any delegation of work duties in mobile equipment operations, blasting and drilling operations, rail haulage and conveyor system operations, or roof control which a miner is not qualified to perform pursuant to this chapter.
- (9) "Operator" means an individual, firm or corporation operating a coal mine or any part thereof.

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(10) "Normal work shift" means the equivalent of eight (8) hours.

Section 2. For purposes of this chapter, any person receiving training throughout a normal work shift shall be deemed to have received eight (8) hours of training.]

JOHN L. FRANKLIN, Commissioner, Chairman  
RONALD B. MCCLOUD, Secretary  
STEPHAN L. TAYLOR, General Counsel

APPROVED BY AGENCY: June 14, 1999

FILED WITH LRC: June 15, 1999 at 9 a.m.

PUBLIC HEARING: A public hearing on this proposed amendment shall be held on Tuesday, July 27, 1999 at 1 p.m., prevailing local time, in the first floor hearing room of the Department of Mines and Minerals, 1025 Capital Center Drive, Suite 201, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by July 20, 1999, five working days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed amendment. 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 amendment. Send written notification of intent to be heard at the public hearing or written comments on the proposed amendment to the contact person.

CONTACT PERSON: Stephan L. Taylor, General Counsel, Kentucky Department of Mines and Minerals, P.O. Box 2244, Frankfort, Kentucky 40602-2244, Telephone (502) 573-0140, Fax (502) 573-0152.

### REGULATORY IMPACT ANALYSIS

Contact Person: Hon. Stephan L. Taylor, General Counsel

(1) This regulation affects 20,000 coal miners and 541 coal operation in the Commonwealth of Kentucky.

(2) There are no financial costs or savings created by this regulation; no increase in paperwork is required and there will be no increase in the cost of doing business as a result of this regulation.

(3) This regulation will not affect the work of the Department of Mines and Minerals.

(4) This regulation will not affect state or local revenues.

(5) The regular budget of the Department of Mines and Minerals will suffice for the implementation and enforcement of this regulation.

(6) No public comments have been offered on this regulation. There will be no economic impact arising from this regulation.

(7) No alternative approaches to the problems addressed by this regulation exist. Miners need and are required to have training in the safe performance of their jobs. This regulation effects that training.

(8) This regulation will improve the ability of miners to do their jobs more safely, thereby reducing injuries and fatalities. To that extent failing to promulgate this regulation will be detrimental to miner safety.

(9) There is no statute, administrative regulation, or governmental policy with which this regulation conflicts, overlaps, or duplicates.

(10) The requirements of this regulation enhance the ability of a coal miner to do his job well, but also in greater confidence of being alive at the end of his shift. Better and more efficient training, such as is effected by this regulation, are the keys to reducing deaths and serious injuries in the coal mining industry.

(11) Tiering is not applied because the definitions are applicable to every class of miner, i.e., surface, underground, inexperienced, or experienced.

### PUBLIC PROTECTION AND REGULATION CABINET Department of Mines and Minerals Division of Miner Training, Education and Certification (Amendment)

805 KAR 7:020. Training and certification of inexperienced miners.

RELATES TO: KRS 351.102, 351.105

STATUTORY AUTHORITY: KRS 13A.100, 351.106

NECESSITY, FUNCTION, AND CONFORMITY: KRS 351.102 and 351.106 require the Department of Mines and Minerals to promulgate a program of training for inexperienced miners according to criteria and standards determined by the Mining Board. This administrative regulation promulgates that program of training for inexperienced miners. [KRS 351.106 empowers the Commissioner of the Department of Mines and Minerals to promulgate such reasonable administrative regulations as are necessary to establish a program for miner training and examination according to the criteria and standards established by the Board of Miner Training, Education and Certification. This administrative regulation effects the provisions of that statute.]

Section 1. Training and Certification of Inexperienced Miners. (1) The required trainee miner training shall be documented on a form prescribed by the commissioner of the department and embossed with the instructor's seal and an embossed copy shall be provided to the miner.

(2)(a) The certificate gained by this training shall be valid for twelve (12) months preceding initial employment at a mine.

(b) If employment is not obtained within twelve (12) months, annual retraining requirements must be successfully completed each year in order to maintain the trainee miner permit. [A permit as trainee miner shall be issued by the commissioner to any person who has completed a program of education and training that meets all of the requirements of this administrative regulation and consists of a minimum of forty-eight (48) hours or who is enrolled in a certified mine technology program.]

(2) This training may be received through the Bureau of Vocational Education, mine company programs, private or public institutions of education or any program certified by the board as meeting the requirements of this administrative regulation.

(3) Upon proof that an inexperienced miner has received the course of instruction set forth in this administrative regulation within twelve (12) months preceding initial employment at a mine, such miner need not repeat the training specified in this administrative regulation.]

Section 2. Training Program. The training program for inexperienced miners shall include, but not be limited to, instruction in, the following courses:

(1) Introduction to mining;

(2) Self-rescue devices; [-The course shall include instruction in the use, care and maintenance of self-rescue devices. This course shall be given before the inexperienced miner visits, tours or goes underground.]

(2) Introduction to mining. The introduction to mining course should include a visit and tour of a mine or portions of a mine which are representative of the entire mine. The method of mining utilized at the mine (that is conventional, continuous, longwall or other) should be observed and explained.]

(3) The statutory rights of miners and their representatives;

(4) Authority and responsibility of supervisors; [-The course shall include review and description of the line of authority of supervisors and the responsibilities of such supervisors, and an introduction to rules and proper procedures for reporting safety hazards.]

(5) [(4)] Entering and leaving mines, transportation, communications; [-The course shall include instruction in the procedures in effect for entering and leaving mines, the check-in and check-out systems in effect at mines, the procedures for riding on and in mine conveyances, the controls in effect for transportation of miners and materials, and the use of mine communication systems, warning signals and directional signs.]

(6) [(5)] Mine map, escapeways, emergency evacuations, barriers.

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cading; [-The course shall include a review of mine maps, the escapeway systems, the escapes, firefighting and emergency evacuation plans in effect at mines, the location of abandoned and dangerous areas, and an introduction to methods of barricading and the locations of barricading materials.]

(7) [(6)] Roof or ground control and ventilation plans; [-The course shall include an introduction to and instruction on the roof control plans in effect within the mining industry, and procedures for roof and rib control, and introduction to and instruction on the ventilation plans in effect within the mining industry, and the procedures for maintaining and controlling ventilation.]

(8) Health standards;

(9) Clean-up and [(7)] rock dusting;

(10) Hazard recognition;

(11) Electrical hazard;

(12) First aid;

(13) Mine gases and [-The course shall include instruction on the purpose of rock dusting and the rock dusting programs in effect within the mining industry;

(8) First aid. The course of instruction shall consist of a course in first aid methods.

(9) Electrical hazards, moving equipment. The course shall include instruction on recognition and avoidance of electrical hazards, and the procedures for working on and near moving equipment at all locations in mines.

(10) Prevention of accidents. The course shall include instruction on the prevention of all types of accidents including electrical and mechanical.

(11) explosives;

(14) Accident prevention; and

(15) Other courses as may be required by commissioner. [The course shall include review and instruction on the hazards related to explosives and the danger involved when working with and around such explosives.

(12) Health and safety standards. The course shall include the health and safety standards contained in KRS Chapters 351 and 352 and the Federal Mine Safety and Health Act of 1977 (PL 95-164).

(13) The training program shall include all other substantive mine safety law not covered in the above courses that deals with the underground miner, including review and instruction of miners' and operators' statutory rights and obligations with regard to mine safety law.]

JOHN L. FRANKLIN, Commissioner, Chairman

RONALD B. MCCLOUD, Secretary

STEPHAN L. TAYLOR, General Counsel

APPROVED BY AGENCY: June 14, 1999

FILED WITH LRC: June 15, 1999 at 9 a.m.

PUBLIC HEARING: A public hearing on this proposed amendment shall be held on Tuesday, July 27, 1999 at 1 p.m., prevailing local time, in the first floor hearing room of the Department of Mines and Minerals, 1025 Capital Center Drive, Suite 201, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by July 20, 1999, five working days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed amendment. 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 amendment. Send written notification of intent to be heard at the public hearing or written comments on the proposed amendment to the contact person.

CONTACT PERSON: Stephan L. Taylor, General Counsel, Kentucky Department of Mines and Minerals, Post Office Box 2244, Frankfort, Kentucky 40602-2244, Telephone (502) 573-0140, Fax (502) 573-0152.

### REGULATORY IMPACT ANALYSIS

Contact Person: Hon. Stephan L. Taylor, General Counsel

(1) This regulation affects 20,000 coal miners and 541 coal operation in the Commonwealth of Kentucky.

(2) There are no financial costs or savings created by this regulation; no increase in paperwork is required and there will be no increase in the cost of doing business as a result of this regulation.

(3) This regulation will not affect the work of the Department of Mines and Minerals.

(4) This regulation will not affect state or local revenues.

(5) The regular budget of the Department of Mines and Minerals will suffice for the implementation and enforcement of this regulation.

(6) No public comments have been offered on this regulation. There will be no economic impact arising from this regulation.

(7) No alternative approaches to the problems addressed by this regulation exist. Miners need and are required to have training in the safe performance of their jobs. This regulation effects that training.

(8) This regulation will improve the ability of miners to do their jobs more safely, thereby reducing injuries and fatalities. To that extent failing to promulgate this regulation will be detrimental to miner safety.

(9) There is no statute, administrative regulation, or governmental policy with which this regulation conflicts, overlaps, or duplicates.

(10) The requirements of this regulation enhance the ability of a coal miner to do his job well, but also in greater confidence of being alive at the end of his shift. Better and more efficient training, such as is effected by this regulation, are the keys to reducing deaths and serious injuries in the coal mining industry.

(11) Tiering is applied because inexperienced coal miners are less aware of the dangers of coal mining than experienced coal miners. The regulation takes into account this difference and adjusts the training requirements accordingly.

### PUBLIC PROTECTION AND REGULATION CABINET Department of Mines and Minerals Division of Miner Training, Education and Certification (Amendment)

#### 805 KAR 7:030. Annual retraining.

RELATES TO: KRS 351.105

STATUTORY AUTHORITY: KRS 13A.100, 351.106

NECESSITY, FUNCTION, AND CONFORMITY: KRS 351.102 and 351.106 require the Department of Mines and Minerals to promulgate an annual miner retraining program according to the criteria and standards determined by the Mining Board. This administrative regulation promulgates requirements and terms of that annual retraining program. [KRS 351.106 empowers the Commissioner of the Department of Mines and Minerals to promulgate such reasonable administrative regulations as are necessary to establish a program for miner training and examination according to the criteria and standards established by the Board of Miner Training, Education and Certification. This administrative regulation effects the provisions of that statute.]

Section 1. (1) All certified persons shall receive a minimum of sixteen (16) hours of annual retraining, at least eight (8) hours of which shall be administered in a classroom and conducted by a Kentucky certified underground mining instructor. This training shall be documented on a form approved by the commissioner and signed and embossed with the instructor's seal. The balance of such annual retraining may be administered in segments of not less than fifteen (15) minutes; the persons who receive annual retraining in this manner shall be notified that each segment is being administered in satisfaction of the annual retraining requirement. This training shall be documented on a form approved by the commissioner and the person supervising the training shall be a Kentucky certified mine foreman or a certified underground mining instructor and shall sign the form, including his certification number. Upon completion of his sixteen (16) hour annual retraining, the miner immediately shall receive a copy of the training form.

(2) [The annual retraining set forth in this administrative regulation shall be administered to each certified person in the manner established in Section 2 of this administrative regulation.

(3) The course of annual retraining shall include [but not be limited to] the following subjects:

(a) Transportation controls and communications systems. The course shall include instruction in procedures for riding on and in mine conveyances, the controls in effect for the transportation of miners and material, the use of the mine communication system, warning signals and directional signs.

(b) Barricading. The course shall include instruction and review of the methods of barricading and locations of barricading materials.

(c) Roof control and ventilation plans. The course shall include instruction in and review of the roof control and ventilation plans in effect at the mine, the procedures for roof and rib control, and the procedures for maintaining ventilation and control of ventilation.

(d) First aid. The course shall include instruction and review of first aid methods.

(e) Electrical hazards and [.] moving equipment. The course shall include instruction in the recognition and avoidance of electrical hazards and procedures for working on or [and] near moving equipment throughout the mine.

(f) Accident prevention. The course shall include instruction in and review of the prevention of accidents, both electrical and mechanical.

(g) Self-rescue devices. The course shall include instruction in the use, care and maintenance of self-rescue devices.

(h) Explosives. The course shall include instruction in and review of the hazards related to explosives and procedures for the safe handling and use of explosives.

(i) Health and safety standards. Instruction shall be given on the health and safety standards set out in KRS Chapters 351 and 352 and in the Federal Mine Safety and Health Act of 1977 [(PL-95-165) as such requirements are related to the tasks and work assignments of each miner].

(j) The statutory rights of miners and their representatives.

[4] In addition to the minimum of sixteen (16) hours of annual retraining required above for all certified persons, those persons who hold a mine foreman certificate, including mine foremen, assistant mine foremen, fire bosses, and mine superintendents, shall receive an additional four (4) hours of annual retraining which is specifically applicable to the duties and standards of conduct generally exercised by holders of mine foreman certificates. This annual retraining of mine foreman certificate holders shall include, at a minimum, instruction in the following subjects:

(a) Mine accident investigation and reporting techniques.

(b) Identification and avoidance of electrical hazards.

(c) Identification and avoidance of haulage hazards.

(d) Preparation for and response to mine emergencies.

(e) Mine safety law.

(f) Development, implementation, and enforcement of mine plans.

(g) Performance of preshift and on-shift mine examinations.

(h) Techniques in conducting effective safety meetings and miner communications.]

Section 2. A person [All persons] required to receive annual retraining shall complete that retraining within not more than twelve (12) months from the end of the month in which his [their] most recent annual retraining was completed. Following a break in employment as an underground miner, a miner shall be eligible to work if he has successfully completed the annual retraining requirements within the last twelve (12) months. [Each instructor administering annual retraining shall, within ten (10) days of administering it, certify to the department, on forms prepared by it, the nature of the retraining administered by him and the names of the persons receiving it. All persons required to receive annual retraining may receive it within less than twelve (12) months from the month of completion certified by an instructor and recorded as such by the department, whereupon those persons shall be required to satisfy their annual retraining requirement within not more than twelve (12) months from the month of completion of all successive annual retraining received by them.]

Section 3. The licensee [operator] shall maintain verification of all miner training and certification on a form prescribed by the commissioner, at the mine premises. The form [annually verify in the form of an affidavit to the department that each certified person in his employ has received the annual retraining required by this administrative

regulation. Such affidavit] shall state the dates on which the annual training sessions were conducted and the names and miner identification [corresponding Social Security] numbers of those persons, including persons no longer in the employ of the licensee [operator], receiving the annual retraining[; provided, however, that no person shall be required to disclose his Social Security number for purposes of this affidavit. In the event that a person who has received the annual retraining refuses to disclose his Social Security number, the operator shall make a notation to that effect in the affidavit in lieu of stating that person's Social Security number.

Section 4. If a certified person willfully performs duties for which annual retraining is required by this administrative regulation without having received that annual retraining, that person's performance of such duties shall constitute grounds for revocation, suspension, or probation of the certificate, in accordance with KRS 352.390].

JOHN L. FRANKLIN, Commissioner, Chairman

RONALD B. MCCLOUD, Secretary

STEPHAN L. TAYLOR, General Counsel

APPROVED BY AGENCY: June 14, 1999

FILED WITH LRC: June 15, 1999 at 9 a.m.

PUBLIC HEARING: A public hearing on this proposed amendment shall be held on Tuesday, July 27, 1999 at 1 p.m., prevailing local time, in the first floor hearing room of the Department of Mines and Minerals, 1025 Capital Center Drive, Suite 201, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by July 20, 1999, five working days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed amendment. 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 amendment. Send written notification of intent to be heard at the public hearing or written comments on the proposed amendment to the contact person.

CONTACT PERSON: Stephan L. Taylor, General Counsel, Kentucky Department of Mines and Minerals, Post Office Box 2244, Frankfort, Kentucky 40602-2244, Telephone (502) 573-0140, Fax (502) 573-0152.

#### REGULATORY IMPACT ANALYSIS

Contact Person: Hon. Stephan L. Taylor, General Counsel

(1) This regulation affects 20,000 coal miners and 541 coal operation in the Commonwealth of Kentucky.

(2) There are no financial costs or savings created by this regulation; no increase in paperwork is required and there will be no increase in the cost of doing business as a result of this regulation.

(3) This regulation will not affect the work of the Department of Mines and Minerals.

(4) This regulation will not affect state or local revenues.

(5) The regular budget of the Department of Mines and Minerals will suffice for the implementation and enforcement of this regulation.

(6) No public comments have been offered on this regulation. There will be no economic impact arising from this regulation.

(7) No alternative approaches to the problems addressed by this regulation exist. Miners need and are required to have training in the safe performance of their jobs. This regulation effects that training.

(8) This regulation will improve the ability of miners to do their jobs more safely, thereby reducing injuries and fatalities. To that extent failing to promulgate this regulation will be detrimental to miner safety.

(9) There is no statute, administrative regulation, or governmental policy with which this regulation conflicts, overlaps, or duplicates.

(10) The requirements of this regulation enhance the ability of a coal miner to do his job well, but also in greater confidence of being alive at the end of his shift. Better and more efficient training, such as is effected by this regulation, are the keys to reducing deaths and

serious injuries in the coal mining industry.

(11) Tiering is not applied because the retraining is required of all miners.

**PUBLIC PROTECTION AND REGULATION CABINET  
Department of Mines and Minerals  
Division of Miner Training, Education and Certification  
(Amendment)**

**805 KAR 7:040. Training of newly employed [hired] miners.**

RELATES TO: KRS 351.105

STATUTORY AUTHORITY: KRS 13A.100, 351.106

NECESSITY, FUNCTION, AND CONFORMITY: KRS 351.102 and 351.106 require the Department of Mines and Minerals to promulgate a program of miner training, including newly employed miners, according to the criteria and standards determined by the Mining Board. This administrative regulation promulgates a program of training and examination for newly employed miners. [KRS 351.106 provides that the Commissioner of the Department of Mines and Minerals shall promulgate such reasonable administrative regulations as are necessary to establish and implement a program of miner training and examination according to the criteria and standards established by the Board of Miner Training, Education, and Certification pursuant to KRS Chapter 351. This administrative regulation effects the provisions of that statute.]

Section 1. Training of Newly Employed [Hired] Miners - Mine Specific Training. (1) Each newly employed inexperienced [hired] miner; ~~whether experienced or inexperienced;~~ shall receive a minimum of eight (8) hours training provided by the licensee, and performed by a person that is a Kentucky certified mine foreman or certified mining instructor, [mine operator] in mine specifics as applied to the particular mine wherein the miner is to be employed.

(2) Each newly employed experienced miner shall receive sufficient training provided by the licensee and performed by a person who is a Kentucky certified mine foreman or mining instructor in mine specifics of the particular mine where the miner is to be employed.

(3) Such training shall include instruction in the courses set forth in 805 KAR 7:020, Section 2(2), (3), (4), (5), (6), (7), (8), ~~and~~ (9), (10), (11), (12), (13), (14), and (15), and shall be completed before the newly hired miner can be assigned any work duties.

(4) ~~[(3)]~~ The licensee [operator] shall verify ~~[in the form of an affidavit] to the department on a form prescribed by the commissioner~~ that the newly employed [hired] miner has received the eight (8) hours training in mine specifics required by this administrative regulation. The newly employed miner shall receive a copy of this form.

(5) ~~[(4)]~~ Upon proof by a licensee ~~[an operator]~~ that a reemployed [rehired] experienced miner has received the training set forth in this administrative regulation within twelve (12) months preceding reemployment at the mine, such miner need not repeat the training set forth in this administrative regulation.

JOHN L. FRANKLIN, Commissioner, Chairman

RONALD B. MCCLOUD, Secretary

STEPHAN L. TAYLOR, General Counsel

APPROVED BY AGENCY: June 14, 1999

FILED WITH LRC: June 15, 1999 at 9 a.m.

PUBLIC HEARING: A public hearing on this proposed amendment shall be held on Tuesday, July 27, 1999 at 1 p.m., prevailing local time, in the first floor hearing room of the Department of Mines and Minerals, 1025 Capital Center Drive, Suite 201, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by July 20, 1999, five working days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed amendment. 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 amendment. Send written notification of intent to be

heard at the public hearing or written comments on the proposed amendment to the contact person.

CONTACT PERSON: Stephan L. Taylor, General Counsel, Kentucky Department of Mines and Minerals, Post Office Box 2244, Frankfort, Kentucky 40602-2244, Telephone (502) 573-0140, Fax (502) 573-0152.

**REGULATORY IMPACT ANALYSIS**

Contact Person: Hon. Stephan L. Taylor, General Counsel

(1) This regulation affects 20,000 coal miners and 541 coal operation in the Commonwealth of Kentucky.

(2) There are no financial costs or savings created by this regulation; no increase in paperwork is required and there will be no increase in the cost of doing business as a result of this regulation.

(3) This regulation will not affect the work of the Department of Mines and Minerals.

(4) This regulation will not affect state or local revenues.

(5) The regular budget of the Department of Mines and Minerals will suffice for the implementation and enforcement of this regulation.

(6) No public comments have been offered on this regulation. There will be no economic impact arising from this regulation.

(7) No alternative approaches to the problems addressed by this regulation exist. Miners need and are required to have training in the safe performance of their jobs. This regulation effects that training.

(8) This regulation will improve the ability of miners to do their jobs more safely, thereby reducing injuries and fatalities. To that extent failing to promulgate this regulation will be detrimental to miner safety.

(9) There is no statute, administrative regulation, or governmental policy with which this regulation conflicts, overlaps, or duplicates.

(10) The requirements of this regulation enhance the ability of a coal miner to do his job well, but also in greater confidence of being alive at the end of his shift. Better and more efficient training, such as is effected by this regulation, are the keys to reducing deaths and serious injuries in the coal mining industry.

(11) Tiering is applied because inexperienced coal miners are less aware of the dangers of coal mining than experienced coal miners. The regulation takes into account this difference and adjusts the training requirements accordingly.

**PUBLIC PROTECTION AND REGULATION CABINET  
Department of Mines and Minerals  
Division of Miner Training, Education and Certification  
(Amendment)**

**805 KAR 7:050. Training of miners for new work assignments.**

RELATES TO: KRS 351.105

STATUTORY AUTHORITY: KRS 13A.100, 351.106

NECESSITY, FUNCTION, AND CONFORMITY: KRS 351.102 and KRS 351.106 require the Department of Mines and Minerals to promulgate a program of miner training, including the training of miners at new work assignments, according to criteria and standards determined by the Mining Board. This administrative regulation promulgates a program of training and examination for miners at new work assignments. [KRS 351.106 empowers the Commissioner of the Department of Mines and Minerals to promulgate such reasonable administrative regulations as are necessary to establish a program for miner training and examination according to the criteria and standards established by the Board of Miner Training, Education and Certification. This administrative regulation effects the provisions of that statute.]

Section 1. Task Training [of Miners for New Work Assignments].

(1) Each miner receiving new work assignments requiring the direct operation of mechanical or electrical machinery or equipment in connection with mobile equipment operations, blasting and drilling operations, [rail] haulage and conveyor system operations, or [and] roof

control, shall not perform such work duties until he[~~she~~] has completed a program of training as provided as set out in subsection (2) of this section [in this administrative regulation of a minimum of twenty (20) hours as specified in KRS 351.105].

(2) The [Such minimum of twenty (20) hours] training program for miners receiving new work assignments shall include:

(a) Health and safety aspects and safe operating procedures for work tasks, equipment, and machinery;

(b) Supervised practice during nonproduction;

(c) Supervised operation during production;

(d) New or modified machines and equipment; and

(e) Such other courses as may be required by the commissioner.

[be provided as follows: eight (8) hours of observing the operation in which the new work assignment is to be made, eight (8) hours of a combination of instruction and practice in such new work assignment, and four (4) hours in production under supervision.

(3) The training program shall include, but not be limited to, the following:

(a) Safe operation procedures for existing, modified, or new equipment or machines. This training shall include instruction in the safe operating procedures related to the equipment or machine. Instruction shall be given by the immediate supervisor or experienced person in an on-the-job environment, and shall be taught from a safe operating procedures checklist developed specifically for the equipment or machine. A copy of the checklist shall be given to each equipment or machine operator at the time of instruction.

(b) Supervised practice during nonproduction. This training shall include supervised practice in operating equipment or a machine and performing work duties at mines or places where production is not the primary objective. The equipment or machine operator shall practice the operation of the equipment or machine under direct supervision of the immediate supervisor or experienced person until such time as sufficient practice has taken place to ensure the operation of the equipment or machine in a safe manner.

(c) Supervised practice during production. This training shall include supervised operation of the machine or equipment and performing work duties under the direct and immediate supervision of an experienced foreman or experienced equipment or machine operator while production is in progress. An equipment or machine operator shall not operate equipment or a machine without direction and immediate supervision until such operator has demonstrated to the satisfaction of the operator of the mine or to the mine foreman that the trainee possesses knowledge of the safe operating procedures for such equipment or machine.

(d) Any person who controls or directs rail haulage operations at a mine shall, before assignment to such duties, receive and complete training in safe haulage procedures related to the haulage system, ventilation system, firefighting procedures, and the emergency evacuation procedures in effect at the mine. This training may be received as part of the training program provided for in paragraphs (a), (b), and (c) of this subsection.]

Section 2. When [At such time as] a miner becomes qualified under the provisions of this administrative regulation to perform any work assignment, he[~~she~~] shall continue to be [so] qualified [during any calendar year] thereafter wherein the miner demonstrated safe operating procedures in performance of the work assignment during the preceding calendar year. Each licensee shall maintain verification on the mine premises that the miner has demonstrated proficiency in work assignments pursuant to Section 1(1) of this administrative regulation.

Section 3. [Each operator shall annually submit to the department, in the form prescribed by the commissioner, a current list of the miners in his employ, the job assignments for which each miner is qualified and the basis for such qualification. This list shall be submitted to the department during the month of January in each calendar year. A copy of said list shall be posted in a conspicuous place upon the premises of the mine and shall be updated to reflect changes as they occur.

Section 4.] The provisions of this administrative regulation shall not be construed to alter or deprive any person of any right or duty

accruing to that person by virtue of any labor-management contract.

JOHN L. FRANKLIN, Commissioner, Chairman

RONALD B. MCCLOUD, Secretary

STEPHAN L. TAYLOR, General Counsel

APPROVED BY AGENCY: June 14, 1999

FILED WITH LRC: June 15, 1999 at 9 a.m.

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CONTACT PERSON: Stephan L. Taylor, General Counsel, Kentucky Department of Mines and Minerals, Post Office Box 2244, Frankfort, Kentucky 40602-2244, Telephone (502) 573-0140, Fax (502) 573-0152.

#### REGULATORY IMPACT ANALYSIS

Contact Person: Hon. Stephan L. Taylor, General Counsel

(1) This regulation affects 20,000 coal miners and 541 coal operation in the Commonwealth of Kentucky.

(2) There are no financial costs or savings created by this regulation; no increase in paperwork is required and there will be no increase in the cost of doing business as a result of this regulation.

(3) This regulation will not affect the work of the Department of Mines and Minerals.

(4) This regulation will not affect state or local revenues.

(5) The regular budget of the Department of Mines and Minerals will suffice for the implementation and enforcement of this regulation.

(6) No public comments have been offered on this regulation. There will be no economic impact arising from this regulation.

(7) No alternative approaches to the problems addressed by this regulation exist. Miners need and are required to have training in the safe performance of their jobs. This regulation effects that training.

(8) This regulation will improve the ability of miners to do their jobs more safely, thereby reducing injuries and fatalities. To that extent failing to promulgate this regulation will be detrimental to miner safety.

(9) There is no statute, administrative regulation, or governmental policy with which this regulation conflicts, overlaps, or duplicates.

(10) The requirements of this regulation enhance the ability of a coal miner to do his job well, but also in greater confidence of being alive at the end of his shift. Better and more efficient training, such as is effected by this regulation, are the keys to reducing deaths and serious injuries in the coal mining industry.

(11) Tiering is not applied because all miners need the training established by this regulation. Safety issues cross all classes of miners and the training must be applied to everyone who works in this industry.

#### PUBLIC PROTECTION AND REGULATION CABINET Department of Mines and Minerals Division of Miner Training, Education and Certification (Amendment)

805 KAR 7:060. Program approval.

RELATES TO: KRS 351.101, 351.102, 351.105

STATUTORY AUTHORITY: KRS 13A.100, 351.020, 351.106

## VOLUME 26, NUMBER 1 – JULY 1, 1999

NECESSITY, FUNCTION, AND CONFORMITY: KRS 351.102 and 351.105 provide for the promulgation [establishment] of a program of training and education of inexperienced underground coal miners. This administrative regulation promulgates [sets forth] the conditions [manner] in which private and public entities [concerns] desiring to train inexperienced miners in accordance with the above-cited statutes may submit those [such] programs for approval by the Mining Board [of Miner Training, Education and Certification].

Section 1. ~~No person shall be issued a permit as a trainee miner unless that person has completed a program of training approved by the board, or that person has received a degree in mining engineering from an accredited institution of higher education or is enrolled in a course of mining technology approved by the board.~~

Section 2. A program of training for inexperienced miners shall be approved by the board if that [such] program [at a minimum] meets the criteria and objectives of 805 KAR 7:020, and the instructors teaching the program have been [duly] certified by the Kentucky Department of Mines and Minerals and the U.S. Department of Labor, Mine Safety and Health Administration.

Section 2. A person who desires to provide a training program for inexperienced miners shall submit the proposed training program [3. Approval of training programs for inexperienced miners may be obtained by submitting for review such proposed training programs] to the Department of Mines and Minerals, Mining Board [of Miner Training, Education and Certification], P.O. Box 2244, Frankfort [680, Lexington], Kentucky 40602-2244, for review. The [40586, which] proposed training program [programs] shall contain [at a minimum] the following information:

- (1) The address and location of the training facility to be used [utilized];
- (2) A description of the equipment and facilities to be used [utilized];
- (3) A list of the participating instructors;
- (4) The content areas in the training program for which each instructor shall be responsible;
- (5) The approximate number of students per class;
- (6) The dates on which the training program will be conducted;
- (7) The name and address of the person responsible for the formulation and implementation of the training program;
- (8) An outline of the proposed program showing how it meets the criteria and objectives of 805 KAR 7:020;
- (9) A list of instructional material to be used [utilized] (e.g. films, programmed material, etc.), noting where such material will be used within the instructional sequence; and
- (10) A description of the instructional methods to be used [utilized] throughout the program (e.g. lecture-demonstration, personalized instruction, team-teaching, etc.).

Section 3. [4.] (1) [Any] Approval granted by the board in accordance with the provisions of this administrative regulation shall be conditional upon the practical implementation of the training program in a manner consistent with the criteria and objectives of 805 KAR 7:020.

(2) The department shall have the authority to monitor any approved program without prior notice.

~~[(3) The board shall revoke its approval of any program that does not meet the criteria and objectives of 805 KAR 7:020 as ascertained by a monitoring of that program by the department.~~

~~(4) The board may revoke its approval of any program or part thereof when a monitoring of that program reveals that the instructor has not conducted the program or part thereof in a manner consistent with the criteria and objectives of 805 KAR 7:020.]~~

JOHN L. FRANKLIN, Commissioner, Chairman  
RONALD B. MCCLOUD, Secretary  
STEPHAN L. TAYLOR, General Counsel

APPROVED BY AGENCY: June 14, 1999

FILED WITH LRC: June 15, 1999 at 9 a.m.

PUBLIC HEARING: A public hearing on this proposed amendment shall be held on Tuesday, July 27, 1999 at 1 p.m., prevailing

local time, in the first floor hearing room of the Department of Mines and Minerals, 1025 Capital Center Drive, Suite 201, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by July 20, 1999, five working days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed amendment. 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 amendment. Send written notification of intent to be heard at the public hearing or written comments on the proposed amendment to the contact person.

CONTACT PERSON: Stephan L. Taylor, General Counsel, Kentucky Department of Mines and Minerals, Post Office Box 2244, Frankfort, Kentucky 40602-2244, Telephone (502) 573-0140, Fax (502) 573-0152.

### REGULATORY IMPACT ANALYSIS

Contact Person: Hon. Stephan L. Taylor, General Counsel

(1) This regulation affects 20,000 coal miners and 541 coal operation in the Commonwealth of Kentucky.

(2) There are no financial costs or savings created by this regulation; no increase in paperwork is required and there will be no increase in the cost of doing business as a result of this regulation.

(3) This regulation will not affect the work of the Department of Mines and Minerals.

(4) This regulation will not affect state or local revenues.

(5) The regular budget of the Department of Mines and Minerals will suffice for the implementation and enforcement of this regulation.

(6) No public comments have been offered on this regulation. There will be no economic impact arising from this regulation.

(7) No alternative approaches to the problems addressed by this regulation exist. Miners need and are required to have training in the safe performance of their jobs. This regulation effects that training.

(8) This regulation will improve the ability of miners to do their jobs more safely, thereby reducing injuries and fatalities. To that extent failing to promulgate this regulation will be detrimental to miner safety.

(9) There is no statute, administrative regulation, or governmental policy with which this regulation conflicts, overlaps, or duplicates.

(10) The requirements of this regulation enhance the ability of a coal miner to do his job well, but also in greater confidence of being alive at the end of his shift. Better and more efficient training, such as is effected by this regulation, are the keys to reducing deaths and serious injuries in the coal mining industry.

(11) Tiering is not applied because all entities wishing to develop approved training programs will be treated similarly.

### PUBLIC PROTECTION AND REGULATION CABINET Department of Mines and Minerals Division of Miner Training, Education and Certification (Amendment)

805 KAR 7:070. ~~[Reporting procedures and]~~ Record maintenance.

RELATES TO: KRS 351.102, 351.105

STATUTORY AUTHORITY: KRS 13A.100, 351.105, 351.106

NECESSITY, FUNCTION, AND CONFORMITY: KRS 351.102 and 351.106 require the Department of Mines and Minerals, on behalf of the Mining Board, to promulgate criteria and conditions for a program of miner training and education. This administrative regulation promulgates the requirements for record maintenance necessary to administer that program. [KRS 351.102 requires the Board of Miner Training, Education and Certification to establish criteria and standards for a program of training and education for underground coal miners. This administrative regulation sets forth the reporting

procedures and record maintenance necessary to implement and administer such program.]

Section 1. [Reporting Requirements. (1) The operator of each underground coal mine may, at his option, make a monthly report to the department on forms prescribed by the commissioner.

(2) In the event that an operator makes monthly reports to the department in accordance with the provisions of this administrative regulation, then that operator need not make the reports required by 805 KAR 7:030(3), 805 KAR 7:040(3), and 805 KAR 7:050(5).

(3) Each such monthly report shall be mailed to the department no later than fifteen (15) days subsequent to the last day of each month.

(4) A copy of the last monthly report submitted to the department shall be posted in a conspicuous place on the mine premises.

(5) Any operator wishing to make monthly reports to the department in lieu of the reports required by 805 KAR 7:030(3), 805 KAR 7:040(3), and 805 KAR 7:050(5) may do so by giving written notification to the department of his intent to submit monthly reports.

Section 2. Information to be Reported Monthly. (1) Each monthly report shall contain the following information:

(a) Identification of each person who accumulated a total of sixteen (16) hours of annual retraining during that month;

(b) Identification of each newly-hired miner who received eight (8) hours of mine specific training in accordance with 805 KAR 7:040 during that month;

(c) Identification of each experienced miner rehired by the operator during that month who had received the mine specific training set forth in 805 KAR 7:040 within the twelve (12) preceding months;

(d) Identification of each miner who has completed twenty (20) hours of training for a new work assignment during that month as set forth in 805 KAR 7:050, and the particular work assignment for which the training was received; and

(e) Identification of each miner qualified in the preceding calendar year who demonstrated safe operating procedures in the performance of a particular work assignment during that month.

(2) The operator shall report the information required by this administrative regulation as it pertains to each person employed by the operator during the reported month regardless of whether that person is so employed at the time of submission of the monthly report.

(3) If, during any month, none of the events required to be reported occur, the operator need not submit any report for that month.

Section 3. Record Maintenance. (1) The licensee [operator] shall maintain upon the mine premises current and accurate records of the following:

(a) The dates on which annual retraining sessions were conducted and [by the operator,] the persons receiving the annual retraining on those dates, and the subjects covered by each annual retraining session];

(b) The name of each miner newly-employed [hired] during the prevailing calendar year, the date on which he[she] was employed [hired], and the date on which he[she] received [eight (8) hours of] mine specific training; and

(c) The particular work assignments which each miner is qualified to perform pursuant to 805 KAR 7:050, and the basis for such qualification.

(2) The operator shall maintain upon the mine premises a copy of all monthly reports submitted to the department during the preceding twelve (12) months].

JOHN L. FRANKLIN, Commissioner, Chairman  
RONALD B. MCCLOUD, Secretary  
STEPHAN L. TAYLOR, General Counsel

APPROVED BY AGENCY: June 14, 1999

FILED WITH LRC: June 15, 1999 at 9 a.m.

PUBLIC HEARING: A public hearing on this proposed amendment shall be held on Tuesday, July 27, 1999 at 1 p.m., prevailing local time, in the first floor hearing room of the Department of Mines and Minerals, 1025 Capital Center Drive, Suite 201, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by July 20, 1999, five working days prior to the hearing, of their intent to attend. If no notification of intent to

attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed amendment. 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 amendment. Send written notification of intent to be heard at the public hearing or written comments on the proposed amendment to the contact person.

CONTACT PERSON: Stephan L. Taylor, General Counsel, Kentucky Department of Mines and Minerals, Post Office Box 2244, Frankfort, Kentucky 40602-2244, Telephone (502) 573-0140, Fax (502) 573-0152.

#### REGULATORY IMPACT ANALYSIS

Contact Person: Hon. Stephan L. Taylor, General Counsel

(1) This regulation affects 20,000 coal miners and 541 coal operation in the Commonwealth of Kentucky.

(2) There are no financial costs or savings created by this regulation; no increase in paperwork is required and there will be no increase in the cost of doing business as a result of this regulation.

(3) This regulation will not affect the work of the Department of Mines and Minerals.

(4) This regulation will not affect state or local revenues.

(5) The regular budget of the Department of Mines and Minerals will suffice for the implementation and enforcement of this regulation.

(6) No public comments have been offered on this regulation. There will be no economic impact arising from this regulation.

(7) No alternative approaches to the problems addressed by this regulation exist. Miners need and are required to have training in the safe performance of their jobs. This regulation effects that training.

(8) This regulation will improve the ability of miners to do their jobs more safely, thereby reducing injuries and fatalities. To that extent failing to promulgate this regulation will be detrimental to miner safety.

(9) There is no statute, administrative regulation, or governmental policy with which this regulation conflicts, overlaps, or duplicates.

(10) The requirements of this regulation enhance the ability of a coal miner to do his job well, but also in greater confidence of being alive at the end of his shift. Better and more efficient training, such as is effected by this regulation, are the keys to reducing deaths and serious injuries in the coal mining industry.

(11) Tiering is not applied because the required record maintenance treats all miners and operators similarly.

#### PUBLIC PROTECTION AND REGULATION CABINET Department of Housing, Buildings and Construction Division of Plumbing (Amendment)

815 KAR 20:073. Installation standards for water and waste piping material of types K, L, M and DWV copper; types R-K, R-L, R-DWV brass tubing and seamless stainless steel tubing, G or H.

RELATES TO: KRS Chapter 318

STATUTORY AUTHORITY: KRS 318.130

NECESSITY, FUNCTION, AND CONFORMITY: [The department is directed by] KRS 318.130 requires the department, through the State Plumbing Code Committee, to promulgate an administrative regulation establishing [adopt and put into effect] a State Plumbing Code. This administrative regulation establishes [relates to] the standards for the proper installation of copper pipe and fittings for water and waste piping. [This amendment is necessary to allow for new technology in the joining of copper pipe and fittings. This amendment was approved by the Plumbing Code Committee and the Board of Housing.]

Section 1. The installation of copper, brass and seamless stainless steel tubing water and waste piping shall be made according to

recommended procedures to ~~[-since care taken in installing will]~~ assure the satisfactory performance of the plumbing water distribution and drainage system ~~[systems]~~.

Section 2. Cutting, Reaming and Sizing. (1) The tube shall be cut to exact length with a square cut using:

- (a) A tube cutter;
- (b) A ~~[cutters;]~~ hacksaw blade; or
- (c) An abrasive saw.

(2) The tube shall have burrs and slivers removed by using a reamer or other appropriate tool.

(3) The tube shall be brought to true dimensions and roundness by using a sizing tool consisting ~~[which consists]~~ of a plug and ring.

Section 3. Cleaning. The surface ~~[Surfaces]~~ to be joined shall be clean and free from oil, grease and heavy oxides. The end of the tube shall be cleaned with a fine sand cloth or a special wire brush ~~[Clean the end of the tube]~~ a distance slightly more than is required to enter the socket of the fitting ~~[with fine sand cloth or special wire brushes]~~.

Section 4. Jointing Techniques. (1) Soldered joints. After cleaning, cover the surfaces with a thin film of mildly corrosive liquid or petroleum based pastes that contain chlorides of zinc and ammonium. Self-cleaning flux shall not be used in lieu of cleaning pipe as outlined in Section 3 of this administrative regulation. Wipe off excess flux in fitting socket. Insert tube end into socket, making sure the tube is firmly seated against the end of the socket. Remove excess flux with a rag. Apply heat to the fitting and then move in order to heat as large an area as possible. Do not overheat. When the joint is hot enough, the solder will melt on contact with the pipe and will flow by capillary attraction into joint. Remove heat and allow to cool before moving (refer to 815 KAR 20:060).

(2) Brazed joints. After cleaning, cover the surface of the tube end and the fitting socket with a thin film of flux in accordance with the recommendations of the manufacturer of the brazing filler metal being used. Avoid getting flux inside the tube itself. Flux may be omitted when joining copper tube to wrought copper fittings with copper-phosphorus alloys (B-cup Series) which are self fluxing on copper. Insert tube end into socket hard against the stop and turn if possible. Apply heat to parts to be joined, heating the tube first, then the fitting at the base of the cup. Apply brazing wire, rod or strip where tube enters the socket of the fitting. Remove heat and allow to cool.

(3) Flared joints; impact tools.

(a) See Sections 2 and 3 of this administrative regulation.

(b) Slip the coupling nut over the end of the tube.

(c) Insert flaring tool into the tube end and drive the flaring tool by hammer strokes expanding the end of the tube to the desired flare.

(d) Place the fitting squarely against the flare. Engage the coupling nut with the fitting threads. Tighten with two (2) wrenches, one (1) on the nut and one (1) on the fitting.

(4) Screw type flaring block.

(a) Follow subsection (3)(a) and (b) of this section for impact flaring.

(b) Clamp the tube in the flaring block so that the tube is slightly above the block. Place the yoke of the flaring tool on the block so that the beveled end of the compression cone is over the tube end. Turn the compressor screw down firmly, forming the flare between the chamber in the flaring block and the beveled compressor cone. Remove the flaring tool and assemble as in subsection (3)(d) of this section.

(5) Mechanically formed tee connection.

(a) For use in domestic hot and cold water distribution systems above ground only.

(b) Mechanically extracted collars shall be formed in a continuous operation consisting of drilling a pilot hole and drawing out the tube surface to form a collar having a height of not less than three (3) times the thickness of the tube wall. The collaring device shall be fully adjustable so to insure proper tolerance and complete uniformity of the joint.

(c) ~~[The joining branch tube shall be no less than one (1) pipe size smaller than the main and shall be notched and dimpled in a single process to set the proper penetration of the branch tube into the fitting to assure a free flow joint.]~~

(d) All joints shall be brazed in accordance with subsection (2) of this section and the manufacturer's instructions. NOTE: Soldered joints shall not be permitted.

(6) Mechanical couplings. Types K and L copper tubing systems from two (2) inch through six (6) inch and used for water distribution may be installed using mechanical pipe couplings of a bolted type with a flush seal gasket along with grooved end copper fittings. Couplings shall be of the angle pad design to obtain rigidity.

Section 5. Hangers and Supports. Hangers, anchors and supports shall be of material of sufficient strength to support the piping and its contents. Hangers, anchors and supports shall be securely attached to the building construction at sufficiently close intervals to support the piping and its contents. Provisions shall be made to allow for expansion, contraction, structural settlement and vibrations.

(1) Vertical piping. Copper tubing shall be supported at each story for piping one and one-half (1 1/2) inches and larger in diameter. For piping one and one-quarter (1 1/4) inches and smaller in diameter, it shall be supported at each story and not more than ten (10) foot intervals. Supports shall be of copper material of sufficient strength which will not adversely react with the piping material.

(2) Horizontal piping. Copper tubing shall be supported at six (6) foot intervals for one (1) inch and smaller in diameter and ten (10) foot intervals for one and one-quarter (1 1/4) inch and larger. Supports shall be of copper material of sufficient strength which will not adversely react with the piping material.

FRANK PHIEFFER, Chairman  
CHARLES A. COTTON, Commissioner  
RONALD MCCLOUD, Secretary  
JUDITH G. WALDEN, Office of General Counsel

APPROVED BY AGENCY: June 14, 1999

FILED WITH LRC: June 15, 1999 at 9 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on Tuesday, July 27, 1999 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 July 20, 1999, (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

(1) Type and number of entities affected: All licensed master and journeyman plumbers and users of the State Plumbing Code.

(2) Direct and indirect costs or savings on the: No costs or savings involved with implementation of this change.

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented:

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented:

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

1. First year following implementation: No reporting or paperwork required by users of the State Plumbing Code.

2. Second and subsequent years:

(3) Effects on the promulgating administrative body: No effect be-

yond requirements of updating the State Plumbing Code with approved amendments.

- (a) Direct and indirect costs or savings:
  1. First year:
  2. Continuing costs or savings:
  3. Additional factors increasing or decreasing costs:
- (b) Reporting and paperwork requirements: Preparing amendment to code and distributing the information to users.
- (4) Assessment of anticipated effect on state and local revenues: State or local revenues will not be affected by this amendment.
- (5) Source of revenue to be used for implementation and enforcement of administrative regulation: Division of Plumbing's revenue will not be affected by the enforcement of this amendment.
- (6) Economic impact, including effects of economic activities arising from administrative regulation, on:
  - (a) Geographical area in which administrative regulation will be implemented: The administrative regulation is implemented statewide; however, its implementation should have no economic impact to the area or statewide.
  - (b) Kentucky: Same as above.
- (7) Assessment of alternative methods; reasons why alternatives were rejected: State Plumbing Code Committee and the Board of Housing review proposed amendments and accept on basis within limits defined.
- (8) Assessment of expected benefits: Will allow drawn T's to be used in smaller diameter pipe and in compliance with manufacturer's instructions.
  - (a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: Public health or environment will not be affected with the implementation of this amendment.
  - (b) State whether a detrimental effect on environment and public health would result if not implemented: No detrimental effect on the environment will result if not implemented.
  - (c) If detrimental effect would result, explain detrimental effect:
- (9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: No known conflict in either statute, regulation or policy.
  - (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. Each standard approved is considered separately for compliance.

**PUBLIC PROTECTION AND REGULATION CABINET**  
**Department of Housing, Buildings and Construction**  
**Division of Plumbing**  
**(Amendment)**

**815 KAR 20:110. Traps and clean-outs.**

RELATES TO: KRS Chapter 318

STATUTORY AUTHORITY: KRS [318.010;] 318.130

NECESSITY, FUNCTION, AND CONFORMITY: [The department is directed by] KRS 318.130 requires the department, through the State Plumbing Code Committee, to promulgate an administrative regulation establishing [adopt and put into effect] a State Plumbing Code. This administrative regulation relates to the quality, location and the placing of traps and clean-outs to prevent harmful gases and odors from entering a building or home [buildings and homes] that is [are] served by a plumbing system [systems]. This administrative regulation also identifies the manufacturer's specification number of the material accepted in an installation. [those installations. This amendment is necessary to allow the use of plastic devices (see Section 14 of this administrative regulation) which have, in fact, been utilized for several years with success.]

Section 1. Traps, Kind and Minimum Size. Every trap shall be self-cleaning. Traps for bathtubs, lavatories, sinks and other similar fixtures shall either be tubular brass, tubular ABS or PVC produced and labeled as ASTM F-409, cast brass, cast iron, lead or schedule 40 PVC

(polyvinyl chloride) or ABS (acrylonitrile-butadiene-styrene) traps. Tubular or schedule 40 PVC or ABS p-traps may be either the union-joint or solvent welded type. Tubular brass traps shall be seventeen (17) gauge. Tubular brass, tubular PVC or tubular ABS traps shall not be installed below the finished floor serving a fixture. Traps shall have a full-bore, smooth interior waterway. The threads in cast brass and cast iron traps shall be tapped out of solid metal. Lead traps shall be extra heavy.

Section 2. Traps, Prohibited. A trap which depends upon the action of a movable part [parts] or concealed interior partition [partitions] for its seal shall not be used.

Section 3. Traps, Where Required. A fixture shall be separately trapped by a water-seal trap placed as near as possible to the fixture but not to exceed ten (10) inches from the bottom of the fixture to the dip of the seal. Waste from a bathtub or other fixture shall not discharge into a water closet bend. A fixture shall not be double trapped.

Section 4. Water Seal. A fixture trap shall have a water seal not less than two (2) inches or more than four (4) inches.

Section 5. Trap Clean-outs. A trap clean-out [Trap clean-outs] shall be optional.

Section 6. Trap Levels and Protection. A trap [Traps] shall be set true with respect to its [their] water seal [seals] and shall be protected from frost and evaporation.

Section 7. Pipe Clean-outs. The bodies of clean-out ferrules shall be made in a standard pipe size [sizes], conforming in thickness to that of the pipe and fittings and shall not extend less than one-quarter (1/4) inch above the hub in which it is placed. The clean-out cap or plug shall be heavy red brass not less than one-eighth (1/8) inch thick and shall have a raised nut or recessed pocket for removal.

Section 8. Pipe Clean-outs, Where Required. In a building served by a stack over forty-five (45) feet in height, a clean-out shall be provided at the base of each vertical waste or soil stack. There shall be at least one (1) clean-out in the building drain with a full-size branch inside the wall or outside the building at a point not to exceed two (2) feet from the foundation wall. If located outside the building, the clean-out must be extended to the finished grade for accessibility. A clean-out shall be of the same nominal size as the pipe it serves up to four (4) inches and shall not be less than four (4) inches for larger pipe. [A clean-out shall be easily accessible and shall be provided at the base of each vertical waste or soil stack. There shall be at least two (2) clean-outs in the house drain, one (1) at or near the base of the stack and the other with full size branch inside the wall or outside the building at a point not beyond two (2) feet from the foundation wall. Clean-outs shall be of the same nominal size as the pipe it serves up to four (4) inches, and shall not be less than four (4) inches for larger pipe.]

Section 9. Manholes. An underground clean-out [Underground clean-outs] in a building, except where a clean-out is [clean-outs are] flush with the floor or wall, shall be made accessible by a manhole or with a proper cover.

Section 10. Clean-outs (Equivalents). A floor or wall connection of a fixture trap, whether bolted or screwed to the floor or wall, shall be regarded as a clean-out with the exception of the clean-out where the house drain enters a building.

Section 11. Grease Traps. If a grease trap is installed, it shall be placed as near to the fixture it serves as practical and shall be approved by the department. A grease trap [Grease traps] used inside a building shall have a sealed cover and shall be properly vented. A grease trap [Grease traps] shall be installed for a restaurant or a [restaurants and] food service establishment [establishments] and other business establishments deemed necessary by the Department of Housing, Buildings and Construction or as required by municipal ordinance. If a food establishment uses [food establishments use] a pri-

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vate sewage system, a grease trap [traps] shall be installed as required by the Cabinet for Human resources administrative regulation 902 KAR 10:085.

Section 12. Sand Traps. A sand trap [Sand-traps] shall be readily accessible and shall meet the requirements of the Department of Housing, Buildings and Construction.

Section 13. Basement Floor Drains. A basement floor drain shall connect to a trap and be readily accessible for cleaning and shall be of sufficient size to serve the purpose intended. If a drain is [drains-are] subject to back flow or back pressure, the drain [drains] shall be equipped with a backwater valve approved by administrative regulation of the Department of Housing, Buildings and Construction.

Section 14. Back Water Valves. A back water valve shall be of noncorrosive material and shall be constructed to insure a positive mechanical seal except when discharging waste [wastes].

Section 15. Residential Utility Room Floor Drains. A two (2) inch floor drain with an individual waste and vent may be installed in a residential utility room.

Section 16. Directional Flow Fittings and Continuous-waste. A kitchen sink unit or fixture [units, or fixtures] with more than one (1) unit may be connected with a continuous-waste, if a directional flow fitting is used. Continuous-waste shall be either seventeen (17) gauge tubular brass or schedule 40 ABS or PVC or tubular ABS or PVC material.

FRANK PHIEFFER, Chairman  
CHARLES A. COTTON, Commissioner  
RONALD MCCLOUD, Secretary  
JUDITH G. WALDEN, Office of General Counsel

APPROVED BY AGENCY: June 14, 1999

FILED WITH LRC: June 15, 1999 at 9 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on Tuesday, July 27, 1999 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 July 20, 1999, (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

(1) Type and number of entities affected: Licensed master and journeyman plumbers; users of the State Plumbing Code.

(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: Implementation of this amendment will not affect the cost of living or employment in any area.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented: No change in the cost of doing business.

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

competition) for the:

1. First year following implementation: No reporting or paperwork required by users of the State Plumbing Code.

2. Second and subsequent years:

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings: No costs or savings on the administrative agency involved in this arrangement.

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements: Preparing amendment to Code and distributing the information to users.

(4) Assessment of anticipated effect on state and local revenues: No effect on state or local revenue with the implementation of this amendment.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Enforcement of this regulation will not increase agency costs.

(6) Economic impact, including effects of economic activities arising from administrative regulation, on:

(a) Geographical area in which administrative regulation will be implemented: Administrative regulation implemented statewide; however, its implementation should have no economic impact to the area or statewide.

(b) Kentucky: Same as above.

(7) Assessment of alternative methods; reasons why alternatives were rejected: State Plumbing Code Committee and Board of Housing review proposed amendments and accept on basis within limits defined.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: Implementation will have no effect except to make more quality materials available.

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

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

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication:

(a) Necessity of proposed regulation if in conflict: No known 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 used in that each standard approved is considered separately for compliance.

### PUBLIC PROTECTION AND REGULATION CABINET Department of Housing, Buildings and Construction Division of Fire Prevention (Amendment)

815 KAR 35:030. Kentucky certification of electrical contractors.

RELATES TO: KRS 227.450 through 227.500

STATUTORY AUTHORITY: KRS 227.4901

NECESSITY, FUNCTION, AND CONFORMITY: [In 1990, the General Assembly enacted] KRS 227.4901 requires [which requires that] the Department of Housing, Buildings and Construction, with advice from the Electrical Advisory Committee, to select and approve an examination designed to determine the competency of electrical contractors under the National Electrical Code, and to certify those individuals passing the examination. KRS 227.4901(5) requires the department [and] to collect and compile reports on disciplinary actions taken against licensed electrical contractors by cities and counties, and to submit quarterly reports of these actions to each city or county that licenses electrical contractors. This administrative regulation is necessary [in order] to establish procedures of administration and reasonable fees to carry on the certification program. [This amendment is necessary in order to reduce the administrative burden on the

department, reduce the "red tape" for contractors and maintain flexibility in maintaining certification.]

Section 1. Definitions. (1) ["NAIE" means the examination based upon the National Electrical Code which is developed, administered and scored by the National Assessment Institute.

(2) "NCPGGI" means the National Certification Program for Construction Code Inspectors.

(3) "Kentucky Certificate of Electrical Contractor Examination" means the written document issued by the department which certifies that the person [whose name] is listed [thereon] has successfully completed the examination required by this administrative regulation.

(2) "NCPCCI" means the National Certification Program for Construction Code Inspectors.

(3) "Standard Master Electrical Exam" means the Kentucky Certified Electrical Contractor Examination based upon the National Electrical Code which is developed, administered and scored by Expor Assessments.

Section 2. Approved Examinations. (1) A person [After the effective date of this amendment, any person] seeking to obtain a Kentucky Certificate of Electrical Contractor Examination shall pass the examination known as the Standard Master Electrical Exam [NAIE].

(2) The department shall issue or renew a Kentucky Certificate of Electrical Contractor Examination to any person who complies with the terms of this administrative regulation.

Section 3. Application for Certificate. (1) An application shall be made to the department by the individual seeking certification on Form SFM-EL-2, Application for Electrical Contractor Certification [forms incorporated by reference in Section 5 of this administrative regulation].

(2) The original application shall be accompanied by a fee of \$100 to cover the administrative costs of processing the application, verifying examination scores and issuing certificates.

(3) The Kentucky Certificate of Electrical Contractor Examination is not a license to do business as an electrical contractor.

Section 4. Renewal of Certificates. (1) General. Each person seeking certification pursuant to this administrative regulation shall be required to pay an additional annual renewal fee in the sum of twenty-five (25) dollars no later than June 30 of each year in order to maintain the certification.

(2) Delinquent renewal fee. A [Any] certified electrical contractor who fails to renew his certification on or before July 1 of each year may have his certification renewed upon payment of a delinquent renewal fee of \$100. If the fees are not paid by January 1 of the following year, the certification shall be automatically cancelled.

(3) Reinstatement. A [Any] certificate that has been revoked or cancelled may be reinstated upon petition to the commissioner and for good reason shown in his sole discretion and upon payment of any unpaid renewal fees plus a reinstatement fee of \$100.

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

(a) Form SFM-EL-2, Application for Electrical Contractor Certification, April, 1996;

(b) Form SFM-EL-2A, Renewal Application for Electrical Contractor Certification, April, 1996.

(2) This material may be inspected, copied, or obtained at the Department of Housing, Buildings and Construction, Electrical Section, 1047 US 127 South, Suite 1, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m. Electrical Contractor Certification Application Forms. (1) Application for electrical contractor certification. Each applicant seeking certification as an electrical contractor shall submit the Application for Electrical Contractor Certification Form SFM-EL-2, April 1996, hereby incorporated by reference, to the Department of Housing, Buildings and Construction, Electrical Section, 1047 U.S. 127 South, Suite 1, Frankfort, Kentucky 40601, between 8 a.m. and 4:30 p.m., Monday through Friday.

(2) Renewal application for electrical contractor certification. Each applicant seeking renewal of his application for electrical contractor

certification shall submit the Renewal Application for Electrical Contractor Certification Form SFM-EL-2A, April 1996, hereby incorporated by reference to the Department of Housing. Copies of the renewal application form are available at the Department of Housing, Buildings and Construction, Electrical Section, 1047 U.S. 127 South, Suite 1, Frankfort, Kentucky 40601, between 8 a.m. and 4:30 p.m., Monday through Friday.]

CHARLES A. COTTON, Commissioner

RONALD MCCLOUD, Secretary

JUDITH G. WALDEN, Office of General Counsel

APPROVED BY AGENCY: June 14, 1999

FILED WITH LRC: June 15, 1999 at 9 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on Tuesday, July 27, 1999 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 July 20, 1999, (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

(1) Type and number of entities affected: Electrical contractors who desire state certification and any local government agency licensing electrical contractors and issuing permits for electrical wiring.

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

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented: The administrative regulation will be implemented statewide, however, the cost of living and employment will not be impacted by this amendment.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented: This administrative regulation is implemented statewide but does not affect the cost of doing business within the state.

(c) Compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition) for the: This amendment itself will not increase costs or paperwork.

1. First year following implementation: \$100 certification fee.

2. Second and subsequent years: \$25 renewal fee, plus revival or reinstatement fee, if applicable.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings: Little impact on promulgating agency beyond record keeping. Program supported by fees.

1. First year: \$100 fee per applicant.

2. Continuing costs or savings: \$25 renewal fee per applicant.

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: applications, certificates and personnel to review insurance compliance.

(4) Assessment of anticipated effect on state and local revenues: There is no direct impact by this administrative regulation because it is not a mandatory certification program. Local governments may license or not, but if they do, they must use department test.

(5) Source of revenue to be used for implementation and en-

forcement of administrative regulation: not applicable to this amendment.

(6) Economic impact, including effects of economic activities arising from administrative regulation, on:

(a) Geographical area in which administrative regulation will be implemented: not applicable to this amendment.

(b) Kentucky: Application of this amendment will affect only a very few individuals who fail to renew their certification by the stated deadline and on a statewide basis will not have an economic impact.

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

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: Not applicable to this amendment.

(b) State whether a detrimental effect on environment and public health would result if not implemented: Not applicable to this amendment.

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

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: No known conflict with other statutes or regulations.

(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: Material incorporated by reference not amended; Section corrected to conform to drafting criteria.

(11) TIERING: Is tiering applied? No. These amendments apply to any certified contractor who attempts to renew his certification.

#### 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? If yes, complete questions 2-4. Yes

2. State what unit, part or division of local government this administrative regulation will affect. This administrative regulation affects the electrical section of local government.

3. State the aspect or service of local government to which this administrative regulation relates. This administrative regulation requires any local government which chooses to license electrical contractors to accept and administer the particular test chosen by the department if the local government requires examination as a condition of licensure.

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:

#### PUBLIC PROTECTION AND REGULATION CABINET Commission on Fire Protection Personnel Standards and Education Office of the State Fire Marshal (Amendment)

#### 815 KAR 45:080. Volunteer fire department aid.

RELATES TO: KRS Chapter 95A, 136.392

STATUTORY AUTHORITY: KRS 95A.262(2)

NECESSITY, FUNCTION, AND CONFORMITY: The Commission on Fire Protection Personnel Standards and Education is required by KRS 95A.262 to allot funds to local volunteer fire departments in order to promote better fire protection through better facilities and equipment. This administrative regulation sets out standards and procedures for determining the use of volunteer fire department aid.

Section 1. Definitions. (1) "Certified volunteer firefighter" means an

individual who has received at least 150 hours of certified training as defined by the Commission on Fire Protection Personnel Standards and Education and who receives at least twenty (20) hours of defined and certified training annually.

(2) "Certified training" means firefighter training given or verified by an instructor certified pursuant to 815 KAR 45:090 and recorded by the commission.

(3) "Commission" means commission as defined by KRS 95A.210(1).

(4) "Fire apparatus" means a motorized vehicle specifically designed to perform firefighting operations, equipped with a pump having a minimum capacity of pumping 250 gallons per minute and with sufficient space to carry fire hose and other fire suppression equipment.

(5) "Volunteer fire department" means a fire department recognized by the commission as having a membership of more than fifty (50) percent of its members being full time volunteer firefighters.

(6) "Newly formed department" means a fire department which has organized to the point of having a minimum of twelve (12) members, a chief and having either in their possession or on order at least one (1) operational fire apparatus. The department shall also have available from any source for the year in which the allotment is to be made funds, equipment, land and buildings of sufficient value to match or exceed the amount of the aid allotment.

Section 2. Eligibility. (1) To qualify to receive aid under the volunteer fire department aid law, volunteer fire departments in cities of all classes, fire prevention districts organized pursuant to KRS Chapter 75, county districts established under authority of KRS 67.083 and all other organized volunteer fire departments registered as nonprofit corporations shall maintain at least twelve (12) firefighters, a chief and at least one (1) operational fire apparatus, as required by KRS 95A.262(2).

(2) A fire department or entity eligible for and receiving aid shall have a minimum of fifty (50) percent of its firefighters certified as required by this administrative regulation.

(3) Effective April 1, 1999, any new fire department applying to be recognized by the Fire Commission for funding and benefits must have twelve (12) members and a chief that are not qualifying another fire department for volunteer fire department aid. [January 1, 2001, no firefighter who is listed on a fire department roster for purposes of qualifying that department for volunteer fire department aid may be listed as part of a roster qualifying any other fire department for volunteer fire department aid.]

(4) ~~[A fire department or entity anticipating receiving aid shall maintain a current roster of those firefighters who qualify them for the following year's volunteer fire department aid check and submit a copy of the roster to the commission.]~~

(5) ~~After December 31, 2000, if two (2) or more fire departments contain the name of the same firefighter on its roster, no fire department shall use that firefighter in its calculation toward qualification for receiving aid.~~

(6) A fire department or other eligible entity requesting aid for any year shall provide proof of purchase expenditures for the previous year's aid. The proof shall be submitted by June 30 of each year.

(5) [(7)] Certification of personnel shall be determined from Form KFS-2, July 14, 1998 which shall be submitted to the commission regarding active or inactive status of existing members as well as departure of members and entry of new members.

(6) [(8)] New members of a fire department shall have two (2) years to become certified before being counted as personnel to determine qualification of the fifty (50) percent of personnel certified for eligibility of state-aid funding.

(7) [(9)] To be eligible to receive funds, a newly formed fire department shall have fifty (50) percent of its membership with at least half of their training hours toward certification by July 31 within their first year of existence and plans to receive the balance of the required hours for certification within the second year of their existence. Each successive year, they shall meet the requirements of the commission to retain certification.

Section 3. Participation Requirement. (1) It shall be the responsibility of the chief officer or his appointed representative of the depart-

ment to furnish the information required by the commission for determination of eligibility.

(2) All training hours for the department for the previous twelve (12) months shall be submitted by December 31st.

(3) A volunteer fire department seeking aid pursuant to the authority of KRS Chapter 95A shall file Form KSA-1 and KFS-3, July 14, 1998, and submit to the office of the commission.

Section 4. Purposes for which Volunteer Aid May be Used. (1) An approved equipment list of items which can be purchased with volunteer fire department aid pursuant to this administrative regulation shall be supplied with each check.

(2) Funds shall not be expended for an item not on the approved list unless written permission to spend the funds for other purposes is granted by the fire department aid administrator.

(3) Proof of purchase shall be submitted in the form of invoices and cancelled checks and shall be recorded on Form KSA-2, July 14, 1998, and submitted to the commission.

(4) Proof of purchase documentation shall be returned by June 30 of the year following receipt of the check.

(5) The commission or its designee may make an inspection of the applicant's fire department to determine comparative needs within the department before making the allotment. The inspection may also include an accounting to assure that equipment previously purchased is currently in the possession of the fire department.

Section 5. Processing Applications for and Expenditure of Aid. (1) Allotment shall not be expended for any purpose other than that for which it is approved without the approval of the commission.

(2) If approved allotment is insufficient to cover the cost of equipment or other approved purposes, funds granted for a fiscal year may be deposited in any bank authorized by the applicant to be held for a period not to exceed five (5) years from the initial request. If additional time beyond the five (5) years is needed, a written request shall be made to the commission giving reasons why additional time is needed. This shall be held in a special and separate bank account marked "Fire Department Aid Fund."

(3) If an allotment is granted to a fire department and is to be used for the purchase of equipment other than that listed on the approved equipment list or for any other purpose, the chief of the fire department shall:

(a) Request, in writing, permission to use the allotment for other equipment or purposes; or

(b) Refund the grant-in-aid allotment.

(4) An amount expended for expense of firefighters in attending fire related school or classes shall not exceed ten (10) percent for a fire department. This shall be an item entered on Form KSA-2, July 14, 1998, with receipts.

(5) If expenditure is made of any allotted funds, copies of receipted bills shall be forwarded by the volunteer fire department aid coordinator to the commission. If the grant is to be used toward the retirement of a preexisting debt for purchase of land, buildings or equipment, proof of the expenditure in the form of an affidavit or cancelled note shall be furnished to the commission. A false statement made knowingly by an applicant shall call for refund of grant monies and prosecution under existing statutes.

Section 6. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) Fire Department Information, Form KSA-1, July 14, 1998.

(b) Firefighter Application for Certification of Personnel, Form KFS-2, July 14, 1998.

(c) Fire Department Application, Form KFS-3, July 14, 1998.

(d) Proof of Purchase, Form KSA-2, July 14, 1998.

(2) This material may be inspected, copied, or obtained at the Commission on Fire Protection Personnel Standards and Education, 1049 U.S. 127 South, Suite #5, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

GERALD STEWART, Chairman  
RONALD MCCLLOUD, Secretary  
JUDITH G. WALDEN, Office of General Counsel  
APPROVED BY AGENCY: June 14, 1999

FILED WITH LRC: June 15, 1999 at 9 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on Tuesday, July 27, 1999 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 July 20, 1999, (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: Bob Burch

(1) Type and number of entities affected: 740 predominately volunteer and volunteer fire departments.

(2) Direct and indirect costs or savings on the: No effect on cost of living, employment or doing business will result with revision of this administrative regulation.

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented:

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented:

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

1. First year following implementation:

2. Second and subsequent years:

(3) Effects on the promulgating administrative body: Existing personnel presently in place to administer this program.

(a) Direct and indirect costs or savings:

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements: Less 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: Firefighters Foundation Fund KRS 95A.262.

(6) Economic impact, including effects of economic activities arising from administrative regulation, on: There should be no economic impact from the revisions of this administrative regulation.

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

(b) Kentucky:

(7) Assessment of alternative methods; reasons why alternatives were rejected: No alternative methods necessary; only revising present regulations.

(8) Assessment of expected benefits: Less paperwork and recording required of volunteer fire departments.

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: No effect on public health or environment if implemented.

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

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

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: No con-

flicting statute, regulation or policy in effect.

(a) Necessity of proposed regulation if in conflict:

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

(10) Any additional information or comments:

(11) TIERING: Is tiering applied? No. Tiering is applied in the sense that state aid is granted only to volunteer fire departments meeting the requirements of KRS 95A.262 and these administrative regulations.

#### FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? If yes, complete questions 2-4. Yes

2. State what unit, part or division of local government this administrative regulation will affect. Volunteer fire departments.

3. State the aspect or service of local government to which this administrative regulation relates. Fire service.

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: Qualifying fire departments will be eligible to raise money for facilities and equipment for having trained personnel under this administrative regulation.

#### PUBLIC PROTECTION AND REGULATION CABINET Department of Charitable Gaming (Amendment)

##### 820 KAR 1:001. Definitions for 820 KAR Chapter 1.

RELATES TO: KRS 238.500 to 238.995

STATUTORY AUTHORITY: KRS 238.515(9)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 238.515(9) authorizes the Department of Charitable Gaming to promulgate administrative regulations to carry out the provisions of the chapter. This administrative regulation establishes definitions of terms used throughout 820 KAR Chapter 1.

Section 1. Definitions. (1) "Bet block" means an area which indicates the dollar amount of the wager.

(2) "Card" or "face" means a card or paper containing:

(a) Five (5) rows of five (5) squares with twenty-four (24) pre-printed numbers;

(b) A free center space; and

(c) The letters "B", "I", "N", "G", "O" printed in order over the five (5) columns.

(3) "Cash" means currency, coinage or a negotiable instrument.

(4) "Conditioning" means a restatement of:

(a) How many numbers or combinations of numbers are being selected by the players;

(b) The way in which the numbers are being wagered; and

(c) The corresponding dollar amount wagered.

(5) "Covered" means daubed or smeared with indelible ink.

(6) "Deal" means each separate game or series of charity game tickets with the same serial number.

(7) "Designator" means an item:

(a) Upon which bingo letters and numbers are imprinted; and

(b) Used in the number selection process.

(8) "Disposable paper bingo card" means a nonreusable, paper bingo card:

(a) Bearing preprinted numbers; and

(b) Assembled in a:

1. Multiple card sheet;

2. Single sheet;

3. Pad; or

4. Packet form.

(9) "Draw ticket" means a ticket upon which the numbers randomly selected are marked on a blank ticket as the numbers are selected.

(10) "EPROM" means Erasable Programmable ROM.

(11) "Exception log" means a record documenting a prize payout that has not been authorized by the computer.

(12) ["Festival bingo" means bingo:

(a) Conducted at a charity fundraising event; and

(b) For which total cash and fair market value of prizes awarded do not exceed \$5,000.

(13) "Flare" means a piece of paper, cardboard or similar material that bears printed information relating to the:

(a) Number of prizes to be awarded; and

(b) Specific prize amounts in a particular deal of charity game tickets.

(13) "Inside ticket" means a blank Keno ticket:

(a) Constructed with eighty (80) blocks numbered one (1) through eighty (80); and

(b) Containing a bet block.

(14) "Keno" means a numbers game in which:

(a) A participant chooses from one (1) to ten (10) numbers from a pool of eighty (80) numbers; and

(b) The winner and his prize is determined by correctly matching his numbers to the twenty (20) numbers generated in the game.

(15) "Keno equipment" means a:

(a) Electronic selection device;

(b) Random number generator;

(c) Computerized Keno system; or

(d) Integrated system of computer hardware and software that:

1. Generates a player ticket;

2. Records a game outcome;

3. Verifies a winning ticket;

4. Produces a management report; or

5. Performs other internal audit controls of a Keno operation.

(16) "Keno manager" means the person in charge of the operation of the Keno game.

(17) "Multirace ticket" means a single ticket which allows a player to make the same wager on consecutive games.

(18) "Outside ticket" means a computer generated ticket given to the player which reflects certain game and wagering information.

(19) "Perm number" means the number generally printed in the center space of a bingo card that identifies the unique pattern of numbers printed on that card.

(20) "PROM" means programmable ROM.

(21) "Quick pick" means a number selection made for the player by a computer.

(22) "RAM" or "random access memory" means the electronic memory that a computer uses to store information.

(23) "Random number generator" means a device:

(a) For generating number values that exhibit characteristics of randomness; and

(b) Composed of:

1. Computer hardware;

2. Computer software; or

3. A combination of computer hardware and software.

(24) "Regrade" means to manually recalculate the prize payout of a winning ticket according to the printed pay schedule.

(25) "ROM" or "read only memory" means:

(a) The electronic component used for storage of nonvolatile information in Keno equipment that provides instructions needed by the computer to begin its operations each time it is turned on;

(b) "PROM"; and

(c) "EPROM".

(26) "Selection device" means a device that:

(a) May be operated:

1. Manually; or

2. Automatically; and

(b) Is used to randomly select bingo numbers.

(27) "Serial number" means a number that is:

(a) Printed by the manufacturer on each card in a set; and

(b) Unique to the set.

(28) "Series number" means the number of unique card faces contained in a set.

(29) "Set" means a specific group of cards from the same product line that:

(a) Are the same:

1. Color; and
2. Border pattern;

(b) Are imprinted with the same serial number; and

(c) May include more than one (1) series of:

1. Cards; or
2. Faces.

(30) "Transaction log" means a record of the same information printed on each outside ticket that is:

(a) Retained in the computer's memory; or

(b) Printed out by the computer.

(31) "Verification book" means a book compiled by the manufacturer of bingo cards that:

(a) Lists the unique patterns of numbers on each card by perm number; and

(b) Is used to verify the authenticity of a winning card.

(32) "Way ticket" means a single ticket that permits wagering on a combination of groups of numbers in various ways designated by the player.

(33) "Week" means a seven (7) day period beginning on Sunday and ending Saturday.

(34) "Year" means calendar year except as used in KRS 238.555(7), 238.545(4), and 238.547(1) [and 500 KAR 11:080, Section 2], when "year" means the licensee's license year.

RONALD B. MCCLOUD, Secretary

RAY FRANKLIN, Commissioner

SCOTT JONES, General Counsel

APPROVED BY AGENCY: June 15, 1999

FILED WITH LRC: June 15, 1999 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on Wednesday, July 21, 1999, at 1 p.m. at the Farnham Dudgeon Civic Center (Meeting Room), Mero Street, Frankfort, Kentucky 40601. Individuals interested in attending this hearing shall notify this agency in writing by July 14, 1999, five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on this administrative regulation. Any disabled person desiring to attend or participate in this public hearing will be provided reasonable accommodation, if requested, at the time of notification of intent to attend. A transcript of the public hearing will not be made unless a written request for a transcript is made, with cost therefore to be borne by the requesting party. If you do not wish to attend the public hearing, you may submit comments on this administrative regulation by July 21, 1999. Send written notification to attend the public hearing or comments on this administrative regulation to: Department of Charitable Gaming, Public Protection and Regulation Cabinet, Attn: Scott Jones, General Counsel, 403 Wapping Street, Bush Building, Suite 100, Frankfort, Kentucky 40601-2639, PH: (502) 564-5528, FAX: (502) 564-6625.

#### REGULATORY IMPACT ANALYSIS

Contact Person: Scott Jones

(1) Type and number of entities affected: All licensed manufacturers (currently 22), licensed distributors (currently 48), licensed facilities (currently 66), and licensed charitable organizations (currently 759).

(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 year 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: Charitable Gaming Regulatory Account (KRS 238.570(2)).

(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 the administrative regulation will be implemented: None

(b) Kentucky: None

(7) Assessment of alternative methods; reasons why alternatives were rejected: Not applicable.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: Not applicable.

(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: Not applicable

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

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

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

(10) Any additional information or comments: None

(11) TIERING: Is tiering applied? Tiering is not applicable. All the definitions promulgated in this regulation apply evenly to all licensees.

#### PUBLIC PROTECTION AND REGULATION CABINET Department of Charitable Gaming (Amendment)

##### 820 KAR 1:010. Temporary licensure.

RELATES TO: KRS 238.525

STATUTORY AUTHORITY: KRS 238.515(9), 238.525(4), 238.530(1), (2), 238.535(11), 238.555(1)

NECESSITY, FUNCTION, AND CONFORMITY: The Department of Charitable Gaming may issue temporary licenses to those qualifying charitable organizations, manufacturers, distributors and charitable gaming facilities who have [substantially] complied with the licensure requirements.

Section 1. Application for Temporary Licensure. A temporary license may be issued by the Department of Charitable Gaming to a charitable organization, manufacturer, distributor or charitable gaming facility if the applicant has exhibited [substantial] compliance with licensure requirements by completing and supplying the information requested on the appropriate licensure application form prescribed by the Department of Charitable Gaming.

Section 2. Form of Temporary Licenses. A temporary license issued by the Department of Charitable Gaming shall clearly state the:

(1) Name of the licensee;

(2) Address of the licensee;

(3) Date of issuance of the temporary license;

(4) Expiration date of the temporary license;

(5) Premises or location at which the charitable gaming will be conducted, if the temporary license is for a charitable organization or a charitable gaming facility;

(6) Type of temporary license issued; and

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(7) Address of the Department of Charitable Gaming.

Section 3. Processing Fee. (1) A processing fee of twenty-five (25) dollars shall accompany each application for temporary licensure.

(2) The twenty-five (25) dollar processing fee shall be credited to any balance due on the regular license at the time it is issued.

Section 4. Incorporation by Reference. (1) The following temporary application forms and materials are incorporated by reference:

(a) Form CG-1, "Application for License for Charitable Organization to Conduct Charitable Gaming in the Commonwealth of Kentucky (6/96)".

(b) Attachment CG-1A, "Tax Information Authorization (6/99)".

(c) Form CG-2, "Application for License for Distributor of Charitable Gaming Supplies and Equipment (6/99 [96])".

(d) [(e)] Form CG-3, "Application for License for Manufacturer of Charitable Gaming Supplies and Equipment (6/99 [96])".

(e) [(d)] Form CG-4, "Application for License to Operate a Charitable Gaming Facility in the Commonwealth of Kentucky (6/99 [96])".

(f) [(e)] Form CG-Schedule A, "Application for Charity Fundraising Event License or Special Limited Charity Fundraising Event License" [~~"Application for Special Limited Charitable Gaming License/Special Charity Fundraising Event License"~~] (For Use With Form CG-1) (6/99 [96])".

(2) These forms may be inspected, obtained or copied at the Department of Charitable Gaming, Public Protection and Regulation Cabinet, 403 Wapping Street, Bush Building, Suite 100, Frankfort, Kentucky 40601-2639, 8 a.m. to 4:30 p.m., Monday through Friday.

RONALD B. MCCLOUD, Secretary

RAY FRANKLIN, Commissioner

SCOTT JONES, General Counsel

APPROVED BY AGENCY: June 15, 1999

FILED WITH LRC: June 15, 1999 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on Wednesday, July 21, 1999, at 1 p.m. at the Farnham Dudgeon Civic Center (Meeting Room), Mero Street, Frankfort, Kentucky 40601. Individuals interested in attending this hearing shall notify this agency in writing by July 14, 1999, five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on this administrative regulation. Any disabled person desiring to attend or participate in this public hearing will be provided reasonable accommodation, if requested, at the time of notification of intent to attend. A transcript of the public hearing will not be made unless a written request for a transcript is made, with cost therefore to be borne by the requesting party. If you do not wish to attend the public hearing, you may submit comments on this administrative regulation by July 21, 1999. Send written notification to attend the public hearing or comments on this administrative regulation to: Department of Charitable Gaming, Public Protection and Regulation Cabinet, Attn: Scott Jones, General Counsel, 403 Wapping Street, Bush Building, Suite 100, Frankfort, Kentucky 40601-2639, PH: (502) 564-5528, FAX: (502) 564-6625.

### REGULATORY IMPACT ANALYSIS

Contact Person: Scott Jones

(1) Type and number of entities affected: All licensees (manufacturers, distributors, charitable gaming facilities, and charitable gaming organizations) seeking renewal licensure with the department (currently 895 licensees) and an undetermined number of first-time applicants that meet licensure requirements.

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

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented: None

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented: Any applicant (manufacturer, distributor, charitable gaming facility, and charitable gaming organization) will incur an initial cost of doing business for the temporary licensure processing fee (\$25) that will be applied and

credited toward the permanent licensing fee.

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

1. First year following implementation: Extensive application forms with information necessary to determine whether an applicant is eligible for licensure.

2. Second year and subsequent years: Extensive application forms with information necessary to determine whether an applicant remains eligible for licensure.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: The printing of the license applications will be a significant cost incurred by the department as well as the time of the department employee to process the applications.

2. Continuing costs or savings: The printing of the license applications will be a significant cost incurred by the department as well as the time of the department employee to process the applications.

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: Although the regulation's paperwork requirements are created by the application forms themselves, the department itself has established various reporting and paperwork requirements as to types and classes of applicants, locations (by county) of licensees, money generated and received by each category of licensees, money due from each applicant prior to receiving permanent licensure, and other such informational reports.

(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: To the extent the processing fee does not cover the cost of implementation, funds from the Charitable Gaming Regulatory Account (KRS 238.570(2)) will be used.

(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 the administrative regulation will be implemented: None

(b) Kentucky: None

(7) Assessment of alternative methods; reasons why alternatives were rejected: See the response to Question #11.

(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: Not applicable.

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

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

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

(10) Any additional information or comments: None

(11) TIERING: Is tiering applied? All applicants for licensure are charged the same processing fee of \$25 despite the fact that permanent licensure fees will vary among groups/types of applicants.

### PUBLIC PROTECTION AND REGULATION CABINET Department of Charitable Gaming (Amendment)

#### 820 KAR 1:015. Permanent licensure.

RELATES TO: KRS 238.515(3), 238.525(3)

STATUTORY AUTHORITY: KRS 238.515(2), (3), (9), 238.530(1), (2), 238.535(11), 238.555(1)

NECESSITY, FUNCTION, AND CONFORMITY: The Department of Charitable Gaming is authorized to issue permanent licenses, set license fees, including renewal fees, and establish license years for all permanent licenses issued by the department. This administrative

regulation establishes the above fees and procedures for permanent licensure.

Section 1. Application for Licensure. (1) Unless complete application was made for temporary licensure under 820 KAR 1:010, applicants for permanent licensure shall submit to the department a complete application on a form prescribed by the department at least sixty (60) days prior to engaging in the conduct to be licensed.

(2) If the applicant satisfactorily meets the requirements for licensure prescribed in KRS Chapter 238, the department shall issue a permanent license.

Section 2. Information Required on License. A permanent license issued by the Department of Charitable Gaming shall clearly state the:

- (1) Name of the licensee;
- (2) Address of the licensee;
- (3) Date of issuance of the license;
- (4) Expiration date of the license;
- (5) Premises or location at which the charitable gaming will be conducted, if the license is for a charitable organization or a charitable gaming facility;
- (6) Type of license issued; and
- (7) Address of the Department of Charitable Gaming.

Section 3. Fees for Licensure. (1) The department shall collect fees for applications for permanent licensure and for renewal applications.

(2)(a) The annual license fees for each license issued shall be as follows:

1. Manufacturer - \$500.
2. Distributor - \$1,000 [250].
3. Charitable gaming facility which may have up to eighteen (18) sessions per week - \$2,500.
4. Charitable gaming facility which may have no more than eight (8) sessions per week - \$1,250.
5. Charitable gaming organization with gross receipts not in excess of \$100,000 - \$100.
6. [5:] Charitable gaming organization with gross receipts over \$100,000, but not in excess of \$250,000 - \$200.
7. [6:] Charitable gaming organization with gross receipts over \$250,000 - \$300.

(b) A processing fee of twenty-five (25) dollars shall accompany each application for licensure. The twenty-five (25) dollar processing fee shall be credited to any balance due on the license at the time it is issued.

(3) A permanent license shall not be issued until the annual license fee is paid in full.

(4) The permanent license shall be effective for one (1) year from the date of issuance.

(5) A processing fee of twenty-five (25) dollars shall be required for any change to a license application that mandate the reissuance of a license.

Section 4. Renewals. (1) A licensee wishing to renew its license shall make application to the department on a form specified in Section 5(1) of this administrative regulation, prescribed by the department no later than sixty (60) days prior to the expiration date on the renewal applicant's current license.

(2) Annual fees for renewal licenses shall be the same as those set forth in Section 3(2) of this administrative regulation.

(3) Failure to timely renew as directed in subsection (1) of this section may result in issuance of a renewal license after the expiration date of the applicant's current license. Activities authorized by any license shall not continue after the expiration date on the license, and the licensee shall cease the activities until receipt of the renewal license.

Section 5. Incorporation by Reference. (1) The following application forms and materials are incorporated by reference:

(a) Form CG-1, "Application for License for Charitable Organization to Conduct Charitable Gaming in the Commonwealth of Kentucky (5/99 [6/96])".

(b) Attachment CG-1A, "Tax Information Authorization (6/99)";

(c) Form CG-2, "Application for License for Distributor of Charitable Gaming Supplies and Equipment (6/99 [96])".

(d) [(e)] Form CG-3, "Application for License for Manufacturer of Charitable Gaming Supplies and Equipment (6/99 [96])".

(e) [(d)] Form CG-4, "Application for License to Operate a Charitable Gaming Facility in the Commonwealth of Kentucky (6/99 [96])".

(f) [(e)] Form CG-Schedule A, "Application for Charity Fundraising Event License or Special Limited [Charitable Gaming License/Special] Charity Fundraising Event License (For Use With Form CG-1) (6/99 [96])".

(2) These forms may be inspected, obtained or copied at the Department of Charitable Gaming, Public Protection and Regulation Cabinet, 403 Wapping Street, Bush Building, Suite 100, Frankfort, Kentucky 40601-2639, 8 a.m. to 4:30 p.m., Monday through Friday.

RONALD B. MCCLOUD, Secretary

RAY FRANKLIN, Commissioner

SCOTT JONES, General Counsel

APPROVED BY AGENCY: June 15, 1999

FILED WITH LRC: June 15, 1999 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on Wednesday, July 21, 1999, at 1 p.m. at the Farnham Dudgeon Civic Center (Meeting Room), Mero Street, Frankfort, Kentucky 40601. Individuals interested in attending this hearing shall notify this agency in writing by July 14, 1999, five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on this administrative regulation. Any disabled person desiring to attend or participate in this public hearing will be provided reasonable accommodation, if requested, at the time of notification of intent to attend. A transcript of the public hearing will not be made unless a written request for a transcript is made, with cost therefore to be borne by the requesting party. If you do not wish to attend the public hearing, you may submit comments on this administrative regulation by July 21, 1999. Send written notification to attend the public hearing or comments on this administrative regulation to: Department of Charitable Gaming, Public Protection and Regulation Cabinet, Attn: Scott Jones, General Counsel, 403 Wapping Street, Bush Building, Suite 100, Frankfort, Kentucky 40601-2639, PH: (502) 564-5528, FAX: (502) 564-6625.

#### REGULATORY IMPACT ANALYSIS

Contact Person: Scott Jones

(1) Type and number of entities affected: All licensees (manufacturers, distributors, charitable gaming facilities, and charitable gaming organizations) seeking renewal licensure with the department (currently 895 licensees) and an undetermined number of first-time applicants that meet licensure requirements.

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

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: None

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented: Any applicant (manufacturer, distributor, charitable gaming facility, and charitable gaming organization) will incur an initial cost of doing business for the temporary licensure processing fee (\$25) that will be applied and credited toward the permanent licensing fee. Any applicant that seeks a change to its application that mandates a re-issuance of a license will incur a processing fee of \$25. The permanent license fee structure will be as follows:

Manufacturer - \$500.

Distributors - \$1,000.

Charitable gaming facility - \$2,500 for those facilities limited by KRS 238.555(5) to no more than 18 bingo sessions per week. \$1,250 for those facilities limited by KRS 238.555(5) to no more than 8 bingo sessions per week.

Charitable gaming organization with gross receipts in excess of \$100,000 - \$100.

Charitable gaming organization with gross receipts in excess of

\$100,000, but not in excess of \$250,000 - \$200.

Charitable gaming organization with gross receipts in excess of \$250,000 - \$300.

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

1. First year following implementation: Extensive application forms with information necessary to determine whether an applicant is eligible for licensure.

2. Second year and subsequent years: Extensive application forms with information necessary to determine whether an applicant remains eligible for licensure.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: The printing of the license applications will be a significant cost incurred by the department as well as the time of the department employee to process the applications.

2. Continuing costs or savings: The printing of the license applications will be a significant cost incurred by the department as well as the time of the department employee to process the applications.

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: Although the regulation's paperwork requirements are created by the application forms themselves, the department itself has established various reporting and paperwork requirements as to types and classes of applicants, locations (by county) of licensees, money generated and received by each category of licensees, money due from each applicant prior to receiving permanent licensure, and other such informational reports.

(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: To the extent the processing fee does not cover the cost of implementation, funds from the Charitable Gaming Regulatory Account (KRS 238.570(2)) will be used.

(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 the administrative regulation will be implemented: The charitable gaming facility license fee will be reduced for those facilities that are limited to eight (8) bingo sessions per week, i.e. the charitable gaming facility is located in a city of the third class, fourth class, fifth class, sixth class, or in a county that does not contain a city of the first class or second class.

(b) Kentucky: None

(7) Assessment of alternative methods; reasons why alternatives were rejected: The department considered, but rejected, basing the license fee for facilities on the number of bingo sessions actually held at the facility. The number of such sessions can vary widely and using the maximum number of permissible sessions as the guideline appears more equitable and easier to administer. See also the response to Question #11, *infra*.

(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: Not applicable.

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

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

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

(10) Any additional information or comments: None

(11) TIERING: Is tiering applied? All applicants for licensure are charged the same processing fee of \$25 despite the fact that permanent licensure fees will vary among groups/types of applicants. The initiation of the \$25 processing fee for changes to license applications that mandate a re-issuance of a license is required to offset costs of processing additional licenses in compliance with reporting and paperwork requirements. The increase in the license fee for

distributors, which are for-profit, commercial enterprises, is because they bear an inordinately low cost to be licensed both in terms of fees paid by other licensees in Kentucky and in terms of fees imposed on like enterprises in other states. The increased fee will apply to all distributors. The reduction of the license fee of charitable gaming facilities, which can have no more than 8 bingo sessions per week, is intended to more equitably allocate license fees among facilities, thereby remedying disparate treatment.

**PUBLIC PROTECTION AND REGULATION CABINET  
Department of Charitable Gaming  
(Amendment)**

**820 KAR 1:025. Quarterly reports of a licensed charitable organization.**

RELATES TO: KRS 238.550, 238.570(1)

STATUTORY AUTHORITY: KRS 238.515(4), (9), 238.550, 238.570(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 238.550(2) and 238.570(1) require a licensed charitable organization to submit quarterly reports and remit four-tenths (4/10) [~~one-half (1/2)~~] of one (1) percent of the gross receipts derived from charitable gaming to the department. This administrative regulation establishes the method and time of filing the quarterly reports and remitting payment of the quarterly fees due.

Section 1. Quarterly Reporting Period Defined. A quarterly report shall be filed by a licensed charitable organization within thirty (30) days following the close of each calendar year quarter. A quarterly report shall be considered filed when due if it has been mailed to the department by first class mail, postage prepaid, to the correct address and postmarked by the due date. If the 30th day following the close of the calendar quarter is on a Saturday, Sunday or legal holiday, then the report shall be due on the first business day thereafter.

Section 2. Quarterly Reports. A quarterly report shall:

(1) Be submitted on the following forms:

(a) Form CG-QR, "Quarterly Activity Report";

(b) Attachment A, "Charitable Gaming Accounting Summary";

(c) Attachment B, "Report of All Prize Winners of \$600 or More";

(d) Attachment C, "Special License Activity Report";

(e) Attachment D, "Summary of Gaming Activity";

(f) Attachment E, "Report of Charitable Contributions Made by Licensee";

(2) Be signed by an authorized officer of the licensed charitable organization; and

(3) If prepared by an individual other than an authorized officer, be signed by the preparer.

Section 3. Fees Due. The fee imposed by KRS 238.570(1) on gross gaming receipts of a licensed charitable organization shall be remitted by check made payable to "Kentucky State Treasurer" at the time the quarterly report is due.

Section 4. Late Fine. (1) If the quarterly fee imposed by KRS 238.570(1) is not remitted when due, a fine of twenty-five (25) dollars per day, not to exceed \$250 dollars per quarter, shall be imposed on the licensed charitable organization until the quarterly fee has been received by the department.

(2) The quarterly fee shall be considered remitted when due if:

(a) It has been mailed:

1. To the department by first class mail;

2. Postage prepaid; and

3. To the correct address; and

(b) It has been postmarked by the due date.

(3) The fine imposed in subsection (1) of this section shall be paid:

(a) Within ten (10) days of receipt of an invoice from the department; and

(b) By check made payable to "Kentucky State Treasurer".

Section 5. Reporting Expenses. All expenses reported by a licen-

see on Form CG-QR shall be reported for the period in which payment is made regardless of when the goods or services are used.

Section 6. Incorporation by Reference. (1) The following material is incorporated by reference:

- (a) "Quarterly Activity Report", Form CG-QR, (June 1999 [1996] Edition), Department of Charitable Gaming;
- (b) "Charitable Gaming Accounting Summary", Attachment A, (June 1999 [1996] Edition), Department of Charitable Gaming;
- (c) "Report of All Prize Winners of \$600 or More", Attachment B, (June 1999 [1996] Edition), Department of Charitable Gaming;
- (d) "Special License Activity Report", Attachment C, (June 1999 [1996] Edition), Department of Charitable Gaming;
- (e) "Summary of Gaming Activity", Attachment D, (June 1999 [1996] Edition), Department of Charitable Gaming;
- (f) "Report of Charitable Contributions Made by Licensee", Attachment E, (June 1999 [1996] Edition), Department of Charitable Gaming;
- (g) "Report of Donated Prizes", Attachment F, June 1999 Edition, Department of Charitable Gaming.

(2) This material may be inspected, copied, or obtained at the Department of Charitable Gaming, Public Protection and Regulation Cabinet, 403 Wapping Street, Bush Building, Suite 100, Frankfort, Kentucky 40601-2639, Monday through Friday, 8 a.m. to 4:30 p.m.

RONALD B. MCCLOUD, Secretary  
RAY FRANKLIN, Commissioner  
SCOTT JONES, General Counsel

APPROVED BY AGENCY: June 15, 1999

FILED WITH LRC: June 15, 1999 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on Wednesday, July 21, 1999, at 1 p.m. at the Farnham Dudgeon Civic Center (Meeting Room), Mero Street, Frankfort, Kentucky 40601. Individuals interested in attending this hearing shall notify this agency in writing by July 14, 1999, five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on this administrative regulation. Any disabled person desiring to attend or participate in this public hearing will be provided reasonable accommodation, if requested, at the time of notification of intent to attend. A transcript of the public hearing will not be made unless a written request for a transcript is made, with cost therefore to be borne by the requesting party. If you do not wish to attend the public hearing, you may submit comments on this administrative regulation by July 21, 1999. Send written notification to attend the public hearing or comments on this administrative regulation to: Department of Charitable Gaming, Public Protection and Regulation Cabinet, Attn: Scott Jones, General Counsel, 403 Wapping Street, Bush Building, Suite 100, Frankfort, Kentucky 40601-2639, PH: (502) 564-5528, FAX: (502) 564-6625.

#### REGULATORY IMPACT ANALYSIS

Contact Person: Scott Jones

(1) Type and number of entities affected: All licensed charitable organizations (currently 759).

(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: Implements the statutory fee imposed on 4/10 of 1 percent of gross gaming receipts of licensed organizations in compliance with KRS 238.570(1) as amended by HB 263.

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

1. First year following implementation: Quarterly reporting forms and attachments.

2. Second year and subsequent years: Quarterly reporting forms

and attachments.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: The printing of the license applications will be a significant cost incurred by the department as well as the time of the department employee to process the applications.

2. Continuing costs or savings: The printing of the license applications will be a significant cost incurred by the department as well as the time of the department employee to process the applications.

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements: Although the regulation's paperwork requirements are created by the quarterly report forms themselves, the department itself has established various reporting and paperwork requirements as to fees generated and received by licensees (based on geographic location, types of organizations, types of gaming), and other such informational reports.

(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: Charitable Gaming Regulatory Account (KRS 238.570(2)).

(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 the administrative regulation will be implemented: None

(b) Kentucky: None

(7) Assessment of alternative methods; reasons why alternatives were rejected: None

(8) Assessment of expected benefits: None

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: Not applicable.

(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: Not applicable.

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

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

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

(10) Any additional information or comments: None

(11) TIERING: Is tiering applied? Tiering does not apply. Pursuant to KRS 238.550 and 238.570, respectively, all licensed charitable organizations are required to report quarterly and pay the fee on gross receipts.

#### PUBLIC PROTECTION AND REGULATION CABINET Department of Charitable Gaming (Amendment)

#### 820 KAR 1:030. Charity game ticket standards.

RELATES TO: KRS 238.545(1), (2)

STATUTORY AUTHORITY: KRS 238.515(2), (9), 238.545(1), (2)

NECESSITY, FUNCTION, AND CONFORMITY: The Department of Charitable Gaming is authorized to establish reasonable standards for the conduct of charitable gaming and to establish certain standards for charity game ticket construction, distribution and rules of play. This administrative regulation establishes standards for the construction and distribution of charity game tickets and for the conduct of play of charity game tickets.

Section 1. Charity Game Ticket Construction Standards. The following standards shall govern the construction of charity game tickets:

(1) Charity game tickets shall be constructed so that concealed numbers, symbols, or winner protection features cannot be viewed or determined from the outside of the charity game ticket using a high intensity lamp of 500 watts, with or without utilizing a focusing lens.

(2) The deal shall be designed, constructed, glued and assembled

in a manner to prevent determination of a winning or losing ticket without removing the tabs or otherwise uncovering the symbols or numbers as intended.

(3) Each charity game ticket in a deal shall bear the same serial number. If a seal card is used with a charity game ticket deal, then the seal card shall bear the same serial number as each charity game ticket. Only one (1) serial number shall be used in a deal. No serial number used in a deal of charity game tickets shall be repeated by the same manufacturer on that same manufacturer's form within a three (3) year period.

(4) If the charity game ticket utilizes a window, then the numbers or symbols on the [a] charity game ticket shall be fully visible in the window and shall be placed so that no part of a symbol or number remains covered when the tab is removed. Displacement of the symbol(s) to the left or right in a window may be used for increased game security. Additional security devices or methods, including a laminate underneath a window, may be used by a manufacturer.

(5) If the charity game ticket utilizes a window, then, the window slits on each charity game ticket shall be perforated on the three (3) cut sides. All charity game tickets shall be glued on all four (4) edges and between each window. The glue shall be of sufficient strength and type to prevent the undetectable separation or delamination of the charity game ticket.

(6) The following information shall be printed on a charity game ticket measuring one and one-fourth (1 1/4) inches by two and one-fourth (2 1/4) inches or larger, unopened:

- (a) The name of the manufacturer, or its distinctive logo;
- (b) The name of the game;
- (c) The manufacturer's form number;
- (d) The price per individual charity game ticket, unless accompanied by a flare or seal card with that information;
- (e) The unique minimum five (5) digit game serial number, printed on the game information side of the charity game ticket; and
- (f) The number of winners and respective winning numbers or symbols, and specific prize amounts, unless accompanied by a flare with that information.

(7) The following information shall be printed on a charity game ticket measuring less than one and one-fourth (1 1/4) inches by two and one-fourth (2 1/4) inches, unopened:

- (a) The name of the manufacturer, or its distinctive logo; and
- (b) The unique minimum five (5) digit game serial number, printed on the game information side of the charity game ticket.

Section 2. Randomization. The following randomization standards shall govern the manufacture of charity game tickets:

(1) The deal shall be assembled so that winning tickets are placed throughout the deal.

(2) The deal shall be assembled and packaged in a manner which prevents isolation of winning tickets from variations in size, the appearance of a cut edge, or other markings of the tickets.

(3) The deal shall be assembled and packaged in a manner which prevents detection of winning tickets through variations in printing graphics or colors.

(4) Winning charity game tickets shall be distributed and mixed among all other charity game tickets in a deal so as to eliminate any pattern between deals, or portions of deals, from which the location or approximate location of any winning charity game ticket may be determined.

(5) The charity game ticket deal shall be assembled so that no placement of winning or losing charity game tickets exists that allows the possibility of prize manipulation.

Section 3. Packaging and Distribution. (1) Each deal's package, box, or other container shall be sealed at the manufacturer's factory with a seal which includes a warning to the purchaser that the deal may have been tampered with if the package, box or other container was received by the purchaser with the seal broken.

(2) A deal's serial number shall be clearly and legibly placed on:

- (a) The outside of the deal's package, box or other container; or
- (b) On the inside of the deal's package, box or other container if it is clearly visible from the outside.

(3) Manufacturers shall seal or tape, with a tamper-resistant seal or tape, every entry point into a container of charity game tickets prior

to shipment. The seal or tape shall be constructed to guarantee that should the container be opened or tampered with, such tampering or opening would be easily discernible.

Section 4. Flares or Seal Cards. Every deal of charity game tickets shall contain a flare or a seal card that has printed or affixed on it, by the manufacturer, the following information:

- (1) The name of the game;
- (2) The manufacturer's name or logo;
- (3) The manufacturer's form number;
- (4) The ticket count;
- (5) The prize structure that includes the number of winning charity game tickets by denomination, with their respective winning symbols or number combinations;
- (6) The cost per play; and
- (7) The game serial number.

Section 5. Tracking by Manufacturer. Every manufacturer of charity game tickets shall maintain records sufficient to track each deal of charity game tickets from the manufacturer to the next point of sale for thirty-six (36) months. The records shall be subject to inspection by department staff.

Section 6. Tracking by Distributor. Every distributor of charity game tickets shall maintain records sufficient to track each deal of charity game tickets from purchase by the distributor to the next point of sale for thirty-six (36) months. The records shall be subject to inspection by department staff.

Section 7. Defects. (1) Should a defect in packaging or in the construction of a charity game ticket game be discovered by, or reported to the department, the department shall take immediate steps to notify the manufacturer of the game containing the alleged defect.

(2) Should the department, in consultation with the manufacturer, determine that a defect actually exists, and should the department determine that the defect affects game security or otherwise threatens public confidence in the game, the department may, with respect to deals for use still located within the Commonwealth of Kentucky, require the manufacturer to:

- (a) Recall the deals affected that have not been sold at retail to licensed organizations;
  - (b) Recall the deals, by form number, from the distributor level; or
  - (c) Issue a total recall of all affected deals.
- (3) In choosing and directing a particular recall from subsection (2) of this section, the department shall be guided in each circumstance by any combination of the following factors:
- (a) The nature of the defect;
  - (b) Whether the defect affected game security;
  - (c) Whether the defect affected game playability;
  - (d) Whether the defect was limited to a specific number of deals of a particular form number;
  - (e) Whether the defect was easily detectable by a charitable gaming organization;
  - (f) Whether the defect was easily detectable by members of the general public;
  - (g) Whether the defect threatens public confidence in the game; or
  - (h) Whether the defect is capable of being used to adversely affect the fair play of the game.

Section 8. Rules of Play. The following rules of play govern the conduct and sale of charity game tickets:

(1) The flare or seal card described in Section 4 of this administrative regulation shall be posted by the licensed charitable organization in the vicinity of the deal and in full and complete view of the players while the deal is in play.

(2) Charity game tickets shall not be sold to the public from the original packing box or container.

(3) If a deal of charity game tickets is received in two (2) or more boxes, packages or containers, all of the charity game tickets from the boxes, packages or containers shall be placed out for play at the same time.

(4) [No] Charity game tickets which have been marked, defaced, altered, tampered with, received in packaging that is not tamper-

resistant, or otherwise constructed in a manner which tends to deceive the public or affect the chances of winning or losing shall not be placed into play.

(5) All winning charity game tickets shall have the winning symbol or number defaced or punched by an authorized representative of the charitable organization immediately after redemption.

(6) All winning charity game tickets with a prize value of fifty (50) dollars and above, all seal card winners with a prize value of fifty (50) dollars and above, and all unsold charity game tickets shall be retained by the licensed charitable organization for a period of twelve (12) months to allow auditing by the staff of the department.

(7) All used nonwinning charity game tickets and seal cards, and all winning and unsold charity game tickets and seal cards which have been retained for the required twelve (12) month period, shall be disposed of by burning, shredding, destroying or defacing in some manner to prevent reuse of any charity game ticket or seal card or any portion thereof.

(8) An authorized representative of the charitable organization conducting the event at which charity game tickets are sold shall verify the serial numbers or winner protections for all winning charity game tickets redeemed.

(9) If a deal is not played to completion and there remain unsold winning charity game tickets, the licensed charitable organization conducting the gaming shall sell the remaining charity game tickets on the next appointed date for charitable gaming activities. If no future date is anticipated, the licensed charitable organization shall, after making every effort to sell the entire deal, consider the deal closed or completed, and shall retain all unsold charity game tickets as required in subsection (6) of this section. If no winning charity game tickets remain in the deal, the licensed charitable organization shall consider the deal closed or completed and shall retain unsold charity game tickets as required in subsection (6) of this section. Under no circumstances is a licensed charitable organization other than the licensed charitable organization which initiated the deal to complete play of the deal.

(10) If a seal card from a deal or deals is not played to completion, the licensed charitable organization shall sell the remaining charity game tickets necessary to play out the seal card on the next appointed date for charitable gaming activities. If no future date is anticipated, the licensed charitable organization shall, after making every effort to sell the entire deal, consider the deal closed or completed, and shall retain all unsold charity game tickets as required in subsection (6) of this section. Under no circumstances is a licensed charitable organization other than the licensed charitable organization which initiated the seal card from the deal to complete play of the deal or the seal card.

(11) No individual involved in any capacity in the conduct of a charitable gaming event at which charity game tickets are sold shall be permitted to purchase or play charitable game tickets.

(12) No charity game ticket shall be sold to the public at a price different than that printed on the charity game ticket or upon the flare or seal card which accompanies the charity game ticket.

(13) A holder of a winning charity game ticket shall have sixty (60) days to redeem the winning ticket. If the prize is not claimed within sixty (60) days, then the prize shall be considered unclaimed and be retained as property of the organization.

(14) Before placing a deal into play, the charitable organization shall verify that the serial number on the charity game tickets within each deal match the serial number on the flare or seal card.

Section 9. Automated Charity Game Ticket Dispensers. (1) Approval of a automated charity game ticket dispensers. No automated charity game ticket dispenser may be sold, leased or otherwise furnished to any person in the state unless a dispenser which is identical to the dispenser intended to be sold, leased or otherwise furnished has been first presented to the department by its manufacturer, at the manufacturer's expense, for review by the department or has been certified by an independent testing laboratory that the dispenser satisfies the manufacturing requirements set forth in subsection (2) of this section, and the dispenser has been approved by the department. If granted, approval extends only to the specific dispenser model approved, and any modification shall first be approved by the department. The department may keep the dispenser for further testing and evaluation for as long as the department deems necessary.

(2) Manufacturing requirements. Each automated charity game ticket dispenser shall:

(a) Contain a three (3) prong ground and surge protector, and shall be capable of withstanding static electricity;

(b) Contain columns which accommodates different sized charity game tickets;

(c) Be constructed so that customers can see how many charity game tickets remain within the dispenser or have resettable counters visible to the customer indicating the number of charity game tickets left in each column of the dispenser;

(d) Have an outlet or tray to catch dispensed charity game tickets;

(e) Accurately dispense the correct number of charity game tickets;

(f) Contain one (1) or more player buttons on the front of the dispenser to dispense charity game tickets when pressed;

(g) Have a minimum of two (2) and a maximum of eight (8) columns in a separate locking compartment;

(h) Contain a luminated electronic display to display the value of the currency;

(i) Be capable, in the event a malfunction occurs or the electrical power is interrupted after currency has been validated, of accurately redisplaying the value of the currency after the malfunction or power is restored;

(j) Not dispense any credits or redeem a winning charity game ticket;

(k) If using bill acceptors or similar devices that do not return change, clearly disclose that fact to the customer;

(l) Not have a video screen or produce audio sounds except for security alarms;

(m) Not resemble a slot machine or other gambling device;

(n) Contain the manufacturer's name, dispenser's serial number and model number, and date of manufacture, all of which shall be permanently affixed to the side of the dispenser;

(o) Have an on/off switch in an inconspicuous location on the exterior of the dispenser;

(p) Not record test sales of charity game tickets or currency acceptances on the dispenser's accounting meters;

(q) Contain a nonresettable accounting meter for total currency validated and for total of charity game tickets dispensed and shall be capable of retaining this information for six (6) months after power has been disconnected;

(r) Contain an EPROM microchip which holds the dispenser's programming code and which is identical in all respects to the manufacturer's EPROM microchip approved by the department;

(s) Contain a RAM or EPROM microchip equipped with a RAM microchip which shall maintain the same information as required in paragraph (q) of this subsection for six (6) months after power has been disconnected and which is installed with a tamper-proof seal inside the dispenser;

(t) Automatically discontinue operation when any non-resettable accounting meter, RAM microchip, or EPROM microchip is disconnected;

(u) Contain at least one (1) electronic currency validator which shall:

1. Only validate United States currency;

2. Not validate currency in denominations in excess of twenty (20) dollars;

3. Transmit the value of validated currency to the charity game ticket dispenser;

4. Be equipped with mechanisms to ensure that charity game tickets will not be dispensed unless the currency was validated and retained;

5. Be capable of preventing acceptance of known counterfeit currency;

6. Return any invalid currency to the player;

7. Have at least one (1) removable stacker box capable of stacking bills or a removable drop box contained in a separate locked compartment; and

8. Automatically discontinue accepting or validating currency if a malfunction occurs or if electrical power to the dispenser or currency validator is interrupted.

(3) Automated charity game ticket dispensing limitations. The following limitations apply to the use of automated charity game ticket

dispensers:

(a) No charitable gaming organization shall use the dispenser until any previous user has removed its charity game tickets and money from the dispenser;

(b) Each charitable organization operating the dispenser shall place upon the dispenser an identification label which displays the organization's name and license number;

(c) The keys to open the locked doors to the dispenser's ticket dispensing area and cash box shall be solely in the possession and control of the designated chairperson of the charitable organization conducting the charitable gaming session;

(d) No person shall put out any charity game ticket deal in a dispenser unless the entire deal shall be sold solely from the dispenser. All charity game tickets in any one column shall have the same serial number. Each charity game ticket deal shall be placed in a minimum of two (2) columns to ensure randomization;

(e) No licensee may display, use or otherwise furnish a dispenser which has in any manner been tampered with or which otherwise may deceive the public or affect a person's chances of winning;

(f) No charity game ticket deal shall be placed in the dispenser until the entire deal of charity game tickets previously in the dispenser has been played out or permanently removed; and

(g) No charity game tickets once placed in the dispenser shall be removed from the dispenser, except for those charity game tickets actually played by consumers, removed by department representatives or law enforcement agencies, temporarily removed during necessary repair and maintenance or removed at the end of the gaming session.

(4) Inspection. The department or its authorized representatives may examine and inspect any automated charity game ticket dispenser. The examination and inspection shall include immediate access to the dispenser and unlimited inspection of all parts of the dispenser.

(5) Recordkeeping.

(a) Each licensed charitable organization shall maintain the following information in connection with its use of an automated charity game ticket dispenser:

1. Date of purchase or lease of each dispenser;
2. Model and serial number of each dispenser;
3. Purchase or lease price of each dispenser;
4. Name, address and license number of the distributor from whom the dispenser was purchased, leased or otherwise furnished; and
5. A record of all maintenance and repairs relating to the dispenser.

(b) Manufacturers and distributors shall maintain the following information in connection with each sale or lease of a dispenser:

1. Date of sale or lease;
2. Quantity sold or leased;
3. Cost per dispenser;
4. Model and serial number of each dispenser; and
5. Name, address and license number of the purchaser or lessee;

(c) All records, reports and receipts relating to dispenser sales, maintenance and repairs required to be maintained shall be retained for a period of three (3) years for examination by the department.

(6) Defects. If the department detects or discovers any defect or malfunction with the dispenser, which is not temporary in nature, that affects the integrity or security of the charity game ticket game, the department may direct the manufacturer, distributor or organization to cease the sale, lease or use of the dispenser, as applicable, and may require the manufacturer to correct the defect, malfunction or problem or recall the dispenser immediately upon notification by the department to the manufacturer. If the manufacturer, distributor or organization detects or discovers any defect or malfunction with the dispenser, which is not temporary in nature, such entity shall immediately remove the dispenser from use and notify the department of such action.

RONALD B. MCCLOUD, Secretary

RAY FRANKLIN, Commissioner

SCOTT JONES, General Counsel

APPROVED BY AGENCY: June 15, 1999

FILED WITH LRC: June 15, 1999 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative

regulation shall be held on Wednesday, July 21, 1999, at 1 p.m. at the Farnham Dudgeon Civic Center (Meeting Room), Mero Street, Frankfort, Kentucky 40601. Individuals interested in attending this hearing shall notify this agency in writing by July 14, 1999, five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on this administrative regulation. Any disabled person desiring to attend or participate in this public hearing will be provided reasonable accommodation, if requested, at the time of notification of intent to attend. A transcript of the public hearing will not be made unless a written request for a transcript is made, with cost therefore to be borne by the requesting party. If you do not wish to attend the public hearing, you may submit comments on this administrative regulation by July 21, 1999. Send written notification to attend the public hearing or comments on this administrative regulation to: Department of Charitable Gaming, Public Protection and Regulation Cabinet, Attn: Scott Jones, General Counsel, 403 Wapping Street, Bush Building, Suite 100, Frankfort, Kentucky 40601-2639, PH: (502) 564-5528, FAX: (502) 564-6625.

#### REGULATORY IMPACT ANALYSIS

Contact Person: Scott Jones

(1) Type and number of entities affected: All licensed manufacturers (currently 22), licensed distributors (currently 48), and licensed charitable organizations (currently 759).

(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: 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: The charitable organizations will be required to take steps to ensure continuing compliance with the limitations established by the administrative regulation. Additionally, manufacturers and distributors will be required to comply with the manufacturing requirements contained in this regulation.

2. Second year and subsequent years: The charitable organizations will be required to take steps to ensure continuing compliance with the limitations established by the administrative regulation. Additionally, manufacturers and distributors will be required to comply with the manufacturing requirements contained in this regulation.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: Department inspectors will ensure that licensees meet the charity game ticket standards.

2. Continuing costs or savings: Department inspectors will ensure that licensees meet the charity game ticket standards.

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: Charitable Gaming Regulatory Account [KRS 238.570(2)].

(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 the administrative regulation will be implemented: None

(b) Kentucky: None

(7) Assessment of alternative methods; reasons why alternatives were rejected: None

(8) Assessment of expected benefits:

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

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

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

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

(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 does not apply. The standards for charity game tickets must apply uniformly to all licensees to ensure fair competition and to maintain the integrity of the games.

**PUBLIC PROTECTION AND REGULATION CABINET**  
**Department of Charitable Gaming**  
**(Amendment)**

**820 KAR 1:040. Bingo standards.**

RELATES TO: KRS 238.545

STATUTORY AUTHORITY: KRS 238.515(2), (9)

NECESSITY, FUNCTION, AND CONFORMITY: The Department of Charitable Gaming is authorized to establish reasonable standards for the conduct of charitable gaming and to establish standards for the construction and distribution of bingo materials and equipment and rules of play. This administrative regulation establishes standards for the construction and distribution of bingo materials and equipment and for the conduct of play of bingo.

Section 1. Bingo Material Construction Standards. The following standards shall govern the construction of bingo materials:

(1) The paper used shall be of sufficient weight and quality to allow for clearly readable numbers and to prevent ink from spreading or bleeding through a packet thereby obscuring other numbers or cards.

(2) Perm numbers shall be displayed in the center square of the card.

(3) Numbers printed on the card shall be randomly assigned.

(4) Each set of cards shall be comprised of cards bearing the same serial number. No serial number shall be repeated by the same manufacturer within one (1) year.

(5) Cards assembled in books or packets shall be glued. Staples shall not be used.

(6) A label shall be placed on, or be visible from, the exterior of each carton of bingo cards listing the following information:

- (a) Type of product;
- (b) Number of booklets or loose sheets;
- (c) Series numbers;
- (d) Serial number of the top sheet;
- (e) Number of cases;
- (f) Cut of paper; and
- (g) Color of paper.

Section 2. Bingo Equipment Approval. (1) All bingo equipment, including but not limited to, designators, receptacles, display boards, other selection devices, and other bingo equipment used in the selection and display of game numbers, shall be made available for inspection or testing by the department at any time.

(2) Equipment referenced in subsection (1) of this section shall assure randomness and be free of any defects when used in a bingo game.

Section 3. Tracking by Manufacturer. Every manufacturer of bingo materials shall maintain records sufficient to track the bingo materials from the manufacturer to the next point of sale for thirty-six (36) months. The records shall be subject to inspection by department staff.

Section 4. Tracking by Distributor. Every distributor of bingo materials shall maintain records sufficient to track the bingo materials from purchase by the distributor to the next point of sale for thirty-six (36) months. The records shall be subject to inspection by department

staff.

Section 5. Rules of Play. The following rules of play govern the conduct of bingo games:

(1) All individuals involved in any way in the conduct of bingo shall be trained in the proper conduct of the game and the control of funds.

(2) Except for Braille cards intended for use by blind players, bingo cards shall not be reserved by the charitable organization for any player(s). Legally blind players may use their own cards if the licensee does not make Braille cards available.

(3) No two (2) sets of disposable paper bingo cards shall be sold for use in the same game if they have the same series number.

(4) Before selecting or calling the first number in a game, the bingo caller shall call out the amount of the game prize to be awarded.

(5) Before selecting and calling the first number in a game, the bingo caller shall announce the pattern or arrangement of squares to be covered to win the game. This information shall also be posted in a conspicuous place or listed in an occasion program.

(6) All selection equipment shall be free of defects.

(7) After selecting each number, the bingo caller shall:

(a) Clearly announce the number;

(b) Display the ball or other device used as a designator in a manner allowing the players to see the number;

(c) Cause the designator to be placed in a receptacle so as to prevent it from being placed back in the selection pool; and

(d) Enter each letter and number called on a flash board or similar device for player viewing.

(8) Neither a player nor the charitable organization may separate cards on one (1) sheet or from a packet.

(9) All players shall be physically present at the location where the bingo game is held to play the game or to claim a prize offered.

(10) Winners are determined when the preannounced pattern of squares is covered by a player on a card.

(11) It is the player's responsibility to notify the game operator or caller that the player has a winning bingo combination as announced. When a player declares a winning card, the following steps are required for winner verification:

(a) The game shall be stopped before the next number is called. If the next number has already been called, it shall be secured to ensure that if the declared "bingo" is invalid, the game may continue.

(b) A volunteer for the charitable organization shall take the winning card from the player, holding it in front of a neutral player, and call back the perm number if an electronic verifier or verifier book is used. If any other system is used, a volunteer for the charitable organization shall take the winning card from the player, holding it in front of a neutral player, and call back the winning combination.

(12) If more than one (1) winner is declared in a bingo game, the following method of awarding prizes shall apply:

(a) Cash prizes shall be divided equally among the verified winners.

(b) If the prize is something other than cash and cannot be divided among winners, prizes of equal proportionate value shall be awarded.

(13) Any individual involved in any capacity in the conduct of a charitable gaming event at which bingo cards are sold is prohibited from purchasing or playing bingo cards, unless the individual's duties are completed for the evening.

(14) A charitable organization that has "house rules" concerning its bingo session shall post those rules in at least two (2) conspicuous locations within the gaming facility and announce them prior to the commencement of the bingo session.

(15) Every ball in the bingo machine or other device used as a designator shall be placed out for verification at the commencement, at the completion, and during intermission, if any, of each bingo session.

Section 6. Winner Verification and Registration. (1) Manufacturers of bingo cards shall make available for purchase a verification book or other system for all cards manufactured.

(2) The charitable organization conducting a bingo game shall use a reliable verification system that corresponds with the set of cards in play.

Section 7. Prizes. (1) The values of bingo cards or free packets or

charity game tickets awarded players, whether awarded as door or bingo prizes, as birthday prizes, or for any other reason, shall be included in the prize limit of \$5,000 per twenty-four (24) hour period prescribed in KRS 238.545(1).

(2) Each bingo winner shall be determined and every prize shall be awarded and delivered on the same day on which the bingo was conducted.

(3) Carryover, cumulative or progressive games or prizes connected to a bingo game or conditioned on winning a bingo game shall be permitted only if prizes awarded on carryover, cumulative or progressive games are included in the prize limit of \$5,000 per twenty-four (24) hour period prescribed in KRS 238.545(1) regardless of the method by which a player is eligible to participate. The licensed charitable organization shall be responsible for ensuring that the value of any carryover, cumulative or progressive game prize, when added to the values of the other prizes of the same date or occasion, does not exceed the \$5,000 limit. All receipts on carryover, cumulative or progressive games shall be reported to the department as gross receipts for the date collected pursuant to KRS 238.550.

(4) Any method by which players pay money to be eligible for a drawing, whether or not connected to a bingo game or conditioned on winning a bingo game, shall be considered a raffle.

(5) Each licensed charitable organization awarding a door prize of a value exceeding thirty (30) dollars shall maintain accurate records of the following:

(a) The name and address of the individual to whom the door prize was awarded;

(b) The date on which the door prize was awarded;

(c) A description of the door prize;

(d) The fair market value of the door prize; and

(e) An acknowledgment by the individual to whom the door prize was awarded verifying the information in this subsection and verifying receipt of the door prize.

(6) All door prizes shall be initiated and awarded on the same date and shall be included in the prize limit of \$5,000 per twenty-four (24) hour period as prescribed in KRS 238.545(1).

Section 8. Twenty-four (24) Hour Period Defined. "Twenty-four (24) hour period", for purposes of the bingo prize limits and the frequency and duration of the conduct of bingo established in KRS 238.545(1), means a twenty-four (24) hour period commencing at 12:01 a.m. and ending at 12 midnight.

RONALD B. MCCLOUD, Secretary

RAY FRANKLIN, Commissioner

SCOTT JONES, General Counsel

APPROVED BY AGENCY: June 15, 1999

FILED WITH LRC: June 15, 1999 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on Wednesday, July 21, 1999, at 1 p.m. at the Farnham Dudgeon Civic Center (Meeting Room), Mero Street, Frankfort, Kentucky 40601. Individuals interested in attending this hearing shall notify this agency in writing by July 14, 1999, five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on this administrative regulation. Any disabled person desiring to attend or participate in this public hearing will be provided reasonable accommodation, if requested, at the time of notification of intent to attend. A transcript of the public hearing will not be made unless a written request for a transcript is made, with cost therefore to be borne by the requesting party. If you do not wish to attend the public hearing, you may submit comments on this administrative regulation by July 21, 1999. Send written notification to attend the public hearing or comments on this administrative regulation to: Department of Charitable Gaming, Public Protection and Regulation Cabinet, Attn: Scott Jones, General Counsel, 403 Wapping Street, Bush Building, Suite 100, Frankfort, Kentucky 40601-2639, PH: (502) 564-5528, FAX: (502) 564-6625.

## REGULATORY IMPACT ANALYSIS

Contact Person: Scott Jones

(1) Type and number of entities affected: All licensed manufacturers (currently 22), licensed distributors (currently 48), licensed charitable organizations (currently 759).

(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: The charitable organizations will be required to take steps to ensure continuing compliance with the limitations established by the administrative regulation. Additionally, manufacturers and distributors will be required to comply with the manufacturing requirements contained in this regulation.

2. Second year and subsequent years: The charitable organizations will be required to take steps to ensure continuing compliance with the limitations established by the administrative regulation. Additionally, manufacturers and distributors will be required to comply with the manufacturing requirements contained in this regulation.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: Department inspectors will ensure that licensees meet the charity game ticket standards.

2. Continuing costs or savings: Department inspectors will ensure that licensees meet the charity game ticket standards.

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: Charitable Gaming Regulatory Account (KRS 238.570(2)).

(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 the administrative regulation will be implemented: None

(b) Kentucky: None

(7) Assessment of alternative methods; reasons why alternatives were rejected: None

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: Not applicable.

(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: Not applicable

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

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

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

(10) Any additional information or comments: None

(11) TIERING: Is tiering applied? Tiering does not apply. This regulation applies evenly to all licensees to ensure fair compensation and the integrity of the games.

## PUBLIC PROTECTION AND REGULATION CABINET Department of Charitable Gaming (Amendment)

### 820 KAR 1:070. Exempt activities.

RELATES TO: KRS 238.535

STATUTORY AUTHORITY: KRS 238.515(2), (9), 238.535(1), (2)

**NECESSITY, FUNCTION, AND CONFORMITY:** Any organization exempt from licensure requirements under KRS 238.535(1) is to notify the Department of Charitable Gaming in writing of its intent to engage in exempt charitable gaming. This administrative regulation establishes a reporting method and form by which exemption notices are to be filed with and processed by the department.

Section 1. Any charitable organization which otherwise fully qualifies for licensure but claims to be exempt from licensure under KRS 238.535(1) shall submit to the department, thirty (30) days before the exempt charitable gaming activities first occur, a satisfactorily completed form entitled "Notice of Exemption From Charitable Gaming Licensure Requirement", Form CG-Exempt. The department shall acknowledge receipt of Form CG-Exempt and the charitable organization may present such acknowledgment to licensed distributors or other vendors or entities requiring verification of licensure status as proof that the charitable organization has notified the department of its exempt status. Provided the gaming activities of the charitable organization remain exempt, no additional exemption notice shall be filed with the department. The charitable organization shall [promptly] notify the department of any changes in information contained on the Form CG-Exempt within thirty (30) days.

Section 2. Incorporation by Reference. (1) Form CG-Exempt, "Notice of Exemption From Charitable Gaming Licensure Requirement, (6/99 [96])", is hereby incorporated by reference.

(2) This form may be inspected, obtained or copied at the Department of Charitable Gaming, Public Protection and Regulation Cabinet, 403 Wapping Street, Bush Building, Suite 100, Frankfort, Kentucky 40601-2639, 8 a.m. to 4:30 p.m., Monday through Friday.

RONALD B. MCCLOUD, Secretary

RAY FRANKLIN, Commissioner

SCOTT JONES, General Counsel

APPROVED BY AGENCY: June 15, 1999

FILED WITH LRC: June 15, 1999 at 11 a.m.

**PUBLIC HEARING:** A public hearing on this administrative regulation shall be held on Wednesday, July 21, 1999, at 1 p.m. at the Farnham Dudgeon Civic Center (Meeting Room), Mero Street, Frankfort, Kentucky 40601. Individuals interested in attending this hearing shall notify this agency in writing by July 14, 1999, five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on this administrative regulation. Any disabled person desiring to attend or participate in this public hearing will be provided reasonable accommodation, if requested, at the time of notification of intent to attend. A transcript of the public hearing will not be made unless a written request for a transcript is made, with cost therefore to be borne by the requesting party. If you do not wish to attend the public hearing, you may submit comments on this administrative regulation by July 21, 1999. Send written notification to attend the public hearing or comments on this administrative regulation to: Department of Charitable Gaming, Public Protection and Regulation Cabinet, Attn: Scott Jones, General Counsel, 403 Wapping Street, Bush Building, Suite 100, Frankfort, Kentucky 40601-2639, PH: (502) 564-5528, FAX: (502) 564-6625.

#### REGULATORY IMPACT ANALYSIS

Contact Person: Scott Jones

(1) Type and number of entities affected: All charitable organizations exempted from licensure (currently 330).

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

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: Not applicable.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: Not applicable.

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

competition) for the:

1. First year following implementation: The Notice of Exemption From Charitable Gaming Licensure Requirements form will be required in accordance with the higher exemption amounts pursuant to KRS 238.535(1) as amended by House Bill 263.

2. Second year and subsequent years: The Notice of Exemption From Charitable Gaming Licensure Requirements form will be required in accordance with the higher exemption amounts pursuant to KRS 238.535(1) as amended by House Bill 263.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: To the extent more organizations become eligible for exemption status, costs of determining whether organizations are in compliance with charitable gaming statutes and regulations and the necessity to review required paperwork are anticipated to decline.

2. Continuing costs or savings: To the extent more organizations become eligible for exemption status, costs of determining whether organizations are in compliance with charitable gaming statutes and regulations and the necessity to review required paperwork are anticipated to decline.

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: Charitable Gaming Regulatory Account (KRS 238.570(2)).

(6) To the extent available from the public comments received, the economic impact, including effects of economic activities arising from administrative regulation, on: None

(a) Geographical area in which the administrative regulation will be implemented: Not applicable.

(b) Kentucky: Not applicable.

(7) Assessment of alternative methods; reasons why alternatives were rejected: None

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: Not applicable.

(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: Not applicable.

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

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

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

(10) Any additional information or comments: None

(11) **TIERING:** Is tiering applied? Tiering does not apply. KRS 238.535 does not provide for tiering. The availability of an exemption applies equally to all organizations that meet the statutory standards.

#### CABINET FOR HEALTH SERVICES Department for Mental Health and Mental Retardation Services Division of Mental Health (Amendment)

**908 KAR 2:210. Domestic violence offender treatment certification standards.**

RELATES TO: KRS 403.715 to 403.785

STATUTORY AUTHORITY: KRS 194A.030, 403.7505

**NECESSITY, FUNCTION, AND CONFORMITY:** KRS 403.7505 authorizes the Cabinet for Health Services to promulgate administrative regulations establishing certification standards for mental health professionals providing court-ordered treatment services for domestic violence offenders. The purpose of this administrative regulation is to establish provider certification requirements and

standards for services. This administrative regulation is necessary to assure the quality of court ordered services and reduce the danger of physical injury or death for victims of ineffectively treated domestic violence perpetrators.

Section 1. Definitions. (1) "Assessment" means the evaluation of the offender's characteristics, history of abusive behavior, risk of harm to self and others, and capacity to benefit from treatment.

(2) "Associate provider" means an individual that has been certified to provide services in accordance with the requirements of this administrative regulation only under the direct supervision of an autonomous provider.

(3) "Autonomous provider" means a mental health professional that has been licensed or certified pursuant to KRS Chapters 309, 311, 314, 319, or 335 that has been certified by the cabinet for unsupervised clinical practice in a domestic violence program.

(4) "Cabinet" means the Cabinet for Health Services.

(5) "Client" means any individual who has been charged with or convicted of a criminal offense related to domestic violence or who is a respondent in a protective order issued by a court pursuant to KRS 403, and who has been admitted to a program.

(6) "Court-ordered," means an order by any district, family or circuit court judge for an offender to be assessed by a provider to determine the offender's eligibility for admission to a program.

(7) "Domestic violence" means any act or threat of physical or sexual assault or abuse; psychological or emotional abuse; or the destruction of property or pets intended to elicit [illicit] fear in the victim. It includes criminal offenses against a victim, [and] violations of emergency protective orders and domestic violence orders, physical injury, serious physical injury, sexual abuse, assault, or the infliction of fear of imminent physical injury, serious physical injury, sexual abuse, or assault between family members or members of an unmarried couple.

(8) "Offender" means any individual who has been charged with or convicted of a criminal offense related to domestic violence or who is a respondent in a protective order issued by a court pursuant to KRS Chapter 403.

(9) "Program" means the services provided in accordance with the requirements of this administrative regulation to offenders who have been referred by a court for assessment or treatment related to domestic violence.

(10) "Provider" means an associate provider or an autonomous provider.

(11) "Screening" means the actions taken by associate or autonomous providers to determine an offender's eligibility for admission to the program.

(12) "Treatment" means counseling and educational services that focus on the cessation of violence by an offender. Treatment includes individual and group services using a comprehensive curriculum of content relating to domestic violence.

Section 2. Certification Procedures. (1) The cabinet shall certify an individual as an associate provider or an autonomous provider if:

~~(a) the applicant meets the applicable qualifications specified in Section 4 of this administrative regulation; and~~  
~~(b) An applicant that requests certification as an autonomous provider meets all the requirements specified in Section 4 of this administrative regulation except those in subsection (2)(a), (b) or (c) of this section and requests certification before January 1, 1999.~~

(2) An individual may apply to be certified as an associate provider or an autonomous provider by submitting:

(a) A written request for certification to the cabinet; ~~and~~

(b) Documentary evidence of qualifications; ~~and~~

(c) A copy of the curriculum to be used in the program; and

(d) Evidence that the individual has remedied the cause for the denial or revocation if a certification has been denied or revoked in accordance with Section 3 of this administrative regulation; [evidence that the individual has remedied the cause for the revocation].

(3) A request for certification shall be submitted to the Sexual and Domestic Violence Program Specialist, Department for Mental Health and Mental Retardation Services Division of Mental Health.

(4) The cabinet shall determine that a request is incomplete if:

(a) The documentation of qualifications is insufficient to meet the

applicable qualifications; or

(b) The cabinet can not verify the authenticity of the documentation of qualifications.

(5) If the cabinet determines that a request is incomplete it shall return the request to the sender and specify additional documentation that is required or the documentation that can not be verified.

(6) The cabinet shall respond to [approve or deny] the request for certification in writing no later than sixty (60) working days after receiving a complete request for certification.

(7) Certification shall be effective for two (2) years.

(8) The cabinet shall renew the certification of an associate provider or an autonomous provider upon request if the provider submits documentation of completion of at least eight (8) hours per year of continuing education related to domestic violence unless his certification has been revoked in accordance with Section 3 of this administrative regulation.

(9) The cabinet may form a committee of individuals with expertise in domestic violence to provide recommendations to the cabinet on the certification of providers.

Section 3. Denial or Revocation of Certification. (1) The cabinet may deny a request for certification or revoke the certification of a provider if the cabinet determines that the provider:

(a) Has been convicted of or pled guilty to a felony [criminal] offense or a misdemeanor offense if the crime negatively impacts the delivery of services to clients; [including misdemeanors if the crime is against persons; or]

(b) Has had a domestic violence protective order issued against him within the previous five (5) [two (2)] years; ~~or]~~

(c) Has an alcohol or other drug abuse problem as defined in KRS 222.005; ~~or]~~

(d) Has had a sanction applied against a license [any licensure] or certification held by the applicant or provider at any time in the past two (2) years or currently has a sanction applied against a license or certification; ~~or]~~

(e) Has provided domestic violence offender assessment or treatment services without supervision if supervision is required by Section 5(1) or (2) of this administrative regulation; ~~or]~~

(f) Has falsified any information in a request for certification; ~~or]~~

(g) Has failed to meet the requirements for maintenance of certification set forth in Section 2(8) of this administrative regulation; ~~or]~~

(h) Has failed to implement a corrective action plan imposed by the cabinet in accordance with Section 12(4)(a) or (b) of this administrative regulation;

(i) Has submitted a curriculum or amended a previously approved curriculum in a manner which is inconsistent with any provision of this administrative regulation or with generally accepted program standards for domestic violence treatment; or

(j) Has practiced in a manner which is inconsistent with or in violation of a provision of this administrative regulation.

(2) An applicant or a provider may appeal a denial of a request for certification or a revocation of certification. An appeal shall:

(a) Be submitted in writing to the Sexual and Domestic Violence Program Specialist, Department for Mental Health and Mental Retardation Services Division of Mental Health; and

(b) Specify the reason the provider believes the denial or revocation is unwarranted and;

(c) May include information or documentation supporting the appellant's position.

(3) If an applicant or a provider appeals a certification decision the cabinet shall appoint a hearing officer and conduct an administrative hearing in accordance with KRS Chapter 13B.

(4) An applicant or provider who has had his certification revoked shall be ineligible for certification or recertification until the second anniversary of the date his certificate was revoked.

Section 4. Qualifications of Certified Providers. (1) The qualifications of an associate provider shall be [are]:

(a) A bachelors degree from an accredited university or college in a mental health related discipline; ~~and]~~

(b) Completion of twenty-four (24) clock hours of specialty training in domestic violence including:

1. Characteristics and dynamics of domestic violence;

2. Clinical profiling of domestic violence offenders;
3. Risk assessment and lethality of domestic violence offenders;
4. Treatment of offenders;
5. Effective services for victims and child witnesses of domestic violence;
6. Safety planning for victims; and
7. Criminal sanctions for domestic violence and legal remedies for victims.

(c) Four (4) years of full-time postbachelors degree work experience totaling at least 8000 hours that shall [may] include general clinical experience or [and] direct case experience related to domestic violence;

(d) Being a party to a written agreement to receive the supervision required by Section 5(2) of this administrative regulation; and

(e) Written recommendations for certification from two (2) victim advocates as defined in KRS Chapter 421, at least one (1) of whom works in an agency separate from the applicant. [representatives of two (2) victims advocate agencies.]

(2) The qualifications of an autonomous provider shall be [are]:

(a) An advanced degree from an accredited university or college in a mental health discipline that is regulated by licensure or certification under the statutes of the Commonwealth of Kentucky; and

(b) Possession of a certificate or license to practice under the laws of the Commonwealth of Kentucky in one (1) of the following disciplines:

1. Psychology;
2. Social work;
3. Medicine if board eligible in psychiatry and neurology;
4. Psychiatric nursing;
5. Marriage and family therapy;
6. Professional counseling; or
7. Art therapy; and

(c) 150 hours of clinical experience providing domestic violence services under the direct supervision of one (1) of the licensed or certified professionals specified in paragraph (b) of this subsection of which eighty (80) percent of the time shall have been with offenders and twenty (20) percent with victims; and

(d) Completion of the training specified in subsection (1)(b) of this section; and

(e) A written recommendation for certification from the professional that provided the supervision required by paragraph (c) of this subsection; and

(f) Written recommendations for certification from two (2) victim advocates as defined in KRS Chapter 421, at least one (1) of whom works in an agency separate from the applicant. [representatives of two (2) victims advocate agencies.]

Section 5. Scope of Practice and Supervision Requirements. (1) Under the supervision of an autonomous provider, an associate provider [may under the supervision of an autonomous provider]:

(a) Screen, assess, plan and provide treatment services under the supervision of an autonomous provider to offenders and clients of a program; and

(b) Consult with the courts, prosecutors, law enforcement, other agencies, mental health providers and others regarding the assessment or treatment needs of clients; or and

(c) Have contact with the victims of offenders who are clients of the program in accordance with Section 7 of this administrative regulation.

(2) An associate provider that provides the services specified in subsection (1) of this section shall participate in at least one (1) hour per week of face-to-face supervision including:

- (a) Case discussion;
- (b) Review of reading assignments;
- (c) Skill building; and
- (d) Review of audio or video tapes of actual clinical practice provided by the associate provider.

(3) A certified autonomous provider may provide screening, assessment, treatment and consultation services independently and supervise associate providers if he has:

(a) Participated in a three (3) hour training program in clinical supervision that has been approved by a mental health licensing board or by the cabinet; and

(b) Been in the practice of domestic violence offender treatment for a period of at least one (1) year.

(4) A certified autonomous provider who supervises associate providers shall:

(a) Provide [supervisees] the supervision required by subsection (2) of this section; and

(b) Directly observe the supervisees' practice in person or through video or audio tapes of the supervisees' clinical practice; and

(c) Assure that supervisees provide services in accordance with [all] the provisions of this administrative regulation.

(5) A supervisor shall not supervise more than six (6) associate providers concurrently.

Section 6. General Service Standards. (1) Services provided to offenders referred by a court for domestic violence services shall be based on the following premises regarding violent conduct, the roles of offenders, and the effects of domestic violence on victims:

(a) Domestic violence constitutes a health hazard to victims who may experience short and long-term effects from the abuse. Immediate and long-term cessation of the domestic violence is the priority purpose for treatment.

(b) Domestic violence in its various forms is criminal behavior.

(c) Services shall be designed to enhance and promote the safety of identified and identifiable victims including spouses, live-in partners, children and other family members.

(d) Victims are not responsible for the violent behavior of offenders and services shall not promote the concept of mutual responsibility in explaining domestic violence.

(e) The offender is accountable for domestic violence, which is the product of individual choice and learned traits. The offender's psychopathology, substance abuse, other disorders, or cultural background are not explanatory causes of the offenses but can influence the offender's behavior.

(f) Cooperation and service coordination between law enforcement, the courts, probation and parole agencies, the Department for Community-Based [Social] Services, spouse abuse centers and other victim advocates, chemical dependency professionals, and other mental health professionals is necessary to assure effective treatment and the safety of victims and potential victims.

(2) A provider shall give each offender or client a written document that explains the complaint process of the program.

(3) A provider shall treat offenders with respect and dignity at all times and shall not discriminate against an offender based on race, ethnicity, gender, age, religion or disability.

(4) An offender shall have the right to complain verbally or in writing to the provider, the referring court, or the cabinet. and A provider shall not take [any] adverse action against an offender that makes a complaint.

(5) A provider shall adjust fees based upon the client's ability to pay. If a court has made a finding that a client is indigent prior to making a referral for treatment [that a client is indigent], a court may order a client to perform community service in lieu of payment of a fee.

(6) A provider shall comply with [any and all] federal laws pertaining to research with human subjects and shall protect the privacy of a client [any clients] who gives [give] consent to participate in any provider sponsored research activities.

(7) The provider shall provide clean and comfortable facilities for client services that meet applicable fire safety codes and handicapped accessibility codes.

(8) The provider shall comply with all federal and state laws applicable to the confidentiality of client records.

Section 7. Contact with Victims. (1) If an offender consents to a victim's participation in assessment or treatment services a provider shall:

(a) Attempt to contact the victim within five (5) days of the offender's admission to the program; and

(b) Offer the victim an opportunity to participate in the assessment or treatment of the offender by disclosing information about the offender and the circumstances of the violence; and

(c) Interview victims who consent to participate in an assess-

ment of the offender; ~~and~~

(d) Provide the victim information about the program, its possible benefits, the limitations of services, and the degree to which the offender's participation may or may not result in increased safety for the victim; and

(e) Educate the victim about community services, which are available to assist in meeting current or future protection needs of the victim and family members.

(2) Providers shall document their efforts to contact victims.

(3) Victim interviews shall not be conducted in the presence of the offender.

(4) If a victim does not consent to participate, ~~or~~ withdraws consent to participate, or refuses to participate or provide information, a provider shall not attempt to coerce or persuade the victim to participate.

Section 8. Screening Procedures. (1) A provider shall establish:

(a) Eligibility criteria for participation in a program which may include an offender's admission of responsibility for a domestic violence related offense and may not be based solely on an offender's inability to pay for services; ~~and~~

(b) Procedures for acceptance of referrals of offenders from a court following charges of a domestic violence related offense or as a condition of a protective order issued pursuant to KRS Chapter 403; and

(c) Procedures for notifying ~~[Notification of]~~ the referring court if an offender is determined not to be eligible for a provider's services. The notice shall:

1. Specify ~~[including]~~ the reasons the offender is determined to be ineligible;

2. The ~~[therefore and any]~~ referrals made in accordance with Section 9(2) of this administrative regulation if any; and

3. Be made no later than five (5) days after the determination is made. ~~[decision.]~~

(2) An offender shall be provided with ~~[all of]~~ the following information prior to receiving assessment or treatment services:

(a) The limitations on confidentiality including:

1. The duties of providers to warn and protect intended victims of threats to harm under the provisions of KRS 202A.400;

2. The requirements to report abuse in accordance with KRS 209.030 or 620.030; and

3. The fact that information disclosed to the provider or other clients may be used against them in civil or criminal proceedings;

(b) The relationship of the provider to the referring court including duties to make reports pertaining to the client to the courts, prosecutors, probation and parole officers, law enforcement, the victim, and any other named party or agency that might be involved in the coordination of the client's services;

(c) The offender's responsibility for paying fees for services and policies regarding noncompliance with payment of fees;

(d) The expected length of treatment participation and the terms for discharge from the program including grounds for involuntary discharge;

(e) An explanation of the requirements of Section 6 of this administrative regulation;

(f) ~~[An explanation of the rights set forth in this subsection;~~

~~(g)]~~ A description of the services that will be provided to the offender including requirements for participation; and

~~(g)]~~ ~~[(h)]~~ Notification that, at the discretion of the court, failure to comply with program requirements may result in a citation for contempt of court; and

~~(h)]~~ ~~[(i)]~~ An explanation of procedures for victim participation in screening, admission and treatment services.

Section 9. Assessment and Admission Procedures. (1) If an offender is determined to be eligible for domestic violence services offered by the provider in accordance with Section 8(1) of this administrative regulation an assessment of the offender's treatment needs shall be performed. The assessment shall include consideration of the offender's:

(a) History of abusive behavior including degree of harm and type of violent conduct;

(b) Criminal history;

(c) Risk of harm to self and others;

(d) Medical history;

(e) History of mental or emotional disorder;

(f) Current mental status;

(g) ~~[The presence of any]~~ Co-occurring disorders such as mental illness, ~~or~~ substance abuse, or dependence;

(h) ~~[The offender's]~~ Ability to benefit from the approved program content and methods; ~~[English language services and from group settings;]~~ and

(i) ~~[May include a review any]~~ Relevant public records, police reports and other available collateral sources of information on the offender.

(2) Pursuant to the provisions of Section 7 of this administrative regulation a provider may interview a victim ~~[subject to the provisions of Section 7 of this administrative regulation]~~ and consider information provided by a victim in the assessment if an offender consents for a victim to participate in an assessment.

(3) If, upon assessment, a provider determines that the offender is unlikely to benefit from services due to a high risk of lethality or other factors a provider shall refer the offender to services more likely to benefit the offender.

(4) A provider may refer an offender to mental health or substance abuse treatment services as a prerequisite for admission or completion of a domestic violence offender treatment program.

(5) A provider shall notify the referring court no later than five (5) days after making a determination based on an assessment if the offender shall be admitted to a program or not, and referrals made, if any. The court shall be notified within twenty-four (24) hours if the provider chooses not to admit an offender to a program based on the offender's lethality or other issues related to the safety of the victim.

(6) An offender shall be admitted for domestic violence treatment upon providing a written consent for treatment and agreeing in writing to comply with all program rules and guidelines and providing written authorization for a provider to release information to ~~[all]~~ the ~~[referring or service coordinating]~~ parties identified in subsections (4) and (5) of this section ~~[above].~~

(7) If the provider chooses not to admit an offender to the program due to the offender's inability to benefit from the program or the offender's reasonably foreseeable risk of harm to the victim or others, the provider shall notify the victim of the decision not to admit the offender. Providers shall document their efforts to contact victims.

Section 10. Treatment Procedures. (1) A provider shall make individual and group services available to clients at least once weekly.

(2) A program shall offer separate groups for male and female offenders.

(3) ~~[(a)]~~ Group services may involve a minimum of two (2) clients but shall not exceed twelve (12) clients at any time unless two (2) providers facilitate each group session.

~~[(3)]~~ If two (2) providers facilitate a group, it may include a total of fifteen (15) participants.

(4) Group services shall be scheduled in at least one and one-half (1 1/2) hour sessions.

(5) A client shall participate for a minimum period of twenty (20) weeks ~~[and a recommended period of fifty (50) weeks].~~

(6) Noncourt-referred clients may participate in group services with court-referred clients.

(7) The provider shall establish a core curriculum for group participation that covers the essential features of domestic violence including:

(a) Definition of domestic violence in its various forms, including physical, sexual, psychological and environmental abuse;

(b) Exploration of the effects of domestic violence on victims and witnesses to the domestic violence;

(c) Discussion of civil and criminal law related to ~~[the legal dimensions of]~~ domestic violence;

(d) Description of the cycle of violence and other dynamics of domestic violence;

(e) Instruction of clients about their responsibility for the domestic violence behavior;

- (f) Confrontation of the client's use of power, control and coercion in intimate relationships;
  - (g) Confrontation of rigid sex role stereotypes;
  - (h) Challenge of the client's pattern of aggressive reactions in conflict situations with victims;
  - (i) Exploration of the actual and perceived role of alcohol and drug abuse in the domestic violence;
  - (j) Exploration of constructive and nonviolent methods for expressing anger and resolving conflict in relationships, including the use of "time outs", stress management, anger reduction and constructive verbal methods for resolving conflict;
  - (k) Development of relapse prevention techniques; and
  - (l) Promotion of aftercare services where indicated.
- (8) If group services for female offenders are offered, the curriculum required by subsection (7) of this section shall [may] be amended to relate specifically to female offenders.
- (9) A provider shall execute all duties to warn and protect under the provisions of KRS 202A.400 if intended victims have been threatened by a client of the program [~~under the provisions of KRS 202A.400~~].
- (10) A provider shall notify the victim of the discharge or termination of a client from a program. If the discharge or termination is based on the offender's lethality or other issues related to the safety of the victim, the provider shall immediately make every reasonable attempt to contact the victim. Providers shall document their efforts to contact victims.

(11) A provider shall not offer or provide marital counseling or family therapy to any client or victim until the client has successfully completed the program and has not demonstrated violence in the relationship for at least six (6) months since the successful completion of the program. [at least six (6) months of nonviolent behavior in the relationship.]

(12) A provider shall not offer or provide marital counseling or family therapy to any client or victim if there is a foreseeable risk of harm to the victim resulting from the marital services or if a provider believes that the victim may be agreeing to participate because of coercion or threat from the offender.

Section 11. Involuntary Discharge from a Program. (1) A provider shall dismiss from the program an [any] offender that:

- (a) Fails to attend more than ten (10) percent of scheduled appointments; [or]
  - (b) Fails to actively participate in services or complete assignments; [or]
  - (c) Fails to assume financial responsibility for services as ordered by the court; [or]
  - (d) Violates any provision of a court order; or
  - (e) Reports a reoccurrence of domestic violence or other behaviors that, in the provider's professional judgment, are associated with increased risk of harm to the victim. [poses a threat to the safety of a victim.]
- (2) A provider shall notify the referring court no later than five (5) days after a decision to discharge an offender from the program and shall specify the reason for the discharge. If the provider involuntarily discharges an offender due to the offender's inability to benefit from the program or due to a reasonably foreseeable risk of harm to the victim, the provider shall notify the court within twenty-four (24) hours after the decision to discharge the offender.
- (3) A provider shall immediately notify the victim of the involuntary discharge of a client. A provider shall document an effort to contact a victim.

Section 12. Monitoring. (1) The cabinet shall:

- (a) Investigate signed written complaints received about providers if the complaints allege a failure to comply with the provisions of this administrative regulation; and
- (b) Refer any complaints against providers which relate to unethical practice or practice which may be outside the practice of a provider to the appropriate licensure or certification board.

(2) The cabinet may evaluate a certified provider's adherence to the provisions of this administrative regulation on its own initiative.

(3) Monitoring by cabinet staff may include [any-of] the following activities:

- (a) Interviewing offenders or victims if they consent to be interviewed;
- (b) Reviewing service records maintained by providers on offenders that have been referred by a court in accordance with this administrative regulation;
- (c) Direct observation of services provided to offenders unless an offender objects to being observed;
- (d) Interviewing judicial, correctional, or police officials, victim advocates or [and] other agency personnel that interact regularly with a certified provider in relation to offender services.
- (4) If the cabinet determines that a certified provider has failed to comply with provisions of this administrative regulation the cabinet shall notify the provider in writing of its determination and may:
  - (a) Require the provider to submit a corrective action plan; [or]
  - (b) Impose a corrective action plan upon the provider; or
  - (c) Revoke a provider's certification in accordance with Section 3 of this administrative regulation.
- (5) The cabinet shall notify an autonomous provider that supervises an associate provider if it determines that an associate provider has failed to adhere to the provisions of this administrative regulation and the autonomous provider shall be responsible to assure that corrective action is taken.

ELIZABETH R. WACHTEL, Commissioner  
JOHN H. MORSE, Secretary  
JOHN H. WALKER, Attorney

APPROVED BY AGENCY: June 15, 1999

FILED WITH LRC: June 15, 1999 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held Wednesday, July 21, 1999 at 9 a.m. in the Health Services Auditorium, First Floor, Health Services Building, 275 East Main Street, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by Wednesday, July 14, 1999, 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 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: Kevin Devlin, 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).

#### REGULATORY IMPACT ANALYSIS

Agency Contact Person: Mike Littlefield

- (1) Type and number of entities affected: This regulation will affect the 59 judicial districts 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: None
  - (b) Cost of doing business in the geographical area in which the administrative regulation amendments 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: None
      - (a) Direct and indirect costs or savings: None
        - 1. First year:
        - 2. Continuing costs or savings:
      - 3. Additional factors increasing or decreasing costs:
      - (b) Reporting and paperwork requirements:
      - (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 new revenue is needed. Monitoring of compliance with the regulation will be carried out by existing personnel.

(6) To the extent available from the public comments received, the economic impact, including effects of economic activities arising from administrative regulation, on: N/A. No public hearing has been held yet.

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

(b) Kentucky: N/A

(7) Assessment of alternative methods; reasons why alternatives were rejected: No alternative methods were considered. Treatment of perpetrators of domestic violence requires specialized expertise. The only method the department is authorized to use for establishing standards is the promulgation of administrative regulations in accordance with KRS Chapter 13A.

(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 amendment will increase the protections for victims of domestic violence who are currently at risk of serious harm by ineffectively treated perpetrators. A provision authorizing the cabinet to establish a committee to make recommendations on provider certification will expedite the review and certification of providers and thereby improve accessibility of treatment services. Amendment of provisions for certification, and denial of certification will enhance the cabinet's ability to protect victims.

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

(c) If detrimental effect would result, explain detrimental effect: Failure to implement the amendment to this regulation will leave victims at risk for serious harm if offenders are denied admission to a program due to lethality of their condition, or fail to complete treatment or if ineffective treatments are rendered.

(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? Tiering is not applied to this amendment because the provisions being amended are not tiered. Tiering is applied to standards for certification.

**CABINET FOR HEALTH SERVICES**  
**Department for Mental Health/Mental Retardation Services**  
**(Amendment)**

**908 KAR 3:160. Policies and procedures of Kentucky Correctional Psychiatric Center.**

RELATES TO: KRS Chapters 202A, 202B, 210

STATUTORY AUTHORITY: KRS 194A.030, 194.050, 202A.196, 202B.060, 210.010, 210.040 210.055, 210.285, 42 CFR 440 through 489

NECESSITY, FUNCTION, AND CONFORMITY: KRS 210.010, relating to the hospitalization of mentally ill and mentally retarded persons, requires [directs] that the Secretary for the Cabinet for Health Services [Human Resources] shall adopt rules and regulations which insure proper administration and enforcement of this chapter. KRS 194A.030 places the Department for Mental Health and Mental Retardation Services within the Cabinet for Health Services. KRS 194A.050 empowers the Secretary of the Cabinet for Health Services to promulgate administrative regulations to carry out cabinet programs.

Section 1. The policies and procedures of the Kentucky Correctional Psychiatric Center are established in [as set forth in the July 15, 1991, edition of] the Kentucky Correctional Psychiatric Center policy manual consisting of four (4) volumes relating to the operation of Kentucky Correctional Psychiatric Center [are incorporated by refer-

ence].

Section 2. Incorporation by Reference. (1) Kentucky Correctional Psychiatric Center Policy Manual, June 15, 1999 edition, Department for Mental Health and Mental Retardation Services is incorporated by reference.

(2) This material may be inspected, copied, or obtained at the Department for Mental Health and Mental Retardation Services, 100 Fair Oaks, Leestown Square, Frankfort, Kentucky 40621, and in the office of the Director at the Kentucky Correctional Psychiatric Center, 1512 Dawkins Road, LaGrange, Kentucky 40034 between the hours of 8 a.m. and 4:30 p.m., Monday through Friday. [These policies and procedures are contained in four (4) volumes. They are available for inspection and copy at the office of the Commissioner for the Department for Mental Health/Mental Retardation Services, 275 East Main Street, Frankfort, Kentucky 40621, and in the office of the Director at Kentucky Correctional Psychiatric Center, 1612 Dawkins Road, P. O. Box 67, LaGrange, Kentucky 40031.]

ELIZABETH R. WACHTEL, Commissioner

JOHN H. MORSE, Secretary

JOHN H. WALKER, Attorney

APPROVED BY AGENCY: June 15, 1999

FILED WITH LRC: June 15, 1999 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held July 21, 1999 at 9 a.m. in the Health Services Auditorium, First Floor, Health Services Building, 275 East Main Street, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by Wednesday, July 14, 1999, 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 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: Kevin Devlin, 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).

**REGULATORY IMPACT ANALYSIS**

Agency Contact Person: Mike Littlefield

(1) Type and number of entities affected: This regulation will affect four psychiatric hospitals operated or contracted by the cabinet.

(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: None

(a) Direct and indirect costs or savings: None

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements: None

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

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: No new revenue is needed. Monitoring of compliance with the regulation will be carried out by existing personnel.

(6) To the extent available from the public comments received, the economic impact, including effects of economic activities arising from administrative regulation, on: N/A No public hearing has been held yet.

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

(b) Kentucky: N/A

(7) Assessment of alternative methods; reasons why alternatives were rejected: No alternative methods were considered. The only method the department is authorized to use for establishing policies is the promulgation of administrative regulations in accordance with KRS Chapter 13A. This administrative regulation delineates hospital admission policy.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: The implementation of this regulation will permit the admission of individuals that need the level of care provided by KCPC and decrease the risk of danger to residents of department operated or contracted facilities and the general public.

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

(c) If detrimental effect would result, explain detrimental effect: Failure to implement this regulation may unduly limit the facility's ability to admit individuals needing the level of care provided and thereby endanger their health or the health and safety of others.

(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? Tiering is not applied to admission policies because all admissions need to be processed systematically.

**CABINET FOR FAMILIES AND CHILDREN**  
**Department for Community-Based Services**  
**Division of Policy Development**  
**(Amendment)**

**921 KAR 1:020. Child Support Program: confidentiality, program administration contracts, and agreements.**

RELATES TO: KRS 194B.050(1), 205.175, 205.710-205.800, 205.990(1), (2), (4), (5), 405.520, 406.035, 45 CFR 302.34, [303-21; 303-105-] 303.107, 31 USC 7502, 42 USC 651 et seq., EO 98-731

STATUTORY AUTHORITY: KRS 194B.050(1), 205.175, 205.710-205.800, 405.520, 406.035, 42 USC 651 et seq., EO 98-731

NECESSITY, FUNCTION, AND CONFORMITY: KRS 205.710 to 205.800 provide that the Cabinet for Families and Children administer the Child Support Program (CSP). This administrative regulation specifies the procedures for safeguarding information and entering into program administration contracts and cooperative agreements.

Section 1. Safeguarding Information. (1) If the cabinet determines there is reasonable cause to believe evidence of domestic violence or child abuse, records shall not be opened [open] or published.

(2) The use or disclosure of information concerning an applicant or recipient of CSP services or the noncustodial parent, or obligor, shall be limited to:

(a) The administration of the CSP or other federal or federally assisted program that [which] provides assistance or services directly to an individual [individuals] on the basis of need; or

(b) An investigation, prosecution, or criminal or civil proceeding conducted in connection with the administration of a program specified in this section.

Section 2. Program Administration Contract [Contracts]. (1) As permitted by KRS 205.712(4) to 205.800, a program administration contract initiated by the cabinet with another government entity [local officials] shall:

(a) Contain a clear description of specific duties, functions and responsibilities of each party in administration of the CSP;

(b) Specify clear and definite standards that [which] meet federal requirements;

(c) Specify financial reimbursement arrangements including:

1. Budget estimate;

2. Covered expenditures;

3. Methods of determining costs; and

4. Billing procedures for the child support agency;

(d) Specify record maintenance and format requirements;

(e) Contain appropriate reporting requirements;

(f) Contain the requirements for compliance with 31 USC 7502;

(g) Provide the beginning and end dates of the program administration contract, review or renewal provisions, and termination circumstances; and

(h) Provide audit criteria.

(2) If another government entity [an official] contracts with the cabinet, reimbursement for child support activities shall be provided when billing is submitted in accordance with procedures:

(a) Established by the cabinet; and

(b) Specified in the contract.

(3) The contracted government entity [official] shall provide the cabinet in timely fashion statistical information concerning CSP activities as prescribed by the cabinet and specified in the contract.

(4) If no contract is executed with a local law enforcement official, a referral for child support activities may be made to local law enforcement official [officials] in accordance with the official's [officials'] statutory obligations, but the official [officials] shall not be eligible for reimbursement as specified in subsection (2) of this section.

Section 3. An Agreement with a Financial Institution. The cabinet shall enter into an agreement [agreements] with a financial institution [institutions] pursuant to KRS 205.712(14), 205.772 and 205.774 to conduct a financial data match.

(1) The cabinet or its agent shall implement the data exchange. The cabinet or its agent shall:

(a) Have access to all records of a financial institution obtained through a data match for the purpose of monitoring and auditing; and

(b) Have access to all information available to a financial institution if deemed necessary by the cabinet to provide service to a recipient of child support services.

(2) The cabinet shall pay a financial institution a fee not to exceed \$250 per fiscal year quarter, or the actual cost to the financial institution for operating the data match, whichever is less.

(3) A financial institution shall:

(a) Exchange information by way of an automated data exchange system; and

(b) Adopt policies and procedures and maintain security to assure that information received from the cabinet or its agent concerning a recipient of child support services shall be maintained and safeguarded as confidential and shall not be copied or given to any other entity without the written permission of the cabinet or the recipient of child support services; and

(c) Incur no liability for:

1. Disclosing a financial record to the cabinet for the establishment, modification, or enforcement of a child support obligation of the account holder; or

2. Encumbering or surrendering an asset held by a financial institution in response to an order to withhold or order to deliver issued by the cabinet, or any other action taken by a financial institution in good faith; or

3. Providing all files to the cabinet or its authorized agent in accordance with an approved format as described by the Financial Institution Data Match Specifications Handbook incorporated by reference in Section 4 of this administrative regulation.

(4) If a financial data match occurs, a financial institution shall:

(a) Hold, encumber or surrender an account to the cabinet upon receipt of an order to withhold or order to deliver; and

(b) Address and send to the cabinet or its authorized agent as designated, all notices, paperwork, tapes or other communication resulting from a financial institution data match program; and

(c) Submit all data files to the cabinet or its authorized agent as designated.

(5) The match of an account holder to a delinquent obligor record provided by the cabinet does not constitute a levy and no account will be held, encumbered, or surrendered to the cabinet without a financial institution having received an order to withhold or order to deliver from the cabinet.

(6) The information provided to the cabinet on a quarterly basis by a financial institution shall be provided in the format prescribed by the Financial Institution Data Match Specifications Handbook, incorporated by reference in Section 4 of this administrative regulation, using either Method One or Method Two.

(a) If a financial institution agrees to provide the information according to Method One, the financial institution shall:

1. Submit by March 31, June 30, September 30, and December 31 of each calendar year, data files of all open accounts to the cabinet, or the cabinet's authorized agent, for the data match.

2. Report all information required by the cabinet or the cabinet's authorized agent on any account maintained by a financial institution.

(b) If a financial institution agrees to provide the information according to Method Two, the financial institution shall:

1. Request the cabinet to send the inquiry file to the financial institution's agent; and

2. Match the inquiry file of obligors identified and provided by the cabinet, or by the cabinet's authorized agent, against all open accounts maintained by a financial institution; and

3. Submit a report of all matched accounts to the cabinet or its authorized agent within thirty (30) days of receipt of the inquiry file.

Section 4. Incorporation by Reference. (1) "Financial Institution Data Match Specifications Handbook", edition 3/99, is incorporated by reference.

(2) This material may be inspected, copied or obtained at the Department for Community-Based Services, 275 East Main Street, Frankfort, Kentucky, 40621, Monday through Friday, 8 a.m. to 4:30 p.m.

DIETRA PARIS, Commissioner

VIOLA P. MILLER, Secretary

CHARLES P. LAWRENCE, Attorney

APPROVED BY AGENCY: June 14, 1999

FILED WITH LRC: June 15, 1999 at noon

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on July 21, 1999, at 9 a.m. at the Health Services Auditorium, 1st Floor, CHR Building, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by July 14, 1999, 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: Judy Trigg, Cabinet for Families and Children, Office of the General Counsel, 275 East Main Street, 4th Floor West, Frankfort, Kentucky 40621, Telephone: (502) 564-7900, FAX: (502) 564-7573.

#### REGULATORY IMPACT ANALYSIS

Agency Contact Person: Cathy G. Mobley, Director

(1) Type and number of entities affected: This administrative regulation specifies requirements for confidentiality, administration contracts and agreements. The administrative regulation is being revised to include requirements for the implementation of agreements between the child support agency and financial institutions for the provision of financial data matches on delinquent obligors' accounts and assets. As many as 300 banking institutions could be involved. This number does not include credit unions, brokerage firms etc. that could also be affected as well.

(2) Direct and indirect costs or savings on 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 public comments received. A public hearing was held for the Notice of Intent but no public comments were received.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented to the extent available from public comments received. A public hearing was held for the Notice of Intent but no public comments were received.

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

1. First year following implementation: None

2. Second and subsequent years: None

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: The state share of revenues is projected to be \$516,000 in State Fiscal Year 1999 with state expenditures of \$261,100 out of total expenditures of \$768,000 (the federal government, HHS, reimburses the state 66% of total expenditures) resulting in revenues exceeding expenditures by \$254,900. Note that any excess revenues generated by this amendment to the administrative regulation will help to offset the increased expenditures for other child support administrative regulations recently amended due to federal welfare reform legislation.

2. Continuing costs or savings: For State Fiscal Year 2000, the state share of revenues is projected to be \$464,400 with state share expenditures of \$490,900 out of total expenditures of \$561,600 resulting in revenues exceeding expenditures by \$273,500. Note that any excess revenues generated by this amendment to this administrative regulation will help to offset the increased expenditures for other recently amended child support administrative regulations due to federal welfare reform legislation.

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: None

(4) Assessment of anticipated effect on state and local revenues: A public hearing was held for the Notice of Intent but no comments were received.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Federal and state funds.

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

(a) Geographical area in which administrative regulation will be implemented: A public hearing was held for the Notice of Intent but no public comments were received.

(b) Kentucky: A public hearing was held but no public comments were received.

(7) Assessment of alternative methods; reasons why alternatives rejected: Alternative methods were not considered because of the necessity to comply with statutory 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: These amendments will make it possible for more assets to be located and thus more child support may be collected in delinquent child support cases. 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 that may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict:

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

(10) Any additional information or comments: None

(11) TIERING: Is tiering applied? No. The purpose of the administrative regulation amendment is to allow the cabinet to enter into agreements with financial institutions in order to locate assets. Tiering is not applicable.

FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? No

2. State whether this administrative regulation will affect the local government or only a part or division of the local government. This administrative regulation will not affect local government.

3. State the aspect or service of local government to which this administrative regulation relates. None

4. How does this administrative regulation affect the local government or any service it provides? This administrative regulation will not affect local government.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 42 USC 666(a)(17)

2. State compliance standards. None

3. Minimum or uniform standards contained in the federal mandate. Minimum standards stated in the mandate have been met.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate. No. State standards are not more restrictive than federal language.

5. Justification for the imposition of the stricter standards, or additional or different responsibilities or requirements. No stricter standards.

**CABINET FOR FAMILIES AND CHILDREN**  
**Department for Community Based Services**  
**Division of Policy Development**  
**(Amendment)**

**921 KAR 1:410. Child support collection and distribution.**

RELATES TO: KRS 67A.620, 95.620, 95.878, 161.700(1), 186.570(2), 205.595, 205.710-205.800, 403.215, ~~404.467(4)~~, 405.060(2), 405.405, 405.430-405.510, 407.5101-407.5701, 427.120, 427.125, 45 CFR 302.32, 302.38, 302.51-302.54, 302.60, 302.65, 303.6, 303.100-303.102, ~~303.104~~ [†05], 15 USC 1673, 42 USC 654, 654A, 666(a)(1)-(4), (6)-(12), (14)-(17) [†6], (19), 666(b)

STATUTORY AUTHORITY: KRS 194B.050(1), 205.712(2)(o), 205.7685(3), 205.795, 405.520, 407.5102, 407.5310(2)(d), 42 USC 654, 654A, 666(a)(1)-(4), (6)-(12), (14)-(17) [†6], (19), 666(b), EO 98-731

NECESSITY, FUNCTION, AND CONFORMITY: KRS 205.712(2)(i) requires the cabinet to establish and enforce child support obligations. This administrative regulation establishes procedures for collection and distribution of child support payments, including means of enforcement and management of disputes and appeals.

Section 1. Collection of Spousal Support. The cabinet shall collect spousal support if spousal support meets the definition of "duty of support" in KRS 205.710(5).

Section 2. Collection. (1) Income withholding.

(a) Shall be used:

1. As the primary tool for collection of child support; and  
 2. If necessary to facilitate enrollment of a child in a health insurance plan available through an obligor's employer.

(b) An obligor shall inform the cabinet of his current employer or source of income and his access to health insurance, and of changes to either.

(c) Pursuant to KRS 405.060, if an obligor transfers or assigns income or income-producing property after he has received notice that he has a child support obligation, the cabinet shall take action to obtain:

1. Judicial nullification of the transfer; or
2. A settlement in favor of the creditor.

(d) If current support and an arrearage amount is subject to withholding and a court has not set an amount for an arrearage

payment, the arrearage payment shall be determined by multiplying the currently-ordered obligation by twenty-five (25) percent, if the order was issued in Kentucky and Kentucky has exclusive continuing jurisdiction.

(e) If only an arrearage amount is subject to withholding, the arrearage payment and frequency of payment shall be equal to the payment and frequency last designated by judicial or administrative order.

(f) If the address of the obligor is unknown and the cabinet is unable to comply with the notice provisions of KRS 404.467(4), the cabinet shall provide notice of withholding within fifteen (15) calendar days of locating the obligor.

(g) The notice shall inform the obligor that:

1. He has ten (10) days from the date withholding is implemented to contest the withholding; and

2. If he does not contest, withholding and ordered health care coverage shall apply to the current and any subsequent employer.

(h) The cabinet shall notify the employer or other income source, within fifteen (15) days of the request for income withholding, of the following:

1. The employer or other income source shall implement withholding no later than the first pay period that occurs after fourteen (14) work days following the date the notice was mailed;

2. The employer or other income source shall, within seven (7) working days from the date an amount is withheld, forward:

a. A child support payment to the state disbursement unit in the child support agency [cabinet];

b. A medical insurance premium to the health insurance carrier;

3. The employer or other income source shall include on the transmittal to the cabinet the obligor's name, Social Security number, and cabinet-assigned case number, and the date the money was withheld;

4. The employer or other income source shall withhold ~~and forward withheld amounts~~ at least once monthly;

5. The employer or other income source may combine amounts due the cabinet into one (1) payment, if the amount attributable to each obligor is identified by name, Social Security number, and cabinet-assigned identification number; and

6. If the obligor terminates employment, the employer or other income source shall notify the cabinet promptly, and shall provide the information required by KRS 405.465(5).

(2) Withholding of unemployment compensation.

(a) The cabinet, through an agreement with the state employment security agency, shall collect a child support payment from an obligor receiving unemployment compensation if the state unemployment security agency has commenced withholding on one (1) of the following bases:

1. An obligor with a child support delinquency has voluntarily signed an agreement to withhold child support payments from his unemployment compensation benefits; or

2. An obligor, within fifteen (15) calendar days after he received an agreement from the cabinet, has failed to:

- a. Sign an agreement to withhold; or
- b. Contest the validity of the child support obligation.

(b) No more than fifty (50) percent of the obligor's unemployment benefit shall be withheld unless:

1. Ordered by a court of competent jurisdiction; or
2. Requested by the obligor.

(3) Federal tax refund offset and administrative offset.

(a) A public assistance case for past-due child support, medical support ordered by specific dollar amount, spousal support, K-TAP, or foster care support shall qualify for offset if there is:

1. A court-ordered or administratively-established support obligation;

2. An assignment of support to the cabinet;

3. An arrearage of at least \$150 delinquent for at least three (3) months; and

4. Cabinet verification of the accuracy of the obligor's name and Social Security number.

(b) A nonpublic assistance case involving past-due child support, medical support, or spousal support shall qualify for offset if:

1. The cabinet is enforcing a court-ordered or administratively-established support obligation;

2. The cabinet has verified the accuracy of the obligor's name and Social Security number;

3. The nonpublic assistance arrearage owed is equal to or greater than [cabinet has verified an arrearage of] \$500 [or greater], exclusive of fees, court costs, or other nonchild-support debt;

4. The cabinet has a copy of the:

a. Current support order; and

b. Payment record or affidavit signed by the custodial parent attesting to the amount of support paid; and

5. The arrearage is owed on behalf of a child who is a minor as of December 31 of the year in which the case is submitted for offset.

(c) A case submitted for federal tax refund offset shall be subject to federal administrative offset of nonexempt federal payments. Nonexempt federal payments shall be denied to individuals owing a child support arrearage as defined in paragraphs (a) and (b) of this subsection.

(4) State income tax refund.

(a) A public assistance case for past-due K-TAP, foster care, or medical support shall qualify for offset if:

1. There is an arrearage on a legally established child and medical support obligation;

2. The medical support order includes the specific dollar amount;

3. The obligor's name and Social Security number are known;

4. The arrearage has been verified as accurate; and

5. The amount of the arrearage is at least \$150 [twenty-five (25) dollars].

(b) A nonpublic assistance support arrearage shall qualify for offset if it meets the criteria specified in subsection (3)(b) of this section, and the required arrearage amount is not less than \$150.

Section 3. Kentucky Transitional Assistance Program Accounts Distribution. (1) A child support payment collected on behalf of a K-TAP recipient shall be:

(a) Payable to the state disbursement unit in the child support agency; and

(b) Reported to the K-TAP agency within ten (10) working days of the end of the month in which an escrow [the] payment is disbursed to the recipient [received].

(2) Upon receipt of a notice of payment, the K-TAP agency shall redetermine eligibility for K-TAP payments and report the result to the child support agency.

(a) If the K-TAP family becomes ineligible, the child support agency shall:

1. Distribute at the end of the month the amount of child support collected; and

2. Notify the family of continuation of child support services as specified in 921 KAR 1:380, Section 4(2).

(b) If the family remains eligible, or if a hearing is requested, the child support agency shall distribute the collection as specified in Section 6 of this administrative regulation.

Section 4. Distribution of Foster Care Accounts. A child support payment collected on behalf of a foster care recipient shall be:

(1) Payable to the state disbursement unit; and

(2) Distributed and disbursed to the foster care agency.

Section 5. Distribution of Tax Refund Intercept Amounts and Appeal Process. (1) A federal tax refund intercepted in a public assistance account.

(a) Amounts collected shall be applied to assigned arrearage.

(b) If no assigned arrearage remains, the amount collected shall be:

1. Held by the cabinet for six (6) months, if a joint income tax return has been filed, before being distributed; or

2. Forwarded to the K-TAP family or foster care agency within thirty (30) calendar days of the date of initial receipt.

(2) A federal tax refund intercepted in a nonpublic assistance account.

(a) Amounts collected shall be applied to assigned arrearage.

(b) If no assigned arrearage remains, the amount collected shall be:

1. Held by the cabinet for six (6) months, if a joint income tax

return has been filed, before being distributed; or

2. Forwarded to the family within thirty (30) calendar days of the date of initial receipt.

(3) A state tax refund intercepted in an assistance account shall be distributed according to provisions of Section 3, 4, 6, or 8 of this administrative regulation, whichever is applicable.

(4) An obligor may contest the accuracy of a past-due amount by requesting an administrative hearing in accordance with KRS Chapter 13B. The cabinet shall, within fifteen (15) calendar days of the date of resolution of an obligor's appeal, forward the ordered amount to:

(a) The obligor, if resolution was in his favor; or

(b) The agency or family, if resolution was against the obligor.

Section 6. Treatment of Escrow and Excess Payments. (1) A child support payment shall be applied to the obligation amount for the month in which the support was received [collected].

(2) In a K-TAP case, if the obligation for current support and the collection for current support exceed the grant paid for the month in which the collection was made, the difference between the grant and the obligation or the collection, whichever is less, shall be considered escrow and shall be distributed as follows:

(a) The portion that represents the federal share, as determined by the Medicaid match rate, shall be sent to the federal government for reimbursement of public assistance previously paid.

(b) The portion that represents the state share, as determined by the Medicaid match rate, shall be sent to the family.

(c) An amount in excess of the current obligation shall be applied to arrearage.

Section 7. Income Withholding Distribution. (1) The date of collection for a child support or medical support payment made through income or other withholding shall be the date the income is received by the child support agency.

(2) Distribution of income withholding collections shall be made according to provisions of Section 3, 4, 6, or 8 of this administrative regulation, whichever is applicable.

Section 8. Interstate Case Payment Distribution. A child support payment that is collected by a responding state on behalf of an initiating state shall be forwarded to the location specified by the child support agency in the initiating state, within two (2) business days of initial receipt.

Section 9. Financial Institution Data Match. The cabinet shall, when conducting a data match with a financial institution for the purpose of locating a delinquent obligor's assets:

(1) Use the following criteria to identify a case for submission:

(a) The obligor owes an arrearage equal to six (6) months obligation or \$1,000, whichever is less; and

(b) The obligor is not complying with the current support order;

(2) Issue to financial institutions holding the obligor's accounts with a combined balance of \$500 or more, the Order to Withhold, CS-68, and the Answer to Withhold, CS-69; and

(3) Issue a copy of the Order to Withhold to the obligor by certified mail within two (2) working days after the Order to Withhold and Answer to Withhold are issued to the financial institution; and

(4) Notify the obligor that the only basis for contesting an Order to Withhold shall be a mistake of fact pursuant to KRS 205.712(13); and

(5) To retain the account, an obligor shall take one (1) of the following actions within twenty (20) working days from the date of receipt of the Order to Withhold:

(a) Contest the Order to Withhold in writing; or

(b) Pay the total arrearage specified in the Order to Withhold; or

(c) Post a bond for the total arrearage specified in the Order to Withhold; or

(d) Enter into an agreement to pay current support plus a monthly payment on arrearage, specified as follows:

1. If the arrearage is less than \$1,000, fifty (50) percent;

2. If the arrearage is equal to or greater than \$1,000 and less than \$2,000, \$500 plus twenty-five (25) percent of the amount over \$1,000;

3. If the arrearage is equal to or greater than \$2,000, \$750 plus ten (10) percent of the amount over \$2,000;

(6) Refer the case for parent-locator service if the Order to Withhold is returned and the forwarding address for the obligor is unknown.

(7) If the obligor requests a dispute hearing based upon a mistake of fact, and returns a written request within twenty (20) calendar days of the date notification was received:

(a) Schedule and hold an interview with the obligor within ten (10) working days of the request;

(b) Attempt to resolve the dispute at the time of the interview; and

(c) If the dispute is not resolved, forward the obligor's written request for a hearing to the cabinet's hearing branch;

(8) If there is no dispute or a hearing results in a finding that the case qualifies for the withhold and deliver process, and the obligor does not take an action specified in subsection (5) of this section, send to the financial institution, within (20) twenty days of the date of decision, the Order to Deliver; or

(9) Notify the financial institution and the obligor of the Release of Order to Withhold, CS-70, within twenty (20) working days of the hearing branch's decision or the obligor's action as follows:

(a) Makes full payment; or

(b) Posts a bond for the full arrearage; or

(c) Enters into an agreement as specified in subsection (5)(d) of this section and makes the first payment within seven (7) calendar days of the agreement.

**Section 10. Administrative Enforcement Actions.** (1) If an obligor of a child receiving public assistance owes past-due support, he shall be obliged to participate in work activities pursuant to KRS 405.430(8).

(2) If an obligor owes an arrearage equal to or greater than one (1) month's obligation, the cabinet shall:

(a) File a lien on the obligor's interest in personal or real property within the Commonwealth, pursuant to KRS 205.745; and

(b) Give notice to the obligor that:

1. He may contest the lien pursuant to KRS Chapter 13B and 921 KAR 1:400; and

2. A transfer of property in order to avoid payment will be considered an act of fraud, in accordance with KRS 405.060(2); and

(c) Provide advance notice to the obligor that:

1. Past-due amounts will be reported to a certified consumer reporting agency; and

2. He may contest the accuracy of the information by filing an appeal pursuant to KRS Chapter 13B; and

(d) Not submit the obligor's information for inclusion on the periodic report made available to certified consumer reporting agencies pursuant to KRS 205.768, if the advance notice is returned as undeliverable and subsequent location efforts are unsuccessful; or

(e) Submit the obligor's name and arrearage amount for inclusion on the periodic report made available to certified consumer reporting agencies, if the obligor does not pay or appeal within thirty (30) calendar days from the date notice was received.

(f) Request a full credit report from a certified consumer credit reporting agency if the obligor does not pay or appeal within thirty (30) calendar days from the date notice was received.

(3) If an obligor owes an arrearage equal to or greater than one (1) year's obligation, and for action against a driver's license the arrearage has accrued since January 1, 1994, the cabinet shall:

(a) Determine if the obligor holds a driver's license, professional license or certificate, occupational license or certificate, recreational license, sporting license, or a license to carry a concealed weapon;

(b) Send to the obligor, by certified mail:

1. A "Notice of Intent to Request Denial or Suspension" which includes an Answer to Notice of Intent; [of License or Certificate];

2. [A blank "Obligor's Answer to Notice of Intent" form; and

3.] Notification that the only basis for a dispute hearing contesting the action is a mistake in fact, pursuant to KRS 205.712(13);

3. [4.] Notification that the "Notice to Licensing/Certification Board or Agency" ["Notice of Intent to Request Denial or Suspension of License or Certificate"] will be rescinded if he:

a. Pays the total arrearage accrued; or

b. Posts a bond for the total arrearage; or

c. Enters into an agreement to pay current support plus a monthly payment on arrearage, specified as follows:

(i) If the arrearage is less than \$1,000, fifty (50) percent;

(ii) If the arrearage is equal to or greater than [or equal to] \$1,000 and less than \$2,000, \$500 plus twenty-five (25) percent of the amount over \$1,000;

(iii) If the arrearage is equal to or greater than [or equal to] \$2,000, \$750 plus ten (10) percent of the amount over \$2,000.

(c) Refer the case for parent-locator service, if the notice of intent is returned and the forwarding address unknown;

(d) If the obligor requests a dispute hearing based upon a mistake of fact, and returns the obligor's answer to notice of intent within twenty (20) calendar days of the date notification was received;

1. Schedule and hold an interview with the obligor within ten (10) working days of the response;

2. Attempt to resolve the dispute at the time of the interview; and

3. If the dispute is not resolved, forward the obligor's written request for a hearing to the cabinet's hearing branch;

(e) If there is no dispute, or a hearing results in a finding that the case qualifies for license or certificate denial, suspension, or revocation, and the obligor does not take an action specified in paragraph (b)4 of this subsection, send within twenty (20) days of the date of decision a "Notice to Licensing/Certification Board or Agency" ["Notice to Request Denial or Suspension of License or Certificate"] to the issuing agency or board of licensure or certification; or

(f) Notify the issuing board or agency that the obligor is no longer deemed by the cabinet to be subject to denial, suspension, or revocation, if the obligor:

1. Makes full payment; or

2. Posts a bond for the full arrearage; or

3. Makes a good faith payment equal to three (3) month's current support, and enters into an agreement as specified in paragraph (b)4c of this subsection; or

4. For a person who had failed to respond to a subpoena or warrant, the person has complied with the subpoena or warrant.

(4) If the obligor owes an arrearage of \$5,000 or more:

(a) The cabinet shall send an advance notice of intent to collect past-due support, notifying the obligor that his name is being submitted for passport denial, revocation, or limitation, pursuant to KRS 205.712(8);

(b) The cabinet shall forward the certified name and supporting documents to the Secretary of the U.S. Department of Health and Human Services for passport denial, revocation, or limitation;

(c) The cabinet shall notify the Secretary of the U.S. Department of Health and Human Services that the cabinet rescinds its request for passport denial, revocation, or limitation if:

1. The obligor's timely appeal is resolved with a finding that the arrearage is less than \$5,000; or

2. The obligor is in compliance with payments ordered in an existing arrearage judgment; or

3. A payment reduces the arrearage to less than \$5,000; or

4. If there is no ordered arrearage payment, the obligor:

a. Posts a bond for the total amount due; or

b. Enters into a payment agreement to pay current support plus a monthly payment on the arrearage, specified as follows:

(i) In the first month, a \$750 lump sum plus ten (10) percent of the arrearage balance as of the date of the agreement; and

(ii) In successive months, ten (10) percent of the arrearage balance as of the date of the agreement, or the remaining balance if less than ten (10) percent.

(5) If a person fails to comply with a subpoena or warrant relating to a paternity or child support proceeding:

(a) The agency shall contact the contracting official to determine if the contracting official intends to pursue judicial action;

(b) If the contracting official determines that judicial action will not be taken, the agency shall:

1. Advise the contracting official of the agency's intent to proceed with the notice to revoke or deny a license or certificate; and

2. Proceed in accordance with the provisions of subsection (3) of this section, except that the person shall be notified that he may

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retain his license or certificate by complying with the subpoena or warrant.

Section 11. [40:] Appeal Procedure. An obligor may request a dispute hearing in accordance with KRS 405.450 or 405.490(4).

Section 12. [44:] Incorporation by Reference. (1) The following material is incorporated by reference:

(a) CS-44 "Notice of Intent to Request Denial or Suspension", edition 8/99;

(b) CS-63 "Notice to Licensing/Certification Board or Agency", edition 8/99;

(c) CS-68 "Order to Withhold", edition 8/99;

(d) CS-69 "Answer to Withhold", edition 8/99;

(e) CS-70 "Release of Order to Withhold", edition 8/99;

(f) CS-76 "Unemployment Insurance Agreement", edition 8/99;

(g) CS-78 "Payment Agreement", edition 10/98;

(h) CS-83 "Order to Deliver", edition 8/99;

(i) CS-84 "Administrative Subpoena", edition 10/98;

(j) CS-85 "Notice of Lien", edition 10/98;

(k) CS-89 "Order and Notice to Withhold Income for Child Support", edition 10/98;

(l) CS-92 "Intrastate Notice of Lien", edition 10/98;

(m) CS-93 "Advance Notice of Intent to Request Full Credit Report", edition 10/98;

(n) CS-111 "Child Support Received Affidavit", edition 10/98;

(o) CS-119 "Obligor's Notice of Lien", edition 8/99;

(p) CS-120 "Release of Lien", edition 10/98;

(q) CS-121 "Noncustodial Parent or Obligor Answer to Withhold", edition 8/99;

(r) CS-122 "Advance Notice of Intent to Collect Past-Due Support", edition 10/98;

(s) CS-148 "Custodial Parent Affidavit Letter", edition 10/98;

(t) CS-149 "Custodial Parent Affidavit of Support Paid", edition 10/98;

(u) CS-164 "Notice of Income Withholding", edition 10/98;

(v) NOC "Notice of Claim", edition 8/99. (CS-44 "Notice of Intent to Request Denial or Suspension", (10/98 Edition), Cabinet for Families and Children;

(b) CS-63 "Notice to Request Denial or Suspension of License or Certificate", (10/98 Edition), Cabinet for Families and Children;

(c) CS-78 "Payment Agreement", (10/98 Edition), Cabinet for Families and Children;

(d) CS-84 "Administrative Subpoena", (10/98 Edition), Cabinet for Families and Children;

(e) CS-85 "Notice of Lien", (10/98 Edition), Cabinet for Families and Children;

(f) CS-89 "Order and Notice to Withhold Income for Child Support", (10/98 Edition), Cabinet for Families and Children;

(g) CS-92 "Intrastate Notice of Lien", (10/98 Edition), Cabinet for Families and Children;

(h) CS-93 "Advance Notice of Intent to Request Full Credit Report", (10/98 Edition), Cabinet for Families and Children;

(i) CS-111 "Child Support Received Affidavit", (10/98 Edition), Cabinet for Families and Children;

(j) CS-119 "Obligor's Notice of Lien", (10/98 Edition), Cabinet for Families and Children;

(k) CS-120 "Release of Lien", (10/98 Edition), Cabinet for Families and Children;

(l) CS-122 "Advance Notice of Intent to Collect Past-Due Support", (10/98 Edition), Cabinet for Families and Children;

(m) CS-148 "Custodial Parent Affidavit Letter", (10/98 Edition), Cabinet for Families and Children;

(n) CS-149 "Custodial Parent Affidavit of Support Paid", (10/98 Edition), Cabinet for Families and Children;

(o) CS-164 "Notice of Income Withholding", (10/98 Edition), Cabinet for Families and Children.]

(2) This material may be inspected, copied, or obtained at the Department for Community-Based Services, 275 East Main Street, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

DIETRA PARIS, Commissioner

VIOLA P. MILLER, Secretary

CHARLES P. LAWRENCE, Attorney

APPROVED BY AGENCY: June 14, 1999

FILED WITH LRC: June 15, 1999 at noon

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on July 21, 1999, at 9 a.m. at the Health Services Auditorium, 1st Floor, CHR Building, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by July 14, 1999, 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: Judy Trigg, Cabinet for Families and Children, Office of the General Counsel, 275 East Main Street, 4th Floor West, Frankfort, Kentucky 40621, Telephone: (502) 564-7900, FAX: (502) 564-7573.

### REGULATORY IMPACT ANALYSIS

Agency Contact Person: Cathy G. Mobley, Director

(1) Type and number of entities affected: This administrative regulation specifies the procedures for the cabinet to locate obligor assets through financial institution data matches. It is estimated that as many as 123,446 obligors could meet the criteria for financial data match. Obligor with arrears in excess of \$1,000, or a total of 6 month's worth of child support payments, whichever is less, and who are out of compliance with a current support order are subject to the data match. Approximately 17,000 financial institutions could participate in the data match.

(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 public comments received. A public hearing was held but no public comments were received.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented to the extent available from public comments received. A public hearing was held but no public comments were received.

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

1. First year following implementation: None. The amendments to this administrative regulation have no fiscal impact. The fiscal impact associated with the financial data match only affects 921 KAR 1:020.

2. Second and subsequent years: None. The amendments to this administrative regulation have no fiscal impact. The fiscal impact associated with the financial data match only affects 921 KAR 1:020.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings: None. The amendments to this administrative regulation have no fiscal impact. The fiscal impact associated with the financial data match only affects 921 KAR 1:020.

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: It is possible that this amendment could be responsible for an increase in collections in arrearage cases.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: None required for amendments to this administrative regulation. Any costs related to the financial institution data match are associated with 921 KAR 1:020.

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

(a) Geographical area in which administrative regulation will be

implemented: A public hearing was held but no public comments were received.

(b) Kentucky: A public hearing was held but no public comments were received.

(7) Assessment of alternative methods; reasons why alternatives were rejected: No alternative methods were considered. Amendment to the administrative regulation is a result of statutory requirements resulting from the federal mandates of 42 USC 651 et seq.

(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 was not applied because the Child Support Program requires uniformity in the application of policy as specified in 45 CFR 302.33(c).

#### FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? No

2. State whether this administrative regulation will affect the local government or only a part or division of the local government. This administrative regulation will not affect local government.

3. State the aspect or service of local government to which this administrative regulation relates. None

4. How does this administrative regulation affect the local government or any service it provides? This administrative regulation does not affect local government.

#### FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 42 USC 666(a)(17).

2. State compliance standards. None

3. Minimum or uniform standards contained in the federal mandate. Minimum standards stated in the federal mandate have been met.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate. No

5. Justification for the imposition of the stricter standards, or additional or different responsibilities or requirements. None required.

#### CABINET FOR FAMILIES AND CHILDREN Department for Community-Based Services Division of Policy Development (Amendment)

**921 KAR 3:050. Claims and additional administrative provisions.**

RELATES TO: 7 CFR 272.1, 272.5, 273.16, 273.17, 273.18, 273.18(d)(4)(iii), 26 CFR 301.6402-6 et seq., 31 CFR 5.23 et seq., 56 FR 41325-31, 57 FR 39176-77, 7 USC 2014(e)(2)(C), 2020(e)(8)(D), 2022 [PL-103-66]

STATUTORY AUTHORITY: KRS 194B.050(1), EO 98-731 [13A-120; 194-050]

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Families and Children shall administer a Food Stamp Program pursuant to [as prescribed under] 7 USC 2011 to 2029. KRS 194B.050(1) [194-050] provides that the secretary shall, by administrative regula-

tion, develop policies and operate programs concerned with the welfare of the citizens of the Commonwealth. This administrative regulation sets forth additional provisions used by the cabinet in the administration of the Food Stamp Program.

Section 1. Civil Rights Compliance. The cabinet shall not discriminate against an [any] applicant or participant in any aspect of program administration for reasons of age, race, color, sex, disability, religious creed, national origin, or political beliefs.

Section 2. Restoration of Lost Benefits. (1) Benefits shall be restored to a household if the [a] household has lost benefits:

(a) Due to an administrative error; or

(b) By an administrative disqualification for intentional program violation that is subsequently reversed.

(2) Benefits shall be restored for a period of not more than twelve (12) months from:

(a) The date the agency receives a request for restoration; or

(b) If no request is received, the date a fair hearing action is initiated.

(3) Benefits to be restored shall be calculated by determining the difference between what the household was entitled to receive and what the household actually received.

(4) Benefits to be restored shall be used to offset an [any] unpaid or suspended claim [claims] the household may have.

Section 3. Program Informational Activities. (1) A low-income or disadvantaged household [households] shall be informed of the availability of the program, program rights and responsibilities through program informational activities including posters and pamphlets from the Food and Nutrition [Consumer] Service.

(2) Other programs that a household [households] shall be encouraged to use are the:

(a) Special Supplemental Food Program for Women, Infants and Children; and

(b) Expanded Food and Nutrition Education Program.

Section 4. Identification of a Claim [Claims] Against a Household [Households]. (1) All adult household members shall be jointly and severally liable for the value of any overissuance of benefits to the household.

(2) The cabinet shall establish a claim against a household that:

(a) Has received more food stamp benefits than it is entitled to receive; or

(b) Contains an adult member who was an adult member of another household that received more food stamp benefits than it was entitled to receive.

Section 5. Classification and Establishment of Claims. A claim [Claims] shall be classified as:

(1) Inadvertent household error claim [claims]. Overissuance was due to:

(a) The household unintentionally failed to provide the food stamp office [state agency] with correct or complete information;

(b) An action, or failure to take action, by the Social Security Administration, that results in the household improperly receiving Supplemental Security Income; or

(c) A misunderstanding or unintended error on the part of a categorically eligible household, as defined in 921 KAR 3:030, Section 4 [5], that receives benefits [food stamps] solely because of categorical eligibility, and is subsequently determined ineligible for either Kentucky Transitional Assistance Program (K-TAP) or Supplemental Security Income or both;

(d) The household unintentionally failed to report to the cabinet a change [changes] in its household's circumstance [circumstances];

(e) The household unintentionally received benefits or more benefits than it was entitled to receive pending a fair hearing decision because the household requested a continuation of benefits based on the mistaken belief that it was entitled to the benefits.

(2) Administrative error claim [claims]. Overissuance was due to the agency:

(a) Failing to take action on a change reported by the household;

(b) Incorrectly computing household income or deductions or

otherwise issuing an incorrect allotment;

(c) Issuing duplicate benefits;

(d) Continuing to issue benefits after the certification period expired without a reapplication determination; or

(e) Taking an action or failing to take an appropriate action, that [which] resulted in the household improperly receiving K-TAP.

(3) Intentional program violation claim [claims].

(a) Overissuance was due to an act of intentional program violation on the part of the household by:

1. Making a false or misleading statement, or misrepresenting, concealing or withholding facts; or

2. Committing a violation of 7 USC 2011-2029, 921 KAR Chapter 3, or any state statute relating to the Food Stamp Program, relating to the:

a. Use;

b. Presentation;

c. Transfer;

d. Acquisition;

e. Receipt; or

f. Possession of food stamp coupons or an electronic benefit transfer card.

(b) The act of intentional program violation is determined by:

1. An administrative disqualification hearing official;

2. A federal, state or local court;

3. An individual signing a waiver of his right to an administrative disqualification hearing; or

4. An individual signing a disqualification consent agreement in a case [cases] referred for prosecution.

(4) Neither an agency error claim nor an inadvertent household error claim shall be established if an overissuance occurred as a result of the cabinet failing to insure that a household fulfilled the following procedural requirements:

(a) Sign the application form;

(b) Complete the registration of an individual who is required to register for work pursuant to [in accordance with] 921 KAR 3:042 [3:041]; or

(c) Certify the household in the correct county where [in which] they reside.

Section 6. Calculating the Amount of a Claim [Claims]. (1) Inadvertent household error and agency error claim [claims].

(a) For each month that a household received an overissuance due to an inadvertent household error or agency error, the cabinet shall determine the correct amount of food stamp benefits the household was entitled to receive.

(b) The amount of the inadvertent household error or agency error claim shall be calculated based on the amount of overissuance that [which] occurred during the twenty-four (24) months preceding the date that the overissuance was discovered.

(c) In a case [cases] involving a reported change [changes], the cabinet shall determine the month the overissuance initially occurred as follows:

1. For an inadvertent household error claim [claims], if the household failed to report a change in a circumstance [its circumstances] within the required time frame [frames]:

a. The first month affected by the household's failure to report shall be the first month that [in which] the change would have been effective had it been timely reported.

b. The first month of the established overissuance shall not be [in no event shall the cabinet determine as the first month in which the change would have been effective] any month later than two (2) months from the month that [in which] the change in a household's circumstance [household circumstances] occurred.

2. For an agency error claim [claims], if the household timely reported a change, but the cabinet did not act on the change within the required time frame [frames]:

a. The first month affected by the cabinet's failure to act shall be the first month the cabinet would have made the change effective had it timely acted.

b. The first month of the established overissuance shall not be [in no event shall the cabinet determine as the first month in which the change would have been effective] any month later than two (2) months from the month that [in which] the change in a household's

circumstance [household circumstances] occurred.

c. If a notice of action was required but was not provided, the cabinet shall assume for the purpose of calculating the claim that the household would have been allowed the maximum advance notice period to expire without the household requesting a fair hearing including:

(i) Ten (10) days to report the change;

(ii) Ten (10) days for the caseworker to act on the change; and

(iii) Ten (10) days for the client to respond to the notice of action.

(d) If the household received a larger allotment than it was entitled to receive:

1. For an inadvertent household error claim, the cabinet shall not apply the twenty (20) percent earned income deduction to that portion of earned income that the household failed to report;

2. For an agency error claim, the cabinet shall establish a claim against the household equal to the difference between the allotment the household received and the allotment the household should have received.

(e) For a categorically eligible household as specified in 921 KAR 3:020, Section 4(2), a claim shall only be determined when it can be computed on the basis of changed household net income and household size.

(f) After calculating the amount of the inadvertent household error or agency error claim:

1. The cabinet shall offset the amount of the claim against any amount that has [amounts which have] not yet been restored to the household pursuant to [in accordance with] Section 2 of this administrative regulation.

2. The cabinet shall then initiate collection action for the remaining balance, if any.

(2) Intentional program violation claim [claims].

(a) For each month that a household received an overissuance due to an intentional program violation, the cabinet shall determine the correct amount of food stamp benefits, if any, the household was entitled to receive.

1. The amount of the intentional program violation claim shall be calculated back to the month the act of intentional program violation occurred but back no more than six (6) years from the date the overissuance was discovered.

2. If the household member is determined to have committed an intentional program violation by intentionally failing to report a change in the [its] household's circumstance [circumstances], the first month affected by the household's failure to report shall be the first month that [in which] the change would have been effective had it been reported.

3. The first month of the established overissuance shall not be [in no event shall the cabinet determine as the first month in which the change would have been effective] any month later than two (2) months from the month that [in which] the change in a household circumstance [household circumstances] occurred.

(b) If the household received a larger allotment than it was entitled to receive:

1. The cabinet shall establish a claim against the household equal to the difference between the allotment the household received and the allotment the household should have received;

2. When determining the amount of benefits the household should have received, the cabinet shall not apply the twenty (20) percent earned income deduction to that portion of earned income that [which] the household intentionally failed to report.

(c) Once the amount of the intentional program violation claim is established, the cabinet shall offset the claim against any amount of lost benefits that have not yet been restored to the household pursuant to [in accordance with] Section 2 of this administrative regulation.

Section 7. Collecting a Claim [Claims] Against a Household [Households]. The cabinet shall initiate collection action against a household [households] with an established claim pursuant to [in accordance with] the following criteria:

(1) A claim [All-claims] identified in Section 5 of this administrative regulation, as an inadvertent household or [and] administrative error claim [claims], shall have collection action initiated unless the:

(a) Claim is collected through offset; or

(b) Claim is less than \$125 [thirty-five (35) dollars] and cannot be

recovered by benefit [coupon] reduction due to inactive status [; or  
(c) Department has documentation that the household cannot be located].

(2) A household member found to have committed an intentional program violation, pursuant to [in accordance with] Section 5(3) of this administrative regulation, shall have collection action initiated against the individual's household unless the:

(a) [The] Household has repaid the overissuance;

(b) [The department has documentation that the household cannot be located; or

(c) Collection action would prejudice the case against a household member referred for prosecution; or

(c) Claim is less than \$125 and cannot be recovered by benefit reduction due to inactive status.

(3) A payment [Payments] for a claim [claims] against the household shall be collected as follows:

(a) A lump sum payment [payments].

1. If the household states it is financially able to pay the entire amount of the claim at one (1) time, either as cash payment or benefits [food stamp coupons], the cabinet shall collect a lump sum payment; however

2. The household shall not be required to liquidate all of its resources to make this lump sum payment.

3. If the household states it is financially unable to pay the entire amount of the claim at one (1) time and prefers to make a lump sum payment of cash or benefits [food stamp coupons] as partial payment of the claim, the cabinet shall accept this method of repayment.

(b) Installments.

1. The cabinet shall negotiate a payment schedule with the household for repayment of any amount [amounts] of the claim not repaid through a lump sum payment.

a. The minimum monthly payment shall [must] be equal to the amount that [which] would be received through benefit [coupon] reduction described [outlined] in paragraph (c) of this subsection.

b. Payment shall be accepted by the cabinet in regular installments and shall be paid to the cabinet on a due date agreed upon by the household and the cabinet [no later than the tenth of the month].

c. The household may use benefits [food stamp coupons] as full or partial payment of any installment.

d. If the full claim or remaining amount of the claim cannot be liquidated in thirty-six (36) months, the cabinet may compromise the amount of the claim by reducing it to an amount that allows the household to pay the claim in thirty-six (36) months.

e. The cabinet shall use the full amount of the claim, including any amount compromised, to offset benefits pursuant to [in accordance with] Section 2 of this administrative regulation.

2. If the household fails to make a payment pursuant to [in accordance with] the established repayment schedule, either a lesser amount or no payment, the cabinet shall allow the household an opportunity to renegotiate the payment schedule.

(c) Reduction in the food stamp allotment. For a participating household [households], the cabinet shall collect a payment [payments] for a claim [claims], unless a repayment schedule has been [otherwise] negotiated, by reducing the household's benefits pursuant to [food stamp allotments in accordance with] the following criteria:

1. For an inadvertent household error or administrative error claim [claims], the amount of reduction shall be the greater of:

a. Ten (10) percent of the household's monthly allotment; or

b. Ten (10) dollars per month;

2. [For administrative error claims;

a. The amount of reduction shall be negotiated with the household; and

b. Coupon reduction shall only be imposed if the household prefers to use this method.

3. For an intentional program violation error claim [claims], the amount of reduction shall be the greater of:

a. Twenty (20) percent of the household's monthly entitlement; or

b. Ten (10) dollars per month.

(d) Federal salary offset procedures.

1. The cabinet shall offset the salary of a federal or United States Postal Service employee who owes an:

a. Administrative error claim;

b. Inadvertent household error claim; or

c. [b.] Intentional program violation claim; unless

(i) The claim has been paid;

(ii) The claim is being paid under a current payment agreement; or

(iii) The claim is not collectible.

2. [Prior to salary offset, the cabinet shall provide each federal or United States Postal Service employee verified as owing an inadvertent household error or intentional program violation claim with an advance notice of salary offset which includes an opportunity to enter into a voluntary repayment agreement.

3. The federal or United States Postal Service employee shall avoid referral for salary offset if within thirty (30) days of the date of the federal government's advance notice of intention to attach wages:

a. Payment of the claim is received in full; or

b. The first installment of fifty (50) dollars or more is received by the cabinet and the debtor continues to pay installment payments of fifty (50) dollars or more on an agreed-upon monthly schedule [by the tenth day of each subsequent month] until the claim is paid in full.

3. [4.] If any monthly installment of at least fifty (50) dollars is not received by the tenth day of each subsequent month, the claim shall [will] be referred for salary offset with no further right to enter into a voluntary repayment agreement;

4. [5.] If a federal or United States Postal Service employee believes that he is not responsible for the claim or that the claim has been paid, he may submit documentation to the cabinet, including a:

a. Payment record [records]; or

b. Legal bar [bars] to collection of a claim [claims].

5. [6.] Unless the documentation clearly shows that the claim has been paid or is not legally collectible, the cabinet shall refer the claim for collection from the debtor's salary.

6. A debtor [7-Debtors] shall have the right to a formal appeal to the Food and Nutrition [Consumer] Service.

[8. The advance notice to federal employees is incorporated into this administrative regulation by reference.]

(4) An individual who has defaulted on repayment of his debt shall have the debt offset through intercept of his:

(a) State income tax return if his claim is identified as:

1. Noncourt established intentional program violation [as] described in Section 5(3)(b) 1, 3, or 4 of this administrative regulation; [or]

2. An inadvertent household error [as] described in Section 5(1) of this administrative regulation;

3. An administrative error described in Section 5(2) of this administrative regulation; or

4. Court established fraud, pursuant to Section 5(3)(b)2 of this administrative regulation, that is out of court jurisdiction; and

(b) Federal income tax return if his claim is identified as:

1. Court established fraud as described in Section 5(3)(b)2 of this administrative regulation;

2. Noncourt established intentional program violation [as] described in Section 5(3)(b) 1, 3, or 4 of this administrative regulation; [or]

3. An inadvertent household error as described in Section 5(1) of this administrative regulation; or

4. An administrative error described in Section 5(2) of this administrative regulation.

(5) Disqualification from the Food Stamp Program shall be imposed on an individual with an intentional program violation claim pursuant to [claims in accordance with] 921 KAR 3:060, Section 10.

(6) Cabinet forms necessary to collect an overpayment [overpayments] are incorporated into this administrative regulation by reference.

Section 8. Disclosure of Information. Use or disclosure of information including the address, Social Security number, and, if available, photograph obtained from an applicant household [households], exclusively for the Food Stamp Program, shall be restricted to the following individuals:

(1) A person [Persons] directly connected with the administration or enforcement of the provisions of:

(a) 7 USC 2011-2029;

(b) A [Other] federal assistance program [programs]; or

(c) A federally-aided state program that provides [programs which provide] assistance, on a means-tested basis, to a low income household [households];

(2) An employee [Employees] of the Comptroller General's Office

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of the United States for audit examination authorized by any other provision of law; and

(3) A local, state or federal law enforcement official [officials], upon his [their] written request, for the purpose of investigating an alleged violation of 7 USC 2011-2029 or regulations. The written request shall include:

(a) The identity of the person requesting the information and his authority to do so;

(b) The nature of the violation being investigated including a fugitive felon or parole and probation violator; and

(c) The identity of the person about whom the information is requested.

Section 9. General Program Information. 921 KAR Chapter 3 shall be maintained in the cabinet central and local office for examination by a member [members] of the public on a regular workday [workdays] during regular office hours. A copy of an [Copies of] administrative regulation [regulations] may be obtained from the cabinet. Federal laws and regulations shall be maintained by the cabinet central office and the Food and Nutrition [Consumer] Services and shall be available for inspection and copying.

Section 10. Retention of Records. (1) The cabinet shall retain all program records in an orderly fashion, for audit and review purposes, for a period of three (3) years from the date the claim is paid in full, unless the claim is involved in an audit [month of origin of each record].

(2) The cabinet shall retain fiscal records and accountable documents for three (3) years from the date of fiscal or administrative closure.

Section 11. Disaster Certification. The cabinet shall distribute emergency benefits [coupon allotments] to a household within a food stamp county determined to be a disaster area pursuant to:

(1) In accordance with 42 USC 5122, authorized by the Food and Nutrition [Consumer] Service of the United States Department of Agriculture as a result of a major disaster that is determined by the President of the United States; or

(2) In accordance with 7 USC 2011-2029, authorized by the Food and Nutrition [Consumer] Service as a result of a lesser disaster, if:

(a) The emergency has resulted either from a natural or human occurrence that [which] disrupted the commercial channels of food distribution; and

(b) The Food Stamp Program is operational.

Section 12. Incorporation by Reference. (1) The following material is incorporated by reference:

- (a) "KCA-1, General Claims Notice FS-01", edition 9/98;
- (b) "KCA-1, General Claims Notice FS-02", edition 9/98;
- (c) "KCA-1, General Claims Notice FS-03", edition 9/98;
- (d) "KCA-1, General Claims Notice FS-04", edition 9/98;
- (e) "KCA-1, General Claims Notice FS-05", edition 9/98;
- (f) "KCA-1, General Claims Notice FS-06", edition 9/98;
- (g) "KCA-1, General Claims Notice FS-07", edition 9/98;
- (h) "KCA-1, General Claims Notice FS-08", edition 7/96;
- (i) "KCA-1, General Claims Notice FS-09", edition 7/96;
- (j) "KCA-1, General Claims Notice FS-10", edition 9/98;
- (k) "KCA-1, General Claims Notice FS-11", edition 7/96;
- (l) "KCA-1, General Claims Notice FS-12.1", edition 7/96;
- (m) "KCA-1, General Claims Notice FS-12.2", edition 7/96;
- (n) "KCA-1, General Claims Notice FS-12.3", edition 7/96;
- (o) "KCA-1, General Claims Notice FS-20", edition 7/96;
- (p) "KCA-1, General Claims Notice FS-21", edition 9/98;
- (q) "KCA-1, General Claims Notice FS-22", edition 9/98;
- (r) "KCA-1, General Claims Notice FS-23", edition 9/98;
- (s) "KCA-1, General Claims Notice FS-24", edition 9/98;
- (t) "KCA-1, General Claims Notice FS-25", edition 9/98;
- (u) "KCA-1, General Claims Notice FS-28", edition 9/98;
- (v) "KCA-1, General Claims Notice FS-29", edition 9/98;
- (w) "KCA-1, General Claims Notice FS-30", edition 9/98;

(2) This material may be inspected, copied, or obtained at the Department for Community-Based Services, 275 East Main Street,

Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m. [Material Incorporated by Reference. (1) Forms necessary for the establishment and collection of claims against households, are incorporated effective January 1, 1995. These forms include:

(a) Advance Notice to Federal Employees, revised 1/95;

(b) FS-410, revised 3/92;

(c) FS-412, revised 1/93;

(d) FS-413, revised 6/91; and

(e) FS-415, revised 1/93.

(2) These forms may be inspected and copied at the Department for Community-Based Services, 275 East Main Street, Frankfort, Kentucky 40621 and at each of the department's local offices.]

DIETRA PARIS, Commissioner

VIOLA P. MILLER, Secretary

CHARLES P. LAWRENCE, Attorney

APPROVED BY AGENCY: May 28, 1999

FILED WITH LRC: June 15, 1999 at noon

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on July 21, 1999, at 9 a.m. at the Health Services Auditorium, 1st Floor, CHR Building, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by July 14, 1999, 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: Judy Trigg, Cabinet for Families and Children, Office of the General Counsel, 275 East Main Street, 4th Floor West, Frankfort, Kentucky 40621, Telephone: (502) 564-7900, FAX: (502) 564-7573.

### REGULATORY IMPACT ANALYSIS

Agency Contact Person: Cathy G. Mobley, Director

(1) Type and number of entities affected: The affected entities are individuals and households who are eligible to participate in the Food Stamp Program. As of March, 1999, there were 160,420 participating families and 400,034 participating individuals.

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

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comment received: No public hearing was requested as a result of the Notice of Intent being published and no written comments were received.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comment received: No public hearing was requested as a result of the Notice of Intent being published and no written comments were received.

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

1. First year following implementation: This administrative regulation will not create any additional compliance, reporting or paperwork requirements.

2. Second and subsequent years: See item 1 above.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: None

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: None

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

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: None

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

from administrative regulation, on:

(a) Geographical area in which administrative regulation will be implemented: No public hearing was requested as a result of the Notice of Intent being published and no written comments were received.

(b) Kentucky: The same as item (6)(a).

(7) Assessment of alternative methods; reasons why alternatives were rejected: Alternative methods were not considered since the cabinet is responsible to meet the federal requirements pursuant to 7 CFR 274.12.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: The cabinet is required to administer the Food Stamp Program pursuant to 7 USC 2011 et seq. This administrative regulation is necessary in order to comply with the federal requirements.

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

(c) If detrimental effect would result, explain detrimental effect: No detrimental effect.

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

(a) Necessity of proposed regulation if in conflict: None

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: None

(10) Any additional information or comments: None

(11) TIERING: Is tiering applied? No. Tiering was not applied since application of policy is applied in a like manner for all individuals as set forth through federal requirements.

#### FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 7 USC 2014(e)(2)(C), 2020(e)(8)(D), 2022.

2. State compliance standards. None

3. Minimum or uniform standards contained in the federal mandate. The provisions of this administrative regulation are promulgated pursuant to 7 USC 2011 et seq., as amended, and applied in a like manner on a statewide basis.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate. No

5. Justification for the imposition of the stricter standards, or additional or different responsibilities or requirements. None

#### CABINET FOR FAMILIES AND CHILDREN Department for Community-Based Services Division of Policy Development (Amendment)

#### 922 KAR 2:160. Child day care assistance program.

RELATES TO: KRS 13B.050(2), (3), 13B.080, 13B.090, 13B.110, 13B.120, 199.892-896, 199.8982(1)(c), 202A.011, Chapter 620, 45 CFR 98, 256, 257, 7 USC 2015(d), 20 USC 1432, 42 USC 601 et seq., 1998 Ky. Acts ch. 615

STATUTORY AUTHORITY: KRS 194B.050(1), 199.892, 199.8994, EO 98-731

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194B.050(1) [194.050] and 199.8994 provide that the Secretary for the Cabinet for Families and Children shall promulgate [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. 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 921 KAR 3:042. The function of this administrative regulation is to establish procedures for the implementation of child day care assistance program to the extent funding shall be available.

Section 1. Definitions. (1) [~~"Attending a job training or educa-~~

~~tional 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 diploma or a 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.]

(2) "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.

(3) "Certified family child care home" means a home pursuant to [as governed by] KRS 199.8982(1)(c) and 922 KAR 2:100.

(4) "Child care and development fund, (CCDF)" means child care assistance provided to a family [families] throughout the state to improve the affordability, quality and availability a of child care service [services] for;

(a) A low-income family to;

1. Work;

2. To attend an education or training program leading to self-sufficiency;

(b) Participation [~~participate~~] in K-TAP; or

(c) For a child-protective service case [for protection and teen parents].

(5) "Child protective service case" means a case that [registered for services in which the case file] contains case documentation that substantiates child abuse, neglect, dependency or exploitation. This category may [also] include a service [services] to prevent abuse, neglect, dependency or exploitation, including:

(a) A multiproblem family;

(b) A [families or] teen parent;

(c) An adoption subsidized child including a child whose adoption shall be at risk of disruption;

(d) A child who shall be placed into a relative placement pursuant to 922 KAR 1:130; and

(e) A child and a family in a homeless or spouse abuse shelter or transitional housing [parents].

(6) "Corporal physical discipline" means the deliberate infliction of physical pain and does not include spontaneous physical contact, that shall be [which is] intended to protect a child from immediate danger.

(7) "Day care" means the provision of essential child care for a portion of a day on a regular basis and shall be [is] designed to supplement, but not substitute for, the parent's responsibility for the child's protection, development and supervision.

(8) "Dependent care disregard" means a method of allowing a deduction from the gross income for a child care expense [expenses] for K-TAP and a medical assistance recipient [recipients] with earned income and for a food stamp recipient [recipients] with earned income or who shall be [are] in training or an educational program that shall be [programs which are] preparatory to employment. This deduction allows the K-TAP recipient to retain more income to pay a child care expense [expenses].

(9) "Eligibility requirement [requirements]" means that for a family to qualify for child day care funds, except in those instances where day care shall be [is] provided for a child protective service case [services cases], a family shall meet both need and income status criteria.

(10) "Employment" means public or private, full- or part-time, permanent or temporary work for a wage that is [which wages are] paid, including self-employment.

[(13) "~~Enrolled or enrollment~~" means the process by which unregulated providers become eligible for CGDF by completing the application for provider enrollment and obtaining approval by the Department for Community-Based Services.]

(11) "Family" means one (1) or more adults and children related by blood or law, including a stepparent or [stepparents, and] other person standing in loco parentis who shall be [is] operating or functioning in the place of the parent, residing in the same residence.

(12) "Family child care" means:

(a) A certified family child care home pursuant to [homes as governed by] 922 KAR 2:100; or

(b) Unregulated care provided for no more than three (3) unre-

lated 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 may provide 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.];~~

(13) "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 921 KAR 3:042.

~~[(18) "Group home child care" means a Type II licensed child day care facility.];~~

(14) "Kentucky Transitional Assistance Program, (K-TAP)", Kentucky's Temporary Assistance for Needy Families, (TANF) Program means a money payment program for children pursuant to 904 KAR 2:006, Section 1 ~~[who are deprived of parental support or care due to:~~

~~(a) Death, continued voluntary or involuntary absence of a parent;~~

~~(b) Physical or mental incapacity of one (1) parent when both parents are in the home; or~~

~~(c) Unemployment of at least one (1) parent when both parents are in the home.];~~

(15) "Licensed child day care facility" means a facility pursuant to ~~[as governed by]~~ KRS 199.894.

(16) "Physical or mental incapacity" means a child under the age of nineteen (19) who has multiple or a severe problem [problems] diagnosed by a physician or qualified professional, as defined in KRS 202A.011, that prevent the child from caring for himself for a part of the day.

(17) "Priority" means ~~[Priorities mean]~~ that a ~~[the]~~ client group ~~[groups]~~ identified for receipt of child day care shall be ~~[are]~~ ranked by priority.

(18) "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.

(19) "Relative provider" means a person:

(a) At least eighteen (18) years of age;

(b) Who provides a child care service [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 shall be [is] related to the child [children] served by:

1. Marriage;

2. Blood relationship; or

3. Court decree.

(20) "Social services block grant, (SSBG)" means funding for child care assistance provided by a licensed or certified provider for a family receiving a protective or preventive service ~~[providers for families receiving protective and preventive services, which may include multiproblem families or teen parents, and low income working parents].~~

(21) "Special needs child" means a child who has multiple or a severe problem [problems], and the severity of the disability shall require [requires] ongoing specialized care as defined under [PL 105-17, Title I Part C, Section 632 or] 20 USC 1432.

(22) "Type I licensed child day care facility" means a facility:

(a) Other than a dwelling unit that ~~[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, ~~that~~ ~~[which]~~ regularly provides day care for thirteen (13) or more children, including children of a staff member.

(c) If a preschool child [children] of ~~[any]~~ day care staff receives [receive] care in the facility, he [they] shall be included in the number for which the facility shall be [is] licensed.

(23) "Type II licensed child day care facility" means a home or dwelling unit ~~that~~ ~~[which]~~ regularly provides care apart from a parent

~~[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.];~~

(24) "Unregulated provider" means a child care provider who shall not be ~~[is not]~~ subject to be licensed or certified by the state or federal government.

(25) "Without regard to income" means that SSBG or a CCDF child day care service [services] for a child protective case [cases] may be provided or purchased without regard to family income.

~~(26) "Working" means public or private, full- or part-time, permanent or temporary employment for wages by a single parent or in a two (2) parent family when both shall be employed or when one (1) shall be employed and the other shall be in education or training or shall not be able to provide appropriate care and supervision.~~

Section 2. Technical Eligibility for CCDF. A child shall be eligible for a service [services] if he:

(1) Is under the age of thirteen (13) or is under the age of nineteen (19) 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 as defined in KRS 202A.011; or

4. As accepted by a collateral agency (school [schools], comprehensive care center); or

(b) Is under court supervision;

(2) Resides with a family whose income does not exceed:

(a) 160 [450] percent of poverty at the time of application; or

(b) 160 [450] percent of poverty at the time of reauthorization;

(c) To the extent necessary, the eligibility requirement relating to the percent of poverty may be increased based on the availability of state and federal funds.

(d) Except a child protective service [services] case shall be [is] eligible without regard to income.

(3) Resides with a parent [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 family's income does not exceed eighty-five (85) percent of state median income, excluding an employment retention bonus provided to the former K-TAP recipient; and

(b) The family shall be responsible for the maximum copayment amount specified in the child care daily parent copayment schedule.

(4) Resides with a parent [parents] or K-TAP specified relative who shall be [are] working, participating in K-TAP, shall be a teen parent ~~[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) Resides with a parent [parents] or specified relative who shall be a [are] non-K-TAP adult in an ~~[adults in a postsecondary]~~ education program, such as vocational school or college, education or a training program consistent with an employment goal, if the family income meets the guidelines listed in subsection (2)(a) of this section.

(6) Copayment requirement.

(a) Except for a protective service case where the copayment may be waived, 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) Unless a satisfactory arrangement shall be made to make full payment, an individual who fails to cooperate in paying the required copayment [copayments] may be [;] subject to a notice and a hearing requirement, and ~~[notices and hearing requirements;]~~ lose eligibility for the period of time a back copayment shall be ~~[copayments are] owed[unless satisfactory arrangements are made to make full payment].~~

(c) In a situation [situations] where the court shall be [is] involved, a parent [parents] may be ordered to pay for part or all of the cost of day care for his child. A voluntary payment by the parent [their child. Voluntary payments by parents] may be accepted.

(7) An [Other] eligibility condition [conditions] or a priority requirement [requirements] including childhood development and a before- and after-school care service [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 a parental right pursuant to [rights as governed by] Section 5 or 6(4) of this administrative regulation.

(8) A family [Families] shall not be eligible for child care assistance if care shall be [is] provided by:

(a) A parent or stepparent [Parents or stepparents];

(b) A legal guardian [Legal guardians];

(c) a member [Members] of the K-TAP or food stamp assistance unit or a person [persons] living in a home that [-which] includes the child in need of care;

(d) A provider [Providers] not meeting an applicable standard [standards] of state and local law or not enrolled pursuant to Section 6 of this administrative regulation; and

(e) An alternative program [Alternative programs] such as Head Start, state preschool and kindergarten that shall be [which are] available and accessible for the time [hours] child care shall be [is] needed.

Section 3. Technical Eligibility for SSBG. (1) The child shall have met the requirements pursuant to [specified in] Section 2(1) of this administrative regulation.

(2) The Department for Community Based Services case record shall:

(a) Substantiate child abuse, neglect, dependency or exploitation; or

(b) Provide documentation that a family has a need for a child care service [services] and with the use of child care the need for a protective service [services] may be prevented.

(c) Provide case-by-case documentation if the copayment is waived.

(3) A working parent [Working parents] may be eligible if:

(a) A child care need exists [Child care needs exist] in order to allow the parent to work;

(b) The family shall be [is] income eligible pursuant to [as specified in] Section 2(2) of this administrative regulation; and

(c) A CCDF fund shall be [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 service [services] if he:

(a) Shall be [is] under the age of thirteen (13); or

(b) Regardless of his age, shall be [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 as defined in KRS 202A.011;

4. A Department for Community Based Services worker indicating that the dependent qualifies as a special needs child;

5. A collateral agency (schools, comprehensive care center); or

(c) Shall be [is] disabled pursuant to 921 KAR 3:010, Section 1(9); or

(d) Shall be [is] under court supervision; and

(e) Resides with an adult household member who:

1. Shall be [is] responsible for his care; and

2. Shall be [is] subject to and complying with FSETP, pursuant

to 921 KAR 3:042.

(2) A family [Families] shall not be eligible for FSETP child care assistance if child care shall be [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 shall be [is] responsible for the care of a household member who shall be [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 shall be [is] provided onsite; or

(d) The FSETP participant shall be [is] a K-TAP recipient.

Section 5. Parental Rights and Responsibilities. (1) Unless an alternative program [programs] such as Head Start, state preschool or [and] kindergarten shall be [are] available and accessible for the time care shall be [hours care is] needed, a parent of an eligible child who receives or shall be [is] offered a child care service [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, a Child Day Care Service [Services] Agreement and Child Care Certificate, that [which] shall:

1. Be issued to the parent;

2. Be of value commensurate with the value of a child care service [services] provided in Section 5(1)(b) of this administrative regulation;

3. If chosen by the parent, be used for a child care service [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 a parent [parents] to choose from a variety of child care categories in compliance with federal regulations governing a child day care program [programs] including:

a. A licensed child care provider [providers];

b. A certified family child care provider [providers] (CFCCP); [and]

c. An unregulated child care provider [providers] enrolled with the Department for Community Based Services; or

d. A relative provider [providers] as defined in Section 1 of this administrative regulation. [-and]

6. Unless an exception shall be authorized by the Cabinet for Families and Children or its designee, a parent may change his provider a maximum of three (3) times in a twelve (12) month period.

7. Inform the parent and the provider [parents and providers] that the agreement may be terminated upon notice that the Department for Community Based Services has determined that a condition or a circumstance [conditions or circumstances] at the child day care location places a child [premises place children] at risk of abuse, neglect, or exploitation pursuant to KRS Chapter 620.

(2) A provider of a child care service [Providers of child care services] shall afford the parent [parents] unlimited access to his child [their children] and to the provider during normal hours of operation and whenever the child shall be [is] in the care of the provider.

(3) The cabinet or designee shall:

(a) Maintain a record of every substantiated parental complaint [complaints]; and

(b) Make information regarding the parental complaint [complaints] available to the public upon request.

(4) The cabinet or designee shall make available through a brochure, handout, [brochures, handouts,] and information shared by the service delivery agent [agents], to the parent [parents] and general public, consumer education about the parental option [options] relating to a child care service [services] including:

(a) The full range of child care providers available;

(b) Licensing and regulatory requirements;

(c) Information and criteria regarding the TANF exception for a single custodial parent who has demonstrated inability to obtain a

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needed child care service [services] for a child under six (6) years of age and information regarding the counting of time exempted toward the time limit on federal benefits; and

(d) Complaint procedures.

Section 6. State and Provider Requirements. (1) The cabinet shall assure that a provider of a child care service [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 pursuant to [as governed by] 922 KAR 2:001, 905 KAR 2:090, 922 KAR 2:100, 922 KAR 2:110, 922 [905] KAR 2:120; and

(b) With the exception of a provider who shall not be [these providers who are not] required to be licensed or certified pursuant to [as governed by] 922 KAR 2:001, 905 KAR 2:090, 922 KAR 2:100, 922 KAR 2:110, 922 KAR 2:120 and shall not be a relative provider. He [are not relative providers. They] shall be enrolled with the cabinet to meet the minimum health and safety standards. A provider [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 Selfassessment, and meet the following requirements:

1. The provider shall be at least eighteen (18) years of age;

2. The provider and each adult residing in the home shall be free of tuberculosis, as stated by a qualified physician or health care specialist;

3. The provider and each adult residing in the home shall submit to a criminal records check conducted within the past year by the Kentucky State Police;

4. The provider and each adult residing in the home shall not be found by the cabinet or court to have abused or neglected an adult or child;

5. The provider shall sign an agreement not to use any form of corporal physical discipline on the child [children] entrusted into his [their] care; and

6. The provider shall complete the enrollment process every three (3) years.

7. The provider shall have at least one (1) telephone in working order.

(c) The department may deny or terminate an agreement with an unregulated provider if a condition or circumstance [conditions or circumstances] at the child care premises places the child [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 reason [reasons] for the adverse action and the provider's right of appeal.

(e) If the provider feels an action of the Department for Community Based Services shall be [is] unfair, without reason, or unwarranted, the provider may appeal the action, in writing, to the Quality Assurance Section of the Office of Performance Enhancement, 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, a hearing officer shall be appointed to review the record, conduct the hearing, and make a recommendation [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 pursuant to [as governed by] KRS 13B.080 and 13B.090.

(h) The hearing officer shall advise the party [parties] that a recommended order shall be distributed within ten (10) days after the close of the hearing, the party [parties] shall have fifteen (15) days from the date of the recommended order to file an exception [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 affirm-

ing 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 that [by which] the child care payment [payments] shall cease.

(2) The cabinet has established the maximum child day care payment [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

#### East Region

Counties: Bath, Bell, Boyd, Bracken, Breathitt, Carter, Clay, Elliott, Fleming, Floyd, Greenup, Harlan, Jackson, Johnson, Knott, Knox, Lawrence, Laurel, Lee, Leslie, Letcher, Lewis, Magoffin, Martin, Mason, Meade, Menifee, Montgomery, Morgan, Owsley, Perry, Pike, Robertson, Rockcastle, Rowan, Whitley, and Wolfe.

Maximum Payment Rates						
East Region	Licensed		Certified		Enrolled Relative	
	FD	PD	FD	PD	FD	PD
Infant/Toddler	17	12	15	12	9	5
Preschool	14	10	14	10	9	5
School Age	14	10	14	8	9	5

#### West Region

Counties: Allen, Ballard, Barren, Breckinridge, Butler, Caldwell, Calloway, Carlisle, Christian, Crittenden, Daviess, Edmonson, Fulton, Grayson, Graves, Hancock, Hardin, Hart, Henderson, Hickman, Hopkins, Larue, Livingston, Logan, Lyon, Marion, Marshall, McCracken, McLean, Metcalfe, Monroe, Muhlenberg, Nelson, Ohio, Simpson, Todd, Trigg, Union, Warren, Washington and Webster.

Maximum Payment Rates						
West Region	Licensed		Certified		Enrolled Relative	
	FD	PD	FD	PD	FD	PD
Infant/Toddler	17	12	15	12	9	5
Preschool	14	12	13	10	9	5
School Age	13	12	12	10	9	5

#### Central Region

Counties: Adair, Anderson, Bourbon, Boyle, Bullitt, Carroll, Casey, Clark, Clinton, Cumberland, Estill, Franklin, Gallatin, Garrard, Grant, Green, Harrison, Henry, Jessamine, Lincoln, Madison, McCreary, Mercer, Nicholas, Oldham, Owen, Pendleton, Powell, Pulaski, Russell, Scott, Spencer, Shelby, Taylor, Trimble, Wayne, and Woodford.

Maximum Payment Rates						
Central Region	Licensed		Certified		Enrolled Relative	
	FD	PD	FD	PD	FD	PD
Infant/Toddler	18	13	16	13	12	7
Preschool	15	9	15	9	11	6
School Age	14	8	15	9	10	5

#### Metro Region

Counties: Boone, Campbell, Fayette, Jefferson, and Kenton.

Maximum Payment Rates						
Metro Region	Licensed		Certified		Enrolled Relative	
	FD	PD	FD	PD	FD	PD
Infant/Toddler	20	15	18	15	12	7
Preschool	17	12	15	12	11	6
School Age	16	10	15	11	10	5

#### [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,

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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, 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	\$16	10	15	9	12	7
Preschool	\$15	9	15	9	11	6
School-Age	\$14	8	15	9	10	5

	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

(b) A licensed or certified provider [providers], if the same amount is charged to the general public[;] may receive:

1. Two (2) dollars [one (1) dollar] per day beyond the maximum rate if the provider shall be [;

1-1s] accredited by the National Association for the Education for Young Children or National Association for Family Child Care or National School Aged Child Care Alliance;

2. An additional one (1) dollar per day beyond maximum rate if the provider provides child care to a child with a special need; and

3. An additional one (1) dollar per day beyond the maximum rate if the provider [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.

(c) If a provider meets all of the above criteria, he shall not exceed the maximum rate by more than four (4) dollars a day.

(3) The cabinet or designee shall determine a copayment that [which] the family shall pay to the provider for the cost of child day care based on the following sliding scale:

Family Fee Scale (Family Copay Per Day) Effective October 1, 1999								
\$900 TO 160% of POVERTY and 85% of median (99-2000)								
Income Range Monthly		Family Size 2 Family Copay With One Child	Family Size 3 Family Copay		Family Size 4 Family Copay		Family Size 5 or More Family Copay	
			with One Child	with 2 or More	with One Child	with 2 or More	with One Child	with 2 or More
0	399	\$0.00	\$-	\$-	\$-	\$-	\$-	\$-
400	499	\$0.00	\$-	\$-	\$-	\$-	\$-	\$-
500	599	\$0.00	\$-	\$-	\$-	\$-	\$-	\$-
600	699	\$0.00	\$-	\$-	\$-	\$-	\$-	\$-
700	799	\$0.00	\$-	\$-	\$-	\$-	\$-	\$-
800	899	\$0.00	\$-	\$-	\$-	\$-	\$-	\$-
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	\$4.00	\$4.00	\$4.50	\$3.25	\$3.75	\$2.75	\$3.25
1,200	1,299	\$4.50	\$4.50	\$5.00	\$4.00	\$4.50	\$3.00	\$3.50
1,300	1,399	\$5.00	\$5.00	\$5.50	\$5.00	\$5.50	\$3.50	\$4.25
1,400	1,499	\$5.50	\$5.50	\$6.25	\$5.50	\$6.25	\$4.25	\$4.75
1,500	1,599	\$6.00	\$6.00	\$6.75	\$6.00	\$6.75	\$5.00	\$5.75
1,600	1,699	\$6.50	\$6.50	\$7.50	\$6.50	\$7.50	\$6.00	\$6.75
1,700	1,799	\$7.00	\$7.00	\$8.00	\$7.00	\$8.00	\$7.00	\$8.00
1,800	1,899	\$7.50	\$7.50	\$8.50	\$7.00	\$8.00	\$7.50	\$8.50
1,900	1,999	\$8.00	\$8.00	\$9.00	\$7.00	\$8.00	\$8.00	\$9.00
2,000	2,099	\$8.50	\$8.50	\$9.50	\$7.00	\$8.00	\$8.50	\$9.50
2,100	2,199	\$9.00	\$9.00	\$10.00	\$9.00	\$10.00	\$9.00	\$10.00
2,200	2,299	\$9.50	\$9.50	\$10.50	\$9.50	\$10.50	\$9.50	\$10.50
2,300	2,399		\$9.75	\$10.75	\$9.75	\$10.75	\$9.75	\$10.75
2,400	2,499		\$10.25	\$11.25	\$10.25	\$11.25	\$10.25	\$11.25
2,500	2,599		\$10.75	\$11.75	\$10.75	\$11.75	\$10.75	\$11.75
2,600	2,699		\$11.25	\$12.25	\$11.25	\$12.25	\$11.25	\$12.25
2,700	2,799		\$11.50	\$12.75	\$11.50	\$12.75	\$11.50	\$12.75
2,800	2,899				\$12.00	\$13.25	\$12.00	\$13.25
2,900	2,999				\$12.50	\$13.75	\$12.50	\$13.75
3,000	3,099				\$12.75	\$14.25	\$12.75	\$14.25
3,100	3,199				\$13.25	\$14.75	\$13.25	\$14.75
3,200	3,299				\$13.75	\$15.25	\$13.75	\$15.25
3,300	3,399						\$14.00	\$15.50
3,400	3,499						\$14.50	\$16.00
3,500	3,599						\$15.00	\$16.50
3,600	3,699						\$15.00	\$16.50
3,700 and above							\$15.00	\$16.50

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There is no copay below \$900
Horizontal line indicates bracket in which income reaches 160 percent of poverty.
Families transitioning from TANF/K-TAP have one (1) year of eligibility if income shall be below eighty-five percent of State Median Income and may then remain as low income working parent if income is less than 160 percent of poverty.
The maximum copay for eligible families with more than five (5) members shall be fifteen (15) dollars with one (1) child in care and sixteen dollars and fifty cents (16.50) with two (2) or more children in care.

CHILD CARE DAILY PARENT COPAYMENT SCHEDULE							
Income Range Monthly	Family Size 2 Family Copay	Family Size 3 Family Copay		Family Size 4 Family Copay		Family Size 5 or More Family Copay	
	With 1 Child	With 1 Child	With 2 or More	With 1 Child	With 2 or More	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.

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 a client shall be [clients are] receiving dependent care disregard; or

2. A food stamp or FSETP case.

(b) A copayment [Copayments] in a child protective service case [cases]:

1. A copayment [Copayments] may be waived in a child protective service case under SSBG or CCDF.

2. If the copayment is not waived, it shall be calculated at the maximum amount indicated, taking into consideration the family income, size, and number of children in care or as specified in the referral.

3. The family shall be [is] eligible for a service [services] without regard to income.

(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 a payment. A reauthorization [payments. Reauthorizations] shall be determined:

1. Every twelve (12) months; and

2. Upon receipt of a reported change [changes].

(4) The Cabinet for Families and Children may, except for a protective service case [cases] and a FSETP case [cases], establish a priority [priorities] for a child care service [services] as follows:

(a) A child [Children] with a special need [needs];

(b) A teen parent [parents];

(c) A K-TAP participant [participants] to meet the need of a family [needs of families who are] attempting to transition off assistance;

(d) A parent [Parents] or K-TAP specified relative whose K-TAP

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case has been discontinued and needs child care assistance to accept or retain employment; and

(e) A [Other] low income working parent or a parent in education or training [parents].

(5) Recoupment.

(a) 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. Recoup an overpayment in each of the following cases:

1. Of fraud;
2. Involving a current recipient; and
3. In that [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.

(6) If a client's child care service shall be [services are] reduced or terminated due to need, income criteria, priority status, or change in law, administrative 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.

(7) The cabinet or designee shall notify the client of his right [their rights] to notice of an adverse action, hearing and an appeal pursuant to [actions, hearings and appeals as governed by] 922 KAR 1:320, Fair hearing. If notice of intended action is appealed by the client, the child care worker shall notify the client that the child care service [services] shall not be continued through the appeal process.

Section 7. Incorporated by Reference. (1) The following material is incorporated by reference:

(a) DSS-76 "Child Day Care Service Agreement and Child Care Certificate", edition 10-97;

(b) DSS-77 "Child Care Billing Statement, Enrollment/Attendance Verification", edition 10-98;

(c) DSS-1295 "Application for Child Care Provider Enrollment: In Provider's Home", edition 3-99;

(d) DSS-1296 "Child Care Provider Enrollment Self-Assessment", edition 3/99;

(e) DSS-1297 "Application for Child Care Provider Enrollment: In Child's Home", edition 3-99; and

(f) "Application for Subsidized Child Day Care Assistance", 10/97. ["Child Day 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, "October, 1998", Cabinet for Families and Children;

(d) "Application for Child Care Provider Enrollment: In Provider's Home", DSS-1295, "October, 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 Community Based Services, CHR Building, 3rd Floor, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m.

DIETRA PARIS, Commissioner

VIOLA P. MILLER, Secretary

CHARLES P. LAWRENCE, Attorney

APPROVED BY AGENCY: June 15, 1999

FILED WITH LRC: June 15, 1999 at noon

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on July 21, 1999, at 9 a.m. at the Health Services Auditorium, 1st Floor, CHR Building, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by July 14, 1999, 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: Judy Trigg, Cabinet for Families and Children, Office of the General Counsel, 275 East Main Street, 4th Floor West, Frankfort, Kentucky 40621, Telephone: (502) 564-7900, FAX: (502) 564-7573.

### REGULATORY IMPACT ANALYSIS

Agency Contact Person: Cathy G. Mobley, Director

(1) Type and number of entities affected: The type and number of entities affected are approximately 45,000 children who may receive subsidized child care assistance governed by this administrative regulation and provided by approximately 700 certified, 2000 licensed and 12,000 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 Child Care and Development Fund State Plan which with Temporary Assistance for Needy Families (TANF) and Welfare To Work Grant (WTWG) has available approximately \$127 million dollars for SFY '00. 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.

(2) Direct and indirect costs or savings to those affected: Family gross income eligibility is increased to 160% of poverty. The child care maximum rates have been increased. The sliding copayment scale is revised so no family pays more than 10% of their income, and no family with income below \$900 has a copayment. This improved service delivery system may encourage the development of needed child day care providers as it may equate to an increase in revenue for these providers, though an exact amount of increase is not able to be calculated at this time. The improved service delivery system may also assist local K-Tap recipients and other low income families in obtaining child day care assistance in order to work or attend education or training programs.

(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. The amended regulation implements a simplified child care maximum rate structure and a revised sliding copayment scale based on client eligibility at below 160% of poverty at the time of application. It also increases the number of children served by 7,700. A public hearing was not held on the Notice of Intent but written comments were received. These comments resulted in an amended after hearing 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 comment received. The maximum reimbursement rates increase will provide an additional \$16,000,000 for the charges of child care providers reimbursable by the Cabinet for Families and Children. An additional 7,700 children will be receive child care assistance reimbursed by the Cabinet for Families and Children.

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

1. First year following implementation: Compliance reporting and paperwork requirements to serve an additional 7,700 children will be necessary.

2. Second and subsequent years: Compliance, reporting and paperwork requirements for the second and subsequent years include continued operation of the revised child day care assistance

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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 is projected to be \$26,339,000.

2. Continuing costs or savings: Continuing costs to the agency is \$32,200,000. The impact of possible changes is estimated to range from \$32.2 million to \$65.7 million annually. This analysis assumes 9 months of impact in FY 99 and 12 months in FY 2000. The actual cost will depend on the availability of federal, state and local funds. An additional \$10 million in federal funds is currently projected to be available for FY 2000.

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 parents who are working or in education or training programs 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, Temporary Assistance to Needy Families (TANF), Welfare to Work Grant (WTWG) and such other federal, state or local resources as may be available.

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

(a) Geographical area in which administrative regulation will be implemented: A public hearing was not requested as a result of the Notice of Intent being published but written comments were received. To be determined after the public hearing on this ordinary regulation.

(b) Kentucky: A public hearing was not requested as a result of the Notice of Intent being published but written comments were received. To be determined after the public hearing on this ordinary regulation.

(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. The goal for all families in Kentucky to have access to quality and developmentally appropriate child care that is safe and affordable. 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 increase in 7,700 children served, higher maximum payment rates, increase income eligibility and no

families paying more than 10% of income for child care copayment if also under \$900, spouse abuse, domestic violence, education and training.

(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 Family gross income eligibility is increased to 160% of poverty. The child care maximum rates have been increased. The sliding copayment scale is revised so no family pays more than 10% of their income, and no family with income below \$900 has a copayment.

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.

NEW ADMINISTRATIVE REGULATIONS FILED AS OF NOON, JUNE 15, 1999

PERSONNEL CABINET  
(New Administrative Regulation)

101 KAR 2:034. Classified compensation administrative regulations.

RELATES TO: KRS 18A.030, 18A.110, 18A.165

STATUTORY AUTHORITY: KRS 18A.110(1)(c), (d), (g), (7)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 18A.110 requires the Secretary of Personnel to promulgate comprehensive administrative regulations consistent with the provisions of KRS Chapter 18A, which govern the pay plan for all employees in the classified service. This administrative regulation is to assure uniformity and equity in administration of the pay plan in accordance with statutory requirements.

Section 1. New Appointments. (1) An appointing authority may appoint a new employee at a salary not to exceed the midpoint of the pay grade.

(2) The appointing authority shall adjust to that salary, any employee who is earning less than the new appointee's salary if the appointing authority determines that the incumbent employee:

- (a) Is in the same class;
- (b) Is in the same work county; and
- (c) Has a similar combination of education and experience relating to the job classification.

Section 2. Reentrance to Classified Service. (1) Returning retirees. An employee who was formerly employed under KRS Chapter 18A and who is appointed to a position covered by the provisions of KRS Chapter 18A while receiving retirement payments through the Kentucky Retirement Systems or Kentucky Teachers Retirement System shall be appointed in accordance with the provisions for new appointments.

(2) Other reentering employees.

(a) Former classified employees. An appointing authority may set the salary of a former classified employee, other than a returning retiree, who is being reemployed, reinstated, or probationarily appointed in one (1) of the following ways:

1. In accordance with the standards used for making new appointments;
2. Up to the same salary as that paid at the time of separation from the classified service, if that salary is within the current pay grade; or
3. Higher than the salary paid at the time of separation from the classified service, if the salary would have changed due to intervening changes in the salary schedule, or due to pay grade adjustments made on or after the effective date of this administrative regulation as amended.

(b) Former unclassified employees with prior classified service. An appointing authority may set the salary of a former classified employee who moved to the unclassified service and who is reinstated, reemployed or probationarily appointed to a position in the classified service in one of the following ways:

1. In accordance with the standards for making new appointments;
2. Up to the same salary as that paid at the time of separation from the classified service, if that salary is within the current pay grade;
3. Higher than the salary paid at the time of separation from the classified service, if the salary would have changed due to intervening changes in the salary schedule, or due to pay grade adjustments made on or after the effective date of this administrative regulation as amended; or
4. At a salary that is the same as the salary the employee last received in the classified service with adjustments for increases that would have been received if the employee had remained in the classified service prior to resignation.

(c) Former unclassified employees with no previous classified service. An appointing authority may set the salary of a former un-

classified employee with no previous classified service, who is probationarily appointed or reemployed, in one of the following ways:

1. In accordance with the standards for making new appointments; or

2. At five (5) percent above the minimum salary for each year of service in the unclassified service, provided that the salary shall not exceed the range maximum.

(d) Laid off employees. Former employees, separated from the classified service by layoff and reinstated or reemployed in the same or similar job classification within five (5) years from the date of layoff, may receive the salary they were receiving at the time of layoff, even if the salary is above the maximum of the pay grade.

(3) Probationary increments upon reentrance to state service.

(a) Former employees who are probationarily appointed at a salary below the midpoint of the pay grade shall receive a probationary increment upon successful completion of the probationary period.

(b) Former employees who are probationarily appointed at a salary that equals or exceeds the midpoint of the pay grade may, at the discretion of the appointing authority, receive a probationary increment at the time of successful completion of the probationary period. If the employee is not granted a probationary increment at the time of completion of the probationary period, an increment shall be awarded at the beginning of the month following completion of twelve (12) months of service from the date of appointment.

Section 3. Salary Adjustments. (1) Promotion. An employee who is promoted shall receive the greater of five (5) percent for each grade, or an increase to the minimum of the new grade.

(2) Demotion. When an employee is demoted the appointing authority may determine the salary in one (1) of the following ways:

(a) The employee's salary may be reduced to a rate that is not below the minimum for the class to which the demotion is made; or

(b) The employee may be allowed to retain the salary received prior to demotion. If the employee's salary is not reduced upon demotion, the appointing authority shall explain the reason in writing and place the explanation in the employee's personnel files.

(3) Reclassification. An employee who is advanced to a higher pay grade through reclassification shall receive the greater of five (5) percent for each grade or the new grade minimum. An employee who is placed in a lower pay grade through reclassification shall receive the same salary received prior to reclassification.

(4) Reallocation. An employee who is advanced to a higher pay grade through reallocation shall receive the greater of five (5) percent for each grade or the new grade minimum. An employee who is placed in a lower pay grade through reallocation shall receive the same salary received prior to reallocation.

(5) Detail to special duty. An employee who is approved for detail to special duty shall receive, during the period of detail, the greater of five (5) percent for each grade or the new grade minimum. An employee who is approved for detail to the same or lower pay grade shall receive the same salary received prior to detail.

(6) Reversion.

(a) The salary of an employee who is reverted while serving a promotional probationary period, or following detail to special duty in a higher class shall be adjusted to:

1. The salary received prior to the promotion or detail; and
2. All salary advancements and adjustments which would have been awarded if the promotion or detail had not occurred.

(b) The salary of an employee who is reverted from a position in the unclassified service to a position in the classified service shall be adjusted to:

1. The salary received prior to leaving the classified service; and
2. All salary advancements and adjustments which would have been awarded if the individual had remained in the classified service.

(7) Pay grade changes.

(a) When a job classification is assigned to a higher pay grade, the appointing authority shall raise the salary of any employee below the new grade minimum to the new grade minimum. If sufficient

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funds are available, an appointing authority may uniformly adjust the salary of all employees in that agency in that class to:

1. The greater of the new grade minimum or five (5) percent; or
2. The greater of the new grade minimum or ten (10) percent; or
3. The greater of the new grade minimum or a dollar amount approved by the secretary.

(b) When a job classification is assigned to a lower pay grade, employees in that class shall retain their current salary.

(8) Special entrance rates. When a special entrance rate is established for a job classification, an appointing authority shall adjust the salary of any employee in that classification who is below the special entrance rate to the new rate. If sufficient funds are available, an appointing authority may uniformly grant to all employees in that class a salary adjustment equal to the difference between the former entrance rate and the new entrance rate.

(9) Other salary adjustments.

(a) On the 16th of any month, an appointing authority may grant a salary adjustment to all employees in a class within an agency who were eligible for, but did not receive a five (5) percent salary adjustment as a result of a grade change applicable to the class, on or after January 1, 1999. The total adjustment granted at the time of the grade change and under this provision shall equal five (5) percent of the employee's salary immediately prior to the grade change.

(b) On the 16th of any month, an appointing authority may grant a salary adjustment based on the establishment of a special entrance rate on or after the adoption of this administrative regulation, under the following provisions:

1. The adjustment must be uniformly granted to all employees within the agency who were eligible for, but did not receive, a salary adjustment equal to the difference in the former entrance rate and the new entrance rate at the time a special entrance rate was established; and

2. The total adjustment granted at the time of the special entrance rate and under this provision shall equal the difference in the former entrance rate and the new entrance rate.

Section 4. Salary Advancements. (1) Initial probation increase. Full-time and part-time employees who complete an initial probationary period shall be granted a five (5) percent salary advancement on the first of the month following completion of the probationary period, except as specified under Section 2(3) of this administrative regulation.

(2) Promotional probation increase. An employee shall receive a five (5) percent salary advancement on the first of the month following completion of the promotional probationary period.

(3) Annual increment dates shall be established as follows:

(a) Upon completion of an initial probationary period:

(b) When a former employee has been probationarily appointed and has completed a total of twelve (12) months of service without receiving an increment; or

(c) When an employee returns from leave without pay under the provisions of subsection (5) of this section.

(4) Annual increment dates will not change when an employee:

(a) Is in a position which is assigned a new or different pay grade;

(b) Receives a salary adjustment as a result of a reallocation;

(c) Is promoted;

(d) Is transferred;

(e) Is demoted;

(f) Is detailed to special duty;

(g) Receives an educational achievement award;

(h) Returns from military leave;

(i) Is reclassified;

(j) Receives a promotional increase after completion of a promotional probationary period.

(5) Return from leave without pay. An employee returning to duty from leave without pay shall receive an annual increment on the first of the month after completing twelve (12) months of service since the last increment was received.

(6) Service computation. Full-time and part-time service shall be counted in computing service for the purpose of determining increment eligibility.

(7) Order of calculating increments and other salary increases

which occur at the same time. If an employee's increment date occurs on the same date that a salary adjustment or advancement is granted, the increment shall be applied before the adjustment or advancement is added to the employee's salary except when the adjustment is based on a pay grade change or a salary schedule change.

Section 5. Educational Achievement Award. (1) On the 16th of any month, an appointing authority may grant a five (5) percent increase to an employee's base salary based on educational achievement as specified in this section.

(2) An agency may elect not to participate in the educational achievement program if sufficient funds are not available.

(3) An employee may not receive more than one (1) educational achievement award in any fiscal year.

(4) An employee shall not receive an educational achievement award and an adjustment for continuing excellence (ACE) based on the same training.

(5) By submitting a personnel action to grant an educational achievement award, the appointing authority certifies that all of the qualifying conditions established by this section for the appropriate type of educational achievement award have been met:

(a) High school diploma, high school equivalency certificate, or a passing score on the GED test.

1. The employee has obtained the high school diploma, equivalency certificate, or passing score on the GED test:

- a. Outside of work hours;

- b. While in state service; and

- c. On or after January 1, 1984.

2. The employee has not previously attained a high school diploma, equivalency certificate, or passing score on the GED test; and

3. The employee has not completed college coursework on the undergraduate or graduate level prior to obtaining the high school diploma, equivalency certificate or a passing score on the GED test.

- (b) Postsecondary education or training.

1. The employee has completed 260 hours of job related instruction (or the equivalent as determined by the Secretary of Personnel);

2. The employee began the course work after becoming a state employee and completed the course work after establishing an increment date;

3. The employee has completed the course work within five (5) years of the date on which it was begun;

4. The course work has not previously been applied toward an educational achievement award;

5. The agency has not paid for the course work or costs associated with it, in whole or in part;

6. The employee was not on educational or extended sick leave when the courses were taken.

- (c) Kentucky Certified Public Manager Program.

1. The employee has successfully completed the Kentucky Certified Public Manager Program offered by the Governmental Services Center at Kentucky State University; and

2. The employee has not previously received an educational achievement award for completing the Kentucky Certified Managers Program.

Section 6. Salary Schedule Adjustment. When the secretary authorizes an adjustment of all grades in the salary schedule, an appointing authority shall adjust the salaries of all employees below the new minimum rate to the new minimum rate. If sufficient funds are available, the secretary may authorize an appointing authority to grant a salary increase for all employees equal to the difference in the old schedule minimum for the grade and the new schedule minimum for the grade.

Section 7. Paid Overtime. (1) Overtime for which pay is authorized shall be in accordance with 101 KAR 2:102, Section 5, and the Fair Labor Standards Act, 29 USC Section 201, et seq., as amended.

(2) Eligibility for overtime pay shall be approved by the appointing authority, and is subject to review by the Secretary of Personnel

and the Secretary of the Finance and Administration Cabinet.

(3) Employees who are eligible for overtime shall request permission from or be directed in advance by the supervisor to work overtime.

(4) Overtime payments shall not be added to base salary or wages.

Section 8. Maintenance and Maintenance Allowance. In each case where an employee, or the employee and family, are provided with full or partial maintenance, consisting of one (1) or more meals per day, lodging or living quarters, and domestic or other personal services, such maintenance shall be treated as partial payment of wages. The value of those services shall be deducted from the employee's salary in accordance with a maintenance schedule developed by the appropriate appointing authority after consultation with the Secretary of the Finance and Administration Cabinet.

#### Section 9. Supplemental Premiums. (1) Shift premium.

(a) Upon request by an appointing authority, the secretary may authorize the payment of a supplemental premium for employees who are regularly assigned to work an evening or night shift in that agency.

(b) Once authorized, this premium shall apply to all employees in that agency who are regularly assigned to work an evening or night shift in a job classification for which the shift premium is approved.

(c) An employee shall not receive a shift premium after shift reassignment, transfer, promotion or demotion to a position that is ineligible for a shift differential premium.

(d) The secretary may rescind authorization to pay shift premium for a class at any time.

(e) Shift differential pay shall not be considered a part of base pay or wages.

#### (2) Weekend premium.

(a) Upon request by an appointing authority, the secretary may authorize the payment of a weekend premium for employees in specific classes who are regularly assigned to work on Saturdays, Sundays, and state holidays as part of the usual work week.

(b) Once authorized, the premium shall apply to all employees in the specified classes in that agency who are regularly assigned to work Saturdays, Sundays, and state holidays as part of their usual work week.

(c) An employee shall not receive a weekend premium after reassignment, transfer, promotion, or demotion to a position that is ineligible for weekend premium.

(d) The secretary may rescind authorization to pay weekend premium at any time.

(e) Weekend premium pay shall not be considered part of the employees' base salary and wages.

(3) An agency may request, and be authorized for, both shift premium and weekend premium for the same job classes.

Section 10. Employee Recognition Award. (1) On the 16th day of any month, an appointing authority may grant an employee an employee recognition award (ERA) in the form of a lump sum payment of up to five (5) percent of midpoint under the following conditions:

(a) The employee has established an annual increment date and has worked at least twenty-four (24) consecutive months in state service, twelve (12) consecutive months of which is in the department granting the award; and

(b) The employee has not received an ERA or a distinguished service award in the preceding twenty four (24) months, nor an adjustment for continuing excellence (ACE) award in the preceding twelve (12) months; and

(c) The appointing authority determines that the employee's acts or ideas have resulted in significant financial savings or improvements in services to the Commonwealth and its citizens. An employee is not eligible for an ERA under this provision for an act or idea that has been approved or submitted for consideration as an employee suggestion system award. An employee who has received an ERA shall not be eligible to be considered for an employee suggestion system award for those acts or ideas upon which the ERA is

based.

(d) The employee has exhibited distinguished performance during participation in special projects that have had a significant beneficial impact on the department or governmental operations.

(2) The granting of an ERA shall be within the sole discretion of the appointing authority.

(3) When an appointing authority grants an ERA, the justification for the award shall be stated in writing, and placed in the employee's personnel files.

(4) An appointing authority may grant an ERA to no more than twenty-five (25) percent of the total number of full-time employees in the department in any calendar year.

(5) By submitting the appropriate personnel documents to award an ERA, the appointing authority certifies that sufficient funds are available within the department, and that the criteria and limitations in this section have been met.

#### Section 11. Adjustment for Continuing Excellence (ACE) Award.

(1) On the 16th day of any month, an appointing authority may grant a salary adjustment of up to ten (10) percent of the grade midpoint to a full-time employee's base pay as an adjustment for continuing excellence award (ACE) under the following conditions:

(a) The employee has an established annual increment date.

(b) The employee has worked at least twenty-four (24) consecutive months, twelve (12) consecutive months of which shall have been served in the department granting the award.

(c) The employee has not received an ACE award or a distinguished service award in the preceding twenty-four (24) months or an employee recognition award (ERA) in the preceding twelve (12) months; and

(d) The employee has demonstrated a sustained level of exceptional job performance; or

(e) The employee has assumed a significant level of additional job responsibilities or duties consistent with the assigned classification, and has performed them in an exceptional manner; or

(f) The employee has acquired professional or technical skills or knowledge through department directed or authorized attainment of a job related licensure, certification, or formal training that will substantially improve job performance.

(g) An employee is not eligible for an ACE award under this provision if an educational achievement award has been granted for the same training.

(2) The granting of an ACE award shall be within the sole discretion of the appointing authority.

(3) No more than twenty-five (25) percent of the total number of full-time employees in a department, in any calendar year, may receive an ACE award.

(4) When an appointing authority grants an ACE award, the appointing authority shall submit the appropriate personnel action and a memorandum certifying:

(a) The reason or reasons for the granting of the award; and

(b) That all criteria and limitations provided in this section for the award have been met; and

(c) That funds are available within the department's current recurring base budget to support the award.

PAUL E. PATTON, Governor

CAROL M. PALMORE, Secretary

DANIEL F. EGBERS, General Counsel

APPROVED BY AGENCY: May 21, 1999

FILED WITH LRC: June 10, 1999 at 10 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on July 23, 1999 at 9:30 a.m., prevailing local time in Room 508 of the Personnel Cabinet's Offices, 200 Fair Oaks Lane, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify the agency in writing by July 16, 1999, five workdays prior to the hearing of their intent to attend. If no notification of intent to attend is received by that date, the hearing may be cancelled. The hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on this proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing,

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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: Daniel F. Egbers, General Counsel, Kentucky Personnel Cabinet, 200 Fair Oaks Lane, Suite 516, Frankfort, Kentucky 40601, telephone: (502) 564-4460, fax number: (502) 564-7603.

### REGULATORY IMPACT ANALYSIS

Agency Contact: Daniel F. Egbers

(1) Type and number of entities affected: The proposed amendment to this administrative regulation will affect approximately 32,000 employees in the classified service of the executive branch of state government.

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

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented: None anticipated.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented: None anticipated.

(c) Compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon completion), to the extent available from the public comments received, for the:

1. First year following implementation: No significant change is anticipated.

2. Second and subsequent years: No significant change is anticipated.

(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 change anticipated.

(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: Recurring agency base budgets.

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

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

(b) Kentucky: None

(7) Assessment of alternative methods; reasons why alternatives were rejected: Due to substantial changes in the administrative regulation governing the compensation system for classified employees, the Personnel Cabinet believes that it is prudent to repeal the former administrative regulation and re-promulgate the compensation rules in a more easily understood new regulation.

(8) Assessment of expected benefits: The new regulation governing the compensation system for the classified service should promote ease of administration and equity in the manner in which employees are paid. Due to the statutory changes impacting retirees and seasonal employment, special new rules are necessary to address these issues. Salary increases on promotion are tied to the number of grades advanced, which promotes the generally accepted compensation philosophy relating to the worth of a job. The Personnel Cabinet also believes that the uniform salary rules relating to grade changes will provide fairness and prevent favoritism. The new award programs replace the former distinguished service award and provide a more meaningful incentive for continuing excellence or service on special projects. Weekend premium pay should help 24 hour facilities and agencies which must provide continual service to recruit and retain employees for critical positions.

(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: This administrative regulation does not directly impact environmental and public health.

(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: This administrative regulation does not conflict with, overlap or duplicate and existing statute, administrative regulation or government policy, to our knowledge.

(a) Necessity of proposed regulation if in conflict: No conflict is seen.

(b) If in conflict, was the effort made to harmonize the proposed administrative regulation with the conflicting provisions. No conflict is seen.

(10) Any additional information or comments: The administrative regulation governing compensation for the classified service replaces 101 KAR 2:036 and incorporates term changes adopted by the General Assembly in the 1998 Session.

(11) TIERING: Is tiering applied? Yes. Although this administrative regulation applies equally to all employees in the classified service of state government, it does not apply to the unclassified service.

### PERSONNEL CABINET (New Administrative Regulation)

#### 101 KAR 2:037. Repeal of 101 KAR 2:036 and 101 KAR 2:100.

RELATES TO: KRS 18A.030, 18A.110, 18A.165, 18A.195, 61.394, 344.030, 29 CFR 778, et seq., 29 USC 201, et seq.

STATUTORY AUTHORITY: KRS 18A.030, 18A.110, 18A.155, 18A.195, 344.030

NECESSITY, FUNCTION, AND CONFORMITY: KRS 18A.110 authorizes the Secretary of Personnel, with the approval of the Governor, to adopt administrative regulations for the classified service governing a pay plan for all employees in the classified service and for annual, sick and special leaves of absence. 101 KAR 2:036 which governs the classified service pay plan and 101 KAR 2:100 which governs leave for employees in the classified service are being repealed because of substantial revisions that are being simultaneously promulgated with this administrative regulation. 101 KAR 2:036 shall be replaced by 101 KAR 2:034. 101 KAR 2:100 shall be replaced by 101 KAR 2:102.

Section 1. Repealer Administrative Regulation for 101 KAR 2:036. Administrative regulations governing the compensation plan and pay incentive systems for the classified service are hereby repealed.

Section 2. Repealer Administrative Regulation for 101 KAR 2:100. Administrative regulations governing leave for the classified service are hereby repealed.

PAUL E. PATTON, Governor  
CAROL M. PALMORE, Secretary  
DANIEL F. EGBERS, General Counsel

APPROVED BY AGENCY: May 21, 1999

FILED WITH LRC: June 10, 1999 at 4 p.m.

PUBLIC HEARING: A public Hearing on this administrative regulation shall be held on July 23, 1999 at 9:30 a.m., prevailing local time in Room 508 of the Personnel Cabinet's Offices, 200 Fair Oaks Lane, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify the agency in writing by July 16, 1999, five workdays prior to the hearing of their intent to attend. If no notification of intent to attend is received by that date, the hearing may be cancelled. The hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on this proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to: Daniel F. Egbers, General Counsel, Kentucky Person-

nel Cabinet, 200 Fair Oaks Lane, Suite 516, Frankfort, Kentucky 40601, telephone: (502) 564-4460, Fax: (502) 564-7603.

# REGULATORY IMPACT ANALYSIS

Agency Contact: Daniel F. Egbers

(1) Type and number of entities affected: The proposed repeal of 101 KAR 2:036 and 101 KAR 2:100 will affect approximately 32,000 employees in the classified service of the executive branch of state government.

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

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented: None anticipated.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented: None anticipated.

(c) Compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon completion), to the extent available from the public comments received, for the:

1. First year following implementation: No significant change is anticipated.

2. Second and subsequent years: No significant change is anticipated.

(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 change anticipated.

(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: Recurring agency base budgets.

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

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

(b) Kentucky: None

(7) Assessment of alternative methods; reasons why alternatives were rejected: Due to substantial changes in the administrative regulations governing the compensation system and leave for classified employees, the Personnel Cabinet believes that it is prudent to repeal the former administrative regulation and repromulgate the compensation and leave rules in more easily understood new regulations.

(8) Assessment of expected benefits: The new regulation governing the compensation system for the classified service should promote ease of administration and equity in the manner in which employees are paid. Due to the statutory changes impacting retirees and seasonal employment, special new rules are necessary to address these issues. Salary increases on promotion are tied to the number of grades advanced, which promotes the generally accepted compensation philosophy relating to the worth of a job. The Personnel Cabinet also believes that the uniform salary rules relating to grade changes will provide fairness and prevent favoritism. The new award programs replace the former distinguished service award and provide a more meaningful incentive for continuing excellence or service on special projects. Weekend premium pay should help 24 hour facilities and agencies which must provide continual service to recruit and retain employees for critical positions. The new regulation governing various types of leave contains additional benefits and modifies how these benefits may be used.

(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: This administrative regulation does not directly impact environmental and public health.

(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: This administrative regulation does not conflict with, overlap or duplicate an existing statute, administrative regulation or government policy, to our knowledge.

(a) Necessity of proposed regulation if in conflict: No conflict is seen.

(b) If in conflict, was the effort made to harmonize the proposed administrative regulation with the conflicting provisions. No conflict is seen.

(10) Any additional information or comments: The administrative regulation governing compensation for the classified service replaces 101 KAR 2:036. The administrative regulation governing leave will be promulgated as 101 KAR 2:102. These administrative regulations will also incorporate term changes adopted by the General Assembly in the 1998 Session.

(11) TIERING: Is tiering applied? Yes. Although this administrative regulation applies equally to all employees in the classified service of state government, it does not apply to the unclassified service.

## PERSONNEL CABINET (New Administrative Regulation)

### 101 KAR 2:102. Classified leave administrative regulations.

RELATES TO: KRS 18A.030, 18A.110, 18A.195, 61.394, 344.030, 29 USC 201, et seq., 2601, et seq.

STATUTORY AUTHORITY: KRS 18A.030, 18A.110, 18A.155, 344.030, 29 USC 201, et seq., 2601, et seq.

NECESSITY, FUNCTION, AND CONFORMITY: KRS 18A.110 requires the Secretary of Personnel, with the approval of the Governor, to promulgate comprehensive administrative regulations, consistent with KRS Chapter 18A, which govern annual leave, sick leave, special leaves of absence, and for other conditions of leave. This administrative regulation establishes policies governing these subject matters.

Section 1. Annual Leave. (1) Accrual of annual leave.

(a) Each full-time employee shall accumulate annual leave at the following rate:

Months of Service	Annual Leave Days
0-59 months	1 leave day per month; 12 per year
60-119 months	1 1/4 leave days per month; 15 per year
120-179 months	1 1/2 leave days per month; 18 per year
180-239 months	1 3/4 days per month; 21 per year
240 months & over	2 leave days per month; 24 per year

(b) A full-time employee shall have worked, or been on paid leave, other than educational leave with pay, for 100 or more per month to accrue annual leave.

(c) Accrued leave shall be credited on the first day of the month following the month in which the annual leave is earned.

(d) In computing months of total service for the purpose of earning annual leave, only the months for which an employee earned annual leave shall be counted.

(e) Former employees who have been rehired, except as provided in paragraph (f) of this subsection, shall receive credit for prior service, unless the employee had been dismissed as a result of misconduct or a violation of KRS 18A.140, 18A.145, or 18A.990.

(f) An employee, who has retired from a position covered by a state retirement system, is receiving retirement benefits and returns to state service, shall not receive credit for months of service prior to retirement.

(g) A part-time employee shall not be entitled to annual leave.

(2) Use and retention of annual leave.

(a) Annual leave shall be used in increments of hours or of one-quarter (1/4) hours.

(b) An employee who makes a timely request for annual leave shall be granted annual leave by the appointing authority, during the calendar year, up to at least the amount of time earned that year, if the operating requirements of the agency permit, however;

(c) An appointing authority may require an employee who has a balance of at least 100 hours of compensatory leave to use compensatory leave before the employee's request to use annual leave is granted, unless the employee's annual leave balance exceeds the maximum number of hours that may be carried forward under this administrative regulation.

(d) Absence due to sickness, injury, or disability in excess of the amount available for such purposes may, at the request of the employee, be charged against annual leave.

(e) An employee shall use annual leave for absences only on regularly scheduled workdays.

(f) An employee who is transferred or otherwise moved from the jurisdiction of one (1) agency to another shall retain his accumulated annual leave in the receiving agency.

(g) An employee who is eligible for state contributions for life insurance and health benefits under the provisions of KRS Chapter 18A shall have worked or been on paid leave, other than educational leave, during any part of the previous month.

(h) Annual leave may be carried from one (1) calendar year to the next as provided in this paragraph:

Months of Service	Maximum Amount
0-59 months	Thirty (30) workdays
60-119 months	Thirty-seven (37) workdays
120-179 months	Forty-five (45) workdays
180-239 months	Fifty-two (52) workdays
240 months and over	Sixty (60) workdays

(i) Leave in excess of the maximum amounts specified in the preceding paragraph shall be converted to sick leave at the end of the calendar year or upon retirement.

(j) The amount of annual leave that may be carried forward and the amount of annual leave that may be converted to sick leave shall be determined by computing months of service as provided by subsection (1)(d) of this section.

(3) Annual leave on separation.

(a) If an employee is separated by proper resignation or retirement, he shall be paid in a lump sum for accumulated annual leave. The accumulated annual leave for which he is paid shall not exceed the amounts established by subsection (2)(h) of this section. Following payment of annual leave at resignation, leave remaining after the payment of the maximum provided shall be removed from the balance.

(b) If an employee is laid off, he shall be paid in a lump sum for all accumulated annual leave.

(c) An employee in the unclassified service who reverts to the classified service, or resigns one (1) day and is employed the next workday, shall retain his accumulated leave in the receiving agency.

(d) An employee who has been dismissed for cause related to misconduct or who has failed, without proper excuse, to give proper notice of resignation or retirement shall not be paid for accumulated annual leave.

(e) Upon the death of an employee, his estate shall be entitled to receive pay for the unused portion of the employee's accumulated annual leave.

(f) An employee may request in writing that his accumulated annual leave not be paid upon resignation, and that all or part of the amount of his accumulated annual leave that does not exceed the amount established by this section be waived, if:

1. He resigns, or is laid off from his position, because of an approved plan of privatization of the services he performed; and
2. The successor employer has agreed to credit him with an equal amount of annual leave.

## Section 2. Sick Leave. (1) Accrual of sick leave.

(a) An employee, except a part-time employee, shall accumulate sick leave with pay at the rate of one (1) working day per month.

(b) An employee shall have worked or been on paid leave, other than educational leave, for 100 or more hours in a month to accrue sick leave.

(c) An employee shall be credited with additional sick leave upon the first day of the month following the month in which the sick leave is earned.

(d) A full-time employee who completes 120 months of total service with the state shall be credited with ten (10) additional days

of sick leave upon the first day of the month following the completion of 120 months of service.

(e) A full-time employee who completes 240 months of total service with the state shall be credited with another ten (10) additional days of sick leave upon the first day of the month following the completion of 240 months of service. An employee with 240 or more months of service at the time of implementation of this section shall have the additional ten (10) days credited to the sick leave balance.

(f) In computing months of total service for the purpose of crediting sick leave, only the months for which an employee earned sick leave shall be counted.

(g) The total service shall be verified before the leave is credited to the employee's record.

(h) Former employees who have been rehired, except as provided in paragraph (j) of this subsection, shall receive credit for prior service, unless the employee had been dismissed as a result of misconduct or a violation of KRS 18A.140, 18A.145, or 18A.990.

(i) A former employee who is appointed, reinstated or reemployed, other than a former employee receiving benefits under a state retirement system, shall be credited with the unused sick leave balance credited to him upon separation.

(j) Sick leave may be accumulated with no maximum.

(2) Use and retention of sick leave with pay.

(a) An appointing authority shall grant or may require the use of accrued sick leave with pay if an employee:

1. Is unable to work due to medical, dental or optical examination or treatment;
2. Is disabled by illness or injury. The appointing authority may require the employee to provide a doctor's statement certifying the employee's inability to perform his duties for the days or hours sick leave is requested;
3. Is required to care for or transport a member of his immediate family in need of medical attention for a reasonable period of time. The appointing authority may require the employee to provide a doctor's statement certifying the employee's need to care for a family member;
4. Would jeopardize the health of himself or others at his work station because of a contagious disease or demonstration of behavior that might endanger himself or others;
5. Has lost by death a spouse, parent, grandparent, child, brother or sister, or the spouse of any of them and may be granted to include other relatives of close association. Leave under this paragraph shall be limited to three (3) days.
6. Requires leave for the birth, placement or adoption of a child.

(b) At the termination of sick leave with pay, the appointing authority shall return the employee to his former position.

(c) An employee eligible for state contributions for life insurance and health benefits under the provisions of KRS Chapter 18A shall have worked or been on paid leave, other than education leave, during any part of the previous month.

(d) Sick leave shall be used in increments of hours or increments of one-quarter (1/4) hours.

(e) An employee who is transferred or otherwise moved from the jurisdiction of one (1) agency to another shall retain his accumulated sick leave in the receiving agency.

(f) An employee shall be credited for accumulated sick leave if he is separated by proper resignation, layoff or retirement.

(3) Sick leave without pay.

(a) An appointing authority shall grant sick leave without pay for the duration of an employee's impairment by injury or illness, if:

1. The total continuous leave does not exceed one (1) year; and
2. The employee has used or been paid for any accumulated annual, sick and compensatory leave unless he has requested to retain up to ten (10) days of accumulated sick leave.

(b) For continuous leave without pay in excess of thirty (30) working days, excluding holidays, the appointing authority shall notify the employee in writing of the leave without pay status.

(c) The appointing authority may require periodic doctor's statements during the year attesting to the employee's continued inability to perform the essential functions of his duties with or without reasonable accommodation.

(d) An appointing authority may grant sick leave without pay to an employee who does not qualify for family and medical leave due

to lack of service time and who has exhausted all accumulated paid leave when the employee is required to care for a member of the immediate family for a period not to exceed thirty (30) working days.

(e) If an employee has given notice of his ability to resume his duties following sick leave without pay, the appointing authority shall return the employee to the original position or to a position for which he is qualified and which resembles his former position as closely as circumstances permit.

(f) If reasonable accommodation is requested, the employee shall:

1. Inform the employer; and
2. Upon request, provide supportive documentation from a certified professional.

(g) An employee shall be considered to have resigned if he:

1. Has been on one (1) year continuous sick leave without pay; and

2. Has been requested by the appointing authority in writing to return to work at least ten (10) days prior to the expiration of sick leave; and

3. Is unable to return to his former position; and

4. Has been given priority consideration by the appointing authority for a vacant, budgeted position with the same agency, for which he qualified and is capable of performing its essential functions with or without reasonable accommodation; but

5. The appointing authority has been unable to place him in such a vacant position.

(h) Sick leave granted under this paragraph is not renewable after the employee has been medically certified as able to return to work.

(i) An employee who has been resigned under this subsection shall retain reinstatement privileges that were accrued during service in the classified service.

(4) Workers' compensation.

(a) If an absence is due to illness or injury for which workers' compensation benefits are received, accumulated sick leave may be used to maintain regular full salary.

(b) If paid sick leave is used to maintain regular full salary, workers' compensation pay benefits shall be assigned to the state for the period of time the employee received paid sick leave.

(c) The employee's sick leave shall be immediately reinstated to the extent that workers' compensation benefits are assigned.

(5) Application for sick leave and supporting documentation.

(a) An employee shall file a written application for sick leave with or without pay within a reasonable time.

(b) Except for an emergency illness, an employee shall request advance approval for sick leave for medical, dental or optical examinations, and for sick leave without pay.

(c) If the employee is too ill to work, an employee shall notify the immediate supervisor or other designated person. Failure, without good cause, to do so in a reasonable period of time shall be cause for denial of sick leave for the period of absence.

(d) An appointing authority may, for good cause and on notice, require an employee to supply supporting evidence in order to receive sick leave.

(e) A medical certificate may be required, signed by a licensed practitioner and certifying to the employee's incapacity, examination or treatment.

(f) An appointing authority shall grant sick leave when the application is supported by acceptable evidence but may require confirmation if there is reasonable cause to question the authenticity of the certificate or its contents.

Section 3. Family and Medical Leave. (1) Appointing authorities shall comply with the requirements of the Family and Medical Leave Act of 1993, 20 USC 2601, et seq. and the federal regulations implementing the Act, 29 CFR Part 825.

(2) An employee in state service shall qualify for twelve (12) weeks of unpaid family leave if the employee has:

(a) Completed twelve (12) months of service; and

(b) Worked or been on paid leave at least 1,250 hours in the twelve (12) months immediately preceding the first day of family and medical leave.

(3) Family and medical leave shall be awarded on a calendar

year basis.

(4) If both parents are employed by the state, each parent shall be entitled to twelve (12) weeks of unpaid family and medical leave for the birth, placement, or adoption of a child.

(5) While an employee is on unpaid family and medical leave the state contribution for health and life insurance shall be maintained by the employer.

(6) If the employee would qualify for family and medical leave, but has an annual, compensatory or sick leave balance, the agency shall not designate the leave as FMLA leave until:

(a) The employee's leave balance has been exhausted; or

(b) The employee requests to reserve ten (10) days of accumulated sick leave and be placed on unpaid FMLA leave.

Section 4. Court Leave. (1) An employee shall be entitled to court leave during his scheduled working hours without loss of time or pay for the amount of time necessary to:

(a) Comply with subpoenas by a court, or administrative agency or body of the federal or state government or any political subdivision thereof;

(b) Serve as a juror or a witness, unless the employee or a member of his family is a party to the proceeding.

(2) Court leave shall include necessary travel time.

(3) If relieved from duty as a juror or witness during his normal working hours, the employee shall return to work or use annual or compensatory leave.

(4) An employee shall not be required to report as court leave attendance at a proceeding that is part of his assigned duties.

Section 5. Compensatory Leave and Overtime. (1) Accrual of compensatory leave and overtime.

(a) Appointing authorities shall comply with the overtime and compensatory leave provisions of the Fair Labor Standards Act (FLSA).

(b) An employee who is directed to or who requests and is authorized to work in excess of the prescribed hours of duty shall be granted compensatory leave and paid overtime subject to the provisions of the Fair Labor Standards Act, the Kentucky Revised Statutes and this administrative regulation.

(c) An employee deemed to be "nonexempt" by the provisions of the FLSA shall be compensated for hours worked in excess of forty (40) per week as provided by paragraphs (1) to (3) of this subsection.

1. An employee who has not accumulated the maximum amount of compensatory leave shall have the option to accumulate compensatory leave at the rate of an hour and one-half (1 1/2) for each hour worked in excess of forty (40) per week in lieu of paid overtime.

2. The election to receive compensatory leave in lieu of paid overtime shall be in writing and shall remain in force for a minimum of six (6) months. The election shall be changed by the submission of a new form. The effective date of a change shall be the first day of the next work week following receipt of the election.

3. An employee who does not elect compensatory leave in lieu of paid overtime shall be paid one and one-half (1 1/2) times the regular hourly rate of pay for all hours worked in excess of forty (40) hours per week.

(d) An employee deemed to be "exempt" under the provisions of the FLSA shall accumulate compensatory time on an hour-for-hour basis for hours worked in excess of the regular work schedule.

(e) Compensatory leave may be accumulated or taken off in one-quarter (1/4) hour increments.

(f) The maximum amount of compensatory leave that may be carried forward from one (1) pay period to another shall be 240 hours.

(g) An employee who is transferred or otherwise moved from the jurisdiction of one (1) agency to another shall retain the compensatory leave in the receiving agency.

(2) Reductions in compensatory leave balances.

(a) An appointing authority may require an employee who has accrued at least 100 hours compensatory leave to use compensatory leave before annual leave and shall otherwise allow the use of compensatory leave if it will not unduly disrupt the operations of the agency.

(b) An employee who is not in a policy-making position may, after accumulating 151 hours of compensatory leave, request payment for fifty (50) hours at the regular rate of pay. If the appointing authority or the designee approves the payment, an employee's leave balance shall be reduced accordingly.

(c) An employee who is not in a policy-making position shall be paid for fifty (50) hours at the regular hourly rate of pay, upon accumulating at the end of the pay period, 240 hours of compensatory leave. The employee's leave balance shall be reduced accordingly.

(d) If an employee's prescribed hours of duty are normally less than forty (40) hours per week, the employee shall receive compensatory leave for the number of hours worked that:

1. Exceed the number of normally prescribed hours of duty; and
2. Do not exceed the maximum amount of compensatory time that is permitted.

(e) Only hours actually worked shall be used for computing paid overtime or time and one-half (1 1/2) compensatory time.

(f) Upon separation from state service, an employee shall be paid for all unused compensatory leave at the greater of his:

1. Regular hourly rate of pay; or
2. Average regular rate of pay for the final three (3) years of employment.

Section 6. Military Leave. (1) Upon request, an employee who is an active member of the United States Army Reserve, the United States Air Force Reserve, the United States Naval Reserve, the United States Marine Corps Reserve, the United States Coast Guard Reserve, the United State Public Health Service Reserve, or the Kentucky National Guard shall be relieved from the civil duties, to serve under order on training duty without loss of the regular compensation for a period not to exceed ten (10) working days in a federal fiscal year.

(2) The absence shall not be charged to leave.

(3) Absence that exceeds ten (10) working days in a federal fiscal year shall be charged to annual leave, compensatory leave or leave without pay.

(4) The appointing authority may require a copy of the orders requiring the attendance of the employee before granting military leave.

(5) An appointing authority shall grant an employee entering military duty a leave of absence without pay for a period of such duty not to exceed six (6) years. Upon receiving military duty leave of absence, all accumulated annual and compensatory leave shall be paid in a lump sum, if requested by the employee.

Section 7. Voting and Election Leave. (1) An employee who is eligible and registered to vote shall be allowed, upon prior request, four (4) hours, for the purpose of voting.

(2) Election officers may receive additional leave if the total leave for election day does not exceed a regular workday.

(3) The absence shall not be charged against leave.

(4) An employee who is not scheduled to work during voting hours shall not receive voting leave and shall not be entitled to compensatory leave in lieu of time off to vote. Employees who are permitted to work in lieu of voting leave shall be granted compensatory leave on an hour-for-hour basis for the hours worked on election day.

Section 8. Special Leave of Absence. (1) If approved by the secretary, an appointing authority may grant a leave of absence for continuing education or training.

(2) Leave may be granted for a period not to exceed twenty-four (24) months.

(3) Leave may be granted with pay (provided that the employee contractually agrees to a service commitment) or without pay.

(4) Leave shall be restricted to attendance at a college, university, vocational or business school for training in subjects that relates to the employee's work and will benefit the state.

(5) An appointing authority, with approval of the secretary, may grant an employee a leave of absence without pay for a period not to exceed one (1) year for purposes other than specified in this administrative regulation that are of tangible benefit to the state.

(6) If approved by the secretary, an appointing authority may

place an employee on special leave with pay for investigative purposes pending an investigation of allegations of employee misconduct.

(a) Leave shall not exceed sixty (60) working days.

(b) The employee shall be notified in writing by the appointing authority that he is being placed on special leave for investigative purposes, and the reasons for being placed on leave.

(c) If the investigation reveals no misconduct by the employee, records relating to the investigation shall be purged from agency and Personnel Cabinet files.

(d) The appointing authority shall notify the employee, in writing, of the completion of the investigation and the action taken. This notification shall be made to the employee, whether the employee has remained in state service, or has voluntarily resigned after being placed on special leave for investigative purposes.

Section 9. Absence Without Leave. (1) An employee who is absent from duty without prior approval shall report the reason for the absence to the supervisor immediately.

(2) Unauthorized or unreported absence shall be considered absence:

(a) Without leave; and

(b) Treated as leave without pay for employees covered by the provision of the Fair Labor Standards Act; and

(c) Shall constitute grounds for disciplinary action.

(3) An employee who has been absent without leave or notice to the supervisor for a period of ten (10) working days shall be considered to have resigned the employment.

Section 10. Absences Due to Adverse Weather. (1) When operations are suspended or temporarily closed due to localized adverse weather, an employee, who is not designated for mandatory operations and chooses not to report to work or to leave early in the event of adverse weather conditions, shall have the time of the absence reported as:

(a) Charged to annual or compensatory leave; or

(b) Taken as leave without pay, if annual and compensatory leave has been exhausted; or

(c) Deferred in accordance with paragraphs (3) and (4) of this section.

(2) Employees who are on prearranged annual, compensatory or sick leave shall charge leave as originally requested.

(3) Where operational needs allow, except for employees in mandatory operations, management shall make every reasonable effort to arrange schedules whereby employees will be given an opportunity to make up time not worked rather than charging it to leave.

(4) An employee shall not make up work if the work would result in the employee working more than forty (40) hours in a workweek.

(a) Makeup work shall occur in the workweek in which the time is lost or in a week when the employee has not worked a full work schedule due to such absences as holiday, annual leave or sick leave.

(b) Time lost shall be made up within four (4) months of the occurrence of the absence. If it is not made up within four (4) months, annual leave will be deducted to cover the absence, or leave without pay will be charged if no annual leave is available.

(c) If an employee transfers or separates from employment before the leave is made up, the leave shall be charged to annual leave or deducted from the final paycheck.

(5) When catastrophic, life-threatening weather conditions occur, as created by hurricanes, tornadoes, floods or blizzards, and it becomes necessary for authorities to order evacuation or shutdown of the place of employment, the following provisions shall apply:

(a) Employees who are required to evacuate or who would report to a location that has been shutdown will not be required to make up the time that is lost from work during the period officially declared hazardous to life and safety.

(b) Employees who are required to work in such emergency situations shall be compensated pursuant to the provisions of Section 5 of this administrative regulation and the Fair Labor Standards Act as amended.

## VOLUME 26, NUMBER 1 – JULY 1, 1999

Section 11. Blood Donation Leave. (1) An employee who, during regular working hours, donates blood at any licensed blood center certified by the Food and Drug Administration shall receive four (4) hours leave time, with pay, for the purpose of donating and recuperating from the donation.

(2) Leave granted under this section shall be used at the time of the donation unless circumstances as specified by the supervisor required the employee to return to work. If the employee returns to work, the unused portion of the leave time shall be credited as compensatory leave.

(3) An employee shall request leave in advance to qualify for blood donation leave.

(4) An employee who is deferred from donating blood shall not be charged leave time for the time spent in the attempted donation, but shall not qualify for the remainder of the blood donation leave.

PAUL E. PATTON, Governor

CAROL M. PALMORE, Secretary

DANIEL F. EGBERS, General Counsel

APPROVED BY AGENCY: May 21, 1999

FILED WITH LRC: June 10, 1999 at 4 p.m.

PUBLIC HEARING: A public Hearing on this administrative regulation shall be held on July 23, 1999 at 9:30 a.m., prevailing local time in Room 508 of the Personnel Cabinet's Offices, 200 Fair Oaks Lane, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify the agency in writing by July 16, 1999, five workdays prior to the hearing of their intent to attend. If no notification of intent to attend is received by that date, the hearing may be cancelled. The hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on this proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to: Daniel F. Egbers, General Counsel, Kentucky Personnel Cabinet, 200 Fair Oaks Lane, Suite 516, Frankfort, Kentucky 40601, telephone: (502) 564-4460, fax number: (502) 564-7603.

### REGULATORY IMPACT ANALYSIS

Agency Contact: Daniel F. Egbers

(1) Type and number of entities affected: The proposed amendment to 101 KAR 2:102, classified leave regulations will affect approximately 32,000 employees in the classified service of the executive branch of state government.

(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 impact anticipated. Addition of 10 sick days at 20 years of service and increase in the annual leave awarded based on seniority will have an indirect fiscal impact.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented: None anticipated.

(c) Compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon completion), to the extent available from the public comments received, for the:

1. First year following implementation: No significant change is anticipated.

(2) Second and subsequent years: No significant change is anticipated.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: Some indirect savings could be realized from requiring an employee with 100 hours of compensatory leave to use that time before using annual leave because payment for excess compensatory leave would be reduced.

2. Continuing costs or savings: See (3)(a)(1), above.

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: No change anticipated.

(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: Recurring agency base budgets.

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

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

(b) Kentucky: None

(7) Assessment of alternative methods; reasons why alternatives were rejected: Most of the amendments to this administrative regulation are technical in nature and are offered to comply with changes in statutory language. The substantive amendments permit an agency to require an employee with 100 hours of compensatory leave to use that time before using annual leave. They also provide for additional sick and annual leave based on longevity.

(8) Assessment of expected benefits: Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: Please see item (7) above. No direct impact on public health or environmental welfare is anticipated.

(a) State whether a detrimental effect on environmental and public health would result if not implemented: This administrative regulation does not directly impact environmental and public health other than as noted above.

(b) 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: This administrative regulation does not conflict with, overlap or duplicate an existing statute, administrative regulation or government policy, to our knowledge. The administrative regulation requires compliance with the Family and Medical Leave Act.

(a) Necessity of proposed regulation if in conflict: No conflict is seen.

(b) If in conflict, was the effort made to harmonize the proposed administrative regulation with the conflicting provisions. No conflict is seen.

(10) Any additional information or comments: The administrative regulation will also incorporate term changes adopted by the General Assembly in the 1998 Session.

(11) TIERING: Is tiering applied? Yes. Although this administrative regulation applies equally to all employees in the classified service of state government, it does not apply to the unclassified service.

### PERSONNEL CABINET (New Administrative Regulation)

#### 101 KAR 3:011. Repeal of 101 KAR 3:010.

RELATES TO: KRS 18A.030, 18A.115, 18A.155, 61.394, 344.030, 29 CFR 778, et seq., 29 USC 201, et seq.

STATUTORY AUTHORITY: KRS 18A.030, 18A.155, 18A.195, 344.030

NECESSITY, FUNCTION, AND CONFORMITY: KRS 18A.155 authorizes the Secretary of Personnel, to submit to the Governor and to secure his approval for administrative regulations for the unclassified service enumerated in KRS 18A.115 governing annual, sick and special leaves of absence. 101 KAR 3:010 which governs leave for employees in the unclassified service is being repealed because of substantial revisions that are being simultaneously promulgated with this administrative regulation. 101 KAR 3:010 shall be replaced by 101 KAR 3:015.

Section 1. Repealer Administrative Regulation for 101 KAR 3:010. The administrative regulations governing leave for the unclassified service is hereby repealed.

PAUL E. PATTON, Governor

CAROL M. PALMORE, Secretary

DANIEL F. EGBERS, General Counsel

APPROVED BY AGENCY: May 21, 1999

FILED WITH LRC: June 10, 1999 at 4 p.m.

**PUBLIC HEARING:** A public Hearing on this administrative regulation shall be held on July 23, 1999 at 9:30 a.m., prevailing local time in Room 508 of the Personnel Cabinet's Offices, 200 Fair Oaks Lane, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify the agency in writing by July 16, 1999, five workdays prior to the hearing of their intent to attend. If no notification of intent to attend is received by that date, the hearing may be cancelled. The hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on this proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to: Daniel F. Egbers, General Counsel, Kentucky Personnel Cabinet, 200 Fair Oaks Lane, Suite 516, Frankfort, Kentucky 40601, telephone: (502) 564-4460, fax number: (502) 564-7603.

# REGULATORY IMPACT ANALYSIS

Agency Contact: Daniel F. Egbers

(1) Type and number of entities affected: The proposed repeal of 101 KAR 3:010, Unclassified leave regulations will affect approximately 3,260 employees in the unclassified service of the executive branch of state government.

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

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented: None anticipated.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented: None anticipated.

(c) Compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon completion), to the extent available from the public comments received, for the:

1. First year following implementation: No significant change is anticipated.

2. Second and subsequent years: No significant change is anticipated.

(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 change anticipated.

(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: Recurring agency base budgets.

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

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

(b) Kentucky: None

(7) Assessment of alternative methods; reasons why alternatives were rejected: Due to substantial changes in the administrative regulations governing the compensation system and leave for classified employees, the Personnel Cabinet believes that it is prudent to repeal the former administrative regulation and re-promulgate the leave rules in more easily understood new regulations.

(8) Assessment of expected benefits: The new regulation governing various types of leave contains additional benefits and modifies how these benefits may be used.

(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: This administrative regulation does not directly impact environmental and public health.

(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: This administrative regulation does not conflict with, overlap or duplicate an existing statute, administrative regulation or government policy, to our knowledge.

(a) Necessity of proposed regulation if in conflict: No conflict is seen.

(b) If in conflict, was the effort made to harmonize the proposed administrative regulation with the conflicting provisions. No conflict is seen.

(10) Any additional information or comments: The administrative regulation governing leave will be promulgated as 101 KAR 3:037. This administrative regulations will also incorporate term changes adopted by the General Assembly in the 1998 Session.

(11) TIERING: Is tiering applied? Yes. Although this administrative regulation applies equally to all employees in the unclassified service of state government, it does not apply to the classified service.

## PERSONNEL CABINET (New Administrative Regulation)

### 101 KAR 3:015. Leave administrative regulations for the unclassified service.

RELATES TO: KRS 18A.030, 18A.110, 18A.195, 61.394, 344.030, 29 USC 201 et seq., 2601 et seq.

STATUTORY AUTHORITY: KRS 18A.030, 18A.110, 18A.155, 344.030, 29 USC 201 et seq., 2601 et seq.

NECESSITY, FUNCTION, AND CONFORMITY: KRS 18A.110 requires the Secretary of Personnel, with the approval of the Governor, to promulgate comprehensive administrative regulations, consistent with KRS Chapter 18A, which govern annual leave, sick leave, special leaves of absence, and for other conditions of leave. This administrative regulation establishes policies governing these subject matters.

#### Section 1. Annual Leave. (1) Accrual of annual leave.

(a) Each full-time employee shall accumulate annual leave at the following rate:

Months of Service	Annual Leave Days
0-59 months	1 leave day per month; 12 per year
60-119 months	1 1/4 leave days per month; 15 per year
120-179 months	1 1/2 leave days per month; 18 per year
180-239 months	1 3/4 days per month; 21 per year
240 months & over	2 leave days per month; 24 per year

(b) A full-time employee shall have worked, or been on paid leave, other than educational leave with pay, for 100 hours or more per month to accrue annual leave.

(c) Accrued leave shall be credited on the first day of the month following the month in which the annual leave is earned.

(d) In computing months of total service for the purpose of earning annual leave, only the months for which an employee earned annual leave shall be counted.

(e) Former employees who have been rehired, except as provided in paragraph (f) of this subsection, shall receive credit for prior service, unless the employee had been dismissed as a result of misconduct or a violation of KRS 18A.140, 18A.145, or 18A.990.

(f) An employee, who has retired from a position covered by a state retirement system, is receiving retirement benefits and returns to state service, shall not receive credit for months of service prior to retirement.

(g) A part-time or interim employee shall not be entitled to annual leave.

(2) Use and retention of annual leave.

(a) Annual leave shall be used in increments of hours or of one-quarter (1/4) hours.

(b) An employee who makes a timely request for annual leave

shall be granted annual leave by the appointing authority, during the calendar year, up to at least the amount of time earned that year, if the operating requirements of the agency permit, however;

(c) An appointing authority may require an employee who has a balance of at least 100 hours of compensatory leave to use compensatory leave before the employee's request to use annual leave is granted, unless the employee's annual leave balance exceeds the maximum number of hours that may be carried forward under this administrative regulation.

(d) Absence due to sickness, injury, or disability in excess of the amount available for such purposes may, at the request of the employee, be charged against annual leave.

(e) An employee shall use annual leave for absences only on regularly scheduled workdays.

(f) An employee who is transferred or otherwise moved from the jurisdiction of one (1) agency to another shall retain accumulated annual leave in the receiving agency.

(g) An employee who is eligible for state contributions for life insurance and health benefits under the provisions of KRS Chapter 18A shall have worked or been on paid leave, other than educational leave, during any part of the previous month.

(h) Annual leave may be carried from one (1) calendar year to the next as provided in this paragraph:

Months of Service	Maximum Amount
0-59 months	Thirty (30) workdays
60-119 months	Thirty-seven (37) workdays
120-179 months	Forty-five (45) workdays
180-239 months	Fifty-two (52) workdays
240 months and over	Sixty (60) workdays

(i) Leave in excess of the maximum amounts specified in the preceding paragraph shall be converted to sick leave at the end of the calendar year or upon retirement.

(j) The amount of annual leave that may be carried forward and the amount of annual leave that may be converted to sick leave shall be determined by computing months of service as provided by subsection (1)(d) of this section.

(3) Annual leave on separation.

(a) If an employee is separated by proper resignation or retirement, he shall be paid in a lump sum for accumulated annual leave. The accumulated annual leave for which he is paid shall not exceed the amounts established by subsection (2)(h) of this section. Following payment of annual leave at resignation, leave remaining after the payment of the maximum provided shall be removed from the balance.

(b) If an employee is laid off, he shall be paid in a lump sum for all accumulated annual leave.

(c) An employee in the unclassified service who reverts to the classified service, or resigns or is terminated one (1) day and is employed the next workday, shall retain his accumulated leave in the receiving agency.

(d) An employee who has been dismissed for cause related to misconduct or who has failed, without proper excuse, to give proper notice of resignation or retirement shall not be paid for accumulated annual leave.

(e) Upon the death of an employee, his estate shall be entitled to receive pay for the unused portion of the employee's accumulated annual leave.

(f) An employee may request in writing that his accumulated annual leave not be paid upon resignation, and that all or part of the amount of his accumulated annual leave that does not exceed the amount established by this section be waived, if:

1. He resigns, or is laid off from his position, because of an approved plan of privatization of the services he performed; and

2. The successor employer has agreed to credit him with an equal amount of annual leave.

Section 2. Sick Leave. (1) Accrual of sick leave.

(a) An employee, except a part-time employee, shall accumulate sick leave with pay at the rate of one (1) working day per month.

(b) An employee shall have worked or been on paid leave, other than educational leave, for 100 or more hours in a month to accrue sick leave.

(c) An employee shall be credited with additional sick leave

upon the first day of the month following the month in which the sick leave is earned.

(d) A full-time employee who completes 120 months of total service with the state shall be credited with ten (10) additional days of sick leave upon the first day of the month following the completion of 120 months of service.

(e) A full-time employee who completes 240 months of total service with the state shall be credited with another ten (10) additional days of sick leave upon the first day of the month following the completion of 240 months of service. An employee with 240 or more months of service at the time of implementation of this section shall have the additional ten (10) days credited to the sick leave balance.

(f) In computing months of total service for the purpose of crediting sick leave, only the months for which an employee earned sick leave shall be counted.

(g) The total service shall be verified before the leave is credited to the employee's record.

(h) Former employees who have been rehired, except as provided in paragraph (i) of this subsection, shall receive credit for prior service, unless the employee had been dismissed as a result of misconduct or a violation of KRS 18A.140, 18A.145, or 18A.990.

(i) A former employee, other than a former employee receiving benefits under a state retirement system, who is appointed to an unclassified position, shall be credited with the unused sick leave balance upon separation.

(j) Sick leave may be accumulated with no maximum.

(2) Use and retention of sick leave with pay.

(a) An appointing authority shall grant or may require the use of accrued sick leave with pay if an employee:

1. Is unable to work due to medical, dental or optical examination or treatment;

2. Is disabled by illness or injury. The appointing authority may require the employee to provide a doctor's statement certifying the employee's inability to perform his duties for the days or hours sick leave is requested;

3. Is required to care for or transport a member of his immediate family in need of medical attention for a reasonable period of time. The appointing authority may require the employee to provide a doctor's statement certifying the employee's need to care for a family member;

4. Would jeopardize the health of himself or others at his work station because of a contagious disease or demonstration of behavior that might endanger himself or others;

5. Has lost by death a spouse, parent, grandparent, child, brother or sister, or the spouse of any of them and may be granted to include other relatives of close association. Leave under this paragraph shall be limited to three (3) days.

6. Requires leave for the birth, placement or adoption of a child.

(b) At the termination of sick leave with pay, the appointing authority shall return the employee to his former position.

(c) An employee eligible for state contributions for life insurance and health benefits under the provisions of KRS Chapter 18A shall have worked or been on paid leave, other than education leave, during any part of the previous month.

(d) Sick leave shall be used in increments of hours or increments of one-quarter (1/4) hours.

(e) An employee who is transferred or otherwise moved from the jurisdiction of one (1) agency to another shall retain his accumulated sick leave in the receiving agency.

(f) An employee shall be credited for accumulated sick leave if he is separated by proper resignation, layoff or retirement.

(g) The duration of an interim employee's appointment shall not be extended by the use or approval for sick leave with or without pay.

(3) Sick leave without pay.

(a) An appointing authority shall grant sick leave without pay to an employee for the duration of an employee's impairment by injury or illness, if:

1. The total continuous leave does not exceed one (1) year; and

2. The employee has used or been paid for any accumulated annual, sick and compensatory leave unless he has requested to retain up to ten (10) days of accumulated sick leave.

(b) For continuous leave without pay in excess of thirty (30)

working days, excluding holidays, the appointing authority shall notify the employee in writing of the leave without pay status.

(c) The appointing authority may require periodic doctor's statements during the year attesting to the employee's continued inability to perform the essential functions of his duties with or without reasonable accommodation.

(d) An appointing authority may grant sick leave without pay to an employee, other than an interim employee, who does not qualify for family and medical leave due to lack of service time and who has exhausted all accumulated paid leave when the employee is required to care for a member of the immediate family for a period not to exceed thirty (30) working days.

(e) If an employee has given notice of his ability to resume his duties following sick leave without pay, the appointing authority shall return the employee to the original position or to a position for which he is qualified and which resembles his former position as closely as circumstances permit.

(f) If reasonable accommodation is requested, the employee shall:

1. Inform the employer; and
2. Upon request, provide supportive documentation from a certified professional.

(g) An employee shall be considered to have resigned if he:

1. Has been on one (1) year continuous sick leave without pay; and

2. Has been requested by the appointing authority in writing to return to work at least ten (10) days prior to the expiration of sick leave; and

3. Is unable to return to his former position; and

4. Has been given priority consideration by the appointing authority for a vacant, budgeted position with the same agency, for which he qualified and is capable of performing its essential functions with or without reasonable accommodation; but

5. The appointing authority has been unable to place him in such a vacant position.

(h) Sick leave granted under this paragraph is not renewable after the employee has been medically certified as able to return to work.

(i) An employee who has been resigned under this subsection shall retain reinstatement privileges that were accrued during his service in the classified service.

(4) Workers' compensation.

(a) If an absence is due to illness or injury for which workers' compensation benefits are received, accumulated sick leave may be used to maintain regular full salary.

(b) If paid sick leave is used to maintain regular full salary, workers' compensation pay benefits shall be assigned to the state for the period of time the employee received paid sick leave.

(c) The employee's sick leave shall be immediately reinstated to the extent that workers' compensation benefits are assigned.

(5) Application for sick leave and supporting documentation.

(a) An employee shall file a written application for sick leave with or without pay within a reasonable time.

(b) Except for an emergency illness, an employee shall request advance approval for sick leave for medical, dental or optical examinations, and for sick leave without pay.

(c) If he is too ill to work, an employee shall notify his immediate supervisor or other designated person. Failure, without good cause, to do so in a reasonable period of time shall be cause for denial of sick leave for the period of absence.

(d) An appointing authority may, for good cause and on notice, require an employee to supply supporting evidence in order to receive sick leave.

(e) A medical certificate may be required, signed by a licensed practitioner and certifying to the employee's incapacity, examination or treatment.

(f) An appointing authority shall grant sick leave when the application is supported by acceptable evidence but may require confirmation if there is reasonable cause to question the authenticity of the certificate or its contents.

Section 3. Family and Medical Leave. (1) Appointing authorities shall comply with the requirements of the Family and Medical Leave

Act of 1993, 20 USC 2601, et seq. and the federal regulations implementing the Act, 29 CFR Part 825.

(2) An employee in state service shall qualify for twelve (12) weeks of unpaid family leave if the employee:

(a) Completed twelve (12) months of service; and

(b) Worked or been on paid leave at least 1,250 hours in the twelve (12) months immediately preceding the first day of family and medical leave.

(3) Family and medical leave shall be awarded on a calendar year basis.

(4) If both parents are employed by the state, each parent shall be entitled to twelve (12) weeks of unpaid family and medical leave for the birth, placement, or adoption of a child.

(5) While an employee is on unpaid family and medical leave the state contribution for health and life insurance shall be maintained by the employer.

(6) If the employee would qualify for family and medical leave, but has an annual, compensatory or sick leave balance, the agency shall not designate the leave as FMLA leave until:

(a) The employee's leave balance has been exhausted; or

(b) The employee requests to reserve ten (10) days of accumulated sick leave and be placed on unpaid FMLA leave.

Section 4. Court Leave. (1) An employee shall be entitled to court leave during his scheduled working hours without loss of time or pay for the amount of time necessary to:

(a) Comply with subpoenas by a court, or administrative agency or body of the federal or state government or any political subdivision thereof;

(b) Serve as a juror or a witness, unless the employee or a member of his family is a party to the proceeding.

(2) Court leave shall include necessary travel time.

(3) If relieved from duty as a juror or witness during his normal working hours, the employee shall return to work or use annual or compensatory leave.

(4) An employee shall not be required to report as court leave attendance at a proceeding that is part of his assigned duties.

Section 5. Compensatory Leave and Overtime. (1) Accrual of compensatory leave and overtime.

(a) Appointing authorities shall comply with the overtime and compensatory leave provisions of the Fair Labor Standards Act (FLSA).

(b) An employee who is directed to work, or who requests and is authorized to work in excess of the prescribed hours of duty shall be granted compensatory leave and paid overtime subject to the provisions of the Fair Labor Standards Act, the Kentucky Revised Statutes and this administrative regulation.

(c) An employee deemed to be "nonexempt" by the provisions of the FLSA shall be compensated for hours worked in excess of forty (40) per week as provided by subparagraphs 1 to 3 of this paragraph.

1. An employee who has not accumulated the maximum amount of compensatory leave shall have the option to accumulate compensatory leave at the rate of an hour and one-half (1 1/2) for each hour worked in excess of forty (40) per week in lieu of paid overtime.

2. The election to receive compensatory leave in lieu of paid overtime shall be in writing and shall remain in force for a minimum of six (6) months. The election shall be changed by the submission of a new form. The effective date of a change shall be the first day of the next workweek following receipt of the election.

3. An employee who does not elect compensatory leave in lieu of paid overtime shall be paid one and one-half (1 1/2) times his regular hourly rate of pay for all hours worked in excess of forty (40) hours per week.

(d) An employee deemed to be "exempt" under the provisions of the FLSA shall accumulate compensatory time on an hour-for-hour basis for hours worked in excess of his regular work schedule.

(e) Compensatory leave may be accumulated or taken off in one-quarter (1/4) hour increments.

(f) The maximum amount of compensatory leave that may be carried forward from one (1) pay period to another shall be 240 hours.

(g) An employee who is transferred or otherwise moved from the jurisdiction of one (1) agency to another shall retain his compensatory leave in the receiving agency.

(2) Reductions in compensatory leave balances.

(a) An appointing authority may require an employee who has accrued at least 100 hours compensatory leave to use compensatory leave before annual leave and shall otherwise allow the use of compensatory leave if it will not unduly disrupt the operations of the agency.

(b) An employee who is not in a policy-making position may, after accumulating 151 hours of compensatory leave, request that he be paid for fifty (50) hours at his regular rate of pay. If the appointing authority or his designee approves the payment, an employee's leave balance shall be reduced accordingly.

(c) An employee who is not in a policy-making position shall be paid for fifty (50) hours at his regular hourly rate of pay, upon accumulating at the end of the pay period, 240 hours of compensatory leave. The employee's leave balance shall be reduced accordingly.

(d) If an employee's prescribed hours of duty are normally less than forty (40) hours per week, he shall receive compensatory leave for the number of hours worked that:

1. Exceed the number of normally prescribed hours of duty; and
2. Do not exceed the maximum amount of compensatory time that is permitted.

(e) Only hours actually worked shall be used for computing paid overtime or time and one-half (1 1/2) compensatory time.

(f) Upon separation from state service, an employee shall be paid for all unused compensatory leave at the greater of his:

1. Regular hourly rate of pay; or
2. Average regular rate of pay for the final three (3) years of employment.

Section 6. Military Leave. (1) Upon request, an employee who is an active member of the United States Army Reserve, the United States Air Force Reserve, the United States Naval Reserve, the United States Marine Corps Reserve, the United States Coast Guard Reserve, the United States Public Health Service Reserve, or the Kentucky National Guard shall be relieved from his civil duties, to serve under order on training duty without loss of his regular compensation for a period not to exceed ten (10) working days in a federal fiscal year.

(2) The absence shall not be charged to leave.

(3) Absence that exceeds ten (10) working days in a federal fiscal year shall be charged to annual leave, compensatory leave or leave without pay.

(4) The appointing authority may require a copy of the orders requiring the attendance of the employee before granting military leave.

(5) An appointing authority shall grant an employee entering military duty a leave of absence without pay for a period of such duty not to exceed six (6) years. Upon receiving military duty leave of absence, all accumulated annual and compensatory leave shall be paid in a lump sum, if requested by the employee.

Section 7. Voting and Election Leave. (1) An employee who is eligible and registered to vote shall be allowed, upon prior request, four (4) hours, for the purpose of voting.

(2) Election officers may receive additional leave if the total leave for election day does not exceed a regular workday.

(3) The absence shall not be charged against leave.

(4) An employee who is not scheduled to work during voting hours shall not receive voting leave and shall not be entitled to compensatory leave in lieu of time off to vote. Employees who are permitted to work in lieu of voting leave shall be granted compensatory leave on an hour-for-hour basis for the hours worked on election day.

Section 8. Special Leave of Absence. (1) If approved by the secretary, an appointing authority may grant a leave of absence for continuing education or training.

(a) Leave may be granted for a period not to exceed twenty-four (24) months or the conclusion of the administration in which the employee is serving, whichever comes first.

(b) Leave may be granted with pay (provided that the employee contractually agrees to a service commitment) or without pay.

(c) Leave shall be restricted to attendance at a college, university, vocational or business school for training in subjects that relates to the employee's work and will benefit the state.

(2) An appointing authority, with approval of the secretary, may grant an employee a leave of absence without pay for a period not to exceed one (1) year for purposes other than specified in this administrative regulation that are of tangible benefit to the state.

(3)(a) If approved by the secretary, an appointing authority may place an employee on special leave with pay for investigative purposes pending an investigation of allegations of employee misconduct.

(b) Leave shall not exceed sixty (60) working days.

(c) The employee shall be notified in writing by the appointing authority that he is being placed on special leave for investigative purposes, and the reasons for being placed on leave.

(d) If the investigation reveals no misconduct by the employee, records relating to the investigation shall be purged from agency and Personnel Cabinet files.

(e) The appointing authority shall notify the employee, in writing, of the completion of the investigation and the action taken. This notification shall be made to the employee, whether he has remained in state service, or has voluntarily resigned after being placed on special leave for investigative purposes.

Section 9. Absence Without Leave. (1) An employee who is absent from duty without prior approval shall report the reason for his absence to his supervisor immediately.

(2) Unauthorized or unreported absence shall be considered absence:

(a) Without leave; and

(b) Treated as leave without pay for employees covered by the provision of the Fair Labor Standards Act; and

(c) Shall constitute grounds for disciplinary action.

(3) An employee who has been absent without leave or notice to the supervisor for a period of ten (10) working days shall be considered to have resigned his employment.

Section 10. Absences Due to Adverse Weather. (1) When operations are suspended or temporarily closed due to localized adverse weather, an employee, who is designated for mandatory operations and chooses not to report to work or to leave early in the event of adverse weather conditions, shall have the time of his absence reported as:

(a) Charged to annual or compensatory leave; or

(b) Taken as leave without pay, if annual and compensatory leave has been exhausted; or

(c) Deferred in accordance with subsections (3) and (4) of this section.

(2) Employees who are on prearranged annual, compensatory or sick leave shall charge leave as originally requested.

(3) Where operational needs allow, except for employees in mandatory operations, management shall make every reasonable effort to arrange schedules whereby employee will be given an opportunity to make up time not worked rather than charging it to leave.

(4) An employee shall not make up work if the work would result in the employee working more than forty (40) hours in a workweek.

(a) Makeup work shall occur in the workweek in which the time is lost or in a week when the employee has not worked a full work schedule due to such absences as holiday, annual leave or sick leave.

(b) Time lost shall be made up within four (4) months of the occurrence of the absence. If it is not made up within four (4) months, annual leave will be deducted to cover the absence, or leave without pay will be charged if no annual leave is available.

(c) If an employee transfers or separates from employment before the leave is made up, the leave shall be charged to annual leave or deducted from the final paycheck.

(5) When catastrophic, life-threatening weather conditions occur, as created by hurricanes, tornadoes, floods or blizzards, and it becomes necessary for authorities to order evacuation or shutdown of

the place of employment, the following provisions shall apply:

(a) Employees who are required to evacuate or who would report to a location that has been shut down will not be required to make up the time that is lost from work during the period officially declared hazardous to life and safety.

(b) Employees who are required to work in such emergency situations shall be compensated pursuant to the provisions of Section 5 of this administrative regulation and the Fair Labor Standards Act as amended.

Section 11. Blood Donation Leave. (1) An employee who, during regular working hours, donates blood at any licensed blood center certified by the Food and Drug Administration shall receive four (4) hours leave time, with pay, for the purpose of donating and recuperating from the donation.

(2) Leave granted under this section shall be used at the time of the donation unless circumstances as specified by the supervisor required the employee to return to work. If the employee returns to work, the unused portion of the leave time shall be credited as compensatory leave.

(3) An employee shall request leave in advance to qualify for blood donation leave. An employee who is deferred from donating blood shall not be charged leave time for the time spent in the attempted donation, but shall not qualify for the remainder of the blood donation leave.

PAUL E. PATTON, Governor

CAROL M. PALMORE, Secretary

DANIEL F. EGBERS, General Counsel

APPROVED BY AGENCY: May 21, 1999

FILED WITH LRC: June 10, 1999 at 4 p.m.

PUBLIC HEARING: A public Hearing on this administrative regulation shall be held on July 23, 1999 at 9:30 a.m., prevailing local time in Room 508 of the Personnel Cabinet's Offices, 200 Fair Oaks Lane, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify the agency in writing by July 16, 1999, five workdays prior to the hearing of their intent to attend. If no notification of intent to attend is received by that date, the hearing may be cancelled. The hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on this proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to: Daniel F. Egbers, General Counsel, Kentucky Personnel Cabinet, 200 Fair Oaks Lane, Suite 516, Frankfort, Kentucky 40601, telephone: (502) 564-4460, fax number: (502) 564-7603.

#### REGULATORY IMPACT ANALYSIS

Agency Contact: Daniel F. Egbers

(1) Type and number of entities affected: The proposed new administrative regulation, 101 KAR 3:015, Leave regulations for the unclassified service will affect approximately 3,260 employees in the unclassified service of the executive branch of state government.

(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 impact anticipated. Addition of ten sick days at 20 years of service and increase in the annual leave awarded based on seniority will have an indirect fiscal impact.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented: None anticipated.

(c) Compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon completion), to the extent available from the public comments received, for the:

1. First year following implementation: No significant change is anticipated.

2. Second and subsequent years: No significant change is anticipated.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: Some indirect savings could be realized from requiring an employee with 100 hours of compensatory leave to use that time before using annual because payment for excess compensatory leave would be reduced..

2. Continuing costs or savings: See 3(a)(1) above.

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: No change anticipated.

(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: Recurring agency base budgets.

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

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

(b) Kentucky: None

(7) Assessment of alternative methods; reasons why alternatives were rejected: Most of the amendments to this administrative regulation are technical in nature and are offered to comply with changes in statutory language. The substantive allow agencies to require employees with 100 hours of compensatory leave who wish to take time off to use accumulated compensatory leave before using annual leave.

(8) Assessment of expected benefits: Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky. No direct impact on public health or environmental welfare is anticipated.

(a) State whether a detrimental effect on environmental and public health would result if not implemented: This administrative regulation does not directly impact environmental and public health other than as noted above.

(b) 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: This administrative regulation does not conflict with, overlap or duplicate an existing statute, administrative regulation or government policy, to our knowledge.

(a) Necessity of proposed regulation if in conflict: No conflict is seen.

(b) If in conflict, was the effort made to harmonize the proposed administrative regulation with the conflicting provisions. No conflict is seen.

(10) Any additional information or comments: The administrative regulation will also incorporate term changes adopted by the General Assembly in the 1998 Session.

(11) TIERING: Is tiering applied? Yes. Although this administrative regulation applies to all employees in the unclassified service of state government, it does not apply to the classified service

#### FINANCE AND ADMINISTRATION CABINET Division of Occupations and Professions Directory of Registered Athlete Agents (New Administrative Regulation)

#### 200 KAR 30:010. Definitions.

RELATES TO: KRS 164.680 to 164.689

STATUTORY AUTHORITY: KRS 164.681(4)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 164.681(4) authorizes the division to promulgate administrative regulations necessary to carry out the provisions of KRS 164.680 to 164.689. This administrative regulation provides definitions for terms used in those administrative regulations.

Section 1. Definitions. (1) "Agent contract" is defined by KRS 164.680(1).

(2) "Appropriate college, university, secondary school or athletic regulatory body" means the college, university, secondary school or athletic regulatory body which provides an athletic program in which a student athlete participates or did participate, at the time the misconduct set forth in a complaint occurred.

(3) "Athlete agent" is defined by KRS 164.680(3).

(4) "Charge" means an allegation issued by the college, university, secondary school or athletic regulatory body stating a violation of a specified provision of KRS 164.681 to 164.689, or the administrative regulations promulgated thereunder, has occurred.

(5) "Complaint" means any written allegation of misconduct by a registered athlete agent or student athlete which may constitute a violation of KRS 164.680 to 164.689 or the administrative regulations promulgated thereunder.

(6) "Disciplinary action" means a suspension or revocation of an athlete agent's registration, the imposition of community service upon a student athlete, or any combination of the above.

(7) "Division" is defined by KRS 164.680(4).

(8) "Director" means the director of the Division of Occupations and Professions.

(9) "Informal proceedings" means proceedings instituted by the appropriate college, university, secondary school or athletic regulatory body during the investigative process to allow those affected to comment on the complaint prior to reaching a factually-supported decision whether or not the college, university, secondary school or athletic regulatory body will recommend to the division disciplinary action.

(10) "Investigative assistant" means an individual designated by the division to assist the college, university, secondary school, athletic regulatory body or division in the investigation of a complaint.

(11) "Student athlete" is defined by KRS 164.680(7).

NANCY L. BLACK, Director

ROBERT S. JONES, Assistant Attorney General

APPROVED BY AGENCY: June 11, 1999

FILED WITH LRC: June 11, 1999 at 2 p.m.

**PUBLIC HEARING:** A public hearing on this administrative regulation shall be held on July 26, 1999 at 10 a.m., prevailing local time at the offices of the Division of Occupations and Professions, 700 Louisville Road, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify the agency in writing by July 19, 1999, five workdays prior to the hearing of their intent to attend. If no notification of intent to attend is received by that date, the hearing may be canceled. The hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on this proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made with the notification of intent to attend. 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: Nancy L. Black, Director, Division of Occupations and Professions, 700 Louisville Road, Frankfort, Kentucky 40601, phone: (502) 564-3296, fax (502) 564-4818.

#### REGULATORY IMPACT ANALYSIS

Contact person: Nancy L. Black

(1) Type and number of entities affected: All athlete agents, colleges, universities, and student athletes in Kentucky.

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

(a) Cost of living and employment in the geographical area in which the emergency 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 emergency administrative regulation will be implemented, to the extent available from the public comments received: No public comments received; potential fiscal impact will be minimal.

(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) First year: None

(b) Direct and indirect costs or savings:

1. First year: None

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs: None

(c) 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: Department funds, supplemented by registration and renewal fees.

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

a. Geographical area in which emergency administrative regulation will be implemented: Implemented statewide, same as below.

b. Kentucky: None

(7) Assessment of alternative methods: reasons why alternatives were rejected: This was the only alternative possible as required by the wording of the statute and would allow for maximum protection of colleges, universities and student athletes in the Commonwealth.

(8) Assessment of expected benefits: Expected benefits would be to ensure that contacts between athlete agents and student athletes in Kentucky are conducted in a manner which will not harm the rights and interests of colleges, universities and student athletes.

(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:

(a) Necessity of proposed regulation if in conflict: This regulation is required to implement KRS 164.680-689.

(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) TIRING: Is tiering applied? (Explain why tiering was or was not used.) No. The regulation applies to all credential holders.

#### FINANCE AND ADMINISTRATION CABINET Division of Occupations and Professions Directory of Registered Athlete Agents (New Administrative Regulation)

#### 200 KAR 30:020. Complaint review.

RELATES TO: KRS 164.680 to 164.689

STATUTORY AUTHORITY: KRS 164.681(4)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 164.681(4) authorizes the division to promulgate administrative regulations establishing a procedure to review complaints against athlete agents and student athletes for violation of KRS 164.680 to 164.689, and the administrative regulations promulgated thereunder. This administrative regulation sets forth procedures for review of complaints.

Section 1. Form of Complaint: Response. (1) A complaint shall be submitted to the division.

(2) A complaint shall be in writing and shall be signed by the person offering the complaint.

(3) A complaint may be filed by any person or institution, including the division or appropriate college, university, secondary school or athletic regulatory body, based upon information in its possession.

(4) Upon receipt of a complaint, the division shall send a copy to the appropriate college, university, secondary school or athletic regulatory body.

(5) A copy of the complaint shall be sent by the division to the athlete agent, student athlete, or both, named in the complaint, and shall include with a request for a response to the complaint. The response shall be filed with the division within twenty (20) days from the date of service of the complaint, and shall be served upon the appropriate college, university, secondary school or athletic regulatory body.

Section 2. Review by Appropriate College, University, Secondary School, or Athletic Regulatory Body. (1) After the receipt of a complaint, and a response, or after the period of time for a response to be filed has expired, the appropriate college, university, secondary school or athletic regulatory body shall enter an initial determination within thirty (30) days stating in writing whether a formal investigation of the complaint is necessary. An extension of time may be granted by the division for good cause, upon request by the institution.

(2) When in the opinion of the college, university, secondary school or athletic regulatory body a complaint does not warrant a formal investigation, because a violation of KRS 164.680 to 164.689, or the administrative regulations promulgated thereunder is not alleged, nor could a violation be inferred from allegations in the complaint, the college, university, secondary school or athletic regulatory body shall notify the complaining party, the person against whom the complaint was made, and the division of its recommendation not to proceed. The division may either accept the recommendation not to proceed or order a formal investigation under subsection (3) of this section.

(3) When in the opinion of the division, or the appropriate college, university, secondary school or athletic regulatory body a complaint warrants a formal investigation for conduct in violation of KRS 164.680 to 164.689, or the administrative regulations promulgated thereunder, the college, university, secondary school or athletic regulatory body shall:

(a) Issue a written statement notifying the division, person against whom the complaint was made, and person or institution making the complaint, of the decision to investigate the complaint;

(b) Authorize its president or athletic director or designated representative, and a designated investigative assistant assigned by the division, to investigate the complaint and report their findings and recommendations to the division within ninety (90) days of the date of the notification of the decision to investigate. An extension of time may be granted by the division for good cause shown.

Section 3. Issuance of Recommendations: Review by the Division. (1) Upon completion of the formal investigation, the college, university, secondary school or athletic regulatory body shall issue a written report to the division stating its factual findings and recommendations as to the proper disposition of the complaint. The recommendations shall be served upon those against whom the complaint was made. If the recommendations are for the division to take disciplinary action, they shall state the charges upon which the recommendations are based.

(2) Within fifteen (15) days of receipt of the recommendations, the division shall take action in a manner commensurate with the nature and severity of the violation identified by the charges.

(3) When in the opinion of the division the charges do not warrant disciplinary action, being investigated, and the appropriate college, university, secondary school or athletic regulatory body, of the outcome of the complaint.

(4) When in the opinion of the division the charges warrant disciplinary action, the division shall issue an order stating the charges, and the disciplinary action imposed. The order shall be signed by the director and served upon the person disciplined.

(5) An order by the division may be appealed as authorized by KRS 164.687(2).

Section 5. Notice and Service of Process. Unless waived by the recipient, service of notice and other process shall be made by hand-delivery or delivery by certified mail, return receipt requested, to the individual's last known address which the division has of record or, if known, by regular mail on the named individual's attorney. Refusal of service if by certified mail; or avoidance of service if

hand-delivered shall not prevent the division from proceeding, as may be appropriate.

NANCY L. BLACK, Director

ROBERT S. JONES, Assistant Attorney General

APPROVED BY AGENCY: June 11, 1999

FILED WITH LRC: June 11, 1999 at 2 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on July 26, 1999 at 10 a.m., prevailing local time at the offices of the Division of Occupations and Professions, 700 Louisville Road, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify the agency in writing by July 19, 1999, five workdays prior to the hearing of their intent to attend. If no notification of intent to attend is received by that date, the hearing may be canceled. The hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on this proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made with the notification of intent to attend. 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: Nancy L. Black, Director, Division of Occupations and Professions, 700 Louisville Road, Frankfort, Kentucky 40601, phone: (502) 564-3296, fax (502) 564-4818.

#### REGULATORY IMPACT ANALYSIS

Contact person: Nancy L. Black

(1) Type and number of entities affected: All athlete agents, colleges, universities, secondary schools and student athletes in Kentucky.

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

(a) Cost of living and employment in the geographical area in which the emergency 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 emergency administrative regulation will be implemented, to the extent available from the public comments received: No public comments received; potential fiscal impact will be minimal.

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

1. First year following implementation: Implementation costs will be borne by the individual colleges, universities and athlete agents, based upon the number of complaints received relating to contact between athlete agents and student athletes. The primary cost will be due to paperwork requirements for handling complaints and maintaining records. Personnel cost will also be incurred by colleges and universities to investigate complaints. However, enforcement should produce a decrease in cost to colleges and universities by decreasing the potential of a violation of rules proscribed by an athletic regulatory body.

2. Second and subsequent years: See above.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: The Division of Occupations and Professions will incur start up cost for personnel necessary to staff the Directory of Registered Athlete Agents.

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: The Division of Occupations will incur the expense of providing office space and equipment necessary process and maintain necessary paperwork.

(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: Department funds, to be supplemented by registration and renewal fees after startup.

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

(a) Geographical area in which emergency administrative regu-

lation will be implemented: Implemented statewide, same as below.

(b) Kentucky: None

(7) Assessment of alternative methods: reasons why alternatives were rejected: This was the only alternative possible as required by the wording of the statute and would allow for maximum protection of colleges, universities and student athletes in the Commonwealth.

(8) Assessment of expected benefits: Expected benefits are to ensure that contacts between athlete agents and student athletes in Kentucky are conducted in a manner which will not harm the rights and interests of colleges, universities, secondary schools and student athletes in Kentucky.

(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:

(a) Necessity of proposed regulation if in conflict: This regulation is required to implement KRS 164.680-689.

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

(10) Any additional information or comments: None

(11) TIERING: Is tiering applied? No. The regulation applies to all credential holders.

**FINANCE AND ADMINISTRATION CABINET  
Division of Occupations and Professions  
Directory of Registered Athlete Agents  
(New Administrative Regulation)**

**200 KAR 30:030. Procedure for registration.**

RELATES TO: KRS 164.682

STATUTORY AUTHORITY: KRS 164.681(4)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 164.681(4) authorizes the division to promulgate such administrative regulations as are needed to implement the provisions of KRS 164.680 to 164.689. This administrative regulation sets forth the procedures for application and registration of athlete agents.

Section 1. Application Procedures. (1) Application for registration shall be made to the division using the application which is attached and incorporated by reference.

(2) Applications shall be complete and signed by the applicant.

(3) The division may request clarification and verification of the information provided in the application.

Section 2. Incorporation by Reference. (1) The following forms are incorporated by reference:

(a) "Application for Athlete Agent Registration (2/99)";

(b) "Bond for Athlete Agents (2/99)".

(2) These forms may be inspected, copied, or obtained between 8 a.m. and 4:30 p.m. at the Division of Occupations and Professions, Berry Hill Mansion, 700 Louisville Road, Frankfort, Kentucky, Monday through Friday.

NANCY L. BLACK, Director

ROBERT S. JONES, Assistant Attorney General

APPROVED BY AGENCY: June 11, 1999

FILED WITH LRC: June 11, 1999 at 2 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on July 26, 1999 at 10 a.m., prevailing local time at the offices of the Division of Occupations and Professions, 700 Louisville Road, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify the agency in writing by July 19, 1999, five workdays prior to the hearing of their intent to attend. If no notification of intent to attend is received by that date, the hearing may be canceled. The hearing is open to the public. Any

person who wishes to be heard will be given an opportunity to comment on this proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made with the notification of intent to attend. 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: Nancy L. Black, Director, Division of Occupations and Professions, 700 Louisville Road, Frankfort, Kentucky 40601, phone: (502) 564-3296, fax (502) 564-4818.

**REGULATORY IMPACT ANALYSIS**

Contact person: Nancy L. Black

(1) Type and number of entities affected: All athlete agents, colleges, universities, and student athletes in Kentucky.

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

(a) Cost of living and employment in the geographical area in which the emergency 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 emergency administrative regulation will be implemented, to the extent available from the public comments received: No public comments received; potential fiscal impact will be minimal.

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

1. First year following implementation: Minimal cost, associated with the cost to produce the applications, and store the records provided by registrants.

2. Second and subsequent years: See above.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: The Division of Occupations and Professions will incur start up cost for personnel necessary to staff the Directory of Registered Athlete Agents.

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: The Division of Occupations will incur the expense of providing office space and equipment necessary process and maintain necessary paperwork

(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: Department funds, to be supplemented by registration and renewal fees after startup.

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

(a) Geographical area in which emergency administrative regulation will be implemented: Implemented statewide, same as below.

(b) Kentucky: None

(7) Assessment of alternative methods: reasons why alternatives were rejected: This was the only alternative possible as required by the wording of the statute and would allow for maximum protection of colleges, universities and student athletes in the Commonwealth.

(8) Assessment of expected benefits: Expected benefits are to ensure that contacts between athlete agents and student athletes in Kentucky are conducted in a manner which will not harm the rights and interests of colleges, universities and student athletes.

(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:

(a) Necessity of proposed regulation if in conflict: This regulation is required to implement KRS 164.680-689.

(b) If in conflict, was effort made to harmonize the proposed

administrative regulation with conflicting provisions: Not applicable.

(10) Any additional information or comments: None

(11) TIERING: Is tiering applied? No. The regulation applies to all credential holders.

**FINANCE AND ADMINISTRATION CABINET  
Division of Occupations and Professions  
Directory of Registered Athlete Agents  
(New Administrative Regulation)**

**200 KAR 30:040. Fees.**

RELATES TO: KRS 164.682

STATUTORY AUTHORITY: KRS 164.681

NECESSITY, FUNCTION, AND CONFORMITY: KRS 164.682 provides the maximum fees which may be charged by the division. This administrative regulation provides the exact fees to be charged by the division.

Section 1. Application and Renewal Fees. (1) The fee for initial registration with the Kentucky Division of Occupations and Professions as an athlete agent shall be \$300;

(2) Registration renewal fees shall be paid as of March 31 of each year.

(a) The renewal fee for registration as an athlete agent shall be \$100 if paid by March 31;

(b) The late renewal fee during a sixty (60) day grace period after March 31 shall be \$150;

(c) The late renewal fee after the sixty (60) day grace period, but during a one (1) year period after March 31 shall be \$200; and

(d) The division shall revoke any registration not renewed within one (1) year of March 31, and may reinstate the registration, canceled under this provision, only upon satisfaction of all requirements necessary for an initial applicant, plus payment of a reinstatement fee \$300.

Section 2. Verification of Registration Fee. The fee for a verification of a registration shall be fifteen (15) dollars.

NANCY L. BLACK, Director

ROBERT S. JONES, Assistant Attorney General

APPROVED BY AGENCY: June 11, 1999

FILED WITH LRC: June 11, 1999 at 2 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on July 26, 1999 at 10 a.m., prevailing local time at the offices of the Division of Occupations and Professions, 700 Louisville Road, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify the agency in writing by July 19, 1999, five workdays prior to the hearing of their intent to attend. If no notification of intent to attend is received by that date, the hearing may be canceled. The hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on this proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made with the notification of intent to attend. 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: Nancy L. Black, Director, Division of Occupations and Professions, 700 Louisville Road, Frankfort, Kentucky 40601, phone: (502) 564-3296, fax (502) 564-4818.

**REGULATORY IMPACT ANALYSIS**

Contact person: Nancy L. Black

(1) Type and number of entities affected: All athlete agents, Colleges, universities, and student athletes in Kentucky.

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

(a) Cost of living and employment in the geographical area in which the emergency 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 emergency administrative regulation will be implemented, to the extent available from the public comments received: No public comments received; potential fiscal impact will be minimal.

(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: See above.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: The fees will allow the directory to generate income to pay for its operation.

2. Continuing costs or savings: See above.

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: The Division of Occupations will incur the expense of providing office space and equipment necessary to process and maintain paperwork, and manage the revolving account into which fees are placed and from which expenses are to be paid.

(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: Department funds, to be supplemented by registration and renewal fees after startup.

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

(a) Geographical area in which emergency administrative regulation will be implemented: Implemented statewide, same as below.

(b) Kentucky: None

(7) Assessment of alternative methods: reasons why alternatives were rejected: This was the only alternative possible as required by the wording of the statute and would allow for maximum protection of colleges, universities and student athletes in the Commonwealth.

(8) Assessment of expected benefits: Expected benefits are to ensure the directory has funds necessary to fulfill its statutory mandate.

(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:

(a) Necessity of proposed regulation if in conflict: This regulation is required to implement KRS 164.680-689.

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

(10) Any additional information or comments: None

(11) TIERING: Is tiering applied? No. The regulation applies to all credential holders.

**FINANCE AND ADMINISTRATION CABINET  
Division of Occupations and Professions  
Directory of Registered Athlete Agents  
(New Administrative Regulation)**

**200 KAR 30:050. Reinstatement.**

RELATES TO: KRS 164.687

STATUTORY AUTHORITY: KRS 164.681(4)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 164.687(3) provides for the reinstatement of registered athlete agents by the division. This administrative regulation establishes those reinstatement procedures.

Section 1. Reinstatement Procedures. (1) A person whose registration has been revoked due to disciplinary action taken by the division for a minimum three (3) years may petition the division for reinstatement.

(2) A copy of the petition shall be sent to the division and the appropriate college, university, secondary school or athletic regulatory body.

(3) The appropriate college, university, secondary school or athletic regulatory body shall respond to a petition for reinstatement within thirty (30) days from the date of receipt.

(4) The division shall consider the petition and response, and may investigate the petition on its own, or in response to objections, if raised.

(5) The division may reinstate the registration upon a factual finding that the athlete agent has complied with the terms prescribed in the order of revocation, and displays knowledge and ethical character which in the opinion of the division displays an ability to competently act as an athlete agent in conformity with the KRS 164.680 to 164.689 and the administrative regulations promulgated thereunder.

(6) The athlete agent seeking reinstatement may request a hearing with the division within thirty (30) days after an adverse decision on the petition.

NANCY L. BLACK, Director

ROBERT S. JONES, Assistant Attorney General

APPROVED BY AGENCY: June 11, 1999

FILED WITH LRC: June 11, 1999 at 2 p.m.

**PUBLIC HEARING:** A public hearing on this administrative regulation shall be held on July 26, 1999 at 10 a.m., prevailing local time at the offices of the Division of Occupations and Professions, 700 Louisville Road, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify the agency in writing by July 19, 1999, five workdays prior to the hearing of their intent to attend. If no notification of intent to attend is received by that date, the hearing may be canceled. The hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on this proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made with the notification of intent to attend. 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: Nancy L. Black, Director, Division of Occupations and Professions, 700 Louisville Road, Frankfort, Kentucky 40601, phone: (502) 564-3296, fax (502) 564-4818.

#### REGULATORY IMPACT ANALYSIS

Contact person: Nancy L. Black

(1) Type and number of entities affected: All athlete agents, colleges, universities, and student athletes in Kentucky.

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

(a) Cost of living and employment in the geographical area in which the emergency 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 emergency administrative regulation will be implemented, to the extent available from the public comments received: No public comments received; potential fiscal impact will be minimal.

(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: See above.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: Minimal cost related to recordkeeping.

2. Continuing costs or savings: See above.

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: The Division of Occupations will incur the expense of providing office space and equipment necessary to process and maintain paperwork.

(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: Department funds, to be supplemented by registration and renewal fees after startup.

forcement of administrative regulation: Department funds, to be supplemented by registration and renewal fees after startup.

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

(a) Geographical area in which emergency administrative regulation will be implemented: Implemented statewide, same as below.

(b) Kentucky: None

(7) Assessment of alternative methods: reasons why alternatives were rejected: This was the only alternative possible as required by the wording of the statute and would allow for maximum protection of colleges, universities and student athletes in the Commonwealth.

(8) Assessment of expected benefits: Expected benefits are to ensure the directory has funds necessary to fulfill its statutory mandate.

(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:

(a) Necessity of proposed regulation if in conflict: This regulation is required to implement KRS 164.680-689.

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

(10) Any additional information or comments: None

(11) TIERING: Is tiering applied? No. The regulation applies to all credential holders.

#### FINANCE AND ADMINISTRATION CABINET Division of Occupations and Professions Directory of Registered Athlete Agents (New Administrative Regulation)

#### 200 KAR 30:060. Annual contact report.

RELATES TO: KRS 164.682

STATUTORY AUTHORITY: KRS 164.681

NECESSITY, FUNCTION, AND CONFORMITY: KRS 164.682 provides for athlete agents to maintain financial records, and file annual contact reports on activities within the Commonwealth. This administrative regulation sets forth the minimum requirements for those reports.

Section 1. Annual Contact Report. An annual contact report shall be filed by March 31 of each year, and shall include:

(1) A list of each student athlete contacted, either directly or otherwise, during the preceding twelve (12) months;

(2) The date of initial contact with each student athlete;

(3) A list of student athletes with whom the athlete agent enters into an oral or written contract or provides in-kind benefits, with an attached copy of the contract, if written;

(4) The date and time the athlete agent entered into each contract or in-kind transaction;

(5) The date and time written notification was provided to the athletic director or president of the college or university in which the student athlete was enrolled when the athlete agent entered into each contract or provided monetary or in-kind benefits to a student athlete, with an attached copy of the written notification.

(6) A complete financial statement for the preceding year through December 31.

NANCY L. BLACK, Director

ROBERT S. JONES, Assistant Attorney General

APPROVED BY AGENCY: June 11, 1999

FILED WITH LRC: June 11, 1999 at 2 p.m.

**PUBLIC HEARING:** A public hearing on this administrative regulation shall be held on July 26, 1999 at 10 a.m., prevailing local time at the offices of the Division of Occupations and Professions,

## VOLUME 26, NUMBER 1 – JULY 1, 1999

700 Louisville Road, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify the agency in writing by July 19, 1999, five workdays prior to the hearing of their intent to attend. If no notification of intent to attend is received by that date, the hearing may be canceled. The hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on this proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made with the notification of intent to attend. 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: Nancy L. Black, Director, Division of Occupations and Professions, 700 Louisville Road, Frankfort, Kentucky 40601, phone: (502) 564-3296, fax (502) 564-4818.

### REGULATORY IMPACT ANALYSIS

Contact person: Nancy L. Black

(1) Type and number of entities affected: All athlete agents, colleges, universities, and student athletes in Kentucky.

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

(a) Cost of living and employment in the geographical area in which the emergency 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 emergency administrative regulation will be implemented, to the extent available from the public comments received: No public comments received; potential fiscal impact will be minimal.

(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: See above.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: Minimal cost related to record keeping.

2. Continuing costs or savings: See above.

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: The Division of Occupations will incur the expense of providing office space and equipment necessary to process and maintain paperwork.

(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: Department funds, to be supplemented by registration and renewal fees after startup.

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

(a) Geographical area in which emergency administrative regulation will be implemented: Implemented statewide, same as below.

(b) Kentucky: None

(7) Assessment of alternative methods: reasons why alternatives were rejected: This was the only alternative possible as required by the wording of the statute and would allow for maximum protection of colleges, universities and student athletes in the Commonwealth.

(8) Assessment of expected benefits: Expected benefits are to ensure the directory can monitor contacts between athlete agents and student athletes.

(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:

(a) Necessity of proposed regulation if in conflict: This regulation is required to implement KRS 164.680-689.

(b) If in conflict, was effort made to harmonize the proposed

administrative regulation with conflicting provisions: Not applicable.

(10) Any additional information or comments: None

(11) TIERING: Is tiering applied? No. The regulation applies to all credential holders.

### FINANCE AND ADMINISTRATION CABINET Division of Occupations and Professions Directory of Registered Athlete Agents (New Administrative Regulation)

#### 200 KAR 30:070. Records retention.

RELATES TO: KRS 164.684(2)

STATUTORY AUTHORITY: KRS 164.681(4)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 164.684(2) provides for athlete agents and student athletes to provide to the college or university in which a student athlete is enrolled written notification of an agent contract or the acceptance of in-kind benefits. This administrative regulation sets forth the records retention requirements for colleges and universities receiving this written notification.

Section 1. Colleges and universities which receive written notification a student athlete has entered an agent contract or accepted in-kind benefits from an athlete agent shall record the time and date of receipt of the notification.

Section 2. Colleges and universities which receive written notification a student athlete has entered an agent contract or accepted in-kind benefits from an athlete agent shall maintain the written notification, and the record of time and date of receipt, for a period of five (5) years, and those records shall be subject to inspection by an authorized agent of the division.

NANCY L. BLACK, Director

ROBERT S. JONES, Assistant Attorney General

APPROVED BY AGENCY: June 11, 1999

FILED WITH LRC: June 11, 1999 at 2 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on July 26, 1999 at 10 a.m., prevailing local time at the offices of the Division of Occupations and Professions, 700 Louisville Road, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify the agency in writing by July 19, 1999, five workdays prior to the hearing of their intent to attend. If no notification of intent to attend is received by that date, the hearing may be canceled. The hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on this proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made with the notification of intent to attend. 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: Nancy L. Black, Director, Division of Occupations and Professions, 700 Louisville Road, Frankfort, Kentucky 40601, phone: (502) 564-3296, fax (502) 564-4818.

### REGULATORY IMPACT ANALYSIS

Contact person: Nancy L. Black

(1) Type and number of entities affected: All athlete agents, colleges, universities, and student athletes in Kentucky.

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

(a) Cost of living and employment in the geographical area in which the emergency 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 emergency administrative regulation will be implemented, to the extent available from the public comments received: No public comments received; potential fiscal impact will be minimal.

(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: See above.
- (3) Effects on the promulgating administrative body:
  - (a) Direct and indirect costs or savings:
    1. First year: Minimal cost related to record keeping.
    2. Continuing costs or savings: See above.
  3. Additional factors increasing or decreasing costs: None
- (b) Reporting and paperwork requirements: The Division of Occupations will incur the expense of providing office space and equipment necessary to process and maintain paperwork.
- (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: Department funds, to be supplemented by registration and renewal fees after startup.
- (6) To the extent available from the public comments received, the economic impact, including effects of economic activities arising from the emergency amended administrative regulation, on:
  - (a) Geographical area in which emergency administrative regulation will be implemented: Implemented statewide, same as below.
  - (b) Kentucky: None
  - (7) Assessment of alternative methods: reasons why alternatives were rejected: This was the only alternative possible as required by the wording of the statute and would allow for maximum protection of colleges, universities and student athletes in the Commonwealth.
  - (8) Assessment of expected benefits: Expected benefits are to ensure the directory has the ability to access records filed by athlete agents.
    - (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:
    - (a) Necessity of proposed regulation if in conflict: This regulation is required to implement KRS 164.680-689.
    - (b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: Not applicable.
  - (10) Any additional information or comments: None
  - (11) TIERING: Is tiering applied? No. The regulation applies to all credential holders.

**GENERAL GOVERNMENT CABINET  
Kentucky Board of Social Work  
(New Administrative Regulation)**

**201 KAR 23:075. Continuing education.**

RELATES TO: KRS 335.130(4)

STATUTORY AUTHORITY: KRS 335.070(3), (6), 335.130(4)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 335.130(4) allows the board to require continuing education as a condition of license renewal. This administrative regulation delineates the requirements for continuing education and prescribes methods and standards for the accreditation of continuing education courses.

Section 1. Definitions. As used in this administrative regulation, unless the context otherwise requires:

- (1) "Approved" means recognized by the Kentucky Board of Social Work.
- (2) "Continuing education hour" means fifty (50) clock minutes of participating in continuing educational experiences.
- (3) "Program" means an organized learning experience:
  - (a) Planned and evaluated to meet behavioral objectives; and
  - (b) Presented in one (1) session or series.
- (4) "Academic courses offered by an accredited postsecondary institution" means:

- (a) A social work course, at the graduate level:
  1. Designated by a social work title or content; or
  2. An academic course, at the graduate level, relevant to social work.
- (b) A general education course, either electives or designed to meet degree requirements, will not be acceptable.
- (c) Academic credit equivalency for continuing education hours shall be based on one (1) credit hour equals fifteen (15) continuing education hours.
- (5) "Relevant" means having content applicable the practice of social work.
- (6) "Provider" means an organization approved by the Kentucky Board of Social Work for providing continuing education programs.

Section 2. Accrual and Computation of Continuing Education Hours. (1) A minimum of thirty (30) continuing education hours shall be accrued by each licensed clinical social worker and certified social worker holding licensure during the three (3) year period for renewal with the following exceptions:

- (a) A person holding licensure or certification whose renewal date is before September 1, 2000 shall acquire ten (10) hours of continuing education for that renewal only;
- (b) A person holding licensure or certification whose renewal date is on or after September 1, 2000 and before September 1, 2001 shall acquire twenty (20) hours of continuing education for that renewal only.
- (2) A minimum of fifteen (15) continuing education hours shall be accrued by each licensed social worker holding licensure during the three (3) year period for renewal with the following exceptions:
  - (a) A person holding licensure whose renewal date is before September 1, 2000 shall acquire five (5) hours of continuing education for that renewal only;
  - (b) A person holding licensure or certification whose renewal date is on or after September 1, 2000 and before September 1, 2001 shall acquire ten (10) hours of continuing education for that renewal only.
- (3) All continuing education hours shall be in or relevant to the practice of social work.
- (4) Three (3) continuing education hours during each renewal period shall be acquired in the area of social work ethics.
- (5) Two (2) of the continuing education hours during each renewal period shall be on HIV/AIDS courses approved by the Cabinet for Health Services pursuant to 902 KAR 2:160.

Section 3. Methods of Acquiring Continuing Education Hours. Continuing education hours applicable to the renewal of the license shall be directly related to the professional growth and development of the licensee. They may be earned by completing any of the following education activities:

- (1) Programs not requiring board review and approval. An educational program from any of the following providers shall be deemed to be relevant to the practice of social work and shall be approved without further review by the board if it is:
  - (a) Sponsored or approved by the National Association of Social Workers or any of its affiliated state chapters;
  - (b) Sponsored by:
    1. The National Federation of Clinical Social Workers or any of its affiliated state chapters;
    2. The American Psychological Association or any of its affiliated state chapters;
    3. The American Counseling Association or any of its affiliated state chapters;
    4. The National Board for Certified Counselors or any of its affiliated state chapters; and
    5. The American Psychiatric Association or any of its affiliated state chapters.
  - (c) An academic course offered by an accredited postsecondary institution directly related to social work or counseling psychology;
- (2) Programs requiring board review and approval. A program from any of the following sources shall be reviewed and determined if it is relevant and therefore subsequently approved by the board:
  - (a) Relevant programs, including home study and in-service training provided by other organizations, educational institutions, or

other service providers approved by the board;

(b) Relevant programs or academic courses presented by the licensee. A presenter of relevant programs or academic courses may earn full continuing education credit for each contact hour of instruction, not to exceed one-half (1/2) of the continuing education renewal requirements. Credit shall not be issued for repeated instruction of the same course;

(c) Authoring an article in a relevant, professionally recognized or juried publication. Credit may be granted only for an article that was published within the one (1) year period immediately preceding the renewal date. A licensee may only earn one-half (1/2) of the continuing education hours required for renewal under the provisions of this subsection. Only one (1) publication may be counted during each renewal period.

Section 4. Procedures for Approval of Continuing Education Programs. A program, which is offered by an entity that is not a provider, may be used for continuing education if approval is secured from the board for the course. In order for the board to adequately review these programs, the following information shall be submitted:

- (1) A published course or similar description;
- (2) Names and qualifications of the instructors;
- (3) A copy of the program agenda indicating hours of education, coffee and lunch breaks;
- (4) Number of continuing education hours requested;
- (5) Official certificate of completion or college transcript from the sponsoring agency or college; and
- (6) Application for continuing education credits approval.

Section 5. Procedures for Preapproval of Continuing Education Sponsors and Programs. (1) Sponsor approval. Any entity seeking to obtain approval of a continuing education program prior to its offering shall:

(a) Apply to the board at least sixty (60) days in advance of the commencement of the program, and shall provide the information required in Section 4 of this administrative regulation.

(b) Provide proof to the board that the entity seeking this status:

1. Consistently offers programs which meet or exceed all the requirements set forth in subsection (2) of this section; and
2. Does not exclude any licensee from its programs.

(c) A continuing education activity shall be qualified for approval if the board determines the activity being presented:

(a) Is an organized program of learning in which an identified licensed social worker was involved in the planning and review thereof;

(b) Is relevant to the practice of social work;

(c) Contributes to the professional competency of the licensee; and

(d) Has competent instructors with appropriate academic training, professional licensures or certification, or professionally recognized experience.

Section 6. Responsibilities and Reporting Requirements of Licensees. Each licensee shall be responsible for obtaining required continuing education hours. He shall identify his own continuing education needs, take the initiative in seeking continuing professional education activities to meet these needs, and seek ways to integrate new knowledge, skills and attitudes. Each person holding licensure shall:

(1) Select approved activities by which to earn continuing education hours;

(2) Submit to the board, when applicable, a request for continuing education activities requiring approval by the board as established in Section 4 of this administrative regulation;

(3) Maintain his own records of continuing education hours;

(4) At the time of renewal, list the continuing education hours obtained during that licensure renewal period;

(5) Furnish documentation of attendance and participation in the appropriate number of continuing education hours at the time of his renewal, as follows:

(a) Each person holding licensure shall maintain, for a period of one (1) year from the date of renewal, all documentation verifying

successful completion of continuing education hours;

(b) In each calendar year, up to fifteen (15) percent of all licensees shall be required by the board to furnish documentation of the completion of the appropriate number of continuing education hours for the current renewal period;

(c) Verification of continuing education hours shall not otherwise be reported to the board;

(d) Documentation sent in to the board prior to renewal shall be returned to the licensee by regular mail;

(e) Documentation shall take the form of official documents including:

1. Transcripts;
2. Certificates;
3. Affidavits signed by instructors; or
4. Receipts for fees paid to the sponsor; and

(f) Each licensee shall retain copies of his documentation.

Section 7. Responsibilities and Reporting Requirements of Providers and Sponsors. (1) Providers of continuing education not requiring board approval shall be responsible for providing documentation, as established in Section 6(5) of this administrative regulation, directly to the licensee.

(2) Sponsors of continuing education requiring board approval shall be responsible for submitting a course offering to the board for review and approval before listing or advertising that offering as approved by the board.

Section 8. Board to Approve Continuing Education Hours; Appeal when Approval Denied. In the event of denial, in whole or part, of any application for approval of continuing education hours, the licensee shall have the right to request reconsideration by the board of its decision. The request shall be in writing and shall be received by the board within thirty (30) days after the date of the board's decision denying approval of continuing education hours.

Section 9. Waiver or Extensions of Continuing Education. (1) The board may, in individual cases involving medical disability, illness, or undue hardship as determined by the board, grant waivers of the minimum continuing education requirements or extensions of time within which to fulfill the requirements or make the required reports.

(2) A written request for waiver or extension of time involving medical disability or illness shall be submitted by the person holding licensure and shall be accompanied by a verifying document signed by a licensed physician.

(3) Waivers of the minimum continuing education requirements or extensions of time within which to fulfill the continuing education requirements may be granted by the board for a period of time not to exceed one (1) calendar year.

(4) If the medical disability or illness upon which a waiver or extension has been granted continues beyond the period of the waiver or extension, the person holding licensure shall reapply for the waiver or extension.

Section 10. Continuing Education Requirements for Reinstatement or Reactivation of Licensure. (1) A person requesting reinstatement or reactivation of licensure shall submit evidence of thirty (30) hours of continuing education within the thirty-six (36) month period immediately preceding the date on which the request for reinstatement or reactivation is submitted to the board.

(2) The person may request, and the board, at its discretion, may reinstate the licensure, with the provision that the person shall receive thirty (30) hours continuing education within six (6) months of the date on which the licensure is reinstated.

(3) The continuing education hours received in compliance with this section shall be in addition to the continuing education requirements established in Section 2 of this administrative regulation and shall not be used to comply with the requirements of that section.

NANCY L. BLACK, Director

JAMES J. GRAWE, Assistant Attorney General

APPROVED BY AGENCY: June 14, 1999

FILED WITH LRC: June 15, 1999 at 10 a.m.

**PUBLIC HEARING:** A public hearing on this administrative regulation shall be held on July 23, 1999, at 10 a.m., at the Division of Occupations and Professions, Berry Hill Annex, 700 Louisville Road, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by July 16, 1999, 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: Nancy L. Black, Director, Division of Occupations and Professions, Post Office Box 1360, Frankfort, Kentucky 40602-1360, Phone: (502) 564-3296 ext. 224; Fax: (502) 564-4818.

#### REGULATORY IMPACT ANALYSIS

Agency Contact: Nancy Black

(1) Type and number of entities affected: Approximately 3500 certified and licensed social workers.

(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 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: 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 licensees are treated uniformly under the law.

#### FINANCE AND ADMINISTRATION CABINET Division of Occupations and Professions Kentucky Board of Marriage and Family Therapists (New Administrative Regulation)

#### 201 KAR 32:045. Examination.

RELATES TO: KRS 335.320

STATUTORY AUTHORITY: KRS 335.330

NECESSITY, CONFORMITY, AND FUNCTION: KRS 335.330 requires the board to administer a test for licensure for marriage and family therapists.

Section 1. General Requirements. (1) The board shall publish pertinent instructions and establish the examination schedule which shall include the:

(a) Place;

(b) Time; and

(c) Final date by which the board shall have received the applicant's materials.

(2)(a) An applicant for examination shall:

1. Submit a complete application; and

2. Pay the applicable fee.

(b) Once the application has been approved by the board, the applicant shall be scheduled to take the examination at the next regularly scheduled date.

(3) If an applicant fails to appear for the scheduled examination and presents a valid reason in writing for missing the examination, including illness or death in the immediate family, the examination shall be deferred until the next scheduled date without forfeiture of the examination fee.

(4) If an applicant fails to appear for or to complete the examination without a valid reason:

(a) The applicant shall forfeit all fees paid; and

(b) Resubmit the application to the board, requesting to be scheduled to take the examination at the next regularly scheduled date.

(5) If an applicant fails to appear for or to complete the examination without presenting a valid reason in writing, including illness or death in the immediate family:

(a) The application shall be terminated on the date of the examination; and

(b) The applicant shall be denied licensure on the basis of failure of the examination by default.

Section 2. Examination for Licensure. (1) An applicant for licensure shall submit to a written examination in accordance with subsection (2) of this section.

(2) The board shall contract with a nationally recognized testing agency approved by the board. The test shall be administered upon completion of the requirements set forth in KRS 335.320, at regularly scheduled times set by the board.

(3) If an applicant for licensure fails the objective examination, the candidate shall, with payment of the required fee, be rescheduled to take the examination at its next regularly scheduled date. The candidate shall continue to function as a marriage and family therapist associate under the supervision of the board-approved supervisor until:

(a) The examination is successfully completed;

(b) The supervisory contract is terminated; or

(c) The candidate ceases to practice as a marriage and family therapist associate and notifies the board in writing.

JOHN P. SOHAN, Chair

DIANE SCHULER FLEMING, Assistant Attorney General

APPROVED BY AGENCY; June 15, 1999

FILED WITH LRC: June 15, 1999 at noon

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on July 29, 1999, at 10 a.m. at the offices of the Division of Occupations and Professions, 700 Louisville Road, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by July 22, 1999, five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by this date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given the opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Nancy Black, Executive Director, Division of Occupations and Professions, 700 Louisville Road, Frankfort, Kentucky 40601, telephone (502) 564-3296, Fax (502) 564-4818.

#### REGULATORY IMPACT ANALYSIS

Agency contact: Nancy Black

(1) Type and number of entities affected: All applicants desiring to become licensed marriage and family therapists.

(2) Direct and indirect costs or savings to those affected: Examination fees will be charged. If an applicant fails to appear for or complete the exam, he shall forfeit the fees.

(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: No change.

2. Second and subsequent years: See above.

(3) Effects on the promulgating administrative body: None anticipated.

(a) Direct or indirect costs or savings: None

1. First year: See above.

2. Continuing costs or savings: See above.

3. Additional factors increasing or decreasing costs: None anticipated.

(b) Reporting and paperwork requirements: None

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

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Board funds generated from licensure fees.

(6) To the extent available from public comments received, the economic impact, including effects of economic activities arising from administrative regulation on: No comments received.

(a) Geographical area in which administrative regulation will be implemented: This administrative regulation does not affect economic activity.

(b) Kentucky: None

(7) Assessment of alternative methods; reasons why alternatives were rejected: Not applicable.

(8) Assessment of expected benefits: Clarification of the law.

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

(b) State whether a detrimental effect on environment and public

health would result if not implemented: No

(c) If detrimental effect would result, explain detrimental effect: Not applicable.

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: Board is not aware of any statute, regulation or government policy which may be in conflict or is duplicated by this proposed regulation.

(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 comments: None

(11) TIERING: Is tiering applied? No. The regulation applies equally to all applicants for licensure as marriage and family therapists.

#### GENERAL GOVERNMENT CABINET

#### Kentucky Board of Certification for Professional Counselors (New Administrative Regulation)

#### 201 KAR 36:060. Qualifying experience under supervision.

RELATES TO: KRS 335.500(4), 335.505(4), 335.525(1)(e)

STATUTORY AUTHORITY: KRS 335.515(1), (3)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 335.505(4) allows a student intern or trainee in professional counseling to use the title of "professional counselor intern" or "student in training" if his activities are performed under the supervision or direction of an approved supervisor and the activities are a part of a supervised program of study. KRS 335.525(1)(d) provides that an applicant for a professional counselor certificate must have acquired 2000 hours of experience in the practice of counseling under the general supervision of an approved supervisor. This administrative regulation establishes the requirements relating to supervision and the requirements for experience under supervision.

Section 1. Definitions. (1) "The practice of counseling" means professional counseling services within the scope of Section 2 of this administrative regulation and which involve the application of mental health and development principals, methods or procedures, including assessment, evaluation, diagnosis, and treatment of emotional disorders or mental illnesses, to assist individuals to achieve more effective personal, social, educational, or career development and adjustment.

(2) "Supervision" means the educational process of utilizing a partnership between a supervisor and a supervisee aimed at enhancing the professional development of the supervisee in providing professional counseling services.

Section 2. Practice of Professional Counseling. (1) The practice of professional counseling shall be based on knowledge of interpersonal, cognitive, cognitive behavioral, psychodynamics, human relations, crisis intervention, psychopathology, group dynamics, and effective methods and strategies necessary to help the client achieve mental, vocational, emotional, physical, social, moral, and spiritual development and adjustment throughout the client's life span.

(2) A practitioner of professional counseling shall possess and utilize numerous skills, including skills necessary to apply professional counseling services relative to the following areas:

(a) The helping relationship, including counseling theory and practice;

(b) Human growth and development;

(c) Lifestyle and career development;

(d) Group dynamics, process, counseling, and consulting;

(e) Assessment, appraisal, and testing of individuals;

(f) Social and cultural foundation, including multicultural issues;

(g) Principles of etiology, diagnosis, treatment planning, and prevention of mental and emotional disorders and dysfunctional behavior;

(h) Research and evaluation; and

(i) Professional orientation and ethics.

Section 3. Supervision. (1) A supervisor shall be a properly credentialed member of one (1) of the professions identified in KRS 335.500(4) who:

(a) Provides supervision to a person obtaining the experience required under KRS 335.525(1)(e);

(b) Does not have:

1. An unresolved citation filed against him by the board that licenses or certifies that profession;

2. A suspended or probated license or certificate;

3. An order from the board under which he is licensed or certified prohibiting him from providing supervision; or

4. A previous or existing dual relationship or other personal relationship with a supervisee; and

(c) Has been in the practice of the profession listed in KRS 335.500(4) under which they qualify as an approved supervisor for three (3) years following licensure or certification in that profession.

(2) Notwithstanding the requirement of subsection (1)(c) of this section, a supervisor whose credential is that of a certified professional counselor shall not be required to have held a certificate for three (3) years until after January 1, 2001.

(3) A supervisor of record shall assume responsibility for the practice of the supervisee. A supervisor shall not serve as a supervisor of record for more than six (6) persons obtaining experience for certification or licensure at the same time.

Section 4. Supervisory Agreement. A supervisee shall enter into a supervisory agreement with an approved supervisor. The supervisory agreement required by this section shall contain:

(1) The name and address of the supervisee.

(2) The name, address, license or certification number, and number of years of practice of the supervisor of record.

(3) The name, address, license or certification number, and number of years of practice of other supervisors.

(4) The agency, institution, or organization where the experience will be received.

(5) A detailed description of the nature of the practice including the type of:

(a) Clients which shall be seen;

(b) Therapies and treatment modalities which shall be used including the prospective length of treatment; and

(c) Problems which shall be treated.

(6) The nature, duration, and frequency of the supervision, including the:

(a) Number of hours of supervision per week;

(b) Number of hours of individual supervision; and

(c) Methodology for transmission of case information.

(7) The conditions or procedures for termination of the supervision.

(8) A statement that:

(a) The supervisor of record understands that he shall be held accountable to the board for the care given to the supervisee's clients; and

(b) The supervisor of record and other supervisors meet the criteria established in Section 3(1) and (2) of this administrative regulation.

(9) The supervisory agreement shall be signed by the supervisor.

Section 5. Experience Under Supervision. Experience under supervision shall consist of:

(1) Direct responsibility for a specific individual or group of clients; and

(2) Broad exposure and opportunity for skill enhancement with a variety of developmental issues, dysfunctions, diagnoses, acuity levels and population groups.

Section 6. Supervision Requirements. Supervision shall relate specifically to the qualifying experience and shall focus on:

(1) The accurate diagnosis of a client problem leading to proficiency in applying professionally recognized clinical nomenclature;

(2) The development and modification of the treatment plan;

(3) The development of treatment skills suitable to each phase of the therapeutic process;

(4) Ethical problems in the practice of professional counseling; and

(5) The development and use of the professional self in the therapeutic process.

Section 7. Evaluation by Board. The period of supervised experience required by KRS 335.525(1)(e) shall be evaluated by the board according to one (1) of the following methods at the option of the candidate:

(1) Preapproved evaluation. The candidate shall submit the supervisory contract required by Section 4 of this administrative regulation for the experience prior to beginning to accrue the required experience. This contract shall be evaluated by the board and shall be approved or disapproved within ninety (90) days of its submission.

(2) Postexperience evaluation for persons who obtained their experience in another state. A candidate who obtained his experience in another state shall submit his application along with appropriate documentation of his hours of supervision. The documentation shall also:

(a) Provide information that verifies that the requirements for the license or certificate of the supervisor from the state in which the license or certificate was held are substantially equivalent to the requirements for that license or certificate in Kentucky; and

(b) Provide information that verifies that the supervisor is in good standing with the certifying or licensing state.

NANCY L. BLACK, Director

JAMES J. GRAWE, Assistant Attorney General

APPROVED BY AGENCY: June 14, 1999

FILED WITH LRC: June 15, 1999 at 10 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on July 23, 1999, at 1 p.m., at the Division of Occupations and Professions, Berry Hill Annex, 700 Louisville Road, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by July 16, 1999, 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: Nancy L. Black, Director, Division of Occupations and Professions, Post Office Box 1360, Frankfort, Kentucky 40602-1360, Phone: (502) 564-3296 ext. 224; Fax: (502) 564-4818.

# REGULATORY IMPACT ANALYSIS

Agency Contact: Nancy Black

(1) Type and number of entities affected: Approximately 200 certified professional counselors and persons seeking certification.

(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 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: 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 applicants are treated uniformly under the law.

**GENERAL GOVERNMENT CABINET  
Board of Certification of Fee-Based Pastoral Counselors  
(New Administrative Regulation)**

**201 KAR 38:010. Definitions.**

RELATES TO: KRS 335.620

STATUTORY AUTHORITY: KRS 335.615(1)-(4), (6); KRS 335.620

NECESSITY, FUNCTION, AND CONFORMITY: KRS 335.620 sets forth the requirements for certification as a fee-based pastoral counselor. The board is required to review the applications of applicants for certification. In addition to other requirements, KRS 335.620(5)(b) requires applicants to have experience under supervision. This administrative regulation establishes definitions necessary for the evaluation of experience under supervision.

Section 1. Definitions. The following terms relate to the evaluation of applications for certification:

- (1) "Approved supervisor" means an individual who:
  - (a) Holds a diplomate level of certification from the American Association of Pastoral Counselors;
  - (b) Holds a fellow level of certification from the American Association of Pastoral Counselors and is also under supervision by a diplomate;
  - (c) Is certified as a fee-based pastoral counselor in the Commonwealth of Kentucky with a minimum of four (4) years of experience in the practice of pastoral counseling; or
  - (d) Holds licensure or certification in any of the mental health

professions of psychiatry, psychology, social work, or family therapy with at least five (5) years of clinical experience and two (2) years of supervisory experience.

(2) "Clinical supervision" means the process of utilizing a partnership aimed at enhancing the professional development of supervisees in providing pastoral counseling services. Clinical supervision shall be equally distributed throughout the qualifying period.

(3) "Equivalent course of study" means a master's, doctoral degree, or accredited training program in pastoral counseling from a regionally accredited institution in a mental health field closely related to pastoral counseling which either contains, or has been supplemented by the coursework in each of the basic core areas listed in 201 KAR 38:030, Section 1.

(4) "The practice of fee-based pastoral counseling" means the practice of fee-based pastoral counseling as defined by KRS 335.605(3).

NANCY L. BLACK, Director

MARK BRENGELMAN, Assistant Attorney General

APPROVED BY AGENCY: June 14, 1999

FILED WITH LRC: June 14, 1999 at 4 p.m.

PUBLIC HEARING: A public hearing on this proposed administrative regulation shall be held on July 23, 1999, at 3 p.m., local time, at the Division of Occupations and Professions, Berry Hill Annex, 700 Louisville Road, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by July 16, 1999, five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on this proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to: Nancy L. Black, Director, Division of Occupations and Professions, Post Office Box 1360, Frankfort, Kentucky 40602-1360, Phone: (502) 564-3296 ext. 224; Fax: (502) 564-4818.

**REGULATORY IMPACT ANALYSIS**

Contact person: Nancy L. Black

(1) Type and number of entities affected: Approximately 100 anticipated applicants for certification as a fee-based pastoral counselor.

(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: N/A

2. Second and subsequent years: N/A

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings: None

1. First year: N/A

2. Continuing costs or savings: N/A

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

(b) Reporting and paperwork requirements: N/A

(4) Assessment of anticipated effect on state and local revenues: N/A

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Agency funds and annual 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: N/A

(b) Kentucky: N/A

(7) Assessment of alternative methods; reasons why alternatives were rejected: The agency has no alternative methods when it is required by statute to define the terms that it uses.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: N/A

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

(c) If detrimental effect would result, explain detrimental effect: The board would not be able to protect the public by ensuring that only qualified applicants obtained certification and maintained their certification in accord with statute.

(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. This regulation applies to all applicants and credential holders equally.

**GENERAL GOVERNMENT CABINET**  
**Board of Certification of Fee-Based Pastoral Counselors**  
**(New Administrative Regulation)**

**201 KAR 38:020. Application.**

RELATES TO: KRS 335.600

STATUTORY AUTHORITY: KRS 335.615(1)-(4), (6), 335.620

NECESSITY, FUNCTION, AND CONFORMITY: This administrative regulation establishes the application process for certification under KRS 335.615(1)-(4) as a fee-based pastoral counselor.

Section 1. An applicant for certification shall:

(1) Meet the requirements of KRS 335.620;

(2) Pay by check or money order an initial certification fee as established by 201 KAR 38:040, Fees, made payable to the Kentucky State Treasurer;

(3) Pay by check or money order a written examination fee as established by 201 KAR 38:040, Fees, made payable to the Pastoral Counselor Examination Board at the time of taking the pastoral counselor examination;

(4) Pass the written examination of the Pastoral Counselor Examination Board, the pastoral counselor examination;

(5) File a completed, signed, and dated application form with the board containing;

(a) Name;

(b) Address;

(c) Home phone;

(d) Work address;

(e) Work phone;

(f) Date of birth;

(g) Criminal convictions;

(h) Misconduct in other positions;

(i) Credentials by other states;

(j) Membership in professional organizations;

(k) Education;

(l) Experience;

(m) Clinical supervision and verification;

(n) Religious endorsing body endorsement for ministry; and

(o) Affidavit.

Section 2. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) Form "Application-1" (June, 1999 edition) Board of Certification of Fee-Based Pastoral Counselors, is incorporated by reference; and

(b) Form "Application-2" (June, 1999 edition) Board of Certification of Fee-Based Pastoral Counselors, is incorporated by reference.

(2) They may be inspected, copied, or obtained at the Board of Certification of Fee-Based Pastoral Counselors, 700 Louisville Road, Berry Hill Annex, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

NANCY L. BLACK, Director

MARK BRENGELMAN, Assistant Attorney General

APPROVED BY AGENCY: June 14, 1999

FILED WITH LRC: June 14, 1999 at 4 p.m.

PUBLIC HEARING: A public hearing on this proposed administrative regulation shall be held on July 23, 1999, at 3 p.m., local time, at the Division of Occupations and Professions, Berry Hill Annex, 700 Louisville Road, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by July 16, 1999, five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on this proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to: Nancy L. Black, Director, Division of Occupations and Professions, Post Office Box 1360, Frankfort, Kentucky 40602-1360, Phone: (502) 564-3296 ext. 224; Fax: (502) 564-4818.

**REGULATORY IMPACT ANALYSIS**

Contact person: Nancy L. Black

(1) Type and number of entities affected: Approximately 100 anticipated applicants for certification as a fee-based pastoral counselor.

(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: N/A

2. Second and subsequent years: N/A

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings: None

1. First year: N/A

2. Continuing costs or savings: N/A

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

(b) Reporting and paperwork requirements: N/A

(4) Assessment of anticipated effect on state and local revenues: N/A

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Agency funds and annual 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: N/A

(b) Kentucky: N/A

(7) Assessment of alternative methods; reasons why alternatives were rejected: The agency has no alternative methods when it is required by statute to set forth an application process by which applicants can become credentialed by the board.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: N/A

(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:

The board would not be able to protect the public by ensuring that only qualified applicants obtained certification and maintained their certification in accord with statute.

(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. This regulation applies to all applicants and credential holders equally.

**GENERAL GOVERNMENT CABINET  
Board of Certification of Fee-Based Pastoral Counselors  
(New Administrative Regulation)**

**201 KAR 38:030. Equivalent course of study.**

RELATES TO: KRS 335.620(4)-(7)

STATUTORY AUTHORITY: 335.615(1)-(4), (6); KRS 335.620(4)-(7)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 335.620(7) provides that the board shall approve a course of study equivalent to a master of divinity degree plus an additional minimum of one (1) year of academic training relative to pastoral counseling and promulgate the equivalency standard by administrative regulations. This administrative regulation defines the criteria for the equivalent course of study.

Section 1. Clinical membership at the fellow level in the American Association for Pastoral Counselors shall be deemed that the applicant has met both the educational and experiential requirements for certification as set forth in KRS 335.620(4)-(7).

Section 2. The basic core areas which are necessary in order to qualify as an equivalent course of study, shall include the completion of a minimum of fifty-eight (58) semester hours of work which may include or extend beyond the one (1) professional degree in theological/spiritual discipline or mental health discipline. This work may include unlimited hours from American Association of Pastoral Counselors approved training programs in pastoral counseling (with fifteen (15) contact hours equaling one (1) semester hour) or other educational institutional programs which meet requirements stipulated by the American Association of Pastoral Counselors, Certification Committee, or the Institutional Accreditation Committee. These hours shall be distributed as follows:

(1) Religious foundations. This area shall include up to twenty-seven (27) semester hours, including the following areas:

- (a) Scripture;
- (b) Theology;
- (c) Religious history;
- (d) Theological and social ethics;
- (e) Spirituality; and
- (f) World religions.

(2) Core clinical theory.

(a) This area shall include up to twenty-four (24) semester hours, including at least three (3) semester hours in each of the following:

- 1. Counseling and psychotherapy techniques;
- 2. Group dynamics and techniques; and
- 3. Marriage and family systems theories and techniques.

(b) Up to fifteen (15) semester hours must be taken from the following areas:

- 1. Professional identity function and ethics;
- 2. Theories of counseling and psychotherapy;
- 3. Theories of human behavior, learning, personality development;
- 4. Career development;
- 5. Appraisal, evaluation, and diagnostic procedures (to make a current diagnosis); and
- 6. Abnormal behavior.

(3) Pastoral counseling theory. This area shall include up to

twelve (12) semester hours distributed among the following:

(a) Basic pastoral care (crisis intervention, grief counseling, hospital ministry);

(b) History of pastoral care and counseling;

(c) Psychology of religion;

(d) Faith development;

(e) Pastoral theology;

(f) Theology of psychotherapy;

(g) Spiritual formation; and

(h) Clinical pastoral education.

(4) Specialized technical studies. This area shall include up to fifteen (15) semester hours including at least two (2), but not more than three (3) of the following areas:

(a) Psychodynamic psychotherapies;

(b) Marriage and family therapy;

(c) Humanistic psychotherapy;

(d) Jungian analytic psychotherapy;

(e) Cognitive therapy;

(f) Behavior therapy;

(g) Brief therapy; or

(h) Group therapy.

(5) A practicum, internship, or residency may be included in addition to academic courses not to exceed more than ten (10) hours.

NANCY L. BLACK, Director

MARK BRENGELMAN, Assistant Attorney General

APPROVED BY AGENCY: June 14, 1999

FILED WITH LRC: June 14, 1999 at 4 p.m.

PUBLIC HEARING: A public hearing on this proposed administrative regulation shall be held on July 23, 1999, at 3 p.m., local time, at the Division of Occupations and Professions, Berry Hill Annex, 700 Louisville Road, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by July 16, 1999, five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that dated, 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 this proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to: Nancy L. Black, Director, Division of Occupations and Professions, Post Office Box 1360, Frankfort, Kentucky 40602-1360, Phone: (502) 564-3296 ext. 224; Fax: (502) 564-4818.

**REGULATORY IMPACT ANALYSIS**

Contact person: Nancy L. Black

(1) Type and number of entities affected: Approximately 100 anticipated applicants for certification as a fee-based pastoral counselor.

(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: N/A

2. Second and subsequent years: N/A

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings: None

1. First year: N/A

2. Continuing costs or savings: N/A

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

(b) Reporting and paperwork requirements: N/A

(4) Assessment of anticipated effect on state and local reve-

nues: N/A

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Agency funds and annual 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: N/A

(b) Kentucky: N/A

(7) Assessment of alternative methods; reasons why alternatives were rejected: The agency has no alternative methods when it is required by statute to define the equivalent course of study necessary for applicants to obtain certification.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: N/A

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

(c) If detrimental effect would result, explain detrimental effect: The board would not be able to protect the public by ensuring that only qualified applicants obtained certification and maintained their certification in accord with statute.

(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. This regulation applies to all applicants and credential holders equally.

#### GENERAL GOVERNMENT CABINET

##### Board of Certification of Fee-Based Pastoral Counselors (New Administrative Regulation)

#### 201 KAR 38:040. Fees.

RELATES TO: KRS 335.620(1)

STATUTORY AUTHORITY: KRS 335.615(6); 335.620(1), (8)

NECESSITY, FUNCTION, AND CONFORMITY: This administrative regulation establishes the initial fee for certification, and the fee for taking the written examination, that KRS 335.620(1) and (8) authorizes the board to establish and approve by administrative regulation.

Section 1. Initial Certification Fee. (1) The initial fee for certification as a fee-based pastoral counselor shall be \$400.

(2) If an application for certification is denied, the board shall refund \$250 of the initial certification fee.

Section 2. Written Examination Fee. The fee for taking the written examination of the Pastoral Counselor Examination Board, the pastoral counselor examination, shall be \$200.

NANCY L. BLACK, Director

MARK BRENGELMAN, Assistant Attorney General

APPROVED BY AGENCY: June 14, 1999

FILED WITH LRC: June 14, 1999 at 4 p.m.

PUBLIC HEARING: A public hearing on this proposed administrative regulation shall be held on July 23, 1999, at 3 p.m., local time, at the Division of Occupations and Professions, Berry Hill Annex, 700 Louisville Road, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by July 16, 1999, five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that dated, 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 this proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed admin-

istrative regulation. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to: Nancy L. Black, Director, Division of Occupations and Professions, Post Office Box 1360, Frankfort, Kentucky 40602-1360, Phone: (502) 564-3296 ext. 224; Fax: (502) 564-4818.

#### REGULATORY IMPACT ANALYSIS

Contact person: Nancy L. Black

(1) Type and number of entities affected: Approximately 100 anticipated applicants for certification as a fee-based pastoral counselor.

(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: N/A

2. Second and subsequent years: N/A

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings: None

1. First year: N/A

2. Continuing costs or savings: N/A

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

(b) Reporting and paperwork requirements: N/A

(4) Assessment of anticipated effect on state and local revenues: N/A

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Agency funds and annual 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: N/A

(b) Kentucky: N/A

(7) Assessment of alternative methods; reasons why alternatives were rejected: The agency has no alternative methods when it is required by statute to set fees for the application for certification and initial certification period by the board.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: N/A

(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: The board would not be able to protect the public by ensuring that only qualified applicants obtained certification and maintained their certification in accord with statute.

(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. This regulation applies to all applicants and credential holders equally.

#### GENERAL GOVERNMENT CABINET

##### Board of Certification of Fee-Based Pastoral Counselors (New Administrative Regulation)

#### 201 KAR 38:050. Travel expenses of board members.

RELATES TO: KRS 335.615(6)

STATUTORY AUTHORITY: KRS 12.070(5); 335.615(2)

NECESSITY, FUNCTION, AND CONFORMITY: Board mem-

bers are required to function by a variety of tasks in fulfilling their duties. This administrative regulation outlines the actual and necessary expenses that members will receive when required to represent the board or attend its meetings.

Section 1. Each member of the board shall be entitled to receive reimbursement for travel in accord with 201 KAR 2:006 as deemed to be a state employee for attending each meeting of the board, proctoring licensure examinations, or otherwise representing the board.

NANCY L. BLACK, Director

MARK BRENGELMAN, Assistant Attorney General

APPROVED BY AGENCY: June 14, 1999

FILED WITH LRC: June 14, 1999 at 4 p.m.

PUBLIC HEARING: A public hearing on this proposed administrative regulation shall be held on July 23, 1999, at 3 p.m., local time, at the Division of Occupations and Professions, Berry Hill Annex, 700 Louisville Road, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by July 16, 1999, five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on this proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to: Nancy L. Black, Director, Division of Occupations and Professions, Post Office Box 1360, Frankfort, Kentucky 40602-1360, Phone: (502) 564-3296 ext. 224; Fax: (502) 564-4818.

#### REGULATORY IMPACT ANALYSIS

Contact person: Nancy L. Black

(1) Type and number of entities affected: Five individuals who serve as members of the Board of Certification of Fee-Based Pastoral Counselors.

(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: N/A

2. Second and subsequent years: N/A

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings: The board will be required to pay its members for travel expenses, lodging, and meals in accord with administrative regulation as authorized by statute when conducting business as a board member.

1. First year: Approximately \$1,500.

2. Continuing costs or savings: Approximately \$1,500.

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

(b) Reporting and paperwork requirements: Board members will have to complete a travel voucher for submission for payment of travel expenses.

(4) Assessment of anticipated effect on state and local revenues: N/A

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Agency funds and annual 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: N/A

(b) Kentucky: N/A

(7) Assessment of alternative methods; reasons why alternatives were rejected: The agency has no alternative methods when the authorizing statute does not define what are actual and necessary expenses.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: N/A

(b) State whether a detrimental effect on environment and public health would result if not implemented: 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: KRS 12.070(5)

(a) Necessity of proposed regulation if in conflict: KRS 12.070(5) is not in conflict because this emergency regulation only defines what are necessary and actual expenses.

(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. This regulation applies to all board members equally.

#### GENERAL GOVERNMENT CABINET

##### Board of Certification of Fee-Based Pastoral Counselors (New Administrative Regulation)

#### 201 KAR 38:060. Code of ethics.

RELATES TO: KRS 335.615(5)

STATUTORY AUTHORITY: KRS 335.615(5), (6)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 335.615(5) requires the board to promulgate a code of ethics for certified fee-based pastoral counselors. This administrative regulation establishes the required code of ethics.

Section 1. Definition. "Client" shall be a person who receives a counseling, psychotherapeutic, or other professional service from a fee-based pastoral counselor. A client shall be deemed to continue to be a client for a period of two (2) years following the last date of service rendered to that client.

Section 2. Responsibility to Clients. (1) A fee-based pastoral counselor shall:

(a) Advance and protect the welfare of his client;

(b) Respect the rights of persons seeking his assistance; and

(c) Make reasonable efforts to ensure that his services are used appropriately.

(2) A fee-based pastoral counselor shall not:

(a) Discriminate against or refuse professional service to anyone on the basis of race, gender, religion, national origin, or sexual orientations;

(b) Exploit the trust and dependency of a client;

(c) Engage in a dual relationship with a client, including a social, business, or personal relationship, that may:

1. Impair professional judgment;

2. Incur a risk of exploitation of the client; or

3. Otherwise violate a provision of this administrative regulation.

If a dual relationship cannot be avoided, and does not impair professional judgment, incur a risk of exploitation of the client, or otherwise violate a provision of this administrative regulation, a pastoral counselor shall take appropriate professional precautions to ensure that judgment is not impaired and exploitation of the client does not occur.

(d) Engage in a sexual relationship with a current client or with a former client for two (2) years following the termination of pastoral counseling;

(e) Use his professional relationship with a client to further his own interests;

(f) Continue pastoral counseling relationships unless it is reasonably clear that the client is benefiting from the relationship;

(g) Fail to assist a person in obtaining other pastoral counseling services if the pastoral counselor is unable or unwilling, for appropriate reasons, to provide professional help;

(h) Abandon or neglect a client in treatment without making reasonable arrangements for the continuation of treatment;

(i) Videotape, record, or permit third-party observation of pastoral counseling sessions without having first obtained written informed consent from the client;

(j) Engage in sexual or other harassment or exploitation of a client, student, trainee, supervisee, employee, colleague, research subject, or actual or potential witness or complainant in investigations and disciplinary investigations or proceedings by the board; or

(k) Diagnose, treat, or advise on problems outside the recognized boundaries of his competence.

Section 3. Confidentiality. (1) A fee-based pastoral counselor shall respect and guard the confidences of each individual client.

(2) Fee-based pastoral counselors shall not disclose a client confidence except:

(a) As mandated, or permitted by law;

(b) To prevent a clear and immediate danger to a person;

(c) If the pastoral counselor is a defendant in a civil, criminal, or disciplinary action arising from the pastoral counseling, confidences may be disclosed only in the course of that action; or

(d) If a waiver has been obtained in writing, confidential information shall be revealed only in accordance with the terms of the waiver. If more than one (1) person in a family receives pastoral counseling, unless a waiver is executed by each family member receiving pastoral counseling, who is legally competent to execute a waiver, a pastoral counselor shall not disclose information received from any family member.

(3) A pastoral counselor may use client or clinical materials in teaching, writing, and public presentations if:

(a) A written waiver has been obtained in accordance with subsection (2)(d) of this section; or

(b) Appropriate steps have been taken to protect client identity and confidentiality.

(4) A pastoral counselor shall store or dispose of client records so as to maintain confidentiality.

Section 4. Responsibility to a Student or Supervisee. (1) A fee-based pastoral counselor shall not exploit the trust and dependency of a student or supervisee.

(2) A fee-based pastoral counselor shall:

(a) Be aware of his influential position with respect to a student or supervisee; and

(b) Avoid exploiting the trust and dependency of these persons.

1. A pastoral counselor shall make every effort to avoid a dual relationship, including a social, business, or personal relationship, with a student or supervisee that may impair professional judgment or increase the risk of exploitation.

2. If a dual relationship cannot be avoided, a pastoral counselor shall take appropriate professional precautions to ensure judgment is not impaired and no exploitation occurs.

3. A pastoral counselor shall not provide pastoral counseling to a student, employee or supervisee.

4. A pastoral counselor shall not engage in sexual intimacy or contact with a student or supervisee.

(3) A pastoral counselor shall not permit a student or supervisee to perform or to hold himself out as competent to perform professional services beyond his level of training, experience, and competence.

(4) A pastoral counselor shall not disclose a student's or supervisee's confidence except:

(a) As mandated, or permitted by law;

(b) To prevent a clear and immediate danger to a person or persons;

(c) If the pastoral counselor is a defendant in a civil, criminal, or disciplinary action arising from the supervision, the student's or supervisee's confidence may be disclosed only in the course of that action;

(d) In educational or training settings if there are multiple supervisors, to other professional colleagues who share responsibility for

the training of the supervisee; or

(e) If there is a waiver previously obtained in writing, information shall be revealed only in accordance with the terms of the waiver.

Section 5. Financial Arrangements. (1) A pastoral counselor shall make financial arrangements with a client, third-party payer, or supervisee that are reasonably understandable and conform to accepted professional practices.

(2) A pastoral counselor shall:

(a) Not offer or accept payment for referrals;

(b) Not charge excessive fees for services;

(c) Disclose his fees to clients and supervisees at the beginning of services; or

(d) Represent facts truthfully to clients, third-party payers, and supervisees regarding services rendered.

Section 6. Advertising. A fee-based pastoral counselor shall:

(1) Accurately represent his education, training, and experience relevant to his practice of pastoral counseling;

(2) Not use professional identification, including a business card, office sign, letterhead, or telephone or association directory listing if it includes a statement or claim that is false, fraudulent, misleading, or deceptive.

(3) A statement shall be false, fraudulent, misleading, or deceptive if it:

(a) Contains a material misrepresentation of fact;

(b) Fails to state any material fact necessary to make the statement, in light of all circumstances, not misleading; or

(c) Is intended to or is likely to create an unjustified expectation.

Section 7. Professional Competence and Integrity. A pastoral counselor shall maintain standards of professional competence and integrity and shall be subject to disciplinary action as provided in KRS 335.635:

(1)(a) Conviction of a felony, or a misdemeanor involving moral turpitude, or a misdemeanor related to his practice as a pastoral counselor.

(b) Conviction shall include conviction based on:

1. A plea of no contest or an "Alford Plea"; or

2. The suspension or deferral of a sentence or conditional discharge.

(2) If his license or certificate to practice a health profession issued by another state's regulatory agency has been disciplined, or had a license or certificate to practice denied, by that state's regulatory agency;

(3) If his license or certificate to practice a health profession issued by another Kentucky regulatory agency has been disciplined or had a license or certificate to practice denied, by that Kentucky regulatory agency;

(4) Upon a showing of impairment due to mental or physical incapacity or the abuse of alcohol or other substances which may negatively impact the practice of pastoral counseling;

(5) If he misrepresented or concealed a material fact in obtaining a certificate or seeking reinstatement of a certificate, or seeking renewal of a certificate;

(6) If he has refused to comply with an order issued by the board; or

(7) He has failed to cooperate with the board by not:

(a) Furnishing in writing a complete explanation to an initiating complaint filed with the board;

(b) Appearing before the board or designated representatives of the board at the time and place designated;

(c) Properly responding to subpoenas issued by the board; or

(8) Violated any statutory or regulatory section of KRS Chapter 335.

NANCY L. BLACK, Director

MARK BRENGELMAN, Assistant Attorney General

APPROVED BY AGENCY: June 14, 1999

FILED WITH LRC: June 14, 1999 at 4 p.m.

PUBLIC HEARING: A public hearing on this proposed administrative regulation shall be held on July 23, 1999, at 3 p.m., local time, at the Division of Occupations and Professions, Berry Hill An-

nex, 700 Louisville Road, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by July 16, 1999, five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on this proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to: Nancy L. Black, Director, Division of Occupations and Professions, Post Office Box 1360, Frankfort, Kentucky 40602-1360, Phone: (502) 564-3296 ext. 224; Fax: (502) 564-4818.

#### REGULATORY IMPACT ANALYSIS

Contact person: Nancy L. Black

(1) Type and number of entities affected: Approximately 100 anticipated applicants for certification as a fee-based pastoral counselor.

(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: N/A

2. Second and subsequent years: N/A

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: N/A

2. Continuing costs or savings: N/A

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

(b) Reporting and paperwork requirements: None

(4) Assessment of anticipated effect on state and local revenues: N/A

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Agency funds and annual 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: N/A

(b) Kentucky: N/A

(7) Assessment of alternative methods; reasons why alternatives were rejected: The agency has no alternative methods when the authorizing statute requires the board to promulgate a code of ethics.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: N/A

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

(c) If detrimental effect would result, explain detrimental effect: The board would not be able to protect the public by ensuring that only qualified applicants obtained certification and maintained their certification in accord with statute.

(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. This regulation applies to all applicants equally.

#### TOURISM DEVELOPMENT CABINET Department of Fish and Wildlife Resources (New Administrative Regulation)

##### 301 KAR 1:400. Assessing fish kill damages.

RELATES TO: KRS 150.460(1), (3), 150.990(7)

STATUTORY AUTHORITY: KRS 150.990(7)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 150.460(1) and (3) make it illegal for a person to pollute the waters of the Commonwealth. KRS 150.990(7) makes a person who violates KRS 150.460 liable to the department in an amount not to exceed the value of any fish or wildlife killed or destroyed. This administrative regulation establishes the standard the department shall use to determine the replacement value of fish killed in pollution cases.

Section 1. The department shall use the American Fisheries Society Special Publication 24, "Investigation and Valuation of Fish Kills", to assess the replacement value of fish killed in violation of KRS 150.460(1) or (3).

Section 2. Incorporation by Reference. (1) The American Fisheries Society Special Publication 24: "Investigation and Valuation of Fish Kills", 1992 edition, is incorporated by reference.

(2) This material may be inspected, copied or obtained at the Department of Fish and Wildlife Resources, #1 Game Farm Road, Frankfort, Kentucky 40601 Monday through Friday, 8 a.m. until 4:30 p.m.

C. THOMAS BENNETT, Commissioner

MIKE BOATWRIGHT, Chairman

ANN R. LATTA, Secretary

DOUGLAS SCOTT PORTERS, Assistant Attorney General

APPROVED BY AGENCY: June 14, 1999

FILED WITH LRC: June 14, 1999 at 1 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on July 29, 1999 at 9 a.m. at the Department of Fish and Wildlife Resources in the Commission Room of the Arnold L. Mitchell Building, #1 Game Farm Road, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by July 22, 1999, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: John Wilson, Department of Fish and Wildlife Resources, Arnold L. Mitchell Building, #1 Game Farm Road, Frankfort, Kentucky 40601, (502) 564-4406, FAX (502) 564-6508.

#### REGULATORY IMPACT ANALYSIS

Contact Person: John Wilson

(1) Type and number of entities affected: Approximately

(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. This administrative regulation should have no impact on costs of living or employment.

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

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

1. First year following implementation: This administrative regu-

lation will not affect compliance, reporting or paperwork requirements.

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: This administrative regulation will create no additional direct or indirect costs or savings.

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

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: 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: 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 comments received. This administrative regulation will be implemented statewide.

(b) Kentucky: This amendment to an existing administrative regulation should have no negative or positive impact on Kentucky.

(7) Assessment of alternative methods; reasons why alternatives were rejected: KRS Chapter 13A requires that every standard or fee be implemented by administrative regulation. There are no alternatives to incorporating by reference into administrative regulation the monetary values fish for assessing damages in pollution-caused fish kills.

(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 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.

## JUSTICE CABINET

### (New Administrative Regulation)

#### 500 KAR 13:020. Internal Investigations Unit.

RELATES TO: KRS Chapter 15A

STATUTORY AUTHORITY: KRS 15A.160, *U.S. vs Commonwealth*, Civil Action No. 3:95 CV-7575

NECESSITY, FUNCTION, AND CONFORMITY: This administrative regulation establishes the procedures for investigations by the "Internal Investigations Unit" (hereinafter "IIU") Office of the Secretary. The "IIU" shall conduct investigations of all special incidents at all residential treatment and youth development centers, group homes, and detention centers operated by or contracted with the Department for Juvenile Justice and any other investigations within the cabinet as authorized by the Secretary of the Justice Cabinet.

Section 1. Definitions. (1) "Facility" means a group home, residential treatment or youth development center, or a detention center operated by or contracted with the Department of Juvenile Justice.

(2) "Founded" means that a special incident occurred:

(a) By an admission of the person responsible; or

(b) By a preponderance of the evidence.

(3) "Initiation" means any action by the Internal Investigations Unit intended to ensure the immediate safety of the alleged victim or to obtain evidence or information relevant to the investigation;

(4) "IIU" means Internal Investigation Unit, Office of the Secre-

tary, Justice Cabinet.

(5) "Perpetrator" means an individual employed or a volunteer at a facility against whom an allegation of a special incident has been founded by the Internal Investigations Unit.

(6) "Special incident" means an act in which the health or welfare of a resident is harmed or threatened with harm by a facility staff person. It includes but is not limited to incidents when a facility staff person:

(a) Uses inappropriate or excessive force that results in an injury.

(b) Uses inappropriate or excessive force that could result in an injury.

(c) Engages in any sexual activity to include any contact or interaction, which uses or allows, permits or encourages the use of a resident for the sexual gratification of the perpetrator or another person.

(d) Uses inappropriate consequences as punishment such as excessive exercise, harsh physical labor or other physical consequences outside accepted practices of the Department for Juvenile Justice.

(e) Uses or attempts to use a resident in the pursuit of the staff's own personal gain;

(f) Enters into a business relationship with a resident;

(g) Extends unearned special privileges to a resident in return for something done for staff.

(h) Accepts a bribe from a resident or indicate a bribe would be accepted.

(i) Enters any unlawful transaction with a youth as set forth in KRS 530.064, 530.065 and 530.070.

(j) Uses humiliating, demeaning, profane or racially charged language and/or gestures directed at a resident;

(k) Uses verbal threats of harm directed at a resident;

(l) Exhibits a pattern of harassing conduct directed at a resident;

(m) Does not provide appropriate supervision, medical care, food, clothing, shelter or education;

(n) Allows or encourages a resident to engage in an illegal activity such as use of drugs or alcohol or gambling.

(7) "Unfounded" means insufficient evidence was found to indicate that a special incident occurred.

Section 2. Receiving a Report. The Internal Investigations Unit (IIU) shall accept reports of special incidents involving residents in juvenile residential treatment and youth development centers, group homes and detention centers operated by or contracted with the Department of Juvenile Justice (DJJ).

(1) An 800 number shall be made available to all staff and residents in juvenile residential treatment and youth development centers, group homes, and detention centers to report special incidents. A voice mailbox system shall be available for reporting special incidents after normal work hours.

(2) The investigator shall attempt to elicit from the person reporting the special incident as much information about the incident as possible, including:

(a) The nature and extent of the special incident;

(b) The causes of the special incident;

(c) The location of the alleged victim;

(d) Any witnesses to the alleged special incident;

(e) The present danger to the alleged victim;

(f) The person responsible for the alleged special incident;

(g) The reporting person's identity and relationship to the victim.

(3) Anonymous reports which give sufficient information and allege a special incident shall be investigated.

Section 3. The IIU shall not investigate reports that do not meet the definition of a special incident. Such reports shall be referred to other appropriate resources.

Section 4. Reports of Suspected Special Incident. Following the receipt of the report, the IIU-2, Special Incident Reporting Form, herein incorporated by reference shall be completed and the report investigated. Investigations shall be conducted according to the following time frames:

(1) If the report indicates the resident is in imminent danger, the

investigation shall be initiated within one (1) hour and personal contact made with the alleged victim within twenty-four (24) hours;

(2) If the report does not indicate imminent danger, the investigation shall be initiated within twenty-four (24) hours and personal contact made with the victim within seventy-two (72) hours. Issues to be considered in determining how soon personal contact should be made include the nature of the allegation, how recently the alleged incident occurred and the measures taken by the facility to ensure the safety of the resident. Any deviation from the time frames shall require supervisory approval and be documented in the investigative file.

(3) If the report indicates that the victim is no longer in a residential treatment or youth development center, group home or detention center, the investigation shall be initiated within forty-eight (48) hours and every effort made to have personal contact with the victim within three (3) workdays. Unsuccessful efforts to make personal contact shall be documented in the investigative file.

(4) The time frames begin at the time the report is received by the IIU staff.

Section 5. Initial Investigation. After receiving a report of an alleged special incident the IIU investigator shall:

- (1) Complete the IIU-2.
- (2) Forward all alleged special incidents to local law enforcement or the Kentucky State Police and the local county attorney.
- (3) Notify the Commissioner of the Department of Juvenile Justice or designee of the report.
- (4) Interview the victim privately.
- (5) Interview the alleged perpetrator.
- (6) Interview appropriate witnesses.
- (7) Review documentation relevant to the incident.
- (8) Take possession of and preserve appropriate evidence.

Section 6: Determining the Validity of the Report. After the interviews and all the necessary information is gathered the investigator shall:

- (1) Complete a written report within thirty (30) days of receipt of the allegation unless there are extenuating circumstances which are documented. The report shall contain:
  - (a) The information gathered during the investigation;
  - (b) A recommendation regarding the validity of the allegation as founded or unfounded.
- (2) Submit the report through supervisory channels for review and approval.
- (3) Forward all completed investigations to the Commissioner of the Department of Juvenile Justice.
- (4) Forward all completed investigations that appear to meet the definition of an abused or neglected child in KRS 600.020 to the Cabinet for Families and Children.
- (5) Forward all completed investigations that are founded to the local county attorney.
- (6) Forward all completed investigations to the Juvenile Services Review Board as required by *U.S. v. Commonwealth No. 3:95-CV-7575*.
  - (a) The board shall make a determination of whether the facts support a finding that a special incident occurred; and
  - (b) The board shall recommend disciplinary action.
  - (c) The determination and recommendations by the board shall be forwarded to the Commissioner of the Department of Juvenile Justice.

ROBERT F. STEPHENS, Secretary  
BARBARA W. JONES, General Counsel

APPROVED BY AGENCY: June 7, 1999

FILED WITH LRC: June 8, 1999 at 4 p.m.

PUBLIC HEARING: A public hearing on this proposed administrative regulation shall be held on July 22, 1999 at 10 a.m., at 403 Wapping Street, 2nd Floor Bush Building, Frankfort, Kentucky in the Justice Cabinet's conference room. Individuals interested in being heard at this hearing shall notify this agency in writing by July 15, 1999, five working days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the

public. Any person who wishes to be heard will be given an opportunity to comment on this proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to: Barbara W. Jones, Justice Cabinet, 403 Wapping Street, 2nd Floor Bush Building, Frankfort, Kentucky 40601, phone: (502) 564-3279, Fax (502) 564-5244.

#### REGULATORY IMPACT ANALYSIS

Contact Person: Barbara W. Jones

(1) Type and number of entities affected: All juvenile residential treatment and youth development centers, group homes and juvenile detention centers operated by or contracted with the Department of Juvenile Justice, approximately 31 facilities.

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

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: None

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments are 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: None

(a) Direct and indirect costs or savings:

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements:

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

(5) Source of revenue to be used for implementation and enforcement of administrative regulation is the funds budgeted for this 1998 - 2000 biennium. General Fund Dollars

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

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

(b) Kentucky: All juvenile residential treatment and youth development centers, group homes and juvenile detention centers operated by or contracted with the Department of Juvenile Justice.

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

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: Regulation ensures prompt and thorough investigation of all alleged special incidents in juvenile residential treatment and youth development centers, group homes, and juvenile detention centers operated by or contracted with the Department of Juvenile Justice.

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

(c) If detrimental effect would result, explain detrimental effect: Failure to implement the regulation could result in residents not being adequately protected in relation to special incidents.

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: KRS 620.020, 620.030 and 620.040.

(a) Necessity of proposed regulation if in conflict: The regulation is not in conflict with the cited statutes, but there could be some overlap. The regulation is needed because the cited statutes do not adequately govern the special incidents that residents in residential treatment and youth development centers, group homes or juvenile detention centers may be subjected to.

(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: Was tiering applied: Yes

**EDUCATION, ARTS AND HUMANITIES CABINET**  
**Kentucky Board of Education**  
**Department of Education**  
**Bureau of Learning Support Services**  
**(New Administrative Regulation)**

**703 KAR 5:111. Repeal of 703 KAR 4:010, 703 KAR 3:060, 703 KAR 4:080, 703 KAR 4:090, and 703 KAR 4:100.**

RELATES TO: KRS 158.6453, 158.6455

STATUTORY AUTHORITY: KRS 156.070, 158.6453, 158.6455

NECESSITY, FUNCTION, AND CONFORMITY: KRS 158.6453 and 158.6455 necessitate new provisions of several assessment and accountability administrative regulations. Unlike other Kentucky Board of Education (KBE) administrative regulations that are reviewed by the Administrative Regulation Review Subcommittee (ARRS), KRS 158.647 and 158.6471 provide that assessment and accountability administrative regulations shall instead be reviewed by the Education, Assessment, and Accountability Review Subcommittee (EAARS). Legislature Research Commission staff requested that the KBE follow the procedure of repealing the existing administrative regulations, and then promulgating the revisions as new administrative regulations under 703 KAR Chapter 5 in order to automatically route those administrative regulations to EAARS instead of ARRS. As a result, the administrative regulations need to be repealed now that new administrative regulations have been promulgated by the KBE in 703 KAR Chapter 5 on these subjects.

Section 1. The following administrative regulations are hereby repealed:

- (1) 703 KAR 4:010, Formula for determining successful schools;
- (2) 703 KAR 3:060, Procedures for determining rewards and sanctions;
- (3) 703 KAR 4:080, Relating accountability index to school classification (A1-A6);
- (4) 703 KAR 4:090, School building and local district appeal of performance judgments; and
- (5) 703 KAR 4:100, Grade placement of assessment program components.

WILMER S. CODY, Commissioner

HELEN MOUNTJOY, Chairperson

KEVIN M. NOLAND, Attorney

APPROVED BY AGENCY: June 10, 1999

FILED WITH LRC: June 10, 1999 at 11 a.m.

PUBLIC HEARING: A public hearing on this proposed administrative regulation shall be held on July 23, 1999, at 10 a.m. in the State Board Room, First Floor, Capital Plaza Tower, 500 Mero Street, Frankfort, Kentucky. Individuals interested in being heard at this meeting shall notify this agency in writing by July 16, 1999, five working days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to Mr. Kevin M. Noland, Associate Commissioner, Office of Legal Services, Department of Education, 500 Mero Street, First Floor, Capital Plaza Tower, Frankfort, Kentucky, 40601, phone (502) 564-4474, fax (502) 564-9321.

**REGULATORY IMPACT ANALYSIS**

Agency Contact: C. Scott Trimble

- (1) Type and number of entities affected: 176 school districts.
- (2) Direct and indirect costs or saving to those affected: None
- (a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: None
- (b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: None
- (c) Compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition) for the:
  - 1. First year following implementation: None
  - 2. Second and subsequent years: None
- (3) Effects on the promulgating administrative body:
  - (a) Direct and indirect costs or savings:
    - 1. First year: None
    - 2. Continuing costs or savings: None
  - 3. Additional factors increasing or decreasing costs: None
- (b) Reporting and paperwork requirements: None
- (4) Assessment of anticipated effect on state and local revenues: None
- (5) Source of revenue to be used for implementation and enforcement of administrative regulation: None
- (6) To the extent available from public comments received, the economic impact, including effects of economic activities arising from administrative regulation on:
  - (a) Geographical area in which administrative regulation will be implemented: None
  - (b) Kentucky: None
- (7) Assessment of alternative methods; reasons why alternatives were rejected: None
- (8) Assessment of expected benefits:
  - (a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: None
  - (b) State whether a detrimental effect on environment and public health would result if not implemented: None
  - (c) If detrimental effect would occur, explain detrimental effect: None
- (9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping or duplicative: None
- (a) Necessity of proposed regulation, if in conflict: 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: Was tiering applied? No. Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all school districts.

**PUBLIC PROTECTION AND REGULATION CABINET**  
**Department of Mines and Minerals**  
**Division of Miner Training, Education and Certification**  
**(New Administrative Regulation)**

**805 KAR 7:090. Hazard training.**

RELATES TO: KRS 351.106, 352.350

STATUTORY AUTHORITY: KRS 13A.100, 351.070, 351.105

NECESSITY, FUNCTION, AND CONFORMITY: KRS 351.106 requires the Department of Mines and Minerals to oversee safety matters at mine sites, and KRS 352.350 allocates the immediate responsibility for safety matters at a mine site to the mine foreman. This administrative regulation promulgates a training program for visitors to mine sites.

Section 1. Surface. (1) Hazard training shall be provided by the licensee to visitors exposed to mine hazards.

- (2) Hazard training shall include:
  - (a) Hazard recognition and avoidance;
  - (b) Emergency procedures; and
  - (c) Other courses required by the commissioner.

Section 2. Underground. (1) Hazard training shall be provided by

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the licensee for visitors exposed to mine hazards.

(2) Persons subject to hazard training shall be accompanied at all times while underground by an experienced miner.

(3) Hazard training shall include:

- (a) Hazard recognition and avoidance;
- (b) Emergency and evacuation procedures;
- (c) Use of self-rescuer and respiratory devices; and
- (d) Other courses required by the commissioner.

Section 3. Training shall be documented. This training shall be valid for a period of twelve (12) months and for only the mine where the hazard training was provided.

JOHN L. FRANKLIN, Commissioner, Chairman

RONALD B. MCCLOUD, Secretary

STEPHAN L. TAYLOR, General Counsel

APPROVED BY AGENCY: June 14, 1999

FILED WITH LRC: June 15, 1999 at 9 a.m.

**PUBLIC HEARING:** A public hearing on this proposed amendment shall be held on Tuesday, July 27, 1999 at 1 p.m., prevailing local time, in the first floor hearing room of the Department of Mines and Minerals, 1025 Capital Center Drive, Suite 201, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by July 20, 1999, five working days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed amendment. 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 amendment. Send written notification of intent to be heard at the public hearing or written comments on the proposed amendment to the contact person.

**CONTACT PERSON:** Stephan L. Taylor, General Counsel, Kentucky Department of Mines and Minerals, Post Office Box 2244, Frankfort, Kentucky 40602-2244, Telephone (502) 573-0140, Fax (502) 573-0152.

### REGULATORY IMPACT ANALYSIS

Contact Person: Hon. Stephan L. Taylor, General Counsel

(1) This regulation affects 20,000 coal miners and 541 coal operation in the Commonwealth of Kentucky.

(2) There are no financial costs or savings created by this regulation; no increase in paperwork is required and there will be no increase in the cost of doing business as a result of this regulation.

(3) This regulation will not affect the work of the Department of Mines and Minerals.

(4) This regulation will not affect state or local revenues.

(5) The regular budget of the Department of Mines and Minerals will suffice for the implementation and enforcement of this regulation.

(6) No public comments have been offered on this regulation. There will be no economic impact arising from this regulation.

(7) No alternative approaches to the problems addressed by this regulation exist. Miners need and are required to have training in the safe performance of their jobs. This regulation effects that training.

(8) This regulation will improve the ability of miners to do their jobs more safely, thereby reducing injuries and fatalities. To that extent failing to promulgate this regulation will be detrimental to miner safety.

(9) There is no statute, administrative regulation, or governmental policy with which this regulation conflicts, overlaps, or duplicates.

(10) The requirements of this regulation enhance the ability of a coal miner to do his job well, but also in greater confidence of being alive at the end of his shift. Better and more efficient training, such as is effected by this regulation, are the keys to reducing deaths and serious injuries in the coal mining industry.

(11) Tiering is not applied because all visitors need the training established by this regulation. Safety issues cross all classes of visitors and the training must be applied to everyone similarly.

## PUBLIC PROTECTION AND REGULATION CABINET Department of Charitable Gaming (New Administrative Regulation)

### 820 KAR 1:081. Repeal of 820 KAR 1:080, Charity fundraising event.

RELATES TO: KRS 238.505(8), 238.535(1), (c), 238.545(1), (c)  
STATUTORY AUTHORITY: KRS 238.505(8), 238.515(2), (9), 238.535

**NECESSITY, FUNCTION, AND CONFORMITY:** 820 KAR 1:080 is no longer required because the administrative regulation has become unnecessary and is contrary to changes to KRS Chapter 238 made by House Bill 263.

Section 1. 820 KAR 1:080, Charity fundraising event, is hereby repealed.

RONALD B. MCCLOUD, Secretary

RAY FRANKLIN, Commissioner

SCOTT JONES, General Counsel

APPROVED BY AGENCY: June 15, 1999

FILED WITH LRC: June 15, 1999 at 11 a.m.

**PUBLIC HEARING:** A public hearing on this administrative regulation shall be held on Wednesday, July 21, 1999, at 1 p.m. at the Farnham Dudgeon Civic Center (Meeting Room), Mero Street, Frankfort, Kentucky 40601. Individuals interested in attending this hearing shall notify this agency in writing by July 14, 1999, five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on this administrative regulation. Any disabled person desiring to attend or participate in this public hearing will be provided reasonable accommodation, if requested, at the time of notification of intent to attend. A transcript of the public hearing will not be made unless a written request for a transcript is made, with cost therefore to be borne by the requesting party. If you do not wish to attend the public hearing, you may submit comments on this administrative regulation by July 21, 1999. Send written notification to attend the public hearing or comments on this administrative regulation to: Department of Charitable Gaming, Public Protection and Regulation Cabinet, Attn: Scott Jones, General Counsel, 403 Wapping Street, Bush Building, Suite 100, Frankfort, Kentucky 40601-2639, PH: (502) 564-5528, FAX: (502) 564-6625.

### REGULATORY IMPACT ANALYSIS

Contact Person: Scott Jones

(1) Type and number of entities affected: All licensed manufacturers (currently 22), licensed distributors (currently 48), licensed facilities (currently 66), licensed charitable organizations (currently 759).

(2) Direct and indirect costs or savings on the: None

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: Not applicable.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: Not applicable.

(c) Compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition) for the: None

1. First year following implementation: Not applicable.

2. Second year and subsequent years: Not applicable.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings: None

1. First year: Not applicable.

2. Continuing costs or savings: Not applicable.

3. Additional factors increasing or decreasing costs: Not applicable.

(b) Reporting and paperwork requirements: Not applicable.

(4) Assessment of anticipated effect on state and local revenue:

nues: Not applicable.

(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: None

(a) Geographical area in which the administrative regulation will be implemented: Not applicable.

(b) Kentucky: Not applicable.

(7) Assessment of alternative methods; reasons why alternatives were rejected: Not applicable.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: Not applicable.

(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: Not applicable.

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

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

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

(10) Any additional information or comments: None

(11) TIERING: Is tiering applied? KRS 238.545 does not authorize tiering; the statute applies to all licensed organizations.

**CABINET FOR FAMILIES AND CHILDREN**  
**Department for Community-Based Services**  
**Division of Policy Development**  
**(New Administrative Regulation)**

**922 KAR 1:130. Kinship Care Program.**

RELATES TO: KRS 194B.050(1), 205.200(2), (3), 605.120(4), 42 USC 601 et. seq.

STATUTORY AUTHORITY: KRS 194B.050(1), 205.200(2), (3), 605.120(4), 42 USC 601 et seq., EO 98-731

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194B.050(1) requires the Secretary of the Cabinet for Families and Children to promulgate administrative regulations necessary to operate programs and fulfill responsibilities vested in the Cabinet for Families and Children. This administrative regulation sets forth the development of the Kinship Care Program in Kentucky.

Section 1. Establishing the Program. (1) The Kinship Program shall serve a child who is:

(a) In need of protection and unable to remain in his parental home;

(b) Removed from his parental home for a protection issue;

(c) In a placement with a caring relative that has been determined to be a preferable and viable alternative to placement with a nonrelative by the Cabinet for Families and Children;

(d) At risk of commitment to the Cabinet for Families and Children due to abuse or neglect;

(e) Currently in a nonrelative foster care placement; or

(f) In a child-only Kentucky Transitional Assistance Program (K-TAP) case, with a prior protection case on record and the relative placement arranged by the cabinet.

(2) This program shall provide:

(a) Financial assistance; and

(b) A case-management service to each nonparental relative caring for the child in his home.

Section 2. Program Requirement. (1) A relative whose home is being considered for placement of a child shall:

(a) Receive an approved home evaluation by Cabinet for Families and Children staff;

(b) Pass a criminal record check;

(c) Be free of a substantiated child or adult abuse or neglect report; and

(d) If there has been a conviction or substantiation on a charge other than minor traffic offenses, provide evidence of rehabilitation by submitting a statement from an appropriate justice agency attesting to the individual's rehabilitation and a character reference from a person with good standing in the community, not a relative or close friend, and from the employer, who are aware of the conviction and who can attest to the person's behavior since the conviction. Permission to proceed shall be given by the service region administrator or designee.

(2) Upon completion of the requirement listed in subsection (1) of this section, the relative shall enter into a written agreement with the Cabinet for Families and Children that shall detail the responsibility and commitment of the:

(a) Relative as a caretaker of the child; and

(b) Department for Community-Based Services, Division of Protection and Permanency, regarding the placement of the child within the home of the relative.

(3) The responsibility of the relative shall include:

(a) Cooperation in a child support activity pursuant to 42 USC 608(a)(2); and

(b) Participation in an annual eligibility review pursuant to 921 KAR 2:040, Section 2(2)(c).

(4) The Cabinet for Families and Children shall recommend to the court that the caretaker relative be granted temporary custody of the child.

(5) The Cabinet for Families and Children shall review the placement after a twelve (12) month period. This review shall lead to a cabinet recommendation regarding permanent custody or guardianship.

Section 3. The Pilot Program. (1) Beginning October 1, 1999, the cabinet shall make available in a selected area, the Kinship Care Program.

(2) Placement of a child or sibling group shall be made in a selected pilot county.

(3) After placement, if a caretaker relative changes his residence to a county not included in the selected pilot area, assistance shall continue through coordination of designated staff between the:

(a) Selected pilot county; and

(b) New county of residence.

(4) The cabinet shall expand the Kinship Care Program, to the extent funding shall be available, until statewide implementation is completed.

Section 4. Financial and Eligibility Criteria. (1) The monthly payment scale and income limit shall be as follows:

Number of Eligible Children	Monthly Payment
1 Child	\$ 300
2 Children	\$ 600
3 Children	\$ 900
4 Children	\$1,200
5 Children	\$1,500
6 or More Children	1,800

(2) The resource limit and countable resources of the child shall be the same as a K-TAP child pursuant to 904 KAR 2:016, Section 2.

(3) Except for the income limit in subsection (1) of this section, countable income of the child shall be the same as a K-TAP child pursuant to 904 KAR 2:016, Section 4(3).

(4) The child shall meet technical eligibility requirements pursuant to 904 KAR 2:006.

(5) The child's eligibility for payment shall be ongoing until the child:

(a) Leaves the home of the relative; or

(b) Has attained the age of nineteen (19) and is no longer a full-time student in:

1. Elementary school;

2. Secondary school; or

3. An equivalent level of vocational or technical school.

(6) A start-up cost amount shall be provided that equals a total amount for a sibling group, calculated as the number of children multiplied by \$500. The provision of this one (1) time start-up cost amount shall assist each child in getting established in the home for

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any immediate need related to:

- (a) Clothing;
- (b) A school supply;
- (c) Additional furniture;
- (d) A deposit for a larger apartment; or
- (e) Any other need falling into this category, as determined by the Cabinet for Families and Children.
- (7) A caretaker relative shall be excluded from the case.
- (8) Income or resources of the caretaker relative shall be disregarded.

Section 5. Support Services. (1) The Cabinet for Families and Children shall make available to the caretaker relative on a case-by-case basis:

- (a) A child care subsidy pursuant to 922 KAR 2:160; and
- (b) Respite child care.
- (2) Family counseling shall be provided to the child and caretaker relative, if needed, as determined by the cabinet.
- (3) Referral to an available support group shall be provided for the caretaker relative.
- (4) A case-management service shall be supplied to the caretaker relative and child through the Cabinet for Families and Children for a minimal period of twelve (12) months.
- (5) The caretaker relative shall be referred to available parenting training.

DIETRA PARIS, Commissioner

VIOLA MILLER, Secretary

CHARLES P. LAWRENCE, Attorney

APPROVED BY AGENCY: June 14, 1999

FILED WITH LRC: June 15, 1999 at noon

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on July 21, 1999 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 July 14, 1999, 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: Judy Trigg, Cabinet for Families and Children, Office of the General Counsel, 275 East Main Street - 4th Floor West, Frankfort, Kentucky 40621, (502) 564-7900, (502) 564-7573 (Fax).

### REGULATORY IMPACT ANALYSIS

Agency Contact: Cathy G. Mobley

(1) Type and number of entities affected: The type and number of entities affected are children who may be benefited by the implementation of a pilot program for the purpose of kinship care as an alternative to foster care or other nonrelative care.

(a) It is estimated that the pilot program will impact 460 children who will transition from existing TANF cases and 328 children who will be transitioned from existing foster home placements.

(b) It is estimated the for the first full year of statewide implementation, 1,643 children will be transitioned from existing TANF cases and 962 children who will be transitioned from existing foster home placements.

(2) Direct and indirect costs or savings to those affected:

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comment received. No public hearing was requested as a result of the Notice of Intent being published and no written or verbal comments were received. To be determined after the hearing on this ordinary 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 comment received. Implementation of this regulation will not affect the cost of doing business in the areas served. No public hearing was requested as a result of the Notice of Intent being published and no written or verbal comments were received. To be determined after the hearing on this ordinary regulation.

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

1. First year following implementation: There are no first year compliance, reporting or paperwork requirements.

2. Second and subsequent years: There are no second or subsequent year additional compliance, reporting or paperwork requirements.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: The maximum estimated cost for the first year of the pilot program is \$1,884,800. Sources of revenue are:

\$23,600 from IV-E federal funds;  
\$1,753,600 from TANF federal funds; and  
\$107,600 from general state funds.

2. Continuing costs or savings: The maximum estimated cost for the first full year of statewide implementation is \$8,323,300. Sources of revenue are:

\$226,800 from IV-E Federal Funds;  
\$7,063,300 from TANF Federal Funds; and  
\$1,033,200 from General State Funds.

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: No additional requirements necessary.

(4) Assessment of anticipated effect on state and local revenues: The anticipated effect on state revenues is listed in Section 3(a)1 and 2 of this document as the amount originating from the general state funds. There is no effect of local revenues.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Sources of revenue used to implement this administrative regulation include IV-E federal funds, TANF federal funds and general state funds.

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

(a) Geographical area in which administrative regulation will be implemented: A public hearing was not requested as a result of the Notice of Intent being published and no written or verbal comments were received. To be determined after the public hearing on this ordinary regulation.

(b) Kentucky: A public hearing was not requested as a result of the Notice of Intent being published and no written or verbal comments were received. To be determined after the public hearing on this ordinary 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: 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

(10) Any additional information or comments: None

(11) TIERING: Is tiering applied? Yes. This administrative regulation will be using tiering for the first year of implementation, as a pilot program is will be implementing in 3 separate counties, treating the children effected by FCAP differently than those children who do not reside in the pilot counties. Tiering is not appropriate in this regulation after the program is implemented statewide, estimated to become effective July 1, 2000, because the administrative regulation applies equally to all of those individuals or entities regulated by it when it is implemented statewide.

### FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate.

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42 USC 601(a)

2. State compliance standards. KRS 205.200(2); 605.120(4)

3. Minimum or uniform standards contained in the federal mandate. The increase of flexibility of states in operating a program designed to provide assistance to needy families so that children may be cared for in their own homes or in the homes of relatives.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate. No

5. Justification for the imposition of the stricter standards, or additional or different responsibilities or requirements. None

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ADMINISTRATIVE REGULATION REVIEW SUBCOMMITTEE  
Minutes of June 8, 1999

The June meeting of the Administrative Regulation Review Subcommittee was held on Tuesday, June 8, 1999 at 10:30 a.m. in Room 149 of the Capitol Annex. Representative John Arnold, Chairman, called the meeting to order, and the roll call was taken. The minutes of the May 11, 1999 meeting were approved.

Present were:

**Members:** John Arnold, Chairman; Senators Marshall Long, Joey Pendleton and Dick Roeding; Representatives James Bruce and Woody Allen.

**LRC Staff:** Gregory Karambellas, Donna Little, Stephen Lynn, Susan Wunderlich, Angela Phillips, Donna Valencia, Susan Eastman, Edna Lowery, Ellen Benzing, Biff Baker, Sheila Hardy.

**Guests:** Kim Blitch, Office of Financial Management and Economic Analysis; Pam Johnson, William P. Hanes, Kentucky Retirement Systems; Pat Miller, Kentucky Teachers' Retirement System; Donna Early, Judicial/Legislators Retirement; Roy Grimes, John Wilson, David C. Yancy, Tom Bennett, Department of Fish and Wildlife Resources; Mark Mangeot, Gerry Ennis, Millie Ellis, Diana Andrews, Ken Hines, Natural Resources and Environmental Protection Cabinet; Jack Damron, Brenda Priestley, Department of Corrections; Barbara W. Jones, Justice Cabinet; Stephanie c. Bingham, John Bizzack, Kenneth D. Schwendeman, Bernie Thompson, Greg Howard, Jeff Burns, Department of Criminal Justice Training; Ed Monahan, Gail Robinson, Department of Public Advocacy; Ray DeBolt, Department Juvenile Justice; Charlie Harmon, Transportation Cabinet; Thella M. Helmbrecht, Harlan Stubbs, Jr., Sarah M. Jackson, Department for Adult Education and Literacy; Virginia V. Davis, Rick Johnstone, Rebecca Goodman, Gordon Goad, Alcoholic Beverage Control; Louis Kurtz, Ralph Von Derau, Danise Newton, Karen Doyle, Trish Howard, Nora McCormick, D. W. Swain, Martha B. Graves, Cabinet for Health Services; Cookie Whitehouse, Jules W. Delambre, Lane Kemp, Rosanne Barkley, Thelma Cornett, Cabinet for Families and Children; Robert L. Barnett, Jr., Kentucky Pharmacists Association; Ted Bradshaw, IIAK; Larry Ball, Kentucky Law Enforcement Council; Rod Maggard, Kentucky Association of Chiefs of Police; Joey King, Hazard Police, Carl Bee, Ruben L. Gardner, Elizabethtown Police Department; Bart Baldwin, Children's Alliance; Mike Helton, KPMA; Ruth Jeffers, Jimmy C. Jeffers, RTA; Ruby Joe Cummins, KAHCF; Mack Bushart; Wesley Bradford, Sturgis Chief of Police; Jim Carlross, Kentucky Association of Realtors.

**The Subcommittee determined that the following administrative regulation, as amended by the promulgating agency and the Subcommittee, did not comply with statutory authority:**

**Department of Alcoholic Beverage Control: Licensing**

804 KAR 4:210. Supplemental bar license. Rick Johnston, Commissioner, and Rebecca Goodman, General Counsel, represented the Department.

Subcommittee staff stated that this administrative regulation was deficient, because: (1) the Department did not have the authority to: (a) require payment for the first five (5) supplemental licenses; and (b) issue subsequent licenses without charge to an applicant; and (2) because the alcohol licensing statutes permitted a licensee to apply for more than one (1) type of license, the Department did not have the authority to limit a licensee's application to a certain type of license.

In response to a question from Representative Bruce, Mr. Johnston stated that: (1) there were many changes in the Alcoholic Beverage Control ("ABC") laws during the 1998 Regular Session of the General Assembly; (2) one change in the law was a fee adjustment, because the fees were not high enough to support the agency's work; (3) one of the problems he faced when he became Commissioner was businesses having the wrong type of alcoholic beverage license; (4) an issue arose with licensing large facilities like airports, racetracks, and convention centers; (5) these were usually looked at differently because of the way they conducted business; (6) many more licensees were become big facilities; (7) a

business must qualify for a basic license; (8) if the business had additional bars, it would be charged for a supplemental bar license; (9) in administering the license laws, the Department found that licenses were costing licensees twice or more what it cost in the past; (10) the intent of the Department was not to cause financial hardship or run a licensee out of business; (11) as the Department attempted to correct the problem of licensees having the wrong license, licensees were promised that in making corrections, the Department would not make a detrimental financial impact on their business; (12) the state license fees for some of the big facilities had increased as much as eight times from what it had been prior to the changes; (13) facilities felt that was unfair and he agreed; (14) Churchill Downs has a racetrack license that costs \$2,000, with a Sunday sales license that costs an additional \$2,000; (15) there were multiple bars at Churchill Downs; (16) other big facilities in Louisville and Northern Kentucky paid as much as \$16,000 to 17,000; (17) for competitive reasons, the Department did not like to charge a licensee a huge amount of money; (18) the Department's intent in promulgating this administrative regulation was to give some relief to a supplemental licensee after he had bought a certain number of licenses; (19) the big licensees would still be paying more than other designated licensees, like racetracks; (20) KRS 243.030(40) provided that the Department could issue special licenses; (21) the Department did not want to issue a special license, because it already had over sixty special licenses which it wanted to reduce to ten licenses; (22) KRS 243.030(40) authorized the Board to promulgate any administrative regulation necessary for the control of the larger licensees; (23) KRS 261.060(2) authorized the Board to limit, in its sound discretion, the number of licenses of each kind or class may be issued; (24) KRS 241.060(1) authorized the Board to promulgate administrative regulations relative to all matters over which they had jurisdiction; (25) the Board believed that they had jurisdiction over the multiple licenses.

Representative Bruce stated that he thought the Department would have to amend the statutes to authorize it not to charge for a supplemental license.

Subcommittee staff stated that this administrative regulation did not comply with statutory authority, because: (1) this administrative regulation amended the statute; (2) KRS 243.030(8) provided for specific retail drink license fees of: (a) \$1,000 for a county containing a first class city; (b) \$700 for a county containing a second class city; (c) \$600 for a county containing a third class city; and (d) \$500 for a county containing a 4<sup>th</sup> class city; (3) the Department did not have the authority to waive a license fee; (4) the broad statutory authority cited by the Department could not authorize amending the statute; (5) if a statute granted an agency broad authority to implement the statute, the agency was not authorized to amend, alter, or determine not to comply with the statute; (6) the Department should request the General Assembly to amend the statute to authorize waiving the supplemental license fee; (7) KRS 243.030(40) applied to other special licenses; (8) the Department could not amend the statute through the establishment of another special license; and (9) the issue was what the General Assembly had authorized by statute, not whether what the Department was doing was a good thing.

Senator Long stated that, while he thought what the Department was trying to do was right, he thought that it would have to change the supplemental license fees by statute in the next Regular Session.

Subcommittee staff stated that: (1) if the administrative regulation was found deficient, it would ensure that it expired at the end of the next Regular Session unless legislation was enacted; (2) that would give the Department the opportunity to get a legislator to sponsor a bill amending the statute; (3) if the Department wanted specific exemptions, they should be provided in the legislation.

Mr. Johnston stated that: (1) it was the Department's responsibility to enforce the alcoholic beverage laws; (2) he did not violate the law to do that; (3) he also did not want to put a licensee out of business.

The Subcommittee unanimously approved a motion by Senator Long, seconded by Senator Roeding, to find 804 KAR 4:210, as amended, deficient.

Subcommittee staff stated that: (1) since this amended administrative regulation was found deficient, it would be suspended until the Governor determined whether it should become effective; (2) after the Governor made his decision and notified the Regulations Compiler, the administrative regulation would go into effect, and remain in effect until *sine die* adjournment of the next Regular Session in July, 2000.

This administrative regulation was amended as follows: (1) the RELATES TO and STATUTORY AUTHORITY paragraph were amended to correct statutory citations; (2) the NECESSITY, FUNCTION, AND CONFORMITY paragraph was amended to clearly state the necessity for and function served by this administrative regulation, as required by KRS 13A.220(3)(f); (3) a new Section 2 was created to incorporate by reference the "Application for Supplemental Bar License"; and (4) Section 1(1) was amended to comply with the drafting requirements of KRS 13A.222(4).

**The Subcommittee determined that the following administrative regulations, as amended by the promulgating agency and the Subcommittee, complied with statutory requirements:**

**Finance and Administration Cabinet: Underwriter and Bond Counsel Selection Process**

200 KAR 21:010 & E. Procedure for prequalification of underwriters and bond counsel for state bond issues. Kim Blitch, Financial Analyst, represented the Office.

In response to questions by Senator Roeding, Ms. Blitch stated that: (1) the emergency regulation was required to allow the Office to issue recent requests for qualifications; (2) a firm had to be prequalified before the issuance of a request for proposals, because only qualified firms were authorized to respond to a request for proposals; (3) firms were notified by mail of their prequalification status; (4) firms: (a) were familiar with the information required; and (b) had not previously objected to the experience requirements; and (5) the cost to people doing business with Kentucky would be lower, because these firms would go through the process every two years, rather than every year.

In response to questions by Senator Roeding, Subcommittee staff stated that the amendment prepared by Subcommittee staff: (1) clarified previously unclear terms; (2) amended Section 2 to correct grammatical problems; and (3) addressed the issues that had been raised in the Initial Staff Review.

In response to a question by Representative Bruce, Ms. Blitch stated that: (1) this administrative regulation was amended to: (a) change the interval between prequalification periods from one to two years, in accordance with House Bill 392, which was enacted during the 1998 Regular Session of the General Assembly; (b) conform with the requirements of KRS Chapter 13A; and (c) authorize a firm to prequalify during the interim, if needed; (2) firms supported the change, because it was less of a burden to qualify biennially rather than annually; and (3) the amendment would not make it harder for a firm to qualify.

This administrative regulation was amended as follows: (1) the STATUTORY AUTHORITY and NECESSITY, FUNCTION, AND CONFORMITY paragraphs were amended to correct a statutory citation; (2) Sections 1 through 5 were amended to comply with the drafting requirements of KRS 13A.222(4); and (3) Section 2 was amended to specify the information required to be submitted regarding a firm's experience.

200 KAR 21:030. Calculating the preference for Kentucky bond counsel firms for state bond issues. In response to a question by Senator Roeding, Subcommittee staff stated that the term, "preference handicap": (1) had been used in the Initial Staff Review, to summarize the statutory provisions; and (2) was not used in this administrative regulation.

In response to a question by Senator Roeding, Ms. Blitch stated that: (1) the preference calculation: (a) was based on many factors, including fees and experience; and (b) did not work to the disadvantage of Kentucky firms; and (2) if another state asked if Kentucky gave preference to in-state firms, it would give preference to its in-

state firms.

Representative Bruce stated that: (1) the Finance Cabinet was not consistent, because the Cabinet deposited its money out-of-state with non-Kentucky banks for a quarter of a percent higher interest; and (2) he had a bill that would correct this inconsistency.

This administrative regulation was amended as follows: (1) the RELATES TO, STATUTORY AUTHORITY, and NECESSITY, FUNCTION, AND CONFORMITY paragraphs were amended to correct a statutory citation; (2) the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Section 1 were amended to comply with the drafting requirements of KRS 13A.222(4); and (3) Section 1(2) was amended to specify the time period for a state to respond to a request for preference information.

**Tourism Development Cabinet: Department of Fish and Wildlife Resources: Game**

301 KAR 2:049. Small game and furbearer hunting on public areas. Tom Bennett, Commissioner, and Roy Grimes, Director of the Division of Wildlife, represented the Department.

In response to questions by Chairman Arnold, Mr. Grimes stated that: (1) the Department had: (a) accounted for all of the collared elk; and (b) recaptured one of the elk last week in Wolfe County; and (2) the elk had: (a) been darted and relocated to the elk release area; and (b) fallen in love with a domestic cow.

In response to questions by Chairman Arnold, Mr. Bennett stated that: (1) Kentucky was part of a seven state study to determine the grouse population throughout the Appalachian range; (2) this administrative regulation closed the Yatesville Wildlife Management Area to grouse hunting for three years to permit the Department to study whether hunting had an adverse impact on the grouse population; (3) the Department would: (a) open five other areas to grouse hunting to compensate for the loss of the Yatesville Wildlife Management Area; and (b) have four times as much land available for grouse hunting; and (4) the Eastern part of Kentucky was the primary area for grouse hunting.

In response to a question by Chairman Arnold, Mr. Grimes stated that: (1) the Department did permit grouse hunting in the Tradewater and Pennyrite areas; and (2) there was a low population of grouse in the land between the lakes area, because: (a) the timber in that area was too old; and (b) grouse required a forest that was 10 years old or younger to raise their young.

Mr. Bennett stated that the Department would: (1) be doing another stocking of grouse in the Hart and Ohio County area; and (2) monitor that area very close.

This administrative regulation was amended as follows: (1) Section 2(5) relating to unleashed dogs was deleted; and (2) Section 2(5)(a) was amended to establish dates for deer quota hunt on Taylorsville Lake WMA.

301 KAR 2:178. Deer hunting on wildlife management areas. In response to questions by Senator Roeding, Mr. Bennett stated that: (1) the Department's wildlife management areas had established: (a) hunts; and (b) a set number of hunters who would be allowed to enter the WMA to hunt; (2) because the number of applicants exceeded the opportunities: (a) the Department: 1. entered applicants' names into a computer; and 2. randomly drew names; and (b) if an applicant's name was drawn, the applicant was permitted to hunt on the WMA; and (3) the \$3.00 fee was an administrative handling fee.

This administrative regulation was amended as follows: (1) Section 2(4)(a)1. was amended to include Adair and Barren River WMA in areas where taking more than one deer was prohibited; (2) Section 2(4)(a)2. was amended to substitute Stewart Island for Dewey Lake WMA; (3) Section 2(4)(b)2. was amended to add Dewey Lake WMA to the areas where taking more than two deer was prohibited; (4) a new Section 3(12) was created to prohibit eligibility for the following year's quota hunt to anyone who failed to check out before 8:00 p.m.; (5) Section 4(8) was amended to establish the deer hunting requirements of Cyprus AMAX-Robinson Forest WMA; (6) Sections 4(12) and 4(25) were amended to delete the 6:00 p.m. checkout time; and (7) Section 4 was amended to comply with the drafting requirements of KRS 13A.222(4).

301 KAR 2:179. State park deer hunts. In response to questions by Representative Allen, Mr. Bennett stated that: (1) Kentucky had more than 50,000 people who had a disability license; (2) these

licenses were established by House Bill 654, enacted during the 1998 Regular Session of the General Assembly; (3) some of the 50,000 people: (a) were 100% disabled; and (b) had the ability to apply for a special hunt; (4) the Department provided an opportunity for wheelchair hunters to hunt at the Taylorsville Lake State Park; (5) the disabled hunters: (a) were in a wheelchair; or (b) had some other type of disability that required some assistance to hunt; (6) not all the people that had a disabled hunting license needed assistance; (7) to obtain a disabled hunting license, House Bill 654 required a person to provide certification that he was: (a) 100% disabled by Social Security; (b) 100% disabled by Worker's Compensation; (c) 100% disabled from the Railroad; or (d) 50% or more military disabled; and (8) a disabled hunter paid \$5.00 for a hunting license, which included deer, turkey, and waterfowl stamps.

In response to a question by Chairman Arnold, Mr. Bennett stated that: (1) there were six state park hunting areas; (2) Taylorsville State Park: (a) was the only disability specific hunt; (b) provided the most accessibility to mobility impaired hunters; and (c) had twenty-five hunting slots; and (3) the remaining state parks were quota hunts which would be managed under the normal quota hunt process.

In response to a question by Representative Bruce, Mr. Bennett stated that there would be a new quota hunt for Lake Barkley State Park this year.

This administrative regulation was amended as follows: (1) Section 1(1)(b) was amended to permit the taking of antlerless deer at Taylorsville Lake State Park by disabled persons; (2) a new Section 1(2)(c) was created to require a person hunting at Lake Cumberland State Resort Park to stay in their assigned area; (3) Section 3(3)(b) was amended to exempt a senior/disabled hunter from showing a valid hunting license; (4) Section 6(1)(c) was amended to require checkout by 6:00 p.m.; and (5) Section 1(2) was amended to comply with the drafting requirements of KRS 13A.222(4).

#### **Department of Fish and Wildlife Resources: Water Patrol**

301 KAR 6:060. Safe boating certification. In response to questions by Chairman Arnold, Mr. Bennett stated that: (1) he received a report that morning that the Department had certified more than 4,300 young people; (2) the Department was very pleased with the first efforts; (3) he would provide each Subcommittee member with a copy of current testing sites in each county; and (4) the course was provided by the Department upon request at boat dealers and marinas.

In response to questions by Senator Roeding, Mr. Bennett stated that the Department stayed in close contact with Representative Royce Adams, who: (1) sponsored the enabling legislation for this program; (2) followed the progress of this program on a weekly basis; and (3) at last report, was very satisfied with the efforts of the Department.

Senator Roeding stated that: (1) Mr. Bennett's actions were commendable; and (2) he wished the other cabinets would contact the sponsors and co-sponsors of legislation when administrative regulations were promulgated.

This administrative regulation was amended to create a new Section 3(2) to provide a toll-free telephone number for exam times and locations.

#### **Natural Resources and Environmental Protection Cabinet: Department for Environmental Protection: Division for Air Quality: Hazardous Pollutants**

401 KAR 57:002. 40 CFR Part 61 national emission standards for hazardous air pollutants. Diana Andrews, Assistant Director, and Kenneth Hines, Branch Manager, Administrative Regulations Development Branch, represented the Division.

In response to a question by Senator Roeding, Ms. Andrews stated that: (1) the court orders of May 14 and May 16: (a) applied to the National Ambient Air Quality Standards and the U.S. EPA "SIP Call"; and (b) did not delay the implementation of this administrative regulation; and (2) this administrative regulation, 401 KAR 60:005, and 401 KAR 63:002 were promulgated to: (a) incorporate by reference existing federal regulations relating to: 1. hazardous pollutants; 2. new source performance standards; and 3. general standards of performance; and (b) permit the Department to: 1. repeal 106 administrative regulations; and 2. replace them with three consolidated

administrative regulations.

#### **New Source Performance Standards**

401 KAR 60:005. 40 CFR Part 60 standards of performance for new stationary sources. In response to questions by Chairman Arnold, Mr. Hines stated that: (1) Kentucky voluntarily adopted the federal regulations, that: (a) had been adopted by the United States Environmental Protection Agency; (b) already applied to existing Kentucky sources; (c) had been adopted by Kentucky to permit enforcement by Kentucky officials; and (d) would have been enforced by federal officials against Kentucky sources, if Kentucky had not adopted them; (2) regulated sources preferred enforcement by Kentucky officials because: (a) the U.S. EPA Region 4 was located in Atlanta, Georgia; and (b) regulated sources did not want to travel to Atlanta to confer with officials regarding detected violations in Kentucky; and (3) Kentucky was not more or less likely to detect violations compared to the federal government.

In response to questions by Representative Bruce, Ms. Andrews stated that: (1) the program: (a) was supported by: 1. a Section 105 grant from the federal government; (b) general fees; and (c) Title V emissions fees; (2) if Kentucky did not adopt the federal program, the federal government would: (a) enforce the program; and (b) charge the fees; (3) the Division believed state regulation: (a) would cost the state less money, personnel, and time; and (b) did not cost Kentucky additional money; and (4) she believed that sources had historically preferred to deal with the state, rather than federal, government.

This administrative regulation was amended as follows: Section 1 was amended to comply with the drafting requirements of KRS 13A.222(4).

#### **General Standards of Performance**

401 KAR 63:002. 40 CFR Part 63 national emission standards for hazardous air pollutants. In response to a question by Senator Roeding, Ms. Hines stated that recent court orders did not apply to this administrative regulation.

This administrative regulation was amended as follows: Section 1 was amended to comply with the drafting requirements of KRS 13A.222(4).

#### **Department of Corrections: Division of Adult Institutions: Office of the Secretary**

501 KAR 6:060. Northpoint Training Center. In response to questions by Chairman Arnold, Mr. Damron stated that: (1) this administrative regulation: (a) did not remove the warden as chief administrative officer of the prison; (b) designated the warden as the person responsible for the management of the prison; and (c) amended the policy to clearly establish the qualifications needed for the position of warden or chief executive officer; and (2) a furlough: (a) might be granted to a prisoner: 1. close to the end of his sentence; and 2. classified as minimum security, which was the least risk category for committing an offense; (b) was designed to help reorient a prisoner to life in society prior to his release from prison; (c) would probably be available to a person convicted of theft if the person had a low custody score; and (d) was not available to a person convicted of certain serious offenses.

In response to questions by Representative Allen, Mr. Damron stated that: (1) an inmate who served out his time, without being paroled, would be released without supervision; (2) the Department would provide free transportation to any place in Kentucky he wished to go; (3) a benefit of the Kentucky parole system was that a person: (a) might be granted parole; and (b) not be released immediately; (4) the Parole Board wanted to make sure that the person had a home, job, and proper supervision; and (5) if a prisoner served every day of his sentence, the Department no longer had authority to exercise or control him.

This administrative regulation was amended as follows: (1) NTC 01-15-01 was amended to comply with the drafting requirements of KRS 13A.222(4); and (2) NTC 02-12-02 was amended to include provisions for the acceptance of cash when an inmate had just: (a) returned from a furlough; or (b) entered the system from a local facility.

501 KAR 6:120. Blackburn Correctional Complex. In response to questions by Senator Roeding, Mr. Damron stated that: (1) the policy on pharmaceutical products addressed: (a) the time for pill call;

and (b) when the pharmacy was open; and (2) the policy on administration and use of psychotropic drugs established the guidelines for Department medical staff to follow in prescribing and providing those type of drugs.

Senator Roeding stated that: (1) he had a longtime concern that many prescription and over the counter medications caused drowsiness; (2) when he checked on one of the Correctional facilities in the late 1970's, one of the most used pharmaceuticals by prisoners was diphenhydromine (Benadryl); and (3) he did not know if that drug was still used by prisoners as a downer.

Mr. Damron stated that: (1) he did not know if diphenhydromine was still being used by prisoners; (2) the Department: (a) had a medical director who was a licensed physician who supervised all medical staff; and (b) had physicians at every institution to monitor the types of prescriptions that are given to prisoners; and (3) he thought that if it were a problem in the 1970's, it had been corrected by now.

In response to a question by Chairman Arnold, Mr. Damron stated that he would: (1) find out if diphenhydromine was still a problem; and (2) report to the Subcommittee.

This administrative regulation was amended as follows: (1) BCC 11-04-01 was amended to make compliance with health regulations mandatory, rather than permissive; (2) BCC 15-3-01 was amended to comply with the drafting requirements of KRS 13A.222(4); (3) BCC 16-02-01 was amended to clearly establish the length of short pants worn by a visitor; and (4) BCC 16-02-01 was amended to make visitor dress requirements mandatory.

**Department of Criminal Justice Training: Kentucky Law Enforcement Council**

503 KAR 1:140 & E. Peace officer professional standards. Stephanie Bingham, General Counsel, Larry Ball, Kentucky Law Enforcement Council, represented the Department. Rod Maggard, Hazard Chief of Police, appeared before the Subcommittee.

In response to questions by Representative Bruce, Ms. Bingham stated that: (1) this administrative regulation: (a) applied to law enforcement officers, regardless of whether they were: 1. full-time; 2. part-time; 3. paid; or 4. unpaid; and (b) did not apply to a county sheriff, who was elected in accordance with the Kentucky Constitution; (2) certain classifications of officers could choose to participate in the training; and (3) the Attorney General's investigative officers had added this training to their requirements.

In response to a question by Representative Bruce, Mr. Ball stated that this administrative regulation: (1) did not apply to a sheriff's special deputies or bailiffs; and (2) applied to city auxiliary police officers.

In response to a question by Representative Bruce, Ms. Bingham stated that: (1) this training was a very big change for law enforcement for the state; (2) there had been a lot of effort to show the police departments that this training was beneficial; (3) some of the smaller agencies had experienced problems in finding people who could comply with the certification requirement; and (4) the Department had educated agencies about the requirements and training.

In response to questions by Representative Bruce, Mr. Ball stated that: (1) some of the problems had been experienced by the smaller sheriff's departments; (2) most of the city police officers had been involved in the training process for a long time; (3) the Sheriff's Association of Kentucky, the Kentucky Police Chiefs Association, and the Kentucky Peace Officers Association supported this administrative regulation; and (4) some people had questioned the program because it changed the hiring process for them.

In response to a question by Representative Bruce, Mr. Maggard stated that: (1) he was the: (a) Chief of Police in Hazard, Kentucky; and (b) President-Elect of the Kentucky Association of Chiefs of Police; and (2) the Association supported this administrative regulation.

Subcommittee staff stated that: (1) the certification program was required by statute; and (2) the Department had not exceeded statutory requirements.

In response to questions by Senator Roeding, Ms. Bingham stated that: (1) some of the tests were offered by the Kentucky Law Enforcement Council (KLEC); (2) an agency could use: (a) the KLEC testing; or (b) provide its own testing, if the testing had been approved by KLEC; (3) the police agency was responsible for paying

the costs of some requirements, including the: (a) medical screening; (b) fingerprinting; and (c) background investigation; and (4) the total KLEC test costs was \$166.00, including: (a) \$50.00 for the psychological screening; (b) \$100.00 for the polygraph examination; and (c) \$16.00 for the drug screen.

In response to questions by Representative Allen, Ms. Bingham stated that: (1) deputy sheriff's were required to comply with certification requirements; and (2) the sheriff was not required to comply with certification requirements, because he was elected as required by the Kentucky Constitution.

In response to a question by Representative Allen, Mr. Ball stated that several sheriffs had elected to comply with the certification process.

In response to questions by Representative Allen, Ms. Bingham stated that: (1) while there was a cost for the medical examination, the cost depended upon the agency arrangement with local physicians; (2) there were several ways to be certified, including: (a) being grandfathered in by being employed on December 1, 1998 and continuously employed since that time; and (b) completing the Department of Criminal Justice Training's ("DCJT") Basic Training; and (3) the purpose of the certification requirements was to raise the standards for Kentucky police officers.

In response to questions by Representative Allen, Mr. Ball stated that: (1) the certification requirements were to improve the quality of law enforcement services for the citizens; (2) prior to the enactment of certification requirements, there were no minimum standards for peace officers in Kentucky, other than: (a) being 21 years old; and (b) not having a felony conviction; (3) the peace officer professional standards legislation included pre-employment standards; (4) to be certified, an officer had to graduate from DCJT basic training; (5) state troopers were: (a) required to be certified; (b) not required to complete the DCJT program because the State Police Academy: 1. already met the requirements established by statute; and 2. had been approved by the KLEC; (c) certified through the State Police admission, selection, and testing process; and (d) not required to pay the KLEC test fees; (6) state police standards had exceeded the minimum standards for many years; and (7) there were no additional requirements placed upon state troopers.

This administrative regulation was amended as follows: (1) Section 1(2)(e) was amended to: (a) clarify that an application may be found insufficient or erroneous, pursuant to KRS 15.394; and (b) require that the agency be notified of the Department's requirement to file a declaratory action if a procedure was found to be insufficient or erroneous; (2) Section 2(5) was amended to provide a KRS Chapter 13B administrative hearing if an agency's procedure was rejected; (3) Section 5(1) was amended to require that certification and employment be denied an applicant found to have used illegal drugs; (4) "Form T-2 Liability Waiver" was amended to remove injury liability waiver provision; (5) Section 4(1) was amended to comply with the formatting requirements of KRS 13A.220(4); and (6) Section 4(1) and 13(1)(z) were amended to comply with the drafting requirements of KRS 13A.222(4).

**Workforce Development Cabinet: Department for Adult Education and Literacy: Adult Education and Literacy**

785 KAR 1:010. Testing program. Sarah Jackson, General Counsel, and Harlan Stubbs, Kentucky GED Administrator, represented the Department.

This administrative regulation was amended as follows: (1) Section 1(2) was amended to clearly establish the requirements for certification as test-ready in the body of this administrative regulation, rather than in the form incorporated by reference; (2) Sections 1(3), (4), (5), (6), and (9) were amended to comply with the: (a) format requirements of KRS 13A.220(4); and (b) drafting requirements of KRS 13A.222(4); and (3) Section 1(9) was amended to specify the names of the required forms.

**Cabinet for Health Services: Department for Public Health: Office of Inspector General: Health Services and Facilities**

902 KAR 20:140. Operation and services; hospices. Ralph Von Derau, Health Planner Principal, represented the Office.

In response to a question by Chairman Arnold, Mr. Von Derau stated that the change from the Cabinet for Human Resources to the

Cabinet for Health Services was made to comply with the reorganization of the Cabinet for Human Resources into the Cabinet for Health Services and the Cabinet for Families and Children.

This administrative regulation was amended as follows: (1) the RELATES TO, STATUTORY AUTHORITY, and NECESSITY, FUNCTION, AND CONFORMITY paragraphs were amended to correct statutory citations; and (2) Sections 1 through 6 were amended to comply with the drafting requirements of KRS 13A.222(4).

#### **Department for Medicaid Services**

907 KAR 1:780. Converted dual-licensed hospital-based nursing facility beds. Karen Doyle, Commissioner's Office, and Nora McCormick, Office of Counsel, represented the Department.

In response to a question by Chairman Arnold and Representative Bruce, Ms. Doyle stated that because the Kentucky Hospital Association had not been pleased with the Statement of Consideration filed on this administrative regulation, the Department: (1) had worked with the Association on an additional amendment; and (2) believed the Association and other interested parties were happy with this administrative regulation as amended.

This administrative regulation was amended as follows: (1) Section 1 was amended to: (a) comply with the requirements relating to definitions established in KRS 13A.222(4)(e); (b) delete definitions that repeated or summarized statutes; and (c) correct statutory citations; (2) Section 3(2)(b)2. was amended to include a medical services trend report in the list of information the Department may consider when making a determination of need; and (3) Sections 1 through 5 were amended to comply with the: (a) format requirements of KRS 13A.220(4); and (b) drafting requirements of KRS 13A.222(4).

#### **Cabinet for Families and Children: Office of Program Support: Administration**

920 KAR 1:060. Protection of human subjects. Cookie Whitehouse, Office of Program Support, and Jules Delambre, Office of Technology Services, represented the Office.

In response to questions by Senator Roeding, Mr. Delambre stated that: (1) he had staffed the Cabinet for Human Resources' Institutional Review Board since 1980; (2) the Institutional Review Board: (a) consisted of individuals with a background in the sciences or research; (b) reviewed proposals of research that: 1. affected or had Cabinet funding; 2. involved staff or clients of the Cabinet; or 3. had the support of the Cabinet; and (c) ensured that human subjects were protected during research; and (3) while the same individuals would be used for the institutional review board by both the Cabinet for Families and Children and the Cabinet for Health Services, each Cabinet had promulgated a separate administrative regulation.

This administrative regulation was amended as follows: Sections 1, 3 through 7, and 9 through 12 were amended to comply with the: (1) format requirements of KRS 13A.220(4); and (2) drafting requirements of KRS 13A.222(4).

#### **Department for Community-Based Services: Division of Policy Development: K-TAP, Kentucky Works, Welfare to Work, State Supplementation**

921 KAR 2:015 & E. Supplemental programs for persons who are aged, blind, or have a disability. Rosanne Barkley, Policy Analyst, represented the Department.

In response to questions by Senator Roeding, Ms. Barkley stated that: (1) this administrative regulation established a supplemental program for persons who: (a) were aged, blind, or had a disability; and (b) received: 1. supplements to reside in personal care homes or family care homes; and 2. caretaker services; (2) the Department for Community-Based Services accepted applications for this program at each local office; and (3) most people involved in the outreach industry: (a) were aware of this program; and (b) referred individuals to the Cabinet.

In response to questions by Chairman Arnold, Ms. Barkley stated that: (1) to access the program, the person, his authorized representative, or the person who authorized services was required to make application at one of the Department's local offices; (2) the eligibility determination involved an examination of the applicant's income and resources; and (3) the application was made in the same office that accepted applications for food stamps and other

benefits.

This administrative regulation was amended as follows: (1) Sections 2, 3, 5, 6, 7, 10, 11, and 13 were amended to comply with the: (a) format requirements of KRS 13A.220(4); and (b) drafting requirements of KRS 13A.222(4); and (2) Sections 11 and 13 were amended to specify the requirements for filing the Notice of Decision to Personal Care Home, which is incorporated by reference.

#### **The Subcommittee determined that the following administrative regulations complied with statutory authority:**

#### **Tourism Development Cabinet: Department of Fish and Wildlife Resources: Game**

301 KAR 2:172. Deer hunting seasons and requirements. In response to a question by Chairman Arnold, Mr. Bennett stated that this administrative regulation was amended to: (1) permit deer hunters to check deer by telephone, which was more convenient; (2) implement the check program statewide; and (3) create an antlerless deer hunting season in forty counties, to reduce the size of the deer herd in those counties.

In response to a question by Chairman Arnold, Mr. Bennett stated that because the Department had discontinued the paper system for checking deer, a person needed to check a deer through the telephone check system.

In response to questions by Chairman Arnold, Mr. Grimes stated that: (1) telecheck would be the only way to report a harvested deer, unless the: (a) person participated in a quota hunt; and (b) deer were checked at the hunt; (2) while the Department had not eliminated the deer check stations, the stations had been converted to telecheck stations to permit a hunter to use the station's telephone to report the deer kill; (3) the deer check station operator had the discretion to report a deer kill for a hunter that did not want to use the telecheck system; (4) the Department believed that the: (a) number of unchecked deer would not increase using this system; and (b) telecheck system was much easier than the previous method because, if a hunter killed a deer late at night, he: 1. could call the Department telecheck number; and 2. did not have to return the deer to a check station the next morning; and (5) over 60,000 phone lines were available to handle the calls.

301 KAR 2:174. Deer hunting zones. Mr. Bennett stated that: (1) three years ago, the Department told the Subcommittee that deer hunting would be liberalized in fifty counties to increase the deer kill; (2) two years ago, the Department liberalized deer hunting in fifty-three additional counties; and (3) this year, the Department would liberalize deer hunting in an additional sixty-three counties in order to control and stabilize the growth of the deer herd.

Representative Bruce stated that because he farmed, he knew that the deer: (1) were getting ahead of the hunters; and (2) ate everything.

#### **Natural Resources and Environmental Protection Cabinet: Department for Environmental Protection: Division for Air Quality: Hazardous Pollutants**

401 KAR 57:019. Repeal of 401 KAR 57:005, 57:015, 57:021, 57:025, 57:030, 57:035, 57:040, 57:045, 57:050, 57:055, 57:130, 57:270, 57:300, 59:450, 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, 60:750, 63:070, 63:100, 63:101, 63:104, 63:110, 63:160, 63:190, 63:300, 63:320, 63:340, 63:360, 63:400, 63:420, 63:460, 63:520, 63:541, 63:560, 63:640, 63:680, 63:701, 63:920, 63:940, and 63:960. Diana Andrews, Assistant Director, and Kenneth Hines, Branch Manager, Administrative Regulations Development Branch, represented the Division.

#### **Justice Cabinet: Department of Corrections: Division of Adult Institutions: Office of the Secretary**

501 KAR 6:040. Kentucky State Penitentiary. Jack Damron,

Staff Attorney, represented the Department.

Subcommittee staff stated that: (1) this administrative regulation amended policies relating to: (a) the special security unit; (b) pharmacy procedures; (c) the organization of medical services; (d) the levels of medical care and staff training; (e) health records; (f) psychiatric and psychological services; and (g) informed consent; (2) the initial staff review indicated that this administrative regulation: (a) charged prisoners for copies of medical records; and (b) might violate KRS 422.317(1), which required a health care provider to provide a patient with one free copy of his medical records; (3) pursuant to KRS 422.317(2), the Department: (a) was not considered a health care provider for the purpose of providing a free copy of medical records; and (b) could charge a prisoner for a copy of his medical records; (4) the Initial Staff Review suggested having each prisoner: (a) advised about refusing treatment; and (b) sign an informed consent form; and (5) due to the large number of prisoners treated by the Department, time and expense prevented this from practical application.

In response to a question by Senator Roeding, Mr. Damron stated that this administrative regulation addressed when the pharmacy would be accessible by an inmate, including: (1) operation times; and (2) staffing in the pharmacy.

**Cabinet for Families and Children: Division of Program Development: Food Stamp Program**

921 KAR 3:030. Application process. Rosanne Barkley, Policy Analyst, represented the Cabinet.

In response to questions by Representative Bruce, Ms. Barkley stated that, when a person applied for food stamps, the Cabinet verified the person's living situation, including his: (1) address; (2) name; (3) social security number; and (4) income and resources.

In response to a question by Representative Allen, Ms. Barkley stated that a prisoner could apply for food stamps, if the prisoner: (1) had served his time; and (2) was released from prison.

In response to a question by Senator Roeding, Ms. Barkley stated that: (1) this administrative regulation incorporated by reference the voter registration form required by the "Motor Voter Act"; and (2) the cabinet had not developed a separate form.

**The Subcommittee and promulgating administrative bodies agreed to defer consideration of the following administrative regulations to the June 8, 1999 meeting of the Subcommittee:**

**Revenue Cabinet: Department of Law: Division of Tax Policy: General Administration**

103 KAR 1:050. Forms manual.

**Department for Local Government: Development Finance**

109 KAR 9:010. Area Development Fund.

**Finance and Administration Cabinet: Office of the Secretary: Purchasing**

200 KAR 5:340. Process for evaluating information for use in determining whether to approve privatization of a government service.

**Directory of Registered Athlete Agents**

- 200 KAR 30:010E. Definitions.
- 200 KAR 30:020E. Complaint review
- 200 KAR 30:030E. Requirements for registration.
- 200 KAR 30:040E. Fees.
- 200 KAR 30:050E. Reinstatement.
- 200 KAR 30:060E. Annual contact report.
- 200 KAR 30:070E. Records retention.

**Board of Medical Licensure**

- 201 KAR 9:084. Fee schedule.
- 201 KAR 9:175. Physician assistants; certification and supervision.
- 201 KAR 9:310. Continuing medical education.
- 201 KAR 9:330 & E. Determination of death by a paramedic.
- 201 KAR 9:335 & E. Discontinuance of resuscitation by a paramedic.
- 201 KAR 9:340 & E. Training of paramedics in determination of

death and discontinuance of resuscitation.

**Board of Nursing**

201 KAR 20:420 & E. Determination of death by a registered nurse employed by an ambulance service.

201 KAR 20:430 & E. Discontinuance of resuscitation by a registered nurse employed by an ambulance service.

201 KAR 20:440 & E. Training of registered nurses employed by an ambulance service in determination of death and discontinuance of resuscitation.

**Board of Certification of Fee-Based Pastoral Counselors**

- 201 KAR 38:010E. Definitions.
- 201 KAR 38:020E. Application.
- 201 KAR 38:030E. Equivalent course of study.
- 201 KAR 38:040E. Fees.
- 201 KAR 38:050E. Travel expenses of board members.
- 201 KAR 38:060E. Code of ethics.

**Natural Resources and Environmental Protection Cabinet: Department for Surface Mining Reclamation and Enforcement: Bond and Insurance Requirements**

405 KAR 10:010E. General requirements for performance bond and liability insurance.

**Public Protection and Regulation Cabinet: Office of the Petroleum Storage Tank Environmental Assurance Fund**

- 415 KAR 1:080E. Claims procedures.
- 415 KAR 1:120.

**Justice Cabinet: Abuse Investigation**

500 KAR 13:010E. Appeals hearings for substantiated abuse investigations.

500 KAR 13:020E. Internal investigations unit.

**Department of State Police: Sexual Assault Nurse Examiner Medical Protocol**

502 KAR 12:010. Sexual assault nurse examiner medical protocol.

**Transportation Cabinet: Department of Vehicle Regulation: Division of Vehicle Enforcement: Division of Motor Carriers**

601 KAR 1:040E. Application for operating authority and registration of motor carriers.

**Education, Arts and Humanities Cabinet: Department of Libraries and Archives: Division of Public Records: Archives**

725 KAR 1:070E. Standards for documents presented for recording.

**Public Protection and Regulation Cabinet: Kentucky Board of Tax Appeals**

802 KAR 1:010. Rules of practice and procedure.

**Department of Insurance: Health Insurance Contracts**

806 KAR 17:066E. Medicare supplement insurance policies.

**Cabinet for Health Services: Office of Certificate of Need: Certificate of Need**

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

**Department for Public Health: Office of Inspector General: Health Services and Facilities**

902 KAR 20:091. Facilities specifications, operation and services; community mental health-mental retardation center. Ralph Von Derau, Health Planner Principal, represented the Office.

Subcommittee staff stated that there had been a request for deferral.

Mr. Von Derau stated that the Office: (1) would work to resolve outstanding issues; and (2) requested deferral of this administrative regulation until the July 13, 1999, meeting of the Subcommittee.

**Kentucky Board of Family Health Care Providers**

902 KAR 22:040. Charitable health care providers. Denise Newton, Department for Public Health, represented the Board.

In response to questions by Representative Bruce, Ms. Newton stated that: (1) this administrative regulation: (a) related to St. Luke's Clinic in Hopkinsville and five or six other hospitals in Kentucky; (b) implemented KRS 216.941, which required the Cabinet to register

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charitable health care providers; and (c) incorporated by reference the forms required for registering the charitable health care providers, including St. Luke's Clinic; (2) KRS 216.941 required payment of the medical malpractice premiums of doctors who provided these services; and (3) because she had been in regular contact with St. Luke's, she knew that the issues St. Luke's had raised: (a) related to the statutory provisions; and (b) did not relate to this administrative regulation.

Senator Pendleton stated that: (1) the initial staff review stated that approximately \$15,000 was paid by the state for the medical malpractice insurance of charitable clinics; (2) House Bill 128, which was enacted during the 1998 Regular Session of the General Assembly, placed a \$20,000 cap on the insurance premiums; and (3) the clinics, including St. Luke's in Hopkinsville, had stated that the \$20,000 was not a sufficient amount to cover their malpractice insurance premiums for each charitable health care provider.

In response to questions by Senator Pendleton, Ms. Newton stated that: (1) because this program had previously been implemented by the Department of Insurance, she did not know: (a) the costs of the malpractice insurance; (b) the origin of the \$20,000 cap; and (c) if there was sufficient funding; (2) the money did not come directly from the budget for the Cabinet for Health Services; (3) she: (a) believed there was enough money to cover the premiums, because House Bill 128 restricted the type of provider who could qualify for the program; and (b) would find out the names of the clinics that participated in this program; and (4) pursuant to KRS 216.940, a charitable health care provider was a provider who did not: (a) have malpractice insurance; and (b) receive compensation for his services.

In response to questions by Chairman Arnold, Ms. Newton stated that she would inform the Subcommittee members of the identity of the charitable health care organizations, including St. Luke's Clinic, and the free clinics of Owensboro and Paducah.

Subcommittee staff stated that if Ms. Newton needed a separate request from the Subcommittee for this information: (1) she should contact Donna Little; and (2) Subcommittee staff would transmit the request from the Subcommittee to the appropriate person.

Representative Bruce stated that: (1) the Cabinet should request the appropriate changes during the 2000 Regular Session; and (2) he and Senator Pendleton would follow this issue.

Senator Roeding stated that he did not want the \$50 registration fee to be an impediment to a physician who: (1) did not make any money; and (2) basically worked for the state for free.

Ms. Newton stated that: (1) KRS 216.941 required a charitable health care provider to: (a) register with the Cabinet for Health Services; and (b) pay a \$50 registration fee; (2) this administrative regulation incorporated by reference the required registration forms, which included information mandated by KRS 216.941; and (3) the \$50 fee was required to be paid by charitable health care providers and sponsoring organizations.

In response to a question by Chairman Arnold, Ms. Newton stated that she would provide him with the information he needed to enable Union County to start a charitable health care sponsoring organization.

In response to questions by Representative Bruce, Ms. Newton stated that: (1) she would: (a) agree to defer consideration of this administrative regulation to the July 13, 1999, meeting; and (b) try to find out the origination of the \$20,000 cap; and (2) the \$50 registration fee was required by KRS 216.941, not this administrative regulation.

Subcommittee staff stated that the agency needed to refile the amendment for the July 13, 1999, Subcommittee meeting.

Without objection, this administrative regulation was deferred.

### **Cabinet for Families and Children: Department for Community-Based Services: Division of Policy Development: Day Care**

905 KAR 2:090. Child care facility licensure.

### **Cabinet for Health Services: Department for Medicaid Services: Medicaid Services**

907 KAR 1:002. Definitions.

907 KAR 1:019. Pharmacy services.

907 KAR 1:021. Amounts payable for drugs.

907 KAR 1:025E. Payments for nursing facility and intermediate care facility for the mentally retarded services.

### **Division of Member and Provider Services: Payment and Services**

907 KAR 3:090E. Acquired brain injury services.

907 KAR 3:100E. Payments for acquired brain injury services.

### **Kentucky Children's Health Insurance Program**

907 KAR 4:020 & E. Kentucky Children's Health Insurance Program.

### **Department for Mental Health and Mental Retardation Services: Division of Substance Abuse: Substance Abuse**

908 KAR 1:310. Certification standards and administrative procedures for driving under the influence programs.

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.

### **Division of Mental Health: Institutional Care**

908 KAR 3:160E. Policies and procedures of Kentucky Correctional Psychiatric Center.

## **OTHER BUSINESS:**

### **Justice Cabinet: Department of Juvenile Justice: Child Welfare**

505 KAR 1:040. Policies and procedures manual. Ray Debolt, General Counsel, represented the Department of Juvenile Justice; Ed Monahan, Deputy Public Advocate, and Gail Robinson, Post-Dispositional Branch Manager, represented the Department of Public Advocacy.

Subcommittee staff stated that: (1) when the Subcommittee had considered this administrative regulation at a previous meeting, an issue had been raised relating to the group therapy size; (2) this administrative regulation established a size of twelve residents; (3) the federal consent decree, entered into by the Commonwealth, established a group size of eight residents; (4) the Department of Juvenile Justice and the Public Advocate had been asked to appear to report to the Subcommittee, on whether the: (a) consent decree had been modified; and (b) if the consent decree had not been modified, the group sizes had been changed; (5) the Department of Juvenile Justice had also been requested to inform the Subcommittee whether it had begun the process of amending this administrative regulation to comply with the formatting requirements of KRS 13A.221(1); (6) the Department of Juvenile Justice had begun the amendment process; and (7) the primary issue before the Subcommittee related to the consent decree, which had not been modified.

Mr. Debolt stated that: (1) it was important to understand that the consent decree was: (a) not a law; (b) an agreement that was made by the Commonwealth in the early 1990's to rectify problems with the Juvenile Justice treatment system; (2) the DEPARTMENT OF JUVENILE JUSTICE came into existence as a result of the consent decree; (3) the DEPARTMENT OF JUVENILE JUSTICE developed a lot of new programs; (4) at the time the consent decree was signed, it used a number that they believed was the maximum number of youth that should be in a counseling group with a therapist; (5) current professional mental health literature indicated that group sizes were beneficial at twelve or fourteen members; (6) Department of Juvenile Justice chose to use a maximum number of twelve residents and promulgated it in the administrative regulation; (7) there could be groups of ten, but twelve would be the most that could be in the group; (8) in February, Department of Juvenile Justice met with the U. S. Justice Department in Washington, D.C. and discussed the number of residents in therapy groups; (9) the U. S. Justice Department advised the Department of Juvenile Justice that, logistically, it would be nearly impossible to modify a provision of the consent decree because of the bureaucracy with which they operated; (10) the U. S. Justice Department would be coming to Kentucky to do an evaluation of the juvenile facilities; (11) The Depart-

ment of Juvenile Justice intended to notify the U. S. Justice Department that it was in substantial compliance with the consent decree; (12) "substantial compliance" was the standard that the Department had to meet to have the consent decree dismissed; (13) after the consent decree was dismissed, there were no requirements that Department of Juvenile Justice had not already enacted into law through the legislative process; (14) the group size number of eight was a number that was picked in the early 1990's; and (15) counseling professionals said that it was not an effective number.

Mr. Monahan stated that: (1) Ernie Lewis, the Public Advocate, could not be present that day; (2) the Public Advocate and the Department of Juvenile Justice both recognized the importance of working together with children who were involved in the juvenile justice system; (3) the Public Advocate respected the job that Department of Juvenile Justice did and the progress it had made; (4) the Public Advocate trusted that the Department of Juvenile Justice respected the role that it played in the system as public defenders; (5) the Public Advocate was not a party to the consent decree; (6) the Protection and Advocacy Division was on the Juvenile Services Review Board, pursuant to the consent decree; (7) Public Advocate staff attorneys utilized the consent decree as existing law when they represented clients; (8) the federal monitor, Earl Dunlap, would be the appropriate person to appear before the Subcommittee to report on the status of the consent decree; (9) the Public Advocate did not know whether the issue relating to the therapy group sizes had been resolved; (10) the most recent federal monitor's report could provide that information; (11) Public Advocate attorneys who work in the Department of Juvenile Justice youth development centers reported that therapy group sizes were between ten and twelve residents; (12) the Public Advocate did not know whether the consent decree had been amended by the court to permit a larger group size; (13) the federal monitor's report indicated that the consent decree had not been altered to permit larger group sizes; (14) the Public Advocate did not know whether the Department of Juvenile Justice had begun to amend 505 KAR 1:040 to comply with KRS 13A.221(1); (15) the Public Advocate did not have a position on the proper size of the therapy groups; and (16) individual Public Advocate attorneys who represented individual juveniles might assert that a particular group size is appropriate for their particular client.

Ms. Robinson stated that: (1) there were two different consent decrees that made things confusing; (2) the consent decree under which the Post-Dispositional Branch was established was the M. K. v. Wallace consent decree which was an access to the courts decree; (3) pursuant to the M. K. v. Wallace consent decree, as of 1996, lawyers and paralegals went into the residential treatment centers operated by Department of Juvenile Justice on a regular basis; (4) she was the supervisor of these lawyers and paralegals; (5) the lawyers and paralegals utilized the CRIPA consent decree on behalf of their clients, when it was appropriate; (6) while the Public Advocate was not a party to either of the consent decrees, it carried out the provisions of M. K. v. Wallace, by providing access to the courts on fact determinations and conditions of confinement issues.

In response to a question by Chairman Arnold, Mr. Monahan stated that: (1) a group size in excess of eight varied from the requirements of the consent decree; (2) as a Department, it could not make a policy statement on the appropriate therapy group size issue; (3) on behalf of their clients, its lawyers would take the position that eight was the number that was required by the consent decree.

Subcommittee staff stated that the Subcommittee could: (1) find the administrative regulation deficient; (2) approve the administrative regulation; or (3) reconsider the administrative regulation at a later date and determine whether it was deficient.

In response to a question by Senator Long, Mr. Debolt stated that: (1) the federal monitors worked continuously; and (2) the monitor would not take an official position as to what the group number should be.

In response to a question by Representative Bruce, Mr. Debolt stated that: (1) he did not know the actual cost of failing to comply with the consent decree; (2) from a therapy standpoint, if group size was limited to eight, rather than twelve, there would be a 25 to 50% increase in the cost of therapy; and (3) the total cost to provide additional therapists would be close to \$300,000; (4) if the Subcommittee waited until August to reconsider this issue, Department of Juvenile

Justice would be in the same situation; (5) the U.S. Justice Department: (a) did not oppose Department of Juvenile Justice on the therapy group size; and (b) could not modify the number established by the consent decree; (6) if the Department of Juvenile Justice was in substantial compliance with the consent decree, the decree could be dismissed.

In response to questions by Senator Pendleton, Mr. Debolt stated that: (1) Department of Juvenile Justice was not in compliance with the therapy group size requirement provided by the consent decree; (2) from their communications with the Department of Justice, they were not going to hold the Department of Juvenile Justice to the number of eight residents if the Department was in compliance with the consent decree as a whole; (3) if the Department of Justice decided to require eight, they would proceed with the lawsuit as to whether the Court believed Department of Juvenile Justice was in substantial compliance; (4) he thought that litigation would be substantially less than incurring the expense of additional therapists.

The Subcommittee deferred further consideration of this issue and reconsidering the administrative regulation until its September meeting.

#### **Kentucky Teachers' Retirement System: Implementation of KRS 161.5465**

Pam Johnson, General Manager, and Billy Hanes, Deputy Commissioner, Kentucky Retirement System; Pat Miller, Executive Secretary, and Billy Hunt, Deputy for Administration, Kentucky Teachers Retirement System; and Donna Early, Director, Judicial and Legislative Retirement System appeared before the Subcommittee.

Subcommittee staff stated that: (1) the General Assembly had enacted legislation that permitted state employee members of the Kentucky Employees Retirement System ("KERS") and the Kentucky Teachers Retirement System ("KTRS") to purchase 5 years service credit: (a) if they had 20 years state service; and (b) on time; (2) while it appeared that KERI had followed the statutory directive, KTRS had implemented a policy that: (a) restricted the purchase of service to those who were retiring, rather than allowing those who had 20 years of service to purchase the service outright or over a period of time; and (b) reduced medical benefits, for a period determined as the difference between the amount of service earned prior to purchase of service credit and the amount of service credit purchased; (3) Chairman Arnold had sent KTRS a letter that: (a) requested that KTRS, KERS, and Judicial and Legislative Retirement System representatives appear before the Subcommittee; and (b) the policy established by KTRS violated KRS 13A.100, 13A.120, and 13A.130, because: 1. KRS Chapter 13A prohibited the use of a policy that had not been promulgated as an administrative regulation; and 2. even if the policy had been promulgated as an administrative regulation, it exceeded statutory authority, because KRS Chapter 161 did not: a. permit restriction of purchase of the service to an employee who was retiring; and b. authorize the KTRS to reduce medical benefits; (4) the policy would also adversely affect those who were on consolidated pensions, those receiving pensions from both KERS and the KTRS; (5) Subcommittee staff had transmitted to Subcommittee members a letter from a member of KTRS affected by the KTRS policy; and (6) Chairman Arnold had also requested KTRS to provide the Subcommittee with information relating to the method for charging members for non-qualified service.

In response to questions relating to the conditions established for purchase of the 5 years service, Ms. Johnson stated that: (1) KERS treated this service purchase in the same manner it treated other service purchases of additional service purchases granted by statute; (2) KERS had provided the Subcommittee with a letter from its actuary that set out the determiners of the calculation these service purchases: (a) either the higher of final compensation, current rate of pay or final rate of pay times of actuarial age factor multiplied by the number of years of service that the member would be purchasing; (b) as provided by statute, a member could either pay by lump sum or through installment purchases; (c) if the member is eligible to retire he could retire, or wait until some future date to retire; and (d) when the member retires, he is eligible to receive medical insurance benefits without reduction.

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In response to a question relating to whether problems were created for the retirement system in determining full actuarial cost and in costs to the system because a member might not be at the point of retirement, Ms. Johnson stated that it: (a) was not; and (b) was not any different than the manner in which the system figured other service purchases.

In response to questions relating to the manner in which KERS treated all service purchases that the General Assembly permitted system members to make, Ms. Johnson stated that, under the full actuarial cost method or requirement, KERS: (1) applied uniform procedures and conditions to all types of service purchases; and (2) did not have different rules for categories of service purchases.

In response to a question relating to when the policy relating to the purchase of the Gregory: For the Teachers Retirement System, when was the policy for suspension of medical insurance implemented?

In response to a question relating to the date the KTRS policy governing purchase of the 5 years service credit permitted under KRS Chapter 161 was established, Mr. Miller stated that KTRS did not implement a policy, because the statute provided the method for determining full actuarial cost.

Subcommittee staff stated that: (1) if the conditions or requirements were not clear in the applicable statute, an administrative body would have to establish them; (2) KTRS had established a policy relating to: (a) when the service credit could be purchased; and (b) the reduction of medical benefits by those purchasing the service credit; (3) if the statute were clear, a policy or administrative regulation was not needed; and (4) since the statute did not provide for, or authorize, reduction of medical benefits or restriction of purchase to those who were retiring, KTRS had established a policy implementing these restrictions.

Mr. Miller stated that: (1) various statutes in KRS Chapter 161 specify that a member could buy service if he had 20 years service by paying full actuarial cost; that (2) KRS Chapter 161 provided that the actuarial system, rather than the retirement board or the retirement system determine all actuarial factors that make up the cost of the system; (3) that, when the bill was enacted, the actuaries informed KTRS that, under the KRS 161.400(2), there were 3 factors to consider if the statute were enacted: (a) the increase in the members annuity; (b) when that person uses that service is to qualify for eligibility purposes to retire (*sic*); and (c) a member would receive benefits, including medical benefits, sooner than normally, which would be an additional costs.

Subcommittee staff stated that: (1) the actuaries did not determine policy; (2) KTRS determined the policy; (3) KTRS treated the purchase of the 5 years service differently than other purchases permitted by the General Assembly; (4) KTRS did not apply the restrictions it applied for the purchase of the 5 years service to other purchases, such as those permitted for military credit; (5) if one applied the same reasoning stated by Mr. Miller as justification or reason for the restrictions established for the 5 years service, members who purchased other service credit, such as credit for military service, also would be retiring earlier than normal and should be subject to the same restrictions; and (6) because KRS Chapter 161 clearly did not permit, require, or authorize the restrictions established by KTRS, KTRS had established them by policy.

Representative Bruce stated that those retiring would be employees earning the largest salaries, and that new hires and those remaining would be making less.

Mr. Miller stated that: (1) the purchase of the 5 years service permitted by KRS 161.5465 was not regular service; (2) this service was "air time"; (3) credit was being given for service a member had not performed; (4) a member had to pay the full actuarial cost, while the retirement system would not have to pay a dime; and (5) the statutes gave complete authority to the actuary;

Senator Long stated that: (1) he was the sponsor of the bill that provided for the purchase of 5 years service by members of KERS; (2) asked KTRS if it wanted to be included, and was told that KTRS wanted to draft its own bill; and (3) he had not been informed, and did not believe that the bills established different requirements.

Mr. Miller stated that the bills did not establish different requirements.

Senator Long stated that: (1) if KTRS had actuarial problems

with the provisions of the bill, it should have communicated them to members of the General Assembly during the Regular Session during which the bills were enacted; and (2) KTRS was treating teachers differently than KERS employees were being treated, even though the statute governing KTRS is identical with the statute governing KERS.

Mr. Miller stated that KTRS currently had no choice but to impose the restrictions because KTRS actuaries stated that a member would receive health insurance sooner than he would had he not purchased the time.

Senator Long asked whether the actuary was aware of this at the time the bill was passed. Mr. Miller stated that KTRS was aware of this.

Subcommittee staff stated that: (1) the clear language of the statute did not authorize the policy; (2) as Sen. Long had pointed out, KTRS had created another class of retirees who were being penalized and not offered what the legislature clearly had provided for members of both systems; (3) since applicable statutes did not establish this policy, there was no authority for it; (4) the statute clearly: (a) provides for payment in installments; (b) authorizes those who have 20 years of service to purchase it; (c) does not restrict purchase to a member who is retiring; and (d) does not restrict medical benefits.

In response to a question by Mr. Miller relating to cost, Subcommittee staff stated that: (1) while full actuarial cost was required, full actuarial cost did not require restriction of medical benefits or time of purchase; and (2) in response to Senator Long's question relating to other changes: (a) other legislation changed calculation of final pension to the last 3 years salary, rather than 5 years; (b) while this would increase costs to the system, restrictive policies had not been established by KTRS.

Senator Roeding asked whether KTRS policy was a denial of equal protection? Subcommittee staff stated that it was.

Mr. Miller stated that the purchase of the 5 years service was a special category that could not be treated like a purchase of military service.

Subcommittee staff stated that: (1) the General Assembly did not establish a separate class of retirees or impose different costs or treatment; (2) the statutes relating to the purchase of 5 years service credit were identical; and (3) it would be a denial of equal protection to establish restrictions for members of KTRS.

Senator Long stated that: (1) the bill he had sponsored for KERS members to purchase 5 years service did not establish a special category of purchase that would be treated differently than other purchases of service credit permitted by the General Assembly; and (2) not once during the debate on this bill or not once during the discussion on the bill in any of the committees did that issue arise.

Mr. Miller stated that, while he agreed with Senator Long that the service as to be counted as regular service, he maintained that the KERS approach was wrong.

Senator Long stated that, while he understood what Mr. Miller maintained, he did not believe that that was what the law provided.

Mr. Miller stated that he did not believe KTRS had an option because the actuary, rather than KTRS, determined the actual rates and the cost factors.

Senator Long stated that: (1) if cost was a problem, questions relating to cost should have risen during the debate on the bill; (2) questions should not have been raised after the bill had passed; and (3) KTRS had established a special situation for teachers that differs from the method of implementation by KERS of a bill that was identical to KTRS legislation.

Chairman Arnold stated that he: (1) failed to see the purpose of allowing the purchase if all retirees were not treated the same; and (2) did not see any justification for the different treatment or the reduction of medical benefits.

Representative Bruce asked whether the Subcommittee wished to determine that KTRS action did not comply with statutory authority.

Senator Long stated that: (1) an impasse had been reached, since KTRS would apply its method; and (2) he believed the approach followed by KERS, rather than the approach followed by KTRS, was the correct approach and complied with statutory

authority.

Subcommittee staff stated that: (1) the policy that had been implemented was not contained in administrative regulation; (2) Subcommittee staff would provide the numbers and titles of administrative regulations which should have contained any policy relating to the purchase of the 5 years service, which could be found deficient by the Subcommittee; (3) a finding of deficiency would ensure that the General Assembly considered KTRS policy at its next Regular Session; and (4) the Subcommittee could approve a motion that: (a) the action taken by the KTRS: 1. violated KRS Chapters 13A and 161; and 2. was not authorized by the legislation enacted by the General Assembly; and (b) requesting LRC to refer this issue to the appropriate legislative subcommittee to prepare legislation to correct it.

The Subcommittee approved a motion that: (1) the policy that had been implemented was not contained in administrative regulation; (2) Subcommittee staff would provide the numbers and titles of administrative regulations which should have contained any policy relating to the purchase of the 5 years service, for a finding of deficiency by the Subcommittee; (3)(a) the action taken by the KTRS: 1. violated KRS Chapters 13A and 161; and 2. was not authorized by the legislation enacted by the General Assembly; and (b) LRC refer this issue to the appropriate legislative subcommittee to prepare legislation to correct it.

**Staff:**

Chairman Arnold introduced Zach Weinberg, summer intern, for the Subcommittee.

**The Subcommittee adjourned at 12:50 p.m. until July 13, 1999, at 10:30 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 LOCAL GOVERNMENT Meeting of April 28, 1999**

The following administrative regulation was available for consideration by the Interim Joint Committee on Local Government during its meeting of April 28, 1999, having been referred to the Committee on April 19, 1999, pursuant to KRS 13A.290(6): 109 KAR 13:010

This administrative regulation were deferred pursuant to KRS 13A.300: 109 KAR 13:010

Committee activity in regard to review of the above-referenced administrative regulation is reflected in the minutes of the April 28, 1999 meeting, which are hereby incorporated by reference. Additional committee findings, recommendations, or comments, if any, are attached hereto.

#### **INTERIM JOINT COMMITTEE ON LOCAL GOVERNMENT Meeting of May 26, 1999**

The following administrative regulations were available for consideration by the Interim Joint Committee on Local Government during its meeting of May 26, 1999, having been referred to the Committee on May 18, 1999, pursuant to KRS 13A.290(6):

109 KAR 13:010  
815 KAR 10:051  
815 KAR 10:060  
815 KAR 20:030

The following administrative regulations were found to be deficient pursuant to KRS 13A.290(7) and 13A.030(2): None

The following administrative regulations were approved as amended at the Committee meeting pursuant to KRS 13A.320: None

The following administrative regulations were deferred pursuant to KRS 13A.300: None

Committee activity in regard to review of the above-referenced administrative regulations is reflected in the minutes of the May 26, 1999 meeting, which are hereby incorporated by reference. Additional committee findings, recommendations, or comments, if any, are attached hereto.

#### **INTERIM JOINT COMMITTEE ON TRANSPORTATION Meeting of June 1, 1999**

The following administrative regulations were available for consideration by the Interim Joint Committee on Transportation during its meeting of June 1, 1999, having been referred to the Committee on May 17, 1999 pursuant to KRS 13A.290(6):

603 KAR 7:080 & E (The Committee took no action on 603 KAR 7:080 & E because the Interim Joint Committee Review on Administrative Regulations found the regulation to be deficient at its May 11, 1999 meeting.)

600 KAR 3:030  
603 KAR 4:035  
603 KAR 4:045  
603 KAR 4:055  
603 KAR 4:050

The following administrative regulations were found to be deficient pursuant to KRS 13A.290(7) and 13A.030(2): None

The Committee rationale for each finding of deficiency is attached to and made a part of this memorandum.

The following administrative regulations were approved as amended at the Committee meeting pursuant to KRS 13A.320: 603 KAR 4:035

The wording of the amendment of each such administrative regulation is attached to and made a part of this memorandum.

The Transportation Committee amended 603 KAR 4:035 by:

On page 4, Section 4(3) by deleting the word "sufficient" and in lieu thereof inserting the word "insufficient".

The following administrative regulations were deferred pursuant to KRS 13A.300: None

Committee activity in regard to review of the above-referenced administrative regulations is reflected in the minutes of the June 1, 1999, meeting, which are hereby incorporated by reference. Additional committee findings, recommendations, or comments, if any, are attached hereto.

#### **INTERIM JOINT COMMITTEE ON EDUCATION Meeting of June 7, 1999**

The following administrative regulations were available for consideration by the Interim Joint Committee on Education during its meeting of June 7, 1999, having been referred to the Committee on May 6, 1999, pursuant to KRS 13A.290(6):

13 KAR 2:045  
704 KAR 3:410  
704 KAR 3:420  
703 KAR 4:021  
703 KAR 5:040  
703 KAR 5:070  
707 KAR 1:150

The following administrative regulations were found to be deficient pursuant to KRS 13A.290(7) and 13A.030(2): None

The Committee rationale for each finding of deficiency is attached to and made a part of this memorandum.

The following administrative regulations were approved as amended at the Committee meeting pursuant to KRS 13A.320: None

The wording of the amendment of each such administrative regulation is attached to and made a part of this memorandum.

The following administrative regulations were deferred pursuant to KRS 13A.300: None

Committee activity in regard to review of the above-referenced administrative regulations is reflected in the minutes of the June 7, 1999 meeting, which are hereby incorporated by reference. Additional committee findings, recommendations, or comments, if any, are attached hereto.

**INTERIM JOINT COMMITTEE ON HEALTH AND WELFARE**  
**Meeting of June 16, 1999**

The following administrative regulations were available for consideration by the Interim Joint Committee on Health and Welfare during its meeting of June 16, 1999, having been referred to the Committee on May 17, 1999, and June 14, 1999, pursuant to KRS 13A.290(6):

201 KAR 2:030  
201 KAR 2:040  
201 KAR 2:050  
201 KAR 9:320  
201 KAR 22:135  
201 KAR 25:031  
902 KAR 20:140  
904 KAR 2:006 & E  
904 KAR 2:016  
904 KAR 2:017  
904 KAR 2:370 & E  
904 KAR 2:500  
904 KAR 2:510  
907 KAR 1:780  
920 KAR 1:060  
921 KAR 2:015 & E  
921 KAR 3:030

The following administrative regulations were deferred pursuant to KRS 13A.300:

201 KAR 9:320  
902 KAR 20:140  
907 KAR 1:780  
920 KAR 1:060  
921 KAR 3:030

Committee activity in regard to review of the above-referenced administrative regulations is reflected in the minutes of the June 16, 1998, meeting, which are hereby incorporated by reference.



## CUMULATIVE SUPPLEMENT

### Locator Index - Effective Dates .....A - 2

The Locator Index lists all administrative regulations published in VOLUME 26 of the Administrative Register from July, 1999 through June, 2000. 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 25 are those administrative regulations that were originally published in Volume 25 (last year's) issues of the Administrative Register but had not yet gone into effect when the 1999 bound Volumes were published.

### KRS Index .....A - 8

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 26 of the Administrative Register.

### Subject Index .....A - 11

The Subject Index is a general index of administrative regulations published in VOLUME 26 of the Administrative Register, and is mainly broken down by agency.

# LOCATOR INDEX - EFFECTIVE DATES

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## VOLUME 25

The administrative regulations listed under VOLUME 25 are those administrative regulations that were originally published in Volume 25 (last year's) issues of the Administrative Register but had not yet gone into effect when the 1999 bound Volumes were published.

### EMERGENCY ADMINISTRATIVE REGULATIONS:

12 KAR 4:170E	2813	4-22-99
109 KAR 2:020E	2814	4-19-99
109 KAR 15:020E	2816	4-19-99
200 KAR 21:010E	2116	2-12-99
200 KAR 30:010E	2311	2-26-99
200 KAR 30:020E	2312	2-26-99
200 KAR 30:030E	2313	2-26-99
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200 KAR 30:060E	2316	2-26-99
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201 KAR 2:020E	2818	4-22-99
201 KAR 9:330E	1338	11-12-98
201 KAR 9:335E	1339	11-12-98
201 KAR 9:340E	1340	11-12-98
201 KAR 20:420E	1829	1-4-99
201 KAR 20:430E	1830	1-4-99
201 KAR 20:440E	1830	1-4-99
201 KAR 38:010E	2317	3-4-99
201 KAR 38:020E	2318	3-4-99
201 KAR 38:030E	2319	3-4-99
201 KAR 38:040E	2320	3-4-99
201 KAR 38:050E	2321	3-4-99
201 KAR 38:060E	2322	3-4-99
405 KAR 10:010E	1562	11-24-98
415 KAR 1:080E	2529	4-12-99
500 KAR 13:010E	1831	12-30-98
500 KAR 13:020E	2534	4-5-99
501 KAR 6:190E	1564	12-4-98
Replaced	2871	6-16-99
501 KAR 6:200E	1567	12-4-98
Replaced	2875	6-16-99
501 KAR 6:210E	1568	12-4-98
Replaced	2876	6-16-99
501 KAR 6:999E	2821	5-14-99
503 KAR 1:140E	1570	11-30-98
601 KAR 1:040E	1573	12-14-98
725 KAR 1:070E	1832	1-6-99
Withdrawn		6-15-99
803 KAR 2:320E	1835	1-15-99
Replaced	2451	6-16-99
803 KAR 2:425E	1840	1-15-99
Replaced	2464	6-16-99
803 KAR 2:500E	1841	1-15-99
Replaced	2465	6-16-99
806 KAR 17:066E	2323	3-12-99
900 KAR 6:050E	2536	3-26-99
904 KAR 2:006E	775	9-14-98
Expired		3-20-99
904 KAR 2:370E	786	9-14-98
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907 KAR 1:013E	2822	4-21-99
907 KAR 1:025E	1844	1-15-99
907 KAR 3:090E	1851	1-11-99
907 KAR 3:100E	1854	1-11-99
907 KAR 4:020E	1856	1-15-99
908 KAR 3:160E	2353	3-9-99
921 KAR 2:015E	1862	1-14-99

### ORDINARY ADMINISTRATIVE REGULATIONS:

2 KAR 2:030		
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2 KAR 2:031	2476	6-16-99
11 KAR 5:001		
Amended	2920	
11 KAR 5:130		
Amended	2922	
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13 KAR 2:045		
Amended	2177	
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Amended	2182	
109 KAR 13:010		
Amended	2184	
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200 KAR 5:340	2709	
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Amended	2648	(See Volume 26)
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201 KAR 9:041		
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201 KAR 9:084		
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201 KAR 9:310		
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201 KAR 9:320	687	
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201 KAR 9:330	2229	
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201 KAR 9:340	2231	
201 KAR 14:040		
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201 KAR 18:071	2983		401 KAR 65:001		
201 KAR 18:080			Amended	1458	
Amended	2930		As Amended	2855	6-9-99
201 KAR 18:091	2983		401 KAR 68:010	1747	
201 KAR 18:100			Amended	2400	
Amended	2931		As Amended	2857	
201 KAR 18:110			401 KAR 68:020	1748	
Amended	2931		Amended	2401	
201 KAR 18:120			As Amended	2858	
Amended	2932		401 KAR 68:048	1750	
201 KAR 20:420	2232		Amended	2402	
201 KAR 20:430	2233		As Amended	2858	
201 KAR 20:440	2234		401 KAR 68:065	1751	
201 KAR 22:135			Amended	2404	
Amended	2432		As Amended	2859	
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201 KAR 25:031			Amended	2405	
Amended	1947		As Amended	2859	
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202 KAR 3:020			Amended	2407	
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301 KAR 2:049			401 KAR 68:150	1756	
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301 KAR 2:111			As Amended	2860	
Amended	2934		401 KAR 68:200	1757	
301 KAR 2:172			Amended	2409	
Amended	2653		As Amended	2860	
301 KAR 2:174			405 KAR 7:097	2048	
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301 KAR 2:179			Amended	2935	
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401 KAR 47:110			As Amended	2863	6-9-99
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401 KAR 51:110	2713		415 KAR 1:130		
401 KAR 51:120	2717		Amended	1128	
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Amended	2669		Amended	2207	
501 KAR 6:060			As Amended	2897	6-7-99
Amended	2670		725 KAR 1:070		
501 KAR 6:070			Amended	2955	
Amended	2950		785 KAR 1:010		
501 KAR 6:090			Amended	2673	(See Volume 26)
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501 KAR 6:110			Amended	434	
Amended	2438	6-16-99	Amended	880	
501 KAR 6:120			803 KAR 2:307		
Amended	2672		Amended	2441	6-16-99
501 KAR 6:140			803 KAR 2:309		
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